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

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

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

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

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

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

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

Sec. 1.003. INTERNAL REFERENCES. In this code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and

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

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

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

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

Sec. 1.005. DEFINITIONS. In this code:

(1) "Artificial swimming lagoon" means an artificial body of water used for recreational purposes with more than 20,000 square feet of surface area, an artificial liner, and a method of disinfectant. The term does not include a body of water open to the public that continuously recirculates water from a spring or a pool.

(2) "Licensed practitioner" includes a sex offender treatment provider who is licensed under Chapter 110, Occupations Code.

(3) "Public swimming pool" means an artificial body of water, including a spa, maintained expressly for public recreational purposes, swimming and similar aquatic sports, or therapeutic purposes. The term does not include an artificial swimming lagoon or a body of water open to the public that continuously recirculates water from a spring.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 821 (H.B. 1468), Sec. 1, eff. June 15, 2017.

Sec. 1.006. REPORTS. Notwithstanding any other law, each report that is required by this code to be submitted to the governor or a member of the legislature must be submitted not later than December 1 of the year that the report is due.

Added by Acts 2025, 89th Leg., R.S., Ch. 664 (H.B. 4666), Sec. 11, eff. June 20, 2025.

TITLE 2. HEALTH
SUBTITLE A. DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 11. GENERAL PROVISIONS

Sec. 11.001. DEFINITIONS. In this title:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the commissioner of state health services.

(3) "Department" means the Department of State Health Services.

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0003, eff. April 2, 2015.

CHAPTER 12. POWERS AND DUTIES OF DEPARTMENT OF STATE HEALTH SERVICES
SUBCHAPTER A. GENERAL POWERS AND DUTIES

Sec. 12.0001. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner by this title or another law conflicts with any of the following provisions of the Government Code, the Government Code provision controls:

(1) Subchapter A, Chapter 524;

(2) Section 524.0101;

(3) Sections 524.0151(a)(2) and (b);

(4) Section 524.0202; and

(5) Section 525.0254.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0010, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.23, eff. April 1, 2025.

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

(b) The executive commissioner shall adopt rules for the performance of each duty imposed by law on the executive commissioner, the department, or the commissioner and file a copy of those rules with the department.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0010, eff. April 2, 2015.

Sec. 12.0011. INVESTIGATIONS IN GENERAL. Subject to the oversight of the executive commissioner, the department shall examine, investigate, enter, and inspect any public place or public building as the department determines necessary for the discovery and suppression of disease and the enforcement of any health or sanitation law of this state.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0010, eff. April 2, 2015.

Sec. 12.002. CERTAIN PROCEDURES FOR INVESTIGATIONS. (a) The commissioner or the commissioner's designee may administer oaths, summon witnesses, and compel the attendance of witnesses in any matter proper for investigation by the department, subject to the executive commissioner's oversight, including the determination of nuisances and the investigation of:

(1) public water supplies;

(2) sanitary conditions;

(3) the existence of infection; or

(4) any matter that requires the department to exercise its

discretionary powers and that is within the general scope of its authority under this subchapter.

(b) Each district court shall aid the department in its investigations and in compelling compliance with this subchapter. If a witness summoned by the commissioner or the commissioner's designee is disobedient or disrespectful to the department's lawful authority, the district court of the county in which the witness is summoned to appear shall punish the witness in the manner provided for contempt of court.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0010, eff. April 2, 2015.

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0010, eff. April 2, 2015.

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

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

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

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

Sec. 12.0111. LICENSING FEES. (a) This section applies in relation to each licensing program administered by the department or administered by a regulatory board or other agency that is under the jurisdiction of the department or administratively attached to the department. In this section and Section 12.0112, "license" includes a permit, certificate, or registration.

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

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

(d) This section does not apply to:

(1) a person regulated under Chapter 773; or

(2) a license or registration under Chapter 401.

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

Amended by:

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0011, eff. April 2, 2015.

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

of licenses.

(b) This section does not apply to:

(1) a license issued for a youth camp under Chapter 141;

(2) a food manager certificate issued under Subchapter G, Chapter 438; or

(3) a license or registration under Chapter 401.

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

Amended by:

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

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

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

Sec. 12.0115. INTEGRATION OF HEALTH CARE DELIVERY PROGRAMS. (a) In this section, "health care delivery programs" includes the department's primary health care services program, its program to improve maternal and infant health, its services program for children with special health care needs, any aspects of health care delivery under the state Medicaid program assigned to the department by law or by the commission, and the part of any other department program concerned with the department's responsibility for the delivery of health care services.

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

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

(1) the development of health care policy;

(2) the delivery of health care services, to the extent appropriate for the recipients of the health care services; and

(3) to the extent possible, the administration of contracts

with providers of health care services, particularly providers who concurrently provide health care services under more than one contract or program with the department.

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

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

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

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

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

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

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

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

(4) the integration of reimbursement methods:

(A) particularly for a provider that delivers health

services for the department under more than one contract or under more than one department program; and

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

(f) The department shall examine the extent to which the department could integrate all or part of its health care delivery programs into a single delivery system.

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0012, eff. April 2, 2015.

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

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

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

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

(b) The executive commissioner by rule shall adopt a list of categories of licensed, certified, registered, or otherwise authorized providers to whom the department may award a grant for professional services under this section or with whom the department may contract or otherwise engage to perform professional services under this section.

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

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0013, eff. April 2, 2015.

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

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

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

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

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

(d) The executive commissioner by rule may establish fees that the department may collect for the sale of laboratory services.

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0014, eff. April 2, 2015.

Sec. 12.0125. DRUG REBATES. (a) The department shall develop a voluntary drug manufacturer rebate program for drugs purchased by or on behalf of a client of the Kidney Health Care Program or the Children with Special Health Care Needs Services Program for which rebates are not available under the Medicaid drug manufacturer rebate program.

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

drug manufacturer rebate program.

(c) Amounts received by the department under the drug rebate program established under this section may be appropriated only for the Kidney Health Care Program or the Children with Special Health Care Needs Services Program.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0018, eff. April 2, 2015.

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

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

(c) To the extent allowed by federal law, the department shall provide an equal opportunity to request a waiver of the foreign country residence requirement for an individual described by Subsection (a) who agrees to practice medicine in:

(1) an area that the department determines is affected by an ongoing exposure to a disease that is designated as reportable under Section 81.048;

(2) a medically underserved area; or

(3) a health professional shortage area.

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

Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 3, eff. September 1, 2015.

Sec. 12.0128. HEALTH ALERT NETWORK. The department shall include local health officials, the Texas Association of Community

Health Centers, and the Texas Organization of Rural and Community Hospitals in the department's Texas Health Alert Network to the extent federal funds for bioterrorism preparedness are available for that purpose.

Added by Acts 2005, 79th Leg., Ch. 1337 (S.B. 9), Sec. 17, eff. June 18, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0019, eff. April 2, 2015.

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

(1) the licensing of drivers;

(2) the enforcement of traffic safety laws, including differentiation between drivers who are ill or intoxicated; and

(3) accident investigation, including examination for alcohol or drugs in the bodies of persons killed in traffic accidents.

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

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

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

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

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

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

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0020, eff. April 2, 2015.

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

(1) the imposition of a reprimand, a period of probation, a monetary penalty, or a condition on a person's continued practice or a facility's continued operation; and

(2) the refusal to renew or the suspension, probation, or revocation of a license or other form of permission to engage in an activity.

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

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

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

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

a high school education.

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0021, eff. April 2, 2015.

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

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

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

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

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 6, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0022, eff. April 2, 2015.

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

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

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

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

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

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 9.01, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0023, eff. April 2, 2015.

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

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

Sec. 12.019. GENETIC COUNSELING FEES. (a) The executive commissioner by rule may set a fee to be collected by the department for providing genetic counseling services. The fee may not exceed the actual cost of providing the services.
(b) The department shall use the fees for providing genetic counseling services.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 8.116, eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 12.017 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(51), eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0024, eff. April 2, 2015.

Sec. 12.020. PROTECTION AND USE OF INTELLECTUAL PROPERTY. (a) The department may:
(1) apply for, register, secure, hold, and protect under the laws of the United States, any state, or any nation:
(A) a patent for an invention or discovery of, or improvement to, any process, machine, manufacture, or composition of matter;
(B) a copyright for an original work of authorship fixed in any tangible medium of expression now known or later developed that can be perceived, reproduced, or otherwise

communicated;

(C) a trademark, service mark, collective mark, or certification mark for a word, name, symbol, device, or slogan, or any combination of those items, that has been adopted and used by the department to identify goods or services and distinguish those goods or services from other goods or services; or

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

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

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

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

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

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

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

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

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

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

(1) the public disclosure or availability of products, technology, and scientific information, including inventions,

discoveries, trade secrets, and computer software;

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

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

(4) the identification of ownership and licensing responsibilities for each class of intellectual property; and

(5) royalty participation by inventors and the department.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0025, eff. April 2, 2015.

SUBCHAPTER D. FEES FOR PUBLIC HEALTH SERVICES

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

(1) personal health promotion, maintenance, and treatment services;

(2) infectious disease control and prevention services;

(3) environmental and consumer health protection services;

(4) laboratory services;

(5) health facility architectural plan review;

(6) public health planning, information, and statistical services;

(7) public health education and information services; and

(8) administration services.

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

Sec. 12.032. FEES FOR PUBLIC HEALTH SERVICES. (a) The executive commissioner by rule may adopt fees to be collected by the department from a person who receives public health services from the department.

(b) The executive commissioner by rule may require department contractors to collect fees for public health services provided by department contractors participating in the department's programs. A department contractor shall retain a fee collected under this

subsection and shall use the fee in accordance with the contract provisions.

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0026, eff. April 2, 2015.

Sec. 12.033. DISTRIBUTION AND ADMINISTRATION OF CERTAIN VACCINES AND SERA. (a) Except as otherwise provided by this section, the executive commissioner by rule shall adopt fees to be collected by the department for the distribution and administration of vaccines and sera provided under:

(1) Section 38.001, Education Code;

(2) Section 42.043, Human Resources Code;

(3) Chapter 826 (Rabies Control Act of 1981);

(4) Chapter 81 (Communicable Disease Prevention and Control Act); and

(5) Section 161.005.

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

(c) Provided the executive commissioner finds that the monetary savings of this subsection are greater than any costs associated with administering it, the executive commissioner by rule shall establish a fee schedule for fees under this section. In establishing the fee schedule, the executive commissioner shall consider a person's financial ability to pay all or part of the fee, including the availability of health insurance coverage. In the event the fee

schedule conflicts with any federal law or regulation, the executive commissioner shall seek a waiver from the applicable federal law or regulation to permit the fee schedule. In the event the waiver is denied, the fee schedule shall not go into effect.

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

(1) a public health emergency exists; and

(2) the vaccine or serum is needed to meet the emergency.

(e) The department may not deny an immunization to an individual required to be immunized under a law specified by Subsection (a) because of the individual's inability to pay for the immunization. The department shall provide the immunization at a reduced charge or no charge according to the financial ability of the individual or a person with a legal obligation to support the individual to pay for the immunization. The department shall give priority to those persons least able to pay for immunization.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0027, eff. April 2, 2015.

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

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

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

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

the money shall be deposited in the state treasury.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0028, eff. April 2, 2015.

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 647, Sec. 2, eff. June 11, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 19.02(11), eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0029, eff. April 2, 2015.

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

(1) personal insurance;

(2) another person, for a personal injury caused by the other person's negligence or wrongdoing; or

(3) any other source.

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

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

(1) enforcement of the right would tend to defeat the purpose of the department's program; or

(2) the administrative expense of the enforcement would be

greater than the expected recovery.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0030, eff. April 2, 2015.

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0031, eff. April 2, 2015.

Sec. 12.038. RULES. The executive commissioner may adopt rules necessary to implement this subchapter.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0032, eff. April 2, 2015.

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

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

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

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

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

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

Sec. 12.052. REQUIREMENTS FOR EXPENDITURE OF CERTAIN FUNDS. (a) The expenditure of funds received by local units of government from the department is governed by Chapter 783, Government Code, and the rules adopted under that law, except as provided by Section 12.055.

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.15, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1045, Sec. 3, eff. Sept. 1, 1997.

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

purchased with funds provided by the department upon the termination of the program, contract, or grant.

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

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

(1) exempt under Section 12.053 from the statewide personal property accounting system; or

(2) lawfully in the possession of an emergency medical services provider or governmental entity as those terms are defined by Section 773.003.

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

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

Added by Acts 1993, 73rd Leg., ch. 164, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19(10), eff. Sept. 1, 1997.

Sec. 12.055. CERTAIN PROCUREMENTS MADE WITH DEPARTMENT FUNDS. (a) A state agency or local unit of government that expends funds received from the department for the acquisition of goods and services may satisfy the requirements of Section 12.052 or of another state law requiring procurements by competitive bidding or competitive sealed proposals by procuring goods or services with those funds in accordance with Section 12.056 or in accordance with:

(1) Section 2155.144, Government Code, if the entity is a state agency subject to that law;

(2) Section 32.043 or 32.044, Human Resources Code, if the entity is a public hospital subject to those laws; or

(3) this section, if the entity is not covered by Subdivision (1) or (2).

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

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

(1) any installation costs;

(2) the delivery terms;

(3) the quality and reliability of the vendor's goods or services;

(4) the extent to which the goods or services meet the state agency's or local unit of government's needs;

(5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements;

(6) the impact on the ability of the state agency or local unit of government to comply with laws and rules relating to historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities;

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

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

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

(10) the acquisition price; and

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

(d) If a state agency to which this section applies acquires

goods or services with a value that exceeds $100,000, the state agency shall consult with and receive approval from the commission before considering factors other than price and meeting specifications.

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0033, eff. April 2, 2015.

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

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

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

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

SUBCHAPTER F. BORDER HEALTH

Sec. 12.071. OFFICE OF BORDER HEALTH. The department shall establish and maintain an office in the department to coordinate and promote health and environmental issues between this state and Mexico.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0034, eff. April 2, 2015.

Sec. 12.072. VECTOR-BORNE AND ZOONOTIC DISEASE MITIGATION IN BORDER COUNTIES. (a) To address vector-borne and zoonotic diseases and standardize practices in counties located along the international border with Mexico, the department shall:

(1) consult with the Department of Agriculture and other appropriate state agencies to study:

(A) the ongoing and potential needs of border counties related to vector-borne and zoonotic diseases;

(B) the availability of and capacity for vector mitigation and control, including increased staffing, equipment, education, and training; and

(C) strategies to improve or develop continuing education and public outreach initiatives for vector-borne and zoonotic disease prevention, including sanitation, removal of standing water, use of repellant, and reporting to health authorities of rashes and other symptoms of vector-borne and zoonotic diseases;

(2) develop rapid local and regional response and support plans for:

(A) ongoing vector-borne and zoonotic disease control activities; and

(B) disasters, including flooding, hurricanes, and outbreaks of vector-borne diseases; and

(3) perform any administrative actions necessary to address the findings from the study described by Subdivision (1) and to implement any appropriate strategies developed under this section.

(b) The department may solicit and accept gifts, grants, and donations to implement and administer this section. The department shall coordinate with appropriate federal agencies, state agencies, nonprofit organizations, public and private hospitals, institutions of higher education, and private entities in implementing and administering this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 398 (S.B. 1312), Sec. 3, eff. June 2, 2019.

SUBCHAPTER H. MEDICAL ADVISORY BOARD

Sec. 12.091. DEFINITION. In this subchapter, "panel" means a panel of the medical advisory board.

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

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0035, eff. April 2, 2015.

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

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

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

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

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

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

Added by Acts 1995, 74th Leg., ch. 165, Sec. 9, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1261, Sec. 21, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 9.23, eff. Sept. 1, 1999. Amended by:

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0036, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 29, eff. January 1, 2016.

Sec. 12.093. ADMINISTRATION. (a) The medical advisory board is administratively attached to the department.

(b) The department:

(1) shall provide administrative support for the medical advisory board and panels of the medical advisory board; and

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0037, eff. April 2, 2015.

Sec. 12.094. RULES RELATING TO MEDICAL ADVISORY BOARD MEMBERS. (a) The executive commissioner:

(1) may adopt rules to govern the activities of the medical advisory board;

(2) by rule may establish a reasonable fee to pay a member of the medical advisory board for the member's professional consultation services; and

(3) if appropriate, may authorize reimbursement for travel expenses as provided by Section 2110.004, Government Code, for each meeting a member attends.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0038, eff. April 2, 2015.

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

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

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

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

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

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

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

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

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

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

2001.

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

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

(2) are privileged information; and

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

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

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

(2) the applicant or license holder; and

(3) the officer who presides at the hearing.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0039, eff. April 2, 2015.

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

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

SUBCHAPTER I. TEXAS VOLUNTEER HEALTH CORPS

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

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

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

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

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

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

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0040, eff.

April 2, 2015.

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

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

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

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

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

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

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

SUBCHAPTER J. TOBACCO SETTLEMENT PROCEEDS

Sec. 12.131. DEFINITIONS. In this subchapter:

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

(2) "Advisory committee" means the tobacco settlement

permanent trust account administration advisory committee.

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

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

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

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

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

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

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

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

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0041, eff. April 2, 2015.

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

(b) The rules may provide for:

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

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

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

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0042, eff. April 2, 2015.

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

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

Sec. 12.136. ADJUSTMENT FOLLOWING AUDIT. (a) If the

department, pursuant to rules adopted by the executive commissioner, finds, after an audit conducted under Section 12.133 or 12.134, that a political subdivision has overstated unreimbursed health care expenditures in the information submitted under Section 12.133 for any year, the department shall report that fact to the comptroller and shall reduce that political subdivision's percentage of the subsequent annual distribution of the earnings from the account appropriately.

(b) If a monetary penalty is applied under Section 12.134, the department shall also reduce the political subdivision's percentage of the subsequent annual distribution of the earnings from the account appropriately.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0043, eff. April 2, 2015.

Sec. 12.137. TOBACCO SETTLEMENT PERMANENT TRUST ACCOUNT ADMINISTRATION ADVISORY COMMITTEE. (a) The tobacco settlement permanent trust account administration advisory committee shall advise:

(1) the department on the implementation of the department's duties under this subchapter; and

(2) the comptroller on the administration of the comptroller's duties under Section 403.1041, Government Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) A member of the advisory committee may not receive compensation from the trust fund or the state for service on the advisory committee but may be reimbursed for actual and necessary expenses of attending meetings of the advisory committee or performing other official duties authorized by the comptroller.

(i) The department shall provide administrative support and resources to the advisory committee as necessary for the advisory

committee to perform the advisory committee's duties under this subchapter.

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

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 9, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0044, eff. April 2, 2015.
Acts 2025, 89th Leg., R.S., Ch. 1157 (S.B. 2900), Sec. 7, eff. June 20, 2025.

Sec. 12.138. APPROVAL OF RULES. A rule to be adopted by the executive commissioner relating to certification of a percentage of an annual distribution under Section 12.132 or collection of information under Sections 12.132, 12.133, and 12.134 must be submitted to the advisory committee and may not become effective before the rule is approved by the advisory committee. If the advisory committee disapproves a proposed rule, the advisory committee shall provide the executive commissioner the specific reasons that the rule was disapproved.

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0045, eff. April 2, 2015.

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

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

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

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0046, eff. April 2, 2015.

CHAPTER 13. DEPARTMENT HOSPITALS AND RESPIRATORY FACILITIES
SUBCHAPTER A. CARE AND TREATMENT IN DEPARTMENT HOSPITALS

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

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

(2) will benefit from hospitalization.

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

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

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

(c) The executive commissioner may adopt rules and the department may enter into contracts as necessary to implement this section.

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

(1) admit a patient to a particular hospital;

(2) guarantee the availability of space at any hospital; or

(3) provide treatment for a particular medical need at any hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0049, eff. April 2, 2015.

Sec. 13.003. SERVICES AT RIO GRANDE STATE CENTER. (a) The primary purpose of the Rio Grande State Center is to provide inpatient and outpatient services, either directly or by contract

with one or more public or private health care providers or entities, to the residents of the Lower Rio Grande Valley.

(b) The department may establish at the Rio Grande State Center:

(1) cancer screening;
(2) diagnostic services;
(3) educational services;
(4) obstetrical services;
(5) gynecological services;
(6) other inpatient health care services; and
(7) outpatient health care services, including diagnostic, treatment, disease management, and supportive care services.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0050, eff. April 2, 2015.

Sec. 13.004. TREATMENT OF CERTAIN PERSONS WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY. (a) The department or the Department of Aging and Disability Services, as appropriate, may transfer a person with mental illness or an intellectual disability who is infected with tuberculosis to a public health hospital as defined by Section 13.033.

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0051, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0052, eff.

April 2, 2015.

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

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

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

(b) The department may contract with:

(1) municipal, county, or state hospitals;

(2) private physicians;

(3) licensed nursing facilities and hospitals; and

(4) hospital districts.

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0053, eff. April 2, 2015.

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

(1) case-finding;

(2) inpatient and outpatient treatment; and

(3) the eventual eradication of tuberculosis.

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

Sec. 13.007. COLONEL H. WILLIAM "BILL" CARD, JR., OUTPATIENT CLINIC. The outpatient clinic operated by the South Texas Health Care System in Harlingen, Texas, is named the Colonel H. William "Bill" Card, Jr., Outpatient Clinic in honor of Colonel H. William "Bill" Card, Jr.

Added by Acts 2009, 81st Leg., R.S., Ch. 1056 (H.B. 4642), Sec. 1, eff. June 19, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1118 (S.B. 1926), Sec. 1, eff. June 17, 2011.

SUBCHAPTER B. TEXAS TUBERCULOSIS CODE

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

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

Sec. 13.032. PURPOSE. The purpose of this subchapter is to:
(1) enable persons with tuberculosis to obtain needed care;
(2) provide care and treatment for those persons; and
(3) facilitate their hospitalization.

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

Sec. 13.033. DEFINITIONS. In this subchapter:
(1) "Legally responsible person" means a parent, guardian, or spouse, or any person whom the laws of this state hold responsible for debts incurred as a result of the hospitalization or treatment of a patient.
(2) "Local health authority" means a practicing physician who acts as:
(A) a municipal or county health authority;
(B) a director of a local health department or public health district; or
(C) a regional director of a public health region.
(3) "Physician" means a person licensed by the Texas Medical Board to practice medicine in this state.

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

(5) "Public health hospital" means a hospital operated by the department to provide services under this subchapter, including the Texas Center for Infectious Disease.

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0054, eff. April 2, 2015.

Sec. 13.034. DUTIES OF EXECUTIVE COMMISSIONER AND DEPARTMENT. (a) The executive commissioner shall adopt rules relating to:

(1) the management of public health hospitals;

(2) the duties of officers and employees of those hospitals; and

(3) the enforcement of necessary discipline and restraint of patients.

(a-1) The executive commissioner may adopt rules as necessary for the proper and efficient hospitalization of tuberculosis patients.

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

(c) The department may:

(1) prescribe the form and content of applications, certificates, records, and reports provided for under this subchapter;

(2) require reports from the administrator of a public health hospital relating to the admission, examination, diagnosis, release, or discharge of a patient;

(3) visit each hospital regularly to review admitting procedures and the care and treatment of all new patients admitted

since the last visit; and

(4) investigate by personal visit a complaint made by a patient or by another person on behalf of a patient.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0055, eff. April 2, 2015.

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0056, eff. April 2, 2015.

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

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

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

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0057, eff. April 2, 2015.

Sec. 13.037. DETERMINATION OF RESIDENCY. (a) A person is a resident of this state if the person:

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

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

(3) is not in this state temporarily.

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

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

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

(3) employment in this state.

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

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

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

(1) does not possess property of any kind;

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

(3) is unable to reimburse the state.

(c) A nonindigent public patient is a person who possesses property out of which the state may be reimbursed, or who has a

person who is legally responsible for the patient's support.

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0058, eff. April 2, 2015.

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0059, eff. April 2, 2015.

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

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

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

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

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0060, eff. April 2, 2015.

Sec. 13.042. DISCRIMINATION PROHIBITED. (a) A public health hospital may not discriminate against a patient.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0061, eff. April 2, 2015.

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

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

(c) The department shall strictly enforce this section.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0062, eff. April 2, 2015.

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

(1) members of the charitable organization;

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

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

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

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

(d) The officers or a board or committee of the charitable

organization and the department must enter into a written agreement relating to the location, construction, style, and character, and terms of existence of buildings, and other questions arising in connection with the grant of permission to erect and maintain private accommodations. The department must maintain as a record a copy of the written agreement.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0063, eff. April 2, 2015.

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0064, eff. April 2, 2015.

Sec. 13.046. ADMISSION OF NONRESIDENT PATIENTS. (a) The department may enter into an agreement with an agency of another state responsible for the care of residents of that state who have tuberculosis under which:

(1) residents of the other state who have tuberculosis may

be admitted to a public health hospital, subject to the availability of appropriate space after the needs of eligible tuberculosis and chronic respiratory disease patients who are residents of this state have been met; and

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0065, eff. April 2, 2015.

SUBTITLE B. HEALTH PROGRAMS

CHAPTER 31. PRIMARY HEALTH CARE

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

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

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

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

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

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

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

(B) Title XVIII or XIX of the Social Security Act (42

U.S.C. Section 1395 et seq. or Section 1396 et seq.);

(C) the United States Department of Veterans Affairs;

(D) the TRICARE program of the United States Department of Defense;

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

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

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

(4) "Primary health care services" includes:

(A) diagnosis and treatment;

(B) emergency services;

(C) family planning services;

(D) preventive health services, including immunizations;

(E) health education;

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

(G) nutrition services;

(H) health screening;

(I) home health care;

(J) dental care;

(K) transportation;

(L) prescription drugs and devices and durable supplies;

(M) environmental health services;

(N) podiatry services; and

(O) social services.

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

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

chapter.

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0066, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0067, eff. April 2, 2015.

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

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

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

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

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

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

(e) The executive commissioner shall adopt rules under Subsection (c) relating to the types of services provided according

to the set of service priorities established under this subsection. Initial service priorities shall focus on the funding of, provision of, and access to:

(1) diagnosis and treatment;

(2) emergency services;

(3) family planning services;

(4) preventive health services, including immunizations;

(5) health education; and

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0068, eff. April 2, 2015.

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

(b) The executive commissioner by rule shall:

(1) establish the administrative structure of the program;

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

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

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0069, eff. April 2, 2015.

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

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

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

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

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

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

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

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

(d) The department shall maintain a continuing review of the services it provides directly to the eligible individuals who

participate in the program. At least annually, the department shall review and determine the continued need for the services it provides directly in each service area, in accordance with the methods and procedures used to make the initial determination as prescribed by this section.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0070, eff. April 2, 2015.

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

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

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

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

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

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

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

(f) The department shall provide a due process hearing procedure in accordance with department rules for the resolution of conflicts between the department and a provider. Chapter 2001,

Government Code, does not apply to conflict resolution procedures adopted under this section.

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

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

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

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

(2) expires according to its terms.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0071, eff. April 2, 2015.

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

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

(c) The application form must be accompanied by:

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

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

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

by the department.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0072, eff. April 2, 2015.

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0073, eff. April 2, 2015.

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

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

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

(d) Chapter 2001, Government Code, does not apply to the granting, denial, modification, suspension, or termination of

services. The department shall conduct hearings in accordance with the department's due process hearing rules.

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0074, eff. April 2, 2015.

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

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

(c) When an application is made under this chapter or when services are received, the individual applying for or receiving services shall inform the department of any other benefit to which the individual, or a person with a legal obligation to support the individual, may be entitled.

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

(e) The department may waive enforcement of Subsections (b)-(d) as prescribed by department rules in certain individually considered cases in which enforcement will deny services to a class of otherwise

eligible individuals because of conflicting federal, state, or local laws or rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0075, eff. April 2, 2015.

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

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

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

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

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0076, eff. April 2, 2015.

Sec. 31.013. FUNDING. (a) Except as provided by this chapter or by other law, the department may seek, receive, and spend funds

received through an appropriation, grant, donation, or reimbursement from any public or private source to administer this chapter.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0077, eff. April 2, 2015.

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

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

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

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

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

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

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

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

(3) the average cost per recipient of services;

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

(5) any other information required by the executive commissioner.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0078, eff. April 2, 2015.

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

(1) quantifiable indicators of effort and success;

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

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

(4) criteria for phasing out unnecessary services;

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

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

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

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

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

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

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

Sec. 31.017. FEDERALLY QUALIFIED HEALTH CENTERS. The department may make grants to establish new or expand existing facilities and to support new or expanded services at facilities that can qualify as federally qualified health centers, as defined by 42 U.S.C. Section 1396d(l)(2)(B), in this state, including:

(1) planning grants;

(2) development grants;

(3) capital improvement grants; and

(4) grants for transitional operating support.

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

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

Sec. 31.018. REFERRAL FROM HEALTHY TEXAS WOMEN PROGRAM TO PRIMARY HEALTH CARE SERVICES PROGRAM. (a) In this section, "Healthy Texas Women program" means a program operated by the commission that is substantially similar to the demonstration project operated under former Section 32.0248, Human Resources Code, and that is intended to expand access to preventive health and family planning services for women in this state.

(b) The executive commissioner by rule shall ensure that women receiving services under the Healthy Texas Women program are referred to and provided with information on the primary health care services program.

Added by Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 2, eff. June 10, 2019.

CHAPTER 32. MATERNAL AND INFANT HEALTH IMPROVEMENT

SUBCHAPTER A. PROGRAM FOR WOMEN AND CHILDREN

Sec. 32.001. SHORT TITLE. This chapter may be cited as the

Maternal and Infant Health Improvement Act.

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

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

(1) "Adolescent" means an individual younger than 18 years of age.

(2) "Ancillary services" means services necessary to obtain timely, effective, and appropriate maternal and infant health improvement services, and includes prescription drugs, medical social services, transportation, health promotion services, and laboratory services.

(3) "Facility" includes a hospital, public health clinic, birthing center, outpatient clinic, or community health center.

(4) "Infant care" means maternal and infant health improvement services and ancillary services appropriate for an individual from birth to 12 months of age.

(5) "Intrapartum care" means maternal and infant health improvement services and ancillary services appropriate for a woman, fetus, or infant during childbirth.

(6) "Maternal and infant health improvement services" means services necessary to assure quality health care for women and children.

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

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

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

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

(C) the United States Department of Veterans Affairs;

(D) the TRICARE program of the United States Department of Defense;

(E) workers' compensation or any other compulsory

employers' insurance program;

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

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

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

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

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

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

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

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

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

(b) The executive commissioner by rule may define a word or term not defined by Subsection (a) as necessary to administer this

chapter. The executive commissioner may not define a word or term so that the word or term is inconsistent or in conflict with the purposes of this chapter, or is in conflict with the definition and conditions of practice governing a provider who is required to be licensed, registered, certified, identified, or otherwise sanctioned under the laws of this state.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0079, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0080, eff. April 2, 2015.

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

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

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

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

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

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

(e) In structuring the program and adopting rules, the department and executive commissioner shall attempt to maximize the amount of federal matching funds available for maternal and infant health improvement services while continuing to serve targeted populations.

(f) If necessary, the executive commissioner by rule may coordinate services and other parts of the program with the medical

assistance program. However, the executive commissioner may not adopt rules relating to the services under either program that would:

(1) cause the program established under this chapter not to conform with federal law to the extent that federal matching funds would not be available; or

(2) affect the status of the single state agency to administer the medical assistance program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 124, Sec. 3, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0081, eff. April 2, 2015.

Sec. 32.005. ABORTION SERVICES RESTRICTED. Notwithstanding any other provision of this chapter, funds administered under this chapter may not be used to provide abortion services unless the mother's life is in danger.

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

Sec. 32.006. ADMINISTRATION. (a) The executive commissioner shall adopt rules necessary to administer this chapter, and the department shall administer the program in accordance with those rules.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0082, eff. April 2, 2015.

Sec. 32.011. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) The department may, for cause, deny, modify, suspend, or terminate services to an individual eligible for or receiving services after notice to the individual and an opportunity for a hearing.

(b) The executive commissioner by rule shall provide criteria for action by the department under this section.

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

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(65), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 124, Sec. 4, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0083, eff. April 2, 2015.

Sec. 32.012. FINANCIAL ELIGIBILITY; OTHER BENEFITS. (a) The department shall require an individual receiving services under this chapter, or the person with a legal obligation to support the individual, to pay for or reimburse the department for that part of the cost of the services that the individual or person is financially able to pay.

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

(c) When a determination of eligibility to receive maternal and infant health improvement services is made under this chapter or when the services are received, the individual requesting or receiving services shall inform the department of any other benefit to which the individual or a person with a legal obligation to support the individual may be entitled.

(d) An individual who has received services that are covered by

some other benefit, or any other person with a legal obligation to support that individual, shall reimburse the department to the extent of the services provided when the other benefit is received.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 124, Sec. 5, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0084, eff. April 2, 2015.

Sec. 32.013. RECOVERY OF COSTS. (a) The department may recover the cost of services provided under this chapter from a person who does not reimburse the department as required by Section 32.012 or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given.

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

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

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

Sec. 32.014. FEES. (a) Except as prohibited by federal law or regulation, the department may collect fees for the services provided directly by the department or through approved providers in accordance with Subchapter D, Chapter 12.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0085, eff. April 2, 2015.

Sec. 32.015. FUNDING. (a) Except as provided by this chapter or by other law, the department may seek, receive, and spend funds received through an appropriation, grant, donation, or reimbursement from any public or private source to administer this chapter.

(b) Notwithstanding other law, the department's authority to spend funds appropriated for the program established by this chapter is not affected by the amount of federal funds the department receives.

(c) The department is not required to provide maternal and infant health improvement services unless funds are appropriated to the department to administer this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 124, Sec. 6, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0086, eff. April 2, 2015.

Sec. 32.016. CONTRACTS. The department shall enter into contracts and agreements or award grants necessary to facilitate the efficient and economical provision of services under this chapter, including contracts and grants for the purchase of services, equipment, and supplies from approved providers.

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

Sec. 32.017. RECORDS. (a) The department shall require each provider receiving reimbursement under this chapter to maintain records and information for each applicant for or recipient of services.

(b) The executive commissioner shall adopt rules relating to the information a provider is required to report to the department and shall adopt procedures to prevent unnecessary and duplicative

reporting of data.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(79), eff. June 17, 2011.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(79), eff. June 17, 2011.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(79), eff. June 17, 2011.

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

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 6, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(1), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(79), eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0087, eff. April 2, 2015.

Sec. 32.018. PROGRAM PLANS. (a) The department shall have a long-range plan covering at least six years that includes at least the following elements:

(1) quantifiable indicators of effort and success;

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

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

(4) criteria for phasing out unnecessary services;

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

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

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

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

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

(e) The department shall use the information collected under Section 32.017 to develop the long-range and short-range plans.

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

Sec. 32.021. REQUIREMENTS REGARDING THE WOMEN, INFANTS, AND CHILDREN PROGRAM. (a) An agency, organization, or other entity that contracts with the Special Supplemental Nutrition Program for Women, Infants, and Children shall each month provide the clinical and nutritional services supported by that program during extended hours, as defined by the department.

(b) Each agency, organization, or other entity that contracts with the program to provide clinical or nutritional services shall include in its annual plan submitted to the department a plan to expand client access to services through extended hours, the schedule for each site that provides services, and the reasons for each site's schedule. An agency, organization, or other entity that contracts with the program is not required to offer extended hours at each of its service sites.

(c) The department shall adopt guidelines for extended hours and waivers from the requirement of Subsection (a).

(d) To obtain a waiver, an agency, organization, or other entity shall submit a written justification to the department explaining the extraordinary circumstances involved and identifying the time frame needed for their resolution.

(e) The department may not grant a waiver to an agency, organization, or other entity for a period of more than two years.

(f) If an agency, organization, or other entity required by this section to maintain extended hours provides other maternal and child health services, that entity shall also make those services available during the extended hours.

Added by Acts 1993, 73rd Leg., ch. 328, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 1317, Sec. 1, eff. Sept. 1,

1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0088, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0089, eff. April 2, 2015.

Sec. 32.0211. WOMEN, INFANTS, AND CHILDREN PROGRAM OUTREACH CAMPAIGN TO PROMOTE FATHERS' INVOLVEMENT. (a) The attorney general shall:

(1) subject to Subsections (b) and (c), develop and periodically update a publication that:

(A) describes the importance and long-term positive effects on children of a father's involvement during a mother's pregnancy; and

(B) provides guidance to prospective fathers on the positive actions that they can take to support the pregnant mother during pregnancy and the effect those actions have on pregnancy outcomes; and

(2) make the publication described by Subdivision (1) available to any agency, organization, or other entity that contracts with the Special Supplemental Nutrition Program for Women, Infants, and Children and on the attorney general's Internet website in a format that allows the public to download and print the publication.

(b) The publication developed by the attorney general under Subsection (a) must include:

(1) information regarding the steps that unmarried parents must take if the parents want to establish legal paternity and the benefits of paternity establishment for children;

(2) a worksheet to help fathers identify personal risk behaviors, including smoking, substance abuse, and unemployment;

(3) information regarding how a father's personal risk behaviors may affect the father's child and a guide to resources that are available to the father to assist in making necessary lifestyle changes;

(4) information for fathers about the mother's prenatal health, including the emotional and physical changes a mother will experience throughout pregnancy, the mother's nutritional needs, and an explanation of how the father may help the mother meet those

needs;

(5) an explanation of prenatal health care visits, including an explanation of what they are and what to expect, and the practical ways a father may support the mother throughout pregnancy;

(6) information regarding a child's prenatal health, including the child's developmental stages, the importance of attending prenatal health care visits, the practical ways a father may contribute to healthy baby outcomes, and actions the father may take to prepare for the birth of a child;

(7) an explanation regarding prenatal tests, including an explanation of what the tests are and what tests to expect;

(8) basic infant care information, including:

(A) information regarding the basics of dressing, diapering, bathing, consoling, and stimulating an infant;

(B) health and safety issues, including issues relating to nutritional information, sleep needs and expectations, baby-proofing a home, and what to expect at the first well-child visits; and

(C) information on bonding and attachment and how each relates to an infant's development;

(9) healthy relationship and coparenting information, including communication strategies, conflict resolution strategies, and problem-solving techniques for coparenting;

(10) worksheets, activities, and exercises to aid fathers and the couple in exploring the following topics:

(A) personal ideas about fatherhood and the role of the father in the family system;

(B) the immediate and long-term benefits of father involvement specific to their family; and

(C) perceived barriers to father involvement and strategies for overcoming those barriers; and

(11) activities and projects for fathers that increase the fathers' understanding of the stages of child developmental and health and safety issues.

(c) In developing the publication required by Subsection (a), the attorney general shall consult with:

(1) the department as the state agency responsible for administering the Special Supplemental Nutrition Program for Women, Infants, and Children and this state's program under the Maternal and Child Health Services Block Grant Act (42 U.S.C. Section 701 et

seq.); and

(2) the Texas Council on Family Violence.

(d) An agency, organization, or other entity that contracts with the Special Supplemental Nutrition Program for Women, Infants, and Children shall make the publication described by Subsection (a) available to each client receiving clinical or nutritional services under the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 241 (H.B. 824), Sec. 1, eff. June 17, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0090, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0091, eff. April 2, 2015.

SUBCHAPTER B. PERINATAL HEALTH CARE SYSTEM

Sec. 32.041. LEGISLATIVE FINDINGS. (a) The legislature finds that the perinatal period beginning before conception and continuing through the first year of life poses unique challenges for the health care system. The development of a coordinated, cooperative system of perinatal health care within a geographic area will reduce unnecessary mortality and morbidity for women and infants.

(b) In order to improve the health of women and infants, it is necessary to promote health education, to provide assurance of reasonable access to safe and appropriate perinatal services, and to improve the quality of perinatal care by encouraging optimal use of health care personnel.

Added by Acts 1995, 74th Leg., ch. 124, Sec. 7, eff. Sept. 1, 1995.

Sec. 32.042. DUTIES OF EXECUTIVE COMMISSIONER; RULES. (a) The executive commissioner by rule shall adopt:

(1) minimum standards and objectives to implement voluntary perinatal health care systems; and

(2) policies for health promotion and education, risk assessment, access to care, and perinatal system structure, including the transfer and transportation of pregnant women and infants.

(b) The rules must:

(1) reflect all geographic areas of the state, considering time and distance;

(2) provide specific requirements for appropriate care of perinatal patients; and

(3) facilitate coordination among all perinatal service providers and health care facilities in the delivery area.

(c) The rules must include:

(1) risk reduction guidelines for preconceptional, prenatal, intrapartum, postpartum, and infant care, including guidelines for the transfer and transportation of perinatal patients;

(2) criteria for determining geographic boundaries of perinatal health care systems;

(3) minimum requirements of health promotion and education, risk assessment, access to care, and coordination of services that must be present in a perinatal health care system;

(4) minimum requirements for resources and equipment needed by a health care facility to treat perinatal patients;

(5) standards for the availability and qualifications of the health care personnel treating perinatal patients in a facility;

(6) requirements for data collection, including operation of the perinatal health care system and patient outcomes;

(7) requirements for periodic performance evaluation of the system and its components; and

(8) assurances that health care facilities will not refuse to accept the transfer of a perinatal patient solely because of the person's inability to pay for services or because of the person's age, sex, race, religion, or national origin.

Added by Acts 1995, 74th Leg., ch. 124, Sec. 7, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0092, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0093, eff. April 2, 2015.

Sec. 32.043. DUTIES OF DEPARTMENT. The department shall:

(1) develop and monitor a statewide network of voluntary perinatal health care systems;

(2) develop and maintain a perinatal reporting and analysis

system to monitor and evaluate perinatal patient care in the perinatal health care systems in this state; and

(3) provide for coordination and cooperation in this state and among this state and adjoining states.

Added by Acts 1995, 74th Leg., ch. 124, Sec. 7, eff. Sept. 1, 1995.

Sec. 32.044. SYSTEM REQUIREMENTS. (a) Each voluntary perinatal health care system must have:

(1) a coordinating board responsible for ensuring, providing, or coordinating planning access to services, data collection, and provider education;

(2) access to appropriate emergency medical services;

(3) risk assessment, transport, and transfer protocols for perinatal patients;

(4) one or more health care facilities categorized according to perinatal care capabilities using standards adopted by department rule; and

(5) documentation of broad-based participation in planning by providers of perinatal services and community representatives throughout the defined geographic region.

(b) This subchapter does not prohibit a health care facility from providing services that it is authorized to provide under a license issued to the facility by the department.

Added by Acts 1995, 74th Leg., ch. 124, Sec. 7, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0094, eff. April 2, 2015.

Sec. 32.045. GRANT PROGRAM. (a) The department may establish a program to award grants to initiate, expand, maintain, and improve voluntary perinatal health care systems.

(b) The executive commissioner by rule shall establish eligibility criteria for awarding the grants. The rules must require the department to consider:

(1) the need of an area and the extent to which the grant would meet the identified need;

(2) the availability of personnel and training programs;

(3) the availability of other funding sources;

(4) the assurance of providing quality services;

(5) the need for emergency transportation of perinatal patients and the extent to which the system meets the identified needs; and

(6) the stage of development of a perinatal health care system.

(c) The department may approve grants according to rules adopted by the executive commissioner. A grant awarded under this section is governed by Chapter 783, Government Code, and rules adopted under that chapter.

Added by Acts 1995, 74th Leg., ch. 124, Sec. 7, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0095, eff. April 2, 2015.

Sec. 32.046. POSTPARTUM DEPRESSION STRATEGIC PLAN. (a) The commission shall develop and implement a five-year strategic plan to improve access to postpartum depression screening, referral, treatment, and support services. Not later than September 1 of the last fiscal year in each five-year period, the commission shall develop a new strategic plan for the next five fiscal years beginning with the following fiscal year.

(b) The strategic plan must provide strategies to:

(1) increase awareness among state-administered program providers who may serve women who are at risk of or are experiencing postpartum depression about the prevalence and effects of postpartum depression on outcomes for women and children;

(2) establish a referral network of community-based mental health providers and support services addressing postpartum depression;

(3) increase women's access to formal and informal peer support services, including access to certified peer specialists who have received additional training related to postpartum depression;

(4) raise public awareness of and reduce the stigma related to postpartum depression; and

(5) leverage sources of funding to support existing community-based postpartum depression screening, referral, treatment,

and support services.

(c) The commission shall coordinate with the department, the office of mental health coordination, and the statewide behavioral health coordinating council in developing the strategic plan.

(d) The commission, in consultation with the department, the office of mental health coordination, and the statewide behavioral health coordinating council, shall annually review and update, as necessary, the strategic plan.

(e) For purposes of this section, "postpartum depression" means a disorder in which a woman experiences moderate to severe depression following a pregnancy, regardless of whether the pregnancy resulted in birth, or an act defined by Section 245.002(1).

Added by Acts 2019, 86th Leg., R.S., Ch. 1028 (H.B. 253), Sec. 1, eff. September 1, 2019.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Sec. 5, eff. September 1, 2025.

Sec. 32.047. HYPEREMESIS GRAVIDARUM STRATEGIC PLAN. (a) In this section, "hyperemesis gravidarum" means a disorder that causes a woman to experience extreme, persistent nausea and vomiting during pregnancy that may lead to dehydration, weight loss, or electrolyte imbalance.

(b) The commission shall develop and implement a five-year strategic plan to improve the diagnosis and treatment of and raise public awareness of hyperemesis gravidarum. Not later than September 1 of the last state fiscal year in each five-year period, the commission shall develop a new strategic plan for the next five state fiscal years that begins with the following state fiscal year.

(c) The strategic plan must provide strategies to:

(1) increase awareness among state-administered program providers who may serve women at risk of or experiencing hyperemesis gravidarum about the prevalence and effects of hyperemesis gravidarum on outcomes for women and children;

(2) establish a referral network of community-based health care providers and support services addressing hyperemesis gravidarum;

(3) increase women's access to formal and informal peer

support services, including access to certified peer specialists who have successfully completed additional training related to hyperemesis gravidarum;

(4) raise public awareness of hyperemesis gravidarum; and

(5) leverage sources of funding to support existing community-based hyperemesis gravidarum screening, referral, treatment, and support services.

(d) The commission shall coordinate with the department in the development of the strategic plan.

(e) The commission, in consultation with the department, shall annually review the strategic plan and update the plan as necessary.

Added by Acts 2021, 87th Leg., R.S., Ch. 441 (S.B. 1941), Sec. 1, eff. September 1, 2021.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Sec. 6, eff. September 1, 2025.

SUBCHAPTER D. CENTERS OF EXCELLENCE FOR FETAL DIAGNOSIS AND THERAPY

Sec. 32.071. DESIGNATION OF CENTERS OF EXCELLENCE FOR FETAL DIAGNOSIS AND THERAPY. (a) The department, in consultation with the Perinatal Advisory Council established under Section 241.187, shall designate as centers of excellence for fetal diagnosis and therapy one or more health care entities or programs in this state, including institutions of higher education as defined by Section 61.003, Education Code, or the programs of those institutions.

(b) The executive commissioner of the Health and Human Services Commission, in consultation with the department and the Perinatal Advisory Council, shall adopt the rules necessary for a health care entity or program in this state to be designated as a center of excellence for fetal diagnosis and therapy.

Added by Acts 2015, 84th Leg., R.S., Ch. 1060 (H.B. 2131), Sec. 1, eff. September 1, 2015.

Sec. 32.072. SUBCOMMITTEE. (a) The department, in consultation with the Perinatal Advisory Council, shall appoint a subcommittee of that advisory council to advise the advisory council and the

department on the development of rules related to the designations made by the department under this subchapter. As part of its duties under this subsection, the subcommittee specifically shall advise the advisory council and the department regarding the criteria necessary for a health care entity or program in this state to receive a designation under this subchapter.

(b) The subcommittee must consist of individuals with expertise in fetal diagnosis and therapy. A majority of the members of the subcommittee must practice in those areas in a health profession in this state. The subcommittee may include national and international experts.

Added by Acts 2015, 84th Leg., R.S., Ch. 1060 (H.B. 2131), Sec. 1, eff. September 1, 2015.

Sec. 32.073. PRIORITY CONSIDERATIONS FOR CENTER DESIGNATIONS. The rules adopted under Section 32.071(b) must prioritize awarding a designation under this subchapter to a health care entity or program that:

(1) offers fetal diagnosis and therapy through an extensive multi-specialty clinical program that is affiliated and collaborates extensively with a medical school in this state and an associated hospital facility that provides advanced maternal and neonatal care in accordance with its level of care designation received under Section 241.182;

(2) demonstrates a significant commitment to research in and advancing the field of fetal diagnosis and therapy;

(3) offers advanced training programs in fetal diagnosis and therapy; and

(4) integrates an advanced fetal care program with a program that provides appropriate long-term monitoring and follow-up care for patients.

Added by Acts 2015, 84th Leg., R.S., Ch. 1060 (H.B. 2131), Sec. 1, eff. September 1, 2015.

Sec. 32.074. QUALIFICATIONS FOR DESIGNATION. The rules adopted under Section 32.071(b) must ensure that a health care entity or program that receives a center of excellence designation under this

subchapter:

(1) provides or is affiliated with a hospital facility that provides advanced maternal and neonatal care in accordance with its level of care designation received under Section 241.182;

(2) implements and maintains a multidisciplinary health care team, including maternal fetal medicine specialists, pediatric and surgical specialists, neonatologists, nurses with specialized maternal and neonatal training, and other ancillary and support staff as appropriate to provide maternal, fetal, and neonatal services;

(3) establishes minimum criteria for medical staff, nursing staff, and ancillary and support personnel;

(4) measures short-term and long-term patient diagnostic and therapeutic outcomes; and

(5) provides to the department annual reports containing aggregate data on short-term and long-term diagnostic and therapeutic outcomes as requested or required by the department and makes those reports available to the public.

Added by Acts 2015, 84th Leg., R.S., Ch. 1060 (H.B. 2131), Sec. 1, eff. September 1, 2015.

SUBCHAPTER E. ENHANCED PRENATAL AND POSTPARTUM CARE SERVICES

Sec. 32.101. ENHANCED PRENATAL SERVICES FOR CERTAIN WOMEN. The commission, in collaboration with managed care organizations that contract with the commission to provide health care services to medical assistance recipients under Chapter 540 or 540A, Government Code, as applicable, shall develop and implement cost-effective, evidence-based, and enhanced prenatal services for high-risk pregnant women covered under the medical assistance program.

Added by Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 3, eff. June 10, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.24, eff. April 1, 2025.

Sec. 32.102. EVALUATION AND ENHANCEMENT OF POSTPARTUM CARE SERVICES FOR CERTAIN WOMEN. (a) In this section, "Healthy Texas Women program" means a program operated by the commission that is

substantially similar to the demonstration project operated under former Section 32.0248, Human Resources Code, and that is intended to expand access to preventive health and family planning services for women in this state.

(b) The commission shall evaluate postpartum care services provided to women enrolled in the Healthy Texas Women program after the first 60 days of the postpartum period.

(c) Based on the commission's evaluation under Subsection (b), the commission shall develop an enhanced, cost-effective, and limited postpartum care services package for women enrolled in the Healthy Texas Women program to be provided:

(1) after the first 60 days of the postpartum period; and

(2) for a period of not more than 12 months after the date of enrollment in the Healthy Texas Women program.

Added by Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 3, eff. June 10, 2019.

SUBCHAPTER F. DELIVERY AND IMPROVEMENT OF MATERNAL HEALTH CARE SERVICES INVOLVING MANAGED CARE ORGANIZATIONS

Sec. 32.151. DEFINITIONS. In this subchapter:

(1) "High-risk population" means the population of women most disproportionately affected by maternal morbidity and maternal mortality, as determined in the joint biennial report required under Section 34.015 including minority women.

(2) "Healthy Texas Women program" means a program operated by the commission that is substantially similar to the demonstration project operated under former Section 32.0248, Human Resources Code, and that is intended to expand access to preventive health and family planning services for women in this state.

(3) "Medicaid managed care organization" means a managed care organization as defined by Section 540.0001, Government Code, that contracts with the commission under Chapter 540 or 540A, Government Code, as applicable, to provide health care services to medical assistance program recipients.

Added by Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 3, eff. June 10, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.25, eff.

April 1, 2025.

Sec. 32.152. PROVISION OF HEALTHY TEXAS WOMEN PROGRAM SERVICES THROUGH MANAGED CARE. (a) The commission shall contract with Medicaid managed care organizations to provide Healthy Texas Women program services.

(b) In implementing this section, the commission shall:

(1) consult with the state Medicaid managed care advisory committee before contracting with Medicaid managed care organizations to provide Healthy Texas Women program services under this section;

(2) identify barriers that prevent women from obtaining Healthy Texas Women program services and seek opportunities to mitigate those barriers; and

(3) designate Healthy Texas Women program service providers as significant traditional providers until at least the third anniversary of the date the commission initially contracts with Medicaid managed care organizations to provide program services.

Added by Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 3, eff. June 10, 2019.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 629 (H.B. 133), Sec. 2, eff. September 1, 2021.

Sec. 32.153. CONTINUITY OF CARE FOR CERTAIN WOMEN ENROLLING IN HEALTHY TEXAS WOMEN PROGRAM. The commission shall develop and implement strategies to ensure the continuity of care for women who transition from the medical assistance program and enroll in the Healthy Texas Women program. In developing and implementing strategies under this section, the commission may collaborate with health care providers participating in the Healthy Texas Women program and Medicaid managed care organizations that provide health care services to pregnant women.

Added by Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 3, eff. June 10, 2019.

Sec. 32.154. POSTPARTUM DEPRESSION TREATMENT NETWORK. Using

money from an available source designated by the commission, the commission, in collaboration with Medicaid managed care organizations and health care providers participating in the Healthy Texas Women program, shall develop and implement a postpartum depression treatment network for women enrolled in the medical assistance or Healthy Texas Women program.

Added by Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 3, eff. June 10, 2019.

Sec. 32.155. STATEWIDE INITIATIVES TO IMPROVE QUALITY OF MATERNAL HEALTH CARE. (a) In this section, "social determinants of health" means the environmental conditions in which an individual lives that affect the individual's health and quality of life.

(b) The commission shall develop or enhance statewide initiatives to improve the quality of maternal health care services and outcomes for women in this state. The commission shall specify the initiatives that each managed care organization that contracts with the commission to provide health care services in this state must incorporate in the organization's managed care plans. The initiatives may address:

(1) prenatal and postpartum care rates;

(2) maternal health disparities that exist for minority women and other high-risk populations of women in this state;

(3) social determinants of health; or

(4) other priorities specified by the commission.

(c) A managed care organization required to incorporate the initiatives in the organization's managed care plans under Subsection (b) may incorporate any additional initiatives to improve the quality of maternal health care services for women receiving health care services through the organization.

(d) The commission shall prepare and submit to the legislature and make available to the public an annual report that summarizes:

(1) the commission's progress in developing or enhancing initiatives under this section; and

(2) each managed care organization's progress in incorporating the required initiatives in the organization's managed care plans.

(e) The commission shall submit the report required under

Subsection (d) with the report required under Section 543A.0008, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 3, eff. June 10, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 738 (H.B. 3265), Sec. 2, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.26, eff. April 1, 2025.

Sec. 32.156. INFORMATION ABOUT AVAILABILITY OF SUBSIDIZED HEALTH INSURANCE COVERAGE. (a) The commission and each managed care organization participating in the Healthy Texas Women program shall provide a written notice containing information about eligibility requirements for and enrollment in a health benefit plan for which an enrollee receives a premium subsidy under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148), based on family income, to a woman who:

(1) is enrolled in the Healthy Texas Women program; and

(2) has a household income that is more than 100 percent but not more than 200 percent of the federal poverty level.

(b) The commission, in consultation with the Texas Department of Insurance, shall develop the form and content of the notice required under this section. The notice must include:

(1) the latest information written in clear and easily understood language on available options for obtaining a subsidized health benefit plan described by Subsection (a); and

(2) resources for receiving assistance applying for and enrolling in that health benefit plan.

Added by Acts 2021, 87th Leg., R.S., Ch. 629 (H.B. 133), Sec. 2, eff. September 1, 2021.

CHAPTER 33. DUCHENNE MUSCULAR DYSTROPHY, PHENYLKETONURIA, OTHER HERITABLE DISEASES, HYPOTHYROIDISM, AND CERTAIN OTHER DISORDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 33.001. DEFINITIONS. In this chapter:

(1) "Birthing facility" means an inpatient or ambulatory

health care facility that offers obstetrical or newborn care services. The term includes:

(A) a hospital licensed under Chapter 241 that offers obstetrical services;

(B) a birthing center licensed under Chapter 244;

(C) a children's hospital; or

(D) a facility that provides obstetrical services and is maintained and operated by this state or an agency of this state.

(1-a) "Critical congenital heart disease" means an abnormality in the structure or function of the heart that exists at birth, causes severe, life-threatening symptoms, and requires medical intervention within the first few hours, days, or months of life.

(1-b) "Heritable disease" means an inherited disease that may result in a physical or intellectual disability or death.

(2) "Hypothyroidism" means a condition that may cause a severe intellectual disability if not treated.

(3) "Other benefit" means a benefit, other than a benefit under this chapter, to which an individual is entitled for the payment of the costs of services. The term includes:

(A) benefits available under:

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

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

(iii) Title XIX of the Social Security Act (42 U.S.C. Section 1396 et seq.);

(iv) the United States Department of Veterans Affairs;

(v) the TRICARE program of the United States Department of Defense; or

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

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

(C) benefits resulting from a cause of action for health care expenses, or a settlement or judgment based on the cause

of action, if the expenses are related to the need for services provided under this chapter.

(4) "Phenylketonuria" means an inherited condition that may cause a severe intellectual disability if not treated.

(5) "Screening test" means a rapid analytical procedure to determine the need for further diagnostic evaluation.

(6) "Duchenne muscular dystrophy" means a progressive muscular degeneration disorder caused by alterations of the protein dystrophin and characterized by progressive muscle degeneration and weakness.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 268 (H.B. 740), Sec. 2, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0098, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.01, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 50 (S.B. 1044), Sec. 2, eff. September 1, 2025.

Sec. 33.002. DETECTION AND TREATMENT PROGRAM ESTABLISHED. (a) The department shall carry out a program to combat morbidity, including intellectual disability, and mortality in persons who have Duchenne muscular dystrophy, phenylketonuria, other heritable diseases, or hypothyroidism.

(b) The executive commissioner shall adopt rules necessary to carry out the program, including a rule specifying other heritable diseases covered by this chapter.

(c) The department shall establish and maintain a laboratory to:

(1) conduct experiments, projects, and other activities necessary to develop screening or diagnostic tests for the early detection of Duchenne muscular dystrophy, phenylketonuria, other heritable diseases, and hypothyroidism;

(2) develop ways and means or discover methods to be used to prevent or treat Duchenne muscular dystrophy, phenylketonuria, other heritable diseases, and hypothyroidism; and

(3) serve other purposes considered necessary by the department to carry out the program.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0099, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.02, eff. September 1, 2023.
Acts 2025, 89th Leg., R.S., Ch. 50 (S.B. 1044), Sec. 3, eff. September 1, 2025.

Sec. 33.0021. SICKLE-CELL TRAIT. Notwithstanding any provision of this chapter, the department shall include sickle-cell trait in the detection and treatment program established under this chapter, in the screening for heritable diseases conducted under Subchapter B, and in the newborn screening services provided under Subchapter C.

Added by Acts 2009, 81st Leg., R.S., Ch. 179 (H.B. 1672), Sec. 1, eff. May 27, 2009.

Sec. 33.003. COOPERATION OF HEALTH CARE PROVIDERS AND GOVERNMENTAL ENTITIES. (a) The department may invite all physicians, hospitals, and other health care providers in the state that provide maternity and newborn infant care to cooperate and participate in any program established by the department under this chapter.

(b) Other boards, agencies, departments, and political subdivisions of the state capable of assisting the department in carrying out the program may cooperate with the department and are encouraged to furnish their services and facilities to the program.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Sec. 33.004. NEWBORN SCREENING PROGRAM; FEES.

(b) In accordance with rules adopted by the executive commissioner, the department shall implement a newborn screening

program.

(c) In implementing the newborn screening program, the department shall obtain the use of screening methodologies and hire the employees necessary to administer newborn screening under this chapter.

(e) The department shall periodically review the newborn screening program to determine the efficacy and cost-effectiveness of the program and determine whether adjustments to the program are necessary to protect the health and welfare of this state's newborns and to maximize the number of newborn screenings that may be conducted with the funding available for the screening.

(f) The executive commissioner by rule shall establish the amounts charged for newborn screening fees, including fees assessed for follow-up services, tracking confirmatory testing, and diagnosis. In adopting rules under this subsection, the executive commissioner shall ensure that amounts charged for newborn screening fees are sufficient to cover the costs of performing the screening.

Added by Acts 2005, 79th Leg., Ch. 940 (H.B. 790), Sec. 2, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0100, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 599 (S.B. 747), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 1, eff. September 1, 2019.

Sec. 33.005. CONSENT. (a) The department shall create a process to:

(1) permit the parent, managing conservator, or guardian of a newborn child to provide the consent required under this chapter through electronic means, including through audio or video recording;

(2) determine the manner of storing electronic consent records; and

(3) ensure the newborn child's attending physician has access to the electronic consent records for the child.

(b) A request for consent required by this chapter may be submitted to the parent, managing conservator, or guardian of a

newborn child through written or electronic means, including through audio or visual recording.

(c) A birthing facility or person required to obtain consent under this chapter is not required to use the process created by the department under this section to obtain the consent.

Added by Acts 2019, 86th Leg., R.S., Ch. 628 (S.B. 1404), Sec. 1, eff. September 1, 2019.

SUBCHAPTER B. NEWBORN SCREENING

Sec. 33.011. TEST REQUIREMENT. (a) The physician attending a newborn child or the person attending the delivery of a newborn child that is not attended by a physician shall cause the child to be subjected to screening tests approved by the department for Duchenne muscular dystrophy, phenylketonuria, other heritable diseases, hypothyroidism, and other disorders for which screening is required by the department.

(a-1) Except as provided by this subsection and to the extent funding is available for the screening, the department shall require newborn screening tests to screen for disorders listed as core and secondary conditions in the Recommended Uniform Screening Panel of the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children or another report determined by the department to provide more stringent newborn screening guidelines to protect the health and welfare of this state's newborns. The department, with the advice of the Newborn Screening Advisory Committee, may require additional newborn screening tests under this subsection to screen for other disorders or conditions. The department may exclude from the newborn screening tests required under this subsection screenings for galactose epimerase and galactokinase.

(b) The department may prescribe the screening test procedures to be used and the standards of accuracy and precision required for each test.

(c) Except as provided by Subsection (d), the screening tests required by this section must be performed by the laboratory established by the department or by a laboratory approved by the department under Section 33.016.

(d) The department, with the advice of the Newborn Screening Advisory Committee, shall authorize a screening test for critical

congenital heart disease to be performed at a birthing facility that provides care to newborn patients and that complies with the test procedures and the standards of accuracy and precision required by the department for each screening test.

(e) If the department under Subsection (d) authorizes the performance at a birthing facility of a screening test for critical congenital heart disease, a birthing facility must perform the screening test on each newborn who is a patient of the facility before the newborn is discharged from the facility unless:

(1) the parent declines the screening;

(2) the newborn is transferred to another facility before the screening test is performed;

(3) the screening test has previously been completed; or

(4) the newborn is discharged from the birthing facility not more than 10 hours after birth and a referral for the newborn was made to another birthing facility, physician, or health care provider.

(f) Before requiring any additional screening test for critical congenital heart disease, the department must review the necessity of the additional screening test, including an assessment of the test implementation costs to the department, birthing facilities, and other health care providers.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.
Amended by:

Acts 2005, 79th Leg., Ch. 940 (H.B. 790), Sec. 3, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1124 (H.B. 1795), Sec. 2, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 268 (H.B. 740), Sec. 3, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0101, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 50 (S.B. 1044), Sec. 4, eff. September 1, 2025.

Sec. 33.0111. DISCLOSURE STATEMENT AND CONSENT. (a) The department shall develop a disclosure statement that clearly discloses to the parent, managing conservator, or guardian of a

newborn child subjected to screening tests under Section 33.011:

(1) that the department or a laboratory established or approved by the department under Section 33.016 may retain for use by the department or laboratory genetic material used to conduct the newborn screening tests and discloses how the material is managed and used subject to this section and Sections 33.0112 and 33.018;

(2) that reports, records, and information obtained by the department under this chapter that do not identify a child or the family of a child will not be released for public health research purposes under Section 33.018(c-1) unless a parent, managing conservator, or guardian of the child consents to disclosure; and

(3) that newborn screening blood spots and associated data are confidential under law and may only be used as described by Section 33.018.

(b) The disclosure statement required by Subsection (a) must be included on the form developed by the department to inform parents about newborn screening. The disclosure statement must:

(1) be in a format that allows a parent, managing conservator, or guardian of a newborn child to consent to disclosure under Section 33.018(c-1);

(2) include instructions on how to complete the portions of the form described by Subdivision (1);

(3) include the department's mailing address; and

(4) describe how a parent, managing conservator, or guardian of a newborn child may obtain information regarding consent through alternative sources.

(b-1) The department may provide the disclosure statement required by Subsection (a) in various formats and languages to ensure clear communication of information on the screening test required under this chapter.

(c) At the time a newborn child is subjected to screening tests under Section 33.011, the physician attending a newborn child or the person attending the delivery of a newborn child that is not attended by a physician shall provide the parent, managing conservator, or guardian of a newborn child a copy of the written or electronic disclosure statement developed by the department under this section.

(d) The department shall establish procedures for a physician attending a newborn child or the person attending the delivery of a newborn child to provide verification to the department that the physician or person has provided the parent, managing conservator, or

guardian of the newborn child the disclosure statement required under this section.

(e) The physician attending a newborn child or the person attending the delivery of a newborn child that is not attended by a physician shall submit any document required by the department.

(f) This section does not supersede the requirements imposed by Section 33.018.

(g) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 268, Sec. 7, eff. September 1, 2013.

(h) Nothing in this section prohibits a physician attending a newborn child from delegating the physician's responsibilities under this section to any qualified and properly trained person acting under the physician's supervision.

Added by Acts 2009, 81st Leg., R.S., Ch. 179 (H.B. 1672), Sec. 2, eff. May 27, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 1, eff. June 1, 2012.

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 2, eff. June 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 268 (H.B. 740), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 268 (H.B. 740), Sec. 7, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 628 (S.B. 1404), Sec. 2, eff. September 1, 2019.

Sec. 33.0112. DESTRUCTION OF GENETIC MATERIAL. (a) The department shall destroy any genetic material obtained from a child under this chapter not later than the second anniversary of the date the department receives the genetic material unless a parent, managing conservator, or guardian of the child consents to disclosure under Section 33.018(c-1).

(b) The department shall destroy any genetic material obtained from a child under this chapter not later than the second anniversary of the date the department receives the genetic material if:

(1) a parent, managing conservator, or guardian of the child consents to disclosure under Section 33.018(c-1);

(2) the parent, managing conservator, or guardian who consented to the disclosure revokes the consent under Section 33.018(i); and

(3) the department receives the written revocation of consent under Section 33.018(i) not later than the second anniversary of the date the department received the genetic material.

(c) The department shall destroy any genetic material obtained from a child under this chapter not later than the 60th day after the date the department receives a written revocation of consent under Section 33.018(i) if:

(1) a parent, managing conservator, or guardian of the child consented to disclosure under Section 33.018(c-1);

(2) the parent, managing conservator, or guardian who consented to the disclosure or the child revokes the consent under Section 33.018(i); and

(3) the department receives the written revocation of consent later than the second anniversary of the date the department received the genetic material.

Added by Acts 2009, 81st Leg., R.S., Ch. 179 (H.B. 1672), Sec. 2, eff. May 27, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 3, eff. June 1, 2012.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0102, eff. April 2, 2015.

Sec. 33.012. EXEMPTION. (a) Screening tests may not be administered to a newborn child whose parents, managing conservator, or guardian objects on the ground that the tests conflict with the religious tenets or practices of an organized church of which they are adherents.

(b) If a parent, managing conservator, or guardian objects to the screening tests, the physician or the person attending the newborn child that is not attended by a physician shall ensure that the objection of the parent, managing conservator, or guardian is entered into the medical record of the child. The parent, managing conservator, or guardian shall sign the entry.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Sec. 33.013. LIMITATION ON LIABILITY. A physician, technician, or other person administering the screening tests required by this chapter is not liable or responsible because of the failure or refusal of a parent, managing conservator, or guardian to consent to the tests for which this chapter provides.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Sec. 33.014. DIAGNOSIS; FOLLOW-UP. (a) If, because of an analysis of a specimen submitted under Section 33.011, the department reasonably suspects that a newborn child may have Duchenne muscular dystrophy, phenylketonuria, another heritable disease, hypothyroidism, or another disorder for which the screening tests are required, the department shall notify the person who submits the specimen that the results are abnormal and provide the test results to that person. The department may notify one or more of the following that the results of the analysis are abnormal and recommend further testing when necessary:

(1) the physician attending the newborn child or the physician's designee;

(2) the person attending the delivery of the newborn child that was not attended by a physician;

(3) the parents of the newborn child;

(4) the health authority of the jurisdiction in which the newborn child was born or in which the child resides, if known; or

(5) physicians who are cooperating pediatric specialists for the program.

(b) If a screening test indicates that a newborn child is at high risk, the department shall recommend that the child be placed under the medical care of a licensed physician for diagnosis and provide the name of a consultant pediatric specialist in the child's geographic area.

(c) The department, the health authority, and the consulting pediatric specialist may follow up a positive test with the attending physician or with a parent of the newborn child if the child was not attended by a physician at birth.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Amended by:

Acts 2005, 79th Leg., Ch. 940 (H.B. 790), Sec. 4, eff. September 1, 2005.

Acts 2025, 89th Leg., R.S., Ch. 50 (S.B. 1044), Sec. 5, eff. September 1, 2025.

Sec. 33.015. REPORTS; RECORD KEEPING. (a) Each physician, health authority, birthing facility, or other individual who has the information of a confirmed case of a disorder for which a screening test is required that has been detected by a mechanism other than identification through a screening of a specimen by the department's diagnostic laboratory shall report the confirmed case to the department.

(b) The department may collect data to derive incidence and prevalence rates of disorders covered by this chapter from the information on the specimen form submitted to the department for screening determinations.

(c) The department shall maintain a roster of children born in this state who have been diagnosed as having one of the disorders for which the screening tests are required.

(d) The department may cooperate with other states in the development of a national roster of individuals who have been diagnosed as having one of the disorders for which the screening tests are required if:

(1) participation in the national roster encourages systematic follow-up in the participating states;

(2) incidence and prevalence information is made available to participating newborn screening programs in other states; and

(3) each participating newborn screening program subscribes to an agreement to protect the identity and diagnosis of the individuals whose names are included in the national roster.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 268 (H.B. 740), Sec. 5, eff. September 1, 2013.

Sec. 33.016. APPROVAL OF LABORATORIES. (a) The department may

develop a program to approve any laboratory that wishes to perform the tests required to be administered under this chapter. To the extent that they are not otherwise provided in this chapter, the executive commissioner may adopt rules prescribing procedures and standards for the conduct of the program.

(b) The department may prescribe the form and reasonable requirements for the application and the procedures for processing the application.

(c) The department may prescribe the test procedure to be employed and the standards of accuracy and precision required for each test.

(d) The department may extend or renew any approval in accordance with reasonable procedures prescribed by the executive commissioner.

(e) The department may for good cause, after notice to the affected laboratory and a hearing if requested, restrict, suspend, or revoke any approval granted under this section.

(f) Hearings under this section shall be conducted in accordance with the department's hearing rules and the applicable provisions of Chapter 2001, Government Code.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0103, eff. April 2, 2015.

Sec. 33.0165. MUTUAL AID AGREEMENT FOR NEWBORN SCREENING LABORATORY SERVICES. (a) In this section, "newborn screening laboratory services" means the performance of tests to analyze specimens collected as part of the newborn screenings performed under this subchapter.

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

(c) Each mutual aid agreement under Subsection (b) shall

include provisions:

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 109 (H.B. 1671), Sec. 1, eff. September 1, 2009.
Transferred, redesignated and amended from Health and Safety Code, Section 12.01221 by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0015, eff. April 2, 2015.

Sec. 33.017. NEWBORN SCREENING ADVISORY COMMITTEE. (a) The department shall establish the Newborn Screening Advisory Committee.

(b) The advisory committee consists of members appointed by the commissioner. The advisory committee must include the following members:

(1) at least four physicians licensed to practice medicine in this state, including at least two physicians specializing in neonatal-perinatal medicine;

(2) at least two hospital representatives;

(3) at least two persons who have family members affected by a condition for which newborn screening is or may be required under this subchapter; and

(4) at least two health care providers who are involved in the delivery of newborn screening services, follow-up, or treatment in this state.

(c) The advisory committee shall:

(1) advise the department regarding strategic planning, policy, rules, and services related to newborn screening and additional newborn screening tests for each disorder included in the list described by Section 33.011(a-1); and

(2) review the necessity of requiring additional screening tests, including an assessment of the test implementation costs to the department, birthing facilities, and other health care providers.

(d) The advisory committee shall adopt bylaws governing the committee's operations.

(e) The advisory committee may appoint subcommittees.

(f) The advisory committee shall meet at least three times each year and at other times at the call of the commissioner.

(g) A member of the advisory committee is not entitled to compensation, but is entitled to reimbursement for travel or other expenses incurred by the member while conducting the business of the advisory committee, as provided by the General Appropriations Act.

(h) The advisory committee is not subject to Chapter 2110, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1124 (H.B. 1795), Sec. 3, eff. September 1, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 268 (H.B. 740), Sec. 6, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0104, eff. April 2, 2015.

Sec. 33.018. CONFIDENTIALITY. (a) In this section:

(1) "Affiliated with a health agency" means a person who is an employee or former employee of a health agency.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(16), eff. April 2, 2015.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(16), eff. April 2, 2015.

(4) "Health agency" means the commission and the health and human services agencies listed in Section 521.0001, Government Code.

(5) "Public health purpose" means a purpose that relates to cancer, a birth defect, an infectious disease, a chronic disease, environmental exposure, or newborn screening.

(a-1) Reports, records, and information obtained or developed by the department under this chapter are confidential and are not subject to disclosure under Chapter 552, Government Code, are not subject to subpoena, and may not otherwise be released or made public except as provided by this section.

(b) Notwithstanding other law, reports, records, and information obtained or developed by the department under this chapter may be disclosed:

(1) for purposes of diagnosis or follow-up authorized under Section 33.014;

(2) with the consent of each identified individual or an individual authorized to consent on behalf of an identified child;

(3) as authorized by court order;

(4) to a medical examiner authorized to conduct an autopsy on a child or an inquest on the death of a child;

(5) to public health programs of the department for public health research purposes, provided that the disclosure is approved by:

(A) the commissioner or the commissioner's designee; and

(B) an institutional review board or privacy board of the department as authorized by the federal privacy requirements adopted under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E;

(6) for purposes relating to review or quality assurance of the department's newborn screening under this chapter or the department's newborn screening program services under Subchapter C, provided that no disclosure occurs outside of the department's newborn screening program;

(7) for purposes related to obtaining or maintaining federal certification, including related quality assurance, for the department's laboratory, provided that no disclosure occurs outside of the department's newborn screening program; or

(8) for purposes relating to improvement of the department's newborn screening under this chapter or the department's newborn screening program services under Subchapter C, provided that the disclosure is approved by the commissioner or the commissioner's designee.

(c) Notwithstanding other law, reports, records, and information that do not identify a child or the family of a child may be released without consent if the disclosure is for:

(1) statistical purposes;

(2) purposes related to obtaining or maintaining federal certification, including related review and quality assurance:

(A) for the department's laboratory that require disclosure outside of the department's newborn screening program; or

(B) for a public or private laboratory to perform newborn screening tests that are not part of inter-laboratory exchanges required for federal certification of the department's

laboratory, provided that the disclosure is approved by the commissioner or the commissioner's designee; or

(3) other quality assurance purposes related to public health testing equipment and supplies, provided that the disclosure is approved by:

(A) the commissioner or the commissioner's designee; and

(B) an institutional review board or privacy board of the department.

(c-1) Notwithstanding other law, reports, records, and information that do not identify a child or the family of a child may be released for public health research purposes not described by Subsection (b)(5) if:

(1) a parent, managing conservator, or guardian of the child consents to the disclosure; and

(2) the disclosure is approved by:

(A) an institutional review board or privacy board of the department; and

(B) the commissioner or the commissioner's designee.

(d) A state officer or employee, a department contractor, or a department contractor's employee, officer, director, or subcontractor may not be examined in a civil, criminal, special, or other judicial or administrative proceeding as to the existence or contents of records, reports, or information made confidential by this section unless disclosure is authorized by this section.

(e) If disclosure is approved by the commissioner or the commissioner's designee under Subsection (c)(3) or (c-1), the department shall post notice on the newborn screening web page on the department's Internet website that disclosure has been approved. The commissioner shall determine the form and content of the notice.

(f) In accordance with this section, the commissioner or the commissioner's designee:

(1) may approve disclosure of reports, records, or information obtained or developed under this chapter only for a public health purpose; and

(2) may not approve disclosure of reports, records, or information obtained or developed under this chapter for purposes related to forensic science or health insurance underwriting.

(g) An institutional review board or privacy board of the department that reviews a potential disclosure under this section

must include at least three persons who are not affiliated with a health agency, one of whom must be a member of the public.

(h) Nothing in this section affects the requirement that screening tests be performed under Section 33.011.

(i) If a parent, managing conservator, or guardian of a child consents to disclosure under this section:

(1) the parent, managing conservator, or guardian who consented to the disclosure may revoke the consent, in writing, at any time by using a form designated by the department; and

(2) the child may revoke the consent, in writing, at any time on or after the date the child attains the age of majority by using a form designated by the department.

(j) If a person revokes consent under Subsection (i), the department shall destroy any genetic material obtained from the child as provided by Section 33.0112.

Added by Acts 2009, 81st Leg., R.S., Ch. 179 (H.B. 1672), Sec. 3, eff. May 27, 2009.
Redesignated from Health and Safety Code, Section 33.017 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(24), eff. September 1, 2011.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 4, eff. June 1, 2012.

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 4, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(16), eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.27, eff. April 1, 2025.

Sec. 33.019. NOTICE OF COST AND CLAIM PROCESS. (a) The department shall publish on its Internet website the cost of and instructions on the full claim and reimbursement process for a newborn screening test kit to be used to comply with the test requirements of Section 33.011.

(b) The department may change the cost published under Subsection (a) not later than the 90th day before the date the department publishes notice of the change on its Internet website.

If the department changes the cost under this subsection, the department shall retain a record of the previous cost until the first anniversary of the date of the change.

Added by Acts 2019, 86th Leg., R.S., Ch. 599 (S.B. 747), Sec. 2, eff. September 1, 2019.

Sec. 33.020. ANNUAL REPORT. (a) For each newborn screening test that screens for a disorder included in the list of core conditions described by Section 33.011(a-1) that is not required by the department, the department shall, not later than September 1 of each year, prepare and submit a written report to the governor, the lieutenant governor, the speaker of the house of representatives, and each standing committee of the legislature having primary jurisdiction over the department. The written report must:

(1) identify any additional program capacity or resources the department would need to:

(A) implement the additional newborn screening test; and

(B) require each newborn in the state to receive the additional newborn screening test; and

(2) summarize the plan for implementing and requiring the additional newborn screening test, including by identifying:

(A) any potential barriers to implementation; and

(B) the anticipated implementation date.

(b) As part of the plan described by Subsection (a)(2), the report must include information on whether the department is capable of implementing the required additional newborn screening test within a 24-month period.

Added by Acts 2023, 88th Leg., R.S., Ch. 722 (H.B. 2478), Sec. 1, eff. September 1, 2023.

SUBCHAPTER C. NEWBORN SCREENING PROGRAM SERVICES

Sec. 33.031. COORDINATION WITH CHILDREN WITH SPECIAL HEALTH CARE NEEDS SERVICES. (a) All newborn children and other individuals under 21 years of age who have been screened, have been found to be presumptively positive through the newborn screening program for Duchenne muscular dystrophy, phenylketonuria, other heritable

diseases, hypothyroidism, or another disorder for which the screening tests are required, and may be financially eligible may be referred to the department's services program for children with special health care needs.

(b) An individual who is determined to be eligible for services under the services program for children with special health care needs shall be given approved services through that program. An individual who does not meet that eligibility criteria shall be referred to the newborn screening program for a determination of eligibility for newborn screening program services.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1505, Sec. 3.11, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 940 (H.B. 790), Sec. 5, eff. September 1, 2005.

Acts 2025, 89th Leg., R.S., Ch. 50 (S.B. 1044), Sec. 6, eff. September 1, 2025.

Sec. 33.032. PROGRAM SERVICES. (a) Within the limits of funds available for this purpose and in cooperation with the individual's physician, the department may provide services directly or through approved providers to individuals of any age who meet the eligibility criteria specified by department rules on the confirmation of a positive test for Duchenne muscular dystrophy, phenylketonuria, other heritable diseases, hypothyroidism, or another disorder for which the screening tests are required.

(b) The executive commissioner may adopt:

(1) rules specifying the type, amount, and duration of program services to be offered;

(2) rules establishing the criteria for eligibility for services, including the medical and financial criteria;

(3) rules establishing the procedures necessary to determine the medical, financial, and other eligibility of the individual;

(4) substantive and procedural rules for applying for program services and processing those applications;

(5) rules for providing services according to a sliding scale of financial eligibility;

(6) substantive and procedural rules for the denial, modification, suspension, and revocation of an individual's approval to receive services; and

(7) substantive and procedural rules for the approval of providers to furnish program services.

(c) The department may select providers according to the criteria in the department's rules.

(d) The executive commissioner by rule may establish fees to be collected by the department for the provision of services, except that services may not be denied to an individual because of the individual's inability to pay the fees.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.
Amended by:

Acts 2005, 79th Leg., Ch. 940 (H.B. 790), Sec. 6, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0105, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 50 (S.B. 1044), Sec. 7, eff. September 1, 2025.

Sec. 33.033. CONSENT. The department may not provide services without the consent of the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Sec. 33.034. DENIAL, MODIFICATION, SUSPENSION, AND REVOCATION OF APPROVAL TO PROVIDE SERVICES. (a) After notice and an opportunity for a fair hearing, the department may deny the approval or modify, suspend, or revoke the approval of a person to provide services under this chapter.

(b) Notice shall be given and the hearing shall be conducted in accordance with the department's informal hearing procedures.

(c) Chapter 2001, Government Code, does not apply to the notice and hearing required by this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.001, eff. September 1, 2005.

Sec. 33.035. INDIVIDUALS ELIGIBLE FOR SERVICES. (a) An individual is not eligible to receive the services authorized by this chapter at no cost or reduced cost to the extent that the individual or the parent, managing conservator, guardian, or other person with a legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the services.

(b) The department may waive ineligibility under Subsection (a) if the department finds that:

(1) good cause for the waiver is shown; and

(2) enforcement of the requirement would tend to defeat the purpose of this chapter or disrupt the administration or prevent the provision of services to an otherwise eligible recipient.

(c) When an application for services is filed or at any time that an individual is eligible for or receiving services, the applicant or recipient shall inform the department of any other benefit to which the applicant, recipient, or person with a legal obligation to support the applicant or recipient may be entitled.

(d) The executive commissioner by rule shall provide criteria for actions taken under this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0106, eff. April 2, 2015.

Sec. 33.036. DENIAL, MODIFICATION, SUSPENSION, AND REVOCATION OF ELIGIBILITY TO RECEIVE SERVICES. (a) After notice to the individual or, if the individual is a minor, the individual's parent, managing conservator, or guardian and an opportunity for a fair hearing, the department may deny, modify, suspend, or revoke the determination of a person's eligibility to receive services at no cost or at reduced cost under this chapter.

(b) Notice shall be given and the hearing shall be conducted in accordance with the department's informal hearing procedures.

(c) Chapter 2001, Government Code, does not apply to the notice and hearing required by this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0107, eff. April 2, 2015.

Sec. 33.037. REIMBURSEMENT. (a) The department may require an individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, or other person with a legal obligation to support the individual to pay or reimburse the department for all or part of the cost of the services provided.

(b) The recipient or the parent, managing conservator, guardian, or other person with a legal obligation to support an individual who has received services from the department that are covered by some other benefit shall, when the other benefit is received, reimburse the department for the cost of services provided.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0108, eff. April 2, 2015.

Sec. 33.038. RECOVERY OF COSTS. (a) The department is entitled to recover an expenditure for services provided under this chapter from:

(1) a person who does not reimburse the department as required by this chapter; or

(2) a third party with a legal obligation to pay other benefits and who has received prior written notice of the department's interests in the other benefits.

(b) This section creates a separate and distinct cause of action, and the department may request the attorney general to bring suit in the appropriate court of Travis County on behalf of the department.

(c) In a judgment in favor of the department, the court may award attorney fees, court costs, and interest accruing from the date

on which the department provides the service to the date on which the department is reimbursed.

(d) The executive commissioner by rule shall provide criteria for actions taken under this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0109, eff. April 2, 2015.

SUBCHAPTER D. NEWBORN SCREENING PRESERVATION ACCOUNT

Sec. 33.051. DEFINITION. In this subchapter, "account" means the newborn screening preservation account established under Section 33.052.

Added by Acts 2019, 86th Leg., R.S., Ch. 599 (S.B. 747), Sec. 3, eff. September 1, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 2, eff. September 1, 2019.

Sec. 33.052. CREATION OF ACCOUNT. (a) The newborn screening preservation account is a dedicated account in the general revenue fund. Money in the account may be appropriated only to the department and only for the purpose of carrying out the newborn screening program established under this chapter.

(a-1) The department may use money appropriated under Subsection (a) to ensure that the laboratory established by the department or a laboratory approved by the department under Section 33.016 is available seven days a week to perform screening tests required by the department under Section 33.011.

(b) On November 1 of each year, the comptroller shall transfer to the account any unexpended and unencumbered money from Medicaid reimbursements collected by the department for newborn screening services during the preceding state fiscal year.

(c) The account is composed of:

(1) money transferred to the account under Subsection (b);

(2) gifts, grants, donations, and legislative appropriations; and

(3) interest earned on the investment of money in the

account.

(d) Section 403.0956, Government Code, does not apply to the account.

(e) The department administers the account. The department may solicit and receive gifts, grants, and donations from any source for the benefit of the account.

Added by Acts 2019, 86th Leg., R.S., Ch. 599 (S.B. 747), Sec. 3, eff. September 1, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 2, eff. September 1, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 722 (H.B. 2478), Sec. 2, eff. September 1, 2023.

Sec. 33.053. DEDICATED USE. (a) The department may use any money remaining in the account after paying the costs of operating the newborn screening program established under this chapter only to:

(1) pay the costs of offering additional newborn screening tests not offered under this chapter before September 1, 2019, including the operational costs incurred during the first year of implementing the additional tests; and

(2) pay for capital assets, equipment, and renovations for the laboratory established by the department to ensure the continuous operation of the newborn screening program.

(b) The department may not use money from the account for the department's general operating expenses.

Added by Acts 2019, 86th Leg., R.S., Ch. 599 (S.B. 747), Sec. 3, eff. September 1, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 2, eff. September 1, 2019.

CHAPTER 34. TEXAS MATERNAL MORTALITY AND MORBIDITY REVIEW COMMITTEE

Sec. 34.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(17), eff. April 2, 2015.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(17), eff. April 2, 2015.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(17), eff. April 2, 2015.

(4) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice, including a physician or a hospital or birthing center.

(5) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(6) "Intrapartum care" has the meaning assigned by Section 32.002.

(7) "Life-threatening condition" means a condition from which the likelihood of death is probable unless the course of the condition is interrupted.

(8) "Maternal morbidity" means a pregnancy-related health condition occurring during pregnancy, labor, or delivery or within one year of delivery or end of pregnancy.

(9) "Patient" means the woman who while pregnant or within one year of delivery or end of pregnancy suffers death or severe maternal morbidity.

(10) "Perinatal care" has the meaning assigned by Section 32.002.

(11) "Physician" means a person licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code.

(12) "Pregnancy-related death" means the death of a woman while pregnant or within one year of delivery or end of pregnancy, regardless of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes.

(12-a) "Review committee" means the Texas Maternal Mortality and Morbidity Review Committee.

(13) "Severe maternal morbidity" means maternal morbidity that constitutes a life-threatening condition.

(14) Repealed by Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 22, eff. June 10, 2019.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(17),

eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 5, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 22, eff. June 10, 2019.

Sec. 34.002. TEXAS MATERNAL MORTALITY AND MORBIDITY REVIEW COMMITTEE. (a) The Texas Maternal Mortality and Morbidity Review Committee is administered by the department.

(b) The review committee is a multidisciplinary advisory committee within the department and is composed of the following 23 members:

(1) 21 members appointed by the commissioner as follows:

(A) four physicians specializing in obstetrics, at least one of whom is a maternal fetal medicine specialist;

(B) one certified nurse-midwife;

(C) one registered nurse;

(D) one nurse specializing in labor and delivery;

(E) one physician specializing in family practice;

(F) one physician specializing in psychiatry;

(G) one physician specializing in pathology;

(H) one epidemiologist, biostatistician, or researcher of pregnancy-related deaths;

(I) one social worker or social service provider;

(J) two community members with experience in a relevant health care field, including a field involving the analysis of health care data, one of whom must represent an urban area of this state and one of whom must represent a rural area of this state;

(K) one medical examiner or coroner responsible for recording deaths;

(L) one physician specializing in critical care;

(M) one physician specializing in emergency care;

(N) one physician specializing in cardiology;

(O) one physician specializing in anesthesiology;

(P) one physician specializing in oncology; and

(Q) one representative of a managed care organization;

(2) a representative of the department's family and community health programs; and

(3) the state epidemiologist for the department or the

epidemiologist's designee.

(c) In appointing members to the review committee, the commissioner shall:

(1) include members:

(A) working in and representing communities that are diverse with regard to race, ethnicity, immigration status, and English proficiency; and

(B) from differing geographic regions in the state, including both rural and urban areas;

(2) endeavor to include members who are working in and representing communities that are affected by pregnancy-related deaths and severe maternal morbidity and by a lack of access to relevant perinatal and intrapartum care services; and

(3) ensure that the composition of the review committee reflects the racial, ethnic, and linguistic diversity of this state.

(d) The commissioner shall appoint from among the review committee members a presiding officer.

(e) A member of the review committee appointed under Subsection (b)(1) is not entitled to compensation for service on the review committee or reimbursement for travel or other expenses incurred by the member while conducting the business of the review committee.

(f) In carrying out its duties, the review committee may use technology, including teleconferencing or videoconferencing, to eliminate travel expenses.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 1, eff. August 16, 2017.

Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 6, eff. June 10, 2019.

Acts 2023, 88th Leg., R.S., Ch. 671 (H.B. 852), Sec. 1, eff. September 1, 2023.

Sec. 34.003. TERMS; VACANCY. (a) Review committee members appointed by the commissioner serve staggered six-year terms, with one-third or as near as possible to one-third of the members' terms expiring February 1 of each odd-numbered year.

(b) A review committee member may serve more than one term.

(c) A vacancy on the review committee shall be filled for the unexpired term in the same manner as the original appointment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 6, eff. June 10, 2019.
Acts 2023, 88th Leg., R.S., Ch. 671 (H.B. 852), Sec. 2, eff. September 1, 2023.

Sec. 34.004. MEETINGS. (a) The review committee shall meet at least quarterly. The review committee may meet at other times at the call of the commissioner.

(b) Meetings of the review committee are subject to Chapter 551, Government Code, except that the review committee shall conduct a closed meeting to review cases under Section 34.007.

(c) The review committee shall:

(1) allow for public comment during at least one public meeting each year;

(2) present in open session recommendations made under Section 34.005 to help reduce the incidence of pregnancy-related deaths and severe maternal morbidity in this state; and

(3) post public notice for meetings conducted for the sole purpose of reviewing cases for selection under Section 34.007.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 2, eff. August 16, 2017.
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 6, eff. June 10, 2019.

Sec. 34.005. DUTIES OF REVIEW COMMITTEE. The review committee shall:

(1) study and review:

(A) cases of pregnancy-related deaths;

(B) trends, rates, or disparities in pregnancy-related deaths and severe maternal morbidity;

(C) health conditions and factors that disproportionately affect the most at-risk population as determined in the joint biennial report required under Section 34.015; and

(D) best practices and programs operating in other states that have reduced rates of pregnancy-related deaths;

(2) compare rates of pregnancy-related deaths based on the socioeconomic status of the mother;

(3) determine the feasibility of the review committee studying cases of severe maternal morbidity; and

(4) in consultation with the Perinatal Advisory Council, make recommendations to help reduce the incidence of pregnancy-related deaths and severe maternal morbidity in this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 3, eff. August 16, 2017.

Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 6, eff. June 10, 2019.

Sec. 34.0055. SCREENING AND EDUCATIONAL MATERIALS FOR SUBSTANCE USE AND DOMESTIC VIOLENCE. (a) Using existing resources, the commission, in consultation with the review committee, shall:

(1) make available to physicians and other persons licensed or certified to conduct a substance use screening and domestic violence screening of pregnant women information that includes:

(A) guidance regarding best practices for verbally screening a pregnant woman for substance use and verbally screening a pregnant woman for domestic violence using a validated screening tool; and

(B) a list of substance use treatment resources and domestic violence prevention and intervention resources in each geographic region of this state; and

(2) review and promote the use of educational materials on the consequences of opioid drug use and on domestic violence prevention and intervention during pregnancy.

(b) The commission shall make the information and educational materials described by Subsection (a) available on the commission's Internet website.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 4, eff. August 16, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 7, eff. June 10, 2019.

Sec. 34.006. CONSULTATIONS AND AGREEMENTS WITH OUTSIDE PARTIES. (a) The department and review committee may consult with any relevant experts and stakeholders, including:

(1) anesthesiologists;
(2) intensivists or critical care physicians;
(3) nutritionists;
(4) substance abuse treatment specialists;
(5) hospital staff or employees;
(6) representatives of the state Medicaid program;
(7) paramedics or other emergency medical response personnel;
(8) hospital-based risk management specialists;
(9) representatives of local health departments and public health districts in this state;
(10) public health experts;
(11) government representatives or officials; and
(12) law enforcement officials.

(b) In gathering information, the department and review committee may consult with representatives of any relevant state professional associations and organizations, including:

(1) District XI of the American Congress of Obstetricians and Gynecologists;
(2) the Texas Association of Obstetricians and Gynecologists;
(3) the Texas Nurses Association;
(4) the Texas Section of the Association of Women's Health, Obstetric and Neonatal Nurses;
(5) the Texas Academy of Family Physicians;
(6) the Texas Pediatric Society;

(7) the Consortium of Texas Certified Nurse-Midwives;
(8) the Association of Texas Midwives;
(9) the Texas Hospital Association;
(10) the Texas Medical Association; and
(11) the Texas Public Health Association.

(c) In consulting with individuals or organizations under Subsection (a) or (b), a member of the review committee or employee of the department may not disclose any identifying information of a patient or health care provider.

(d) The department on behalf of the review committee may enter into agreements with institutions of higher education or other organizations consistent with the duties of the department or review committee under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 8, eff. June 10, 2019.

Sec. 34.007. SELECTION AND REVIEW OF CASES. (a) The department shall determine a statistically significant number of cases of pregnancy-related deaths for review. The department shall either randomly select cases or select all cases for the review committee to review under this subsection to reflect a cross-section of pregnancy-related deaths in this state.

(b) The department shall statistically analyze aggregate data of pregnancy-related deaths and severe maternal morbidity in this state to identify any trends, rates, or disparities.

(c) If feasible, the department may select cases of severe maternal morbidity for review. In selecting cases under this subsection, the department shall randomly select cases for the review committee to review to reflect trends identified under Subsection (b).

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 5, eff. August 16, 2017.

Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 9, eff. June 10, 2019.

Sec. 34.008. OBTAINING DE-IDENTIFIED INFORMATION FOR REVIEW. (a) On selecting a case of pregnancy-related death or severe maternal morbidity for review, the department shall, in accordance with this section, obtain information relevant to the case to enable the review committee to review the case. The department shall provide the information to the review committee.

(b) The information provided to the review committee may not include identifying information of a patient or health care provider, including:

(1) the name, address, or date of birth of the patient or a member of the patient's family; or

(2) the name or specific location of a health care provider that treated the patient.

(c) On the request of the department, a hospital, birthing center, or other custodian of the requested information shall provide the information to the department. The information shall be provided without the authorization of the patient or, if the patient is deceased, without the authorization of the patient's family.

(c-1) Not later than the 30th business day after receiving a request from the department for records regarding a pregnancy-related death for a specific patient, a hospital, birthing center, or other custodian of the records shall submit the records to the department. A request made under this subsection to a hospital or birthing center must be limited to a patient's medical records.

(d) A person who provides information to the department under this section is not subject to an administrative, civil, or criminal action for damages or other relief for providing the information.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 10, eff. June 10, 2019.

Sec. 34.0085. CASE INFORMATION EXCEPTED FROM PROFESSIONAL

REPORTING REQUIREMENTS. Notwithstanding any other law and for purposes of this chapter, a health care provider, including a nurse, who during the review of information relevant to a case selected for review under this chapter learns of conduct related to the provider's profession that is subject to a reporting requirement is exempt from that reporting requirement for the reviewed information.

Added by Acts 2025, 89th Leg., R.S., Ch. 724 (H.B. 713), Sec. 1, eff. June 20, 2025.

Sec. 34.009. CONFIDENTIALITY; PRIVILEGE. (a) Any information pertaining to a pregnancy-related death or severe maternal morbidity is confidential for purposes of this chapter.

(b) Except as provided by Subsection (b-1), confidential information that is acquired by the department and that includes identifying information of an individual or health care provider is privileged and may not be disclosed to any person. Information that may not be disclosed under this subsection includes:

(1) the name and address of a patient or a member of the patient's family;

(2) any service received by the patient or a member of the patient's family;

(3) the social and economic condition of the patient or a member of the patient's family;

(4) medical, dental, and mental health care information related to the patient or a member of the patient's family, including diagnoses, conditions, diseases, or disability; and

(5) the identity of a health care provider that provided any services to the patient or a member of the patient's family.

(b-1) Confidential information that is acquired by the department under this section that includes identifying information of an individual or health care provider may be securely disclosed to an appropriate federal agency for the limited purpose of complying with applicable requirements under the federal Preventing Maternal Deaths Act of 2018 (Pub. L. No. 115-344).

(c) Review committee work product or information obtained by the department under this chapter, including information contained in an electronic database established and maintained under Section 34.012, or any other document or record, is confidential. This

subsection does not prevent the review committee or department from releasing information described by Subsection (d) or (e) or from submitting the report required by Section 34.015.

(d) Information is not confidential under this section if the information is general information that cannot be connected with any specific individual, case, or health care provider, such as:

(1) total expenditures made for specified purposes;

(2) the number of families served by particular health care providers or agencies;

(3) aggregated data on social and economic conditions;

(4) medical data and information related to health care services that do not include any identifying information relating to a patient or the patient's family;

(5) information, including the source, value, and purpose, related to gifts, grants, or donations to or for use by the review committee; and

(6) other statistical information.

(e) The review committee may publish statistical studies and research reports based on information that is confidential under this section, provided that the information:

(1) is published in the aggregate;

(2) does not identify a patient or the patient's family;

(3) does not include any information that could be used to identify a patient or the patient's family; and

(4) does not identify a health care provider.

(f) The department shall adopt and implement practices and procedures to ensure that information that is confidential under this section is not disclosed in violation of this section.

(g) Information that is confidential under this section is excepted from disclosure under Chapter 552, Government Code, as provided by Section 552.101 of that chapter.

(h) The review committee and the department shall comply with all state and federal laws and rules relating to the transmission of health information, including the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and rules adopted under that Act.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 6, eff. August 16, 2017.

Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 11, eff. June 10, 2019.

Sec. 34.010. SUBPOENA AND DISCOVERY. Review committee work product or information that is confidential under Section 34.009 is privileged, is not subject to subpoena or discovery, and may not be introduced into evidence in any administrative, civil, or criminal proceeding against a patient, a member of the family of a patient, or a health care provider.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 12, eff. June 10, 2019.

Sec. 34.011. IMMUNITY. (a) A member of the review committee or a person employed by or acting in an advisory capacity to the review committee and who provides information, counsel, or services to the review committee is not liable for damages for an action taken within the scope of the functions of the review committee.

(b) Subsection (a) does not apply if the person acts with malice or without the reasonable belief that the action is warranted by the facts known to the person.

(c) This section does not provide immunity to a person described by Subsection (a) for a violation of a state or federal law or rule relating to the privacy of health information or the transmission of health information, including the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and rules adopted under that Act.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 13, eff. June 10, 2019.

Sec. 34.012. DATABASE OF DE-IDENTIFIED INFORMATION. (a) The department may establish and maintain an electronic database to track cases of pregnancy-related deaths and severe maternal morbidity to assist the department and review committee in performing functions under this chapter.

(b) The information in the database may not include identifying information, including:

(1) the name of a patient; or

(2) the name or specific location of a health care provider that treated a patient.

(c) The database may be accessed only by the department and the review committee for the purposes described in this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 14, eff. June 10, 2019.

Sec. 34.013. INAPPLICABILITY OF CHAPTER. This chapter does not apply to disclosure of records pertaining to voluntary or therapeutic termination of pregnancy, and those records may not be collected, maintained, or disclosed under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Sec. 34.014. FUNDING. The department may accept gifts and grants from any source to fund the duties of the department and the review committee under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 15, eff. June 10, 2019.

Sec. 34.015. REPORTS. (a) Not later than September 1 of each

even-numbered year, the review committee and the department shall submit a joint report on the findings of the review committee under this chapter to the governor, lieutenant governor, speaker of the house of representatives, and appropriate committees of the legislature.

(b) The report must include the review committee's recommendations under Section 34.005(4).

(c) The department shall disseminate the report to the state professional associations and organizations listed in Section 34.006(b) and make the report publicly available in paper or electronic form.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 7, eff. August 16, 2017.

Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 16, eff. June 10, 2019.

Sec. 34.0155. REPORT ON PREGNANCY-RELATED DEATHS, SEVERE MATERNAL MORBIDITY, AND POSTPARTUM DEPRESSION. The commission shall:

(1) evaluate options for reducing pregnancy-related deaths, focusing on the most prevalent causes of pregnancy-related deaths as identified in the joint biennial report required under Section 34.015, and for treating postpartum depression in economically disadvantaged women;

(2) in coordination with the department and the review committee, identify strategies to:

(A) lower costs of providing medical assistance under Chapter 32, Human Resources Code, related to severe maternal morbidity and chronic illness; and

(B) improve quality outcomes related to the underlying causes of severe maternal morbidity and chronic illness; and

(3) not later than December 1 of each even-numbered year, submit to the governor, the lieutenant governor, the speaker of the house of representatives, the Legislative Budget Board, and the appropriate standing committees of the legislature a written report that includes:

(A) a summary of the commission's and department's efforts to accomplish the tasks described by Subdivisions (1) and (2); and

(B) a summary of the report required by Section 34.0156.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 8, eff. August 16, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 17, eff. June 10, 2019.

Sec. 34.0156. MATERNAL HEALTH AND SAFETY INITIATIVE. (a) Using existing resources, the department, in collaboration with the review committee, shall promote and facilitate the use among health care providers in this state of maternal health and safety informational materials, including tools and procedures related to best practices in maternal health and safety.

(b) Not later than December 1 of each even-numbered year, the department shall submit a report to the executive commissioner that includes:

(1) a summary of the initiative's implementation and outcomes; and

(2) recommendations for improving the effectiveness of the initiative.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 8, eff. August 16, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 18, eff. June 10, 2019.

Sec. 34.0158. REPORT ON ACTIONS TO ADDRESS MATERNAL MORTALITY RATES. Not later than December 1 of each even-numbered year, the commission shall submit to the governor, the lieutenant governor, the speaker of the house of representatives, the Legislative Budget Board, and the appropriate standing committees of the legislature a written report summarizing the actions taken to address maternal morbidity and reduce maternal mortality rates. The report must

include information from programs and initiatives created to address maternal morbidity and reduce maternal mortality rates in this state, including:

(1) Medicaid;

(2) the children's health insurance program, including the perinatal program;

(3) the Healthy Texas Women program;

(4) the Family Planning Program;

(5) this state's program under the Maternal and Child Health Services Block Grant Act (42 U.S.C. Section 701 et seq.);

(6) the Perinatal Advisory Council;

(7) state health plans; and

(8) the Healthy Texas Babies program.

Added by Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 3, eff. September 1, 2019.

Sec. 34.01581. OPIOID USE DISORDER MATERNAL AND NEWBORN HEALTH INITIATIVES. (a) The department, in collaboration with the review committee, shall develop and implement initiatives to:

(1) improve screening procedures to better identify and care for women with opioid use disorder;

(2) improve continuity of care for women with opioid use disorder by ensuring that health care providers refer the women to appropriate treatment and verify the women receive the treatment;

(3) optimize health care provided to pregnant women with opioid use disorder;

(4) optimize health care provided to newborns with neonatal abstinence syndrome by encouraging maternal engagement;

(5) increase access to medication-assisted treatment for women with opioid use disorder during pregnancy and the postpartum period; and

(6) prevent opioid use disorder by reducing the number of opioid drugs prescribed before, during, and following a delivery.

(c) Using existing resources, the department, in collaboration with the review committee, shall promote and facilitate the use among health care providers in this state of maternal health informational materials, including tools and procedures related to best practices in maternal health to improve obstetrical care for women with opioid

use disorder.

Added by Acts 2019, 86th Leg., R.S., Ch. 514 (S.B. 436), Sec. 1, eff. June 7, 2019.
Redesignated and amended from Health and Safety Code, Section 34.0158 by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.001, eff. September 1, 2021.

Sec. 34.0159. PROGRAM EVALUATIONS. The commission, in collaboration with the task force and other interested parties, shall:

(1) explore options for expanding the pilot program for pregnancy medical homes established under former Section 531.0996, Government Code;

(2) explore methods for increasing the benefits provided under Medicaid, including specialty care and prescriptions, for women at greater risk of a high-risk pregnancy or premature delivery;

(3) evaluate the impact of supplemental payments made to obstetrics providers for pregnancy risk assessments on increasing access to maternal health services;

(4) evaluate a waiver to fund managed care organization payments for case management and care coordination services for women at high risk of severe maternal morbidity on conclusion of their eligibility for Medicaid;

(5) evaluate the average time required for pregnant women to complete the Medicaid enrollment process;

(6) evaluate the use of Medicare codes for Medicaid care coordination;

(7) study the impact of programs funded from the Teen Pregnancy Prevention Program federal grant and evaluate whether the state should continue funding the programs; and

(8) evaluate the use of telemedicine medical services for women during pregnancy and the postpartum period.

Added by Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 3, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.28, eff. April 1, 2025.

Sec. 34.016. RULES. The executive commissioner may adopt rules to implement this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Sec. 34.017. DEPARTMENT ACCESS TO INFORMATION. (a) Notwithstanding Chapter 108 or any other law, the department may have access to the following information that may include the identity of a patient to fulfill its duties under this chapter:

(1) birth records;

(2) fetal death records;

(3) maternal death records; and

(4) hospital and birthing center discharge data.

(b) The department may not disclose the information described by Subsection (a) to the review committee or any other person.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 19, eff. June 10, 2019.

Sec. 34.018. SUNSET PROVISION. (a) The review committee is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the review committee is abolished and this chapter expires September 1, 2027.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 9, eff. August 16, 2017.

Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 4.05, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 20, eff. June 10, 2019.

Sec. 34.019. DATA COLLECTION. The task force, under the direction of the department, shall annually collect information relating to maternity care and postpartum depression in this state. The information must be based on statistics for the preceding year and include the:

(1) number of births by Medicaid recipients;

(2) number of births by women with health benefit plan coverage;

(3) number of Medicaid recipients screened for postpartum depression;

(4) number of women screened for postpartum depression under health benefit plan coverage;

(5) number of women treated for postpartum depression under health benefit plan coverage;

(6) number of women screened for postpartum depression under the Healthy Texas Women program;

(7) number of women treated for postpartum depression under the Healthy Texas Women program;

(8) number of claims for postpartum depression treatment paid by the Healthy Texas Women program;

(9) number of claims for postpartum depression treatment rejected by the Healthy Texas Women program;

(10) postpartum depression screening and treatment billing codes and the number of claims for each billing code under the Healthy Texas Women program;

(11) average number of days from the date of a postpartum depression screening to the date the patient begins treatment under Medicaid;

(12) average number of days from the date of a postpartum depression screening to the date the patient begins treatment under the Healthy Texas Women program;

(13) number of women who screened positive for postpartum depression under Medicaid and the average number of days following childbirth for the screening to occur;

(14) number of women who screened positive for postpartum depression under health benefit plan coverage and the average number of days following childbirth for the screening to occur; and

(15) number of women who screened positive for postpartum depression under the Healthy Texas Women program and the average number of days following childbirth for the screening to occur.

Added by Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 4, eff. September 1, 2019.

Sec. 34.020. PROGRAM TO DELIVER PRENATAL AND POSTPARTUM CARE THROUGH TELEHEALTH OR TELEMEDICINE MEDICAL SERVICES IN CERTAIN COUNTIES. (a) In this section:

(1) "Postpartum care" and "prenatal care" have the meanings assigned by Section 32.002.

(2) "Telehealth service" and "telemedicine medical service" have the meanings assigned by Section 111.001, Occupations Code.

(b) The commission, in consultation with the task force, shall develop a program to deliver prenatal and postpartum care through telehealth services or telemedicine medical services to pregnant women with a low risk of experiencing pregnancy-related complications, as determined by a physician. The commission shall implement the program in:

(1) at least two counties with populations of more than 2.5 million;

(2) at least one county with a population of more than 100,000 and less than 500,000; and

(3) at least one rural county with high rates of maternal mortality and morbidity as determined by the commission in consultation with the task force.

(c) The commission shall develop criteria for selecting participants for the program by analyzing information in the reports prepared by the task force under this chapter and the outcomes of the study conducted under former Section 531.02163, Government Code.

(d) In developing and administering the program, the commission shall endeavor to use innovative, durable medical equipment to monitor fetal and maternal health.

(e) If the commission determines it is feasible and cost-effective, the commission may:

(1) provide home telemonitoring services and necessary durable medical equipment to women participating in the program to the extent the commission anticipates the services and equipment will reduce unnecessary emergency room visits or hospitalizations; and

(2) reimburse providers under Medicaid for the provision of home telemonitoring services and durable medical equipment under the program.

(f) Not later than January 1, 2021, the commission shall submit to the legislature a report on the program that evaluates the program's success in delivering prenatal and postpartum care through telehealth services or telemedicine medical services under Subsection (b).

Added by Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 4, eff. September 1, 2019.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.002, eff. September 1, 2021.
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 66, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.29, eff. April 1, 2025.

For expiration of this section, see Subsection (b).

Sec. 34.021. APPLICATION FOR FEDERAL GRANTS. (a) The executive commissioner shall apply to the United States Department of Health and Human Services for grants under the federal Preventing Maternal Deaths Act of 2018 (Pub. L. No. 115-344).

(b) This section expires September 1, 2027.

Added by Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 4, eff. September 1, 2019.

CHAPTER 35. CHILDREN WITH SPECIAL HEALTH CARE NEEDS

Sec. 35.001. SHORT TITLE. This chapter may be cited as the Children with Special Health Care Needs Services Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 3.01, eff. Sept. 1, 1999.

Sec. 35.0021. DEFINITIONS. In this chapter:

(1) "Case management services" includes:

(A) coordinating medical services, marshaling available assistance, serving as a liaison between the child and the child's family and caregivers, insurance services, and other services needed

to improve the well-being of the child and the child's family; and

(B) counseling for the child and the child's family about measures to prevent the transmission of AIDS or HIV and the availability in the geographic area of any appropriate health care services, such as mental health care, psychological health care, and social and support services.

(2) "Child with special health care needs" has the meaning assigned by Section 35.0022.

(3) "Dentist" means a person licensed by the State Board of Dental Examiners to practice dentistry in this state.

(4) "Facility" includes a hospital, an ambulatory surgical center, and an outpatient clinic.

(5) "Family support services" means support, resources, or other assistance provided to the family of a child with special health care needs. The term may include services described by Part A of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.), as amended, and permanency planning, as that term is defined by Section 546.0201, Government Code.

(6) "Other benefit" means a benefit, other than a benefit provided under this chapter, to which a person is entitled for payment of the costs of services provided under the program, including benefits available from:

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

(B) Title XVIII, Title XIX, or Title XXI of the Social Security Act (42 U.S.C. Sec. 1395 et seq., 42 U.S.C. Sec. 1396 et seq., and 42 U.S.C. Sec. 1397aa et seq.), as amended;

(C) the United States Department of Veterans Affairs;

(D) the TRICARE program of the United States Department of Defense;

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

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

(G) a cause of action for the cost of care, including medical care, dental care, facility care, and medical supplies,

required for a person applying for or receiving services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

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

(8) "Program" means the services program for children with special health care needs.

(9) "Provider" means a person who delivers services purchased by the department for the purposes of this chapter.

(10) "Rehabilitation services" means the process of the physical restoration, improvement, or maintenance of a body function destroyed or impaired by congenital defect, disease, or injury and includes:

(A) facility care, medical and dental care, and occupational, speech, and physical therapy;

(B) the provision of braces, artificial appliances, durable medical equipment, and other medical supplies; and

(C) other types of care specified by department rules.

(11) "Services" means the care, activities, and supplies provided under this chapter or department rules, including medical care, dental care, facility care, medical supplies, occupational, physical, and speech therapy, and other care specified by department rules.

(12) "Specialty center" means a facility and staff that meet minimum standards established under the program and are designated by the department for program use in the comprehensive diagnostic and treatment services for a specific medical condition.

(13) "Support" means to contribute money or services necessary for a person's maintenance, including food, clothing, shelter, transportation, and health care.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.02, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0110, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.30, eff. April 1, 2025.

Sec. 35.0022. CHILD WITH SPECIAL HEALTH CARE NEEDS. (a) In this chapter, "child with special health care needs" means a person who:

(1) is younger than 21 years of age and who has a chronic physical or developmental condition; or

(2) has cystic fibrosis, regardless of the person's age.

(b) The term "child with special health care needs" may include a person who has a behavioral or emotional condition that accompanies the person's physical or developmental condition. The term does not include a person who has a behavioral or emotional condition without having an accompanying physical or developmental condition.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.02, eff. Sept. 1, 1999.

Sec. 35.003. SERVICES PROGRAM FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS. (a) The program is in the department to provide services to eligible children with special health care needs. The program shall provide:

(1) early identification of children with special health care needs;

(2) diagnosis and evaluation of children with special health care needs;

(3) rehabilitation services to children with special health care needs;

(4) development and improvement of standards and services for children with special health care needs;

(5) case management services;

(6) other family support services; and

(7) access to health benefits plan coverage under Section 35.0031.

(b) The executive commissioner by rule shall:

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

(2) permit the payment of insurance premiums for eligible children.

(c) If budgetary limitations exist, the executive commissioner by rule shall establish a system of priorities relating to the types of services or the classes of persons eligible for the services. A

waiting list of eligible persons may be established if necessary for the program to remain within the budgetary limitations. The department shall collect from each applicant for services who is placed on a waiting list appropriate information to facilitate contacting the applicant when services become available and to allow efficient enrollment of the applicant in those services. The information collected must include:

(1) the applicant's name, address, and phone number;

(2) the name, address, and phone number of a contact person other than the applicant;

(3) the date of the applicant's earliest application for services;

(4) the applicant's functional needs;

(5) the range of services needed by the applicant; and

(6) a date on which the applicant is scheduled for reassessment.

(d) The program may provide:

(1) transportation and subsistence for an eligible child with special health care needs and the child's parent, managing conservator, guardian, or other adult caretaker approved by the program to obtain services provided by the program; and

(2) the following services to an eligible child with special health care needs who dies in an approved facility outside the child's municipality of residence while receiving program services:

(A) the transportation of the child's remains, and the transportation of a parent or other person accompanying the remains, from the facility to the place of burial in this state that is designated by the parent or other person legally responsible for interment;

(B) the expense of embalming, if required for transportation;

(C) the cost of a coffin purchased at a minimum price, if a coffin is required for transportation; and

(D) any other necessary expenses directly related to the care and return of the child's remains to the place of burial in this state.

(e) The department may:

(1) develop methods to improve the efficiency and effectiveness of the program; and

(2) conduct pilot studies.

(f) The program is separate from the financial or medical assistance program established by Chapters 31 and 32, Human Resources Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 3.03, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0111, eff. April 2, 2015.

Sec. 35.0031. HEALTH BENEFITS PLAN COVERAGE FOR CERTAIN ELIGIBLE CHILDREN. The department shall obtain coverage under a health benefits plan for a child who:

(1) is eligible for services under this chapter; and

(2) is not eligible for assistance under:

(A) a program established under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended; or

(B) the medical assistance program under Chapter 32, Human Resources Code.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1, 1999.

Sec. 35.0032. BENEFITS COVERAGE REQUIRED. To the extent possible, the health benefits plan required by Section 35.0031 must provide benefits comparable to the benefits provided under the state child health plan established by this state to implement Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1, 1999.

Sec. 35.0033. HEALTH BENEFITS PLAN PROVIDER. (a) A health benefits plan provider who provides coverage for benefits under Section 35.0031 must:

(1) hold a certificate of authority or other appropriate

license issued by the Texas Department of Insurance that authorizes the health benefits plan provider to provide the type of coverage to be offered under Section 35.0031; and

(2) satisfy, except as provided by Subsection (b), any other applicable requirement of the Insurance Code or another insurance law of this state.

(b) Except as required by department rule, a health benefits plan provider under this chapter is not subject to a law that requires coverage or the offer of coverage of a health care service or benefit.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0112, eff. April 2, 2015.

Sec. 35.0034. COST-SHARING PAYMENTS. (a) Except as provided by Subsection (b), the department may not require a child who is provided health benefits plan coverage under Section 35.0031 and who meets the income eligibility requirement of the medical assistance program under Chapter 32, Human Resources Code, to pay a premium, deductible, coinsurance, or other cost-sharing payment as a condition of health benefits plan coverage under this chapter.

(b) The department may require a child described by Subsection (a) to pay a copayment as a condition of health benefits plan coverage under Section 35.0031 that is equal to any copayment required under the state child health plan established by this state to implement Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended.

(c) The department may require a child who is provided health benefits plan coverage under Section 35.0031 and who meets the income eligibility requirement of a program established under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, to pay a premium, deductible, coinsurance, or other cost-sharing payment as a condition of health benefits plan coverage. The payment must be equal to any premium, deductible, coinsurance, or other cost-sharing payment required under the state child health plan established by this state to implement Title XXI of the Social

Security Act (42 U.S.C. Section 1397aa et seq.), as amended.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1, 1999.

Sec. 35.0035. DISALLOWANCE OF MATCHING FUNDS FROM FEDERAL GOVERNMENT. Expenditures made to provide health benefits plan coverage under Section 35.0031 may not be included for the purpose of determining the state children's health insurance expenditures, as that term is defined by 42 U.S.C. Section 1397ee(d)(2)(B), as amended.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1, 1999.

Sec. 35.004. SERVICE PROVIDERS. (a) The executive commissioner shall adopt substantive and procedural rules for the selection of providers to participate in the program, including rules for the selection of specialty centers and rules requiring that providers accept program payments as payment in full for services provided.

(b) The department shall approve physicians, dentists, licensed dietitians, facilities, specialty centers, and other providers to participate in the program according to the criteria and following the procedures prescribed by department rules.

(c) The department may pay only for services delivered by an approved provider, except in an emergency.

(d) Except as specified in the department rules, a recipient of services may select any provider approved by the department. If the recipient is a minor, the person legally authorized to consent to the treatment may select the provider.

(e) The executive commissioner shall adopt substantive and procedural rules for the modification, suspension, or termination of the approval of a provider.

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

(g) The department may not terminate the approval of a provider while a hearing is pending under this section. The department may withhold payments while the hearing is pending, but shall pay the withheld payments and resume contract payments if the final determination is favorable to the provider.

(h) Subsection (f) does not apply if a contract:

(1) is canceled by the department because services are restricted to conform to budgetary limitations and service priorities are adopted by the executive commissioner regarding types of services to be provided; or

(2) expires according to its terms.

(i) The Interagency Cooperation Act, Chapter 771, Government Code, does not apply to a payment made by the department for services provided by a publicly supported medical school facility to an eligible child. A publicly supported medical school facility receiving payment under this chapter shall deposit the payment in local funds.

(j) This section does not apply to services for which coverage is provided under the health benefits plan established under Section 35.0031.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 393, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1505, Sec. 3.05, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0113, eff. April 2, 2015.

Sec. 35.0041. PARTICIPATION AND REIMBURSEMENT OF TELEMEDICINE MEDICAL SERVICE PROVIDERS. (a) The executive commissioner by rule shall develop and the department shall implement policies permitting reimbursement of a provider for services under the program performed using telemedicine medical services.

(b) The policies must provide for reimbursement of:

(1) providers using telemedicine medical services and telehealth services in a cost-effective manner that ensures the availability to a child with special health care needs of services appropriately performed using telemedicine medical services and

telehealth services that are comparable to the same types of services available to that child without use of telemedicine medical services and telehealth services;

(2) a provider for a service performed using telemedicine medical services and telehealth services at an amount equal to the amount paid to a provider for performing the same service without using telemedicine medical services and telehealth services;

(3) multiple providers of different services who participate in a single telemedicine medical services or telehealth services session for a child with special health care needs, if the department determines that reimbursing each provider for the session is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services and telehealth services, including the costs of transportation and lodging and other direct costs; and

(4) providers using telemedicine medical services and telehealth services included in the school health and related services program.

(c) In developing and implementing the policies required by this section, the executive commissioner and the department shall consult with:

(1) The University of Texas Medical Branch at Galveston;

(2) Texas Tech University Health Sciences Center;

(3) the commission, including the state Medicaid office;

(4) providers of telemedicine medical services and telehealth services hub sites in this state;

(5) providers of services to children with special health care needs; and

(6) representatives of consumer or disability groups affected by changes to services for children with special health care needs.

(d) This section applies to services for which coverage is provided under the health benefits plan established under Section 35.0031.

Added by Acts 2001, 77th Leg., ch. 959, Sec. 4, eff. June 14, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0114, eff. April 2, 2015.

Sec. 35.005. ELIGIBILITY FOR SERVICES. (a) The executive commissioner by rule shall:

(1) define medical, financial, and other criteria for eligibility to receive services; and

(2) establish a system for verifying eligibility information submitted by an applicant for or recipient of services.

(b) In defining medical and financial criteria for eligibility under Subsection (a), the executive commissioner may not:

(1) establish an exclusive list of coverable medical conditions; or

(2) consider as a source of support to provide services assets legally owned or available to a child's household.

(c) A child is not eligible to receive rehabilitation services unless:

(1) the child is a resident of this state;

(2) at least one physician or dentist certifies to the department that the physician or dentist has examined the child and finds the child to be a child with special health care needs whose disability meets the medical criteria established by the executive commissioner;

(3) the department determines that the persons who have any legal obligation to provide services for the child are unable to pay for the entire cost of the services;

(4) the child has a family income that is less than or equal to 200 percent of the federal poverty level; and

(5) the child meets all other eligibility criteria established by department rules.

(d) A child is not eligible to receive services, other than rehabilitation services, unless the child:

(1) is a resident of this state; and

(2) meets all other eligibility criteria established by department rules.

(e) Notwithstanding Subsection (c)(4), a child with special health care needs who has a family income that is greater than 200 percent of the federal poverty level and who meets all other eligibility criteria established by this section and by department rules is eligible for services if the department determines that the child's family is or will be responsible for medical expenses that are equal to or greater than the amount by which the family's income exceeds 200 percent of the federal poverty level.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 3.06, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0115, eff. April 2, 2015.

Sec. 35.006. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) The executive commissioner shall adopt substantive and procedural rules for the denial of applications and the modification, suspension, or termination of services.

(b) The department may deny services to an applicant and modify, suspend, or terminate services to a recipient after:

(1) notice to the child or the person who is legally obligated to support the child;

(2) a preliminary program review; and

(3) an opportunity for a fair hearing.

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

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

(e) This section does not apply if the department restricts services to conform to budgetary limitations that require the executive commissioner to adopt service priorities regarding types of services to be provided.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0116, eff. April 2, 2015.

Sec. 35.0061. REFERRAL FOR BEHAVIORAL OR EMOTIONAL CONDITIONS. If a child with special health care needs who is eligible for services under this chapter has a behavioral or emotional condition and the child is eligible for services from another provider of services that would address the behavioral or emotional condition,

the department shall refer the child to that provider for those services.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.07, eff. Sept. 1, 1999.

Sec. 35.007. FINANCIAL ELIGIBILITY; OTHER BENEFITS. (a) The department shall require a child receiving services, or the person who has a legal obligation to support the child, to pay for or reimburse the department for that part of the cost of the services that the child or person is financially able to pay.

(b) A child is not eligible to receive services under this chapter to the extent that the child or a person with a legal obligation to support the child is eligible for some other benefit that would pay for all or part of the services. The executive commissioner may waive this subsection if its enforcement will deny services to a class of children because of conflicting state and federal laws or rules and regulations.

(c) When the application is made under this chapter or at any time before, during, or after the receipt of services, an applicant for or recipient of services shall inform the department of any other benefit to which the child or any person who has a legal obligation to support the child may be entitled.

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

(e) The department may collect the cost of services provided under this chapter directly:

(1) in accordance with Title XVIII, Title XIX, or Title XXI of the Social Security Act (42 U.S.C. Sec. 1395 et seq., 42 U.S.C. Sec. 1396 et seq., and 42 U.S.C. Sec. 1397aa et seq.), as amended; or

(2) from any personal insurance, a health maintenance organization, or any other third party who has a legal obligation to pay other benefits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 3.08, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0117, eff. April 2, 2015.

Sec. 35.008. RECOVERY OF COSTS. (a) The department may recover the cost of services provided under this chapter from a person who does not pay or reimburse the department as required by Section 35.007 or from any third party who has a legal obligation to pay other benefits.

(b) This section creates a separate cause of action, and the department may request the attorney general to bring suit in the appropriate court of Travis County on behalf of the department.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0118, eff. April 2, 2015.

Sec. 35.009. FEES. The executive commissioner by rule may adopt reasonable procedures and standards for the determination of fees and charges for program services.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0119, eff. April 2, 2015.

Sec. 35.010. FUNDING. The department may receive and spend:

(1) gifts made for the purposes of this chapter; and

(2) funds appropriated or granted by the state or federal government to provide services for children.

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

Sec. 35.011. CONTRACTS. The department may enter into contracts and agreements necessary to carry out this chapter, including interagency agreements to provide for the efficient and uninterrupted provision of necessary services to children who are eligible to receive services from two or more public programs.

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

Sec. 35.012. RECORDS. (a) The department may take a census, make surveys, and establish permanent records of children with special health care needs.

(b) The department shall maintain a record of orthotic and prosthetic devices, durable medical equipment, and medical supplies purchased by the department for children with special health care needs. Those items are not state-owned personal property and are exempt from the personal property inventory requirements of Subtitle D, Title 10, Government Code.

(c) The purchase of the items described by Subsection (b) is subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 11, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 17.19(4), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1505, Sec. 3.09, eff. Sept. 1, 1999.

Sec. 35.013. LIMITATIONS ON AUTHORITY. (a) This chapter does not limit the authority of a parent, managing conservator, or guardian over a minor.

(b) This chapter does not entitle an employee, agent, or representative of the department or other official agent to enter a home over the objection of a child or, if the child is a minor, over the objection of the child's parent, managing conservator, or guardian.

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

CHAPTER 36. SPECIAL SENSES AND COMMUNICATION DISORDERS

Sec. 36.001. SHORT TITLE. This chapter may be cited as the Special Senses and Communication Disorders Act.

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

Sec. 36.002. PURPOSE. (a) The purpose of this chapter is to establish a program to identify, at as early an age as possible, those individuals from birth through 20 years of age who have special senses and communication disorders and who need remedial vision, hearing, speech, and language services. Early detection and remediation of those disorders provide the individuals with the opportunity to reach academic and social status through adequate educational planning and training.

(b) This chapter shall be implemented in accordance with the provisions of professional license laws that pertain to professional examinations and remedial services for individuals with special senses and communication disorders.

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

Sec. 36.003. DEFINITIONS. In this chapter:

(1) "Communication disorder" means an abnormality of functioning related to the ability to express and receive ideas.

(1-a) "Electronic eye chart" means any computerized or other electronic system, device, or method of displaying on an electronic screen medically accepted and properly sized optotypes, which may be letters, numbers, or symbols, a health care practitioner or other person uses to assess an individual's visual acuity. The term does not include an automated computer program that assesses an individual's visual acuity through the individual's interaction with the program by playing a game.

(2) "Other benefit" means a benefit, other than a benefit under this chapter, to which an individual is entitled for payment of the costs of remedial services, and includes:

(A) benefits received under a personal insurance contract;

(B) payments received from another person for personal injury caused by the other person's negligence or wrongdoing; and

(C) payments received from any other source.

(3) "Preschool" means an educational or child-care institution that admits children who are three years of age or older but younger than five years of age.

(4) "Professional examination" means a diagnostic evaluation performed by an appropriately licensed professional or, if the professional is not required to be licensed under the laws of this state, by a certified or sanctioned individual whose area of expertise addresses the diagnostic needs of an individual identified as having a possible special senses or communication disorder.

(5) "Provider" means a person who provides remedial services to individuals who have special senses and communication disorders, and includes a physician, audiologist, speech pathologist, optometrist, psychologist, hospital, clinic, rehabilitation center, university, or medical school.

(6) "Remedial services" means professional examinations and prescribed remediation, including prosthetic devices, for individuals with special senses or communication disorders.

(7) "School" means an educational institution that admits children who are five years of age or older but younger than 21 years of age.

(8) "Screening" means a test or battery of tests administered to rapidly determine the need for a professional examination.

(9) "Special senses" means the faculties by which the conditions or properties of things are perceived, and includes vision and hearing.

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

Acts 2023, 88th Leg., R.S., Ch. 313 (H.B. 1297), Sec. 1, eff. September 1, 2023.

Sec. 36.004. SCREENING PROGRAM FOR SPECIAL SENSES AND COMMUNICATION DISORDERS. (a) The executive commissioner by rule shall require screening of individuals who attend public or private preschools or schools to detect vision and hearing disorders and any other special senses or communication disorders specified by the executive commissioner. In developing the rules, the executive commissioner may consider the number of individuals to be screened

and the availability of:

(1) personnel qualified to administer the required screening;

(2) appropriate screening equipment; and

(3) state and local funds for screening activities.

(b) The rules must include procedures necessary to administer screening activities.

(b-1) The rules must allow an individual who attends a public or private school to be screened:

(1) using photoscreening to detect vision disorders; and

(2) using an electronic eye chart as a substitute for a printed eye chart to assess visual acuity.

(c) The executive commissioner shall adopt a schedule for implementing the screening requirements and shall give priority to the age groups that may derive the greatest educational and social benefits from early identification of special senses and communication disorders.

(d) The rules must provide for acceptance of results of screening conducted by a licensed professional, regardless of whether that professional is under contract with the department, if:

(1) the professional's legally defined scope of practice includes the area for which the screening is conducted; and

(2) the professional uses acceptable procedures for the screening.

(e) The department may coordinate the special senses and communication disorders screening activities of school districts, private schools, state agencies, volunteer organizations, and other entities so that the efforts of each entity are complementary and not fragmented and duplicative. The department may provide technical assistance to those entities in developing screening programs and may provide educational and other material to assist local screening activities.

(f) The department may provide screening personnel, equipment, and services only if the screening requirements cannot otherwise be met.

(g) The department shall monitor the quality of screening activities provided under this chapter.

(h) This section does not prohibit a volunteer from participating in the department's screening programs.

(i) A hearing screening performed under this section is in

addition to any hearing screening test performed under Chapter 47.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1347, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0120, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 363 (H.B. 3157), Sec. 1, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 313 (H.B. 1297), Sec. 2, eff. September 1, 2023.

Sec. 36.005. COMPLIANCE WITH SCREENING REQUIREMENTS. (a) An individual required to be screened shall undergo approved screening for vision and hearing disorders and any other special senses and communication disorders specified by the executive commissioner. The individual shall comply with the requirements as soon as possible after the individual's admission to a preschool or school and within the period set by the executive commissioner. The individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, may substitute professional examinations for the screening.

(b) An individual is exempt from screening if screening conflicts with the tenets and practices of a recognized church or religious denomination of which the individual is an adherent or a member. To qualify for the exemption, the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, must submit to the admitting officer of the preschool or school on or before the day of admission an affidavit stating the objections to screening.

(c) The chief administrator of each preschool or school shall ensure that each individual admitted to the preschool or school complies with the screening requirements set by the executive commissioner or submits an affidavit of exemption.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0121, eff. April 2, 2015.

Sec. 36.006. RECORDS; REPORTS. (a) The chief administrator of each preschool or school shall maintain, on a form prescribed by the department in accordance with department rules, screening records for each individual in attendance, and the records are open for inspection by the department or the local health department.

(b) The department may, directly or through local health departments, enter a preschool or school and inspect records maintained by the preschool or school relating to screening for special senses and communication disorders.

(c) An individual's screening records may be transferred among preschools and schools without the consent of the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian.

(d) Each preschool or school shall submit to the department an annual report on the screening status of the individuals in attendance during the reporting year and shall include in the report any other information required by the executive commissioner. The report must be on a form prescribed by the department in accordance with department rules and must be submitted according to the rules.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0122, eff. April 2, 2015.

Sec. 36.007. PROVISION OF REMEDIAL SERVICES. (a) The department may provide remedial services directly or through approved providers to eligible individuals who have certain special senses and communication disorders and who are not eligible for special education services that remediate those disorders and that are administered by the Texas Education Agency through the public schools.

(b) The executive commissioner by rule shall:

(1) describe the type, amount, and duration of remedial services that the department provides;

(2) establish medical, financial, and other criteria to be applied by the department in determining an individual's eligibility for the services;

(3) establish criteria for the selection by the department

of providers of remedial services; and

(4) establish procedures necessary to provide remedial services.

(c) The executive commissioner may establish a schedule to determine financial eligibility.

(d) The department may not require remedial services without the consent of the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.34, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0123, eff. April 2, 2015.

Sec. 36.008. INDIVIDUALS ELIGIBLE FOR REMEDIAL SERVICES. (a) An individual is not eligible to receive the remedial services authorized by this chapter to the extent that the individual or the parent, managing conservator, or other person with a legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the services.

(b) The department may waive ineligibility under Subsection (a) if the department finds that:

(1) good cause for the waiver is shown; and

(2) enforcement of the requirement would tend to defeat the purpose of this chapter or disrupt the administration or prevent the provision of remedial services to an otherwise eligible recipient.

(c) When an application for remedial services is filed or at any time that an individual is eligible for and receiving remedial services, the applicant or recipient shall inform the department of any other benefit to which the applicant, recipient, or person with a legal obligation to support the applicant or recipient may be entitled.

(d) The department may modify, suspend, or terminate the eligibility of an applicant for or recipient of remedial services after notice to the affected individual and an opportunity for a fair hearing that is conducted in accordance with the department's informal hearing rules.

(e) The executive commissioner by rule shall provide criteria

for actions taken under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0124, eff. April 2, 2015.

Sec. 36.009. REIMBURSEMENT. (a) The executive commissioner may require an individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, to pay or reimburse the department for a part of the cost of the remedial services provided.

(b) The recipient or the parent, managing conservator, or other person with a legal obligation to support an individual who has received remedial services from the department that are covered by some other benefit shall, when the other benefit is received, reimburse the department for the cost of services provided.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0125, eff. April 2, 2015.

Sec. 36.010. RECOVERY OF COSTS. (a) The department is entitled to recover an expenditure for services provided under this chapter from:

(1) a person who does not reimburse the department as required by this chapter; or

(2) a third party with a legal obligation to pay other benefits and who has notice of the department's interests in the other benefits.

(b) The commissioner may request the attorney general to bring suit in the appropriate court of Travis County on behalf of the department. A suit brought under this section need not be ancillary or dependent on any other action.

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

(d) The executive commissioner by rule shall provide criteria for actions taken under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0126, eff. April 2, 2015.

Sec. 36.011. QUALIFICATIONS OF PERSONS PROVIDING SCREENING AND REMEDIAL SERVICES. (a) The department in accordance with department rules may require that persons who administer special senses and communication disorders screening complete an approved training program, and the department may train those persons and approve training programs.

(b) A person who provides speech and language screening services authorized by this chapter must be:

(1) appropriately licensed; or

(2) trained and monitored by a person who is appropriately licensed.

(c) A person who is not an appropriately licensed professional may not conduct hearing screening authorized by this chapter other than screening of hearing sensitivity. The person shall refer an individual who is unable to respond reliably to that screening to an appropriately licensed professional.

(d) A person who provides a professional examination or remedial services authorized by this chapter for speech, language, or hearing disorders must be appropriately licensed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0127, eff. April 2, 2015.

Sec. 36.012. RESEARCH. (a) The department may conduct research and compile statistics on the provision of remedial services to individuals with special senses and communication disorders and on the availability of those services in the state.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(80), eff. June 17, 2011.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 7, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(2), eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(80), eff. June 17, 2011.

Sec. 36.013. FUNDING. The department may accept appropriations, donations, and reimbursements, including donations of prosthetic devices, and may apply those items to the purposes of this chapter.

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

Sec. 36.014. CONTRACTS. The department may enter into contracts and agreements necessary to administer this chapter, including contracts for the purchase of remedial services.

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

CHAPTER 37. ABNORMAL SPINAL CURVATURE IN CHILDREN

Sec. 37.001. SCREENING PROGRAM FOR ABNORMAL SPINAL CURVATURE. (a) The department, in cooperation with the Texas Education Agency, shall establish a program to detect abnormal spinal curvature in children.

(b) The executive commissioner, in cooperation with the Texas Education Agency, shall adopt rules for the mandatory spinal screening of children attending public or private schools. In adopting rules under this subsection, the executive commissioner shall consider the most recent nationally accepted and peer-reviewed scientific research in determining the appropriate ages for conducting the spinal screening. The department shall coordinate the spinal screening program with any other screening program conducted by the department on those children.

(b-1) The executive commissioner, in cooperation with the Texas Education Agency, by rule shall develop a process to notify a parent,

managing conservator, or guardian of:

(1) the screening requirement;

(2) the purposes of and reasons for the screening requirement, including prevention of painful scoliosis correction surgery and medical risks to the child if screening is declined;

(3) the noninvasive nature of the method used to conduct the screening; and

(4) the method for declining to comply with the screening requirement through the use of an exemption described by Section 37.002(b).

(c) The executive commissioner shall adopt substantive and procedural rules necessary to administer screening activities.

(d) A rule adopted by the executive commissioner under this chapter may not require any expenditure by a school, other than an incidental expense required for certification training for nonhealth practitioners and for notification requirements under Section 37.003.

(e) The department may coordinate the spinal screening activities of school districts, private schools, state agencies, volunteer organizations, and other entities so that the efforts of each entity are complementary and not duplicative. The department may provide technical assistance to those entities in developing screening programs and may provide educational and other material to assist local screening activities.

(f) The department shall monitor the quality of screening activities provided under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.36, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0128, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 336 (H.B. 1076), Sec. 1, eff. September 1, 2017.

Sec. 37.002. COMPLIANCE WITH SCREENING REQUIREMENTS. (a) Each individual required by a department rule to be screened shall undergo approved screening for abnormal spinal curvature. The individual's parent, managing conservator, or guardian may substitute professional examinations for the screening.

(b) An individual is exempt from screening if screening conflicts with the tenets and practices of a recognized church or religious denomination of which the individual is an adherent or a member. To qualify for the exemption, the individual's parent, managing conservator, or guardian must submit to the chief administrator on or before the day of the screening procedure an affidavit stating the objections to screening.

(c) The chief administrator of each school shall ensure that each individual admitted to the school complies with the screening requirements set by the executive commissioner or submits an affidavit of exemption.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0129, eff. April 2, 2015.

Sec. 37.003. REPORTS. (a) If the screening performed under this chapter indicates that an individual may have abnormal spinal curvature, the individual performing the screening shall fill out a report on a form prescribed by the department.

(b) The chief administrator of the school shall retain one copy of the report and shall mail one copy to the parent, managing conservator, or guardian of the individual screened.

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

Sec. 37.004. QUALIFICATIONS OF PERSONS PROVIDING SCREENING. (a) The department may train persons who administer the spinal screening procedure and may approve training programs.

(b) A person who provides screening services authorized by this chapter must be:

(1) appropriately licensed or certified as a health practitioner; or

(2) certified as having completed an approved training program in screening for abnormal spinal curvature.

(c) A person who provides a professional examination authorized by this chapter for abnormal spinal curvature must be appropriately licensed or certified as a health practitioner.

(d) It is the intent of the legislature that the department provide certification training for nonhealth practitioners through Texas Education Agency regional education service centers.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.37, eff. Sept. 1, 1997.

Sec. 37.005. FUNDING. The department may accept appropriations, donations, and reimbursements and may apply those items to the purposes of this chapter.

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

Sec. 37.006. CONTRACTS. The department may enter into contracts and agreements necessary to administer this chapter.

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

CHAPTER 40. EPILEPSY

Sec. 40.001. DEFINITION. In this chapter, "epilepsy" means a variable symptom complex characterized by recurrent paroxysmal attacks of unconsciousness or impaired consciousness, usually with a succession of clonic or tonic muscular spasms or other abnormal behavior.

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

Sec. 40.002. EPILEPSY PROGRAM. The department, with approval of the executive commissioner, may establish an epilepsy program to provide diagnostic services, treatment, and support services to eligible persons who have epilepsy.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0133, eff. April 2, 2015.

Sec. 40.003. RULES. The executive commissioner may adopt rules the executive commissioner considers necessary to define the scope of the epilepsy program and the medical and financial standards for eligibility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0134, eff. April 2, 2015.

Sec. 40.004. ADMINISTRATION. (a) The commissioner, with the approval of the executive commissioner, may appoint an administrator to carry out the epilepsy program.
(b) The administrator shall report to and be under the direction of the commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0135, eff. April 2, 2015.

Sec. 40.005. FEES. Program patients may be charged a fee for services according to rules adopted by the executive commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0136, eff. April 2, 2015.

Sec. 40.006. FUNDING. The department may seek, receive, and spend any funds received through appropriations, grants, or donations from public or private sources for the purposes of the epilepsy program.

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

Sec. 40.007. CONTRACTS. The department may enter into

contracts or other agreements it considers necessary to facilitate the provision of services under this chapter, including contracts with other departments, agencies, boards, educational institutions, individuals, county governments, municipal governments, states, and the United States.

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

CHAPTER 41. HEMOPHILIA

Sec. 41.001. DEFINITIONS. In this chapter:

(1) "Hemophilia" means a human physical condition characterized by bleeding resulting from a genetically or hereditarily determined deficiency of a blood coagulation factor resulting in an abnormal or deficient plasma procoagulant.

(2) "Other benefit" means a benefit, other than a benefit under this chapter, to which a person is entitled for payment of the costs of blood factor replacement products and other substances provided under this chapter, including benefits available from:

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

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

(C) the United States Department of Veterans Affairs;

(D) the TRICARE program of the United States Department of Defense;

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

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

(G) a cause of action for medical or dental expenses to a person applying for or receiving services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0137, eff. April 2, 2015.

Sec. 41.002. HEMOPHILIA ASSISTANCE PROGRAM. (a) The hemophilia assistance program is in the department to assist persons who have hemophilia and who require continuing treatment with blood factor replacement products, but who are unable to pay the entire cost of the treatment.

(b) The executive commissioner shall establish standards of eligibility for assistance under this chapter in accordance with Section 41.004.

(c) The department shall provide, through approved providers, financial assistance for medically eligible persons in obtaining blood factor replacement products and other substances for use in medical or dental facilities or in the home.

(d) In addition to providing financial assistance under Subsection (c), the department may assist an eligible person in obtaining insurance by providing premium payment assistance.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0138, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 704 (H.B. 1038), Sec. 1, eff. June 17, 2015.

Sec. 41.003. ADMINISTRATION. (a) The commissioner may employ or appoint an administrator who shall carry out the hemophilia assistance program and report to the commissioner.

(b) The administrator may employ two persons to help carry out the program.

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

Sec. 41.004. FINANCIAL ELIGIBILITY. (a) A person is not eligible to receive services provided by this chapter:

(1) to the extent that another person with a legal obligation to provide for the person's care and treatment is

financially able to pay for all or part of the services provided by this chapter; or

(2) to the extent that the person or a person with a legal obligation to support the person is eligible for some other benefit that would pay for all or part of the services provided by this chapter.

(b) When the application is made under this chapter or when the services are received, the person applying for or receiving services shall inform the department of any other benefit to which the person or any other person with a legal obligation to support the person may be entitled.

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

Sec. 41.005. REIMBURSEMENT. (a) The department shall require a person receiving services under this chapter who is financially able to bear part of the expense, or a person who has a legal obligation to provide for the person's care and treatment and who is financially able to bear part of the expense, to pay for or reimburse the department for that part of the cost of the services provided to the person by the department.

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

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

Sec. 41.006. RECOVERY OF COSTS. (a) The department may recover the cost of services provided under this chapter from a person who does not reimburse the department as required by Section 41.005 or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given.

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

(c) In a judgment in favor of the department, the court may award attorney's fees, court costs, and interest accruing from the

date on which the department provides the service to the date on which the department is reimbursed.

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

Sec. 41.007. FUNDING. (a) The department may accept gifts and grants from individuals, private or public organizations, or federal or local funds to support the hemophilia assistance program.

(b) The department shall identify any potential sources of funding from federal grants or programs.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0139, eff. April 2, 2015.

CHAPTER 42. KIDNEY HEALTH CARE

Sec. 42.001. SHORT TITLE; PURPOSE. (a) This chapter may be cited as the Texas Kidney Health Care Act.

(b) The state finds that one of the most serious and tragic problems facing the public health and welfare is the death each year from end stage renal disease of hundreds of persons in this state, when the present state of medical art and technology could return many of those individuals to a socially productive life. Patients may die for lack of personal financial resources to pay for the expensive equipment and care necessary for survival. The state therefore recognizes a responsibility to allow its citizens to remain healthy without being pauperized and a responsibility to use the resources and organization of the state to gather and disseminate information on the prevention and treatment of end stage renal disease.

(c) A comprehensive program to combat end stage renal disease must be implemented through the combined and correlated efforts of individuals, state and local governments, persons in the field of medicine, universities, and nonprofit organizations. The program provided by this chapter is designed to direct the use of resources and to coordinate the efforts of the state in this vital matter of public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0140, eff. April 2, 2015.

Sec. 42.002. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(18), eff. April 2, 2015.

(2) "Other benefit" means a benefit, other than one provided under this chapter, to which a person is entitled for payment of the costs of medical care and treatment, services, pharmaceuticals, transportation, and supplies, including benefits available from:

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

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

(C) the United States Department of Veterans Affairs;

(D) the TRICARE program of the United States Department of Defense;

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

(F) a public program created by federal law, state law, or the ordinances or rules of a municipality or other political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, or a hospital district; or

(G) a cause of action for medical expenses brought by an applicant for or recipient of services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

(3) "Serum creatinine test" is a diagnostic test of a person's blood that measures the level of creatinine present in the blood.

(4) "Estimated glomerular filtration rate" is a calculation of a person's kidney function based on:

(A) the person's age, race, and gender; and

(B) the results of the person's serum creatinine test.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1296 (H.B. 2330), Sec. 1, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0141, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(18), eff. April 2, 2015.

Sec. 42.003. KIDNEY HEALTH CARE PROGRAM. (a) The kidney health care program is in the department to carry out this chapter.

(b) The department may develop and expand programs for the care and treatment of persons with end stage renal disease, including dialysis and other lifesaving medical procedures and techniques.

(c) The executive commissioner may adopt rules necessary to carry out this chapter and to provide adequate kidney care and treatment for citizens of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0142, eff. April 2, 2015.

Sec. 42.004. SERVICES. (a) The department shall provide kidney care services directly or through public or private resources to persons the department determines to be eligible for services authorized under this chapter.

(b) The department may cooperate with other departments, agencies, political subdivisions, and public and private institutions to provide the services authorized by this chapter to eligible persons, to study the public health and welfare needs involved, and to plan, establish, develop, and provide programs or facilities and services that are necessary or desirable, including any that are jointly administered with state agencies.

(c) The department may conduct research and compile statistics relating to the provision of kidney care services and the need for the services by persons with disabilities.

(d) The department may contract with schools, hospitals,

corporations, agencies, and individuals, including doctors, nurses, and technicians, for training, physical restoration, transportation, and other services necessary to treat and care for persons with end stage renal disease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0143, eff. April 2, 2015.

Sec. 42.0045. DISTRIBUTION OF DRUGS AND DEVICES. (a) Sections 483.041(a) and 483.042 of this code, Subtitle J, Title 3, Occupations Code, and other applicable laws establishing prohibitions do not apply to a dialysate, device, or drug exclusively used or necessary to perform dialysis that a physician prescribes or orders for administration or delivery to a person with end stage renal disease if:

(1) the dialysate, device, or drug is lawfully held by a manufacturer or wholesaler licensed by the department;

(2) the manufacturer or wholesaler delivers the dialysate, device, or drug to:

(A) a person with end stage renal disease for self-administration at the person's home or a specified address, as ordered by a physician; or

(B) a physician for administration or delivery to a person with end stage renal disease; and

(3) the manufacturer or wholesaler has sufficient and qualified supervision to adequately protect the public health.

(b) The executive commissioner shall adopt rules necessary to ensure the safe distribution, without the interruption of supply, of a dialysate, device, or drug covered by Subsection (a). The rules must include provisions regarding manufacturer and wholesaler licensing, record keeping, evidence of a delivery to a patient or a patient's designee, patient training, specific product and quantity limitation, physician prescriptions or order forms, adequate facilities, and appropriate labeling to ensure that necessary information is affixed to or accompanies the dialysate, device, or drug.

(c) If the department determines that a dialysate, device, or

drug distributed under this chapter is ineffective or unsafe for its intended use, the department may immediately recall the dialysate, device, or drug distributed to an individual patient.

(d) A dialysate, device, or drug covered by Subsection (a) may be delivered only by:

(1) the manufacturer or wholesaler to which the physician has issued an order; or

(2) a carrier authorized to possess the dialysate, device, or drug under Section 483.041(c).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 12, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.769, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0144, eff. April 2, 2015.

Sec. 42.0047. ESTIMATED GLOMERULAR FILTRATION RATE REPORTING. (a) A laboratory that performs a serum creatinine test on a sample from a person 18 years of age or older shall also calculate and include in the reported results the person's estimated glomerular filtration rate or the results of an alternative equivalent calculation measuring kidney function if the laboratory receives along with the sample all relevant clinical information about the person necessary to calculate the person's estimated glomerular filtration rate or perform an alternative equivalent calculation. A physician requesting a serum creatinine test shall provide to the laboratory all relevant clinical information about the person necessary to calculate the person's estimated glomerular filtration rate or perform an alternative equivalent calculation unless the physician determines that the calculation is unnecessary.

(b) The requirements under Subsection (a) do not apply to:

(1) a laboratory that uses equipment to perform serum creatinine tests that cannot be reprogrammed to calculate the estimated glomerular filtration rate or perform an alternative equivalent calculation measuring kidney function; or

(2) a laboratory performing a serum creatinine test on a sample taken from a patient who is being treated in a hospital.

Added by Acts 2009, 81st Leg., R.S., Ch. 1296 (H.B. 2330), Sec. 2,

eff. September 1, 2009.

Sec. 42.005. FACILITIES. (a) The executive commissioner may establish standards for the accreditation of all facilities designed or intended to deliver care or treatment for persons with end stage renal disease, and the department shall maintain all established standards.

(b) The department may conduct surveys of existing facilities in this state that diagnose, evaluate, and treat patients with end stage renal disease and may prepare and submit its findings and a specific program of action.

(c) The department may evaluate the need to create local or regional facilities and to establish a major kidney research center.

(d) The department may:

(1) establish or construct rehabilitation facilities and workshops;

(2) make grants to public agencies and make contracts or other arrangements with public and other nonprofit agencies, organizations, or institutions for the establishment of workshops and rehabilitation facilities; and

(3) operate facilities to carry out this chapter.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(18), eff. April 2, 2015.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0145, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(18), eff. April 2, 2015.

Sec. 42.006. SELECTION OF SERVICE PROVIDERS. (a) The department shall select providers to furnish kidney health care services under the program according to the criteria and procedures adopted by the executive commissioner.

(b) The department shall provide a hearing procedure in accordance with department rules for the resolution of conflicts between the department and a provider. Chapter 2001, Government

Code, does not apply to conflict resolution procedures adopted under this section.

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

(d) Subsections (b) and (c) do not apply if a contract:

(1) is canceled because program services are restricted to conform to budgetary limitations that require the executive commissioner to adopt service priorities regarding types of services to be furnished or classes of eligible individuals; or

(2) expires according to its terms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0146, eff. April 2, 2015.

Sec. 42.007. ELIGIBILITY FOR SERVICES. The executive commissioner may determine the terms, conditions, and standards, including medical and financial standards, for the eligibility of persons with end stage renal disease to receive the aid, care, or treatment provided under this chapter.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0147, eff. April 2, 2015.

Sec. 42.008. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) After notice and an opportunity for a hearing, the department for cause may deny the application of or modify, suspend, or terminate services to an applicant for or recipient of services.

(b) The program rules adopted by the executive commissioner must contain the criteria for the department's action under this section.

(c) Chapter 2001, Government Code, does not apply to the

granting, denial, modification, suspension, or termination of services provided under this chapter. Hearings under this section must be conducted in accordance with the department's hearing rules.

(d) This section does not apply if program services are restricted to conform to budgetary limitations that require the executive commissioner to adopt service priorities regarding types of services to be furnished or classes of eligible persons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0148, eff. April 2, 2015.

Sec. 42.009. REIMBURSEMENT. (a) An applicant or recipient is not eligible to receive services provided by this chapter to the extent that the applicant or recipient, or another person with a legal obligation to support the applicant or recipient, is eligible for some other benefit that would pay for all or part of the services provided by this chapter.

(b) When an application is made under this chapter or at any time while a person is eligible and receiving services under this chapter, the applicant or recipient, or the person with a legal obligation to support the applicant or recipient, shall inform the department of any other benefit to which the applicant or recipient, or the person with a legal obligation to support the applicant or recipient, may be entitled.

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

(d) The executive commissioner may waive the provisions of Subsection (a) in certain individually considered cases when the enforcement of that provision will deny services to a class of end stage renal disease patients because of conflicting state or federal laws or rules.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0149, eff.

April 2, 2015.

Sec. 42.010. RECOVERY OF COSTS. (a) The department may recover the costs of services provided under this chapter from a person who does not reimburse the department as required by Section 42.009(c), or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given.

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

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

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

Sec. 42.011. FUNDING. (a) The department may receive and use gifts to carry out this chapter.

(b) The department may comply with any requirements necessary to obtain federal funds in the maximum amount and most advantageous proportions possible to carry out this chapter.

(c) The comptroller may receive all money appropriated by congress and allotted to this state for carrying out this chapter or agreements or plans authorized by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 10.01, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0150, eff. April 2, 2015.

Sec. 42.012. CONTRACTS. (a) The department may enter into contracts and agreements with persons, colleges, universities, associations, corporations, municipalities, and other units of government as necessary to carry out this chapter.

(b) A contract may provide for payment by the state, within the

limits of funds available, for material, equipment, or services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0151, eff. April 2, 2015.

Sec. 42.013. COOPERATION. (a) The department may cooperate with private or public agencies to facilitate the availability of adequate care for all citizens with end stage renal disease.

(b) The department shall make agreements, arrangements, or plans to cooperate with the federal government in carrying out the purposes of this chapter or of any federal statute or rule relating to the prevention, care, or treatment of end stage renal disease or the care, treatment, or rehabilitation of persons with end stage renal disease. The executive commissioner may adopt rules and methods of administration found by the federal government to be necessary for the proper and efficient operation of the agreements, arrangements, or plans.

(c) The department may enter into reciprocal agreements with other states.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0152, eff. April 2, 2015.

Sec. 42.014. SCIENTIFIC INVESTIGATIONS. (a) The department may develop and administer scientific investigations into the cause, prevention, methods of treatment, and cure of end stage renal disease, including research into kidney transplantation.

(b) The department may develop techniques for an effective method of mass testing to detect end stage renal disease and urinary tract infections.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0153, eff. April 2, 2015.

Sec. 42.015. EDUCATIONAL PROGRAMS. (a) The department may develop, implement, and supervise educational programs for the public and health providers, including physicians, hospitals, and public health departments, concerning end stage renal disease, including prevention and methods of care and treatment.

(b) The department may use existing public or private programs or groups for the educational programs.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0154, eff. April 2, 2015.

Sec. 42.016. REPORTS. The department shall report to the governor and the legislature not later than February 1 of each year concerning its findings, progress, and activities under this chapter and the state's total need in the field of kidney health care.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0155, eff. April 2, 2015.

Sec. 42.017. INSURANCE PREMIUMS. The department may provide for payment of the premiums required to maintain coverage under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) for certain classes of persons with end stage renal disease, in individually considered instances according to criteria established by department rules.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0156, eff. April 2, 2015.

Sec. 42.018. FREEDOM OF SELECTION. The freedom of an eligible

person to select a treating physician, a treatment facility, or a treatment modality is not limited by Section 42.009 if the physician, facility, or modality is approved by the department as required by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0157, eff. April 2, 2015.

CHAPTER 43. ORAL HEALTH IMPROVEMENT

Sec. 43.001. SHORT TITLE. This chapter may be cited as the Texas Oral Health Improvement Act.

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

Sec. 43.002. LIBERAL CONSTRUCTION. It is the intent of the legislature that this chapter be construed liberally so that eligible individuals may receive appropriate and adequate oral health services in a timely manner.

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

Sec. 43.003. DEFINITIONS. (a) In this chapter:

(1) "Dentist" means an individual licensed by the State Board of Dental Examiners to practice dentistry in this state.

(2) "Oral health services" means oral health education and promotion activities.

(3) Repealed by Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 1(b)(2), eff. September 1, 2021.

(4) Repealed by Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 1(b)(2), eff. September 1, 2021.

(5) Repealed by Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 1(b)(2), eff. September 1, 2021.

(b) The executive commissioner by rule may define a word or term not defined by Subsection (a) as necessary to administer this chapter. The executive commissioner may not define a word or term so that the word or term is inconsistent or in conflict with the

purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0158, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0159, eff. April 2, 2015.
Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 1(b)(2), eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 2, eff. September 1, 2021.

Sec. 43.004. ORAL HEALTH IMPROVEMENT SERVICES PROGRAM. (a) Repealed by Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 1(b)(3), eff. September 1, 2021.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 1(b)(3), eff. September 1, 2021.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 1(b)(3), eff. September 1, 2021.

(d) The department may establish an oral health services program that may consist of all or any combination of the following:

(1) a program of oral disease prevention, including:

(A) the fluoridation of community water supplies;

(B) fluoride mouth rinse programs in schools; and

(C) the promotion and implementation of sealants programs;

(2) oral health education and promotion, including:

(A) public health education to promote the prevention of oral disease through self-help methods, including the initiation and expansion of preschool, school age, and adult education programs;

(B) organized continuing health education training programs for health care providers; and

(C) preventive health education information for the public; and

(3) facilitation of access to oral health services, including:

(A) the improvement of the existing oral health services delivery system for the provision of services to low-income

residents;

(B) outreach activities to inform the public of the type and availability of oral health services to increase the accessibility of oral health care for low-income residents; and

(C) assistance and cooperation in promoting better distribution of dentists and other oral health professionals throughout the state.

(e) The department may provide services only as prescribed by department rules.

(f) Repealed by Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 1(b)(3), eff. September 1, 2021.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0160, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 1(b)(3), eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 3, eff. September 1, 2021.

Sec. 43.005. ADMINISTRATION. (a) The department shall:

(1) administer the program of oral health services; and

(2) develop the design and content of all forms necessary for the program.

(b) The department may conduct field research, collect data, and prepare statistical and other reports relating to the need for and the availability of oral health services.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0161, eff. April 2, 2015.

CHAPTER 45. DISTRIBUTION OF CHILD PASSENGER SAFETY SEAT SYSTEMS

Sec. 45.001. DEFINITION. In this chapter, "child passenger safety seat system" has the meaning assigned by Section 545.412, Transportation Code.

Added by Acts 1993, 73rd Leg., ch. 311, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.203, eff. Sept. 1, 1997.

Sec. 45.002. CHILD PASSENGER SAFETY SEAT SYSTEM PROGRAM. (a) The department may establish a program to distribute child passenger safety seat systems to indigent persons in this state.

(b) A program established under this section may distribute new or used child passenger safety seat systems that have been donated to the department for distribution.

Added by Acts 1993, 73rd Leg., ch. 311, Sec. 1, eff. Aug. 30, 1993.

Sec. 45.003. RULES. The executive commissioner may adopt rules governing eligibility for a child passenger safety seat system from the program established under Section 45.002.

Added by Acts 1993, 73rd Leg., ch. 311, Sec. 1, eff. Aug. 30, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0169, eff. April 2, 2015.

CHAPTER 46. CONGENITAL CYTOMEGALOVIRUS

Sec. 46.001. DEFINITION. In this chapter, "congenital cytomegalovirus" means cytomegalovirus acquired by an infant before birth.

Added by Acts 2015, 84th Leg., R.S., Ch. 1163 (S.B. 791), Sec. 2, eff. September 1, 2015.

Sec. 46.002. EDUCATIONAL MATERIALS ON CONGENITAL CYTOMEGALOVIRUS. (a) The department, in consultation with the Texas Medical Board, shall develop and publish informational materials for women who may become pregnant, expectant parents, and parents of infants regarding:

(1) the incidence of cytomegalovirus;

(2) the transmission of cytomegalovirus to pregnant women

and women who may become pregnant;

(3) birth defects caused by congenital cytomegalovirus;

(4) available preventive measures to avoid the infection of women who are pregnant or may become pregnant; and

(5) resources available for families of children born with congenital cytomegalovirus.

(b) The materials must be published in:

(1) English and Spanish;

(2) an easily comprehensible form; and

(3) a typeface large enough to be clearly legible.

(c) The department shall periodically review the materials to determine if changes to the contents of the materials are necessary.

Added by Acts 2015, 84th Leg., R.S., Ch. 1163 (S.B. 791), Sec. 2, eff. September 1, 2015.

Sec. 46.003. PUBLICATION OF MATERIALS. (a) The department shall publish the information required to be published under this chapter on the department's Internet website.

(b) The department may not charge a fee for physical copies of the materials. The department shall provide appropriate quantities of the materials to any person on request.

Added by Acts 2015, 84th Leg., R.S., Ch. 1163 (S.B. 791), Sec. 2, eff. September 1, 2015.

Sec. 46.004. EDUCATION AND OUTREACH. (a) The department shall establish an outreach program to:

(1) educate women who may become pregnant, expectant parents, and parents of infants about cytomegalovirus; and

(2) raise awareness of cytomegalovirus among health care providers who provide care to expectant mothers or infants.

(b) The department may solicit and accept the assistance of any relevant medical associations or community resources, including faith-based resources, to promote education about cytomegalovirus under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1163 (S.B. 791), Sec. 2, eff. September 1, 2015.

Sec. 46.005. RULES. The executive commissioner may adopt rules for the implementation of this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1163 (S.B. 791), Sec. 2, eff. September 1, 2015.

CHAPTER 47. HEARING LOSS IN NEWBORNS

Sec. 47.001. DEFINITIONS. In this chapter:

(1) "Birth admission" means the time after birth that a newborn remains in the birthing facility before the newborn is discharged.

(2) "Birthing facility" means:

(A) a hospital licensed under Chapter 241 that offers obstetrical services;

(B) a birthing center licensed under Chapter 244;

(C) a children's hospital; or

(D) a facility, maintained or operated by this state or an agency of this state, that provides obstetrical services.

(3) "Health care provider" means a registered nurse recognized as an advanced practice registered nurse by the Texas Board of Nursing or a physician assistant licensed by the Texas Physician Assistant Board.

(4) "Hearing loss" means a hearing loss of 30 dB HL or greater in the frequency region important for speech recognition and comprehension in one or both ears, approximately 500 through 4,000 Hz. As technological advances permit the detection of less severe hearing loss, the executive commissioner may modify this definition by rule.

(5) "Infant" means a child who is at least 30 days but who is younger than 24 months old.

(6) "Intervention or follow-up care" means the early intervention services described in Part C, Individuals with Disabilities Education Act (20 U.S.C. Sections 1431-1443).

(7) "Newborn" means a child younger than 30 days old.

(8) "Parent" means a natural parent, stepparent, adoptive parent, legal guardian, or other legal custodian of a child.

(9) "Physician" means a person licensed to practice

medicine by the Texas Medical Board.

(10) "Program" means a newborn hearing screening, tracking, and intervention program certified by the department under this chapter.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 60, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 601 (S.B. 229), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 5, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0170, eff. April 2, 2015.

Sec. 47.003. NEWBORN HEARING SCREENING, TRACKING, AND INTERVENTION PROGRAM. (a) A birthing facility, through a program certified by the department under Section 47.004, shall perform, either directly or through a referral to another program certified under that section, a hearing screening for the identification of hearing loss on each newborn or infant born at the facility before the newborn or infant is discharged from the facility unless:

(1) the parent declines the screening;

(2) the newborn or infant is transferred to another facility before the screening is performed;

(3) the screening has previously been completed; or

(4) the newborn was discharged from the birthing facility not more than 10 hours after birth and a referral for the newborn was made to a program certified under Section 47.004 at another birthing facility or operated by a physician or other health care provider.

(a-1) The birthing facility shall inform the parents during admission that:

(1) the facility is required by law to screen a newborn or infant for hearing loss; and

(2) the parents may decline the screening.

(b) The department or the department's designee shall approve program protocols.

(c) Subject to Section 47.008, the department shall maintain

data and information on each newborn or infant who receives a hearing screening under Subsection (a).

(d) The department shall ensure that intervention is available to families for a newborn or infant identified as having hearing loss and that the intervention is managed by state programs operating under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

(e) The department shall ensure that the intervention described by Subsection (d) is available for a newborn or infant identified as having hearing loss not later than the sixth month after the newborn's or infant's birth and through the time the child is an infant unless the infant has been hospitalized since birth.

(f) If a newborn or an infant receives medical intervention services, including a hearing aid or cochlear implant, the intervention specialist shall report the results of the intervention to the department.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 6, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 586 (S.B. 793), Sec. 1, eff. June 14, 2013.

Sec. 47.0031. FOLLOW-UP SCREENING. (a) The program that performed the hearing screening under Section 47.003 shall provide the newborn's or infant's parents with the screening results. A birthing facility, through the program, shall offer a follow-up hearing screening to the parents of a newborn or infant who does not pass the screening, or refer the parents to another program for the follow-up hearing screening. The follow-up hearing screening should be performed not later than the 30th day after the date the newborn or infant is discharged from the facility.

(b) If a newborn or an infant does not pass the screening in a follow-up hearing screening, the program that performed the follow-up hearing screening on the newborn or infant shall:

(1) provide the screening results to:

(A) the newborn's or infant's parents; and

(B) with the prior written consent of the newborn's or

infant's parents, the primary statewide resource center established under Section 30.051, Education Code;

(2) assist in scheduling a diagnostic audiological evaluation for the newborn or infant, consistent with the most current guidelines in the Joint Committee on Infant Hearing Position Statement, or refer the newborn or infant to a licensed audiologist who provides diagnostic audiological evaluations for newborns or infants that are consistent with the most current guidelines in the Joint Committee on Infant Hearing Position Statement; and

(3) refer the newborn or infant to early childhood intervention services and the primary statewide resource center established under Section 30.051, Education Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 7, eff. June 17, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 98 (H.B. 2255), Sec. 1, eff. September 1, 2019.

Sec. 47.0032. TESTING FOR CONGENITAL CYTOMEGALOVIRUS. (a) In this section, "congenital cytomegalovirus" has the meaning assigned by Section 46.001.

(b) If a newborn or infant does not pass the hearing screening performed under Section 47.003, the program that performed the screening shall perform or cause to be performed a test for congenital cytomegalovirus on the newborn or infant unless the newborn's or infant's parent declines the test.

(c) If the newborn or infant receives a positive test for congenital cytomegalovirus, the entity that performed the test shall provide the newborn's or infant's parents with:

(1) the results of the test;

(2) information on the potential effects of congenital cytomegalovirus and the available treatment options; and

(3) a referral to an appropriate physician or facility for the treatment of congenital cytomegalovirus.

Added by Acts 2023, 88th Leg., R.S., Ch. 722 (H.B. 2478), Sec. 3, eff. September 1, 2023.

Sec. 47.004. CERTIFICATION OF SCREENING PROGRAMS. (a) The executive commissioner shall establish certification criteria for implementing a program.

(b) In order to be certified, the program must:

(1) provide hearing screening using equipment recommended by the department;

(2) use appropriate staff to provide the screening;

(3) maintain and report data electronically as required by department rule;

(4) distribute family, health care provider, and physician educational materials standardized by the department;

(5) provide information, as recommended by the department, to the parents on follow-up services for newborns and infants who do not pass the screening; and

(6) be supervised by:

(A) a physician;

(B) an audiologist;

(C) a registered nurse; or

(D) a physician assistant.

(c) The department may certify a program that meets and maintains the certification criteria.

(d) The department may renew the certification of a program on a periodic basis as established by department rule in order to ensure quality services to newborns, infants, and families.

(e) A fee may not be charged to certify or recertify a program.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 8, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0171, eff. April 2, 2015.

Sec. 47.005. INFORMATION CONCERNING SCREENING RESULTS AND FOLLOW-UP CARE. (a) A birthing facility that operates a program shall simultaneously distribute to the parents of each newborn or infant who is screened:

(1) the screening results; and

(2) educational and informational materials that are

standardized by the department regarding:

(A) follow-up care; and

(B) available public resources, including:

(i) early childhood intervention services developed under Chapter 73, Human Resources Code;

(ii) the primary statewide resource center established under Section 30.051, Education Code; and

(iii) contact information for Texas Early Hearing Detection and Intervention.

(a-1) The department shall make available to the public on request the educational and informational materials described by Subsection (a)(2).

(b) A birthing facility that operates a program shall report screening results to:

(1) the parents;

(2) the newborn's or infant's attending physician, primary care physician, or other applicable health care provider;

(3) the department; and

(4) the primary statewide resource center established under Section 30.051, Education Code.

(c) Appropriate and necessary care for the infant who needs follow-up care should be directed and coordinated by the infant's physician or health care provider, with support from appropriate ancillary services.

(d) The department may coordinate the diagnostic audiological evaluation required under Section 47.0031(b)(2). A diagnostic audiological evaluation must be completed on the newborn or infant:

(1) not later than the third month after the newborn's or infant's birth unless the newborn or infant has been hospitalized since birth; or

(2) upon referral by the newborn's or infant's primary care physician or other applicable health care provider.

(e) An audiologist who performs a diagnostic audiological evaluation under this chapter shall report the results of the evaluation to:

(1) the parents;

(2) the newborn's or infant's primary care physician or other applicable health care provider; and

(3) the department under Section 47.007(b).

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 9, eff. June 17, 2011.
Acts 2019, 86th Leg., R.S., Ch. 98 (H.B. 2255), Sec. 2, eff. September 1, 2019.

Sec. 47.006. TECHNICAL ASSISTANCE BY DEPARTMENT. The department may consult with a birthing facility and provide to the facility technical assistance associated with the implementation of a certified program.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.

Sec. 47.007. INFORMATION MANAGEMENT, REPORTING, AND TRACKING SYSTEM. (a) The department shall provide each birthing facility that provides newborn hearing screening under the state's medical assistance program provided under Chapter 32, Human Resources Code, with access to the appropriate information management, reporting, and tracking system for the program. The information management, reporting, and tracking system must be capable of providing the department with information and data necessary to plan, monitor, and evaluate the program, including the program's screening, follow-up, diagnostic, and intervention components.

(b) Subject to Section 47.008, a qualified hearing screening provider, hospital, health care provider, physician, audiologist, or intervention specialist shall access the information management, reporting, and tracking system to provide information to the department and may obtain information from the department relating to:

(1) the results of each hearing screening performed under Section 47.003(a) or 47.0031(a);

(2) the results of each diagnostic audiological evaluation required under Section 47.0031(b)(2);

(3) infants who receive follow-up care;

(4) infants identified with hearing loss;

(5) infants who are referred for intervention services; and

(6) case level information necessary to report required

statistics to:

(A) the federal Maternal and Child Health Bureau on an annual basis; and

(B) the federal Centers for Disease Control and Prevention.

(c) A birthing facility described by Subsection (a) shall report the resulting information in the format and within the time frame specified by the department.

(d) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who receives a referral from a program under this chapter shall:

(1) provide the services needed by the newborn or infant or refer the newborn or infant to a person who provides the services needed by the newborn or infant; and

(2) provide, with the consent of the newborn's or infant's parent, the following information to the department or the department's designee:

(A) results of follow-up care;

(B) results of audiologic testing of an infant identified with hearing loss; and

(C) reports on the initiation of intervention services.

(e) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who provides services to an infant who is diagnosed with hearing loss shall provide, with the consent of the infant's parent, the following information to the department or the department's designee:

(1) results of follow-up care;

(2) results of audiologic testing; and

(3) reports on the initiation of intervention services.

(f) A hospital that provides services under this chapter shall use the information management, reporting, and tracking system described by this section, access to which has been provided to the hospital by the department, to report, with the consent of the infant's parent, the following information to the department or the department's designee:

(1) results of all follow-up services for an infant who does not pass the screening described by Section 47.003(a) if the hospital provides the follow-up services; or

(2) the name of the provider or facility to which the hospital refers an infant who does not pass the screening described

by Section 47.003(a) for follow-up services.

(g) The department shall ensure that the written or electronic consent of a parent is obtained before any information individually identifying the newborn or infant is released through the information management, reporting, and tracking system.

(h) Subject to Section 47.008, a qualified hearing screening provider, hospital, health care provider, physician, audiologist, or intervention specialist may obtain information from the department relating to:

(1) the results of each hearing screening performed under Section 47.003(a) or 47.0031(a);

(2) the results of each diagnostic audiological evaluation required under Section 47.0031(b)(2);

(3) infants who receive follow-up care;

(4) infants identified with hearing loss; and

(5) infants who are referred for intervention services.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 601 (S.B. 229), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 10, eff. June 17, 2011.

Reenacted and amended by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0172, eff. April 2, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 628 (S.B. 1404), Sec. 3, eff. September 1, 2019.

Sec. 47.008. CONFIDENTIALITY AND GENERAL ACCESS TO DATA. (a) The information management, reporting, and tracking system provided in accordance with this chapter must meet confidentiality requirements in accordance with required state and federal privacy guidelines.

(b) Data obtained through the information management, reporting, and tracking system under this chapter are for the confidential use of the department, the department's designee, and the persons or public or private entities that the department determines are necessary to carry out the functions of the tracking

system.

(c) The executive commissioner by rule shall develop guidelines to protect the confidentiality of patients in accordance with Chapter 159, Occupations Code, and require the written or electronic consent of a parent or guardian of a patient before any individually identifying information is provided to the department or the primary statewide resource center established under Section 30.051, Education Code, as set out in this chapter. The department and center shall permit a parent or guardian at any time to withdraw information provided to the department or center under this chapter.

(d) Statistical or aggregated information that is about activities conducted under this chapter and that could not be used to individually identify a newborn, infant, or patient or a parent or guardian of a newborn, infant, or patient is not confidential.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.771, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 880, Sec. 1, eff. June 20, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0173, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 98 (H.B. 2255), Sec. 3, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 628 (S.B. 1404), Sec. 4, eff. September 1, 2019.

Sec. 47.0085. CONSENT. (a) The department shall create a process to:

(1) permit the parent of a newborn or infant to provide the consent required under this chapter through electronic means, including through audio or video recording;

(2) determine the manner of storing electronic consent records; and

(3) ensure the newborn's or infant's attending physician has access to the electronic consent records for the newborn or infant.

(b) A request for consent required by this chapter may be submitted to the parent or guardian of a newborn or infant through written or electronic means, including through audio or visual

recording.

(c) A birthing facility or person required to obtain consent under this chapter is not required to use the process created by the department under this section to obtain the consent.

Added by Acts 2019, 86th Leg., R.S., Ch. 628 (S.B. 1404), Sec. 5, eff. September 1, 2019.

Sec. 47.009. IMMUNITY FROM LIABILITY. A birthing facility, a clinical laboratory, an audiologist, a health care provider, a physician, a registered nurse, or any other officer or employee of a birthing facility, a laboratory, a physician, or an audiologist is not criminally or civilly liable for furnishing information in good faith to the department or its designee as required by this chapter. This section does not apply to information gathered and furnished after a parent of a newborn or infant declined screening offered through a program.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.

Sec. 47.010. RULEMAKING. (a) The executive commissioner may adopt rules for the department to implement this chapter.

(b) If the executive commissioner adopts rules, the executive commissioner shall consider the most current guidelines established by the Joint Committee on Infant Hearing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 11, eff. June 17, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0174, eff. April 2, 2015.

Sec. 47.011. DUTIES OF MIDWIFE. (a) In this section, "midwife" has the meaning assigned by Section 203.002, Occupations Code, and includes a nurse midwife described by Section 301.152, Occupations Code.

(b) A midwife who attends the birth of a newborn:

(1) is not required to offer the parents of the newborn a

hearing screening for the newborn for the identification of hearing loss; and

(2) shall refer the parents of the newborn to a birthing facility or a provider that participates in the program and make a record of the referral.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 11, eff. June 17, 2011.

CHAPTER 48. PROMOTORAS AND COMMUNITY HEALTH WORKERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 48.001. DEFINITIONS. In this chapter:

(1) "Advisory committee" means the Promotora and Community Health Worker Training and Certification Advisory Committee.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(20), eff. April 2, 2015.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(20), eff. April 2, 2015.

(4) "Compensation" includes receiving payment or receiving reimbursement for expenses.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(20), eff. April 2, 2015.

(6) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(20), eff. April 2, 2015.

(7) "Promotora" or "community health worker" means a person who, with or without compensation, provides a liaison between health care providers and patients through activities that may include activities such as assisting in case conferences, providing patient education, making referrals to health and social services, conducting needs assessments, distributing surveys to identify barriers to health care delivery, making home visits, and providing bilingual language services.

Added by Acts 1999, 76th Leg., ch. 857, Sec. 2.01, eff. Sept. 1, 1999. Renumbered from Sec. 46.001 and amended by Acts 2001, 77th Leg., ch. 946, Sec. 1, eff. Sept. 1, 2001 and Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(72), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 537 (H.B. 2610), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(20), eff. April 2, 2015.

SUBCHAPTER B. TRAINING AND REGULATION OF PROMOTORAS AND COMMUNITY HEALTH WORKERS

Sec. 48.051. PROMOTORA AND COMMUNITY HEALTH WORKER TRAINING PROGRAM. (a) The department shall establish and operate a program designed to train and educate persons who act as promotoras or community health workers. In establishing the training program, the department, to the extent possible, shall consider the applicable recommendations of the advisory committee.

(b) Participation in a training and education program established under this section is voluntary for a promotora or community health worker who provides services without receiving any compensation and mandatory for a promotora or community health worker who provides services for compensation. The executive commissioner may adopt rules to exempt a promotora or community health worker from mandatory training who has served for three or more years or who has 1,000 or more hours of experience.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 537 (H.B. 2610), Sec. 2, eff. September 1, 2011.

Sec. 48.052. CERTIFICATION PROGRAM FOR PROMOTORAS AND COMMUNITY HEALTH WORKERS. (a) The department shall establish and operate a certification program for persons who act as promotoras or community health workers. In establishing the program, the executive commissioner shall adopt rules that provide minimum standards and guidelines, including participation in the training and education program under Section 48.051, for issuance of a certificate to a person under this section. In adopting the minimum standards and guidelines, the executive commissioner shall consider the applicable recommendations of the advisory committee.

(b) Receipt of a certificate issued under this section may not be a requirement for a person to act as a promotora or community health worker without receiving any compensation and is a requirement for a person to act as a promotora or community health worker for

compensation.

(c) The commission shall require health and human services agencies to use certified promotoras to the extent possible in health outreach and education programs for recipients of medical assistance under Chapter 32, Human Resources Code.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 537 (H.B. 2610), Sec. 2, eff. September 1, 2011.

Sec. 48.053. RULES. The executive commissioner shall adopt rules for the administration of this subchapter.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 537 (H.B. 2610), Sec. 2, eff. September 1, 2011.

SUBCHAPTER C. MAXIMIZING BENEFITS FROM EMPLOYMENT OF PROMOTORAS AND COMMUNITY HEALTH WORKERS

Sec. 48.101. PROMOTORA AND COMMUNITY HEALTH WORKER TRAINING AND CERTIFICATION ADVISORY COMMITTEE. (a) The department shall establish a statewide Promotora and Community Health Worker Training and Certification Advisory Committee composed of representatives from relevant entities appointed by the commissioner. The commissioner shall appoint a member of the advisory committee as presiding officer of the advisory committee.

(b) The advisory committee shall:

(1) advise the department and the commission on the implementation of standards, guidelines, and requirements under this chapter that relate to the training and regulation of promotoras and community health workers;

(2) advise the department on matters related to the employment and funding of promotoras and community health workers; and

(3) provide to the department recommendations for a sustainable program for promotoras and community health workers consistent with the purposes of this subchapter.

(c) Chapter 2110, Government Code, applies to the advisory committee.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 537 (H.B. 2610), Sec. 2, eff. September 1, 2011.

CHAPTER 50. SEX TRAFFICKING PREVENTION AND VICTIM TREATMENT PROGRAMS

SUBCHAPTER A. TREATMENT PROGRAM FOR VICTIMS OF CHILD SEX TRAFFICKING

Sec. 50.0001. DEFINITIONS. In this subchapter:

(1) "Child sex trafficking" has the meaning assigned by Section 772.0062, Government Code.

(2) "Program" means the treatment program for victims of child sex trafficking established under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01, eff. September 1, 2019.

Sec. 50.0002. ESTABLISHMENT; PURPOSE. The commission, in collaboration with the institution designated under Section 50.0003, shall establish a program to improve the quality and accessibility of care for victims of child sex trafficking in this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01, eff. September 1, 2019.

Sec. 50.0003. DESIGNATION OF INSTITUTION; OPERATION OF PROGRAM. (a) The commission shall designate a health-related institution of higher education to operate the program.

(b) The designated institution shall improve the quality and accessibility of care for victims of child sex trafficking by:

(1) dedicating a unit at the institution to provide or contract for inpatient care for victims of child sex trafficking;

(2) dedicating a unit at the institution to provide or contract for outpatient care for victims of child sex trafficking;

(3) creating opportunities for research and workforce expansion related to treatment of victims of child sex trafficking; and

(4) assisting other health-related institutions of higher education in this state to establish similar programs.

(c) The commission shall solicit and review applications from

health-related institutions of higher education before designating an institution under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01, eff. September 1, 2019.

Sec. 50.0004. FUNDING. In addition to money appropriated by the legislature, the designated institution may accept gifts, grants, and donations from any public or private person for the purpose of carrying out the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01, eff. September 1, 2019.

Sec. 50.0005. RULES. The executive commissioner shall adopt rules necessary to implement this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01, eff. September 1, 2019.

SUBCHAPTER B. MATCHING GRANT PROGRAM FOR MUNICIPAL SEX TRAFFICKING PREVENTION PROGRAMS

Sec. 50.0051. ESTABLISHMENT OF MATCHING GRANT PROGRAM. (a) The commission shall establish a matching grant program to award to a municipality a grant in an amount equal to the amount committed by the municipality for the development of a sex trafficking prevention needs assessment. A municipality that is awarded a grant must develop the needs assessment in collaboration with a local institution of higher education and on completion submit a copy of the needs assessment to the commission.

(b) A sex trafficking prevention needs assessment developed under Subsection (a) must outline:

(1) the prevalence of sex trafficking crimes in the municipality;

(2) strategies for reducing the number of sex trafficking crimes in the municipality; and

(3) the municipality's need for additional funding for sex trafficking prevention programs and initiatives.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01, eff. September 1, 2019.

Sec. 50.0052. APPLICATION. (a) A municipality may apply to the commission in the form and manner prescribed by the commission for a matching grant under this subchapter. To qualify for a grant, an applicant must:

(1) develop a media campaign and appoint a municipal employee to oversee the program; and

(2) provide proof that the applicant is able to obtain or secure municipal money in an amount at least equal to the amount of the awarded grant.

(b) The commission shall review applications for a matching grant submitted under this section and award matching grants to each municipality that demonstrates in the application the most effective strategies for reducing the number of sex trafficking crimes in the municipality and the greatest need for state funding.

(c) The commission may provide a grant under Subsection (b) only in accordance with a contract between the commission and the municipality. The contract must include provisions under which the commission is granted sufficient control to ensure the public purpose of sex trafficking prevention is accomplished and the state receives the return benefit.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01, eff. September 1, 2019.

Sec. 50.0053. FUNDING. In addition to money appropriated by the legislature, the commission may solicit and accept gifts, grants, or donations from any source to administer and finance the matching grant program established under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01, eff. September 1, 2019.

SUBCHAPTER C. SEX TRAFFICKING PREVENTION GRANT PROGRAM FOR LOCAL LAW ENFORCEMENT

Sec. 50.0101. ESTABLISHMENT OF GRANT PROGRAM. (a) The office

of the governor, in collaboration with the Child Sex Trafficking Prevention Unit established under Section 772.0062, Government Code, shall establish and administer a grant program to train local law enforcement officers to recognize signs of sex trafficking.

(b) The office of the governor may establish eligibility criteria for a grant applicant.

(c) A grant awarded under this section must include provisions under which the office of the governor is provided sufficient control to ensure the public purpose of sex trafficking prevention is accomplished and the state receives the return benefit.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01, eff. September 1, 2019.

Sec. 50.0102. FUNDING. In addition to money appropriated by the legislature, the office of the governor may solicit and accept gifts, grants, or donations from any source to administer and finance the grant program established under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01, eff. September 1, 2019.

SUBCHAPTER D. TRAFFICKED PERSONS GRANT PROGRAM

Sec. 50.0151. DEFINITIONS. In this subchapter:

(1) "Account" means the trafficked persons program account established under Section 50.0153.

(2) "Department" means the Department of Family and Protective Services.

(3) "Grant program" means the trafficked persons grant program established under Section 50.0155.

Added by Acts 2021, 87th Leg., R.S., Ch. 704 (H.B. 2633), Sec. 1, eff. September 1, 2021.

Sec. 50.0152. PURPOSE. The purpose of the trafficked persons program account is to provide money:

(1) to substantiate this state's interest in publicly operated and funded shelter and treatment for victims of an offense

of trafficking of persons as defined by Article 56B.003, Code of Criminal Procedure;

(2) to prevent the recruitment of human trafficking victims within mixed-status child, youth, and young adult shelters;

(3) for consistent and recurring funding of long-term solutions for providing research-based treatment and safe and secure shelter to child, youth, and young adult victims of human trafficking;

(4) for financial stability of local governments, private partners, and medical facilities in planning, building, and maintaining dedicated housing and recovery programs for victims of human trafficking; and

(5) to raise awareness of the account among businesses and philanthropists in this state and to strengthen public and private partnerships established to end the practice of human trafficking.

Added by Acts 2021, 87th Leg., R.S., Ch. 704 (H.B. 2633), Sec. 1, eff. September 1, 2021.

Sec. 50.0153. ESTABLISHMENT OF ACCOUNT. (a) The trafficked persons program account is a dedicated account in the general revenue fund.

(b) The account consists of:

(1) contributions made under Section 2054.252, Government Code;

(2) contributions made under Sections 502.416, 521.013, and 522.0296, Transportation Code;

(3) fees for the specialty license plates issued under Section 504.675, Transportation Code;

(4) gifts, grants, and donations received for the account; and

(5) interest, dividends, and other income of the account.

(c) Section 403.0956, Government Code, does not apply to the account.

(d) Money in the account may be appropriated only to:

(1) the grant program;

(2) the sex trafficking prevention and victim treatment programs established under this chapter;

(3) the trafficked persons program established under

Section 54.04012, Family Code; and

(4) the administration of a program described by Section 264.004(d), Family Code.

(e) The legislature may not use money in the account to offset any other appropriations designated to the department or commission.

Added by Acts 2021, 87th Leg., R.S., Ch. 704 (H.B. 2633), Sec. 1, eff. September 1, 2021.

Sec. 50.0154. ACCOUNT ADMINISTRATION. (a) The commission shall administer the account and by rule establish guidelines for distributing money from the account in accordance with this subchapter.

(b) The commission shall distribute money from the account to the grant program until the commission determines that the grant program's purposes are satisfied statewide. Following that determination, the commission may distribute money from the account to a program described by Section 50.0153(d)(2), (3), or (4).

(c) The comptroller may audit money distributed under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 704 (H.B. 2633), Sec. 1, eff. September 1, 2021.

Sec. 50.0155. TRAFFICKED PERSONS GRANT PROGRAM. (a) The commission shall establish the trafficked persons grant program to provide grants to applicants for dedicated housing and treatment facilities provided to human trafficking victims.

(b) The commission by rule shall establish and publish on its Internet website eligibility criteria for grant recipients. The commission must develop the criteria using research-based best practices and require the recipient to provide:

(1) immediate trauma support to a human trafficking victim on the victim's initial rescue or recovery from trafficking;

(2) wraparound services to facilitate a continuity of care for human trafficking victims placed in the recipient's facility as assisted by:

(A) the Child Sex Trafficking Prevention Unit established under Section 772.0062, Government Code; or

(B) the governor's program for victims of child sex trafficking established under Section 772.0063, Government Code; and

(3) safe and constitutionally secure shelter that considers the clear and present danger of organized crime to the children and youth housed in the facility.

(c) A grant applicant must provide to the commission plans that include:

(1) a process for obtaining the consent of a qualified guardian of a human trafficking victim for the applicant's services and treatment;

(2) a strategy for addressing the spectrum of needs for human trafficking victims, including victims whose history of trauma poses a risk to other residents of the shelter or facility;

(3) a statement on whether the shelter or facility will provide:

(A) acute or subacute services to address the immediate medical or treatment needs of the victims;

(B) short-term housing services following initial rescue or recovery of victims; and

(C) residential treatment services to meet long-term needs of victims; and

(4) a statement on whether the shelter or facility will provide separate housing space according to age, risk, and medical or mental health needs of victims.

(d) In determining whether to award a grant under this section, the commission shall prioritize applicants operating a shelter or facility that:

(1) satisfies the requirements under Chapter 42, Human Resources Code;

(2) provides dedicated housing or shelter space for the exclusive use of human trafficking victims; and

(3) has not adopted a policy that allows the facility to refuse for any reason to provide facility services to persons presented to the facility by any person involved in the recovery of human trafficking victims.

Added by Acts 2021, 87th Leg., R.S., Ch. 704 (H.B. 2633), Sec. 1, eff. September 1, 2021.

Sec. 50.0156. REQUIRED GRANT CONTRACT. Before awarding a grant under this subchapter, the commission shall enter into a written agreement with the recipient specifying that:

(1) if the commission finds that the recipient has not complied with the standards required by this subchapter and rules adopted under this subchapter:

(A) the recipient shall repay the grant or a prorated portion of the grant to this state at an agreed rate and on agreed terms; and

(B) the commission will not distribute to the recipient any grant money that remains to be distributed to the recipient;

(2) if, as of a date provided in the agreement, the recipient has not used grant money awarded under this section for the purposes for which the grant was intended, the recipient shall repay that amount to this state at an agreed rate and on agreed terms; and

(3) the recipient may not use grant money for administrative or overhead expenses.

Added by Acts 2021, 87th Leg., R.S., Ch. 704 (H.B. 2633), Sec. 1, eff. September 1, 2021.

Sec. 50.0157. COMMISSION PROVISION OF SERVICES. The commission may distribute money from the account to the commission for the purposes of providing services described by Section 50.0155 if the commission determines it has the resources and personnel necessary to provide those services in accordance with this subchapter and rules adopted under this subchapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 704 (H.B. 2633), Sec. 1, eff. September 1, 2021.

CHAPTER 51. CANCER CLINICAL TRIAL PARTICIPATION PROGRAM

Sec. 51.0001. DEFINITIONS. In this chapter:

(1) "Cancer clinical trial" means a research study that subjects an individual to a new cancer treatment, including a medication, chemotherapy, adult stem cell therapy, or other treatment.

(2) "Inducement" means the payment of money, including a lump-sum or salary payment, to an individual for the individual's

participation in a cancer clinical trial.

(3) "Program" means the cancer clinical trial participation program established under this chapter.

(4) "Subject" means an individual who participates in the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 1157 (H.B. 3147), Sec. 2, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(53), eff. September 1, 2021.

Sec. 51.0002. ESTABLISHMENT. An independent, third-party organization may develop and implement the cancer clinical trial participation program to provide reimbursement to subjects for ancillary costs associated with participation in a cancer clinical trial, including costs for:

(1) travel;

(2) lodging;

(3) parking and tolls; and

(4) other costs considered appropriate by the organization.

Added by Acts 2019, 86th Leg., R.S., Ch. 1157 (H.B. 3147), Sec. 2, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(53), eff. September 1, 2021.

Sec. 51.0003. REQUIREMENTS; NOTICE. (a) The program:

(1) must collaborate with physicians and health care providers to notify a prospective subject about the program when:

(A) the prospective subject provides informed consent for a cancer clinical trial; or

(B) funding is available to provide the program for the cancer clinical trial in which the prospective subject participates;

(2) must reimburse subjects based on financial need, which may include reimbursement to subjects whose income is at or below 700 percent of the federal poverty level;

(3) must provide reimbursement for ancillary costs, including costs described by Section 51.0002, to eliminate the financial barriers to enrollment in a clinical trial;

(4) may provide reimbursement for reasonable ancillary costs, including costs described by Section 51.0002, to one family member, friend, or other person who attends a cancer clinical trial to support a subject; and

(5) must comply with applicable federal and state laws.

(b) The independent, third-party organization administering the program shall provide written notice to prospective subjects of the requirements described by Subsection (a).

Added by Acts 2019, 86th Leg., R.S., Ch. 1157 (H.B. 3147), Sec. 2, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(53), eff. September 1, 2021.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.002(9), eff. September 1, 2021.

Sec. 51.0004. REIMBURSEMENT REQUIREMENTS; NOTICE. (a) A reimbursement under the program must:

(1) be reviewed and approved by the institutional review board associated with the cancer clinical trial for which the reimbursement is provided; and

(2) comply with applicable federal and state laws.

(b) The independent, third-party organization operating the program is not required to obtain approval from an institutional review board on the financial eligibility of a subject who is medically eligible for the program.

(c) The independent, third-party organization operating the program shall provide written notice to a subject on:

(1) the nature and availability of the ancillary financial support under the program; and

(2) the program's general guidelines on financial eligibility.

Added by Acts 2019, 86th Leg., R.S., Ch. 1157 (H.B. 3147), Sec. 2, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(53), eff. September 1, 2021.

Sec. 51.0005. REIMBURSEMENT STATUS AS INDUCEMENT. Reimbursement to a subject of ancillary costs under the program:

(1) does not constitute an inducement to participate in a cancer clinical trial;

(2) is not considered coercion or the exertion of undue influence to participate in a cancer clinical trial; and

(3) is meant to accomplish parity in access to cancer clinical trials and remove barriers to participation in cancer clinical trials for financially burdened subjects.

Added by Acts 2019, 86th Leg., R.S., Ch. 1157 (H.B. 3147), Sec. 2, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(53), eff. September 1, 2021.

Sec. 51.0006. FUNDING. The independent, third-party organization that administers the program may accept gifts, grants, and donations from any public or private source to implement this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1157 (H.B. 3147), Sec. 2, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(53), eff. September 1, 2021.

Sec. 51.0007. COLLABORATION. The independent, third-party organization that administers the program may collaborate with the Cancer Prevention and Research Institute of Texas established under Chapter 102 to provide reimbursement under the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 1157 (H.B. 3147), Sec. 2, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(53), eff. September 1, 2021.

For expiration of this chapter, see Section 52.0008.

CHAPTER 52. SICKLE CELL TASK FORCE

Sec. 52.0001. ESTABLISHMENT OF TASK FORCE. The executive

commissioner, in collaboration with the members appointed to the Newborn Screening Advisory Committee to represent the sickle cell community, shall establish and maintain a task force to raise awareness of sickle cell disease and sickle cell trait.

Added by Acts 2019, 86th Leg., R.S., Ch. 889 (H.B. 3405), Sec. 1, eff. September 1, 2019.
Redesignated from Health and Safety Code, Chapter 50 by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(54), eff. September 1, 2021.

Sec. 52.0002. DUTIES. (a) The task force shall study and advise the department on implementing the recommendations made in the 2018 Sickle Cell Advisory Committee Report published by the Sickle Cell Advisory Committee or any other report the executive commissioner determines is appropriate.

(b) The executive commissioner may assign tasks to the task force to accomplish the purposes of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 889 (H.B. 3405), Sec. 1, eff. September 1, 2019.
Redesignated from Health and Safety Code, Chapter 50 by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(54), eff. September 1, 2021.

Sec. 52.0003. COMPOSITION OF TASK FORCE. The task force is composed of the following members appointed by the executive commissioner:

(1) two members from community-based organizations with experience addressing the needs of individuals with sickle cell disease;

(2) two physicians specializing in hematology;

(3) three members of the public, one of whom has sickle cell disease or sickle cell trait and two of whom either have sickle cell disease or are a parent of a person with sickle cell disease or sickle cell trait;

(4) one representative of a health-related institution;

(5) one representative of the Texas Education Agency;

(6) one representative of the commission;

(7) one physician with experience addressing the needs of individuals with sickle cell disease or sickle cell trait;

(8) one researcher from a public health-related or academic institution with experience addressing sickle cell disease and sickle cell trait; and

(9) one health care professional with experience addressing the needs of individuals with sickle cell disease or sickle cell trait.

Added by Acts 2019, 86th Leg., R.S., Ch. 889 (H.B. 3405), Sec. 1, eff. September 1, 2019.
Redesignated from Health and Safety Code, Chapter 50 by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(54), eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 409 (H.B. 1488), Sec. 2, eff. September 1, 2023.

Sec. 52.0004. ADMINISTRATIVE SUPPORT. The executive commissioner shall provide administrative support services at the request of the task force.

Added by Acts 2019, 86th Leg., R.S., Ch. 889 (H.B. 3405), Sec. 1, eff. September 1, 2019.
Redesignated from Health and Safety Code, Chapter 50 by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(54), eff. September 1, 2021.

Sec. 52.0005. PRESIDING OFFICER; MEETINGS. (a) The task force shall elect a presiding officer from among its membership.

(b) The task force shall meet at the call of the presiding officer.

Added by Acts 2019, 86th Leg., R.S., Ch. 889 (H.B. 3405), Sec. 1, eff. September 1, 2019.
Redesignated from Health and Safety Code, Chapter 50 by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(54), eff. September 1, 2021.

Sec. 52.0006. COMPENSATION; REIMBURSEMENT; GIFTS, GRANTS, AND DONATIONS. A task force member is not entitled to compensation for service on the task force but is entitled to reimbursement for actual and necessary expenses incurred in performing task force duties. The task force may accept gifts, grants, and donations to pay for those expenses.

Added by Acts 2019, 86th Leg., R.S., Ch. 889 (H.B. 3405), Sec. 1, eff. September 1, 2019.
Redesignated from Health and Safety Code, Chapter 50 by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(54), eff. September 1, 2021.

Sec. 52.0007. ANNUAL REPORT. (a) Not later than December 1 of each year, the task force shall prepare and submit to the governor and the legislature an annual written report that summarizes the task force's work and includes any recommended actions or policy changes endorsed by the task force.

(b) The task force shall, in collaboration with the commission, include in the task force's annual report recommendations for improving sickle cell disease education for health care providers.

Added by Acts 2019, 86th Leg., R.S., Ch. 889 (H.B. 3405), Sec. 1, eff. September 1, 2019.
Redesignated from Health and Safety Code, Chapter 50 by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(54), eff. September 1, 2021.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 409 (H.B. 1488), Sec. 2, eff. September 1, 2023.

Sec. 52.0008. EXPIRATION. The task force is abolished and this chapter expires August 31, 2035.

Added by Acts 2023, 88th Leg., R.S., Ch. 409 (H.B. 1488), Sec. 3, eff. September 1, 2023.

CHAPTER 52A. SICKLE CELL DISEASE CARE EDUCATION AND TREATMENT

Sec. 52A.001. DEFINITION. In this chapter, "sickle cell task force" means the sickle cell task force established under Chapter 52.

Added by Acts 2023, 88th Leg., R.S., Ch. 409 (H.B. 1488), Sec. 4, eff. September 1, 2023.

Sec. 52A.002. EMERGENCY AND PRIMARY CARE MEDICINE GRADUATE MEDICAL EDUCATION PROGRAM CURRICULUM. (a) In this section, "graduate medical education program" and "medical school" have the meanings assigned by Section 58A.001, Education Code.

(b) A medical school or graduate medical education program in this state that offers an emergency medicine, family medicine, internal medicine, obstetrics, or pediatrics residency program shall examine and, to the extent possible, incorporate in the curriculum requirements for the program education focused on sickle cell disease and sickle cell trait. The medical school or graduate medical education program may enter into agreements as necessary for the purposes of this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 409 (H.B. 1488), Sec. 4, eff. September 1, 2023.

Sec. 52A.003. INFORMATION FOR PUBLIC SCHOOL DISTRICT PERSONNEL. (a) To the extent possible, the Texas Education Agency in collaboration with sickle cell disease community-based organizations shall provide information on sickle cell disease and sickle cell trait to public school districts and district staff, including school nurses, teachers, and coaches.

(b) The commission in collaboration with the sickle cell task force shall explore methods for improving sickle cell disease education and awareness within the public school system and provide recommendations to the Texas Education Agency on the improvement methods.

Added by Acts 2023, 88th Leg., R.S., Ch. 409 (H.B. 1488), Sec. 4, eff. September 1, 2023.

CHAPTER 52B. SICKLE CELL DISEASE REGISTRY

Sec. 52B.001. DEFINITION. In this chapter, "health care facility" means:

(1) a hospital licensed under Chapter 241; or

(2) any other facility that provides diagnostic or treatment services to patients with sickle cell disease.

Added by Acts 2025, 89th Leg., R.S., Ch. 712 (H.B. 107), Sec. 1, eff. September 1, 2025.

Sec. 52B.002. REGISTRY; CONTENTS. (a) The department shall establish and maintain a sickle cell disease registry in accordance with this chapter for use as a single repository of accurate, complete records of sickle cell disease cases to aid in the cure and treatment of sickle cell disease in this state.

(b) The sickle cell disease registry must include:

(1) a record of sickle cell disease cases that occur in this state; and

(2) any other information concerning sickle cell disease cases the executive commissioner considers necessary and appropriate to assist with the cure or treatment of sickle cell disease.

Added by Acts 2025, 89th Leg., R.S., Ch. 712 (H.B. 107), Sec. 1, eff. September 1, 2025.

Sec. 52B.003. DATA FROM HEALTH CARE FACILITIES. A health care facility shall provide to the department, in the form and manner the department prescribes, data the department considers necessary and appropriate concerning sickle cell disease cases.

Added by Acts 2025, 89th Leg., R.S., Ch. 712 (H.B. 107), Sec. 1, eff. September 1, 2025.

Sec. 52B.004. DEPARTMENT POWERS; RULES. (a) To implement this chapter, the department may:

(1) execute necessary contracts;

(2) receive data from health care facilities concerning sickle cell disease cases to record and analyze the data directly related to the disease; and

(3) compile and publish statistical and other studies derived from data obtained under this chapter to provide, in an accessible form, information useful to physicians, other medical personnel, and the public.

(b) The executive commissioner shall adopt rules to implement this chapter.

(c) The executive commissioner by rule shall develop guidelines to:

(1) obtain data from health care facilities regarding sickle cell disease cases;

(2) require consent of an individual or the individual's legally authorized representative before any information relating to the individual is included in the sickle cell disease registry;

(3) allow the individual or the individual's legally authorized representative to withdraw consent for inclusion of the individual's information in the registry;

(4) protect the confidentiality of individuals diagnosed with sickle cell disease in accordance with Section 159.002, Occupations Code; and

(5) ensure the registry is developed in a manner consistent with:

(A) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and regulations adopted under that Act; and

(B) other applicable laws and rules governing the disclosure of health information.

(d) The executive commissioner shall ensure the rules adopted under this section provide protections to restrict the use or disclosure of Medicaid information to purposes only directly connected with the administration of the Medicaid program.

Added by Acts 2025, 89th Leg., R.S., Ch. 712 (H.B. 107), Sec. 1, eff. September 1, 2025.

Sec. 52B.005. CONFIDENTIALITY. (a) Reports, records, and information obtained under this chapter:

(1) are not public information;

(2) are not subject to the requirements of Chapter 552, Government Code;

(3) are not subject to subpoena; and

(4) may not otherwise be released or made public except as provided by this section or Section 52B.004.

(b) The reports, records, and information obtained under this chapter are for the confidential use of the department and the persons or public or private entities the department determines are necessary to carry out the purposes of this chapter.

(c) Medical or epidemiological information may be released:

(1) for statistical purposes in a manner that prevents identification of individuals, health care facilities, clinical laboratories, or health care practitioners; or

(2) with the consent of each person identified in the information.

(d) A state employee may not testify in a civil, criminal, special, or other proceeding as to the existence or contents of records, reports, or information concerning an individual's medical records used in submitting information required under this chapter unless the individual consents in advance.

(e) Information furnished to a sickle cell disease registry or a sickle cell researcher under Subsection (c) is for the confidential use of the sickle cell disease registry or the sickle cell researcher, as applicable, and is subject to Subsection (a).

(f) The department's institutional review board established under Chapter 108 shall review and approve requests for access to information that identifies individuals in the sickle cell disease registry.

Added by Acts 2025, 89th Leg., R.S., Ch. 712 (H.B. 107), Sec. 1, eff. September 1, 2025.

Sec. 52B.006. REPORTS. (a) The department shall submit an annual report to the legislature on the information obtained under this chapter.

(b) The department, in cooperation with other sickle cell disease reporting organizations and research institutions, may publish reports the department determines are necessary to carry out the purposes of this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 712 (H.B. 107), Sec. 1, eff. September 1, 2025.

CHAPTER 53. BONE MARROW DONOR RECRUITMENT PROGRAM

Sec. 53.001. ESTABLISHMENT OF PROGRAM. (a) The department shall establish a bone marrow donor recruitment program to educate residents of this state about:

(1) the need for bone marrow donors, including the particular need for donors from minority populations;

(2) the requirements for registering with the federally authorized bone marrow donor registry established and maintained as required by 42 U.S.C. Section 274k as a potential bone marrow donor, including procedures for determining an individual's tissue type;

(3) the medical procedures an individual must undergo to donate bone marrow or other sources of blood stem cells; and

(4) the availability of information about bone marrow donation in health care facilities, blood banks, and driver's license offices.

(b) The department, in consultation with the federally authorized bone marrow donor registry established and maintained as required by 42 U.S.C. Section 274k and the registry's interested contracted network partners, shall develop written and electronic informational materials, including links to Internet websites and machine-readable codes, regarding:

(1) bone marrow donation; and

(2) the process of registering with the federally authorized bone marrow donor registry.

(c) The federally authorized bone marrow donor registry, in collaboration with the registry's interested contracted network partners, may develop and provide the informational materials described by Subsection (b) to the department.

(d) The department and the Department of Public Safety shall post the information described by Subsection (b) on each agency's respective Internet websites.

(e) Appropriate health care facilities, blood banks, and driver's license offices may access the informational materials described by Subsection (b) on the Internet websites of the department and the Department of Public Safety and print the materials to place in their facilities, banks, or offices to provide to residents of this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 14 (H.B. 780), Sec. 1, eff. September 1, 2021.

CHAPTER 54. THRIVING TEXAS FAMILIES PROGRAM

Sec. 54.001. DEFINITIONS. In this chapter:

(1) "Abortion" has the meaning assigned by Section 245.002.

(2) "Abortion services provider" means a person who provides abortion-related services, including:

(A) an abortion provider;

(B) a person who provides or refers an individual for abortion-inducing drugs for the purpose of inducing an abortion to terminate a pregnancy;

(C) a person who facilitates or funds travel to receive an abortion or abortion-related services;

(D) a person who provides information or education relating to abortion or abortion-related services; or

(E) a person who conducts any other activity related to providing, recommending, or advocating for abortion-related services.

(3) "Affiliate" means a person who enters into with another person a legal relationship created or governed by at least one written instrument, including a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license, that demonstrates:

(A) common ownership, management, or control between the parties to the relationship;

(B) a franchise granted by the person to the affiliate; or

(C) the granting or extension of a license or other agreement authorizing the affiliate to use the other person's brand name, trademark, service mark, or other registered identification mark.

(4) "Governmental entity" means this state or a state agency or political subdivision of this state, including a court, municipality, or county.

(5) "Network contractor" means a person who contracts with the commission to provide or coordinate the provision of services under this chapter.

(6) "Program" means the Thriving Texas Families Program established under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 498 (S.B. 1388), Sec. 1, eff. September 1, 2025.

Sec. 54.002. ESTABLISHMENT. (a) The commission shall establish the Thriving Texas Families Program as a continuation of the alternatives to abortion program to facilitate the operation of a statewide support network that provides:

(1) community outreach, consultation, and care coordination for women with an unexpected pregnancy; and

(2) an alternative to abortion through life-affirming pregnancy, adoption, and parenting and family support services.

(b) The Thriving Texas Families Program shall:

(1) promote healthy pregnancy and childbirth;

(2) promote childbirth as an alternative to abortion;

(3) increase access to resources that promote family and child development;

(4) encourage family formation;

(5) help parents establish and implement successful parenting techniques;

(6) increase the number of families who achieve economic self-sufficiency; and

(7) provide a local approach and personalized support to pregnant women to promote childbirth in all instances of pregnancy.

(c) The commission shall contract with network contractors to establish a statewide network of service providers, including pregnancy support centers, adoption assistance providers, and maternity homes, to provide the services described by Section 54.003. The commission may contract with the service providers to provide the services in accordance with this chapter.

(d) In developing the statewide network of service providers, the commission shall:

(1) to the extent practicable, contract with providers who have a history of working with the commission in programs similar to the program created by this chapter; and

(2) ensure that service providers are not associated with an abortion services provider and do not provide, refer patients to,

advocate for, or promote abortion services by verifying the provider:

(A) remains a legally separate entity from any abortion services provider and does not enter into any legal relationship with any abortion services provider;

(B) does not contract with or transfer any money, through gift or payment, to an abortion services provider or affiliate;

(C) does not share any employees or members of its governing body with an abortion services provider or affiliate;

(D) does not recommend abortion as an option for a client; and

(E) does not display or use the names or trademarks of an abortion services provider in describing or naming the provider under this program.

(f) Each network contractor and service provider shall annually certify in writing to the commission that the network contractor or service provider:

(1) upholds the life-affirming mission of the program; and

(2) is not involved in activities contradicting the program's objective of offering an alternative to abortion.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 498 (S.B. 1388), Sec. 2, eff. September 1, 2025.

Sec. 54.003. SERVICES. (a) Using the network contractors described under Section 54.002, the commission shall ensure that services described by this chapter are available throughout this state.

(b) Services provided through the program include:

(1) counseling and mentoring on pregnancy, education, parenting skills, adoption services, life skills, and employment readiness topics;

(2) care coordination for prenatal, perinatal, and postnatal services, including connecting participants to health services;

(3) educational materials and information about pregnancy,

parenting, and adoption services;

(4) referrals to governmental and social service programs, including child care, transportation, housing, and state and federal benefit programs;

(5) classes on life skills, personal finance, parenthood, stress management, job training, job readiness, job placement, and educational attainment;

(6) provision of supplies for infant care and pregnancy, including car seats, cribs, maternity clothes, infant diapers, and formula;

(7) housing services; and

(8) assistance in identifying and applying for stable housing services other than housing provided as authorized by Subsection (d).

(c) A service provider participating in the program may not be required to provide all services listed under Subsection (b).

(d) A network contractor may provide housing services under Subsection (b)(7) through a maternity home.

(e) The commission or network contractors may not provide family planning or any abortion-related services through the network.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 498 (S.B. 1388), Sec. 3, eff. September 1, 2025.

Sec. 54.004. ELIGIBILITY. Program services are available to a resident of this state who is:

(1) a pregnant woman;

(2) the biological father of an unborn child;

(3) the biological parent of a child who is 36 months of age or younger;

(4) an adoptive parent of a child who is 36 months of age or younger;

(5) an approved adoptive parent of an unborn child;

(6) a former participant who has experienced the loss of a child;

(7) a parent or legal guardian of a pregnant minor who is a

program client;

(8) the parent, legal guardian, or adult caregiver of a child who is 36 months of age or younger; and

(9) a parent who experienced a miscarriage or loss of a child not more than 90 days before the parent begins participation in the services offered through the program.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.

Sec. 54.005. PROVISION OF SERVICES. (a) The commission and its network contractors shall contract with service providers to assess the needs of the participants and implement a plan to provide services to address the participants' most critical needs.

(b) A service provider participating in the program may refer a program client to a service provider not participating in the program for medical services otherwise covered by the program. Services received through a referral under this subsection may not be paid for using program funds.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.

Sec. 54.006. PERFORMANCE OUTCOMES. (a) The commission and its network contractors may contract only with service providers whose performance outcomes include:

(1) improving healthy pregnancy and childbirth outcomes;

(2) improving child health and development;

(3) assisting families in achieving economic self-sufficiency and stability;

(4) increasing workforce participation; or

(5) promoting marriage and family formation for participating parents.

(b) The commission shall seek comments from network providers in identifying indicators to measure the performance outcomes under Subsection (a) and require periodic reporting on the outcomes by network contractors and participating service providers.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14,

eff. September 1, 2023.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 498 (S.B. 1388), Sec. 4, eff. September 1, 2025.

Sec. 54.007. IMPACT EVALUATION. (a) The commission shall periodically conduct impact evaluations to measure the effects of services on participants receiving services through the program and to report on measured performance outcomes.

(b) The commission shall contract with an external third party to perform impact evaluations under this chapter.

(c) The commission shall select the impact evaluator through a competitive bidding process. The evaluator must have a demonstrated history in evaluating social services programs using an integrated holistic impact approach and data modeling.

(d) The commission may not enter into an interagency agreement to conduct an evaluation under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.

Sec. 54.008. REPORTS; AUDITS. (a) The commission shall compile reports provided by network contractors and service providers under Section 54.006 and audit a sampling of the reports to ensure validity.

(b) The commission shall annually issue a report that includes:

(1) the total number of network contractors and service providers, sorted by geographical region served;

(2) the total number of individuals served by each provider, sorted by age and sex;

(3) the total amount of expenditures, sorted by method of finance;

(4) the value of the contracts with each network contractor and service provider;

(5) any outcome measures reported to the commission by network contractors and service providers;

(6) any performance outcomes reported to the commission under Section 54.006; and

(7) the results of any impact evaluation conducted under Section 54.007.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.

Sec. 54.009. RULES. (a) The executive commissioner may adopt rules to implement this chapter.

(b) The executive commissioner may not adopt a rule that violates Chapter 110, Civil Practice and Remedies Code, or Chapter 45, Human Resources Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.

Sec. 54.010. PROHIBITED CONTRACT TERMS. A contract under this chapter may not include a provision that violates Chapter 110, Civil Practice and Remedies Code, or Chapter 45, Human Resources Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.

Sec. 54.011. FUNDING. (a) The commission shall, to the greatest extent possible, seek private funding to supplement and match funding provided through the program.

(b) The commission or a service provider may not:

(1) use funding provided through the program to perform, induce, assist, or refer an abortion; or

(2) grant funds to an abortion provider, an affiliate of an abortion provider, or an abortion services provider.

(c) The commission may not use more than three percent of funding allocated to the program to:

(1) administer the program; and

(2) procure evaluator services under Section 54.007.

(d) An organization is not eligible for funding under this chapter if the organization:

(1) is a governmental entity or quasi-governmental entity;

(2) is a hospital or hospital district;

(3) primarily functions as a medical, behavioral health, or mental health provider;

(4) shares any employees or members of its governing body with an abortion services provider; or

(5) is affiliated with, collaborates, or has a relationship with an organization that shares any employees or members of its governing body with an abortion services provider.

(e) Subsections (d)(2) and (3) do not apply to:

(1) an organization that contracted with the commission before September 1, 2023, for the purpose of providing an alternative to abortion; or

(2) an organization that subcontracted with an organization described by Subdivision (1) for the purpose of providing an alternative to abortion.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 498 (S.B. 1388), Sec. 5, eff. September 1, 2025.

Sec. 54.012. PARTICIPATION BY SMALL SERVICE PROVIDERS. (a) To facilitate the participation by service providers with a total annual revenue of less than $2 million in the program, the commission shall adopt measures to simplify the process for those providers to apply for grants, receive grant money, and comply with applicable reporting and implementation requirements.

(b) The commission may develop instructional materials to provide support and technical assistance to service providers described by Subsection (a).

Added by Acts 2025, 89th Leg., R.S., Ch. 498 (S.B. 1388), Sec. 6, eff. September 1, 2025.

CHAPTER 55. LIVING ORGAN DONOR EDUCATION PROGRAM

Sec. 55.001. ESTABLISHMENT OF PROGRAM. The department shall establish a living organ donor education program to educate residents of this state about:

(1) the need for living organ donors, including the

particular need for donors from minority populations;

(2) the partnership between the Glenda Dawson Donate Life Texas Registry for deceased organ donation, maintained by Donate Life Texas, and other organ donor registries for living organ donation;

(3) the requirements for registering as a potential living organ donor;

(4) the medical screening and procedures necessary for an individual to be a living organ donor; and

(5) the availability of information about living organ donation in health care facilities, transplant centers, organ procurement organizations, tissue banks, eye banks, and driver's license offices.

Added by Acts 2023, 88th Leg., R.S., Ch. 88 (S.B. 1249), Sec. 1, eff. September 1, 2023.
Redesignated from Health and Safety Code, Chapter 54 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(18), eff. September 1, 2025.

Sec. 55.002. INFORMATIONAL MATERIALS. (a) The department, in consultation with Donate Life Texas, shall develop written and electronic informational materials, including links to Internet websites and machine-readable codes, regarding:

(1) living organ donation; and

(2) the process of registering with a living donor registry.

(b) Donate Life Texas may develop and provide the informational materials described by Subsection (a) to the department.

(c) The department and the Department of Public Safety shall post the information described by Subsection (a) on each of the agency's Internet websites.

(d) Appropriate health care facilities, transplant centers, organ procurement organizations, tissue banks, eye banks, and driver's license offices may access the informational materials described by Subsection (a) on the Internet websites of the department and the Department of Public Safety and print the materials to place in their facilities or offices to provide to residents of this state.

Added by Acts 2023, 88th Leg., R.S., Ch. 88 (S.B. 1249), Sec. 1, eff.

September 1, 2023.
Redesignated from Health and Safety Code, Chapter 54 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(18), eff. September 1, 2025.

SUBTITLE C. PROGRAMS PROVIDING HEALTH CARE BENEFITS AND SERVICES

CHAPTER 61. INDIGENT HEALTH CARE AND TREATMENT ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 61.001. SHORT TITLE. This chapter may be cited as the Indigent Health Care and Treatment Act.

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

Sec. 61.002. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(21), eff. April 2, 2015.

(2) "Eligible county resident" means an eligible resident of a county who does not reside in the service area of a public hospital or hospital district.

(3) "Eligible resident" means a person who meets the income and resources requirements established by this chapter or by the governmental entity, public hospital, or hospital district in whose jurisdiction the person resides.

(4) "Emergency services" has the meaning assigned by Chapter 773.

(5) "General revenue levy" means:

(A) the property taxes imposed by a county that are not dedicated to:

(i) the construction and maintenance of farm-to-market roads under Article VIII, Section 1-a, Texas Constitution;

(ii) flood control under Article VIII, Section 1-a, Texas Constitution;

(iii) the further maintenance of the public roads under Article VIII, Section 9, Texas Constitution; or

(iv) the payment of principal or interest on county debt; and

(B) the sales and use tax revenue to be received by the county during the calendar year in which the state fiscal year begins

under Chapter 323, Tax Code, as determined under Section 26.041(d), Tax Code.

(6) "Governmental entity" includes a county, municipality, or other political subdivision of the state, but does not include a hospital district or hospital authority.

(7) "Hospital district" means a hospital district created under the authority of Article IX, Sections 4-11, of the Texas Constitution.

(8) "Mandated provider" means a person who provides health care services, is selected by a county, public hospital, or hospital district, and agrees to provide health care services to eligible residents, including the primary teaching hospital of a state medical school located in a county which does not have a public hospital or hospital district, and the faculty members practicing in both the inpatient and outpatient care facilities affiliated with the teaching hospital.

(9) "Medicaid" means the medical assistance program provided under Chapter 32, Human Resources Code.

(10) "Public hospital" means a hospital owned, operated, or leased by a governmental entity, except as provided by Section 61.051.

(11) "Service area" means the geographic region in which a governmental entity, public hospital, or hospital district has a legal obligation to provide health care services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 14, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.119, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1377, Sec. 1.01, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1295 (H.B. 2315), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. 1233), Sec. 16, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(21), eff. April 2, 2015.

Sec. 61.003. RESIDENCE. (a) For purposes of this chapter, a person is presumed to be a resident of the governmental entity in

which the person's home or fixed place of habitation to which the person intends to return after a temporary absence is located. However, if a person's home or fixed place of habitation is located in a hospital district, the person is presumed to be a resident of that hospital district.

(b) If a person does not have a residence, the person is a resident of the governmental entity or hospital district in which the person intends to reside.

(c) Intent to reside may be evidenced by any relevant information, including:

(1) mail addressed to the person or to the person's spouse or children if the spouse or children live with the person;

(2) voting records;

(3) automobile registration;

(4) Texas driver's license or other official identification;

(5) enrollment of children in a public or private school; or

(6) payment of property tax.

(d) A person is not considered a resident of a governmental entity or hospital district if the person attempted to establish residence solely to obtain health care assistance.

(e) The burden of proving intent to reside is on the person requesting assistance.

(f) For purposes of this chapter, a person who is an inmate or resident of a state supported living center, as defined by Section 531.002, or institution operated by the Texas Department of Criminal Justice, Department of Aging and Disability Services, Department of State Health Services, Texas Juvenile Justice Department, Texas School for the Blind and Visually Impaired, Texas School for the Deaf, or any other state agency or who is an inmate, patient, or resident of a school or institution operated by a federal agency is not considered a resident of a hospital district or of any governmental entity except the state or federal government.

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

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.091, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0175, eff.

April 2, 2015.

Sec. 61.004. RESIDENCE OR ELIGIBILITY DISPUTE. (a) If a provider of assistance and a governmental entity or hospital district cannot agree on a person's residence or whether a person is eligible for assistance under this chapter, the provider or the governmental entity or hospital district may submit the matter to the department.

(b) The provider of assistance and the governmental entity or hospital district shall submit all relevant information to the department in accordance with the application, documentation, and verification procedures established by department rule under Section 61.006.

(c) If the department determines that another governmental entity or hospital district may be involved in the dispute, the department shall notify the governmental entity or hospital district and allow the governmental entity or hospital district to respond.

(d) From the information submitted, the department shall determine the person's residence or whether the person is eligible for assistance under this chapter, as appropriate, and shall notify each governmental entity or hospital district and the provider of assistance of the decision and the reasons for the decision.

(e) If a governmental entity, hospital district, or provider of assistance does not agree with the department's decision, the governmental entity, hospital district, or provider of assistance may file an appeal with the department. The appeal must be filed not later than the 30th day after the date on which the governmental entity, hospital district, or provider of assistance receives notice of the decision.

(f) The department shall issue a final decision not later than the 45th day after the date on which the appeal is filed.

(g) A governmental entity, hospital district, or provider of assistance may appeal the final order of the department under Chapter 2001, Government Code, using the substantial evidence rule on appeal.

(h) Service may not be denied pending an administrative or judicial review of residence.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1377, Sec. 1.02, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0176, eff. April 2, 2015.

Sec. 61.0045. INFORMATION NECESSARY TO DETERMINE ELIGIBILITY. (a) Any provider, including a mandated provider, public hospital, or hospital district, that delivers health care services to a patient who the provider suspects is an eligible resident of the service area of a county, hospital district, or public hospital under this chapter may require the patient to:

(1) provide any information necessary to establish that the patient is an eligible resident of the service area of the county, hospital district, or public hospital; and

(2) authorize the release of any information relating to the patient, including medical information and information obtained under Subdivision (1), to permit the provider to submit a claim to the county, hospital district, or public hospital that is liable for payment for the services as described by Section 61.033 or 61.060.

(b) A county, hospital district, or public hospital that receives information obtained under Subsection (a) shall use the information to determine whether the patient to whom services were provided is an eligible resident of the service area of the county, hospital district, or public hospital and, if so, shall pay the claim made by the provider to the extent that the county, hospital district, or public hospital is liable under Section 61.033 or 61.060.

(c) The application, documentation, and verification procedures established by the department for counties under Section 61.006 may include a standard format for obtaining information under Subsection (a) to facilitate eligibility and residence determinations.

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 1.03, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 916 (H.B. 2963), Sec. 1, eff. September 1, 2009.

Sec. 61.005. CONTRIBUTION TOWARD COST OF ASSISTANCE. (a) A

county, public hospital, or hospital district may request an eligible resident receiving health care assistance under this chapter to contribute a nominal amount toward the cost of the assistance.

(b) The county, public hospital, or hospital district may not deny or reduce assistance to an eligible resident who cannot or refuses to contribute.

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

Sec. 61.006. STANDARDS AND PROCEDURES. (a) The department shall establish minimum eligibility standards and application, documentation, and verification procedures for counties to use in determining eligibility under this chapter.

(b) The minimum eligibility standards must incorporate a net income eligibility level equal to 21 percent of the federal poverty level based on the federal Office of Management and Budget poverty index.

(b-1) Expired.

(b-2) Repealed by Acts 2001, 77th Leg., ch. 1128, Sec. 7, eff. Sept. 1, 2001.

(c) The department shall also define the services and establish the payment standards for the categories of services listed in Sections 61.028(a) and 61.0285 in accordance with commission rules relating to the Temporary Assistance for Needy Families-Medicaid program.

(d) The department shall establish application, documentation, and verification procedures that are consistent with the analogous procedures used to determine eligibility in the Temporary Assistance for Needy Families-Medicaid program. Except as provided by Section 61.008(a)(6), the department may not adopt a standard or procedure that is more restrictive than the Temporary Assistance for Needy Families-Medicaid program or procedures.

(e) The department shall ensure that each person who meets the basic income and resources requirements for Temporary Assistance for Needy Families program payments but who is categorically ineligible for Temporary Assistance for Needy Families will be eligible for assistance under Subchapter B. Except as provided by Section 61.023(b), the executive commissioner by rule shall also provide that a person who receives or is eligible to receive Temporary Assistance

for Needy Families, Supplemental Security Income, or Medicaid benefits is not eligible for assistance under Subchapter B even if the person has exhausted a part or all of that person's benefits.

(f) The department shall notify each county and public hospital of any change to department rules that affect the provision of services under this chapter.

(g) Notwithstanding Subsection (a), (b), or (c) or any other provision of law, the department shall permit payment to a licensed dentist for services provided under Sections 61.028(a)(4) and (6) if the dentist can provide those services within the scope of the dentist's license.

(h) Notwithstanding Subsection (a), (b), or (c), the department shall permit payment to a licensed podiatrist for services provided under Sections 61.028(a)(4) and (6), if the podiatrist can provide the services within the scope of the podiatrist's license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.09(a), eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 15, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.120, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1377, Sec. 1.04, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1128, Sec. 1, 7 eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 173 (S.B. 420), Sec. 1, eff. May 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0177, eff. April 2, 2015.

Sec. 61.007. INFORMATION PROVIDED BY APPLICANT. The executive commissioner by rule shall require each applicant to provide at least the following information:

(1) the applicant's full name and address;

(2) the applicant's social security number, if available;

(3) the number of persons in the applicant's household, excluding persons receiving Temporary Assistance for Needy Families, Supplemental Security Income, or Medicaid benefits;

(4) the applicant's county of residence;

(5) the existence of insurance coverage or other hospital or health care benefits for which the applicant is eligible;

(6) any transfer of title to real property that the applicant has made in the preceding 24 months;

(7) the applicant's annual household income, excluding the income of any household member receiving Temporary Assistance for Needy Families, Supplemental Security Income, or Medicaid benefits; and

(8) the amount of the applicant's liquid assets and the equity value of the applicant's car and real property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.04, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0178, eff. April 2, 2015.

Sec. 61.008. ELIGIBILITY RULES. (a) The executive commissioner by rule shall provide that in determining eligibility:

(1) a county may not consider the value of the applicant's homestead;

(2) a county must consider the equity value of a car that is in excess of the amount exempted under department guidelines as a resource;

(3) a county must subtract the work-related and child care expense allowance allowed under department guidelines;

(4) a county must consider as a resource real property other than a homestead and, except as provided by Subsection (b), must count that property in determining eligibility;

(5) if an applicant transferred title to real property for less than market value to become eligible for assistance under this chapter, the county may not credit toward eligibility for state assistance an expenditure for that applicant made during a two-year period beginning on the date on which the property is transferred; and

(6) if an applicant is a sponsored alien, a county may include in the income and resources of the applicant:

(A) the income and resources of a person who executed an affidavit of support on behalf of the applicant; and

(B) the income and resources of the spouse of a person who executed an affidavit of support on behalf of the applicant, if

applicable.

(b) A county may disregard the applicant's real property if the applicant agrees to an enforceable obligation to reimburse the county for all or part of the benefits received under this chapter. The county and the applicant may negotiate the terms of the obligation.

(c) In this section, "sponsored alien" means a person who has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) and who, as a condition of admission, was sponsored by a person who executed an affidavit of support on behalf of the person.

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

Acts 2011, 82nd Leg., R.S., Ch. 173 (S.B. 420), Sec. 2, eff. May 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0179, eff. April 2, 2015.

Sec. 61.009. REPORTING REQUIREMENTS. (a) The department shall establish uniform reporting requirements for governmental entities that own, operate, or lease public hospitals providing assistance under this chapter and for counties.

(b) The reports must include information relating to:

(1) expenditures for and nature of hospital and health care provided to eligible residents;

(2) eligibility standards and procedures established by counties and governmental entities that own, operate, or lease public hospitals; and

(3) relevant characteristics of eligible residents.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.121, eff. Sept. 1, 1995.

Sec. 61.010. DEDICATED TAX REVENUES. If the governing body of a governmental entity adopts a property tax rate that exceeds the rate calculated under Section 26.04, Tax Code, by more than eight percent, and if a portion of the tax rate was designated to provide revenue for indigent health care services required by this chapter, the revenue produced by the portion of the tax rate designated for

that purpose may be spent only to provide indigent health care services.

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

Sec. 61.011. SERVICES BY STATE HOSPITAL OR CLINIC. A state hospital or clinic shall be entitled to payment for services rendered to an eligible resident under the provisions of this chapter applicable to other providers. The executive commissioner may adopt rules as necessary to implement this section.

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 1.05, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0180, eff. April 2, 2015.

Sec. 61.012. REIMBURSEMENT FOR SERVICES. (a) In this section, "sponsored alien" means a person who has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) and who, as a condition of admission, was sponsored by a person who executed an affidavit of support on behalf of the person.

(b) A public hospital or hospital district that provides health care services to a sponsored alien under this chapter may recover from a person who executed an affidavit of support on behalf of the alien the costs of the health care services provided to the alien.

(c) A public hospital or hospital district described by Subsection (b) must notify a sponsored alien and a person who executed an affidavit of support on behalf of the alien, at the time the alien applies for health care services, that a person who executed an affidavit of support on behalf of a sponsored alien is liable for the cost of health care services provided to the alien.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.16(a), eff. September 28, 2011.

SUBCHAPTER B. COUNTY RESPONSIBILITY FOR PERSONS NOT RESIDING IN AN

AREA SERVED BY A PUBLIC HOSPITAL OR HOSPITAL DISTRICT

Sec. 61.021. APPLICATION OF SUBCHAPTER. This subchapter applies to health care services and assistance provided to a person who does not reside in the service area of a public hospital or hospital district.

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

Sec. 61.022. COUNTY OBLIGATION. (a) A county shall provide health care assistance as prescribed by this subchapter to each of its eligible county residents.

(b) The county is the payor of last resort and shall provide assistance only if other adequate public or private sources of payment are not available.

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

Sec. 61.0221. AUTHORITY RELATING TO OTHER ASSISTANCE PROGRAMS. This subchapter does not affect the authority of the commissioners court of a county to provide eligibility standards or other requirements relating to assistance programs or services that are not covered by this subchapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 13.11(g), eff. Sept. 1, 1999.

Sec. 61.023. GENERAL ELIGIBILITY PROVISIONS. (a) A person is eligible for assistance under this subchapter if:

(1) the person does not reside in the service area of a public hospital or hospital district;

(2) the person meets the basic income and resources requirements established by the department under Sections 61.006 and 61.008 and in effect when the assistance is requested; and

(3) no other adequate source of payment exists.

(b) A county may use a less restrictive standard of eligibility for residents than prescribed by Subsection (a). A county may credit toward eligibility for state assistance under this subchapter the services provided to each person who is an eligible resident under a

standard that incorporates a net income eligibility level that is less than 50 percent of the federal poverty level based on the federal Office of Management and Budget poverty index.

(c) A county may contract with the department to perform eligibility determination services.

(d) Not later than the beginning of a state fiscal year, the county shall adopt the eligibility standards it will use during that fiscal year and shall make a reasonable effort to notify the public of the standards. The county may change the eligibility standards to make them more or less restrictive than the preceding standards, but the standards may not be more restrictive than the standards established by the department under Section 61.006.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.10(a), eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 1377, Sec. 1.06, eff. Sept. 1, 1999.

Sec. 61.024. COUNTY APPLICATION PROCEDURE. (a) A county shall adopt an application procedure.

(b) The county may use the application, documentation, and verification procedures established by the department under Sections 61.006 and 61.007 or may use a less restrictive application, documentation, or verification procedure.

(c) Not later than the beginning of a state fiscal year, the county shall specify the procedure it will use during that fiscal year to verify eligibility and the documentation required to support a request for assistance and shall make a reasonable effort to notify the public of the application procedure.

(d) The county shall furnish an applicant with written application forms.

(e) On request of an applicant, the county shall assist the applicant in filling out forms and completing the application process. The county shall inform an applicant of the availability of assistance.

(f) The county shall require an applicant to sign a written statement in which the applicant swears to the truth of the information supplied.

(g) The county shall explain to the applicant that if the application is approved, the applicant must report to the county any

change in income or resources that might affect the applicant's eligibility. The report must be made not later than the 14th day after the date on which the change occurs. The county shall explain the possible penalties for failure to report a change.

(h) The county shall review each application and shall accept or deny the application not later than the 14th day after the date on which the county receives the completed application.

(i) The county shall provide a procedure for reviewing applications and for allowing an applicant to appeal a denial of assistance.

(j) The county shall provide an applicant written notification of the county's decision. If the county denies assistance, the written notification shall include the reason for the denial and an explanation of the procedure for appealing the denial.

(k) The county shall maintain the records relating to an application at least until the end of the third complete state fiscal year following the date on which the application is submitted.

(l) If an applicant is denied assistance, the applicant may resubmit an application at any time circumstances justify a redetermination of eligibility.

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

Sec. 61.025. COUNTY AGREEMENT WITH MUNICIPALITY. (a) This section applies to a municipality that has a population of less than 15,000, that owns, operates, or leases a hospital, and that has made a transfer agreement before August 31, 1989, by the adoption of an ordinance, resolution, or order by the commissioners court and the governing body of the municipality.

(b) The transfer agreement may transfer partial responsibility to the county under which the municipal hospital continues to provide health care services to eligible residents of the municipality, but the county agrees to assume the hospital's responsibility to reimburse other providers who provide:

(1) mandatory inpatient or outpatient services to eligible residents that the municipal hospital cannot provide; or

(2) emergency services to eligible residents.

(c) The hospital is a public hospital for the purposes of this chapter, but it does not have a responsibility to provide

reimbursement for services it cannot provide or for emergency services provided in another facility.

(d) Expenditures made by the county under Subsection (b) may be credited toward eligibility for state assistance under this subchapter if the person who received the health care services meets the eligibility standards established under Section 61.052 and would have been eligible for assistance under the county program if the person had not resided in a public hospital's service area.

(e) The agreement to transfer partial responsibility to a county under this section must take effect on a September 1 that occurs not later than two years after the date on which the county and municipality agree to the transfer. A county and municipality may not revoke or amend an agreement made under this section, except that the county may revoke or amend the agreement if a hospital district is created after the effective date of the agreement and the boundaries of the district cover all or part of the county.

(f) The county, the hospital, and any other entity in the county that provides services under this chapter shall adopt coordinated application and eligibility verification procedures. In establishing the coordinated procedures, the county and other entities shall focus on facilitating the efficient and timely referral of residents to the proper entity in the county. In addition, the procedures must comply with the requirements of Sections 61.024 and 61.053. Expenditures made by a county in establishing the coordinated procedures prescribed by this section may not be credited toward eligibility for state assistance under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1377, Sec. 1.07, eff. Sept. 1, 1999.

Sec. 61.026. REVIEW OF ELIGIBILITY. A county shall review at least once every six months the eligibility of a resident for whom an application for assistance has been granted and who has received assistance under this chapter.

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

Sec. 61.027. CHANGE IN ELIGIBILITY STATUS. (a) An eligible resident must report any change in income or resources that might affect the resident's eligibility. The report must be made not later than the 14th day after the date on which the change occurs.

(b) If an eligible resident fails to report a change in income or resources as prescribed by this section and the change has made the resident ineligible for assistance under the standards adopted by the county, the resident is liable for any benefits received while ineligible. This section does not affect a person's criminal liability under any relevant statute.

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

Sec. 61.028. BASIC HEALTH CARE SERVICES. (a) A county shall, in accordance with department rules adopted under Section 61.006, provide the following basic health care services:

(1) primary and preventative services designed to meet the needs of the community, including:

(A) immunizations;

(B) medical screening services; and

(C) annual physical examinations;

(2) inpatient and outpatient hospital services;

(3) rural health clinics;

(4) laboratory and X-ray services;

(5) family planning services;

(6) physician services;

(7) payment for not more than three prescription drugs a month; and

(8) skilled nursing facility services, regardless of the patient's age.

(b) The county may provide additional health care services, but may not credit the assistance toward eligibility for state assistance, except as provided by Section 61.0285.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.08, eff. Sept. 1, 1999.

Sec. 61.0285. OPTIONAL HEALTH CARE SERVICES. (a) In addition to basic health care services provided under Section 61.028, a county

may, in accordance with department rules adopted under Section 61.006, provide other medically necessary services or supplies that the county determines to be cost-effective, including:

(1) ambulatory surgical center services;

(2) diabetic and colostomy medical supplies and equipment;

(3) durable medical equipment;

(4) home and community health care services;

(5) social work services;

(6) psychological counseling services;

(7) services provided by physician assistants, nurse practitioners, certified nurse midwives, clinical nurse specialists, and certified registered nurse anesthetists;

(8) dental care;

(9) vision care, including eyeglasses;

(10) services provided by federally qualified health centers, as defined by 42 U.S.C. Section 1396d(l)(2)(B);

(11) emergency medical services;

(12) physical and occupational therapy services; and

(13) any other appropriate health care service identified by department rule that may be determined to be cost-effective.

(b) A county must notify the department of the county's intent to provide services specified by Subsection (a). If the services are approved in accordance with Section 61.006, or if the department fails to notify the county of the department's disapproval before the 31st day after the date the county notifies the department of its intent to provide the services, the county may credit the services toward eligibility for state assistance under this subchapter.

(c) A county may provide health care services that are not specified in Subsection (a), or may provide the services specified in Subsection (a) without actual or constructive approval of the department, but may not credit the services toward eligibility for state assistance.

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 1.09, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 874, Sec. 9, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 892, Sec. 24, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 947 (H.B. 871), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0181, eff.

April 2, 2015.

Sec. 61.029. PROVISION OF HEALTH CARE SERVICES. (a) A county may arrange to provide health care services through a local health department, a publicly owned facility, or a contract with a private provider regardless of the provider's location, or through the purchase of insurance for eligible residents.

(b) The county may affiliate with other governmental entities or with a public hospital or hospital district to provide regional administration and delivery of health care services.

(c) A county may provide or arrange to provide health care services for eligible county residents through the purchase of health coverage or other health benefits, including benefits described by Chapter 75.

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

Acts 2009, 81st Leg., R.S., Ch. 916 (H.B. 2963), Sec. 2, eff. September 1, 2009.

Sec. 61.030. MANDATED PROVIDER. A county may select one or more providers of health care services. The county may require eligible county residents to obtain care from a mandated provider except:

(1) in an emergency;

(2) when medically inappropriate; or

(3) when care is not available.

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

Sec. 61.031. NOTIFICATION OF PROVISION OF NONEMERGENCY SERVICES. (a) A county may require any provider, including a mandated provider, to obtain approval from the county before providing nonemergency health care services to an eligible county resident.

(b) If the county does not require prior approval and a provider delivers or will deliver nonemergency health care services to a patient who the provider suspects may be eligible for assistance

under this subchapter, the provider shall notify the patient's county of residence that health care services have been or will be provided to the patient. The notice shall be made:

(1) by telephone not later than the 72nd hour after the provider determines the patient's county of residence; and

(2) by mail postmarked not later than the fifth working day after the date on which the provider determines the patient's county of residence.

(c) If the provider knows that the patient's county of residence has selected a mandated provider or if, after contacting the patient's county of residence, that county requests that the patient be transferred to a mandated provider, the provider shall transfer the patient to the mandated provider unless it is medically inappropriate to do so.

(d) Not later than the 14th day after the date on which the patient's county of residence receives sufficient information to determine eligibility, the county shall determine if the patient is eligible for assistance from that county. If the county does not determine the patient's eligibility within that period, the patient is considered to be eligible. The county shall notify the provider of its decision.

(e) If a provider delivers nonemergency health care services to a patient who is eligible for assistance under this subchapter and fails to comply with this section, the provider is not eligible for payment for the services from the patient's county of residence.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.10, eff. Sept. 1, 1999.

Sec. 61.032. NOTIFICATION OF PROVISION OF EMERGENCY SERVICES. (a) If a nonmandated provider delivers emergency services to a patient who the provider suspects might be eligible for assistance under this subchapter, the provider shall notify the patient's county of residence that emergency services have been or will be provided to the patient. The notice shall be made:

(1) by telephone not later than the 72nd hour after the provider determines the patient's county of residence; and

(2) by mail postmarked not later than the fifth working day after the date on which the provider determines the patient's county

of residence.

(b) The provider shall attempt to determine the patient's county of residence when the patient first receives services.

(c) The provider, the patient, and the patient's family shall cooperate with the county of which the patient is presumed to be a resident in determining if the patient is an eligible resident of that county.

(d) Not later than the 14th day after the date on which the patient's county of residence receives notification and sufficient information to determine eligibility, the county shall determine if the patient is eligible for assistance from that county. If the county does not determine the patient's eligibility within that period, the patient is considered to be eligible. The county shall notify the provider of its decision.

(e) If the county and the provider disagree on the patient's residence or eligibility, the county or the provider may submit the matter to the department as provided by Section 61.004.

(f) If a provider delivers emergency services to a patient who is eligible for assistance under this subchapter and fails to comply with this section, the provider is not eligible for payment for the services from the patient's county of residence.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.11, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1128, Sec. 2, eff. Sept. 1, 2001.

Sec. 61.033. PAYMENT FOR SERVICES. (a) To the extent prescribed by this chapter, a county is liable for health care services provided under this subchapter by any provider, including a public hospital or hospital district, to an eligible county resident. A county is not liable for payment for health care services provided:

(1) by any provider, including a public hospital or hospital district, to a resident of that county who resides in the service area of a public hospital or hospital district; or

(2) to an eligible resident of that county who does not reside within the service area of a public hospital or hospital district by a hospital having a Hill-Burton or state-mandated obligation to provide free services and considered to be in noncompliance with the requirements of the Hill-Burton or state-

mandated obligation.

(b) To the extent prescribed by this chapter, if another source of payment does not adequately cover a health care service a county provides to an eligible county resident, the county shall pay for or provide the health care service for which other payment is not available.

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

Sec. 61.034. PAYMENT STANDARDS FOR HEALTH CARE SERVICES. (a) A county is not liable for the cost of a health care service provided under Section 61.028 or 61.0285 that is in excess of the payment standards for that service established by the department under Section 61.006.

(b) A county may contract with a provider of assistance to provide a health care service at a rate below the payment standard set by department rule.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.12, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0182, eff. April 2, 2015.

Sec. 61.035. LIMITATION OF COUNTY LIABILITY. The maximum county liability for each state fiscal year for health care services provided by all assistance providers, including a hospital and a skilled nursing facility, to each eligible county resident is:

(1) $30,000; or

(2) the payment of 30 days of hospitalization or treatment in a skilled nursing facility, or both, or $30,000, whichever occurs first, if the county provides hospital or skilled nursing facility services to the resident.

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

Sec. 61.036. DETERMINATION OF ELIGIBILITY FOR PURPOSES OF STATE ASSISTANCE. (a) A county may not credit an expenditure made to

assist an eligible county resident toward eligibility for state assistance under this subchapter unless the county complies with the department's application, documentation, and verification procedures.

(b) Except as provided by Section 61.023(b), a county may not credit an expenditure for an applicant toward eligibility for state assistance if the applicant does not meet the department's eligibility standards.

(c) Regardless of the application, documentation, and verification procedures or eligibility standards established under Subchapter A, a county may credit an expenditure for an eligible resident toward eligibility for state assistance if the eligible resident received the health care services at:

(1) a hospital maintained or operated by a state agency that has a contract with the county to provide health care services;

(2) a federally qualified health center delivering federally qualified health center services, as those terms are defined in 42 U.S.C. Sections 1396d(l)(2)(A) and (B), that has a contract with the county to provide health care services; or

(3) a hospital or other health care provider if the eligible resident is an inmate of a county jail or another county correctional facility.

(d) Regardless of the application, documentation, and verification procedures or eligibility standards established under Subchapter A, a county may credit an intergovernmental transfer to the state toward eligibility for state assistance if the transfer was made to provide health care services as part of the Texas Healthcare Transformation and Quality Improvement Program waiver issued under 42 U.S.C. Section 1315.

(e) A county may credit toward eligibility for state assistance intergovernmental transfers made under Subsection (d) that in the aggregate do not exceed four percent of the county's general revenue levy in any state fiscal year, provided:

(1) the commissioners court determines that the expenditure fulfills the county's obligations to provide indigent health care under this chapter;

(2) the commissioners court determines that the amount of care available through participation in the waiver is sufficient in type and amount to meet the requirements of this chapter; and

(3) the county receives periodic reports from health care providers that receive supplemental or incentive payments under the

Texas Healthcare Transformation and Quality Improvement Program waiver that document the number and types of services provided to persons who are eligible to receive services under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.10(b), eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 1377, Sec. 1.13, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 1133 (H.B. 2618), Sec. 1, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1007 (H.B. 2454), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1176 (S.B. 872), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0183, eff. April 2, 2015.

Sec. 61.037. COUNTY ELIGIBILITY FOR STATE ASSISTANCE. (a) The department may distribute funds as provided by this subchapter to eligible counties to assist the counties in providing health care services under Sections 61.028 and 61.0285 to their eligible county residents.

(b) Except as provided by Subsection (c), (d), (e), or (g), to be eligible for state assistance, a county must:

(1) spend in a state fiscal year at least eight percent of the county general revenue levy for that year to provide health care services described by Subsection (a) to its eligible county residents who qualify for assistance under Section 61.023; and

(2) notify the department, not later than the seventh day after the date on which the county reaches the expenditure level, that the county has spent at least six percent of the applicable county general revenue levy for that year to provide health care services described by Subsection (a) to its eligible county residents who qualify for assistance under Section 61.023.

(c) If a county and a health care provider signed a contract on or before January 1, 1985, under which the provider agrees to furnish a certain level of health care services to indigent persons, the value of services furnished in a state fiscal year under the contract is included as part of the computation of a county expenditure under

this section if the value of services does not exceed the payment rate established by the department under Section 61.006.

(d) If a hospital district is located in part but not all of a county, that county's appraisal district shall determine the taxable value of the property located inside the county but outside the hospital district. In determining eligibility for state assistance, that county shall consider only the county general revenue levy resulting from the property located outside the hospital district. A county is eligible for state assistance if:

(1) the county spends in a state fiscal year at least eight percent of the county general revenue levy for that year resulting from the property located outside the hospital district to provide health care services described by Subsection (a) to its eligible county residents who qualify for assistance under Section 61.023; and

(2) the county complies with the other requirements of this subchapter.

(e) A county that provides health care services described by Subsection (a) to its eligible residents through a hospital established by a board of managers jointly appointed by a county and a municipality under Section 265.011 is eligible for state assistance if:

(1) the county spends in a state fiscal year at least eight percent of the county general revenue levy for the year to provide the health care services to its eligible county residents who qualify for assistance under Section 61.052; and

(2) the county complies with the requirements of this subchapter.

(f) If a county anticipates that it will reach the eight percent expenditure level, the county must notify the department as soon as possible before the anticipated date on which the county will reach the level.

(g) The department may waive the requirement that the county meet the minimum expenditure level imposed by Subsection (b), (d), or (e) and provide state assistance under this chapter at a lower level determined by the department if the county demonstrates, through an appropriate actuarial analysis, that the county is unable to satisfy the eight percent expenditure level:

(1) because, although the county's general revenue tax levy has increased significantly, expenditures for health care services

described by Subsection (a) have not increased by the same percentage;

(2) because the county is at the maximum allowable ad valorem tax rate, has a small population, or has insufficient taxable property; or

(3) because of a similar reason.

(h) The executive commissioner shall adopt rules governing the circumstances under which a waiver may be granted under Subsection (g) and the procedures to be used by a county to apply for the waiver. The procedures must provide that the department shall make a determination with respect to an application for a waiver not later than the 90th day after the date the application is submitted to the department in accordance with the procedures established by department rule. To be eligible for state assistance under Subsection (g), a county must submit monthly financial reports, in the form required by the department, covering the 12-month period preceding the date on which the assistance is sought.

(i) The county must give the department all necessary information so that the department can determine if the county meets the requirements of Subsection (b), (d), (e), or (g).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 651, Sec. 1, eff. June 11, 1997; Acts 1999, 76th Leg., ch. 272, Sec. 1, eff. May 28, 1999; Acts 1999, 76th Leg., ch. 1377, Sec. 1.14, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0184, eff. April 2, 2015.

Sec. 61.038. DISTRIBUTION OF ASSISTANCE FUNDS. (a) If the department determines that a county is eligible for assistance, the department shall distribute funds appropriated to the department from the indigent health care assistance fund or any other available fund to the county to assist the county in providing health care services under Sections 61.028 and 61.0285 to its eligible county residents who qualify for assistance as described by Section 61.037.

(b) State funds provided under this section to a county must be equal to at least 90 percent of the actual payment for the health care services for the county's eligible residents during the

remainder of the state fiscal year after the eight percent expenditure level is reached.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 272, Sec. 2, eff. May 28, 1999; Acts 1999, 76th Leg., ch. 1377, Sec. 1.14, eff. Sept. 1, 1999.

Sec. 61.039. FAILURE TO PROVIDE STATE ASSISTANCE. If the department fails to provide assistance to an eligible county as prescribed by Section 61.038, the county is not liable for payments for health care services provided to its eligible county residents after the county reaches the eight percent expenditure level.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.14, eff. Sept. 1, 1999.

Sec. 61.0395. LIMITED TO APPROPRIATED FUNDS. (a) The total amount of state assistance provided to counties under this chapter for a fiscal year may not exceed the amount appropriated for that purpose for that fiscal year.

(b) The executive commissioner may adopt rules governing the distribution of state assistance under this chapter that establish a maximum annual allocation for each county eligible for assistance under this chapter in compliance with Subsection (a).

(c) The rules adopted under this section:

(1) may consider the relative populations of the service areas of eligible counties and other appropriate factors; and

(2) notwithstanding Subsection (b), may provide for, at the end of each state fiscal year, the reallocation of all money that is allocated to a county under Subsection (b) but that the county is not eligible to receive and the distribution of that money to other eligible counties.

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 1.15, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1128, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0185, eff. April 2, 2015.

Sec. 61.040. TAX INFORMATION. (a) For the purpose of determining eligibility for state assistance under this chapter, the department may require a county to provide the following information for the relevant period:

(1) the taxable value of property taxable by the county;

(2) the county's applicable general revenue tax levy; and

(3) the amount of sales and use tax revenue received by the county.

(b) The department shall prescribe the manner in which a county must provide the information described by Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 2nd C.S., ch. 6, Sec. 64, eff. Sept. 1, 1991.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 629 (H.B. 4510), Sec. 3, eff. September 1, 2024.

Sec. 61.041. COUNTY REPORTING. (a) The department shall establish monthly reporting requirements for a county seeking state assistance and establish procedures necessary to determine if the county is eligible for state assistance.

(b) The department shall establish requirements relating to:

(1) documentation required to verify the eligibility of residents to whom the county provides assistance; and

(2) county expenditures for health care services under Sections 61.028 and 61.0285.

(c) The department may audit county records to determine if the county is eligible for state assistance.

(d) The department shall establish annual reporting requirements for each county that is required to provide indigent health care under this chapter but that is not required to report under Subsection (a). A county satisfies the annual reporting requirement of this subsection if the county submits information to the department as required by law to obtain an annual distribution under the Agreement Regarding Disposition of Settlement Proceeds filed on July 24, 1998, in the United States District Court, Eastern

District of Texas, in the case styled The State of Texas v. The American Tobacco Co., et al., No. 5-96CV-91.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.16, eff. Sept. 1, 1999.

Sec. 61.042. EMPLOYMENT SERVICES PROGRAM. (a) A county may establish procedures consistent with those used by the commission under Chapter 31, Human Resources Code, for administering an employment services program and requiring an applicant or eligible resident to register for work with the Texas Workforce Commission.

(b) The county shall notify all persons with pending applications and eligible residents of the employment service program requirements not less than 30 days before the program is established.

Added by Acts 1993, 73rd Leg., ch. 880, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.122, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0186, eff. April 2, 2015.

Sec. 61.043. PREVENTION AND DETECTION OF FRAUD. (a) The county shall adopt reasonable procedures for minimizing the opportunity for fraud, for establishing and maintaining methods for detecting and identifying situations in which a question of fraud may exist, and for administrative hearings to be conducted on disqualifying persons in cases where fraud appears to exist.

(b) Procedures established by a county for administrative hearings conducted under this section shall provide for appropriate due process, including procedures for appeals.

Added by Acts 1993, 73rd Leg., ch. 880, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.044. SUBROGATION. (a) The filing of an application for or receipt of services constitutes an assignment of the applicant's or recipient's right of recovery from:

(1) personal insurance;

(2) other sources; or

(3) another person for personal injury caused by the other person's negligence or wrong.

(b) A person who applies for or receives services shall inform the county, at the time of application or at any time during eligibility, of any unsettled tort claim that may affect medical needs and of any private accident or sickness insurance coverage that is or may become available. An applicant or eligible resident shall inform the county of any injury that is caused by the act or failure to act of some other person. An applicant or eligible resident shall inform the county as required by this subsection within 10 days of the date the person learns of the person's insurance coverage, tort claim, or potential cause of action.

(c) A claim for damages for personal injury does not constitute grounds for denying or discontinuing services under this chapter.

(d) A separate and distinct cause of action in favor of the county is hereby created, and the county may, without written consent, take direct civil action in any court of competent jurisdiction. A suit brought under this section need not be ancillary to or dependent on any other action.

(e) The county's right of recovery is limited to the amount of the cost of services paid by the county. Other subrogation rights granted under this section are limited to the cost of the services provided.

(f) An applicant or eligible resident who knowingly and intentionally fails to disclose the information required by Subsection (b) commits a Class C misdemeanor.

(g) An applicant or eligible resident is subject to denial of services under this chapter following an administrative hearing.

Added by Acts 1993, 73rd Leg., ch. 880, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. PERSONS WHO RESIDE IN AN AREA SERVED BY A PUBLIC HOSPITAL OR HOSPITAL DISTRICT

Sec. 61.051. APPLICATION OF SUBCHAPTER. (a) This subchapter applies to health care services and assistance provided to a person who resides in the service area of a public hospital or hospital district.

(b) For the purposes of this subchapter, a hospital is not

considered to be a public hospital and is not responsible for providing care under this subchapter if the hospital:

(1) is owned, operated, or leased by a municipality with a population of less than 5,500;

(2) was leased before January 1, 1981, by a municipality that at the time of the lease did not have a legal obligation to provide indigent health care; or

(3) was established under Section 265.031.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 16, eff. Sept. 1, 1991.

Sec. 61.052. GENERAL ELIGIBILITY PROVISIONS. (a) A public hospital or hospital district shall provide health care assistance to each eligible resident in its service area who meets:

(1) the basic income and resources requirements established by the department under Sections 61.006 and 61.008 and in effect when the assistance is requested; or

(2) a less restrictive income and resources standard adopted by the hospital or hospital district serving the area in which the person resides.

(b) If a public hospital used an income and resources standard during the operating year that ended before January 1, 1985, that was less restrictive than the income and resources requirements established by the department under Section 61.006, the hospital shall adopt that standard to determine eligibility under this subchapter.

(c) If a public hospital did not use an income and resources standard during the operating year that ended before January 1, 1985, but had a Hill-Burton obligation during part of that year, the hospital shall adopt the standard the hospital used to meet the Hill-Burton obligation to determine eligibility under this subchapter.

(d) A public hospital established after September 1, 1985, shall provide health care services to each resident who meets the income and resources requirements established by the department under Sections 61.006 and 61.008, or the hospital may adopt a less restrictive income and resources standard. The hospital may adopt a less restrictive income and resources standard at any time.

(e) If because of a change in the income and resources

requirements established by the department under Sections 61.006 and 61.008 the standard adopted by a public hospital or hospital district becomes stricter than the requirements established by the department, the hospital or hospital district shall change its standard to at least comply with the requirements established by the department.

(f) A public hospital or hospital district may contract with the department to perform eligibility determination services.

(g) A county that provides health care services to its eligible residents through a hospital established by a board of managers jointly appointed by a county and a municipality under Section 265.011 and that establishes an income and resources standard in accordance with Subsection (a)(2) may credit the services provided to all persons who are eligible under that standard toward eligibility for state assistance as described by Section 61.037(e).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.17, eff. Sept. 1, 1999.

Sec. 61.053. APPLICATION PROCEDURE. (a) A public hospital or hospital district shall adopt an application procedure.

(b) Not later than the beginning of a public hospital's or hospital district's operating year, the hospital or district shall specify the procedure it will use during the operating year to determine eligibility and the documentation required to support a request for assistance and shall make a reasonable effort to notify the public of the procedure.

(c) The public hospital or hospital district shall furnish an applicant with written application forms.

(d) On request of an applicant, the public hospital or hospital district shall assist an applicant in filling out forms and completing the application process. The hospital or district shall inform an applicant of the availability of assistance.

(e) The public hospital or hospital district shall require an applicant to sign a written statement in which the applicant swears to the truth of the information supplied.

(f) The public hospital or hospital district shall explain to the applicant that if the application is approved, the applicant must report to the hospital or district any change in income or resources that might affect the applicant's eligibility. The report must be

made not later than the 14th day after the date on which the change occurs. The hospital or district shall explain the possible penalties for failure to report a change.

(g) The public hospital or hospital district shall review each application and shall accept or deny the application not later than the 14th day after the date on which the hospital or district receives the completed application.

(h) The public hospital or hospital district shall provide a procedure for reviewing applications and for allowing an applicant to appeal a denial of assistance.

(i) The public hospital or hospital district shall provide an applicant written notification of the hospital's or district's decision. If the hospital or district denies assistance, the written notification shall include the reason for the denial and an explanation of the procedure for appealing the denial.

(j) The public hospital or hospital district shall maintain the records relating to an application for at least three years after the date on which the application is submitted.

(k) If an applicant is denied assistance, the applicant may resubmit an application at any time circumstances justify a redetermination of eligibility.

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

Sec. 61.054. BASIC HEALTH CARE SERVICES PROVIDED BY A PUBLIC HOSPITAL. (a) Except as provided by Subsection (c), a public hospital shall endeavor to provide the basic health care services a county is required to provide under Section 61.028.

(b) If a public hospital provided additional health care services to eligible residents during the operating year that ended before January 1, 1985, the hospital shall continue to provide those services.

(c) A public hospital shall coordinate the delivery of basic health care services to eligible residents and may provide any basic health care services the hospital was not providing on January 1, 1999, but only to the extent the hospital is financially able to do so.

(d) A public hospital may provide health care services in addition to basic health care services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.18, eff. Sept. 1, 1999.

Sec. 61.055. BASIC HEALTH CARE SERVICES PROVIDED BY HOSPITAL DISTRICTS. (a) Except as provided by Subsection (b), a hospital district shall endeavor to provide the basic health care services a county is required to provide under Section 61.028, together with any other services required under the Texas Constitution and the statute creating the district.

(b) A hospital district shall coordinate the delivery of basic health care services to eligible residents and may provide any basic health care services the district was not providing on January 1, 1999, but only to the extent the district is financially able to do so.

(c) This section may not be construed to discharge a hospital district from its obligation to provide the health care services required under the Texas Constitution and the statute creating the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.19, eff. Sept. 1, 1999.

Sec. 61.056. PROVISION OF HEALTH CARE SERVICES. (a) A public hospital or hospital district may arrange to provide health care services through a local health department, a publicly owned facility, or a contract with a private provider regardless of the provider's location, or through the purchase of insurance for eligible residents.

(b) The public hospital or hospital district may affiliate with other public hospitals or hospital districts or with a governmental entity to provide regional administration and delivery of health care services.

(c) A hospital district created in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003, may affiliate with any public or private entity to provide regional administration and delivery of health care services. The regional affiliation, in accordance with the affiliation agreement, shall use money

contributed by an affiliated governmental entity to provide health care services to an eligible resident of that governmental entity.

Text of subsection as added by Acts 2009, 81st Leg., R.S., Ch. 916 (H.B. 2963), Sec. 3

(d) A public hospital or hospital district may provide or arrange to provide health care services for eligible residents through the purchase of health coverage or other health benefits, including benefits described by Chapter 75. For purposes of this subsection, the board of directors or managers of the hospital or district have the powers and duties provided to the commissioners court of a county under Chapter 75.

Text of subsection as added by Acts 2009, 81st Leg., R.S., Ch. 217 (S.B. 1063), Sec. 3

(d) A hospital district created in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003, may provide or arrange to provide health care services for eligible residents through the purchase of health coverage or other health benefits, including benefits described by Chapter 75. For purposes of this subsection, the board of managers of the district has the powers and duties provided to the commissioners court of a county under Chapter 75.

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

Acts 2007, 80th Leg., R.S., Ch. 164 (S.B. 1107), Sec. 3, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 217 (S.B. 1063), Sec. 3, eff. May 27, 2009.

Acts 2009, 81st Leg., R.S., Ch. 916 (H.B. 2963), Sec. 3, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 67, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 68, eff. September 1, 2023.

Sec. 61.057. MANDATED PROVIDER. A public hospital may select one or more providers of health care services. A public hospital may require eligible residents to obtain care from a mandated provider except:

(1) in an emergency;
(2) when medically inappropriate; or
(3) when care is not available.

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

Sec. 61.058. NOTIFICATION OF PROVISION OF NONEMERGENCY SERVICES. (a) A public hospital may require any provider, including a mandated provider, to obtain approval from the hospital before providing nonemergency health care services to an eligible resident in the hospital's service area.

(b) If the public hospital does not require prior approval and a provider delivers or will deliver nonemergency health care services to a patient who the provider suspects might be eligible for assistance under this subchapter, the provider shall notify the hospital that health care services have been or will be provided to the patient. The notice shall be made:

(1) by telephone not later than the 72nd hour after the provider determines that the patient resides in the hospital's service area; and

(2) by mail postmarked not later than the fifth working day after the date on which the provider determines that the patient resides in the hospital's service area.

(c) If the provider knows that the public hospital serving the area in which the patient resides has selected a mandated provider or if, after contacting the hospital, the hospital requests that the patient be transferred to a mandated provider, the provider shall transfer the patient to the mandated provider unless it is medically inappropriate to do so.

(d) Not later than the 14th day after the date on which the public hospital receives sufficient information to determine eligibility, the hospital shall determine if the patient is eligible for assistance from the hospital. If the hospital does not determine the patient's eligibility within that period, the patient is considered to be eligible. The hospital shall notify the provider of its decision.

(e) If a provider delivers nonemergency health care services to a patient who is eligible for assistance under this subchapter and fails to comply with this section, the provider is not eligible for

payment for the services from the public hospital serving the area in which the patient resides.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.20, eff. Sept. 1, 1999.

Sec. 61.059. NOTIFICATION OF PROVISION OF EMERGENCY SERVICES. (a) If a nonmandated provider delivers emergency services to a patient who the provider suspects might be eligible for assistance under this subchapter, the provider shall notify the hospital that emergency services have been or will be provided to the patient. The notice shall be made:

(1) by telephone not later than the 72nd hour after the provider determines that the patient resides in the hospital's service area; and

(2) by mail postmarked not later than the fifth working day after the date on which the provider determines that the patient resides in the hospital's service area.

(b) The provider shall attempt to determine if the patient resides in a public hospital's service area when the patient first receives services.

(c) The provider, the patient, and the patient's family shall cooperate with the public hospital in determining if the patient is an eligible resident of the hospital's service area.

(d) Not later than the 14th day after the date on which the public hospital receives sufficient information to determine eligibility, the hospital shall determine if the patient is eligible for assistance from the hospital. If the hospital does not determine the patient's eligibility within that period, the patient is considered to be eligible. The hospital shall notify the provider of its decision.

(e) If the public hospital and the provider disagree on the patient's residence or eligibility, the hospital or the provider may submit the matter to the department as provided by Section 61.004.

(f) If a provider delivers emergency services to a patient who is eligible for assistance under this subchapter and fails to comply with this section, the provider is not eligible for payment for the services from the public hospital serving the area in which the patient resides.

(g) If emergency services are customarily available at a facility operated by a public hospital, that hospital is not liable for emergency services furnished to an eligible resident by another provider in the area the hospital has a legal obligation to serve.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.21, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1128, Sec. 4, eff. Sept. 1, 2001.

Sec. 61.060. PAYMENT FOR SERVICES. (a) To the extent prescribed by this chapter, a public hospital is liable for health care services provided under this subchapter by any provider, including another public hospital, to an eligible resident in the hospital's service area. A public hospital is not liable for payment for health care services provided to:

(1) a person who does not reside in the hospital's service area; or

(2) an eligible resident of the hospital's service area by a hospital having a Hill-Burton or state-mandated obligation to provide free services and considered to be in noncompliance with the requirements of the Hill-Burton or state-mandated obligation.

(b) A hospital district is liable for health care services as provided by the Texas Constitution and the statute creating the district.

(c) A public hospital is the payor of last resort under this subchapter and is not liable for payment or assistance to an eligible resident in the hospital's service area if any other public or private source of payment is available.

(d) If another source of payment does not adequately cover a health care service a public hospital provides to an eligible resident of the hospital's service area, the hospital shall pay for or provide the health care service for which other payment is not available.

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

Sec. 61.061. PAYMENT RATES AND LIMITS. The payment rates and limits prescribed by Sections 61.034 and 61.035 that relate to county services apply to inpatient and outpatient hospital services a public

hospital is required to provide if:

(1) the hospital cannot provide the services or emergency services that are required; and

(2) the services are provided by an entity other than the hospital.

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

Sec. 61.062. RESPONSIBILITY OF GOVERNMENTAL ENTITY. A governmental entity that owns, operates, or leases a public hospital shall provide sufficient funding to the hospital to provide basic health care services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.22, eff. Sept. 1, 1999.

Sec. 61.063. PROCEDURE TO CHANGE ELIGIBILITY STANDARDS OR SERVICES PROVIDED. (a) A public hospital may not change its eligibility standards to make the standards more restrictive and may not reduce the health care services it offers unless it complies with the requirements of this section.

(b) Not later than the 90th day before the date on which a change would take effect, the public hospital must publish notice of the proposed change in a newspaper of general circulation in the hospital's service area and set a date for a public hearing on the change. The published notice must include the date, time, and place of the public meeting. The notice is in addition to the notice required by Chapter 551, Government Code.

(c) Not later than the 30th day before the date on which the change would take effect, the public hospital must conduct a public meeting to discuss the change. The meeting must be held at a convenient time in a convenient location in the hospital's service area. Members of the public may testify at the meeting.

(d) If, based on the public testimony and on other relevant information, the governing body of the hospital finds that the change would not have a detrimental effect on access to health care for the residents the hospital serves, the hospital may adopt the change. That finding must be formally adopted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995.

Sec. 61.064. TRANSFER OF A PUBLIC HOSPITAL. (a) A governmental entity that owns, operates, or leases a public hospital and that closes, sells, or leases the hospital:

(1) has the obligation to provide basic health care services under this chapter;

(2) shall adopt the eligibility standards that the hospital was or would have been required to adopt; and

(3) shall provide the same services the hospital was or would have been required to provide under this chapter on the date of the closing, sale, or lease.

(b) If the governmental entity owned, operated, or leased the public hospital before January 1, 1985, and sold or leased the hospital on or after that date but before September 1, 1986, the obligation retained is the obligation the hospital would have had on September 1, 1986.

(c) Notwithstanding Subsections (a) and (b), if a hospital district that owns, operates, or leases a public hospital dissolves, the district has no responsibility under this chapter. If on or before dissolution the district sold or transferred its hospital to another governmental entity, that governmental entity assumes the district's responsibility to provide health care services in accordance with this subchapter. If the district did not sell or transfer the hospital to another governmental entity, the county shall provide health care services to the residents of the district's service area in accordance with Subchapter B.

(d) This section does not apply to a governmental entity that sold or leased a public hospital to a hospital district or a hospital authority on or after January 1, 1985, but before September 1, 1986. If a governmental entity sold or leased a hospital as provided by this subsection, the hospital ceased being a public hospital for the purposes of this chapter on the date it was sold or leased, and neither the governmental entity nor the hospital district or hospital authority has any responsibility under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.23, eff. Sept. 1, 1999.

Sec. 61.065. COUNTY RESPONSIBILITY FOR HOSPITAL SOLD ON OR AFTER JANUARY 1, 1988. (a) This section applies to a county that, on or after January 1, 1988, sells to a purchaser that is not a governmental entity a county hospital that was leased at the time of the sale to a person who is not a governmental entity.

(b) On the date the hospital is sold, the hospital ceases being a public hospital for the purposes of this chapter, and the county shall provide health care services to county residents in accordance with Subchapter B.

(c) If the contract for the sale of the hospital provides for the provision by the hospital of health care services to county residents, the value of the health care services credited or paid in a state fiscal year under the contract is included as part of the computation of a county expenditure under Section 61.037 to the extent that the value of the services does not exceed the payment standard established by department rule for allowed inpatient and outpatient services.

Added by Acts 1989, 71st Leg., ch. 1100, Sec. 5.10(c), eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0187, eff. April 2, 2015.

Sec. 61.066. PREVENTION AND DETECTION OF FRAUD. (a) A hospital district may adopt reasonable procedures for minimizing the opportunity for fraud, for establishing and maintaining methods for detecting and identifying situations in which a question of fraud may exist, and for administrative hearings to be conducted on disqualifying persons in cases where fraud appears to exist.

(b) Procedures established by a hospital district for administrative hearings conducted under this section shall provide for appropriate due process, including procedures for appeals.

(c) A hospital district may recover, from the eligible resident perpetrating a fraud, an amount equal to the value of any fraudulently obtained health care services provided to the eligible resident disqualified under this section.

Added by Acts 2001, 77th Leg., ch. 563, Sec. 1, eff. Aug. 27, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1320 (S.B. 303), Sec. 1, eff. September 1, 2011.

Sec. 61.067. LIEN BY NON-PROVIDER HOSPITAL DISTRICT. (a) This section applies to a hospital district that does not operate a hospital.

(b) After the hospital district pays the providing hospital for the actual cost of the service, the district may file a lien on a tort cause of action or claim of an eligible resident who receives health care services for injuries caused by an accident that is attributed to the negligence of another person.

(c) A person who applies for or receives health care services shall inform the hospital district, at the time of application or at any time during eligibility for services, of:

(1) any unsettled tort claim that may affect medical needs;

(2) any private accident or health insurance coverage that is or may become available; and

(3) any injury that is caused by the act or failure to act of some other person.

(d) An applicant or eligible resident shall inform the hospital district of information required by Subsection (c) within 30 days of the date the person learns of the person's insurance coverage, tort claim, or potential cause of action.

(e) A claim for damages for personal injury does not constitute grounds for denying or discontinuing services under this chapter.

(f)(1) A lien under this chapter attaches to:

(A) a tort cause of action for damages arising from an injury for which the injured eligible resident receives health care services;

(B) a judgment of a court in this state or the decision of a public agency in a proceeding brought by the eligible resident or by another person entitled to bring the suit in case of the death of the eligible resident to recover tort damages arising from an injury for which the eligible resident receives health care services; and

(C) the proceeds of a settlement of a tort cause of action or a tort claim by the eligible resident or another person

entitled to make the claim, arising from an injury for which the eligible resident receives health care services.

(2) If the eligible resident has health insurance, the providing hospital is obligated to timely bill the applicable health insurer in accordance with Chapter 146, Civil Practice and Remedies Code.

(g) The lien does not attach to a claim under the workers' compensation law of this state, the Federal Employers' Liability Act, or the Federal Longshore and Harbor Workers' Compensation Act.

(h) A hospital district's lien established under Subsection (b) is for the amount actually paid by the hospital district for services provided to the eligible resident for health care services caused by an accident that is attributed to the negligence of another person.

(i) To secure the lien, a hospital district must file written notice of the lien with the county clerk of the county in which the services were provided. The notice must be filed and indexed before money is paid by the third-party liability insurer. The notice must contain:

(1) the injured individual's name and address;

(2) the date of the accident;

(3) the name and location of the hospital district claiming the lien; and

(4) the name of the person alleged to be liable for damages arising from the injury, if known.

(j) The county clerk shall record the name of the injured individual, the date of the accident, and the name and address of the hospital district and shall index the record in the name of the injured individual.

(k) The procedures set forth in Sections 55.006 and 55.007, Property Code, for discharging and releasing the lien shall apply to liens filed under this section.

(l) Procedures established by a hospital district for administrative hearings under this section shall provide for appropriate due process, including procedures for appeals.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1320 (S.B. 303), Sec. 2, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0188, eff. April 2, 2015.

Sec. 61.068. EMPLOYMENT SERVICES PROGRAM. (a) A public hospital or hospital district may establish procedures consistent with those used by the commission under Chapter 31, Human Resources Code, for administering an employment services program and requiring an applicant or eligible resident to register for work with the Texas Workforce Commission.

(b) The public hospital or hospital district shall notify each person with a pending application and all eligible residents of the requirements of the employment services program not less than 30 days before the program is established.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1206 (S.B. 304), Sec. 1, eff. June 17, 2011.
Redesignated from Health and Safety Code, Section 61.067 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(24), eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0189, eff. April 2, 2015.

CHAPTER 62. CHILD HEALTH PLAN FOR CERTAIN LOW-INCOME CHILDREN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 62.001. OBJECTIVE OF THE STATE CHILD HEALTH PLAN. The principal objective of the state child health plan is to provide primary and preventative health care to low-income, uninsured children of this state, including children with special health care needs, who are not served by or eligible for other state assisted health insurance programs.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.002. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(22), eff. April 2, 2015.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(22), eff. April 2, 2015.

(3) "Health plan provider" means an insurance company,

health maintenance organization, or other entity that provides health benefits coverage under the child health plan program. The term includes a primary care case management provider network.

(4) "Household income" means the sum of the individual incomes of each individual in an applicant's or enrollee's household, minus the standard income disregard prescribed by federal law.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.45, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1353 (H.B. 109), Sec. 1, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0190, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(22), eff. April 2, 2015.

Sec. 62.003. NOT AN ENTITLEMENT; TERMINATION OF PROGRAM. (a) This chapter does not establish an entitlement to assistance in obtaining health benefits for a child.

(b) The program established under this chapter terminates at the time that federal funding terminates under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, unless a successor program providing federal funding for a state-designed child health plan program is created.

(c) Unless the legislature authorizes the expenditure of other revenue for the program established under this chapter, the program terminates on the date that money obtained by the state as a result of the Comprehensive Settlement Agreement and Release filed in the case styled The State of Texas v. The American Tobacco Co., et al., No. 5-96CV-91, in the United States District Court, Eastern District of Texas, is no longer available to provide state funding for the program.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.004. FEDERAL LAW AND REGULATIONS. The executive commissioner shall monitor federal legislation affecting Title XXI of

the Social Security Act (42 U.S.C. Section 1397aa et seq.) and changes to the federal regulations implementing that law. If the executive commissioner determines that a change to Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.) or the federal regulations implementing that law conflicts with this chapter, the executive commissioner shall report the changes to the governor, lieutenant governor, and speaker of the house of representatives, with recommendations for legislation necessary to implement the federal law or regulations, seek a waiver, or withdraw from participation.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0191, eff. April 2, 2015.

SUBCHAPTER B. ADMINISTRATION OF CHILD HEALTH PLAN PROGRAM

Sec. 62.051. DUTIES OF EXECUTIVE COMMISSIONER AND COMMISSION IN GENERAL. (a) The executive commissioner shall administer a state-designed child health plan program to obtain health benefits coverage for children in low-income families. The executive commissioner shall ensure that the child health plan program is designed and administered in a manner that qualifies for federal funding under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations.

(b) The executive commissioner is responsible for making policy for the child health plan program, including policy related to covered benefits provided under the child health plan. The executive commissioner may not delegate this duty to another agency or entity.

(c) The executive commissioner shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Insurance.

(d) The executive commissioner shall adopt rules as necessary to implement this chapter.

(e) The commission shall conduct a review of each entity that enters into a contract under Section 62.055 or 62.155 to ensure that the entity is available, prepared, and able to fulfill the entity's obligations under the contract in compliance with the contract, this

chapter, and rules adopted under this chapter.

(f) The commission shall ensure that the amounts spent for administration of the child health plan program do not exceed any limit on those expenditures imposed by federal law.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0192, eff. April 2, 2015.

Sec. 62.052. AUTHORITY OF COMMISSION RELATING TO HEALTH PLAN PROVIDER CONTRACTS. The commission may:

(1) implement contracts with health plan providers under Section 62.155;

(2) monitor the health plan providers, through reporting requirements and other means, to ensure performance under the contracts and quality delivery of services;

(3) monitor the quality of services delivered to enrollees through outcome measurements including:

(A) rate of hospitalization for ambulatory sensitive conditions, including asthma, diabetes, epilepsy, dehydration, gastroenteritis, pneumonia, and UTI/kidney infection;

(B) rate of hospitalization for injuries;

(C) percent of enrolled adolescents reporting risky health behavior such as injuries, tobacco use, alcohol/drug use, dietary behavior, physical activity, or other health related behaviors; and

(D) percent of adolescents reporting attempted suicide; and

(4) provide payment under the contracts to the health plan providers.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0192, eff. April 2, 2015.

Sec. 62.053. AUTHORITY OF COMMISSION RELATING TO ELIGIBILITY AND MEDICAID COORDINATION. The commission may:

(1) accept applications for coverage under the child health plan and implement the child health plan program eligibility screening and enrollment procedures;

(2) resolve grievances relating to eligibility determinations; and

(3) coordinate the child health plan program with the Medicaid program.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0193, eff. April 2, 2015.

Sec. 62.0531. AUTHORITY OF COMMISSION RELATING TO THIRD PARTY ADMINISTRATOR. If the commission contracts with a third party administrator under Section 62.055, the commission may:

(1) implement the contract;

(2) monitor the third party administrator, through reporting requirements and other means, to ensure performance under the contract and quality delivery of services; and

(3) provide payment under the contract to the third party administrator.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0193, eff. April 2, 2015.

Sec. 62.054. DUTIES OF TEXAS DEPARTMENT OF INSURANCE. (a) At the request of the commission, the Texas Department of Insurance shall provide any necessary assistance with the child health plan. The department shall monitor the quality of the services provided by health plan providers and resolve grievances relating to the health plan providers.

(b) The commission and the Texas Department of Insurance may adopt a memorandum of understanding that addresses the responsibilities of each agency with respect to the plan.

(c) The Texas Department of Insurance, in consultation with the commission, shall adopt rules as necessary to implement this section.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0194, eff. April 2, 2015.

Sec. 62.055. CONTRACTS FOR IMPLEMENTATION OF CHILD HEALTH PLAN. (a) It is the intent of the legislature that the commission maximize the use of private resources in administering the child health plan created under this chapter. In administering the child health plan, the commission may contract with a third party administrator to provide enrollment and related services under the state child health plan.

(b), (c) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1).

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(23), eff. April 2, 2015.

(e) The executive commissioner shall retain all policymaking authority over the state child health plan.

(f) The commission shall:

(1) procure all contracts with a third party administrator through a competitive procurement process in compliance with all applicable federal and state laws or regulations; and

(2) ensure that all contracts with child health plan providers under Section 62.155 are procured through a competitive procurement process in compliance with all applicable federal and state laws or regulations.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.43, 2.156(a)(1), eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0195, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(23), eff. April 2, 2015.

Sec. 62.056. COMMUNITY OUTREACH CAMPAIGN; TOLL-FREE HOTLINE. (a) The commission shall conduct a community outreach and education campaign to provide information relating to the availability of

health benefits for children under this chapter. The commission shall conduct the campaign in a manner that promotes enrollment in, and minimizes duplication of effort among, all state-administered child health programs.

(b) The community outreach campaign must include:

(1) outreach efforts that involve school-based health clinics;

(2) a toll-free telephone number through which families may obtain information about health benefits coverage for children; and

(3) information regarding the importance of each conservator of a child promptly informing the other conservator of the child about the child's health benefits coverage.

(c) The commission shall contract with community-based organizations or coalitions of community-based organizations to implement the community outreach campaign and shall also promote and encourage voluntary efforts to implement the community outreach campaign. The commission shall procure the contracts through a process designed by the commission to encourage broad participation of organizations, including organizations that target population groups with high levels of uninsured children.

(d) The commission may direct that the Department of State Health Services perform all or part of the community outreach campaign.

(e) The commission shall ensure that information provided under this section is available in both English and Spanish.

Added by Acts 2007, 80th Leg., R.S., Ch. 1353 (H.B. 109), Sec. 2, eff. June 15, 2007.

Sec. 62.058. FRAUD PREVENTION. The commission shall develop and implement rules for the prevention and detection of fraud in the child health plan program.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.0582. THIRD-PARTY BILLING VENDORS. (a) A third-party billing vendor may not submit a claim with the commission for payment on behalf of a health plan provider under the program unless the vendor has entered into a contract with the commission authorizing

that activity.

(b) To the extent practical, the contract shall contain provisions comparable to the provisions contained in contracts between the commission and health plan providers, with an emphasis on provisions designed to prevent fraud or abuse under the program. At a minimum, the contract must require the third-party billing vendor to:

(1) provide documentation of the vendor's authority to bill on behalf of each provider for whom the vendor submits claims;

(2) submit a claim in a manner that permits the commission to identify and verify the vendor, any computer or telephone line used in submitting the claim, any relevant user password used in submitting the claim, and any provider number referenced in the claim; and

(3) subject to any confidentiality requirements imposed by federal law, provide the commission, the office of the attorney general, or authorized representatives with:

(A) access to any records maintained by the vendor, including original records and records maintained by the vendor on behalf of a provider, relevant to an audit or investigation of the vendor's services or another function of the commission or office of attorney general relating to the vendor; and

(B) if requested, copies of any records described by Paragraph (A) at no charge to the commission, the office of the attorney general, or authorized representatives.

(c) On receipt of a claim submitted by a third-party billing vendor, the commission shall send a remittance notice directly to the provider referenced in the claim. The notice must include detailed information regarding the claim submitted on behalf of the provider.

(d) The commission shall take all action necessary, including any modifications of the commission's claims processing system, to enable the commission to identify and verify a third-party billing vendor submitting a claim for payment under the program, including identification and verification of any computer or telephone line used in submitting the claim, any relevant user password used in submitting the claim, and any provider number referenced in the claim.

(e) The commission shall audit each third-party billing vendor subject to this section at least annually to prevent fraud and abuse under the program.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.44(a), eff. Jan. 1, 2006.

Sec. 62.060. HEALTH INFORMATION TECHNOLOGY STANDARDS. (a) In this section, "health information technology" means information technology used to improve the quality, safety, or efficiency of clinical practice, including the core functionalities of an electronic health record, an electronic medical record, a computerized health care provider order entry, electronic prescribing, and clinical decision support technology.

(b) The commission shall ensure that any health information technology used by the commission or any entity acting on behalf of the commission in the child health plan program conforms to standards required under federal law.

Added by Acts 2009, 81st Leg., R.S., Ch. 1120 (H.B. 1218), Sec. 2, eff. September 1, 2009.

SUBCHAPTER C. ELIGIBILITY FOR COVERAGE UNDER CHILD HEALTH PLAN

Sec. 62.101. ELIGIBILITY. (a) A child is eligible for health benefits coverage under the child health plan if the child:

(1) is younger than 19 years of age;

(2) is not eligible for medical assistance under the Medicaid program;

(3) is not covered by a health benefits plan offering adequate benefits, as determined by the commission;

(4) has a household income that is less than or equal to the income eligibility level established under Subsection (b); and

(5) satisfies any other eligibility standard imposed under the child health plan program in accordance with 42 U.S.C. Section 1397bb, as amended, and any other applicable law or regulations.

(a-1) A child who is the dependent of an employee of an agency of this state and who meets the requirements of Subsection (a) may be eligible for health benefits coverage in accordance with 42 U.S.C. Section 1397jj(b)(6) and any other applicable law or regulations.

(b) The executive commissioner shall establish income eligibility levels consistent with Title XXI, Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable

law or regulations, and subject to the availability of appropriated money, so that a child who is younger than 19 years of age and whose household income is at or below 200 percent of the federal poverty level is eligible for health benefits coverage under the program.

(b-1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(25), eff. April 2, 2015.

(c) The executive commissioner shall evaluate enrollment levels and program impact at least annually and shall submit a finding of fact to the Legislative Budget Board and the Governor's Office of Budget, Planning, and Policy as to the adequacy of funding and the ability of the program to sustain enrollment at the eligibility level established by Subsection (b). In the event that appropriated money is insufficient to sustain enrollment at the authorized eligibility level, the executive commissioner shall:

(1) suspend enrollment in the child health plan;

(2) establish a waiting list for applicants for coverage; and

(3) establish a process for periodic or continued enrollment of applicants in the child health plan program as the availability of money allows.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.46, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1353 (H.B. 109), Sec. 3, eff. June 15, 2007.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.03(a), eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0196, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(25), eff. April 2, 2015.

Sec. 62.1011. VERIFICATION OF INCOME. The commission shall continue employing methods of verifying the individual incomes of the individuals considered in the calculation of an applicant's household income. The commission shall verify income under this section unless the applicant reports a household income that exceeds the income

eligibility level established under Section 62.101(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 1353 (H.B. 109), Sec. 4, eff. June 15, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0197, eff. April 2, 2015.

Sec. 62.1015. ELIGIBILITY OF CERTAIN CHILDREN; DISALLOWANCE OF MATCHING FUNDS. (a) In this section:

(1) "Charter school" and "regional education service center" have the meanings assigned by Section 1579.002, Insurance Code.

(2) "Employee" has the meaning assigned by Section 1579.003, Insurance Code.

(b) A child of an employee of a charter school, school district, other educational district whose employees are members of the Teacher Retirement System of Texas, or regional education service center may be enrolled in health benefits coverage under the child health plan. A child enrolled in the child health plan under this section:

(1) participates in the same manner as any other child enrolled in the child health plan; and

(2) is subject to the same requirements and restrictions relating to income eligibility, continuous coverage, and enrollment, including applicable waiting periods, as any other child enrolled in the child health plan.

(c) The cost of health benefits coverage for children enrolled in the child health plan under this section shall be paid as provided in the General Appropriations Act. Expenditures made to provide health benefits coverage under this section may not be included for the purpose of determining the state children's health insurance expenditures, as that term is defined by 42 U.S.C. Section 1397ee(d)(2)(B), as amended, unless the commission, after consultation with the appropriate federal agencies, determines that the expenditures may be included without adversely affecting federal matching funding for the child health plan provided under this chapter.

Added by Acts 2001, 77th Leg., ch. 1187, Sec. 1.04, eff. Sept. 1,

2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.47, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0198, eff. April 2, 2015.

Sec. 62.102. CONTINUOUS COVERAGE. (a) Subject to a review under Subsection (b), the commission shall provide that an individual who is determined to be eligible for coverage under the child health plan remains eligible for those benefits until the earlier of:

(1) the end of a period not to exceed 12 months, beginning the first day of the month following the date of the eligibility determination; or

(2) the individual's 19th birthday.

(b) During the sixth month following the date of initial enrollment or reenrollment of an individual whose household income exceeds 185 percent of the federal poverty level, the commission shall:

(1) review the individual's household income and may use electronic technology if available and appropriate; and

(2) continue to provide coverage if the individual's household income does not exceed the income eligibility limits prescribed by this chapter.

(c) If, during the review required under Subsection (b), the commission determines that the individual's household income exceeds the income eligibility limits prescribed by this chapter, the commission may not disenroll the individual until:

(1) the commission has provided the family an opportunity to demonstrate that the family's household income is within the income eligibility limits prescribed by this chapter; and

(2) the family fails to demonstrate such eligibility.

(d) The commission shall provide written notice of termination of eligibility to the individual not later than the 30th day before the date the individual's eligibility terminates.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.48, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 3.01, eff. August 29, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1353 (H.B. 109), Sec. 5, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0199, eff. April 2, 2015.

Sec. 62.103. APPLICATION FORM AND PROCEDURES. (a) The executive commissioner shall adopt an application form and application procedures for requesting child health plan coverage under this chapter.

(b) The form and procedures must be coordinated with forms and procedures under the Medicaid program to ensure that there is a single consolidated application to seek assistance under this chapter or the Medicaid program.

(c) To the extent possible, the application form shall be made available in languages other than English.

(d) The executive commissioner may permit application to be made by mail, over the telephone, or through the Internet.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by Acts 2001, 77th Leg., ch. 584, Sec. 1.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0200, eff. April 2, 2015.

Sec. 62.104. ELIGIBILITY SCREENING AND ENROLLMENT. (a) The executive commissioner shall develop eligibility screening and enrollment procedures for children that comply with the requirements of 42 U.S.C. Section 1397bb, as amended, and any other applicable law or regulations. The procedures shall ensure that Medicaid-eligible children are identified and referred to the Medicaid program.

(b) The Texas Integrated Enrollment Services eligibility determination system or a compatible system may be used to screen and enroll children under the child health plan.

(c) The eligibility screening and enrollment procedures shall ensure that children who appear to be Medicaid-eligible are identified and that their families are assisted in applying for

Medicaid coverage.

(d) A child who applies for enrollment in the child health plan, who is denied Medicaid coverage after completion of a Medicaid application under Subsection (c), but who is eligible for enrollment in the child health plan, shall be enrolled in the child health plan without further application or qualification.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(81), eff. June 17, 2011.

(f) A determination of whether a child is eligible for child health plan coverage under the program and the enrollment of an eligible child with a health plan provider must be completed, and information on the family's available choice of health plan providers must be provided, in a timely manner, as determined by the commission. The commission must require that the determination be made and the information be provided not later than the 30th day after the date a complete application is submitted on behalf of the child, unless the child is referred for Medicaid application under this section.

(g) The executive commissioner may establish enrollment periods for the child health plan.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(3), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(81), eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0201, eff. April 2, 2015.

Sec. 62.105. COVERAGE FOR QUALIFIED ALIENS. The commission shall provide coverage under the state Medicaid program and under the program established under this chapter to a child who is a qualified alien, as that term is defined by 8 U.S.C. Section 1641(b), if the federal government authorizes the state to provide that coverage. The commission shall comply with any prerequisite imposed under the federal law to providing that coverage.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.106. SUSPENSION AND AUTOMATIC REINSTATEMENT OF ELIGIBILITY FOR CHILDREN IN JUVENILE FACILITIES. (a) In this section, "juvenile facility" means a facility for the placement, detention, or commitment of a child under Title 3, Family Code.

(b) To the extent allowed under federal law, if a child is placed in a juvenile facility, the commission shall suspend the child's eligibility for health benefits coverage under the child health plan during the period the child is placed in the facility.

(c) Not later than 48 hours after the commission is notified of the release from a juvenile facility of a child whose eligibility for health benefits coverage under the child health plan has been suspended under this section, the commission shall reinstate the child's eligibility. Following the reinstatement, the child remains eligible until the expiration of the period for which the child was certified as eligible, excluding the period during which the child's eligibility was suspended.

Added by Acts 2015, 84th Leg., R.S., Ch. 862 (H.B. 839), Sec. 1, eff. June 18, 2015.

Sec. 62.107. NOTICE OF CERTAIN PLACEMENTS IN JUVENILE FACILITIES. (a) In this section:

(1) "Custodian" and "guardian" have the meanings assigned by Section 51.02, Family Code.

(2) "Juvenile facility" has the meaning assigned by Section 62.106.

(b) A juvenile facility may notify the commission on the placement in the facility of a child who is enrolled in the child health plan.

(c) If a juvenile facility chooses to provide the notice described by Subsection (b), the facility shall provide the notice electronically or by other appropriate means as soon as possible, but not later than the 30th day, after the date of the child's placement.

(d) A juvenile facility may notify the commission of the release of a child who, immediately before the child's placement in the facility, was enrolled in the child health plan.

(e) If a juvenile facility chooses to provide the notice described by Subsection (d), the facility shall provide the notice electronically or by other appropriate means not later than 48 hours

after the child's release from the facility.

(f) If a juvenile facility chooses to provide the notice described by Subsection (d), at the time of the child's release, the facility shall provide the child's guardian or custodian, as appropriate, with a written copy of the notice and a telephone number at which the commission may be contacted regarding confirmation of or assistance relating to reinstatement of the child's eligibility for health benefits coverage under the child health plan.

(g) The commission shall establish a means by which a juvenile facility, or an employee of the facility, may determine whether a child placed in the facility is or was, as appropriate, enrolled in the child health plan for purposes of this section.

(h) A juvenile facility, or an employee of the facility, is not liable in a civil action for damages resulting from a failure to comply with this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 862 (H.B. 839), Sec. 1, eff. June 18, 2015.

SUBCHAPTER D. CHILD HEALTH PLAN

Sec. 62.151. CHILD HEALTH PLAN COVERAGE. (a) The child health plan must comply with this chapter and the coverage requirements prescribed by 42 U.S.C. Section 1397cc, as amended, and any other applicable law or regulations.

(b) In modifying the covered benefits, the executive commissioner shall consider the health care needs of healthy children and children with special health care needs.

(c) In modifying the plan, the executive commissioner shall ensure that primary and preventive health benefits do not include reproductive services, other than prenatal care and care related to diseases, illnesses, or abnormalities related to the reproductive system.

(d) The child health plan must allow an enrolled child with a chronic, disabling, or life-threatening illness to select an appropriate specialist as a primary care physician.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 3.40(b)(2), and Ch. 946 (S.B. 277), Sec. 2.37(c)(2), eff. January 1, 2016.

(f) If the executive commissioner determines the policy to be

cost-effective, the executive commissioner may ensure that an enrolled child does not, unless authorized by the commission in consultation with the child's attending physician or advanced practice nurse, receive under the child health plan:

(1) more than four different outpatient brand-name prescription drugs during a month; or

(2) more than a 34-day supply of a brand-name prescription drug at any one time.

(g) The child health plan may not provide coverage for services prohibited by Section 161.702 that are intended to transition a child's biological sex as determined by the child's sex organs, chromosomes, and endogenous profiles.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.49, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0202, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 3.40(b)(2), eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 2.37(c)(2), eff. January 1, 2016.

Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 1, eff. September 1, 2023.

Sec. 62.1511. COVERAGE FOR MATERNAL DEPRESSION SCREENING. (a) In this section, "maternal depression" means depression of any severity with postpartum onset.

(b) The covered services under the child health plan must include a maternal depression screening for an enrollee's mother, regardless of whether the mother is also an enrollee, that is performed during a covered well-child or other office visit for the enrollee that occurs before the enrollee's first birthday.

(c) The executive commissioner shall adopt rules necessary to implement this section. The rules must be based on:

(1) clinical and empirical evidence concerning maternal depression; and

(2) information provided by relevant physicians and

behavioral health organizations.

(d) The commission shall seek, accept, and spend any federal funds that are available for the purposes of this section, including priority funding authorized by Section 317L-1 of the Public Health Service Act (42 U.S.C. Section 201 et seq.), as added by the 21st Century Cures Act (Pub. L. No. 114-255).

Added by Acts 2017, 85th Leg., R.S., Ch. 852 (H.B. 2466), Sec. 1, eff. September 1, 2017.

Sec. 62.1512. COVERAGE FOR CHILDHOOD CRANIAL REMOLDING ORTHOSIS. (a) In this section, "cranial remolding orthosis" has the meaning assigned by Section 32.03126, Human Resources Code.

(b) The child health plan must cover in full the cost of a cranial remolding orthosis for an enrollee in the same manner that Medicaid coverage is provided for that treatment under Section 32.03126, Human Resources Code.

Added by Acts 2025, 89th Leg., R.S., Ch. 719 (H.B. 426), Sec. 1, eff. September 1, 2025.

Sec. 62.152. APPLICATION OF INSURANCE LAW. To provide the flexibility necessary to satisfy the requirements of Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations, the child health plan is not subject to a law that requires:

(1) coverage or the offer of coverage of a health care service or benefit;

(2) coverage or the offer of coverage for the provision of services by a particular health care services provider, except as provided by Section 62.155(b); or

(3) the use of a particular policy or contract form or of particular language in a policy or contract form.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.153. COST SHARING. (a) To the extent permitted under 42 U.S.C. Section 1397cc, as amended, and any other applicable law or

regulations, the executive commissioner shall require enrollees to share the cost of the child health plan, including provisions requiring enrollees under the child health plan to pay:

(1) a copayment for services provided under the plan;

(2) an enrollment fee; or

(3) a portion of the plan premium.

(b) Subject to Subsection (d), cost-sharing provisions adopted under this section shall ensure that families with higher levels of income are required to pay progressively higher percentages of the cost of the plan.

(c) If cost-sharing provisions imposed under Subsection (a) include requirements that enrollees pay a portion of the plan premium, the executive commissioner shall specify the manner in which the premium is paid. The commission may require that the premium be paid to the health plan provider.

(d) Cost-sharing provisions adopted under this section may be determined based on the maximum level authorized under federal law and applied to income levels in a manner that minimizes administrative costs.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.50, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0203, eff. April 2, 2015.

Sec. 62.154. WAITING PERIOD; CROWD OUT. (a) To the extent permitted under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations, the child health plan must include a waiting period and may include copayments and other provisions intended to discourage:

(1) employers and other persons from electing to discontinue offering coverage for children under employee or other group health benefit plans; and

(2) individuals with access to adequate health benefit plan coverage, other than coverage under the child health plan, from electing not to obtain or to discontinue that coverage for a child.

(b) A child is not subject to a waiting period adopted under

Subsection (a) if:

(1) the family lost coverage for the child as a result of:

(A) termination of employment because of a layoff or business closing;

(B) termination of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272);

(C) change in marital status of a parent of the child;

(D) termination of the child's Medicaid eligibility because:

(i) the child's family's earnings or resources increased; or

(ii) the child reached an age at which Medicaid coverage is not available; or

(E) a similar circumstance resulting in the involuntary loss of coverage;

(2) the family terminated health benefits plan coverage for the child because the cost to the child's family for the coverage exceeded 9.5 percent of the family's household income;

(3) the child has access to group-based health benefits plan coverage and is required to participate in the health insurance premium payment reimbursement program administered by the commission;

(4) the commission has determined that other grounds exist for a good cause exception; or

(5) federal law provides that the child is not subject to a waiting period adopted under Subsection (a).

(c) A child described by Subsection (b) may enroll in the child health plan program at any time, without regard to any open enrollment period established under the enrollment procedures.

(d) The waiting period required by Subsection (a) must:

(1) extend for a period of 90 days after the last date on which the applicant was covered under a health benefits plan; and

(2) apply to a child who was covered by a health benefits plan at any time during the 90 days before the date of application for coverage under the child health plan.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.51(a), (b), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1353 (H.B. 109), Sec. 6, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0204, eff. April 2, 2015.

Sec. 62.155. HEALTH PLAN PROVIDERS. (a) The commission shall select the health plan providers under the program through a competitive procurement process. A health plan provider, other than a state administered primary care case management network, must hold a certificate of authority or other appropriate license issued by the Texas Department of Insurance that authorizes the health plan provider to provide the type of child health plan offered and must satisfy, except as provided by this chapter, any applicable requirement of the Insurance Code or another insurance law of this state.

(b) A managed care organization or other entity shall seek to obtain, in the organization's or entity's provider network, the participation of significant traditional providers, as defined by commission rule, if that organization or entity:

(1) contracts with the commission or with another agency or entity to operate a part of the child health plan under this chapter; and

(2) uses a provider network to provide or arrange for health care services under the child health plan.

(c) In selecting a health plan provider, the commission:

(1) may give preference to a person who provides similar coverage under the Medicaid program; and

(2) shall provide for a choice of at least two health plan providers in each service area.

(d) The executive commissioner may authorize an exception to Subsection (c)(2) if there is only one acceptable applicant to become a health plan provider in the service area.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.52, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0205, eff. April 2, 2015.

Sec. 62.1551. INCLUSION OF CERTAIN HEALTH CARE PROVIDERS IN PROVIDER NETWORKS. (a) Notwithstanding any other law, including Sections 843.312 and 1301.052, Insurance Code, the executive commissioner shall adopt rules to require a managed care organization or other entity to ensure that advanced practice registered nurses and physician assistants are available as primary care providers in the organization's or entity's provider network. The rules must require advanced practice registered nurses and physician assistants to be treated in the same manner as primary care physicians with regard to:

(1) selection and assignment as primary care providers;

(2) inclusion as primary care providers in the provider network; and

(3) inclusion as primary care providers in any provider network directory maintained by the organization or entity.

(b) For purposes of Subsection (a), an advanced practice registered nurse may be included as a primary care provider in a managed care organization's or entity's provider network regardless of whether the physician supervising the advanced practice registered nurse is in the provider network.

(c) This section may not be construed as authorizing a managed care organization or other entity to supervise or control the practice of medicine as prohibited by Subtitle B, Title 3, Occupations Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 22, eff. November 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0206, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 302 (S.B. 654), Sec. 2, eff. September 1, 2017.

Sec. 62.156. HEALTH CARE PROVIDERS. Health care providers who provide health care services under the child health plan must satisfy certification and licensure requirements, as required by commission rules and consistent with other law.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0207, eff. April 2, 2015.

Sec. 62.1561. PROHIBITION OF CERTAIN HEALTH CARE PROVIDERS. The executive commissioner shall adopt rules for prohibiting a person from participating in the child health plan program as a health care provider for a reasonable period, as determined by the executive commissioner, if the person:

(1) fails to repay overpayments under the program; or

(2) owns, controls, manages, or is otherwise affiliated with and has financial, managerial, or administrative influence over a provider who has been suspended or prohibited from participating in the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 8, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0208, eff. April 2, 2015.

Sec. 62.157. TELEMEDICINE MEDICAL SERVICES, TELEDENTISTRY DENTAL SERVICES, AND TELEHEALTH SERVICES FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS. (a) In providing covered benefits to a child with special health care needs, a health plan provider must permit benefits to be provided through telemedicine medical services, teledentistry dental services, and telehealth services in accordance with policies developed by the commission.

(b) The policies must provide for:

(1) the availability of covered benefits appropriately provided through telemedicine medical services, teledentistry dental services, and telehealth services that are comparable to the same types of covered benefits provided without the use of telemedicine medical services, teledentistry dental services, and telehealth services; and

(2) the availability of covered benefits for different services performed by multiple health care providers during a single

session of telemedicine medical services, teledentistry dental services, telehealth services, or any combination of those services, if the executive commissioner determines that delivery of the covered benefits in that manner is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services, teledentistry dental services, and telehealth services, including the costs of transportation and lodging and other direct costs.

(c) In developing the policies required by Subsection (a), the executive commissioner shall consult with:

(1) The University of Texas Medical Branch at Galveston;

(2) Texas Tech University Health Sciences Center;

(3) the Department of State Health Services;

(4) providers of telemedicine hub sites in this state;

(5) providers of services to children with special health care needs; and

(6) representatives of consumer or disability groups affected by changes to services for children with special health care needs.

Added by Acts 2001, 77th Leg., ch. 959, Sec. 5, eff. June 14, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0209, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 22, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 23, eff. September 1, 2021.

Sec. 62.1571. TELEMEDICINE MEDICAL SERVICES, TELEDENTISTRY DENTAL SERVICES, AND TELEHEALTH SERVICES. (a) In providing covered benefits to a child, a health plan provider must permit benefits to be provided through telemedicine medical services, teledentistry dental services, and telehealth services in accordance with policies developed by the commission.

(b) The policies must provide for:

(1) the availability of covered benefits appropriately provided through telemedicine medical services, teledentistry dental services, and telehealth services that are comparable to the same

types of covered benefits provided without the use of telemedicine medical services, teledentistry dental services, and telehealth services; and

(2) the availability of covered benefits for different services performed by multiple health care providers during a single session of telemedicine medical services, teledentistry dental services, or both services, or of telehealth services, if the executive commissioner determines that delivery of the covered benefits in that manner is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services, teledentistry dental services, or telehealth services, including the costs of transportation and lodging and other direct costs.

(c) In this section, "teledentistry dental service," "telehealth service," and "telemedicine medical service" have the meanings assigned by Section 521.0001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1255, Sec. 4, eff. June 15, 2001. Redesignated and amended from Health and Safety Code, Section 62.157 by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0210, eff. April 2, 2015.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 3.40(b)(3), eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 2.37(c)(3), eff. January 1, 2016.

Acts 2021, 87th Leg., R.S., Ch. 624 (H.B. 4), Sec. 7, eff. June 15, 2021.

Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 24, eff. September 1, 2021.

Reenacted and amended by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 11.001, eff. September 1, 2023.
Reenacted and amended by Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.31, eff. April 1, 2025.

Sec. 62.158. STATE TAXES. The commission shall ensure that any experience rebate or profit-sharing for health plan providers under the child health plan is calculated by treating premium, maintenance, and other taxes under the Insurance Code and any other taxes payable

to this state as allowable expenses for purposes of determining the amount of the experience rebate or profit-sharing.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.53, eff. Sept. 1, 2003.

Sec. 62.159. DISEASE MANAGEMENT SERVICES. (a) In this section, "disease management services" means services to assist a child manage a disease or other chronic health condition, such as heart disease, diabetes, respiratory illness, end-stage renal disease, HIV infection, or AIDS, and with respect to which the executive commissioner identifies populations for which disease management would be cost-effective.

(b) The child health plan must provide disease management services or coverage for disease management services in the manner required by the executive commissioner, including:

(1) patient self-management education;

(2) provider education;

(3) evidence-based models and minimum standards of care;

(4) standardized protocols and participation criteria; and

(5) physician-directed or physician-supervised care.

Added by Acts 2003, 78th Leg., ch. 589, Sec. 1, eff. June 20, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0211, eff. April 2, 2015.

CHAPTER 63. HEALTH BENEFITS PLAN FOR CERTAIN CHILDREN

Sec. 63.002. NOT AN ENTITLEMENT. This chapter does not establish an entitlement to assistance in obtaining health benefits for a child.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 63.003. HEALTH BENEFITS PLAN COVERAGE FOR CERTAIN CHILDREN. The executive commissioner shall develop and implement a program to provide health benefits plan coverage for a child who:

(1) is a qualified alien, as that term is defined by 8

U.S.C. Section 1641(b);

(2) is younger than 19 years of age;

(3) entered the United States after August 22, 1996;

(4) has resided in the United States for less than five years; and

(5) meets the income eligibility requirement of, but is not eligible for assistance under:

(A) the child health plan program under Chapter 62; or

(B) the medical assistance program under Chapter 32, Human Resources Code.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0212, eff. April 2, 2015.

Sec. 63.004. BENEFITS COVERAGE REQUIRED. To the extent possible, the program required by Section 63.003 must provide benefits comparable to the benefits provided under the child health plan program under Chapter 62.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 63.005. HEALTH BENEFITS PLAN PROVIDER. (a) A health benefits plan provider under this chapter must:

(1) hold a certificate of authority or other appropriate license issued by the Texas Department of Insurance that authorizes the health benefits plan provider to provide the type of coverage to be offered through the program required by Section 63.003; and

(2) satisfy, except as provided by Subsection (b), any other applicable requirement of the Insurance Code or another insurance law of this state.

(b) Except as required by the executive commissioner, a health benefits plan provider under this chapter is not subject to a law that requires coverage or the offer of coverage of a health care service or benefit.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0213, eff. April 2, 2015.

Sec. 63.006. COST-SHARING PAYMENTS. (a) Except as provided by Subsection (b), the executive commissioner may not require a child who is provided health benefits plan coverage under Section 63.003 and who meets the income eligibility requirement of the medical assistance program under Chapter 32, Human Resources Code, to pay a premium, deductible, coinsurance, or other cost-sharing payment as a condition of health benefits plan coverage under this chapter.

(b) The executive commissioner may require a child described by Subsection (a) to pay a copayment as a condition of health benefits plan coverage under this chapter that is equal to any copayment required under the child health plan program under Chapter 62.

(c) The executive commissioner may require a child who is provided health benefits plan coverage under Section 63.003 and who meets the income eligibility requirement of the child health plan program under Chapter 62 to pay a premium, deductible, coinsurance, or other cost-sharing payment as a condition of health benefits plan coverage under this chapter. The payment must be equal to any premium, deductible, coinsurance, or other cost-sharing payment required under the child health plan program under Chapter 62.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0214, eff. April 2, 2015.

Sec. 63.007. DISALLOWANCE OF MATCHING FUNDS FROM FEDERAL GOVERNMENT. Expenditures made to provide health benefits plan coverage under this chapter may not be included for the purpose of determining the state children's health insurance expenditures, as that term is defined by 42 U.S.C. Section 1397ee(d)(2)(B), as amended.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

CHAPTER 64. MISCELLANEOUS PROVISIONS

Sec. 64.001. TEACHING HOSPITAL ACCOUNT. The Department of State Health Services state-owned multi-categorical teaching hospital account is an account in the general revenue fund. Money in the account may be appropriated only to the department to provide funding for indigent health care.

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 3.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0215, eff. April 2, 2015.

CHAPTER 65. PRESCRIPTION DRUG SAVINGS PROGRAM FOR CERTAIN UNINSURED INDIVIDUALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 65.001. DEFINITIONS. In this chapter:

(1) "Enrollee" means an individual enrolled in the program.

(2) "Fund" means the trust fund established under Section 65.101.

(3) "Pharmacy benefit manager" has the meaning assigned by Section 4151.151, Insurance Code.

(4) "Prescription drug" has the meaning assigned by Section 551.003, Occupations Code.

(5) "Program" means the prescription drug savings program established under this chapter.

(6) "Uninsured individual" means an individual without health benefit plan coverage for a prescription drug benefit.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.002. CONSTRUCTION OF CHAPTER; PURPOSE. (a) This chapter does not establish an entitlement to assistance in obtaining benefits for uninsured individuals.

(b) The purpose of this chapter is to establish a program to provide uninsured individuals access to prescription drug benefits using money from the fund to pay an amount equal to the value of a prescription drug rebate at the point of sale and returning that rebate amount to the fund to ensure the amounts credited to the fund

equal the amounts paid from the fund.

(c) This chapter does not expand the Medicaid program.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.003. RULES. The executive commissioner shall adopt rules as necessary to implement this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

SUBCHAPTER B. ESTABLISHMENT AND ADMINISTRATION OF PRESCRIPTION DRUG SAVINGS PROGRAM

Sec. 65.051. ESTABLISHMENT OF PROGRAM. (a) The commission shall develop and design a prescription drug savings program that partners with a pharmacy benefit manager to offer prescription drugs at a discounted rate to uninsured individuals.

(b) In developing and implementing the program, the commission shall ensure the program benefits do not include prescription drugs used for the elective termination of a pregnancy.

(c) The executive commissioner shall ensure the program is designed to provide the greatest possible value to uninsured individuals served by the program, while considering the adequacy of the prescription drug formulary, net costs of the drugs to enrollees, cost to the state, and other important factors determined by the commission.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.052. GENERAL POWERS AND DUTIES OF COMMISSION RELATED TO PROGRAM. (a) The commission shall oversee the implementation of the program and coordinate the activities of each state agency involved in that implementation.

(b) The commission shall design the program to be cost neutral by collecting prescription drug rebates after using money in the fund in amounts equal to the rebate amounts to purchase prescription

drugs.

(c) The commission shall develop procedures for accepting applications for program enrollment, including a process to:

(1) determine eligibility, screening, and enrollment procedures that allow applicants to self attest to the extent authorized by federal law; and

(2) resolve disputes related to eligibility determinations.

(d) The commission shall publish on an Internet website all average consumer costs for each prescription drug available through the program.

(e) The commission and the contracted pharmacy benefit manager shall integrate manufacturer and other third-party patient assistance programs into the program to the extent feasible. A manufacturer or other third party may decline to link the manufacturer's or third party's patient assistance program to the program. The commission shall give preference to integrating patient assistance programs by listing information on those patient assistance programs in a central location on the Internet website described by Subsection (d) that directs patients to those patient assistance programs as appropriate.

(f) The commission shall ensure the program has access to an adequate pharmacy network and give preference to conducting the program using a state pharmaceutical assistance program.

(g) The commission is not required to enter into stand-alone contracts under this chapter. The commission may add the program, wholly or partly, to existing contracts to increase efficiency.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.053. PHARMACY BENEFIT MANAGER CONTRACT, MONITORING, AND REPORTING REQUIREMENTS. (a) The commission shall contract with a pharmacy benefit manager to provide discounted prescription drugs to enrollees under the program.

(b) The commission shall monitor through reporting or other methods the contracted pharmacy benefit manager to ensure performance under the contract and quality delivery of services.

(c) The contracted pharmacy benefit manager shall report to the commission on the commission's request information related to the program, including information on rebate amounts, prescription drug

rates contracted with pharmacies, administrative costs, and out-of-pocket costs paid by enrollees at the point of sale of the prescription drugs.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.054. CONTRACT FUNCTIONS. (a) The commission may contract with a third-party administrator or other entity to perform any or all program functions for the commission under this chapter.

(b) A third-party administrator or other entity may perform tasks under a contract entered into under Subsection (a) that would otherwise be performed by the commission.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.055. COMMUNITY OUTREACH CAMPAIGN. The commission shall conduct or contract to conduct a community outreach and education campaign in the form and manner determined by the commission to provide information on the program's availability to eligible individuals.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

SUBCHAPTER C. TRUST FUND; PROGRAM SUSPENSION

Sec. 65.101. ESTABLISHMENT OF FUND. (a) A trust fund is established outside the state treasury for the purposes of this chapter.

(b) The fund consists of:

(1) gifts, grants, and donations received by this state for the purposes of the fund;

(2) legislative appropriations of money for the purposes of this chapter;

(3) federal money available to this state that by law may be used for the purposes of this chapter; and

(4) interest, dividends, and other income of the fund.

(c) The commission shall administer the fund as trustee for the benefit of the program established by this chapter.

(d) Money in the fund may be used only to administer the program and provide program services.

(e) The commission shall ensure money spent from the fund to assist enrollees in purchasing prescription drugs is cost neutral after collecting the prescription drug rebates under the program.

(f) The commission may solicit and accept gifts, grants, and donations for the fund.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.102. SUFFICIENT FUNDING REQUIRED. Notwithstanding any other provision of this chapter, the commission is not required to implement the program unless money is provided and by law made available for deposit to the credit of the fund.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.103. SUSPENSION OF PROGRAM. On the fourth anniversary of the date the program is established, the commission shall suspend the program and seek legislative approval to continue the program unless the ongoing costs of administering the program are fully funded through enrollee cost sharing.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

SUBCHAPTER D. PROGRAM ELIGIBILITY AND ENROLLEE REQUIREMENTS

Sec. 65.151. ELIGIBILITY CRITERIA. (a) Except as provided by Subsection (b), an individual is eligible for benefits under the program if the individual is:

(1) a resident of this state;

(2) a citizen or lawful permanent resident of the United States; and

(3) uninsured, as determined by the commission.

(b) If the commission determines necessary, the commission may consider an applicant's financial vulnerability as an additional factor for determining program eligibility.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.152. COST SHARING. (a) To the extent necessary, the commission shall require enrollees to share the cost of the program, including requiring enrollees to pay a copayment at the point of sale of a prescription drug.

(b) The commission must:

(1) allow an enrollee to pay all or part of the enrollee's share from any source the enrollee selects; and

(2) accept another assistance program if that assistance program wholly or partly covers the enrollee share of the prescription drug cost.

(c) The commission shall require an enrollee to pay a copayment to compensate the pharmacy, pharmacy benefit manager, and commission for the costs of administering the program in accordance with Subsection (d) and under the methodology determined by the commission.

(d) Enrollees shall pay the costs of ongoing administration of the program through an additional charge at the point of sale of an eligible prescription drug only if the total number of enrollees in the program allows for the additional charge to be an amount not to exceed the lesser of:

(1) an amount similar to the amount charged for a prescription drug in other state pharmaceutical assistance programs administered by the commission; or

(2) 10 percent of the total amount charged at the point of sale for the prescription drug.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

SUBCHAPTER E. OPERATION OF PROGRAM

Sec. 65.201. PROGRAM BENEFITS. The commission must approve program benefits offered under this chapter. The commission shall

ensure the benefits comply with all applicable federal and state laws, rules, and regulations.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.202. REPORTING. (a) A third-party administrator, pharmacy benefit manager, or any other entity the commission contracts with under Section 65.054 shall report to the commission in the form and manner prescribed by the commission on the benefits and services provided under the program.

(b) The commission shall establish a procedure to monitor the provision of benefits and services under this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.203. FRAUD PREVENTION. The executive commissioner by rule shall develop and implement fraud prevention and detection for pharmacy benefit managers, contracted third parties, and other entities involved in the program.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.204. ANNUAL PROGRAM REPORTS. Not later than December 1 of each year, the commission shall provide a written report to the governor, lieutenant governor, speaker of the house of representatives, and standing committees of the legislature with primary jurisdiction over the program. The report must include:

(1) a line-item list of all program administrative costs incurred by the commission;

(2) the amount of the pharmacy benefit manager and third-party administrator fees;

(3) the aggregate amounts of rebates anticipated and received for the program; and

(4) other program expenditures as the commission determines appropriate.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

CHAPTER 75. REGIONAL OR LOCAL HEALTH CARE PROGRAMS FOR EMPLOYEES OF SMALL EMPLOYERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 75.001. PURPOSE. The purpose of this chapter is to:

(1) improve the health of employees of small employers and their families by improving the employees' access to health care and by reducing the number of those employees who are uninsured;

(2) reduce the likelihood that those employees and their families will require services from state-funded entitlement programs such as Medicaid;

(3) contribute to economic development by helping small businesses remain competitive with a healthy workforce and health care benefits that will attract employees; and

(4) encourage innovative solutions for providing and funding health care services and benefits.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.002. DEFINITIONS. In this chapter:

(1) "Employee" means an individual employed by an employer. The term includes a partner of a partnership and the proprietor of a sole proprietorship.

(2) "Governing body" means:

(A) the commissioners courts of the counties participating in a regional health care program;

(B) the commissioners court of a county participating in a local health care program; or

(C) the governing body of the joint council, nonprofit entity exempt from federal taxation, or other entity that operates a regional or local health care program.

(3) "Local health care program" means a local health care program operating in one county and established for the benefit of the employees of small employers under Subchapter B.

(4) "Regional health care program" means a regional health

care program operating in two or more counties and established for the benefit of the employees of small employers under Subchapter B.

(5) "Small employer" means a person who employed an average of at least two employees but not more than 50 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

SUBCHAPTER B. REGIONAL OR LOCAL HEALTH CARE PROGRAM

Sec. 75.051. ESTABLISHMENT OF PROGRAM; MULTICOUNTY COOPERATION. (a) The commissioners court of a county may, by order, establish or participate in a local health care program under this subchapter.

(b) The commissioners courts of two or more counties may, by joint order, establish or participate in a regional health care program under this subchapter.

(c) A community-based nonprofit organization may establish or participate in a regional health care program under this subchapter without the participation of the commissioners court of a county if the program is a premium assistance program not offering health care services or health care benefits.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 739 (H.B. 2655), Sec. 1, eff. September 1, 2025.

Sec. 75.052. GOVERNANCE OF PROGRAM. (a) A regional health care program may be operated subject to the direct governance of the commissioners courts of the participating counties or, for a program operating under Section 75.051(c), a nonprofit organization. A local health care program may be operated subject to the direct governance of the commissioners court of the participating county. A regional or local health care program may be operated by a joint council, tax-exempt nonprofit entity, or other entity that:

(1) operates the program under a contract with the commissioners court or courts, as applicable;

(2) is an entity in which the county or counties participate or that is established or designated by the commissioners court or courts, as applicable, to operate the program; or

(3) for a program operating under Section 75.051(c), is a participating nonprofit organization.

(b) In selecting an entity described by Subsection (a)(1) or (2) to operate a regional or local health care program, the commissioners court or courts, as applicable, shall require, to the extent possible, that the entity be authorized under federal law to accept donations on a basis that is tax-deductible or otherwise tax-advantaged for the contributor.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 739 (H.B. 2655), Sec. 2, eff. September 1, 2025.

Sec. 75.053. OPERATION OF PROGRAM. A regional or local health care program provides health care services or benefits to the employees of participating small employers who are located within the boundaries of the participating county or counties, as applicable. A program may also provide services or benefits to the dependents of those employees.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.054. PARTICIPATION BY SMALL EMPLOYERS; SHARE OF COST. Subject to Section 75.153, the governing body may establish criteria for participation in a regional or local health care program by small employers, the employees of the small employers, and their dependents. The criteria must require that participating employers and participating employees pay a share of the premium or other cost of the program.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.055. ADDITIONAL FUNDING. (a) A governing body may accept and use state money made available through an appropriation from the general revenue fund or a gift, grant, or donation from any source to operate the regional or local health care program and to provide services or benefits under the program.

(b) A governing body may apply for and receive funding from the health opportunity pool trust fund under Subchapter D.

(c) A governing body shall actively solicit gifts, grants, and donations to:

(1) fund services and benefits provided under the regional or local health care program; and

(2) reduce the cost of participation in the program for small employers and their employees.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

SUBCHAPTER C. HEALTH CARE SERVICES AND BENEFITS

Sec. 75.101. ALTERNATIVE PROGRAMS AUTHORIZED; PROGRAM OBJECTIVES. In developing a regional or local health care program, a governing body may provide health care services or benefits as described by this subchapter or may develop another type of program to accomplish the purposes of this chapter. A regional or local health care program must be developed, to the extent practicable, to:

(1) reduce the number of individuals without health benefit plan coverage within the boundaries of the participating county or counties or, for a program operating under Section 75.051(c), in a county in which a participating nonprofit organization operates;

(2) address rising health care costs and reduce the cost of health care services or health benefit plan coverage for small employers and their employees within the boundaries of the participating county or counties or, for a program operating under Section 75.051(c), in a county in which a participating nonprofit organization operates;

(3) promote preventive care and reduce the incidence of preventable health conditions, such as heart disease, cancer, and diabetes and low birth weight in infants;

(4) promote efficient and collaborative delivery of health care services;

(5) serve as a model for the innovative use of health information technology to promote efficient delivery of health care services, reduce health care costs, and improve the health of the community; and

(6) provide fair payment rates for health care providers.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 739 (H.B. 2655), Sec. 3, eff. September 1, 2025.

Sec. 75.102. HEALTH BENEFIT PLAN COVERAGE. (a) A regional or local health care program may provide health care benefits to the employees of small employers by purchasing or facilitating the purchase of health benefit plan coverage for those employees from a health benefit plan issuer, including coverage under:

(1) a small employer health benefit plan offered under Chapter 1501, Insurance Code;

(2) a standard health benefit plan offered under Chapter 1507, Insurance Code; or

(3) any other health benefit plan available in this state.

(b) The governing body may form one or more cooperatives under Subchapter B, Chapter 1501, Insurance Code.

(c) Notwithstanding Chapter 1251, Insurance Code, an insurer may issue a group accident and health insurance policy, including a group contract issued by a group hospital service corporation, to cover the employees of small employers participating in a regional or local health care program. The group policyholder of a policy issued in accordance with this subsection is the governing body or the designee of the governing body.

(d) A health maintenance organization may issue a health care plan to cover the employees of small employers participating in a regional or local health care program. The group contract holder of a contract issued in accordance with this subsection is the governing body or the designee of the governing body.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.103. OTHER HEALTH BENEFIT PLANS OR PROGRAMS. To the extent authorized by federal law, the governing body may establish or facilitate the establishment of self-funded health benefit plans or may facilitate the provision of health benefit coverage through health savings accounts and high-deductible health plans.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.104. HEALTH CARE SERVICES. (a) A regional or local health care program may contract with health care providers within the boundaries of the participating county or counties to provide health care services directly to the employees of participating small employers and the dependents of those employees.

(b) A regional or local health care program shall allow any individual who receives state premium assistance to buy into the health benefit plan offered by the regional or local health care program.

(c) A governing body that operates a regional or local health care program under this section may require that participating employees and dependents obtain health care services only from health care providers that contract to provide those services under the program and may limit the health care services provided under the program to services provided within the boundaries of the participating county or counties.

(d) A governing body operating a regional or local health care program operated under this section is not an insurer or health maintenance organization and the program is not subject to regulation by the Texas Department of Insurance.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

SUBCHAPTER D. TEXAS HEALTH OPPORTUNITY POOL FUNDS

Sec. 75.151. DEFINITION. In this subchapter, "health opportunity pool trust fund" means the trust fund established under Subchapter D, Chapter 526, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a),

eff. September 1, 2007.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.32, eff. April 1, 2025.

Sec. 75.152. FUNDING AUTHORIZED. Notwithstanding any other law, a regional or local health care program may apply for funding from the health opportunity pool trust fund and the fund may provide funding in accordance with this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.153. ELIGIBILITY FOR FUNDS; STATEWIDE ELIGIBILITY CRITERIA. To be eligible for funding from money in the health opportunity pool trust fund, a regional or local health care program must:

(1) comply with any requirement imposed under the waiver obtained under Section 526.0152, Government Code, including, to the extent applicable, any requirement that health care benefits or services provided under the program be provided in accordance with statewide eligibility criteria; and

(2) provide health care benefits or services under the program to a person receiving premium payment assistance for health benefits coverage through a program established under Section 526.0157, Government Code, regardless of whether the person is an employee, or dependent of an employee, of a small employer.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.33, eff. April 1, 2025.

CHAPTER 76. FEDERALLY QUALIFIED HEALTH CENTER PRIMARY CARE ACCESS PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 76.001. PURPOSES. The purposes of this chapter are to:

(1) increase access to primary care services at federally qualified health centers for low-income or at-risk individuals;

(2) improve the health of the employees of participating employers and their families by improving access to health care;

(3) contribute to economic development by assisting small businesses in remaining competitive through employment of a healthy workforce and provision of health care benefits that attract employees; and

(4) encourage innovative solutions for providing and funding health care services and benefits for participating employees.

Added by Acts 2023, 88th Leg., R.S., Ch. 108 (S.B. 2193), Sec. 1, eff. May 19, 2023.

Sec. 76.002. DEFINITIONS. In this chapter:

(1) "Department of insurance" means the Texas Department of Insurance.

(2) "Employee" means an individual who is employed by an employer for compensation. The term includes a partner of a partnership and a proprietor of a sole proprietorship.

(3) "Federally qualified health center" has the meaning assigned by 42 U.S.C. Section 1396d(l)(2)(B).

(4) "Program" means a primary care access program a federally qualified health center establishes and operates under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 108 (S.B. 2193), Sec. 1, eff. May 19, 2023.

SUBCHAPTER B. PRIMARY CARE ACCESS PROGRAM

Sec. 76.051. ESTABLISHMENT AND OPERATION OF PROGRAM. (a) A federally qualified health center may establish and operate a primary care access program for the provision of primary care services and benefits directly to the employees of participating employers and their dependents within the service area of the federally qualified health center.

(b) A program operated under this chapter shall, within the service area of the federally qualified health center and to the

extent practicable:

(1) reduce the number of individuals who lack access to primary care services;

(2) reduce the cost of primary care services for small business employers and their employees;

(3) promote preventive care and reduce the incidence of preventable health conditions, such as heart disease, cancer, diabetes, and low birth weight in infants;

(4) promote efficient and collaborative delivery of primary care services;

(5) serve as a model for the innovative use of health information technology; and

(6) provide fair payment rates for participating health care providers.

(c) A federally qualified health center may require that participating employees and dependents obtain primary health care services provided under a program only from health care providers at the federally qualified health center.

(d) A federally qualified health center that operates a program under this subchapter is not subject to regulation by the department of insurance as an insurer or health maintenance organization.

Added by Acts 2023, 88th Leg., R.S., Ch. 108 (S.B. 2193), Sec. 1, eff. May 19, 2023.

Sec. 76.052. PARTICIPATION BY EMPLOYERS; SHARE OF COST. (a) A federally qualified health center may establish program participation criteria for employers, employees of the employer, and the employees' dependents.

(b) A federally qualified health center may:

(1) require participating employers and their employees to pay a share of the premium or other cost of the primary care services;

(2) contract with a health foundation or other nonprofit organization to support payment of the employer's or employee's share under Subdivision (1); and

(3) screen employees and their dependents for eligibility to enroll in other state programs and for federal subsidies in the health insurance marketplace.

Added by Acts 2023, 88th Leg., R.S., Ch. 108 (S.B. 2193), Sec. 1, eff. May 19, 2023.

Sec. 76.053. FUNDING. (a) In addition to grants awarded under Subchapter C, a federally qualified health center may accept gifts, grants, or donations from any source to administer and finance the program.

(b) A federally qualified health center shall actively solicit gifts, grants, and donations to:

(1) fund primary care services and benefits provided under the program; and

(2) reduce the cost of participation in the program for employers and their employees.

Added by Acts 2023, 88th Leg., R.S., Ch. 108 (S.B. 2193), Sec. 1, eff. May 19, 2023.

SUBCHAPTER C. PRIMARY CARE ACCESS GRANT PROGRAM

Sec. 76.101. GRANT PROGRAM. (a) The department of insurance, in collaboration with the commission, shall establish and administer a grant program to award grants to federally qualified health centers operating a program under this chapter.

(b) In awarding a grant under this section, the department of insurance shall consider whether the program will accomplish the purposes of this chapter and meet the objectives established under Section 76.051(b).

(c) The department of insurance shall establish performance objectives for a grant recipient and monitor whether the recipient meets those objectives.

(d) In addition to money appropriated by the legislature, the department of insurance may accept gifts, grants, or donations from any source to administer and finance the grant program.

Added by Acts 2023, 88th Leg., R.S., Ch. 108 (S.B. 2193), Sec. 1, eff. May 19, 2023.

Sec. 76.102. REPORT. Not later than December 1 of each even-numbered year, the department of insurance and the commission shall

jointly submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report:

(1) evaluating the success of the program in accomplishing the purposes of this chapter; and

(2) recommending any legislative or other action necessary to facilitate or improve the program.

Added by Acts 2023, 88th Leg., R.S., Ch. 108 (S.B. 2193), Sec. 1, eff. May 19, 2023.

SUBTITLE D. PREVENTION, CONTROL, AND REPORTS OF DISEASES; PUBLIC HEALTH DISASTERS AND EMERGENCIES

CHAPTER 81. COMMUNICABLE DISEASES; PUBLIC HEALTH DISASTERS; PUBLIC HEALTH EMERGENCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 81.001. SHORT TITLE. This chapter may be cited as the Communicable Disease Prevention and Control Act.

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

Sec. 81.002. RESPONSIBILITY OF STATE AND PUBLIC. The state has a duty to protect the public health. Each person shall act responsibly to prevent and control communicable disease.

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

Sec. 81.003. DEFINITIONS. In this chapter:

(1) "Communicable disease" means an illness that occurs through the transmission of an infectious agent or its toxic products from a reservoir to a susceptible host, either directly, as from an infected person or animal, or indirectly through an intermediate plant or animal host, a vector, or the inanimate environment.

(1-a) "Emergency response employee or volunteer" means an individual acting in the course and scope of employment or service as a volunteer as emergency medical service personnel, a peace officer, a detention officer, a county jailer, or a fire fighter.

(1-b) "Designated infection control officer" means the person serving as an entity's designated infection control officer

under Section 81.012.

(2) "Health authority" means:

(A) a physician appointed as a health authority under Chapter 121 (Local Public Health Reorganization Act) or the health authority's designee; or

(B) a physician appointed as a regional director under Chapter 121 (Local Public Health Reorganization Act) who performs the duties of a health authority or the regional director's designee.

(3) "Health professional" means an individual whose:

(A) vocation or profession is directly or indirectly related to the maintenance of the health of another individual or of an animal; and

(B) duties require a specified amount of formal education and may require a special examination, certificate or license, or membership in a regional or national association.

(4) "Local health department" means a department created under Chapter 121 (Local Public Health Reorganization Act).

(4-a) "Long-term care facility" means a facility licensed or regulated under Chapter 242, 247, or 252.

(4-b) "Peace officer" has the meaning assigned by Article 2A.001, Code of Criminal Procedure. The term includes a sheriff or constable.

(5) "Physician" means a person licensed to practice medicine by the Texas Medical Board.

(6) "Public health district" means a district created under Chapter 121 (Local Public Health Reorganization Act).

(7) "Public health disaster" means:

(A) a declaration by the governor of a state of disaster; and

(B) a determination by the commissioner that there exists an immediate threat from a communicable disease, health condition, or chemical, biological, radiological, or electromagnetic exposure that:

(i) poses a high risk of death or serious harm to the public; and

(ii) creates a substantial risk of harmful public exposure.

(7-a) "Public health emergency" means a determination by the commissioner, evidenced in an emergency order issued by the commissioner, that there exists an immediate threat from a

communicable disease, health condition, or chemical, biological, radiological, or electromagnetic exposure that:

(A) potentially poses a risk of death or severe illness or harm to the public; and

(B) potentially creates a substantial risk of harmful exposure to the public.

(8) "Reportable disease" means a disease or condition included in the list of reportable diseases and includes a disease that is designated as reportable under Section 81.048.

(9) "Resident of this state" means a person who:

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

(B) is not in the state for temporary purposes; and

(C) intends to make a home in this state, which may be demonstrated by the presence of personal effects at a specific abode in the state; employment in the state; possession of a Texas driver's license, motor vehicle registration, voter registration, or other similar documentation; or other pertinent evidence.

(10) "School authority" means:

(A) the superintendent of a public school system or the superintendent's designee; or

(B) the principal or other chief administrative officer of a private school.

(11) "Sexually transmitted disease" means an infection, with or without symptoms or clinical manifestations, that may be transmitted from one person to another during, or as a result of, sexual relations between two persons and that may:

(A) produce a disease in, or otherwise impair the health of, either person; or

(B) cause an infection or disease in a fetus in utero or a newborn.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.167, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0216, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 4, eff.

September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 786 (H.B. 1848), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 861 (S.B. 966), Sec. 3, eff. June 16, 2021.

Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 8, eff. June 16, 2021.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.121, eff. January 1, 2025.

Sec. 81.004. ADMINISTRATION OF CHAPTER. (a) The commissioner is responsible for the general statewide administration of this chapter.

(b) The executive commissioner may adopt rules necessary for the effective administration and implementation of this chapter.

(c) A designee of the executive commissioner may exercise a power granted to or perform a duty imposed on the executive commissioner under this chapter except as otherwise required by law.

(d) A designee of the commissioner may exercise a power granted to or perform a duty imposed on the commissioner under this chapter except as otherwise required by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.168, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0217, eff. April 2, 2015.

Sec. 81.005. CONTRACTS. The department may enter into contracts or agreements with persons as necessary to implement this chapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

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

Sec. 81.006. FUNDS. The department may seek, receive, and spend appropriations, grants, fees, or donations for the purpose of identifying, reporting, preventing, or controlling communicable

diseases or conditions determined to be injurious or to be a threat to the public health subject to any limitations or conditions prescribed by the legislature.

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

Sec. 81.007. LIMITATION ON LIABILITY. A private individual performing duties in compliance with orders or instructions of the department or a health authority issued under this chapter is not liable for the death of or injury to a person or for damage to property, except in a case of wilful misconduct or gross negligence.

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

Sec. 81.008. COMMUNICABLE DISEASE IN ANIMALS; EXCHANGE OF INFORMATION. The Texas Animal Health Commission and the Texas A&M University Veterinary Medical Diagnostic Laboratory shall each adopt by rule a memorandum of understanding, adopted also by rule by the executive commissioner, governing the exchange of information on communicable diseases in animals between the department and those entities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0218, eff. April 2, 2015.

Sec. 81.009. EXEMPTION FROM MEDICAL TREATMENT. (a) This chapter does not authorize or require the medical treatment of an individual who chooses treatment by prayer or spiritual means as part of the tenets and practices of a recognized church of which the individual is an adherent or member. However, the individual may be isolated or quarantined in an appropriate facility and shall obey the rules, orders, and instructions of the department or health authority while in isolation or quarantine.

(b) An exemption from medical treatment under this section does not apply during an emergency or an area quarantine or after the issuance by the governor of an executive order or a proclamation

under Chapter 418, Government Code (Texas Disaster Act of 1975).

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

Sec. 81.011. REQUEST FOR INFORMATION. In times of emergency or epidemic declared by the commissioner, the department is authorized to request information pertaining to names, dates of birth, and most recent addresses of individuals from the driver's license records of the Department of Public Safety for the purpose of notification to individuals of the need to receive certain immunizations or diagnostic, evaluation, or treatment services for suspected communicable diseases.

Added by Acts 1991, 72th Leg., ch. 898, Sec. 3, eff. September 1, 1991.
Redesignated from Health and Safety Code Sec. 81.023, subsec. (d) and amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.169, eff. Sept. 1, 2003.

Sec. 81.012. DESIGNATED INFECTION CONTROL OFFICER. (a) An entity that employs or uses the services of an emergency response employee or volunteer shall nominate a designated infection control officer and an alternate designated infection control officer to:

(1) receive notification of a potential exposure to a reportable disease from a health care facility;

(2) notify the appropriate health care providers of a potential exposure to a reportable disease;

(3) act as a liaison between the entity's emergency response employees or volunteers who may have been exposed to a reportable disease during the course and scope of employment or service as a volunteer and the destination hospital of the patient who was the source of the potential exposure;

(4) investigate and evaluate an exposure incident, using current evidence-based information on the possible risks of communicable disease presented by the exposure incident; and

(5) monitor all follow-up treatment provided to the affected emergency response employee or volunteer, in accordance with applicable federal, state, and local law.

(b) The executive commissioner by rule shall prescribe the

qualifications required for a person to be eligible to be designated as an infection control officer under this section. The qualifications must include a requirement that the person be trained as a health care provider or have training in the control of infectious and communicable diseases.

(c) The entity that employs or uses the services of an emergency response employee or volunteer is responsible for notifying the local health authorities or local health care facilities, according to any local rules or procedures, that the entity has a designated infection control officer or alternate designated infection control officer.

Added by Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 5, eff. September 1, 2015.

Sec. 81.013. CONSIDERATION OF FEDERAL LAW AND REGULATIONS. The executive commissioner shall review the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. L. No. 111-87) or any successor law and any regulations adopted under the law and determine whether adopting by rule any part of the federal law or regulations is in the best interest of the state to further achieve the purposes of this chapter. If the executive commissioner determines that adopting the federal law or regulations is in the best interest of the state to further achieve the purposes of this chapter, the executive commissioner may by rule adopt all or a part of the federal law or regulations.

Added by Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 5, eff. September 1, 2015.

Sec. 81.014. LONG-TERM CARE FACILITY INFECTION PREVENTION AND CONTROL PROGRAM. Each long-term care facility's infection prevention and control program must include:

(1) monitoring of key infectious agents, including multidrug-resistant organisms; and

(2) procedures for making rapid influenza diagnostic tests available to facility residents.

Added by Acts 2019, 86th Leg., R.S., Ch. 786 (H.B. 1848), Sec. 2, eff.

September 1, 2019.

Sec. 81.015. ANTIMICROBIAL STEWARDSHIP REGIONAL ADVISORY COMMITTEES. (a) The department shall establish a regional advisory committee in each public health region designated under Section 121.007 to address antimicrobial stewardship in long-term care facilities and to improve antimicrobial stewardship through collaborative action.

(b) A regional advisory committee established under this section must include:

(1) physicians;

(2) directors of nursing or equivalent consultants with long-term care facilities;

(3) public health officials knowledgeable about antimicrobial stewardship; and

(4) other interested parties.

Added by Acts 2019, 86th Leg., R.S., Ch. 786 (H.B. 1848), Sec. 2, eff. September 1, 2019.

Text of section as added by Acts 2021, 87th Leg., R.S., Ch. 842 (S.B. 437), Sec. 1

For text of section as added by Acts 2021, 87th Leg., R.S., Ch. 864 (S.B. 969), Sec. 1, see other Sec. 81.016.

For expiration of this section, see Subsection (d).

Sec. 81.016. PERSONAL PROTECTIVE EQUIPMENT RESERVE ADVISORY COMMITTEE. (a) In this section, "division" means the Texas Division of Emergency Management.

(b) The division shall establish the Personal Protective Equipment Reserve Advisory Committee composed of the following members appointed by the division:

(1) one representative of an association representing different types of hospitals and health systems;

(2) one representative of an association representing nursing facilities;

(3) one representative of an association representing primary care clinics;

(4) one representative of an association representing nurses;

(5) one representative of an association representing home hospice care providers;

(6) one representative of a statewide association representing physicians;

(7) two representatives of labor organizations that represent essential personnel;

(8) one representative from the personal protective equipment manufacturing industry;

(9) one consumer representative;

(10) one representative from an association representing counties;

(11) one representative of a regional advisory council from one of this state's trauma service areas;

(12) one representative from the department;

(13) one representative from the division; and

(14) one representative from the commission.

(c) The advisory committee shall make recommendations to the division as necessary on:

(1) the procurements needed for a statewide personal protective equipment reserve;

(2) the storage of the equipment in the reserve; and

(3) the distribution of the equipment to health care workers and essential personnel.

(d) This section expires and the advisory committee is abolished September 1, 2023.

Added by Acts 2021, 87th Leg., R.S., Ch. 842 (S.B. 437), Sec. 1, eff. June 16, 2021.

Text of section as added by Acts 2021, 87th Leg., R.S., Ch. 864 (S.B. 969), Sec. 1

For text of section as added by Acts 2021, 87th Leg., R.S., Ch. 842 (S.B. 437), Sec. 1, see other Sec. 81.016.

Sec. 81.016. AVAILABILITY OF DATA REGARDING PUBLIC HEALTH DISASTER. During a public health disaster, the department shall timely make available to the public on the department's Internet website, in an easy-to-read format, all available de-identified

public health data regarding the public health disaster. The department must present data related to individuals as summary statistics consistent with the confidentiality provisions of Sections 81.046, 161.0073, and 161.008.

Added by Acts 2021, 87th Leg., R.S., Ch. 864 (S.B. 969), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. PREVENTION AND PREPAREDNESS

Sec. 81.021. PROTECTION OF PUBLIC HEALTH. The executive commissioner and department shall exercise their powers in matters relating to protecting the public health to prevent the introduction of disease into the state.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0220, eff. April 2, 2015.

Sec. 81.022. HEALTH EDUCATION. (a) The department may conduct a program of health education for the prevention and control of communicable disease.

(b) The department may contract for presentations to increase the public awareness of individual actions needed to prevent and control communicable disease. The types of presentations include mass media productions, outdoor display advertising, newspaper advertising, literature, bulletins, pamphlets, posters, and audiovisual displays.

(c) The department shall recommend a public school health curriculum to the State Board of Education.

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

Sec. 81.023. IMMUNIZATION. (a) The department shall develop immunization requirements for children.

(b) The department shall cooperate with the Department of Family and Protective Services in formulating and implementing the immunization requirements for children admitted to child-care

facilities.

(c) The department shall cooperate with the State Board of Education in formulating and implementing immunization requirements for students admitted to public or private primary or secondary schools.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 898, Sec. 3, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.075, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.169, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0221, eff. April 2, 2015.

Sec. 81.024. REPORTS BY DEPARTMENT. The department shall provide regular reports of the incidence, prevalence, and medical and economic effects of each disease that the department determines is a threatening risk to the public health. A disease may be a risk because of its indirect complications.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0222, eff. April 2, 2015.

Sec. 81.027. TRAUMA SERVICE AREA REGIONAL ADVISORY COUNCIL DATA COLLECTION AND REPORTING. (a) Each trauma service area regional advisory council shall collect from each hospital located in the regional advisory council's trauma service area the de-identified health care data, including demographic data, necessary for this state and the area to effectively plan for and respond to public health disasters and communicable or infectious disease emergencies in this state. The executive commissioner by rule shall prescribe the data each council must collect under this subsection.

(b) A trauma service area regional advisory council shall:

(1) provide the data collected under Subsection (a) to the department; and

(2) make the data publicly available by:

(A) posting the data on the regional advisory council's

Internet website; or

(B) if the regional advisory council does not maintain an Internet website, providing the data in writing on request.

(c) Information collected or maintained under this section that identifies a patient is confidential and exempt from disclosure under Chapter 552, Government Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 866 (S.B. 984), Sec. 1, eff. September 1, 2021.

SUBCHAPTER C. REPORTS AND REPORTABLE DISEASES

Sec. 81.041. REPORTABLE DISEASES. (a) The executive commissioner shall identify each communicable disease or health condition that shall be reported under this chapter.

(b) The executive commissioner shall classify each reportable disease according to its nature and the severity of its effect on the public health.

(c) The executive commissioner shall maintain and revise as necessary the list of reportable diseases.

(d) The executive commissioner may establish registries for reportable diseases and other communicable diseases and health conditions. The provision to the department of information relating to a communicable disease or health condition that is not classified as reportable is voluntary only.

(e) Acquired immune deficiency syndrome and human immunodeficiency virus infection are reportable diseases under this chapter for which the executive commissioner shall require reports.

(f) In a public health disaster, the commissioner may require reports of communicable diseases or other health conditions from providers without the adoption of a rule or other action by the executive commissioner. The commissioner shall issue appropriate instructions relating to complying with the reporting requirements of this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.170, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0223, eff. April 2, 2015.

Sec. 81.042. PERSONS REQUIRED TO REPORT. (a) A report under Subsection (b), (c), or (d) shall be made to the local health authority.

(b) A dentist or veterinarian licensed to practice in this state or a physician shall report, after the first professional encounter, a patient or animal examined that has or is suspected of having a reportable disease.

(c) A local school authority shall report a child attending school who is suspected of having a reportable disease. The executive commissioner by rule shall establish procedures to determine if a child should be suspected and reported and to exclude the child from school pending appropriate medical diagnosis or recovery.

(d) A person in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of a specimen derived from a human body yields microscopical, cultural, serological, or other evidence of a reportable disease shall report the findings, in accordance with this section and procedures adopted by the executive commissioner, in the jurisdiction in which:

(1) the physician's office is located, if the laboratory examination was requested by a physician; or

(2) the laboratory is located, if the laboratory examination was not requested by a physician.

(e) The following persons shall report to the local health authority or the department a suspected case of a reportable disease and all information known concerning the person who has or is suspected of having the disease if a report is not made as required by Subsections (a)-(d):

(1) a professional registered nurse;

(2) an administrator or director of a public or private temporary or permanent child-care facility;

(3) an administrator or director of a nursing home, personal care home, adult respite care center, or day activity and health services facility;

(4) an administrator of a home health agency;

(5) an administrator or health official of a public or private institution of higher education;

(6) an owner or manager of a restaurant, dairy, or other food handling or processing establishment or outlet;

(7) a superintendent, manager, or health official of a public or private camp, home, or institution;

(8) a parent, guardian, or householder;

(9) a health professional;

(10) an administrator or health official of a penal or correctional institution; or

(11) emergency medical service personnel, a peace officer, or a firefighter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.171, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1312, Sec. 7, eff. June 21, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 14, eff. September 1, 2012.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0224, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 2, eff. June 19, 2015.

Sec. 81.043. RECORDS AND REPORTS OF HEALTH AUTHORITY. (a) Each health authority shall keep a record of each case of a reportable disease that is reported to the authority.

(b) A health authority shall report reportable diseases to the department's central office at least as frequently as the interval set by department rule.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(28), eff. April 2, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(28), eff. April 2, 2015.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.172, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 447 (H.B. 246), Sec. 1, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0225, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(28), eff. April 2, 2015.

Sec. 81.044. REPORTING PROCEDURES. (a) The executive commissioner shall prescribe the form and method of reporting under this chapter by electronic data transmission, through a health information exchange as defined by Section 182.151 if requested and authorized by the person required to report, or by other means.

(b) The executive commissioner may require the reports to contain any information relating to a case that is necessary for the purposes of this chapter, including:

(1) the patient's name, address, age, sex, race, and occupation;

(2) the date of onset of the disease or condition;

(3) the probable source of infection; and

(4) the name of the attending physician or dentist.

(b-1) In this subsection, "cycle threshold value" means for a communicable disease test the number of thermal cycles required for the fluorescent signal to exceed that of the background and cross the threshold for a positive test. The executive commissioner shall require the reports of polymerase chain reaction tests from clinical or hospital laboratories to contain the cycle threshold values and their reference ranges.

(c) The commissioner may authorize an alternate routing of information in particular cases if the commissioner determines that the reporting procedure would cause the information to be unduly delayed.

(d) For a case of acquired immune deficiency syndrome or human immunodeficiency virus infection, the executive commissioner shall require the reports to contain:

(1) the information described by Subsection (b); and

(2) the patient's ethnicity, national origin, and city and county of residence.

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

Acts 2007, 80th Leg., R.S., Ch. 447 (H.B. 246), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0226, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 4, eff.

September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 10, eff. June 16, 2021.

Acts 2021, 87th Leg., R.S., Ch. 864 (S.B. 969), Sec. 2, eff. September 1, 2021.

Sec. 81.0443. STANDARDIZED INFORMATION SHARING METHOD. The department shall collaborate with local health authorities, hospitals, laboratories, and other persons who submit information to the department during a public health disaster or in response to other outbreaks of communicable disease to plan, design, and implement a standardized and streamlined method for sharing information needed during the disaster or response. The department may require a person submitting information to the department under this subchapter to use the method developed under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 864 (S.B. 969), Sec. 3, eff. September 1, 2021.

Sec. 81.0444. HOSPITAL TO REPORT. A hospital shall report to the department and to the applicable trauma service area regional advisory council all information required by the department related to a reportable disease for which a public health disaster is declared.

Added by Acts 2021, 87th Leg., R.S., Ch. 864 (S.B. 969), Sec. 3, eff. September 1, 2021.

Sec. 81.0445. PROVISION OF INFORMATION TO PUBLIC DURING PUBLIC HEALTH DISASTER. (a) This section applies only to information related to a reportable disease for which a public health disaster is declared.

(b) The department and each trauma service area regional advisory council shall make publicly available in accordance with Subsection (c) the information a hospital is required to report to the department and regional advisory council under Section 81.0444. The department and each regional advisory council shall ensure that information released under this subsection does not contain any

personally identifiable information.

(c) The department shall collaborate and coordinate with local health departments to ensure that all information covering a reporting period is released to the public in a timely manner.

(d) The department shall develop and publish on its Internet website monthly compliance reports for laboratories reporting during a public health disaster. Each compliance report, at a minimum, must include:

(1) the number of laboratory reports the department receives by electronic data transmission;

(2) the number of incomplete information fields in the laboratory reports;

(3) the electronic format each laboratory used in submitting information;

(4) the number of coding errors in the laboratory reports; and

(5) the average length of time from the date the specimen is collected to the date the department receives the corresponding laboratory report.

(e) The department shall develop and publish on its Internet website monthly compliance reports for hospitals reporting during a public health disaster. Each compliance report, at a minimum, must include:

(1) the number of incomplete information fields in the hospital reports;

(2) the number of reports a hospital failed to submit in a timely manner; and

(3) the number of identified inaccuracies in the information submitted.

Added by Acts 2021, 87th Leg., R.S., Ch. 864 (S.B. 969), Sec. 3, eff. September 1, 2021.

Sec. 81.045. REPORTS OF DEATH. (a) A physician who attends a person during the person's last illness shall immediately notify the health authority of the jurisdiction in which the person's death is pronounced or the department if the physician knows or suspects that the person died of a reportable disease or other communicable disease that the physician believes may be a threat to the public health.

(b) An attending physician or health authority, with consent of the survivors, may request an autopsy if the physician or health authority needs further information concerning the cause of death in order to protect the public health. The health authority shall order the autopsy to determine the cause of death if there are no survivors or the survivors withhold consent to the autopsy. The autopsy results shall be reported to the department.

Text of subsection effective until April 1, 2027

(c) A justice of the peace acting as coroner or a county medical examiner in the course of an inquest under Chapter 49, Code of Criminal Procedure, who finds that a person's cause of death was a reportable disease or other communicable disease that the coroner or medical examiner believes may be a threat to the public health shall immediately notify the health authority of the jurisdiction in which the finding is made or the department.

Text of subsection effective on April 1, 2027

(c) A justice of the peace acting as coroner or a county medical examiner in the course of an inquest under Chapter 49A, Code of Criminal Procedure, who finds that a person's cause of death was a reportable disease or other communicable disease that the coroner or medical examiner believes may be a threat to the public health shall immediately notify the health authority of the jurisdiction in which the finding is made or the department.

(d) If the department provides to a health authority, who serves in that office part-time as described by Section 121.0245, information on a death from a reportable or other communicable disease reported to the department under this section, the department shall also provide the information to the director of the local health department for the county served by the health authority.

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

Acts 2021, 87th Leg., R.S., Ch. 566 (S.B. 464), Sec. 1, eff. June 14, 2021.

Acts 2025, 89th Leg., R.S., Ch. 202 (H.B. 1610), Sec. 2.09, eff. April 1, 2027.

Sec. 81.046. CONFIDENTIALITY. (a) Reports, records, and information received from any source, including from a federal agency

or from another state, furnished to a public health district, a health authority, a local health department, or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by:

(1) Subsections (c), (c-1), (d), and (f); and

(2) Section 181.060.

(c) Medical or epidemiological information, including information linking a person who is exposed to a person with a communicable disease, may be released:

(1) for statistical purposes if released in a manner that prevents the identification of any person;

(2) with the consent of each person identified in the information;

(3) to medical personnel treating the individual, appropriate state agencies in this state or another state, a health authority or local health department in this state or another state, or federal, county, or district courts to comply with this chapter and related rules relating to the control and treatment of communicable diseases and health conditions or under another state or federal law that expressly authorizes the disclosure of this information;

(4) to appropriate federal agencies, such as the Centers for Disease Control and Prevention, but, except as provided under Subsection (c-3), the information must be limited to the name, address, sex, race, and occupation of the patient, the date of disease onset, the probable source of infection, and other requested information relating to the case or suspected case of a communicable disease or health condition;

(5) to medical personnel to the extent necessary in a medical emergency to protect the health or life of the person identified in the information;

(6) to a designated infection control officer;

(7) to governmental entities that provide first responders who may respond to a situation involving a potential communicable

disease of concern and need the information to properly respond to the situation; or

(8) to a local health department or health authority for a designated monitoring period based on the potential risk for developing symptoms of a communicable disease of concern.

(c-1) A local health department or health authority shall provide to first responders the physical address of a person who is being monitored by the local department or authority for a communicable disease for the duration of the disease's incubation period. The local health department, health authority, or other governmental entity, as applicable, shall remove the person's physical address from any computer-aided dispatch system after the monitoring period expires.

(c-2) Only the minimum necessary information may be released under Subsections (c)(6) and (7) and (c-1), as determined by a health authority, local health department, governmental entity, or department.

(c-3) The following medical or epidemiological information relating to a person who has or is suspected of having a present or potential health condition resulting from exposure to a high consequence communicable disease as defined by the department, including the Zika virus, may be released to an appropriate federal agency:

(1) the name, address, sex, race, and occupation of the person;

(2) the date of the onset of the health condition;

(3) the probable source of infection or exposure; and

(4) other requested information relating to the case or suspected case of the infection.

(d) In a case of sexually transmitted disease involving a minor under 14 years of age, information may not be released, except that the child's name, age, and address and the name of the disease may be released to appropriate agents as required by Chapter 261, Family Code. This subsection does not affect a person's duty to report child abuse or neglect under Subchapter B, Chapter 261, Family Code, except that information made confidential by this chapter may not be released. If that information is required in a court proceeding involving child abuse, the information shall be disclosed in camera.

(e) A state or public health district officer or employee, local health department officer or employee, or health authority may

not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of, or reports or information about, a person examined or treated for a reportable disease by the public health district, local health department, or health authority without that person's consent.

(f) Reports, records, and information relating to cases or suspected cases of diseases or health conditions may be released to the extent necessary during a public health disaster, including an outbreak of a communicable disease, to law enforcement personnel and first responders solely for the purpose of protecting the health or life of a first responder or the person identified in the report, record, or information. Only the minimum necessary information may be released under this subsection, as determined by the health authority, the local health department, or the department.

(g) A judge of a county or district court may issue a protective order or take other action to limit disclosure of medical or epidemiological information obtained under this section before that information is entered into evidence or otherwise disclosed in a court proceeding.

(h) For purposes of this section, "first responder" has the meaning assigned by Section 421.095, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 7.39, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.173, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 788 (S.B. 1171), Sec. 1, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 789 (H.B. 2646), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 6, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 9.001, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(25), eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 29, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1087 (H.B. 3576), Sec. 1, eff.

September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1087 (H.B. 3576), Sec. 2, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 95 (S.B. 930), Sec. 1, eff. September 1, 2021.

Sec. 81.047. EPIDEMIOLOGICAL REPORTS. Subject to the confidentiality requirements of this chapter, the department shall require epidemiological reports of disease outbreaks and of individual cases of disease suspected or known to be of importance to the public health. The department shall evaluate the reports to determine the trends involved and the nature and magnitude of the hazards.

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

Sec. 81.048. NOTIFICATION OF EMERGENCY RESPONSE EMPLOYEE OR VOLUNTEER. (a) The executive commissioner shall:

(1) designate certain reportable diseases for notification under this section; and

(2) define the conditions that constitute possible exposure to those diseases.

(b) Notice of a positive or negative test result for a reportable disease designated under Subsection (a) shall be given to an emergency response employee or volunteer as provided by this section if:

(1) the emergency response employee or volunteer delivered a person to a hospital as defined by Section 74.001, Civil Practice and Remedies Code;

(2) the hospital has knowledge that the person has a reportable disease and has medical reason to believe that the person had the disease when the person was admitted to the hospital; and

(3) the emergency response employee or volunteer was exposed to the reportable disease during the course and scope of the person's employment or service as a volunteer.

(c) Notice of the possible exposure shall be given:

(1) by the hospital to the local health authority;

(2) by the hospital to the designated infection control

officer of the entity that employs or uses the services of the affected emergency response employee or volunteer; and

(3) by the local health authority or the designated infection control officer of the entity that employs or uses the services of the affected emergency response employee or volunteer to the employee or volunteer affected.

(d) A person notified of a possible exposure under this section shall maintain the confidentiality of the information as provided by this chapter.

(e) A person is not liable for good faith compliance with this section.

(f) This section does not create a duty for a hospital to perform a test that is not necessary for the medical management of the person delivered to the hospital.

(g) A hospital that gives notice of a possible exposure under Subsection (c) or a local health authority or designated infection control officer that receives notice of a possible exposure under Subsection (c) may give notice of the possible exposure to a person other than the affected emergency response employee or volunteer if the person demonstrates that the person was exposed to the reportable disease while providing emergency care. The executive commissioner shall adopt rules to implement this subsection.

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

Acts 2005, 79th Leg., Ch. 135 (H.B. 738), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 243 (H.B. 162), Sec. 2, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0227, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 7, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 8, eff. September 1, 2015.

Sec. 81.049. FAILURE TO REPORT; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly fails to report a reportable disease or health condition under this subchapter.

(b) An offense under this section is a Class B misdemeanor.

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

Sec. 81.0495. FAILURE TO REPORT; CIVIL PENALTY. (a) The department may impose a civil penalty of not more than $1,000 on a health care facility for each failure to submit a report required under this subchapter.

(b) The attorney general may bring an action to recover a civil penalty imposed under Subsection (a).

Added by Acts 2021, 87th Leg., R.S., Ch. 864 (S.B. 969), Sec. 3, eff. September 1, 2021.

Sec. 81.050. MANDATORY TESTING OF PERSONS SUSPECTED OF EXPOSING CERTAIN OTHER PERSONS TO REPORTABLE DISEASES, INCLUDING HIV INFECTION. (a) The executive commissioner by rule shall prescribe the criteria that constitute exposure to reportable diseases. The criteria must be based on activities that the United States Public Health Service determines pose a risk of infection.

(b) A person whose occupation or whose volunteer service is included in one or more of the following categories may request the department or a health authority to order testing of another person who may have exposed the person to a reportable disease:

(1) a law enforcement officer;

(2) a fire fighter;

(3) an emergency medical service employee or paramedic;

(4) a correctional officer;

(5) an employee, contractor, or volunteer, other than a correctional officer, who performs a service in a correctional facility as defined by Section 1.07, Penal Code, or a secure correctional facility or secure detention facility as defined by Section 51.02, Family Code;

(6) an employee of a juvenile probation department; or

(7) any other emergency response employee or volunteer.

(c) A request under this section may be made only if the person:

(1) has experienced the exposure in the course of the person's employment or volunteer service;

(2) believes that the exposure places the person at risk of a reportable disease; and

(3) presents to the department or health authority a sworn affidavit that delineates the reasons for the request.

(d) The department or the department's designee who meets the minimum training requirements prescribed by department rule shall review the person's request and inform the person whether the request meets the criteria establishing risk of infection with a reportable disease.

(e) The department or the department's designee shall give the person who is subject to the order prompt and confidential written notice of the order. The order must:

(1) state the grounds and provisions of the order, including the factual basis for its issuance;

(2) refer the person to appropriate health care facilities where the person can be tested for reportable diseases; and

(3) inform the person who is subject to the order of that person's right to refuse to be tested and the authority of the department or health authority to ask for a court order requiring the test.

(f) If the person who is subject to the order refuses to comply, the prosecuting attorney who represents the state in district court, on request of the department or the department's designee, shall petition the district court for a hearing on the order. The person who is subject to the order has the right to an attorney at the hearing, and the court shall appoint an attorney for a person who cannot afford legal representation. The person may not waive the right to an attorney unless the person has consulted with an attorney.

(g) In reviewing the order, the court shall determine whether exposure occurred and whether that exposure presents a possible risk of infection as defined by department rule. The attorney for the state and the attorney for the person subject to the order may introduce evidence at the hearing in support of or opposition to the testing of the person. On conclusion of the hearing, the court shall either issue an appropriate order requiring counseling and testing of the person for reportable diseases or refuse to issue the order if the court has determined that the counseling and testing of the person is unnecessary. The court may assess court costs against the person who requested the test if the court finds that there was not

reasonable cause for the request.

(h) The department or the department's designee shall inform the person who requested the order and the designated infection control officer of the person who requested the order, if that person is an emergency response employee or volunteer, of the results of the test. If the person subject to the order is found to have a reportable disease, the department or the department's designee shall inform that person and the person who requested the order of the need for medical follow-up and counseling services. The department or the department's designee shall develop protocols for coding test specimens to ensure that any identifying information concerning the person tested will be destroyed as soon as the testing is complete.

(i) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(28), eff. April 2, 2015.

(j) For the purpose of qualifying for workers' compensation or any other similar benefits for compensation, an employee who claims a possible work-related exposure to a reportable disease must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of the reportable disease.

(k) A person listed in Subsection (b) who may have been exposed to a reportable disease may not be required to be tested.

(l) In this section, "test result" has the meaning assigned by Section 81.101.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 17, eff. Sept. 1, 1991.
Amended by:

Acts 2005, 79th Leg., Ch. 320 (S.B. 665), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 925 (H.B. 3005), Sec. 1, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0228, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(28), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 9, eff. September 1, 2015.

Sec. 81.051. PARTNER NOTIFICATION PROGRAMS; HIV INFECTION. (a) The department shall establish programs for partner notification and referral services.

(b) The partner notification services offered by health care providers participating in a program shall be made available and easily accessible to all persons with clinically validated HIV seropositive status.

(c) If a person with HIV infection voluntarily discloses the name of a partner, that information is confidential. Partner names may be used only for field investigation and notification.

(d) An employee of a partner notification program shall make the notification. The employee shall inform the person who is named as a partner of the:

(1) methods of transmission and prevention of HIV infection;

(2) telephone numbers and addresses of HIV antibody testing sites; and

(3) existence of local HIV support groups, mental health services, and medical facilities.

(e) The employee may not disclose:

(1) the name of or other identifying information concerning the identity of the person who gave the partner's name; or

(2) the date or period of the partner's exposure.

(f) If the person with HIV infection also makes the notification, the person should provide the information listed in Subsection (d).

(g) A partner notification program shall be carried out as follows:

(1) a partner notification program shall make the notification of a partner of a person with HIV infection in the manner authorized by this section regardless of whether the person with HIV infection who gave the partner's name consents to the notification; and

(2) a health care professional shall notify the partner notification program when the health care professional knows the HIV+ status of a patient and the health care professional has actual knowledge of possible transmission of HIV to a third party. Such notification shall be carried out in the manner authorized in this section and Section 81.103.

(h) A health care professional who fails to make the

notification required by Subsection (g) is immune from civil or criminal liability for failure to make that notification.

(i) A partner notification program shall provide counseling, testing, or referral services to a person with HIV infection regardless of whether the person discloses the names of any partners.

(j) A partner notification program shall routinely evaluate the performance of counselors and other program personnel to ensure that high quality services are being delivered. A program shall adopt quality assurance and training guidelines according to recommendations of the Centers for Disease Control and Prevention of the United States Public Health Service for professionals participating in the program.

(k) In this section, "HIV" has the meaning assigned by Section 81.101.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 18, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 622, Sec. 1, eff. June 14, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0229, eff. April 2, 2015.

Sec. 81.052. REPORTS AND ANALYSES CONCERNING AIDS AND HIV INFECTION. (a) The department shall ensure timely and accurate reporting under this chapter of information relating to acquired immune deficiency syndrome and human immunodeficiency virus infection.

(b) The department shall:

(1) quarterly compile the information submitted under Section 81.043(c) and make the compiled data available to the public within six months of the last day of each quarter;

(2) annually analyze and determine trends in incidence and prevalence of AIDS and HIV infection by region, city, county, age, gender, race, ethnicity, national origin, transmission category, and other factors as appropriate; and

(3) annually prepare a report on the analysis conducted under Subdivision (2) and make the report available to the public.

(b-1) The department may not include any information that would allow the identification of an individual in an analysis conducted under Subsection (b) or in a report prepared under that subsection.

(c) The department shall annually project the number of AIDS cases expected in this state based on the reports.

(d) The department shall make available epidemiologic projections and other analyses, including comparisons of Texas and national trends, to state and local agencies for use in planning, developing, and evaluating AIDS and HIV-related programs and services.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 19, eff. Sept. 1, 1991. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 447 (H.B. 246), Sec. 3, eff. September 1, 2007.

Sec. 81.053. DATA QUALITY ASSURANCE. The department shall implement quality assurance procedures to ensure that data collected and reported for a public health disaster is systematically reviewed for errors and completeness. The department shall implement procedures to timely resolve any deficiencies in data collection and reporting.

Added by Acts 2021, 87th Leg., R.S., Ch. 864 (S.B. 969), Sec. 3, eff. September 1, 2021.

SUBCHAPTER D. INVESTIGATION AND INSPECTION

Sec. 81.061. INVESTIGATION. (a) The department shall investigate the causes and effects of communicable disease and methods of prevention.

(b) The department may require special investigations of specified cases of disease to evaluate the status in this state of epidemic, endemic, or sporadic diseases. Each health authority shall provide information on request according to the department's written instructions.

(c) The department may investigate the existence of communicable disease in the state to determine the nature and extent of the disease and potential effects on the health of individuals and to formulate and evaluate the control measures used to protect the public health. A person shall provide records and other information to the department on request according to the department's written instructions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1087 (H.B. 3576), Sec. 3, eff. September 1, 2017.

Sec. 81.062. WITNESSES; DOCUMENTS. (a) For the purpose of an investigation under Section 81.061(c), the department may administer oaths, summon witnesses, and compel the attendance of a witness or the production of a document. The department may request the assistance of a county or district court to compel the attendance of a summoned witness or the production of a requested document at a hearing.

(b) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to appear at a hearing or proceeding under this section conducted outside the witness's or deponent's county of residence is entitled to a travel and per diem allowance. The executive commissioner by rule shall set the allowance in an amount not to exceed the travel and per diem allowance authorized for state employees traveling in this state on official business.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0230, eff. April 2, 2015.

Sec. 81.063. SAMPLES. (a) A person authorized to conduct an investigation under this subchapter may take samples of materials present on the premises, including soil, water, air, unprocessed or processed foodstuffs, manufactured clothing, pharmaceuticals, and household goods.

(b) A person who takes a sample under this section shall offer a corresponding sample to the person in control of the premises for independent analysis.

(c) A person who takes a sample under this section may reimburse or offer to reimburse the owner for the materials taken. The reimbursement may not exceed the actual monetary loss to the owner.

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

Sec. 81.064. INSPECTION. (a) The department or a health authority may enter at reasonable times and inspect within reasonable limits a public place in the performance of that person's duty to prevent or control the entry into or spread in this state of communicable disease by enforcing this chapter or the rules adopted under this chapter.

(b) In this section, "a public place" means all or any portion of an area, building or other structure, or conveyance that is not used for private residential purposes, regardless of ownership.

(c) Evidence gathered during an inspection by the department or health authority under this section may not be used in a criminal proceeding other than a proceeding to assess a criminal penalty under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.174, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0231, eff. April 2, 2015.

Sec. 81.065. RIGHT OF ENTRY. (a) For an investigation or inspection, the commissioner, an employee of the department, or a health authority has the right of entry on land or in a building, vehicle, watercraft, or aircraft and the right of access to an individual, animal, or object that is in isolation, detention, restriction, or quarantine instituted by the commissioner, an employee of the department, or a health authority or instituted voluntarily on instructions of a private physician.

(b) Evidence gathered during an entry by the commissioner, department, or health authority under this section may not be used in a criminal proceeding other than a proceeding to assess a criminal penalty under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.175, eff. Sept. 1, 2003.

Sec. 81.066. CONCEALING COMMUNICABLE DISEASE OR EXPOSURE TO COMMUNICABLE DISEASE; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly conceals or attempts to conceal from the department, a health authority, or a peace officer, during the course of an investigation under this chapter, the fact that:

(1) the person has, has been exposed to, or is the carrier of a communicable disease that is a threat to the public health; or

(2) a minor child or incompetent adult of whom the person is a parent, managing conservator, or guardian has, has been exposed to, or is the carrier of a communicable disease that is a threat to the public health.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.176, eff. Sept. 1, 2003.

Sec. 81.067. CONCEALING, REMOVING, OR DISPOSING OF AN INFECTED OR CONTAMINATED ANIMAL, OBJECT, VEHICLE, WATERCRAFT, OR AIRCRAFT; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly conceals, removes, or disposes of an infected or contaminated animal, object, vehicle, watercraft, or aircraft that is the subject of an investigation under this chapter by the department, a health authority, or a peace officer.

(b) An offense under this Section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.177, eff. Sept. 1, 2003.

Sec. 81.068. REFUSING ENTRY OR INSPECTION; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly refuses or attempts to refuse entry to the department, a health authority, or a peace officer on presentation of a valid search warrant to investigate, inspect, or take samples on premises controlled by the person or by an agent of the person acting on the person's instruction.

(b) A person commits an offense if the person knowingly refuses or attempts to refuse inspection under Section 81.064 or entry or access under Section 81.065.

(c) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.178, eff. Sept. 1, 2003.

SUBCHAPTER E. CONTROL; PUBLIC HEALTH DISASTERS; PUBLIC HEALTH EMERGENCIES

Sec. 81.081. DEPARTMENT'S DUTY. The department is the preemptive authority for purposes of this chapter and shall coordinate statewide or regional efforts to protect public health. The department shall collaborate with local elected officials, including county and municipal officials, to prevent the spread of disease and protect the public health.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0232, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 11, eff. June 16, 2021.

Sec. 81.0813. AUTHORITY TO DECLARE PUBLIC HEALTH DISASTER OR ORDER PUBLIC HEALTH EMERGENCY. (a) The commissioner may declare a statewide or regional public health disaster or order a statewide or regional public health emergency if the commissioner determines an occurrence or threat to public health is imminent. The commissioner may declare a public health disaster only if the governor declares a state of disaster under Chapter 418, Government Code, for the occurrence or threat.

(b) Except as provided by Subsection (c), a public health disaster or public health emergency continues until the governor or commissioner terminates the disaster or emergency on a finding that:

(1) the threat or danger has passed; or

(2) the disaster or emergency has been managed to the extent emergency conditions no longer exist.

(c) A public health disaster or public health emergency expires on the 30th day after the date the disaster or emergency is declared or ordered by the commissioner. A public health disaster may only be renewed by the legislature or by the commissioner with the approval of a designated legislative oversight board that has been granted

authority under a statute enacted by the legislature to approve the renewal of a public health disaster declaration. Each renewal period may not exceed 30 days.

(d) A declaration or order issued under this section must include:

(1) a description of the nature of the disaster or emergency;

(2) a designation of the area threatened by the disaster or emergency;

(3) a description of the condition that created the disaster or emergency; and

(4) if applicable:

(A) the reason for renewing the disaster or emergency; or

(B) the reason for terminating the disaster or emergency.

(e) A declaration or order issued under this section must be disseminated promptly by means intended to bring its contents to the public's attention. A statewide or regional declaration or order shall be filed promptly with the office of the governor and the secretary of state. A regional declaration or order shall be filed with the county clerk or municipal secretary in each area to which it applies, unless the circumstances attendant on the disaster or emergency prevent or impede the filing.

Added by Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 12, eff. June 16, 2021.

Sec. 81.0814. CONSULTATION WITH TASK FORCE ON INFECTIOUS DISEASE PREPAREDNESS AND RESPONSE. After declaring a public health disaster or ordering a public health emergency, the commissioner shall consult with the Task Force on Infectious Disease Preparedness and Response, including any subcommittee the task force forms to aid in the rapid assessment of response efforts.

Added by Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 12, eff. June 16, 2021.

Sec. 81.0815. FAILURE TO REPORT; CIVIL PENALTY. (a) A health

care facility that fails to submit a report required by the department under a public health disaster is liable to this state for a civil penalty of not more than $1,000 for each failure.

(b) The attorney general at the request of the department may bring an action to collect a civil penalty imposed under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 12, eff. June 16, 2021.

Sec. 81.082. ADMINISTRATION OF CONTROL MEASURES. (a) A health authority has supervisory authority and control over the administration of communicable disease control measures in the health authority's jurisdiction unless specifically preempted by the department. Control measures imposed by a health authority must be consistent with, and at least as stringent as, the control measure standards in rules adopted by the executive commissioner.

(b) A communicable disease control measure imposed by a health authority in the health authority's jurisdiction may be amended, revised, or revoked by the department if the department finds that the modification is necessary or desirable in the administration of a regional or statewide public health program or policy. A control measure imposed by the department may not be modified or discontinued until the department authorizes the action.

(c) The control measures may be imposed on an individual, animal, place, or object, as appropriate.

(c-1) A health authority may designate health care facilities within the health authority's jurisdiction that are capable of providing services for the examination, observation, quarantine, isolation, treatment, or imposition of control measures during a public health disaster or during an area quarantine under Section 81.085. A health authority may not designate a nursing facility or other institution licensed under Chapter 242.

(d) A declaration of a public health disaster or an order of public health emergency may continue for not more than 30 days after the date the disaster or emergency is declared or ordered by the commissioner. A public health disaster may be renewed by the legislature or by the commissioner with the approval of the legislative public health oversight board established under Section

81.0821 for an additional 30 days. A public health emergency order may be renewed by the commissioner for an additional 30 days. Each renewal period may not exceed 30 days.

(d-1) Notwithstanding Subsection (d), if the legislature or the legislative public health oversight board is unable to meet to consider the renewal of a declaration of a public health disaster, the declaration shall continue until the legislature or board meets unless the declaration is terminated by the commissioner or governor.

(d-2) Not later than the seventh day after the date the commissioner issues an initial declaration of a public health disaster or an order of a public health emergency, the commissioner shall consult with the chairs of the standing committees of the senate and house of representatives with primary jurisdiction over public health regarding the disaster or emergency.

(e) Repealed by Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 17, eff. June 16, 2021.

(f) In this section, "control measures" includes:

(1) immunization;
(2) detention;
(3) restriction;
(4) disinfection;
(5) decontamination;
(6) isolation;
(7) quarantine;
(8) disinfestation;
(9) chemoprophylaxis;
(10) preventive therapy;
(11) prevention; and
(12) education.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 20, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 198, Sec. 2.179, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.01, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0233, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 861 (S.B. 966), Sec. 5, eff. June 16, 2021.

Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 17, eff. June 16, 2021.

Sec. 81.0821. LEGISLATIVE PUBLIC HEALTH OVERSIGHT BOARD. (a) In this section, "board" means the legislative public health oversight board established under this section.

(b) The legislative public health oversight board is established to provide oversight for declarations of public health disasters and orders of public health emergencies issued by the commissioner under this chapter and perform other duties required by law.

(c) The board consists of the following members:

(1) the lieutenant governor;

(2) the speaker of the house of representatives;

(3) the chair of the Senate Committee on Finance or its successor;

(4) the chair of the Senate Committee on State Affairs or its successor;

(5) the chair of the Senate Committee on Health and Human Services or its successor;

(6) the chair of the Senate Committee on Education or its successor;

(7) the chair of the House Committee on Appropriations or its successor;

(8) the chair of the House Committee on State Affairs or its successor;

(9) the chair of the House Committee on Public Health or its successor;

(10) the chair of the House Committee on Public Education or its successor;

(11) two additional members of the senate appointed by the lieutenant governor; and

(12) two additional members of the house appointed by the speaker.

(d) The lieutenant governor and the speaker of the house of representatives are joint chairs of the board.

(e) A majority of the members of the board from each house of the legislature constitutes a quorum to transact business. If a quorum is present, the board by majority vote may act on any matter

within the board's jurisdiction.

(f) The board shall meet as often as necessary to perform the board's duties. Meetings may be held at any time at the request of either chair or on written petition of a majority of the board members from each house of the legislature.

(g) The board shall meet in Austin, except that if a majority of the board members from each house of the legislature agree, the committee may meet in any location determined by the board.

(h) As an exception to Chapter 551, Government Code, and other law, for a meeting in Austin at which both joint chairs of the board are physically present, any number of the other board members may attend the meeting by use of telephone conference call, video conference call, or other similar telecommunication device. This subsection applies for purposes of establishing a quorum or voting or any other purpose allowing the members to fully participate in any board meeting. This subsection applies without regard to the subject or topics considered by the members at the meeting.

(i) A board meeting held by use of telephone conference call, video conference call, or other similar telecommunication device:

(1) is subject to the notice requirements applicable to other meetings;

(2) must specify in the notice of the meeting the location in Austin at which the joint chairs will be physically present;

(3) must be open to the public and audible to the public at the location specified in the notice under Subdivision (2); and

(4) must provide two-way audio communication between all board members attending the meeting during the entire meeting, and if the two-way audio communication link with any member attending the meeting is disrupted at any time, the meeting may not continue until the two-way audio communication link is reestablished.

Added by Acts 2021, 87th Leg., R.S., Ch. 861 (S.B. 966), Sec. 6, eff. June 16, 2021.

Sec. 81.083. APPLICATION OF CONTROL MEASURES TO INDIVIDUAL. (a) Any person, including a physician, who examines or treats an individual who has a communicable disease shall instruct the individual about:

(1) measures for preventing reinfection and spread of the

disease; and

(2) the necessity for treatment until the individual is cured or free from the infection.

(b) If the department or a health authority has reasonable cause to believe that an individual is ill with, has been exposed to, or is the carrier of a communicable disease, the department or health authority may order the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, to implement control measures that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in this state.

(c) An order under this section must be in writing and be delivered personally or by registered or certified mail to the individual or to the individual's parent, legal guardian, or managing conservator if the individual is a minor.

(d) An order under this section is effective until the individual is no longer infected with a communicable disease or, in the case of a suspected disease, expiration of the longest usual incubation period for the disease.

(e) An individual may be subject to court orders under Subchapter G if the individual is infected or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health and:

(1) the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, does not comply with the written orders of the department or a health authority under this section; or

(2) a public health disaster exists, regardless of whether the department or health authority has issued a written order and the individual has indicated that the individual will not voluntarily comply with control measures.

(f) An individual who is the subject of court orders under Subchapter G shall pay the expense of the required medical care and treatment except as provided by Subsections (g)-(i).

(g) A county or hospital district shall pay the medical expenses of a resident of the county or hospital district who is:

(1) indigent and without the financial means to pay for part or all of the required medical care or treatment; and

(2) not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a

federal, state, county, or municipal medical assistance program or facility.

(h) The state may pay the medical expenses of a nonresident individual who is:

(1) indigent and without the financial means to pay for part or all of the required medical care and treatment; and

(2) not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a federal, state, county, or municipal medical assistance program.

(i) The provider of the medical care and treatment under Subsection (h) shall certify the reasonable amount of the required medical care to the comptroller. The comptroller shall issue a warrant to the provider of the medical care and treatment for the certified amount.

(j) The department may:

(1) return a nonresident individual involuntarily hospitalized in this state to the program agency in the state in which the individual resides; and

(2) enter into reciprocal agreements with the proper agencies of other states to facilitate the return of individuals involuntarily hospitalized in this state.

(k) If the department or a health authority has reasonable cause to believe that a group of five or more individuals has been exposed to or infected with a communicable disease, the department or health authority may order the members of the group to implement control measures that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in this state. If the department or health authority adopts control measures under this subsection, each member of the group is subject to the requirements of this section.

(l) An order under Subsection (k) must be in writing and be delivered personally or by registered or certified mail to each member of the group, or the member's parent, legal guardian, or managing conservator if the member is a minor. If the name, address, and county of residence of any member of the group is unknown at the time the order is issued, the department or health authority must publish notice in a newspaper of general circulation in the county that includes the area of the suspected exposure and any other county in which the department or health authority suspects a member of the group resides. The notice must contain the following information:

(1) that the department or health authority has reasonable cause to believe that a group of individuals is ill with, has been exposed to, or is the carrier of a communicable disease;

(2) the suspected time and place of exposure to the disease;

(3) a copy of any orders under Subsection (k);

(4) instructions to an individual to provide the individual's name, address, and county of residence to the department or health authority if the individual knows or reasonably suspects that the individual was at the place of the suspected exposure at the time of the suspected exposure;

(5) that the department or health authority may request that an application for court orders under Subchapter G be filed for the group, if applicable; and

(6) that a criminal penalty applies to an individual who:

(A) is a member of the group; and

(B) knowingly refuses to perform or allow the performance of the control measures in the order.

(m) A peace officer, including a sheriff or constable, may use reasonable force to:

(1) secure the members of a group subject to an order issued under Subsection (k); and

(2) except as directed by the department or health authority, prevent the members from leaving the group or other individuals from joining the group.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.180, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.02, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 2, eff. June 14, 2013.

Sec. 81.084. APPLICATION OF CONTROL MEASURES TO PROPERTY. (a) If the department or a health authority has reasonable cause to believe that property in its jurisdiction is or may be infected or contaminated with a communicable disease, the department or health authority may place the property in quarantine for the period

necessary for a medical examination or technical analysis of samples taken from the property to determine if the property is infected or contaminated. The department or health authority may tag an object for identification with a notice of possible infection or contamination.

(b) The department or health authority shall send notice of its action by registered or certified mail or by personal delivery to the person who owns or controls the property. If the property is land or a structure or an animal or other property on the land, the department or health authority shall also post the notice on the land and at a place convenient to the public in the county courthouse. If the property is infected or contaminated as a result of a public health disaster, the department or health authority is not required to provide notice under this subsection.

(c) The department or health authority shall remove the quarantine and return control of the property to the person who owns or controls it if the property is found not to be infected or contaminated. The department or health authority by written order may require the person who owns or controls the property to impose control measures that are technically feasible to disinfect or decontaminate the property if the property is found to be infected or contaminated.

(d) The department or health authority shall remove the quarantine and return control of the property to the person who owns or controls it if the control measures are effective. If the control measures are ineffective or if there is not a technically feasible control measure available for use, the department or health authority may continue the quarantine and order the person who owns or controls the property:

(1) to destroy the property, other than land, in a manner that disinfects or decontaminates the property to prevent the spread of infection or contamination;

(2) if the property is land, to securely fence the perimeter of the land or any part of the land that is infected or contaminated; or

(3) to securely seal off an infected or contaminated structure or other property on land to prevent entry into the infected or contaminated area until the quarantine is removed by the department or health authority.

(d-1) In a public health disaster, the department or health

authority by written order may require a person who owns or controls property to impose control measures that are technically feasible to disinfect or decontaminate the property or, if technically feasible control measures are not available, may order the person who owns or controls the property:

(1) to destroy the property, other than land, in a manner that disinfects or decontaminates the property to prevent the spread of infection or contamination;

(2) if the property is land, to securely fence the perimeter of the land or any part of the land that is infected or contaminated; or

(3) to securely seal off an infected or contaminated structure or other property on land to prevent entry into the infected or contaminated area until the department or health authority authorizes entry into the structure or property.

(e) The department or health authority may petition the county or district court of the county in which the property is located for orders necessary for public health if:

(1) a person fails or refuses to comply with the orders of the department or health authority as required by this section; and

(2) the department or health authority has reason to believe that the property is or may be infected or contaminated with a communicable disease that presents an immediate threat to the public health.

(f) After the filing of a petition, the court may grant injunctive relief for the health and safety of the public.

(g) The person who owns or controls the property shall pay all expenses of implementing control measures, court costs, storage, and other justifiable expenses. The court may require the person who owns or controls the property to execute a bond in an amount set by the court to ensure the performance of any control measures, restoration, or destruction ordered by the court. If the property is an object, the bond may not exceed the value of the object in a noninfected or noncontaminated state. The bond shall be returned to the person when the department or health authority informs the court that the property is no longer infected or contaminated or that the property has been destroyed.

(h) If the court finds that the property is not infected or contaminated, it shall order the department or health authority to:

(1) remove the quarantine;

(2) if the property is an object, remove the quarantine tags; and

(3) release the property to the person who owns or controls it.

(i) The department or health authority, as appropriate, shall charge the person who owns or controls the property for the cost of any control measures performed by the department's or health authority's employees. The department shall deposit the payments received to the credit of the general revenue fund to be used for the administration of this chapter. A health authority shall distribute payments received to each county, municipality, or other jurisdiction in an amount proportional to the jurisdiction's contribution to the quarantine and control expense.

(j) In this section, "property" means:

(1) an object;

(2) a parcel of land; or

(3) a structure, animal, or other property on a parcel of land.

(k) In a public health disaster, the department or a health authority may impose additional control measures the department or health authority considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health.

(l) A peace officer, including a sheriff or constable, may use reasonable force to:

(1) secure a property subject to a court order issued under this section; and

(2) except as directed by the department or health authority, prevent an individual from entering or leaving the property subject to the order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.181, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 3, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0234, eff. April 2, 2015.

Sec. 81.085. AREA QUARANTINE; CRIMINAL PENALTY. (a) If an

outbreak of communicable disease occurs in this state, the commissioner or one or more health authorities may impose an area quarantine coextensive with the area affected. The commissioner may impose an area quarantine, if the commissioner has reasonable cause to believe that individuals or property in the area may be infected or contaminated with a communicable disease, for the period necessary to determine whether an outbreak of communicable disease has occurred. A health authority may impose the quarantine only within the boundaries of the health authority's jurisdiction.

(b) A health authority may not impose an area quarantine until the authority consults with the department. A health authority that imposes an area quarantine shall give written notice to and shall consult with the governing body of each county and municipality in the health authority's jurisdiction that has territory in the affected area as soon as practicable.

(c) The department may impose additional disease control measures in a quarantine area that the department considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health. Absent preemptive action by the department under this chapter or by the governor under Chapter 418, Government Code (Texas Disaster Act of 1975), a health authority may impose in a quarantine area under the authority's jurisdiction additional disease control measures that the health authority considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health.

(d) If an affected area includes territory in an adjacent state, the department may enter into cooperative agreements with the appropriate officials or agencies of that state to:

(1) exchange morbidity, mortality, and other technical information;

(2) receive extrajurisdictional inspection reports;

(3) coordinate disease control measures;

(4) disseminate instructions to the population of the area, operators of interstate private or common carriers, and private vehicles in transit across state borders; and

(5) participate in other public health activities appropriate to arrest, control, and eradicate the threat to the public health.

(e) The department or health authority may use all reasonable means of communication to inform persons in the quarantine area of

the department's or health authority's orders and instructions during the period of area quarantine. The department or health authority shall publish at least once each week during the area quarantine period, in a newspaper of general circulation in the area, a notice of the orders or instructions in force with a brief explanation of their meaning and effect. Notice by publication is sufficient to inform persons in the area of their rights, duties, and obligations under the orders or instructions.

(f) The department or, with the department's consent, a health authority may terminate an area quarantine.

(g) To provide isolation and quarantine facilities during an area quarantine, the commissioner's court of a county, the governing body of a municipality, or the governing body of a hospital district may suspend the admission of patients desiring admission for elective care and treatment, except for needy or indigent residents for whom the county, municipality, or district is constitutionally or statutorily required to care.

(h) A person commits an offense if the person knowingly fails or refuses to obey a rule, order, or instruction of the department or an order or instruction of a health authority issued under a department rule and published during an area quarantine under this section. An offense under this subsection is a felony of the third degree.

(i) On request of the department during a public health disaster, an individual shall disclose the individual's immunization information. If the individual does not have updated or appropriate immunizations, the department may take appropriate action during a quarantine to protect that individual and the public from the communicable disease.

(j) A peace officer, including a sheriff or constable, may use reasonable force to:

(1) secure a quarantine area; and

(2) except as directed by the department or health authority, prevent an individual from entering or leaving the quarantine area.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.182, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 4, eff.

June 14, 2013.

Sec. 81.086. APPLICATION OF CONTROL MEASURES TO PRIVATE AND COMMON CARRIERS AND PRIVATE CONVEYANCES. (a) This section applies to any private or common carrier or private conveyance, including a vehicle, aircraft, or watercraft, while the vehicle or craft is in this state.

(b) If the department or health authority has reasonable cause to believe that a carrier or conveyance has departed from or traveled through an area infected or contaminated with a communicable disease, the department or health authority may order the owner, operator, or authorized agent in control of the carrier or conveyance to:

(1) stop the carrier or conveyance at a port of entry or place of first landing or first arrival in this state; and

(2) provide information on passengers and cargo manifests that includes the details of:

(A) any illness suspected of being communicable that occurred during the journey;

(B) any condition on board the carrier or conveyance during the journey that may lead to the spread of disease; and

(C) any control measures imposed on the carrier or conveyance, its passengers or crew, or its cargo or any other object on board during the journey.

(c) The department or health authority may impose necessary technically feasible control measures under Section 81.083 or 81.084 to prevent the introduction and spread of communicable disease in this state if the department or health authority, after inspection, has reasonable cause to believe that a carrier or conveyance that has departed from or traveled through an infected or contaminated area:

(1) is or may be infected or contaminated with a communicable disease;

(2) has cargo or an object on board that is or may be infected or contaminated with a communicable disease; or

(3) has an individual on board who has been exposed to, or is the carrier of, a communicable disease.

(d) The owner or operator of a carrier or conveyance placed in quarantine by order of the department or health authority, or of a county or district court under Section 81.083 or 81.084, shall bear the expense of the control measures employed to disinfect or

decontaminate the carrier or conveyance. The department or health authority, as appropriate, shall charge and be reimbursed for the cost of control measures performed by the department's or health authority's employees. The department shall deposit the reimbursements to the credit of the general revenue fund to be used to administer this chapter. A health authority shall distribute the reimbursements to each county, municipality, or other governmental entity in an amount proportional to that entity's contribution to the quarantine and control expense.

(e) The owner or claimant of cargo or an object on board the carrier or conveyance shall pay the expense of the control measures employed in the manner provided by Section 81.084. The cost of services rendered or provided by the department or health authority is subject to reimbursement as provided by Subsection (d).

(f) A crew member, passenger, or individual on board the carrier or conveyance shall pay the expense of control measures employed under Section 81.083. The state may pay the expenses of an individual who is:

(1) without the financial means to pay for part or all of the required medical care or treatment; and

(2) not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a federal, state, or local medical assistance program, as provided by Section 81.083.

(g) A carrier, a conveyance, cargo, an object, an animal, or an individual placed in quarantine under this section may not be removed from or leave the area of quarantine without the department's or health authority's permission.

(h) If the department or health authority has reasonable cause to believe that a carrier or conveyance is transporting cargo or an object that is or may be infected or contaminated with a communicable disease, the department or health authority may:

(1) require that the cargo or object be transported in secure confinement or sealed in a car, trailer, hold, or compartment, as appropriate, that is secured on the order and instruction of the department or health authority, if the cargo or object is being transported through this state;

(2) require that the cargo or object be unloaded at an alternate location equipped with adequate investigative and disease control facilities if the cargo or object is being transported to an

intermediate or ultimate destination in this state that cannot provide the necessary facilities; and

(3) investigate and, if necessary, quarantine the cargo or object and impose any required control measure as authorized by Section 81.084.

(i) The department or health authority may require an individual transported by carrier or conveyance who the department or health authority has reasonable cause to believe has been exposed to or is the carrier of a communicable disease to be isolated from other travelers and to disembark with the individual's personal effects and baggage at the first location equipped with adequate investigative and disease control facilities, whether the person is in transit through this state or to an intermediate or ultimate destination in this state. The department or health authority may investigate and, if necessary, isolate or involuntarily hospitalize the individual until the department or health authority approves the discharge as authorized by Section 81.083.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.183, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0235, eff. April 2, 2015.

Sec. 81.087. VIOLATION OF CONTROL MEASURE ORDERS; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly refuses to perform or allow the performance of certain control measures ordered by a health authority or the department under Sections 81.083-81.086.

(b) An offense under this section is a Class B misdemeanor.

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

Sec. 81.088. REMOVAL, ALTERATION, OR DESTRUCTION OF QUARANTINE DEVICES; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly or intentionally:

(1) removes, alters, or attempts to remove or alter an object the person knows is a quarantine device, notice, or security item in a manner that diminishes the effectiveness of the device,

notice, or item; or

(2) destroys an object the person knows is a quarantine device, notice, or security item.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.184, eff. Sept. 1, 2003.

Sec. 81.089. TRANSPORTATION; CRIMINAL PENALTY. (a) A person commits an offense if, before notifying the department or health authority at a port of entry or a place of first landing or first arrival in this state, the person knowingly or intentionally:

(1) transports or causes to be transported into this state an object the person knows or suspects may be infected or contaminated with a communicable disease that is a threat to the public health;

(2) transports or causes to be transported into this state an individual who the person knows has or is the carrier of a communicable disease that is a threat to the public health; or

(3) transports or causes to be transported into this state a person, animal, or object in a private or common carrier or a private conveyance that the person knows is or suspects may be infected or contaminated with a communicable disease that is a threat to the public health.

(b) An offense under this section is a Class A misdemeanor, except that if the person acts with the intent to harm or defraud another, the offense is a felony of the third degree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.185, eff. Sept. 1, 2003.

Sec. 81.090. DIAGNOSTIC TESTING DURING PREGNANCY AND AFTER BIRTH. (a) A physician or other person permitted by law to attend a pregnant woman during gestation or at delivery of an infant shall:

(1) take or cause to be taken a sample of the woman's blood or other appropriate specimen at the first examination and visit;

(2) submit the sample to an appropriately certified laboratory for diagnostic testing approved by the United States Food and Drug Administration for:

(A) syphilis;

(B) HIV infection; and

(C) hepatitis B infection; and

(3) retain a report of each case for nine months and deliver the report to any successor in the case.

(a-1) A physician or other person permitted by law to attend a pregnant woman during gestation or at delivery of an infant shall:

(1) take or cause to be taken a sample of the woman's blood or other appropriate specimen at an examination in the third trimester of the pregnancy, but not earlier than the 28th week of the pregnancy;

(2) submit the sample to an appropriately certified laboratory for a diagnostic test approved by the United States Food and Drug Administration for syphilis and HIV infection; and

(3) retain a report of each case for nine months and deliver the report to any successor in the case.

(b) A successor is presumed to have complied with this section if the successor in good faith obtains a record that indicates compliance with Subsections (a) and (a-1), if applicable.

(c) A physician or other person in attendance at a delivery shall:

(1) take or cause to be taken a sample of blood or other appropriate specimen from the mother on admission for delivery; and

(2) submit the sample to an appropriately certified laboratory for diagnostic testing approved by the United States Food and Drug Administration for hepatitis B infection and syphilis.

(c-1) If the physician or other person in attendance at the delivery does not find in the woman's medical records results from the diagnostic test for syphilis and HIV infection performed under Subsection (a-1), the physician or person shall:

(1) take or cause to be taken a sample of blood or other appropriate specimen from the mother;

(2) submit the sample to an appropriately certified laboratory for diagnostic testing approved by the United States Food and Drug Administration for syphilis and HIV infection; and

(3) instruct the laboratory to expedite the processing of the HIV test so that the results are received less than six hours after the time the sample is submitted.

(c-2) If the physician or other person responsible for the newborn child does not find in the woman's medical records results

from a diagnostic test for syphilis and HIV infection performed under Subsection (a-1), and the diagnostic test for syphilis and HIV infection was not performed before delivery under Subsection (c-1), the physician or other person responsible for the newborn child shall:

(1) take or cause to be taken a sample of blood or other appropriate specimen from the newborn child less than two hours after the time of birth;

(2) submit the sample to an appropriately certified laboratory for a diagnostic test approved by the United States Food and Drug Administration for syphilis and HIV infection; and

(3) instruct the laboratory to expedite the processing of the HIV test so that the results are received less than six hours after the time the sample is submitted.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1124, Sec. 7, eff. September 1, 2009.

(e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1124, Sec. 7, eff. September 1, 2009.

(f) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1124, Sec. 7, eff. September 1, 2009.

(g) Repealed by Acts 1993, 73rd Leg., ch. 30, Sec. 3, eff. Sept. 1, 1993.

(h) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1124, Sec. 7, eff. September 1, 2009.

(i) Before conducting or causing to be conducted a diagnostic test for HIV infection under this section, the physician or other person shall advise the woman that the result of a test taken under this section is confidential as provided by Subchapter F, but that the test is not anonymous. The physician or other person shall explain the difference between a confidential and an anonymous test to the woman and that an anonymous test may be available from another entity. The physician or other person shall make the information available in another language, if needed, and if resources permit. The information shall be provided by the physician or another person, as needed, in a manner and in terms understandable to a person who may be illiterate if resources permit.

(j) The result of a test for HIV infection under Subsection (a)(2)(B), (a-1), (c-1), or (c-2) is a test result for purposes of Subchapter F.

(k) Before the sample is taken, the health care provider shall

distribute to the patient printed materials about AIDS, HIV, hepatitis B, and syphilis. A health care provider shall verbally notify the patient that an HIV test shall be performed if the patient does not object. If the patient objects, the patient shall be referred to an anonymous testing facility or instructed about anonymous testing methods. The health care provider shall note on the medical records that the distribution of printed materials was made and that verbal notification was given. The materials shall be provided to the health care provider by the department and shall be prepared and designed to inform the patients about:

(1) the incidence and mode of transmission of AIDS, HIV, hepatitis B, and syphilis;

(2) how being infected with HIV, AIDS, hepatitis B, or syphilis could affect the health of their child;

(3) the available cure for syphilis;

(4) the available treatment to prevent maternal-infant HIV transmission; and

(5) methods to prevent the transmission of the HIV virus, hepatitis B, and syphilis.

(l) A physician or other person may not conduct a diagnostic test for HIV infection under Subsection (a)(2)(B), (a-1), or (c-1) if the woman objects. A physician or other person may not conduct a diagnostic test for HIV infection under Subsection (c-2) if a parent, managing conservator, or guardian objects.

(m) If a screening test and a confirmatory test conducted under this section show that the woman is or may be infected with HIV, hepatitis B, or syphilis, the physician or other person who submitted the sample for the test shall provide or make available to the woman disease-specific information on the disease diagnosed, including:

(1) information relating to treatment of HIV infection, acquired immune deficiency syndrome, hepatitis B, or syphilis, which must be in another language, if needed, and must be presented, as necessary, in a manner and in terms understandable to a person who may be illiterate if resources permit; and

(2) counseling under Section 81.109, if HIV infection or AIDS is diagnosed.

(n) A physician or other person may comply with the requirements of Subsection (m)(1) by referring the woman to an entity that provides treatment for individuals infected with the disease diagnosed.

(o) In this section, "HIV" has the meaning assigned by Section 81.101.

(p) Not later than January 1 of each odd-numbered year, the department shall report to the legislature the number of cases of early congenital syphilis and of late congenital syphilis that were diagnosed in this state in the preceding biennium.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 30, Sec. 3, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 420, Sec. 1, eff. June 6, 1993; Acts 1995, 74th Leg., ch. 805, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 573, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1124 (H.B. 1795), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1124 (H.B. 1795), Sec. 6, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1124 (H.B. 1795), Sec. 7, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 206 (S.B. 1128), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 5, eff. September 1, 2019.

Sec. 81.091. OPHTHALMIA NEONATORUM PREVENTION; CRIMINAL PENALTY. (a) A physician, nurse, midwife, or other person in attendance at childbirth shall use or cause to be used prophylaxis approved by the executive commissioner to prevent ophthalmia neonatorum.

(b) A midwife is responsible for the administration of the prophylaxis to each infant the midwife delivers by:

(1) administering the prophylaxis under standing delegation orders issued by a licensed physician; or

(2) requiring the prophylaxis to be administered by an appropriately licensed and trained individual under standing delegation orders issued by a licensed physician.

(c) Subject to the availability of funds, the department shall furnish prophylaxis approved by the executive commissioner free of charge to:

(1) health care providers if the newborn's financially responsible adult is unable to pay; and

(2) a midwife identified under Chapter 203, Occupations Code, who requests prophylaxis for administration under standing delegation orders issued by a licensed physician under Subsection (b) and subject to the provisions of Subchapter A, Chapter 157, Occupations Code.

(d) If a physician is not available to issue a standing delegation order or if no physician will agree to issue a standing delegation order, a midwife shall administer or cause to be administered by an appropriately trained and licensed individual prophylaxis approved by the executive commissioner to prevent ophthalmia neonatorum to each infant that the midwife delivers.

(e) Administration and possession by a midwife of prophylaxis under this section is not a violation of Chapter 483.

(f) A health care provider may not charge for prophylaxis received free from the department.

(g) Except as provided by Subsection (g-1), a person commits an offense if the person is a physician or other person in attendance on a pregnant woman either during pregnancy or at delivery and fails to perform a duty required by this section. An offense under this section is a Class B misdemeanor.

(g-1) A physician, nurse, midwife, or other person in attendance at childbirth who is unable to apply the prophylaxis as required by this section due to the objection of a parent, managing conservator, or guardian of the newborn infant does not commit an offense under this section and is not subject to criminal, civil, or administrative liability or any professional disciplinary action for failure to administer the prophylaxis. The physician, nurse, midwife, or person shall ensure that the objection of the parent, managing conservator, or guardian is entered into the medical record of the infant.

(h) In this section, "financially responsible adult" means a parent, guardian, spouse, or any other person whom the laws of this state hold responsible for the debts incurred as a result of hospitalization or treatment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 158, Sec. 24, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1420, Sec. 14.772, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0236, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 504 (H.B. 2886), Sec. 1, eff. September 1, 2017.

Sec. 81.092. CONTRACTS FOR SERVICES. The department may contract with a physician to provide services to persons infected or reasonably suspected of being infected with a sexually transmitted disease or tuberculosis if:

(1) local or regional health department services are not available;

(2) the person in need of examination or treatment is unable to pay for the services; and

(3) there is an immediate need for examination or treatment of the person.

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

Sec. 81.093. PERSONS PROSECUTED FOR CERTAIN CRIMES. (a) A court may direct a person convicted of an offense under Section 43.02 or 43.021, Penal Code, under Chapter 481 (Texas Controlled Substances Act), or under Sections 485.031 through 485.035 to be subject to the control measures of Section 81.083 and to the court-ordered management provisions of Subchapter G.

(b) The court shall order that a presentence report be prepared under Subchapter F, Chapter 42A, Code of Criminal Procedure, to determine if a person convicted of an offense under Chapter 481 (Texas Controlled Substances Act) or under Sections 485.031 through 485.035 should be subject to Section 81.083 and Subchapter G.

(c) On the request of a prosecutor who is prosecuting a person under Section 22.012, Penal Code, the court shall release to the prosecutor the presentencing report and a statement as to whether the court directed the person to be subject to control measures and court-ordered management for human immunodeficiency virus infection or acquired immune deficiency syndrome.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 21, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.64, eff. January 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 44, eff. September 1, 2021.

Sec. 81.094. TESTING BY HOSPITALS OF PERSONS INDICTED FOR CERTAIN CRIMES. A hospital shall perform a medical procedure or test on a person if a court orders the hospital to perform the procedure or test on a person whom the court orders to undergo the procedure or test under Article 21.31, Code of Criminal Procedure. The procedure or test is a cost of court.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 22, eff. Sept. 1, 1991.

Sec. 81.095. TESTING FOR ACCIDENTAL EXPOSURE. (a) In a case of accidental exposure of a health care worker to blood or other body fluids of a patient in a licensed hospital, the hospital, following a report of the exposure incident, shall take reasonable steps to test the patient for hepatitis B, hepatitis C, HIV, or any reportable disease.

(b) This subsection applies only in a case of accidental exposure of certified emergency medical services personnel, an emergency response employee or volunteer, or a first responder who renders assistance at the scene of an emergency or during transport to the hospital to blood or other body fluids of a patient who is transported to a licensed hospital. The hospital receiving the patient, following a report of the exposure incident, shall take reasonable steps to test the patient for hepatitis B, hepatitis C, HIV, or any reportable disease if the report shows there is significant risk to the person exposed. The organization that employs the person or for which the person works as a volunteer in connection with rendering the assistance is responsible for paying the costs of the test. The hospital shall provide the test results to the department or to the local health authority and to the designated infection control officer of the entity employing or using the services of an affected emergency response employee or volunteer, which are reponsible for following the procedures prescribed by Section 81.050(h) to inform the person exposed and, if applicable,

the patient regarding the test results. The hospital shall follow applicable reporting requirements prescribed by Subchapter C. This subsection does not impose a duty on a hospital to provide any further testing, treatment, or services or to perform further procedures.

(c) A test conducted under this section may be performed without the patient's specific consent.

(d) The facility shall have a policy concerning the disclosure of the result of the testing as authorized or required by law.

(e) The facility shall abide by all patient confidentiality standards as set out in Section 81.046.

Added by Acts 1999, 76th Leg., ch. 1169, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 610, Sec. 1, eff. June 11, 2001; Acts 2003, 78th Leg., ch. 835, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 10, eff. September 1, 2015.

Sec. 81.0955. TESTING FOR ACCIDENTAL EXPOSURE INVOLVING A DECEASED PERSON. (a) This section applies only to the accidental exposure to the blood or other body fluids of a person who dies at the scene of an emergency or during transport to the hospital involving an emergency response employee or volunteer or another first responder who renders assistance at the scene of an emergency or during transport of a person to the hospital.

(b) A hospital, certified emergency medical services personnel, a justice of the peace, a medical examiner, or a physician on behalf of the person exposed, following a report of the exposure incident, shall take reasonable steps to have the deceased person tested for reportable diseases. The hospital, certified emergency medical services personnel, justice of the peace, medical examiner, or physician shall provide the test results to the department or to the local health authority and to the designated infection control officer of an affected emergency response employee or volunteer responsible for following the procedures prescribed by Section 81.050(h) to inform the person exposed, and, if applicable, the department or the local health authority shall inform the next of kin of the deceased person regarding the test results. The hospital,

certified emergency medical services personnel, medical examiner, or physician shall follow applicable reporting requirements prescribed by Subchapter C. This subsection does not impose a duty on a hospital, certified emergency medical services personnel, a medical examiner, or a physician to provide any further testing, treatment, or services or to perform further procedures. This subsection does not impose a duty on a justice of the peace to order that further testing, treatment, or services be provided or further procedures be performed. The executive commissioner shall adopt rules to implement this subsection.

(c) The organization that employs the exposed person or for which the exposed person works as a volunteer in connection with rendering the assistance is responsible for paying the costs of the test.

(d) If the deceased person is delivered to a funeral establishment as defined in Section 651.001, Occupations Code, before a hospital, certified emergency medical services personnel, or a physician has tested the deceased person, the funeral establishment shall allow, if requested by the hospital, certified emergency medical services personnel, or a physician, access to the deceased person for testing under this section.

(e) A test conducted under this section may be performed without the consent of the next of kin of the deceased person being tested.

(f) A hospital, certified emergency medical services personnel, or a physician that conducts a test under this section must comply with the confidentiality requirements of Section 81.046 except as specifically provided by this section.

Added by Acts 2005, 79th Leg., Ch. 243 (H.B. 162), Sec. 3, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0237, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 11, eff. September 1, 2015.

SUBCHAPTER F. TESTS FOR ACQUIRED IMMUNE DEFICIENCY SYNDROME AND RELATED DISORDERS

Sec. 81.101. DEFINITIONS. In this subchapter:

(1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Public Health Service.

(2) "HIV" means human immunodeficiency virus.

(3) "Bona fide occupational qualification" means a qualification:

(A) that is reasonably related to the satisfactory performance of the duties of a job; and

(B) for which there is a reasonable cause for believing that a person of the excluded group would be unable to perform satisfactorily the duties of the job with safety.

(4) "Blood bank" means a blood bank, blood center, regional collection center, tissue bank, transfusion service, or other similar facility licensed by the Center for Biologics Evaluation and Research of the United States Food and Drug Administration, accredited for membership in the AABB (formerly known as the American Association of Blood Banks), or qualified for membership in the American Association of Tissue Banks.

(5) "Test result" means any statement that indicates that an identifiable individual has or has not been tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, including a statement or assertion that the individual is positive, negative, at risk, or has or does not have a certain level of antigen or antibody.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0238, eff. April 2, 2015.

Sec. 81.102. TESTS; CRIMINAL PENALTY. (a) A person may not require another person to undergo a medical procedure or test designed to determine or help determine if a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS unless:

(1) the medical procedure or test is required under Subsection (d), under Section 81.050, or under Article 21.31, Code of Criminal Procedure;

(2) the medical procedure or test is required under Section 81.090, and no objection has been made under Section 81.090(l);

(3) the medical procedure or test is authorized under Chapter 545, Insurance Code;

(4) a medical procedure is to be performed on the person that could expose health care personnel to AIDS or HIV infection, according to department rules defining the conditions that constitute possible exposure to AIDS or HIV infection, and there is sufficient time to receive the test result before the procedure is conducted; or

(5) the medical procedure or test is necessary:

(A) as a bona fide occupational qualification and there is not a less discriminatory means of satisfying the occupational qualification;

(B) to screen blood, blood products, body fluids, organs, or tissues to determine suitability for donation;

(C) in relation to a particular person under this chapter;

(D) to manage accidental exposure to blood or other body fluids, but only if the test is conducted under written infectious disease control protocols adopted by the health care agency or facility;

(E) to test residents and clients of residential facilities of the department or the Department of Aging and Disability Services, but only if:

(i) the test result would change the medical or social management of the person tested or others who associated with that person; and

(ii) the test is conducted in accordance with guidelines adopted by the residential facility or rules of the appropriate department; or

(F) to test residents and clients of residential facilities of the Texas Juvenile Justice Department, but only if:

(i) the test result would change the medical or social management of the person tested or others who associate with that person; and

(ii) the test is conducted in accordance with guidelines adopted by the Texas Juvenile Justice Department.

(b) An employer who alleges that a test is necessary as a bona fide occupational qualification has the burden of proving that allegation.

(c) Protocols adopted under Subsection (a)(5)(D) must clearly establish procedural guidelines with criteria for testing that respect the rights of the person with the infection and the person who may be exposed to that infection. The protocols may not require the person who may have been exposed to be tested and must ensure the confidentiality of the person with the infection in accordance with this chapter.

(d) The executive commissioner may adopt emergency rules for mandatory testing for HIV infection if the commissioner files a certificate of necessity with the executive commissioner that contains supportive findings of medical and scientific fact and that declares a sudden and imminent threat to public health. The rules must provide for:

(1) the narrowest application of HIV testing necessary for the protection of the public health;

(2) procedures and guidelines to be followed by an affected entity or state agency that clearly specify the need and justification for the testing, specify methods to be used to assure confidentiality, and delineate responsibility and authority for carrying out the recommended actions;

(3) counseling of persons with seropositive test results; and

(4) confidentiality regarding persons tested and their test results.

(e) This section does not create a duty to test for AIDS and related disorders or a cause of action for failure to test for AIDS and related disorders.

(f) A person who requires a medical procedure or test in violation of this section commits an offense. An offense under this subsection is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 23, 24, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 805, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.126, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0239, eff. April 2, 2015.

Sec. 81.103. CONFIDENTIALITY; CRIMINAL PENALTY. (a) A test result is confidential. A person that possesses or has knowledge of a test result may not release or disclose the test result or allow the test result to become known except as provided by this section.

(b) A test result may be released to:

(1) the department under this chapter;

(2) a local health authority if reporting is required under this chapter;

(3) the Centers for Disease Control and prevention of the United States Public Health Service if reporting is required by federal law or regulation;

(4) the physician or other person authorized by law who ordered the test;

(5) a physician, nurse, or other health care personnel who have a legitimate need to know the test result in order to provide for their protection and to provide for the patient's health and welfare;

(6) the person tested or a person legally authorized to consent to the test on the person's behalf;

(7) the spouse of the person tested if the person tests positive for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS;

(8) a person authorized to receive test results under Article 21.31, Code of Criminal Procedure, concerning a person who is tested as required or authorized under that article;

(9) a person exposed to HIV infection as provided by Section 81.050;

(10) a county or district court to comply with this chapter or rules relating to the control and treatment of communicable diseases and health conditions; and

(11) a designated infection control officer of an affected emergency response employee or volunteer.

(c) The court shall notify persons receiving test results under Subsection (b)(8) of the requirements of this section.

(d) A person tested or a person legally authorized to consent to the test on the person's behalf may voluntarily release or disclose that person's test results to any other person, and may authorize the release or disclosure of the test results. An authorization under this subsection must be in writing and signed by the person tested or the person legally authorized to consent to the

test on the person's behalf. The authorization must state the person or class of persons to whom the test results may be released or disclosed.

(e) A person may release or disclose a test result for statistical summary purposes only without the written consent of the person tested if information that could identify the person is removed from the report.

(f) A blood bank may report positive blood test results indicating the name of a donor with a possible infectious disease to other blood banks if the blood bank does not disclose the infectious disease that the donor has or is suspected of having. A report under this subsection is not a breach of any confidential relationship.

(g) A blood bank may report blood test results to the hospitals where the blood was transfused, to the physician who transfused the infected blood, and to the recipient of the blood. A blood bank may also report blood test results for statistical purposes. A report under this subsection may not disclose the name of the donor or person tested or any information that could result in the disclosure of the donor's or person's name, including an address, social security number, a designated recipient, or replacement information.

(h) A blood bank may provide blood samples to hospitals, laboratories, and other blood banks for additional, repetitive, or different testing.

(i) An employee of a health care facility whose job requires the employee to deal with permanent medical records may view test results in the performance of the employee's duties under reasonable health care facility practices. The test results viewed are confidential under this chapter.

(j) A person commits an offense if, with criminal negligence and in violation of this section, the person releases or discloses a test result or other information or allows a test result or other information to become known. An offense under this subsection is a Class A misdemeanor.

(k) A judge of a county or district court may issue a protective order or take other action to limit disclosure of a test result obtained under this section before that information is entered into evidence or otherwise released in a court proceeding.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 25, eff. Sept. 1, 1991.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 788 (S.B. 1171), Sec. 2, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 12, eff. September 1, 2015.

Sec. 81.104. INJUNCTION; CIVIL LIABILITY. (a) A person may bring an action to restrain a violation or threatened violation of Section 81.102 or 81.103.

(b) A person who violates Section 81.102 or who is found in a civil action to have negligently released or disclosed a test result or allowed a test result to become known in violation of Section 81.103 is liable for:

(1) actual damages;

(2) a civil penalty of not more than $5,000; and

(3) court costs and reasonable attorney's fees incurred by the person bringing the action.

(c) A person who is found in a civil action to have wilfully released or disclosed a test result or allowed a test result to become known in violation of Section 81.103 is liable for:

(1) actual damages;

(2) a civil penalty of not less than $5,000 nor more than $10,000; and

(3) court costs and reasonable attorney's fees incurred by the person bringing the action.

(d) Each release or disclosure made, or allowance of a test result to become known, in violation of this subchapter constitutes a separate offense.

(e) A defendant in a civil action brought under this section is not entitled to claim any privilege as a defense to the action.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1213, Sec. 1, eff. Sept. 1, 1999.

Sec. 81.105. INFORMED CONSENT. (a) Except as otherwise provided by law, a person may not perform a test designed to identify HIV or its antigen or antibody without first obtaining the informed consent of the person to be tested.

(b) Consent need not be written if there is documentation in the medical record that the test has been explained and the consent has been obtained.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 26, eff. Sept. 1, 1991.

Sec. 81.106. GENERAL CONSENT. (a) A person who has signed a general consent form for the performance of medical tests or procedures is not required to also sign or be presented with a specific consent form relating to medical tests or procedures to determine HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS that will be performed on the person during the time in which the general consent form is in effect.

(b) Except as otherwise provided by this chapter, the result of a test or procedure to determine HIV infection, antibodies to HIV, or infection with any probable causative agent of AIDS performed under the authorization of a general consent form in accordance with this section may be used only for diagnostic or other purposes directly related to medical treatment.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 27, eff. Sept. 1, 1991.

Sec. 81.107. CONSENT TO TEST FOR CERTAIN ACCIDENTAL EXPOSURES. (a) In a case of accidental exposure to blood or other body fluids under Section 81.102(a)(5)(D), the health care agency or facility may test a person who may have exposed the health care worker or other emergency response employee or volunteer to HIV without the person's specific consent to the test.

(b) A test under this section may be done only if:

(1) the test is done according to protocols established as provided by Section 81.102(c); and

(2) those protocols ensure that any identifying information concerning the person tested will be destroyed as soon as the testing is complete and the person who may have been exposed is notified of the result.

(c) A test result under this section is subject to the confidentiality provisions of this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 28, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0240, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 13, eff. September 1, 2015.

Sec. 81.108. TESTING BY INSURERS. The Insurance Code and any rules adopted by the commissioner of insurance for the Texas Department of Insurance exclusively govern all practices of insurers in testing applicants to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 29, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0241, eff. April 2, 2015.

Sec. 81.109. COUNSELING REQUIRED FOR POSITIVE TEST RESULTS. (a) A positive test result may not be revealed to the person tested without giving that person the immediate opportunity for individual, face-to-face post-test counseling about:

(1) the meaning of the test result;

(2) the possible need for additional testing;

(3) measures to prevent the transmission of HIV;

(4) the availability of appropriate health care services, including mental health care, and appropriate social and support services in the geographic area of the person's residence;

(5) the benefits of partner notification; and

(6) the availability of partner notification programs.

(b) Post-test counseling should:

(1) increase a person's understanding of HIV infection;

(2) explain the potential need for confirmatory testing;

(3) explain ways to change behavior conducive to HIV transmission;

(4) encourage the person to seek appropriate medical care; and

(5) encourage the person to notify persons with whom there has been contact capable of transmitting HIV.

(c) Subsection (a) does not apply if:

(1) a report of a test result is used for statistical or research purposes only and any information that could identify the person is removed from the report; or

(2) the test is conducted for the sole purpose of screening blood, blood products, bodily fluids, organs, or tissues to determine suitability for donation.

(d) A person who is injured by an intentional violation of this section may bring a civil action for damages and may recover for each violation from a person who violates this section:

(1) $1,000 or actual damages, whichever is greater; and

(2) reasonable attorney fees.

(e) This section does not prohibit disciplinary proceedings from being conducted by the appropriate licensing authorities for a health care provider's violation of this section.

(f) A person performing a test to show HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS is not liable under Subsection (d) for failing to provide post-test counseling if the person tested does not appear for the counseling.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 30, eff. Sept. 1, 1991.

SUBCHAPTER G. COURT ORDERS FOR MANAGEMENT OF PERSONS WITH COMMUNICABLE DISEASES

Sec. 81.151. APPLICATION FOR COURT ORDER. (a) At the request of the health authority, a municipal, county, or district attorney shall file a sworn written application for a court order for the management of a person with a communicable disease. At the request of the department, the attorney general shall file a sworn written application for a court order for the management of a person with a communicable disease.

(b) The application must be filed with the district court in the county in which the person:

(1) resides;

(2) is found; or

(3) is receiving court-ordered health services.

(c) If the application is not filed in the county in which the person resides, the court may, on request of the person or the person's attorney and if good cause is shown, transfer the application to that county.

(d) A copy of written orders made under Section 81.083, if applicable, and a medical evaluation must be filed with the application, except that a copy of the written orders need not be filed with an application for outpatient treatment.

(e) A single application may be filed for a group if:

(1) the department or health authority reasonably suspects that a group of five or more persons has been exposed to or infected with a communicable disease; and

(2) each person in the group meets the criteria of this chapter for court orders for the management of a person with a communicable disease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 1, eff. May 23, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.186, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.03, eff. September 1, 2007.

Sec. 81.1511. APPLICABILITY OF SUBCHAPTER TO GROUP. To the extent possible, and except as otherwise provided, if a group application is filed under Section 81.151(e), the provisions of this subchapter apply to the group in the same manner as they apply to an individual, except that:

(1) except as provided by Subdivision (2), any statement or determination regarding the conduct or status of a person must be made in regard to the majority of the members of the group;

(2) any finding or statement related to compliance with orders under Section 81.083 must be made for the entire group;

(3) any notice required to be provided to a person must:

(A) in addition to being sent to each individual in the group for whom the department or health authority has an address, be published in a newspaper of general circulation in the county that includes the area of the suspected contamination and any other county in which the department or health authority suspects a member of the

group resides;

(B) state that the group is appointed an attorney but that a member of the group is entitled to the member's own attorney on request; and

(C) include instructions for any person who reasonably suspects that the person was at the place of the suspected exposure at the time of the suspected exposure to provide the person's name, address, and county of residence to the department or health authority; and

(4) an affidavit of medical evaluation for the group may be based on evaluation of one or more members of the group if the physician reasonably believes that the condition of the individual or individuals represents the condition of the majority of the members of the group.

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.04, eff. September 1, 2007.

Sec. 81.152. FORM OF APPLICATION. (a) An application for a court order for the management of a person with a communicable disease must be styled using the person's initials and not the person's full name.

(b) The application must state whether the application is for temporary or extended management of a person with a communicable disease.

(c) Any application must contain the following information according to the applicant's information and belief:

(1) the person's name and address;

(2) the person's county of residence in this state;

(3) a statement that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health and that the person meets the criteria of this chapter for court orders for the management of a person with a communicable disease; and

(4) a statement, to be included only in an application for inpatient treatment, that the person fails or refuses to comply with written orders of the department or health authority under Section 81.083, if applicable.

(d) A group application must contain the following information

according to the applicant's information and belief:

(1) a description of the group and the location where the members of the group may be found;

(2) a narrative of how the group has been exposed or infected;

(3) an estimate of how many persons are included in the group;

(4) to the extent known, a list containing the name, address, and county of residence in this state of each member of the group;

(5) if the applicant is unable to obtain the name and address of each member of the group:

(A) a statement that the applicant has sought each of the unknown names and addresses; and

(B) the reason that the names and addresses are unavailable; and

(6) a statement, to be included only in an application for inpatient treatment, that the members of the group fail or refuse to comply with written orders of the department or health authority under Section 81.083, if applicable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 2, eff. May 23, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.187, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.05, eff. September 1, 2007.

Sec. 81.153. APPOINTMENT OF ATTORNEY. (a) The judge shall appoint an attorney to represent a person not later than the 24th hour after the time an application for a court order for the management of a person with a communicable disease is filed if the person does not have an attorney. The judge shall also appoint a language or sign interpreter if necessary to ensure effective communication with the attorney in the person's primary language.

(b) The person's attorney shall receive all records and papers in the case and is entitled to have access to all hospital and physicians' records.

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

Sec. 81.1531. APPOINTMENT OF ATTORNEY FOR GROUP. (a) A judge shall appoint an attorney to represent a group identified in a group application under Section 81.151(e) and shall appoint an attorney for each person who is listed in the application if requested by a person in the group who does not have an attorney.

(b) To the extent possible, the provisions of this chapter that apply to an individual's attorney apply to a group's attorney.

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.06, eff. September 1, 2007.

Sec. 81.154. SETTING ON APPLICATION. (a) The judge or a magistrate designated under this chapter shall set a date for a hearing to be held within 14 days after the date on which the application is served on the person.

(b) The hearing may not be held within the first three days after the application is filed if the person or the person's attorney objects.

(c) The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is served on the person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 3, eff. May 23, 1997.

Sec. 81.155. NOTICE. (a) The person and the person's attorney are entitled to receive a copy of the application and written notice of the time and place of the hearing immediately after the date for the hearing is set.

(b) A copy of the application and the written notice shall be delivered in person or sent by certified mail to:

(1) the person's parent, if the person is a minor;

(2) the person's appointed guardian, if the person is the subject of a guardianship; or

(3) each managing and possessory conservator, that has been

appointed for the person.

(c) The court shall appoint a guardian ad litem for a minor if the parent cannot be located and a guardian or conservator has not been appointed.

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

Sec. 81.156. DISCLOSURE OF INFORMATION. (a) The person's attorney may request information from the attorney general or the municipal, county, or district attorney, as appropriate, in accordance with this section if the attorney cannot otherwise obtain the information. The attorney must request the information at least 48 hours before the time set for the hearing.

(b) If the person's attorney requests the information in accordance with Subsection (a), the attorney general or the municipal, county, or district attorney shall, within a reasonable time before the hearing, provide the attorney with a statement that includes:

(1) the provisions of this chapter that will be relied on at the hearing to establish that the person requires a court order for the temporary or extended management of a person with a communicable disease;

(2) the name, address, and telephone number of each witness who may testify at the hearing;

(3) a brief description of the reasons why temporary or extended management is required; and

(4) a list of any acts committed by the person that the applicant will attempt to prove at the hearing.

(c) At the hearing, the judge may admit evidence or testimony that relates to matters not disclosed under this chapter if the admission would not deprive the person of a fair opportunity to contest the evidence or testimony.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 4, eff. May 23, 1997.

Sec. 81.157. DISTRICT COURT JURISDICTION. (a) A proceeding under this chapter must be held in a district court of the county in which the person is found, resides, or is receiving court-ordered

health services.

(b) If a person subject to an order for temporary management is receiving services in a county other than the county in which the court that entered the temporary order is located and requires extended management, the county in which the temporary order was issued shall pay the expenses of transporting the person back to the county for the hearing unless the court that entered the temporary order arranges with the appropriate court in the county in which the person is receiving services to hold the hearing on the application for extended order before the temporary order expires.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 5, eff. May 23, 1997.

Sec. 81.158. AFFIDAVIT OF MEDICAL EVALUATION. (a) An affidavit of medical evaluation must be dated and signed by the commissioner or the commissioner's designee, or by a health authority with the concurrence of the commissioner or the commissioner's designee. The certificate must include:

(1) the name and address of the examining physician, if applicable;

(2) the name and address of the person examined or to be examined;

(3) the date and place of the examination, if applicable;

(4) a brief diagnosis of the examined person's physical and mental condition, if applicable;

(5) the period, if any, during which the examined person has been under the care of the examining physician;

(6) an accurate description of the health treatment, if any, given by or administered under the direction of the examining physician; and

(7) the opinion of the health authority or department and the reason for that opinion, including laboratory reports, that:

(A) the examined person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health; and

(B) as a result of that communicable disease the examined person:

(i) is likely to cause serious harm to himself; or

(ii) will, if not examined, observed, or treated, continue to endanger public health.

(b) The department or health authority must specify in the affidavit each criterion listed in Subsection (a)(7)(B) that in the opinion of the department or health authority applies to the person.

(c) If the affidavit is offered in support of an application for extended management, the affidavit must also include the department's or health authority's opinion that the examined person's condition is expected to continue for more than 90 days.

(d) If the affidavit is offered in support of a motion for a protective custody order, the affidavit must also include the department's or health authority's opinion that the examined person presents a substantial risk of serious harm to himself or others if not immediately restrained. The harm may be demonstrated by the examined person's behavior to the extent that the examined person cannot remain at liberty.

(e) The affidavit must include the detailed basis for each of the department's or health authority's opinions under this section.

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

Sec. 81.159. DESIGNATION OF FACILITY. (a) The commissioner shall designate health care facilities throughout the state that are capable of providing services for the examination, observation, isolation, or treatment of persons having or suspected of having a communicable disease. However, the commissioner may not designate:

(1) a nursing facility or custodial care home required to be licensed under Chapter 242; or

(2) an ICF-IID required to be licensed under Chapter 252.

(b) The health authority shall select a designated facility in the county in which the application is filed. If no facility is designated in the county, the commissioner shall select the facility.

(c) This section does not relieve a county of its responsibility under other provisions of this chapter or applicable law for providing health care services.

(d) A designated facility must comply with this section only to the extent that the commissioner determines that the facility has sufficient resources to perform the necessary services.

(e) This section does not apply to a person for whom treatment

in a private health facility is proposed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 6, eff. May 23, 1997. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.07, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0242, eff. April 2, 2015.

Sec. 81.160. LIBERTY PENDING HEARING. The person who is the subject of an application for management is entitled to remain at liberty pending the hearing on the application unless the person is detained under an appropriate provision of this chapter.

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

Sec. 81.161. MOTION FOR ORDER OF PROTECTIVE CUSTODY. (a) A motion for an order of protective custody may be filed only in the court in which an application for a court order for the management of a person with a communicable disease is pending.

(b) The motion may be filed by the municipal, county, or district attorney on behalf of the health authority. The motion shall be filed by the attorney general at the request of the department.

(c) The motion must state that:

(1) the department or health authority has reason to believe and does believe that the person meets the criteria authorizing the court to order protective custody; and

(2) the belief is derived from:

(A) the representations of a credible person;

(B) the conduct of the person who is the subject of the motion; or

(C) the circumstances under which the person is found.

(d) The motion must be accompanied by an affidavit of medical evaluation.

(e) The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders in the judge's absence.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 7, eff. May 23, 1997.

Sec. 81.162. ISSUANCE OF ORDER. (a) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:

(1) that the health authority or department has stated its opinion and the detailed basis for its opinion that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health; and

(2) that the person fails or refuses to comply with the written orders of the health authority or the department under Section 81.083, if applicable.

(b) Noncompliance with orders issued under Section 81.083 may be demonstrated by the person's behavior to the extent that the person cannot remain at liberty.

(c) The judge or magistrate may consider only the application and affidavit in making a determination that the person meets the criteria prescribed by Subsection (a). If only the application and certificate are considered the judge or magistrate must determine that the conclusions of the health authority or department are adequately supported by the information provided.

(d) The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and affidavit only.

(e) The judge or magistrate may issue a protective custody order for a person who is charged with a criminal offense if the person meets the requirements of this section and the head of the facility designated to detain the person agrees to the detention.

(f) Notwithstanding Section 81.161 or Subsection (c), a judge or magistrate may issue a temporary protective custody order before the filing of an application for a court order for the management of a person with a communicable disease under Section 81.151 if:

(1) the judge or magistrate takes testimony that an application under Section 81.151, together with a motion for protective custody under Section 81.161, will be filed with the court on the next business day; and

(2) the judge or magistrate determines based on evidence

taken under Subsection (d) that there is probable cause to believe that the person presents a substantial risk of serious harm to himself or others to the extent that the person cannot be at liberty pending the filing of the application and motion.

(g) A temporary protective custody order issued under Subsection (f) may continue only until 4 p.m. on the first business day after the date the order is issued unless the application for a court order for the management of a person with a communicable disease and a motion for protective custody, as described by Subsection (f)(1), are filed at or before that time. If the application and motion are filed at or before 4 p.m. on the first business day after the date the order is issued, the temporary protective custody order may continue for the period reasonably necessary for the court to rule on the motion for protective custody.

(h) The judge or magistrate may direct a peace officer, including a sheriff or constable, to prevent a person who is the subject of a protective custody order from leaving the facility designated to detain the person if the court finds that a threat to the public health exists because the person may attempt to leave the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.188, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.08, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 5, eff. June 14, 2013.

Sec. 81.163. APPREHENSION UNDER ORDER. (a) A protective custody order shall direct a peace officer, including a sheriff or constable, to take the person who is the subject of the order into protective custody and transport the person immediately to an appropriate inpatient health facility that has been designated by the commissioner as a suitable place.

(b) If an appropriate inpatient health facility is not available, the person shall be transported to a facility considered suitable by the health authority.

(c) The person shall be detained in the facility until a

hearing is held under Section 81.165.

(d) A facility must comply with this section only to the extent that the commissioner determines that the facility has sufficient resources to perform the necessary services.

(e) A person may not be detained in a private health facility without the consent of the head of the facility.

(f) A protective custody order issued under Section 81.162 may direct an emergency medical services provider to provide an ambulance and staff to immediately transport the person who is the subject of the order to an appropriate inpatient health facility designated by the order or other suitable facility. The provider may seek reimbursement for the costs of the transport from any appropriate source.

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

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 6, eff. June 14, 2013.

Sec. 81.164. APPOINTMENT OF ATTORNEY. (a) The judge or designated magistrate shall appoint an attorney to represent a person who is the subject of a protective custody order who does not have an attorney when the order is signed.

(b) Within a reasonable time before a hearing is held under Section 81.165, the court that ordered the protective custody shall provide the person and the person's attorney with a written notice that states:

(1) that the person has been placed under a protective custody order;

(2) the grounds for the order; and

(3) the time and place of the hearing to determine probable cause.

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

Sec. 81.165. PROBABLE CAUSE HEARING. (a) A hearing must be held to determine if:

(1) there is probable cause to believe that a person under a protective custody order presents a substantial risk of serious

harm to himself or others to the extent that the person cannot be at liberty pending the hearing on a court order for the management of a person with a communicable disease; and

(2) the health authority or department has stated its opinion and the detailed basis for its opinion that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to public health.

(b) The hearing must be held not later than 72 hours after the time that the person was detained under the protective custody order. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the hearing for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions that threaten the safety of the person or another essential party to the hearing. If the area in which the person is found, or the area where the hearing will be held, is under a public health disaster, the judge or magistrate may postpone the hearing until the period of disaster is ended.

(c) A magistrate or a master appointed by the presiding judge shall conduct the hearing. The master is entitled to reasonable compensation.

(d) The person and his attorney shall have an opportunity at the hearing to appear and present evidence to challenge the allegation that the person presents a substantial risk of serious harm to himself or others. If the health authority advises the court that the person must remain in isolation or quarantine and that exposure to the judge, jurors, or the public would jeopardize the health and safety of those persons and the public health, a magistrate or a master may order that a person entitled to a hearing for a protective custody order may not appear in person and may appear only by teleconference or another means the magistrate or master finds appropriate to allow the person to speak, to interact with witnesses, and to confer with the person's attorney.

(e) The magistrate or master may consider evidence that may not be admissible or sufficient in a subsequent commitment hearing, including letters, affidavits, and other material.

(f) The state may prove its case on the health authority's or department's affidavit of medical evaluation filed in support of the

initial motion.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.09, eff. September 1, 2007.

Sec. 81.166. ORDER FOR CONTINUED DETENTION. (a) The magistrate or master shall order that a person remain in protective custody if the magistrate or master determines after the hearing that an adequate factual basis exists for probable cause to believe that the person presents a substantial risk of serious harm to himself or others to the extent that the person cannot remain at liberty pending the hearing on the application.

(b) The magistrate or master shall arrange for the person to be returned to the health facility or other suitable place, along with copies of the affidavits and other material submitted as evidence in the hearing and the notification prepared as prescribed by Subsection (d).

(c) A copy of the notification of probable cause hearing and the supporting evidence shall be filed with the district court that entered the original order of protective custody.

(d) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the _____ day of _____, 20__, the undersigned hearing officer heard evidence concerning the need for protective custody of _____ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that the proposed patient presents a substantial risk of serious harm to self or others.

The proposed patient and the proposed patient's attorney _____ have been given written notice that the proposed patient was placed under an order of protective custody and the reasons for such order on _____ (date of notice).

I have examined the affidavit of medical evaluation and _____ (other evidence considered). Based on this evidence, I find that there is probable cause to believe that the

proposed patient presents a substantial risk of serious harm to self (yes ____ or no ____) or others (yes ____ or no ____) such that the proposed patient cannot be at liberty pending final hearing because the proposed patient is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health and the proposed patient has failed or refused to comply with the orders of the health authority or the Department of State Health Services delivered on _____ (date of service) _____.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0243, eff. April 2, 2015.

Sec. 81.167. DETENTION IN PROTECTIVE CUSTODY. (a) The head of a facility or the facility head's designee shall detain a person under a protective custody order in the facility pending a court order for the management of a person with a communicable disease or until the person is released or discharged under Section 81.168.

(b) A person under a protective custody order shall be detained in an appropriate inpatient health facility that has been designated by the commissioner or by a health authority and selected by the health authority under Section 81.159.

(c) A person under a protective custody order may be detained in a nonmedical facility used to detain persons who are charged with or convicted of a crime only with the consent of the medical director of the facility and only if the facility has respiratory isolation capability for airborne communicable diseases. The person may not be detained in a nonmedical facility under this subsection for longer than 72 hours, excluding Saturdays, Sundays, legal holidays, the period prescribed by Section 81.165(b) for an extreme weather emergency, and the duration of a public health disaster. The person must be isolated from any person who is charged with or convicted of a crime.

(d) The health authority shall ensure that proper isolation methods are used and medical care is made available to a person who is detained in a nonmedical facility under Subsection (c).

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

by Acts 1997, 75th Leg., ch. 242, Sec. 8, eff. May 23, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.10, eff. September 1, 2007.

Sec. 81.168. RELEASE FROM DETENTION. (a) The magistrate or master shall order the release of a person under a protective custody order if the magistrate or master determines after the hearing under Section 81.165 that no probable cause exists to believe that the person presents a substantial risk of serious harm to himself or others.

(b) Arrangements shall be made to return a person released under Subsection (a) to:

(1) the location at which the person was apprehended;

(2) the person's place of residence in this state; or

(3) another suitable location.

(c) The head of a facility shall discharge a person held under a protective custody order if:

(1) the head of the facility does not receive notice within 72 hours after detention begins, excluding Saturdays, Sundays, legal holidays, the period prescribed by Section 81.165(b) for an extreme weather emergency, and the duration of a public health disaster, that a probable cause hearing was held and the person's continued detention was authorized;

(2) a final court order for the management of a person with a communicable disease has not been entered within the time prescribed by Section 81.154; or

(3) the health authority or commissioner determines that the person no longer meets the criteria for protective custody prescribed by Section 81.162.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.11, eff. September 1, 2007.

Sec. 81.169. GENERAL PROVISIONS RELATING TO HEARING. (a) Except as provided by Subsection (b), the judge may hold a hearing on

an application for a court order for the management of a person with a communicable disease at any suitable location in the county. The hearing should be held in a physical setting that is not likely to have a harmful effect on the public or the person.

(b) On the request of the person or the person's attorney, the hearing on the application shall be held in the county courthouse.

(c) The health authority shall advise the court on appropriate control measures to prevent the transmission of the communicable disease alleged in the application.

(d) The person is entitled to be present at the hearing. The person or the person's attorney may waive this right.

(e) The hearing must be open to the public unless the person or the person's attorney requests that the hearing be closed and the judge determines that there is good cause to close the hearing.

(f) The Texas Rules of Evidence apply to the hearing unless the rules are inconsistent with this chapter.

(g) The court may consider the testimony of a nonphysician health professional in addition to medical testimony.

(h) The hearing is on the record, and the state must prove each element of the application criteria by clear and convincing evidence.

(i) Notwithstanding Subsection (d), if the health authority advises the court that the person must remain in isolation or quarantine and that exposure to the judge, jurors, or the public would jeopardize the health and safety of those persons and the public health, a judge may order that a person entitled to a hearing may not appear in person and may appear only by teleconference or another means that the judge finds appropriate to allow the person to speak, to interact with witnesses, and to confer with the person's attorney.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.0001, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.12, eff. September 1, 2007.

Sec. 81.170. RIGHT TO JURY. (a) A hearing for temporary management must be before the court unless the person or the person's attorney requests a jury.

(b) A hearing for extended management must be before a jury unless the person or the person's attorney waives the right to a jury.

(c) A waiver of the right to a jury must be in writing, under oath, and signed by the person and the person's attorney.

(d) The court may permit a waiver of the right to a jury to be withdrawn for good cause shown. The withdrawal must be made at least seven days before the date on which the hearing is scheduled.

(e) A court may not require a jury fee.

(f) The jury shall determine if the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has refused or failed to follow the orders of the health authority. The jury may not make a finding about the type of services to be provided to the person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 9, eff. May 23, 1997.

Sec. 81.171. RELEASE AFTER HEARING. (a) The court shall enter an order denying an application for a court order for temporary or extended management if after a hearing the judge or jury fails to find, from clear and convincing evidence, that the person:

(1) is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health;

(2) has refused or failed to follow the orders of the health authority if the application is for inpatient treatment; and

(3) meets the applicable criteria for orders for the management of a person with a communicable disease.

(b) If the court denies the application, the court shall order the immediate release of a person who is not at liberty.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 10, eff. May 23, 1997.

Sec. 81.172. ORDER FOR TEMPORARY MANAGEMENT. (a) The judge or jury may determine that a person requires court-ordered examination, observation, isolation, or treatment only if the judge or jury finds,

from clear and convincing evidence, that:

(1) the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has failed or refused to follow the orders of the health authority or department; and

(2) as a result of the communicable disease the person:

(A) is likely to cause serious harm to himself; or

(B) will, if not examined, observed, isolated, or treated, continue to endanger public health.

(b) The judge or jury must specify each criterion listed in Subsection (a)(2) that forms the basis for the decision.

(c) The person or the person's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and the court may admit, as evidence, the affidavit of medical evaluation. The affidavit admitted under this subsection constitutes competent medical testimony, and the court may make its findings solely from the affidavit.

(d) An order for temporary management shall state that examinations, treatment, and surveillance are authorized for a period not longer than 90 days.

(e) The department, with the cooperation of the head of the facility, shall submit to the court a general program of treatment to be provided. The program must be submitted not later than the 14th day after the date the order is issued and must be incorporated into the court order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 11, eff. May 23, 1997.

Sec. 81.173. ORDER FOR EXTENDED MANAGEMENT. (a) The jury, or the judge if the right to a jury is waived, may determine that a proposed patient requires court-ordered examination, observation, isolation, or treatment only if the jury or judge finds, from clear and convincing evidence, that:

(1) the person is infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has failed to follow the orders of the health authority or department;

(2) as a result of that communicable disease the person:

(A) is likely to cause serious harm to himself; or

(B) will, if not examined, observed, isolated, or treated, continue to endanger public health; and

(3) the person's condition is expected to continue for more than 90 days.

(b) The jury or judge must specify each criterion listed in Subsection (a)(2) that forms the basis for the decision.

(c) The court may not make findings solely from the affidavit of medical evaluation, but shall hear testimony. The court may not enter an order for extended management unless appropriate findings are made and are supported by testimony taken at the hearing. The testimony must include competent medical testimony.

(d) An order for extended management shall state that examination, treatment, and surveillance are authorized for not longer than 12 months.

(e) The department, with the cooperation of the head of the facility, shall submit to the court a general program of treatment to be provided. The program must be submitted not later than the 14th day after the date the order is issued and must be incorporated into the court order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 12, eff. May 23, 1997.

Sec. 81.174. ORDER OF CARE OR COMMITMENT. (a) The judge shall dismiss the jury, if any, after a hearing in which a person is found:

(1) to be infected with or reasonably suspected of being infected with a communicable disease;

(2) to have failed or refused to follow the orders of a health authority or the department if the application is for inpatient treatment; and

(3) to meet the criteria for orders for the management of a patient with a communicable disease.

(b) The judge may hear additional evidence relating to alternative settings for examination, observation, treatment, or isolation before entering an order relating to the setting for the care the person will receive.

(c) The judge shall consider in determining the setting for

care the recommendation for the appropriate health care facility filed under this chapter.

(d) The judge may enter an order:

(1) committing the person to a health care facility for inpatient care; or

(2) requiring the person to participate in other communicable disease management programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 13, eff. May 23, 1997.

Sec. 81.175. COURT-ORDERED OUTPATIENT SERVICES. (a) The court, in an order that directs a person to participate in an outpatient communicable disease program, shall designate a health authority to monitor the person's compliance. The head of a health care facility or an individual involved in providing the services in which the person is to participate under the order shall cooperate with the health authority in implementing the court orders.

(b) The health authority or the department, with the cooperation of the head of the facility, shall submit to the court within two weeks after the court enters the order a general program of the treatment to be provided. The program must be incorporated into the court order.

(c) The health authority or department shall inform the court:

(1) if the person fails to comply with the court order; and

(2) of any substantial change in the general program of treatment that occurs before the order expires.

(d) A facility must comply with this section to the extent that the commissioner determines that the designated facility has sufficient resources to perform the necessary services.

(e) A person may not be detained in a private health care facility without the consent of the facility head.

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

Sec. 81.176. DESIGNATION OF FACILITY. In a court order for the temporary or extended management of a person with a communicable disease specifying inpatient care, the court shall commit the person

to a health care facility designated by the commissioner or a health authority in accordance with Section 81.159.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.13, eff. September 1, 2007.

Sec. 81.177. COMMITMENT TO PRIVATE FACILITY. (a) The court may order a person committed to a private health care facility at no expense to the state if the court receives:

(1) an application signed by the person or the person's guardian or next friend requesting that the person be placed in a designated private health care facility at the person's or applicant's expense; and

(2) a written agreement from the head of the private health care facility to admit the person and to accept responsibility for the person in accordance with this chapter.

(b) Consistent with Subsection (a), the court may order a person committed to a private health care facility at no expense to the state, a county, a municipality, or a hospital district if:

(1) a state of disaster or a public health disaster has been declared or an area quarantine is imposed under Section 81.085;

(2) the health care facility is located within the disaster area or area quarantine, as applicable; and

(3) the judge determines that there is no public health care facility within the disaster area or area quarantine, as applicable, that has appropriate facilities and the capacity available to receive and treat the person.

(c) Nothing in this section prevents a health care facility that accepts a person under this section from pursuing reimbursement from any appropriate source, such as a third-party public or private payor or disaster relief fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.14, eff. September 1, 2007.

Sec. 81.178. COMMITMENT TO FEDERAL FACILITY. (a) A court may order a person committed to a federal agency that operates a health care facility if the court receives written notice from the agency that facilities are available and that the person is eligible for care or treatment in the facility. The court may place the person in the agency's custody for transportation to the health care facility.

(b) A person admitted under court order to a health care facility operated by a federal agency, regardless of location, is subject to the agency's rules and regulations.

(c) The head of the health care facility has the same authority and responsibility with respect to the person as the head of a facility.

(d) The appropriate courts of this state retain jurisdiction to inquire at any time into the person's condition and the necessity of the person's continued commitment.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0244, eff. April 2, 2015.

Sec. 81.179. TRANSPORTATION OF PERSON. (a) The court shall order the sheriff or constable to transport the person to the designated health care facility.

(b) A female shall be accompanied by a female attendant during conveyance to the health care facility.

(c) The health authority or department shall instruct the sheriff or constable on procedures that may be necessary in transporting the person to prevent the spread of the disease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 14, eff. May 23, 1997.

Sec. 81.180. WRIT OF COMMITMENT. The court shall direct the court clerk to issue to the individual authorized to transport the person two writs of commitment requiring the individual to take custody of and transport the person to the designated health care facility.

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

Sec. 81.181. ACKNOWLEDGEMENT OF DELIVERY. The head of the facility, after receiving a copy of the writ of commitment and after admitting the person, shall:

(1) give the individual transporting the person a written statement acknowledging acceptance of the person and of any personal property belonging to the person; and

(2) file a copy of the statement with the clerk of the committing court.

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

Sec. 81.182. MODIFICATION OF ORDER FOR INPATIENT TREATMENT. (a) At the request of the health authority, a municipal, county, or district attorney, as appropriate, shall request the court that entered the commitment order to modify the order to provide for outpatient care. At the request of the department, the attorney general shall request the court that entered the commitment order to modify the order to provide for outpatient care.

(b) The request must explain in detail the reason for the request. The request must be accompanied by an affidavit of a physician who examined the person during the preceding seven days.

(c) The person shall be given notice of the request.

(d) On the request of the person or any other interested individual, the court shall hold a hearing on the request. The court shall appoint an attorney to represent the person at the hearing. The hearing shall be held before the court without a jury and as prescribed by Section 81.169. The person shall be represented by an attorney and receive proper notice.

(e) If a hearing is not requested, the court may make the decision solely from the request and the supporting affidavit.

(f) If the court modifies the order, the court shall designate the health authority to monitor the person's compliance.

(g) The head of a health care facility or an individual involved in providing the services in which the person is to participate under the order shall cooperate with the health authority and shall comply with Section 81.175(b).

(h) A modified order may not extend beyond the term of the original order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 15, eff. May 23, 1997.

Sec. 81.183. MOTION FOR MODIFICATION OF ORDER FOR OUTPATIENT TREATMENT. (a) The court that entered an order directing a person to participate in outpatient health services may set a hearing to determine if the order should be modified in a way that is a substantial deviation from the original program of treatment incorporated in the court's order. The court may set the hearing on its own motion, on the motion of a municipal, county, or district attorney at the request of the health authority, on the motion of the attorney general at the request of the department, or at the request of any other interested person.

(b) The court shall appoint an attorney to represent the person if a hearing is scheduled. The person shall be given notice of the matters to be considered at the hearing. The notice must comply with the requirements of Section 81.155 for notice before a hearing on an application for court orders for the management of a person with a communicable disease.

(c) The hearing shall be held before the court, without a jury, and as prescribed by this chapter. The person shall be represented by an attorney and receive proper notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 16, eff. May 23, 1997.

Sec. 81.184. ORDER FOR TEMPORARY DETENTION. (a) At the request of the health authority, a municipal, county, or district attorney, as appropriate, shall file a sworn application for the person's temporary detention pending a modification hearing under Section 81.183. At the request of the department, the attorney general shall file a sworn application for the person's temporary detention pending a modification hearing under Section 81.183.

(b) The application must state the applicant's opinion and detail the reason for the applicant's opinion that:

(1) the person meets the criteria described by this

chapter; and

(2) detention in an inpatient health care facility is necessary to evaluate the appropriate setting for continued court-ordered care.

(c) The court shall decide from the information in the application. The court may issue an order for temporary detention if a modification hearing is set and the court finds that there is probable cause to believe that the opinions stated in the application are valid.

(d) The judge shall appoint an attorney to represent a person who does not have an attorney when the order for temporary detention is signed.

(e) Within 24 hours after the time detention begins, the court that issued the temporary detention order shall provide to the person and the person's attorney a written notice that contains:

(1) a statement that the person has been placed under a temporary detention order;

(2) the grounds for the order; and

(3) the time and place of the modification hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 17, eff. May 23, 1997.

Sec. 81.185. APPREHENSION AND RELEASE UNDER ORDER FOR TEMPORARY DETENTION. (a) The order for temporary detention shall direct a peace officer, including a sheriff or constable, to take the person into custody and immediately transport the person to an appropriate inpatient health care facility. The person shall be transported to a facility considered suitable by the health authority if an appropriate inpatient health care facility is not available.

(b) A person may be detained under a temporary detention order for not longer than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 81.165(b) for an extreme weather emergency.

(c) A facility head shall immediately release a person held under an order for temporary detention if the facility head does not receive notice that a modification hearing was held within the time prescribed by Subsection (b) at which the patient's continued detention was authorized.

(d) A person released from custody under Subsection (c) continues to be subject to the terms of the outpatient orders for the management of the person issued before the order for temporary detention, if the orders have not expired.

(e) The order for temporary detention may direct an emergency medical services provider to provide an ambulance and staff to immediately transport the person who is the subject of the order to an appropriate inpatient health care facility designated by the order or other suitable facility. The provider may seek reimbursement for the costs of the transport from any appropriate source.

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

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 7, eff. June 14, 2013.

Sec. 81.186. ORDER OF MODIFICATION OF ORDER FOR OUTPATIENT SERVICES. (a) The court may modify an order for outpatient services at the modification hearing if the court determines that the person continues to meet the applicable criteria for court orders for the management of a person with a communicable disease and that:

(1) the person has not complied with the court's order; or

(2) the person's condition has deteriorated to the extent that outpatient services are no longer appropriate.

(b) The court's decision to modify an order must be supported by an affidavit of medical evaluation prepared by the health authority or department.

(c) A court may refuse to modify the order and may direct the person to continue to participate in outpatient health services in accordance with the original order even if the criteria prescribed by Subsection (a) have been met.

(d) A modification may include:

(1) incorporating in the order a revised treatment program and providing for continued outpatient health services under the modified order, if a revised general program of treatment was submitted to and accepted by the court; or

(2) providing for examination, observation, isolation, or treatment at an appropriate inpatient health care facility.

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

Sec. 81.187. RENEWAL OF ORDER FOR EXTENDED MANAGEMENT. (a) A municipal, county, or district attorney, as appropriate, at the request of the health authority, shall file an application to renew an order for extended management. At the request of the department, the attorney general shall file an application to renew an order for extended management.

(b) The application must explain in detail why the person requests renewal. An application to renew an order committing the person to extended inpatient services must also explain in detail why a less restrictive setting is not appropriate.

(c) The application must be accompanied by an affidavit of medical evaluation dated and signed by the health authority or department according to an examination conducted within the preceding 30 days.

(d) The court shall appoint an attorney to represent the person when an application is filed.

(e) The person or the person's attorney may request a hearing on the application. The court may set a hearing on its own motion. An application for which a hearing is requested or set is considered an original application for a court order for the extended management of a person with a communicable disease.

(f) A court may not renew an order unless the court finds that the patient meets the criteria for extended management required by this chapter. The court must make the findings prescribed by this subsection to renew an order, regardless of whether a hearing is requested or set. A renewed order authorizes treatment for not more than 12 months.

(g) The court may admit into evidence the affidavit of medical evaluation if a hearing is not requested or set. The affidavit constitutes competent medical testimony and the court may make its findings solely from the affidavit and the detailed request for renewal.

(h) The court, after renewing an order for extended inpatient health services, may modify the order to provide for outpatient health services in accordance with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 18, eff. May 23, 1997.

Sec. 81.188. MOTION FOR REHEARING. (a) The court may set aside an order for the management of a person with a communicable disease and grant a motion for rehearing for good cause shown.

(b) The court may stay the order and release the person from custody before the hearing if the court is satisfied that the person does not meet the criteria for protective custody under this chapter.

(c) The court may require an appearance bond in an amount set by the court.

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

Sec. 81.189. REQUEST FOR REEXAMINATION. (a) A person subject to an order for extended management, or any interested person on the person's behalf and with the person's consent, may file a request with a court for a reexamination and a hearing to determine if the person continues to meet the criteria for the court order.

(b) The request must be filed in the county in which the person is receiving the services.

(c) The court may, on good cause shown:

(1) require that the patient be reexamined;

(2) schedule a hearing on the request; and

(3) notify the health authority, department, and the head of the facility providing health services to the person.

(d) A court is not required to order a reexamination or hearing if the request is filed within six months after an order for extended management is entered or after a similar request is filed.

(e) The head of the facility shall arrange for the person to be reexamined after receiving the court's notice.

(f) The head of the facility shall immediately discharge the person if the health authority or department determines that the person no longer meets the criteria for court-ordered extended health services.

(g) If the health authority or department determines that the person continues to meet the criteria for a court order for extended management, the health authority or department shall file an affidavit of medical evaluation with the court within 10 days after the request for reexamination and hearing is filed.

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

Sec. 81.190. HEARING ON REQUEST FOR REEXAMINATION. (a) A court that required a patient's reexamination under Section 81.189 may set a date and place for a hearing on the request if, not later than the 10th day after the request is filed:

(1) an affidavit of medical evaluation stating that the patient continues to meet the criteria for extended management has been filed; or

(2) an affidavit has not been filed and the person has not been discharged.

(b) When the hearing is set, the judge shall appoint an attorney to represent the person if the person does not already have an attorney. The judge shall also give notice of the hearing to the person, the person's attorney, the health authority or department, and the facility head.

(c) The judge shall appoint a physician who is not on the staff of the health care facility in which the person is receiving services to examine the person and file an affidavit with the court setting out the person's diagnosis and recommended treatment. The court shall ensure that the person may be examined by a physician of the person's choice and own expense if requested by the person.

(d) The hearing is held before the court and without a jury. The hearing must be held in accordance with the requirements for a hearing on an application for a court order for the management of a person with a communicable disease.

(e) The court shall dismiss the request if the court finds from clear and convincing evidence that the person continues to meet the criteria for extended management.

(f) The judge shall order the head of the facility to discharge the person if the court fails to find from clear and convincing evidence that the person continues to meet the criteria.

(g) If the department or health authority advises the court that the person must remain in isolation or quarantine and that exposure to the judge or the public would jeopardize the health and safety of those persons and the public health, the judge may order that a person entitled to a hearing may not appear in person and may appear only by teleconference or another means that the judge finds appropriate to allow the person to speak, to interact with witnesses,

and to confer with the person's attorney.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 8, eff. June 14, 2013.

Sec. 81.191. APPEAL. (a) An appeal from an order for the management of a person with a communicable disease, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is entered.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When an appeal is filed the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) The trial judge in whose court the cause is pending may:

(1) stay the order and release the person from custody before the appeal if the judge is satisfied that the person does not meet the criteria for protective custody under this chapter; and

(2) if the person is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases.

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

Sec. 81.192. CONTINUING CARE PLAN BEFORE DISCHARGE. The health authority or department, in consultation with the person, shall prepare a continuing care plan for a person who is scheduled to be discharged if the person requires continuing care.

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

Sec. 81.193. PASS FROM INPATIENT CARE. (a) The head of a facility may permit a person admitted to the facility under order for extended inpatient management of a person with a communicable disease

to leave the facility under a pass.

(b) A pass authorizes the person to leave the facility for not more than 72 hours.

(c) The pass may be subject to specified conditions.

(d) A pass may not be authorized without the concurrence of the health authority or department.

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

Sec. 81.194. RETURN TO FACILITY. (a) If a person is permitted to leave a facility under Section 81.193, the head of the facility may have the person taken into custody, detained, and returned to the facility by:

(1) signing a certificate authorizing the person's return; or

(2) filing the certificate with a magistrate and requesting the magistrate to order the person's return.

(b) The health authority or department may also have a person returned by signing the certificate authorized by Subsection (a)(1).

(c) A magistrate may issue an order directing a peace officer to take a person into custody and return the person to the facility if the head of the facility, health authority, or department files the certificate as prescribed by this section.

(d) The head of the facility, health authority, or department may sign or file the certificate on a reasonable belief that:

(1) the person is absent without authority from the facility;

(2) the person has violated the conditions of a pass; or

(3) the person's condition has deteriorated to the extent that the person's continued absence from the facility under a pass is inappropriate.

(e) A peace officer shall take the person into custody and return the person to the facility as soon as possible if the person's return is authorized by the certificate or the court order.

(f) The peace officer may take the person into custody without having the certificate or court order in the officer's possession.

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

Sec. 81.195. DISCHARGE ON EXPIRATION OF COURT ORDER. The head of a facility to which a person was committed or from which a person was required to receive temporary or extended inpatient or outpatient health services shall discharge the person when the court order expires.

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

Sec. 81.196. DISCHARGE BEFORE EXPIRATION OF COURT ORDER. (a) The health authority or department may direct the head of a facility to which a person was committed for inpatient health services or that provides outpatient health services to discharge the person at any time before the court order expires if the health authority or department determines that the person no longer meets the criteria for court-ordered health services.

(b) The health authority or department shall consider before discharging the person whether the person should receive outpatient health services in accordance with:

(1) a court order; or

(2) a modified order under Section 81.182 that directs the person to participate in outpatient health services.

(c) A discharge under Subsection (a) terminates the court order.

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

Sec. 81.197. CERTIFICATE OF DISCHARGE. Before a person is discharged under Section 81.195 or 81.196, the health authority or department shall prepare a discharge certificate, file it with the court that entered the order, and notify the head of the facility.

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

Sec. 81.198. AUTHORIZATION FOR ADMISSION. The head of a health care facility may admit and detain a person under the procedures prescribed by this subchapter.

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

Sec. 81.199. TRANSFER TO FEDERAL FACILITY. The health authority or department may authorize the head of a health care facility to transfer a person to a federal agency if:

(1) the federal agency sends notice that facilities are available and that the patient is eligible for care or treatment in the facility;

(2) notice of the transfer is sent to the committing court; and

(3) the committing court enters an order approving the transfer.

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

Sec. 81.200. TRANSFER OF RECORDS. The head of the transferring inpatient health care facility shall send the person's appropriate medical records, or a copy of the records, to the head of the health care facility to which the person is transferred.

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

Sec. 81.201. WRIT OF HABEAS CORPUS. This subchapter does not limit a person's right to obtain a writ of habeas corpus.

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

Sec. 81.202. EFFECT ON GUARDIANSHIP. This subchapter, or an action taken or a determination made under this subchapter, does not affect a guardianship established under law.

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

Sec. 81.203. CONFIDENTIALITY OF RECORDS. Records of a health care facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by this chapter or other state law.

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

Sec. 81.204. RIGHTS SUBJECT TO LIMITATION BY HEAD OF FACILITY. (a) A person in an inpatient health care facility has the right to:

(1) receive visitors;

(2) communicate with a person outside the facility; and

(3) communicate by uncensored and sealed mail with legal counsel, the department, the courts, and the state attorney general.

(b) The rights provided in Subsection (a) are subject to facility rules. The head of the facility may restrict a right to the extent the head of the facility determines that the restriction is necessary to the public health or the person's welfare but may not restrict the right to communicate with legal counsel if an attorney-client relationship has been established.

(c) A restriction imposed by the head of the facility for the public health or the person's welfare and the reasons for the restriction shall be made a part of the person's clinical record.

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

Sec. 81.205. NOTIFICATION OF RIGHTS. A person receiving inpatient health services shall be informed of the rights provided by Section 81.206:

(1) orally, in simple, nontechnical terms;

(2) in writing that, if possible, is in the person's primary language; and

(3) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

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

Sec. 81.206. GENERAL RIGHTS RELATING TO TREATMENT. A person receiving health services under this subchapter has the right to:

(1) appropriate treatment for the person's illness in an appropriate setting consistent with the protection of the person and the community;

(2) not receive unnecessary or excessive medication;

(3) refuse to participate in a research program; and

(4) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs.

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

Sec. 81.207. ADEQUACY OF TREATMENT. (a) The head of an inpatient health care facility shall provide adequate medical care and treatment to every patient in accordance with accepted standards of medical practice.

(b) The head of the facility is responsible for the detention of the patient and for providing suitable security to prevent the patient from transmitting the communicable disease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 31, eff. Sept. 1, 1991.

Sec. 81.208. PERIODIC EXAMINATION. The head of a health care facility is responsible for the examination by a physician of each person admitted to the facility under this subchapter at least once every seven days and more frequently as necessary.

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

Sec. 81.209. USE OF PHYSICAL RESTRAINT. (a) A physical restraint may not be applied to a person unless a physician prescribes the restraint.

(b) A physical restraint shall be removed as soon as possible.

(c) Each use of a physical restraint and the reason for the use shall be made a part of the patient's clinical record. The physician who prescribed the restraint shall sign the record.

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

Sec. 81.210. COSTS. (a) A county shall pay the costs for a hearing or proceeding under this subchapter if a health authority:

(1) initiates an application for a court order under

Section 81.151; or

(2) has an application for court-ordered management transferred to it under Section 81.157.

(b) Costs under this section include:

(1) attorney's fees;

(2) physician examination fees;

(3) compensation for court-ordered personal services;

(4) security; and

(5) expenses of transportation to a designated facility.

(c) A county is entitled to reimbursement for costs actually paid by the county from:

(1) the person who is the subject of the application; or

(2) a person or estate liable for the person's support.

(d) The department shall pay the costs of returning a person absent without authorization unless the person is able to pay the costs.

Added by Acts 1997, 75th Leg., ch. 242, Sec. 19 eff. May 23, 1997.

Sec. 81.211. FILING AND STATUS OF FOREIGN COURT ORDERS. (a) In the case of a person who is not a resident of this state and who may be admitted to a public health hospital in accordance with Section 13.046, the attorney general, at the request of the department, shall file a copy of an order issued by a court of another state that authorizes the commitment of the person to a health care facility for inpatient care in the manner provided by Chapter 35, Civil Practice and Remedies Code, for enforcement of foreign judgments.

(b) The application must be filed with the district court in the county in which the public health hospital to which the person will be admitted is located.

(c) A filed foreign court order that authorizes the commitment of a person to a health care facility for inpatient care may be enforced in the same manner as a court order of the court in which it is filed.

(d) A foreign court order that authorizes the commitment of a person to a health care facility for inpatient care is subject to the contractual agreement with the foreign state entered into under Section 13.046.

Added by Acts 2003, 78th Leg., ch. 107, Sec. 4, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0245, eff. April 2, 2015.

Sec. 81.212. EVADING OR RESISTING APPREHENSION OR TRANSPORT; CRIMINAL PENALTY. (a) A person who is subject to a protective custody order or temporary detention order issued by a court under this subchapter commits an offense if the person resists or evades apprehension by a sheriff, constable, or other peace officer enforcing the order or resists or evades transport to an appropriate inpatient health care facility or other suitable facility under the order.

(b) A person commits an offense if the person assists a person who is subject to a protective custody order or temporary detention order issued by a court under this subchapter in resisting or evading apprehension by a sheriff, constable, or other peace officer enforcing the order or in resisting or evading transport to an appropriate inpatient health care facility or other suitable facility under the order.

(c) An offense under this section is a Class A misdemeanor.

Added by Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 9, eff. June 14, 2013.

SUBCHAPTER H. BLOODBORNE PATHOGEN EXPOSURE CONTROL PLAN

Sec. 81.301. DEFINITIONS. In this subchapter:

(1) "Bloodborne pathogens" means pathogenic microorganisms that are present in human blood and that can cause diseases in humans. The term includes hepatitis B virus, hepatitis C virus, and human immunodeficiency virus.

(2) "Engineered sharps injury protection" means:

(A) a physical attribute that is built into a needle device used for withdrawing body fluids, accessing a vein or artery, or administering medications or other fluids and that effectively reduces the risk of an exposure incident by a mechanism such as barrier creation, blunting, encapsulation, withdrawal, retraction, destruction, or another effective mechanism; or

(B) a physical attribute built into any other type of needle device, into a nonneedle sharp, or into a nonneedle infusion safety securement device that effectively reduces the risk of an exposure incident.

(3) "Governmental unit" means:

(A) this state and any agency of the state, including a department, bureau, board, commission, or office;

(B) a political subdivision of this state, including any municipality, county, or special district; and

(C) any other institution of government, including an institution of higher education.

(4) "Needleless system" means a device that does not use a needle and that is used:

(A) to withdraw body fluids after initial venous or arterial access is established;

(B) to administer medication or fluids; or

(C) for any other procedure involving the potential for an exposure incident.

(5) "Sharp" means an object used or encountered in a health care setting that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident, including a needle device, a scalpel, a lancet, a piece of broken glass, a broken capillary tube, an exposed end of a dental wire, or a dental knife, drill, or bur.

(6) "Sharps injury" means any injury caused by a sharp, including a cut, abrasion, or needlestick.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

Sec. 81.302. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a governmental unit that employs employees who:

(1) provide services in a public or private facility providing health care-related services, including a home health care organization; or

(2) otherwise have a risk of exposure to blood or other material potentially containing bloodborne pathogens in connection with exposure to sharps.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1,

1999.

Sec. 81.303. EXPOSURE CONTROL PLAN. The department shall establish an exposure control plan designed to minimize exposure of employees described by Section 81.302 to bloodborne pathogens. In developing the plan, the department must consider:

(1) policies relating to occupational exposure to bloodborne pathogens;

(2) training and educational requirements for employees;

(3) measures to increase vaccinations of employees; and

(4) increased use of personal protective equipment by employees.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

Sec. 81.304. MINIMUM STANDARDS. The executive commissioner by rule shall adopt minimum standards to implement the exposure control plan and the other provisions of this subchapter. The rules shall be analogous to standards adopted by the federal Occupational Safety and Health Administration. Each governmental unit shall comply with the minimum standards adopted under this subchapter.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0246, eff. April 2, 2015.

Sec. 81.305. NEEDLELESS SYSTEMS. (a) The executive commissioner by rule shall recommend that governmental units implement needleless systems and sharps with engineered sharps injury protection for employees.

(b) The recommendation adopted under Subsection (a) does not apply to the use of a needleless system or sharps with engineered sharps injury protection in circumstances and in a year in which an evaluation committee has established that the use of needleless systems and sharps with engineered sharps injury protection will

jeopardize patient or employee safety with regard to a specific medical procedure or will be unduly burdensome. A report of the committee's decision shall be submitted to the department annually.

(c) At least half of the members of an evaluation committee established by a governmental unit to implement Subsection (b) must be employees who are health care workers who have direct contact with patients or provide services on a regular basis.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0247, eff. April 2, 2015.

Sec. 81.306. SHARPS INJURY LOG. (a) The executive commissioner by rule shall require that information concerning exposure incidents be recorded in a written or electronic sharps injury log to be maintained by a governmental unit. This information must be reported to the department and must include:

(1) the date and time of the exposure incident;

(2) the type and brand of sharp involved in the exposure incident; and

(3) a description of the exposure incident, including:

(A) the job classification or title of the exposed employee;

(B) the department or work area where the exposure incident occurred;

(C) the procedure that the exposed employee was performing at the time of the incident;

(D) how the incident occurred;

(E) the employee's body part that was involved in the exposure incident; and

(F) whether the sharp had engineered sharps injury protection and, if so, whether the protective mechanism was activated and whether the injury occurred before, during, or after the activation of the protective mechanism.

(b) Information regarding which recommendations under Section 81.305(a) were adopted by the governmental entity shall be included in the log.

(c) All information and materials obtained or compiled by the department in connection with a report under this section are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release by the department. The department shall make available, in aggregate form, the information described in Section 81.305(b) and this section, provided that the name and other information identifying the facility is deleted and the information is provided according to public health regions established by the executive commissioner.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0248, eff. April 2, 2015.

SUBCHAPTER I. ANIMAL-BORNE DISEASES

Sec. 81.351. DEFINITION. In this subchapter, "pet store" means a retail store that sells animals as pets.

Added by Acts 2001, 77th Leg., ch. 1228, Sec. 1, eff. Sept. 1, 2001.

Sec. 81.352. WARNING SIGN REQUIRED; RULES. (a) The owner or operator of a pet store that sells reptiles shall:

(1) post a sign warning of reptile-associated salmonellosis in accordance with department rules; and

(2) ensure that a written warning related to reptile-associated salmonellosis is provided to each purchaser of a reptile.

(b) The executive commissioner shall adopt rules to govern:

(1) the form and content of the sign required by Subsection (a) and the manner and place of posting of the sign; and

(2) the form and content of the written warning required by Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1228, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0250, eff. April 2, 2015.

Sec. 81.353. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty if a person violates this subchapter or a rule adopted under this subchapter.

(b) In determining the amount of the penalty, the department shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) such other matters as justice may require.

(c) The penalty may not exceed $500 for each month a violation continues.

(d) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the department to contest the affidavit as provided by those rules.

(e) The attorney general may sue to collect the penalty.

(f) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1228, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0251, eff. April 2, 2015.

SUBCHAPTER J. TASK FORCE ON INFECTIOUS DISEASE PREPAREDNESS AND RESPONSE

Sec. 81.401. DEFINITION. In this subchapter, "task force" means the Task Force on Infectious Disease Preparedness and Response.

Added by Acts 2015, 84th Leg., R.S., Ch. 1099 (H.B. 2950), Sec. 1, eff. June 19, 2015.

Sec. 81.402. PURPOSE AND FINDINGS. The legislature finds that:

(1) infectious diseases are responsible for more deaths worldwide than any other single cause;

(2) the State of Texas has a responsibility to safeguard and protect the health and well-being of its citizens from the spread of infectious diseases;

(3) on September 30, 2014, the first case of Ebola diagnosed in the United States occurred in Dallas, Texas;

(4) addressing infectious diseases requires the coordination and cooperation of multiple governmental entities at the local, state, and federal levels;

(5) public health and medical preparedness and response guidelines are crucial to protect the safety and welfare of our citizens; and

(6) Texas has nationally recognized infectious disease experts and other highly trained professionals across the state with the experience needed to minimize any potential risk to the people of Texas.

Added by Acts 2015, 84th Leg., R.S., Ch. 1099 (H.B. 2950), Sec. 1, eff. June 19, 2015.

Sec. 81.403. TASK FORCE; DUTIES. (a) The Task Force on Infectious Disease Preparedness and Response is created as an advisory panel to the governor.

(b) The task force shall:

(1) provide expert, evidence-based assessments, protocols, and recommendations related to state responses to infectious diseases, including Ebola; and

(2) serve as a reliable and transparent source of information and education for Texas leadership and citizens.

Added by Acts 2015, 84th Leg., R.S., Ch. 1099 (H.B. 2950), Sec. 1, eff. June 19, 2015.

Sec. 81.404. APPOINTMENT OF MEMBERS; TERMS. (a) The governor may appoint members of the task force as necessary, including members from relevant state agencies, members with expertise in infectious diseases and other issues involved in the prevention of the spread of

infectious diseases, and members from institutions of higher education in this state. The governor shall appoint to the task force:

(1) at least one member who is a county judge of a county with a population of less than 100,000;

(2) at least one member who is a county judge of a county with a population of 100,000 or more;

(3) at least one member who is a representative of a local health authority serving a rural area;

(4) at least one member who is a representative of a local health authority serving an urban area;

(5) at least one member who is a licensed nurse;

(6) at least one member who is emergency medical services personnel, as defined by Section 773.003; and

(7) at least one member who is an epidemiologist.

(b) The governor shall appoint a director of the task force from among the members of the task force.

(c) The governor may fill any vacancy that occurs on the task force and may appoint additional members as needed.

(d) Members of the task force serve at the pleasure of the governor.

(e) A state or local employee appointed to the task force shall perform any duties required by the task force in addition to the regular duties of the employee.

Added by Acts 2015, 84th Leg., R.S., Ch. 1099 (H.B. 2950), Sec. 1, eff. June 19, 2015.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 866 (S.B. 984), Sec. 2, eff. September 1, 2021.

Sec. 81.405. REPORTS. The task force may make written reports on its findings and recommendations, including legislative recommendations, to the governor and legislature.

Added by Acts 2015, 84th Leg., R.S., Ch. 1099 (H.B. 2950), Sec. 1, eff. June 19, 2015.

Sec. 81.406. MEETINGS. (a) The task force shall meet:

(1) at least once each year at a location determined by the task force director; and

(2) at other times and locations as determined by the task force director.

(b) The task force may meet telephonically in accordance with Section 551.125(b)(3), Government Code.

(c) The task force may hold public hearings to gather information. The task force shall endeavor to meet in various parts of the state to encourage local input.

(d) Notwithstanding Section 551.144, Government Code, or any other law, the task force may hold a closed meeting to discuss matters that are confidential by state or federal law or to ensure public security or law enforcement needs. A closed meeting held as provided by this subsection must be held as otherwise provided by Chapter 551, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 1099 (H.B. 2950), Sec. 1, eff. June 19, 2015.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 866 (S.B. 984), Sec. 3, eff. September 1, 2021.

Sec. 81.407. ADMINISTRATIVE SUPPORT. State agencies with members on the task force shall provide administrative support for the task force.

Added by Acts 2015, 84th Leg., R.S., Ch. 1099 (H.B. 2950), Sec. 1, eff. June 19, 2015.

Sec. 81.408. REIMBURSEMENT. Task force members serve without compensation and are not entitled to reimbursement for travel expenses.

Added by Acts 2015, 84th Leg., R.S., Ch. 1099 (H.B. 2950), Sec. 1, eff. June 19, 2015.

CHAPTER 81B. PRICE GOUGING OF MEDICAL STAFFING SERVICES DURING DESIGNATED PUBLIC HEALTH DISASTER PERIOD

Sec. 81B.001. DEFINITION. In this chapter, "designated public health disaster period" means a period:

(1) based on a threat to the public health, including a threat from:

(A) a chemical, biological, explosive, nuclear, or radiological attack or incident; or

(B) a communicable disease, epidemic, or pandemic;

(2) beginning on the earlier of the date:

(A) the governor issues a proclamation or executive order declaring a state of disaster under Chapter 418, Government Code, for any area of this state;

(B) the president of the United States declares a state of disaster that includes an area of this state as part of the federally declared disaster area; or

(C) a disaster described by Paragraph (A) or (B) occurs; and

(3) ending on the 30th day after the date the disaster declaration expires or is terminated.

Added by Acts 2023, 88th Leg., R.S., Ch. 1029 (S.B. 401), Sec. 1, eff. September 1, 2023.

Sec. 81B.002. APPLICABILITY. This chapter applies only to a medical staffing services agency that provides the following health care professionals to fill vacancies or address temporary staffing needs during a designated public health disaster period:

(1) physician assistants licensed under Chapter 204, Occupations Code;

(2) surgical assistants licensed under Chapter 206, Occupations Code;

(3) nurses licensed under Chapter 301, Occupations Code; or

(4) nurse aides listed in the nurse aide registry under Chapter 250.

Added by Acts 2023, 88th Leg., R.S., Ch. 1029 (S.B. 401), Sec. 1, eff. September 1, 2023.

Sec. 81B.003. PROHIBITED PRICE GOUGING DURING DESIGNATED PUBLIC HEALTH DISASTER PERIOD. During a designated public health disaster

period, a medical staffing services agency to which this chapter applies may not, in an area subject to the declared state of disaster:

(1) provide medical staffing services to a health care organization or other entity in this state at an exorbitant or excessive price; or

(2) demand or charge an exorbitant or excessive price to provide medical staffing services to a health care organization or other entity in this state.

Added by Acts 2023, 88th Leg., R.S., Ch. 1029 (S.B. 401), Sec. 1, eff. September 1, 2023.

Sec. 81B.004. CIVIL PENALTY; INJUNCTION. (a) A medical staffing services agency that violates this chapter is subject to a civil penalty in an amount not to exceed $10,000 for each violation.

(b) The consumer protection division of the office of the attorney general may bring an action in the name of the state to:

(1) recover a civil penalty under this section; or

(2) temporarily or permanently restrain or enjoin the person from violating this chapter.

(c) The consumer protection division of the office of the attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney's fees, expert witness fees, deposition expenses, and investigatory costs.

(d) An action under this section may be brought:

(1) in a district court of the county in which:

(A) the defendant resides;

(B) the defendant's principal place of business is located;

(C) the defendant conducts business; or

(D) the transaction giving rise to the claim occurred; or

(2) on the consent of the parties, in a district court of Travis County.

Added by Acts 2023, 88th Leg., R.S., Ch. 1029 (S.B. 401), Sec. 1, eff. September 1, 2023.

CHAPTER 81C. PROHIBITED CORONAVIRUS PREVENTATIVE MEASURES

Sec. 81C.001. DEFINITIONS. In this chapter:

(1) "COVID-19" means the 2019 novel coronavirus disease and any variants of the disease.

(2) "Governmental entity" means this state, a local government entity as defined by Section 418.004, Government Code, an open-enrollment charter school, or an agency of this state or a local government entity.

Added by Acts 2023, 88th Leg., R.S., Ch. 336 (S.B. 29), Sec. 1, eff. September 1, 2023.
Redesignated from Health and Safety Code, Chapter 81B by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(19), eff. September 1, 2025.

Sec. 81C.002. PROHIBITED FACE-COVERING MANDATE. (a) Except as provided by Subsection (b), a governmental entity may not implement, order, or otherwise impose a mandate requiring a person to wear a face mask or other face covering to prevent the spread of COVID-19.

(b) The limitation prescribed by Subsection (a) does not apply to an order or mandate that relates to:

(1) a state supported living center, as defined by Section 531.002, subject to any applicable rule or guidance prescribed by the commission that conflicts with that limitation;

(2) a facility operated by the Texas Department of Criminal Justice or the Texas Juvenile Justice Department or a municipal or county jail, subject to any applicable rule or guidance prescribed by the Commission on Jail Standards that conflicts with that limitation; or

(3) a hospital or other health care facility owned by a governmental entity, including a hospital or other health care clinic operated by or associated with an institution of higher education, as that term is defined by Section 61.003, Education Code, subject to any applicable order, ordinance, or guidance prescribed by that governmental entity that conflicts with that limitation.

Added by Acts 2023, 88th Leg., R.S., Ch. 336 (S.B. 29), Sec. 1, eff. September 1, 2023.
Redesignated from Health and Safety Code, Chapter 81B by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(19), eff. September

1, 2025.

Sec. 81C.003. PROHIBITED VACCINE MANDATE. (a) Except as provided by Subsection (b), a governmental entity may not implement, order, or otherwise impose a mandate requiring a person to be vaccinated against COVID-19.

(b) The prohibition under Subsection (a) applies only to the extent the prohibition does not conflict with the final rule adopted by the Centers for Medicare and Medicaid Services and published at 86 Fed. Reg. 61555 (November 5, 2021).

Added by Acts 2023, 88th Leg., R.S., Ch. 336 (S.B. 29), Sec. 1, eff. September 1, 2023.
Redesignated from Health and Safety Code, Chapter 81B by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(19), eff. September 1, 2025.

Sec. 81C.004. PROHIBITED CLOSURE MANDATE FOR PRIVATE BUSINESSES AND SCHOOLS. A governmental entity may not implement, order, or otherwise impose a mandate requiring the closure of a private business, public school, open-enrollment charter school, or private school to prevent the spread of COVID-19.

Added by Acts 2023, 88th Leg., R.S., Ch. 336 (S.B. 29), Sec. 1, eff. September 1, 2023.
Redesignated from Health and Safety Code, Chapter 81B by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(19), eff. September 1, 2025.

CHAPTER 81D. PROHIBITED CORONAVIRUS VACCINE MANDATES BY PRIVATE EMPLOYER

Sec. 81D.001. DEFINITIONS. In this chapter:

(1) "Adverse action" means an action taken by an employer that a reasonable person would consider was for the purpose of punishing, alienating, or otherwise adversely affecting an employee, contractor, applicant for employment, or applicant for a contract position.

(2) "Commission" means the Texas Workforce Commission.

(3) "Contractor" means a person who undertakes specific work for an employer in exchange for a benefit without submitting to the control of the employer over the manner, methods, or details of the work.

(4) "COVID-19" means the 2019 novel coronavirus disease and any variants of the disease.

(5) "Employer" means a person, other than a governmental entity, who employs one or more employees.

Added by Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 7), Sec. 1, eff. February 6, 2024.

Sec. 81D.002. EMPLOYER CORONAVIRUS VACCINE MANDATES PROHIBITED. An employer may not adopt or enforce a mandate requiring an employee, contractor, applicant for employment, or applicant for a contract position to be vaccinated against COVID-19 as a condition of employment or a contract position.

Added by Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 7), Sec. 1, eff. February 6, 2024.

Sec. 81D.003. PROHIBITED ADVERSE ACTION BY EMPLOYER. An employer may not take an adverse action against an employee, contractor, applicant for employment, or applicant for a contract position for a refusal to be vaccinated against COVID-19.

Added by Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 7), Sec. 1, eff. February 6, 2024.

Sec. 81D.0035. ADVERSE ACTION EXCEPTION FOR CERTAIN HEALTH CARE FACILITIES, HEALTH CARE PROVIDERS, AND PHYSICIANS. (a) In this section:

(1) "Health care facility" means a facility that is a provider of services, as defined by Section 1861, Social Security Act (42 U.S.C. Section 1395x).

(2) "Health care provider" and "physician" have the meanings assigned by Section 74.001, Civil Practice and Remedies Code.

(b) A health care facility, health care provider, or physician may establish and enforce a reasonable policy that includes requiring the use of protective medical equipment by an individual who is an employee or contractor of the facility, provider, or physician and who is not vaccinated against COVID-19 based on the level of risk the individual presents to patients from the individual's routine and direct exposure to patients.

(c) Establishing or enforcing a policy described by Subsection (b) is not considered an adverse action under this chapter.

Added by Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 7), Sec. 1, eff. February 6, 2024.

Sec. 81D.004. COMPLAINT; INVESTIGATION. (a) An employee, contractor, applicant for employment, or applicant for a contract position against whom an employer took an adverse action in violation of this chapter may file a complaint with the commission in the form and manner prescribed by commission rules.

(b) A complaint filed with the commission must include the following information:

(1) the name of the complainant;

(2) the name of the employer; and

(3) the nature and description of any alleged adverse action the employer took against the complainant.

(c) On receipt of a complaint under Subsection (a), the commission shall conduct an investigation to determine whether the employer took an adverse action against the complainant because of the complainant's refusal to be vaccinated against COVID-19. For a complaint against a health care facility, health care provider, or physician, the commission shall consult with the department in determining if a policy adopted under Section 81D.0035 was reasonable.

Added by Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 7), Sec. 1, eff. February 6, 2024.

Sec. 81D.005. INJUNCTIVE RELIEF. (a) On receipt of a complaint filed under Section 81D.004, the commission may request that the attorney general bring an action for injunctive relief

against the employer to prevent further violations of this chapter by the employer. The action must be filed in a district court in:

(1) Travis County; or

(2) the county in which the alleged adverse action occurred.

(b) In an injunction issued under Subsection (a), a court may include reasonable requirements to prevent further violations of this chapter.

Added by Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 7), Sec. 1, eff. February 6, 2024.

Sec. 81D.006. ADMINISTRATIVE PENALTY. (a) The commission shall impose on an employer who violates this chapter an administrative penalty in an amount equal to $50,000 for each violation, unless the employer, as applicable:

(1) hires the applicant for employment or offers a contract to the applicant for a contract position; or

(2) reinstates the employee or contractor and provides the employee or contractor with back pay from the date the employer took the adverse action and makes every reasonable effort to reverse the effects of the adverse action, including reestablishing employee benefits for which the employee or contractor otherwise would have been eligible if the adverse action had not been taken.

(b) If, following an investigation under Section 81D.004, the commission determines that the employer violated this chapter, the commission may recover from the employer reasonable investigative costs incurred by the commission in conducting the investigation, regardless of whether the employer has taken an action described by Subsection (a)(1) or (2).

Added by Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 7), Sec. 1, eff. February 6, 2024.

Sec. 81D.007. RULES. The commission shall adopt rules as necessary to implement and enforce this chapter.

Added by Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 7), Sec. 1, eff. February 6, 2024.

CHAPTER 82. CANCER REGISTRY

Sec. 82.001. SHORT TITLE. This chapter may be cited as the Texas Cancer Incidence Reporting Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 33, eff. Sept. 1, 1991.

Sec. 82.002. DEFINITIONS. In this chapter:

(1) "Cancer" includes:

(A) a large group of diseases characterized by uncontrolled growth and spread of abnormal cells;

(B) any condition of tumors having the properties of anaplasia, invasion, and metastasis;

(C) a cellular tumor the natural course of which is fatal, including malignant and benign tumors of the central nervous system; and

(D) malignant neoplasm, other than nonmelanoma skin cancers such as basal and squamous cell carcinomas.

(2) "Clinical laboratory" means an accredited facility in which:

(A) tests are performed identifying findings of anatomical changes; and

(B) specimens are interpreted and pathological diagnoses are made.

(3) "Health care facility " means:

(A) a general or special hospital as defined by Chapter 241 (Texas Hospital Licensing Law);

(B) an ambulatory surgical center licensed under Chapter 243;

(C) an institution licensed under Chapter 242; or

(D) any other facility, including an outpatient clinic, that provides diagnosis or treatment services to patients with cancer.

(4) "Health care practitioner" means:

(A) a physician as defined by Section 151.002, Occupations Code; or

(B) a person who practices dentistry as described by

Section 251.003, Occupations Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 589, Sec. 1, eff. Sept. 1, 2001.

Sec. 82.003. APPLICABILITY OF CHAPTER. This chapter applies to records of cases of cancer, diagnosed on or after January 1, 1979, and to records of all ongoing cancer cases diagnosed before January 1, 1979.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 589, Sec. 2, eff. Sept. 1, 2001.

Sec. 82.004. REGISTRY REQUIRED. The department shall maintain a cancer registry for the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0252, eff. April 2, 2015.

Sec. 82.005. CONTENT OF REGISTRY. (a) The cancer registry must be a central data bank of accurate, precise, and current information that medical authorities agree serves as an invaluable tool in the early recognition, prevention, cure, and control of cancer.

(b) The cancer registry must include:

(1) a record of the cases of cancer that occur in the state; and

(2) information concerning cancer cases as the executive commissioner considers necessary and appropriate for the recognition, prevention, cure, or control of cancer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 589, Sec. 3, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0253, eff. April 2, 2015.

Sec. 82.006. EXECUTIVE COMMISSIONER AND DEPARTMENT POWERS. (a) To implement this chapter, the executive commissioner may adopt rules that the executive commissioner considers necessary.

(b) To implement this chapter, the department may:

(1) execute contracts considered necessary;

(2) receive the data from medical records of cases of cancer that are in the custody or under the control of clinical laboratories, health care facilities, and health care practitioners to record and analyze the data directly related to those diseases;

(3) compile and publish statistical and other studies derived from the patient data obtained under this chapter to provide, in an accessible form, information that is useful to physicians, other medical personnel, and the general public;

(4) comply with requirements as necessary to obtain federal funds in the maximum amounts and most advantageous proportions possible;

(5) receive and use gifts made for the purpose of this chapter; and

(6) limit cancer reporting activities under this chapter to specified geographic areas of the state to ensure optimal use of funds available for obtaining the data.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 589, Sec. 4, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0254, eff. April 2, 2015.

Sec. 82.007. REPORTS. (a) The department shall publish an annual report to the legislature of the information obtained under this chapter.

(b) The department, in cooperation with other cancer reporting organizations and research institutions, may publish reports the department determines are necessary or desirable to carry out the purpose of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 34, eff. Sept. 1, 1991.

Sec. 82.008. DATA FROM MEDICAL RECORDS. (a) To ensure an accurate and continuing source of data concerning cancer, each health care facility, clinical laboratory, and health care practitioner shall furnish to the department, on request, data the executive commissioner considers necessary and appropriate that is derived from each medical record pertaining to a case of cancer that is in the custody or under the control of the health care facility, clinical laboratory, or health care practitioner. The department may not request data that is more than three years old unless the department is investigating a possible cancer cluster. At the request and with the authorization of the applicable health care facility, clinical laboratory, or health care practitioner, data may be furnished to the department through a health information exchange as defined by Section 182.151.

(b) A health care facility, clinical laboratory, or health care practitioner shall furnish the data requested under Subsection (a) in a reasonable format prescribed by department rule and within six months of the patient's admission, diagnosis, or treatment for cancer unless a different period is prescribed by the United States Department of Health and Human Services.

(c) The data required to be furnished under this section must include patient identification and diagnosis.

(d) The department may access medical records that would identify cases of cancer, establish characteristics or treatment of cancer, or determine the medical status of any identified patient from the following sources:

(1) a health care facility or clinical laboratory providing screening, diagnostic, or therapeutic services to a patient with respect to cancer; or

(2) a health care practitioner diagnosing or providing treatment to a patient with cancer, except as described by Subsection (g).

(e) The executive commissioner shall adopt procedures that ensure adequate notice is given to the health care facility, clinical laboratory, or health care practitioner before the department accesses data under Subsection (d).

(f) A health care facility, clinical laboratory, or health care practitioner that knowingly or in bad faith fails to furnish data as

required by this chapter shall reimburse the department or its authorized representative for the costs of accessing and reporting the data. The costs reimbursed under this subsection must be reasonable, based on the actual costs incurred by the department or by its authorized representative in the collection of data under Subsection (d), and may include salary and travel expenses. The department may assess a late fee on an account that is 60 days or more overdue. The late fee may not exceed one and one-half percent of the total amount due on the late account for each month or portion of a month the account is not paid in full. A health care facility, clinical laboratory, or health care practitioner may request that the department conduct a hearing to determine whether reimbursement to the department under this subsection is appropriate.

(g) The department may not require a health care practitioner to furnish data or provide access to records if:

(1) the data or records pertain to cases reported by a health care facility providing screening, diagnostic, or therapeutic services to cancer patients that involve patients referred directly to or previously admitted to the facility; and

(2) the facility reported the same data the practitioner would be required to report.

(h) The data required to be furnished under this section may be shared with cancer registries of health care facilities subject to the confidentiality provisions in Section 82.009.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 35, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 343, Sec. 1, eff. May 27, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 23.01, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 589, Sec. 5, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0255, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 5, eff. September 1, 2015.

Sec. 82.009. CONFIDENTIALITY. (a) Reports, records, and information obtained under this chapter are confidential and are not subject to disclosure under Chapter 552, Government Code, are not

subject to subpoena, and may not otherwise be released or made public except as provided by this section or Section 82.008(h). The reports, records, and information obtained under this chapter are for the confidential use of the department and the persons or public or private entities that the department determines are necessary to carry out the intent of this chapter.

(b) Medical or epidemiological information may be released:

(1) for statistical purposes in a manner that prevents identification of individuals, health care facilities, clinical laboratories, or health care practitioners;

(2) with the consent of each person identified in the information; or

(3) to promote cancer research, including release of information to other cancer registries and appropriate state and federal agencies, under rules adopted by the executive commissioner to ensure confidentiality as required by state and federal laws.

(c) A state employee may not testify in a civil, criminal, special, or other proceeding as to the existence or contents of records, reports, or information concerning an individual whose medical records have been used in submitting data required under this chapter unless the individual consents in advance.

(d) Data furnished to a cancer registry or a cancer researcher under Subsection (b) or Section 82.008(h) is for the confidential use of the cancer registry or the cancer researcher, as applicable, and is subject to Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 343, Sec. 2, eff. May 27, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 23.02, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 589, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0256, eff. April 2, 2015.

Sec. 82.010. IMMUNITY FROM LIABILITY. The following persons subject to this chapter that act in compliance with this chapter are not civilly or criminally liable for furnishing the information required under this chapter:

(1) a health care facility or clinical laboratory;

(2) an administrator, officer, or employee of a health care facility or clinical laboratory;

(3) a health care practitioner or employee of a health care practitioner; and

(4) an employee of the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 589, Sec. 7, eff. Sept. 1, 2001.

Sec. 82.011. EXAMINATION AND SUPERVISION NOT REQUIRED. This chapter does not require an individual to submit to any medical examination or supervision or to examination or supervision by the department.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0257, eff. April 2, 2015.

CHAPTER 83. CHRONIC KIDNEY DISEASE TASK FORCE

Sec. 83.001. DEFINITION. In this chapter, "task force" means the Chronic Kidney Disease Task Force.

Added by Acts 2019, 86th Leg., R.S., Ch. 1063 (H.B. 1225), Sec. 3, eff. September 1, 2019.

Sec. 83.002. CHRONIC KIDNEY DISEASE TASK FORCE. (a) The Chronic Kidney Disease Task Force is composed of:

(1) 20 members appointed by the governor as follows:

(A) one family practice physician;

(B) one pathologist;

(C) one nephrologist from a nephrology department of a state medical school;

(D) one nephrologist in private practice;

(E) one representative from the National Kidney Foundation;

(F) one representative from the Texas Kidney

Foundation;

(G) one representative from the South Plains Kidney Foundation of West Texas;

(H) one representative from the Texas Renal Coalition;

(I) one representative from the commission's Kidney Health Care Program;

(J) one representative of an insurer that issues a preferred provider benefit plan or of a health maintenance organization;

(K) one representative of clinical laboratories;

(L) one representative of private renal care providers;

(M) one pediatrician in private practice;

(N) one kidney transplant surgeon;

(O) one primary care physician;

(P) one licensed and certified renal dietitian;

(Q) one certified nephrology nurse;

(R) one representative from a health care system;

(S) one representative of the commission whose duties involve the state Medicaid program; and

(T) one end stage renal disease expert;

(2) two members of the senate appointed by the lieutenant governor; and

(3) two members of the house of representatives appointed by the speaker of the house of representatives.

(b) The governor shall designate a member of the task force to serve as the presiding officer of the task force. The presiding officer serves at the will of the governor.

(c) Appointments to the task force shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Added by Acts 2019, 86th Leg., R.S., Ch. 1063 (H.B. 1225), Sec. 3, eff. September 1, 2019.

Sec. 83.003. DUTIES. The task force shall:

(1) coordinate implementation of the state's cost-effective plan for prevention, early screening, diagnosis, and management of chronic kidney disease for the state's population through national, state, and local partners; and

(2) educate health care professionals on the use of clinical practice guidelines for screening, detecting, diagnosing, treating, and managing chronic kidney disease, its comorbidities, and its complications based on the Kidney Disease Outcomes Quality Initiative Clinical Practice Guidelines for Chronic Kidney Disease.

Added by Acts 2019, 86th Leg., R.S., Ch. 1063 (H.B. 1225), Sec. 3, eff. September 1, 2019.

Sec. 83.004. REIMBURSEMENT. A member of the task force may receive reimbursement for travel expenses as provided by Section 2110.004, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1063 (H.B. 1225), Sec. 3, eff. September 1, 2019.

Sec. 83.005. ASSISTANCE. The commission shall provide administrative support to the task force, including necessary staff and meeting facilities.

Added by Acts 2019, 86th Leg., R.S., Ch. 1063 (H.B. 1225), Sec. 3, eff. September 1, 2019.

Sec. 83.006. REPORT. Not later than January 1 of each odd-numbered year, the task force shall submit its findings and recommendations to:

(1) the governor, lieutenant governor, and speaker of the house of representatives; and

(2) the presiding officers of the appropriate standing committees of the legislature with jurisdiction over health issues.

Added by Acts 2019, 86th Leg., R.S., Ch. 1063 (H.B. 1225), Sec. 3, eff. September 1, 2019.

Sec. 83.007. FUNDING. (a) The task force, through the commission, may accept gifts and grants from individuals, private or public organizations, or federal or local funds to support the task

force.

(b) The commission shall investigate any potential sources of funding from federal grants or programs.

Added by Acts 2019, 86th Leg., R.S., Ch. 1063 (H.B. 1225), Sec. 3, eff. September 1, 2019.

Sec. 83.008. APPLICABILITY OF OTHER LAW. Except as specifically provided by this chapter, Chapter 2110, Government Code, does not apply to the task force.

Added by Acts 2019, 86th Leg., R.S., Ch. 1063 (H.B. 1225), Sec. 3, eff. September 1, 2019.

Sec. 83.009. TASK FORCE REVIEW AND ABOLISHMENT. (a) The commission shall review the continued need for the task force at least once every five years.

(b) If the commission determines the task force is no longer needed and should be abolished, the commission shall publish notice of its decision in the Texas Register and on the commission's Internet website.

(c) The task force is abolished on the date stated in the notice required by Subsection (b).

Added by Acts 2019, 86th Leg., R.S., Ch. 1063 (H.B. 1225), Sec. 3, eff. September 1, 2019.

CHAPTER 84. REPORTING OF OCCUPATIONAL CONDITIONS

Sec. 84.001. SHORT TITLE. This chapter may be cited as the Occupational Condition Reporting Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 2, eff. May 23, 1997.

Sec. 84.002. DEFINITIONS. In this chapter:

(1) "Health professional" means an individual whose:

(A) vocation or profession is directly or indirectly

related to the maintenance of health in another individual; and

(B) duties require a specified amount of formal education and may require a special examination, a certificate or license, or membership in a regional or national association.

(2) "Occupational condition " means a disease, abnormal health condition, or laboratory finding that is caused by or is related to exposures in the workplace.

(3) "Reportable condition " means a disease, condition, or laboratory finding required to be reported under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 2, eff. May 23, 1997.

Sec. 84.003. REPORTABLE CONDITIONS; RULES. (a) Asbestosis and silicosis are occupational conditions that are reportable to the department.

(b) Blood lead levels in adults are laboratory findings that are reportable to the department as provided by department rule.

(c) The executive commissioner may adopt rules that require other occupational conditions to be reported under this chapter. Before the executive commissioner requires another occupational condition to be reported, the executive commissioner must find that the condition:

(1) has a well-understood etiology;

(2) results predominantly from occupational exposures; and

(3) is preventable.

(d) The executive commissioner shall maintain a list of reportable conditions.

(e) The executive commissioner shall adopt rules necessary to administer and implement this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 2, eff. May 23, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0258, eff. April 2, 2015.

Sec. 84.004. REPORTING REQUIREMENTS. (a) The following persons shall report cases or suspected cases of reportable

conditions to the department:

(1) a physician who diagnoses or treats the individual with the condition;

(2) a person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopical, cultural, serological, or other evidence suggestive of the condition; and

(3) a health professional.

(b) The department may contact a physician attending a person with a case or a suspected case of an occupational condition.

(c) The executive commissioner shall prescribe the form and method of reporting. The executive commissioner may require the reports to contain any information necessary to achieve the purposes of this chapter, including the person's name, address, age, sex, race, occupation, employer, and attending physician.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 3, eff. May 23, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0259, eff. April 2, 2015.

Sec. 84.005. POWERS AND DUTIES OF DEPARTMENT. (a) The department may enter into contracts or agreements as necessary to implement this chapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

(b) The department may seek, receive, and spend any funds received through appropriations, grants, or donations from public or private sources for the purpose of identifying, reporting, or preventing those occupational conditions that have been determined by the executive commissioner to be injurious or to be a threat to the public health, subject to any limitations or conditions prescribed by the legislature.

(c) Subject to the confidentiality requirements of this chapter, the department shall evaluate the reports of occupational conditions to establish the nature and magnitude of the hazards associated with those conditions, to prevent the occurrence of those hazards, and to establish any trends involved.

(d) The department may make inspections and investigations as authorized by this chapter and other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 4, eff. May 23, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0260, eff. April 2, 2015.

Sec. 84.006. CONFIDENTIALITY. (a) All information and records relating to reportable conditions are confidential. That information may not be released or made public on subpoena or otherwise, except that release of information may be made:

(1) for statistical purposes, but only if a person is not identified;

(2) with the consent of each person identified in the information released; or

(3) to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named person.

(b) The executive commissioner shall adopt rules establishing procedures to ensure that all information and records maintained by the department under this chapter are kept confidential and protected from release to unauthorized persons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 5, eff. May 23, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0261, eff. April 2, 2015.

Sec. 84.007. INVESTIGATIONS. (a) The department shall investigate the causes of occupational conditions and methods of prevention.

(b) In performing the department's duty to prevent an occupational condition, the department's designee may enter at reasonable times and inspect within reasonable limits all or any part of an area, structure, or conveyance, regardless of ownership, that is not used for private residential purposes.

(c) Persons authorized to conduct investigations under this

section may take samples of materials present on the premises, including samples of soil, water, air, unprocessed or processed foodstuffs, manufactured items of clothing, and household goods. If samples are taken, a corresponding sample shall be offered to the person in control of the premises for independent analysis.

(d) Persons securing the required samples may reimburse or offer to reimburse the owner for the materials taken, but the reimbursement may not exceed the actual monetary loss sustained by the owner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 6, eff. May 23, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0262, eff. April 2, 2015.

CHAPTER 85. ACQUIRED IMMUNE DEFICIENCY SYNDROME AND HUMAN IMMUNODEFICIENCY VIRUS INFECTION

SUBCHAPTER A. GENERAL PROVISIONS AND EDUCATIONAL MATERIALS

Sec. 85.001. SHORT TITLE. This chapter may be cited as the Human Immunodeficiency Virus Services Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.002. DEFINITIONS. In this chapter:

(1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Public Health Service.

(2) "Communicable disease" has the meaning assigned by Section 81.003.

(3) "Contact tracing" means identifying all persons who may have been exposed to an infected person and notifying them that they have been exposed, should be tested, and should seek treatment.

(4) "HIV" means human immunodeficiency virus.

(5) "State agency" means:

(A) a board, commission, department, office, or other agency that is in the executive branch of state government and that was created by the Texas Constitution or a state statute and includes an institution of higher education as defined by Section 61.003,

Education Code;

(B) the legislature or a legislative agency; and

(C) the supreme court, the court of criminal appeals, a court of appeals, the State Bar of Texas, or another state judicial agency.

(6) "Testing program" means a program using a diagnostic test approved by the United States Food and Drug Administration to indicate the presence of HIV.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0263, eff. April 2, 2015.

Sec. 85.003. DEPARTMENT AS LEAD AGENCY AND PRIMARY RESOURCE. The department, in the discharge of its duty to protect the public health, shall act as the lead agency for AIDS and HIV policy for Texas and is the primary resource for HIV education, prevention, risk reduction materials, policies, and information in this state.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 708, Sec. 2, eff. Sept. 1, 1993.

Sec. 85.004. EDUCATIONAL MATERIALS. (a) The department shall develop model educational materials to be available on the department's Internet website to educate the public about AIDS and HIV infection.

(b) The educational materials must:

(1) include information about methods of transmission and prevention of HIV infection, state laws relating to the transmission, and conduct that may result in the transmission of HIV; and

(2) be scientifically accurate and factually correct and designed to:

(A) communicate to the public knowledge about methods of transmission and prevention of HIV infection; and

(B) educate the public about transmission risks in social, employment, and educational situations.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0265, eff. April 2, 2015.

Sec. 85.005. EDUCATIONAL MATERIALS DESIGNED FOR CERTAIN PERSONS; SPECIFIC INFORMATION. (a) The department shall include in the educational materials specific information designed to reach:

(1) persons with behavior conducive to HIV transmission;

(2) persons younger than 18 years of age; and

(3) minority groups.

(b) In developing educational materials for ethnic minorities and in assisting local community organizations in developing educational materials for minority groups, the department shall ensure that the educational materials reflect the nature and spread of HIV infection in minorities in this state.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0265, eff. April 2, 2015.

Sec. 85.006. EDUCATIONAL MATERIALS FOR PERSONS WITH DISABILITIES. (a) The department shall develop and promote the availability of educational materials concerning HIV and prevention of HIV infection specifically designed to address the concerns of persons with physical or mental disabilities.

(b) In developing those educational materials, the department shall consult persons with disabilities or consult experts in the appropriate professional disciplines.

(c) To the maximum extent possible, state-funded HIV education and prevention programs shall be accessible to persons with physical disabilities.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0266, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0267, eff. April 2, 2015.

Sec. 85.007. EDUCATIONAL MATERIALS FOR MINORS. (a) The department shall give priority to developing model educational materials for education programs for persons younger than 18 years of age.

(b) The materials in the education programs intended for persons younger than 18 years of age must:

(1) emphasize sexual abstinence before marriage and fidelity in marriage as the expected standard in terms of public health and the most effective ways to prevent HIV infection, sexually transmitted diseases, and unwanted pregnancies; and

(2) state that homosexual conduct is not an acceptable lifestyle and is a criminal offense under Section 21.06, Penal Code.

(c) In addition, the educational materials intended for persons younger than 18 years of age must:

(1) teach that sexual activity before marriage is likely to have harmful psychological and physical consequences;

(2) teach adolescents ways to recognize and respond to unwanted physical and verbal sexual advances;

(3) teach that the use of alcohol or drugs increases a person's vulnerability to unwanted sexual advances; and

(4) emphasize the importance of attaining self-sufficiency before engaging in sexual activity.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 24.01, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0268, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0269, eff. April 2, 2015.

Sec. 85.008. PROMOTION OF AVAILABILITY OF EDUCATIONAL MATERIALS. The department shall determine where HIV education efforts are needed in this state and shall promote the availability of educational materials on the department's Internet website in those areas.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0270, eff. April 2, 2015.

Sec. 85.009. AVAILABILITY OF EDUCATIONAL MATERIALS. The department shall make the educational materials available on the department's Internet website for local governments and private businesses.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0270, eff. April 2, 2015.

Sec. 85.010. EDUCATIONAL COURSE FOR EMPLOYEES AND CLIENTS OF HEALTH CARE FACILITIES. A health care facility licensed by the department or the Department of Aging and Disability Services shall require its employees to complete an educational course about HIV infection based on the model educational materials developed by the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0270, eff. April 2, 2015.

Sec. 85.011. CONTRACTS FOR EDUCATIONAL MATERIALS. (a) The department may contract with any person, other than a person who advocates or promotes conduct that violates state law, for the design and development of educational materials.
(b) This section does not restrict the inclusion in educational materials of accurate information about different ways to reduce the risk of exposure to or the transmission of HIV.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0270, eff.

April 2, 2015.

Sec. 85.012. MODEL WORKPLACE GUIDELINES. (a) To ensure consistent public policy, the department, in consultation with appropriate state and local agencies and private entities, shall develop model workplace guidelines concerning persons with HIV infection and related conditions.

(b) The model workplace guidelines must include provisions stating that:

(1) all employees will receive some education about methods of transmission and prevention of HIV infection and related conditions;

(2) accommodations will be made to keep persons with HIV infection employed and productive for as long as possible;

(3) the confidentiality of employee medical records will be protected;

(4) HIV-related policies will be consistent with current information from public health authorities, such as the Centers for Disease Control and Prevention of the United States Public Health Service, and with state and federal law and regulations;

(5) persons with HIV infection are entitled to the same rights and opportunities as persons with other communicable diseases; and

(6) employers and employees should not engage in discrimination against persons with HIV infection unless based on accurate scientific information.

(c) The department shall develop more specific model workplace guidelines for employers in businesses with educational, correctional, health, or social service responsibilities.

(d) The department shall make the model workplace guidelines available on request.

(e) Employers should be encouraged to adopt HIV-related workplace guidelines that incorporate, at a minimum, the guidelines established by the department under this section.

(f) This chapter does not create a new cause of action for a violation of workplace guidelines.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0271, eff. April 2, 2015.

Sec. 85.014. TECHNICAL ASSISTANCE TO COMMUNITY ORGANIZATIONS. (a) The department shall provide technical assistance to nonprofit community organizations to maximize the use of limited resources and volunteer efforts and to expand the availability of health care, education, prevention, and social support services needed to address the HIV epidemic.

(b) The department shall provide technical assistance in:

(1) recruiting, training, and effectively using volunteers in the delivery of HIV-related services;

(2) identifying funding opportunities and sources, including information on developing sound grant proposals; and

(3) developing and implementing effective service delivery approaches for community-based health care, education, prevention, and social support services pertaining to HIV.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.015. CONTRACT FOR SERVICES; DURATION. (a) The department may contract with an entity to provide the services required by Subchapters A through F if:

(1) the contract would minimize duplication of effort and would deliver services cost-effectively; and

(2) the contracting entity does not advocate or promote conduct that violates state law.

(b) Subsection (a)(2) does not restrict the inclusion in educational materials of accurate information about ways to reduce the risk of exposure to or transmission of HIV.

(c) The department may audit an entity contracting with the department under Subsection (a).

(d) The department may seek, accept, and spend funds from state, federal, local, and private entities to carry out Subsections (a) through (c).

(e) A contract entered into by the department under this subchapter may not be for a term of more than one year, except that a contract may be renewed without a public hearing.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0272, eff. April 2, 2015.

Sec. 85.016. RULES. The executive commissioner may adopt rules necessary to implement Subchapters A through F.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0273, eff. April 2, 2015.

SUBCHAPTER B. STATE GRANT PROGRAM TO COMMUNITY ORGANIZATIONS

Sec. 85.031. STATE GRANT PROGRAM TO COMMUNITY ORGANIZATIONS. The department shall establish and administer a state grant program to nonprofit community organizations for:

(1) HIV education, prevention, and risk reduction programs; and

(2) treatment, health, and social service programs for persons with HIV infection.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.032. RULES; PROGRAM STRUCTURE. (a) The executive commissioner may adopt rules relating to:

(1) the services that may be furnished under the program;

(2) a system of priorities regarding the types of services provided, geographic areas covered, or classes of individuals or communities targeted for services under the program; and

(3) a process for resolving conflicts between the department and a program receiving money under this subchapter.

(b) Executive commissioner or department actions relating to service, geographic, and other priorities shall be based on the set of priorities and guidelines established under this section.

(c) In structuring the program and adopting rules, the department and the executive commissioner, as appropriate, shall attempt to:

(1) coordinate the use of federal, local, and private funds;

(2) encourage the provision of community-based services;

(3) address needs that are not met by other sources of funding;

(4) provide funding as extensively as possible across the regions of the state in amounts that reflect regional needs; and

(5) encourage cooperation among local service providers.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0274, eff. April 2, 2015.

Sec. 85.033. COORDINATION OF SERVICES. (a) To prevent unnecessary duplication of services, the executive commissioner and the department shall seek to coordinate the services provided by eligible programs under Subchapters A through G with existing federal, state, and local programs.

(b) The department shall consult with the Department of Aging and Disability Services and the commission to ensure that programs funded under this subchapter complement and do not unnecessarily duplicate services provided through the Department of Aging and Disability Services and the commission.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0274, eff. April 2, 2015.

Sec. 85.034. APPLICATION PROCEDURES AND ELIGIBILITY GUIDELINES. (a) The department shall establish application procedures and eligibility guidelines for the state grants under this subchapter.

(b) Application procedures must include regional public hearings after reasonable notice in the region in which the community organization is based before awarding an initial grant or grants totalling more than $25,000 annually.

(c) Before the 10th day before the date of the public hearing, notice shall be given to each state representative and state senator

who represents any part of the region in which any part of the grant will be expended.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.035. APPLICANT INFORMATION. An applicant for a state grant under this subchapter shall submit to the department for approval:

(1) a description of the objectives established by the applicant for the conduct of the program;

(2) documentation that the applicant has consulted with appropriate local officials, community groups, and individuals with expertise in HIV education and treatment and knowledge of the needs of the population to be served;

(3) a description of the methods the applicant will use to evaluate the activities conducted under the program to determine if the objectives are met; and

(4) any other information requested by the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.036. AWARDING OF GRANTS. (a) In awarding grants for education programs under this subchapter, the department shall give special consideration to nonprofit community organizations whose primary purpose is serving persons younger than 18 years of age.

(b) In awarding grants for treatment, health, and social services, the department shall endeavor to distribute grants in a manner that prevents unnecessary duplication of services within a community.

(c) In awarding grants for education programs, the department shall endeavor to complement existing education programs in a community, to prevent unnecessary duplication of services within a community, to provide HIV education programs for populations engaging in behaviors conducive to HIV transmission, to initiate needed HIV education programs where none exist, and to promote early intervention and treatment of persons with HIV infection.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.037. RESTRICTIONS ON GRANTS. (a) The department may not award a grant to an entity or community organization that advocates or promotes conduct that violates state law.

(b) This section does not prohibit the award of a grant to an entity or community organization that provides accurate information about ways to reduce the risk of exposure to or transmission of HIV.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.038. RESTRICTIONS ON FUNDS. (a) The department may not use more than five percent of the funds appropriated for the grant program to employ sufficient staff to review and process grant applications, monitor and evaluate the effectiveness of funded programs, and provide technical assistance to grantees.

(b) Not more than one-third of the funds available under this subchapter may be used for HIV education, prevention, and risk reduction.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.039. INFORMATION PROVIDED BY FUNDED PROGRAM. (a) A program funded with a grant under this subchapter shall provide information and educational materials that are accurate, comprehensive, and consistent with current findings of the United States Public Health Service.

(b) Information and educational materials developed with a grant awarded under this subchapter must contain materials and be presented in a manner that is specifically directed to the group for which the materials are intended.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.040. EVALUATION OF FUNDED PROGRAMS. (a) The department shall develop evaluation criteria to document effectiveness, unit-of-service costs, and number of volunteers used in programs funded with grants under this subchapter.

(b) An organization that receives funding under the program shall:

(1) collect and maintain relevant data as required by the department; and

(2) submit to the department copies of all material the organization has printed or distributed relating to HIV infection.

(c) The department shall provide prompt assistance to grantees in obtaining materials and skills necessary to collect and report the data required under this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.041. RECORDS AND REPORTS. (a) The department shall require each program receiving a grant under this subchapter to maintain records and information specified by the department.

(b) The executive commissioner may adopt rules relating to the information a program is required to report to the department and shall adopt procedures and forms for reporting the information to prevent unnecessary and duplicative reporting of data.

(c) The department shall review records, information, and reports prepared by programs funded under this subchapter. Before December 1 of each year, the department shall prepare a report that is available to the public and that summarizes data regarding the type, level, quality, and cost-effectiveness of services provided under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0275, eff. April 2, 2015.

Sec. 85.042. FINANCIAL RECORDS. (a) The department shall review periodically the financial records of a program funded with a grant under this subchapter.

(b) As a condition of accepting a grant under this subchapter, a community organization must allow the department to periodically review the financial records of that organization.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.043. DUE PROCESS. The department may provide a due process hearing procedure for the resolution of conflicts between the department and a program funded with a state grant under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.044. ADVISORY COMMITTEE. The executive commissioner may appoint an advisory committee to assist in the development of procedures and guidelines required by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0276, eff. April 2, 2015.

SUBCHAPTER C. HIV MEDICATION PROGRAM

Sec. 85.061. HIV MEDICATION PROGRAM. (a) The Texas HIV medication program is established in the department.

(b) The program shall assist hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in the purchase of medications approved by the commissioner that have been shown to be effective in reducing hospitalizations due to HIV-related conditions.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0277, eff. April 2, 2015.

Sec. 85.062. ELIGIBILITY. (a) To be eligible for the program, an individual:

(1) must not be eligible for Medicaid benefits;

(2) must meet financial eligibility criteria set by department rule;

(3) must not qualify for any other state or federal program available for financing the purchase of the prescribed medication;

and

(4) must be diagnosed by a licensed physician as having AIDS or an HIV-related condition or illness of at least the minimal severity set by the executive commissioner.

(b) The department shall give priority to participation in the program to eligible individuals younger than 18 years of age.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0278, eff. April 2, 2015.

Sec. 85.063. PROCEDURES AND ELIGIBILITY GUIDELINES. The executive commissioner by rule shall establish:

(1) application and distribution procedures;

(2) eligibility guidelines to ensure the most appropriate distribution of funds available each year; and

(3) appellate procedures to resolve any eligibility or funding conflicts.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0279, eff. April 2, 2015.

Sec. 85.064. FUNDING. (a) The department may accept and use local, state, and federal funds and private donations to fund the program.

(b) State, local, and private funds may be used to qualify for federal matching funds if federal funding becomes available.

(c) A hospital district, local health department, public or nonprofit hospital or clinic, or nonprofit community organization may participate in the program by sending funds to the department for the purpose of providing assistance to clients for the purchase of HIV medication. A hospital district may send funds obtained from any source, including taxes levied by the district.

(d) The department shall deposit money received under this section in the state treasury to the credit of the general revenue fund.

(e) Funds received from a hospital district, local health department, public or nonprofit hospital or clinic, or nonprofit community organization under this section may be used only to provide assistance to clients of that entity. The funds may be supplemented with other funds available for the purpose of the program.

(f) Funds appropriated by the General Appropriations Act may not be transferred from other line items for the program.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0280, eff. April 2, 2015.

Sec. 85.065. SLIDING FEE SCALE TO PURCHASE MEDICATION. The department may institute a sliding fee scale to help eligible HIV-infected individuals purchase medications under the program.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

SUBCHAPTER D. TESTING PROGRAMS AND COUNSELING

Sec. 85.081. MODEL PROTOCOLS FOR COUNSELING AND TESTING. (a) The department shall develop, and the executive commissioner shall adopt, model protocols for counseling and testing related to HIV infection. The protocols shall be made available to health care providers on request.

(b) A testing program shall adopt and comply with the model protocols developed by the department under Subsection (a).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0281, eff. April 2, 2015.

Sec. 85.082. DEPARTMENT VOLUNTARY TESTING PROGRAMS. (a) The department shall establish voluntary HIV testing programs in each public health region to make confidential counseling and testing available. The department shall complete contact tracing after a confirmed positive test.

(b) The department may contract with public and private entities to perform the testing as necessary according to local circumstances.

(c) The results of a test conducted by a testing program or department program under this section may not be used for insurance purposes, to screen or determine suitability for employment, or to discharge a person from employment.

(d) A person who is injured by an intentional violation of Subsection (c) may bring a civil action for damages and may recover for each violation from a person who violates Subsection (c):

(1) $1,000 or actual damages, whichever is greater; and

(2) reasonable attorney fees.

(e) In addition to the remedies provided by Subsection (d), the person may bring an action to restrain a violation or threatened violation of Subsection (c).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.085. PHYSICIAN SUPERVISION OF MEDICAL CARE. A licensed physician shall supervise any medical care or procedure provided under a testing program.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.086. REPORTS. A testing program shall report test results for HIV infection in the manner provided by Chapter 81 (Communicable Disease Prevention and Control Act).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.087. TRAINING OF COUNSELORS. (a) The department shall develop and offer a training course for persons providing HIV counseling. The training course shall include information relating to the special needs of persons with positive HIV test results, including the importance of early intervention and treatment and recognition of psychosocial needs.

(b) The department shall maintain a registry of persons who successfully complete the training course.

(c) The department may charge a fee for the course to persons other than employees of entities receiving state or federal funds for HIV counseling and testing programs through a contract with the department.

(d) The executive commissioner by rule shall set the fee in an amount that is reasonable and necessary to cover the costs of providing the course.

(e) The department may contract for the training of counselors.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0282, eff. April 2, 2015.

Sec. 85.088. STATE-FUNDED HEALTH CLINICS. (a) State-funded primary health, women's reproductive health, and sexually transmitted disease clinics shall:

(1) make available to patients and clients information and educational materials concerning the prevention of HIV infection; and

(2) provide or refer patients and clients to voluntary and affordable counseling and HIV testing services, including the patient's or client's choice of anonymous or confidential HIV testing or counseling.

(b) Information provided under Subsection (a)(1) shall be routinely incorporated into patient education and counseling in clinics specializing in sexually transmitted diseases and women's reproductive health.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0283, eff. April 2, 2015.

Sec. 85.089. DISCIPLINARY ACTION. This subchapter does not prohibit disciplinary proceedings from being conducted by the appropriate licensing authorities for a health care provider's violation of this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

SUBCHAPTER E. DUTIES OF STATE AGENCIES AND STATE CONTRACTORS

Sec. 85.111. EDUCATION OF STATE EMPLOYEES. (a) Each state agency annually shall provide to each state employee educational information about:

(1) methods of transmission and prevention of HIV infection;

(2) state laws relating to the transmission of HIV infection; and

(3) conduct that may result in the transmission of HIV infection.

(b) The educational information shall be provided to a newly hired state employee on the first day of employment.

(c) The educational information shall be based on the model developed by the department and shall include the workplace guidelines adopted by the state agency.

(d) The department shall prepare and distribute to each state agency a model informational pamphlet that can be reproduced by each state agency to meet the requirements of this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0284, eff. April 2, 2015.

Sec. 85.112. WORKPLACE GUIDELINES. (a) Each state agency shall adopt and implement workplace guidelines concerning persons with AIDS and HIV infection.

(b) The workplace guidelines shall incorporate at a minimum the model workplace guidelines developed by the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.113. WORKPLACE GUIDELINES FOR STATE CONTRACTORS. An entity that contracts with or is funded by any of the following state agencies to operate a program involving direct client contact shall adopt and implement workplace guidelines similar to the guidelines adopted by the agency that funds or contracts with the entity:

(1) the Department of Assistive and Rehabilitative Services;
(2) the Texas Juvenile Justice Department;
(3) the Texas Department of Criminal Justice;
(4) the department;
(5) the Department of Aging and Disability Services; and
(6) the commission.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 835, Sec. 25, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0285, eff. April 2, 2015.

Sec. 85.114. EDUCATION OF CERTAIN CLIENTS, INMATES, PATIENTS, AND RESIDENTS. (a) Each state agency listed in Section 85.113 shall routinely make available HIV education for clients, inmates, patients, and residents of treatment, educational, correctional, or residential facilities under the agency's jurisdiction.

(b) Education available under this section shall be based on the model educational materials developed by the department and tailored to the cultural, educational, language, and developmental needs of the clients, inmates, patients, or residents, including the use of Braille or telecommunication devices for the deaf.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0286, eff. April 2, 2015.

Sec. 85.115. CONFIDENTIALITY GUIDELINES. (a) Each state agency shall develop and implement guidelines regarding confidentiality of AIDS and HIV-related medical information for employees of the agency and for clients, inmates, patients, and residents served by the agency.

(b) Each entity that receives funds from a state agency for residential or direct client services or programs shall develop and implement guidelines regarding confidentiality of AIDS and HIV-

related medical information for employees of the entity and for clients, inmates, patients, and residents served by the entity.

(c) The confidentiality guidelines shall be consistent with guidelines published by the department and with state and federal law and regulations.

(d) An entity that does not adopt confidentiality guidelines as required by Subsection (b) is not eligible to receive state funds until the guidelines are developed and implemented.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.116. TESTING AND COUNSELING FOR STATE EMPLOYEES EXPOSED TO HIV INFECTION ON THE JOB. (a) On an employee's request, a state agency shall pay the costs of testing and counseling an employee of that agency concerning HIV infection if:

(1) the employee documents to the agency's satisfaction that the employee may have been exposed to HIV while performing duties of employment with that agency; and

(2) the employee was exposed to HIV in a manner that the United States Public Health Service has determined is capable of transmitting HIV.

(b) The executive commissioner by rule shall prescribe the criteria that constitute possible exposure to HIV under this section. The criteria must be based on activities the United States Public Health Service determines pose a risk of HIV infection.

(c) For the purpose of qualifying for workers' compensation or any other similar benefits or compensation, an employee who claims a possible work-related exposure to HIV infection must provide the employer with a written statement of the date and circumstances of the exposure and document that, within 10 days after the date of the exposure, the employee had a test result that indicated an absence of HIV infection.

(d) The cost of a state employee's testing and counseling shall be paid from funds appropriated for payment of workers' compensation benefits to state employees. The State Office of Risk Management shall adopt rules necessary to administer this subsection.

(e) Counseling or a test conducted under this section must conform to the model protocol on HIV counseling and testing prescribed by the department.

(f) A state employee who may have been exposed to HIV while performing duties of state employment may not be required to be tested.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0287, eff. April 2, 2015.

SUBCHAPTER G. POLICIES OF CORRECTIONAL AND LAW ENFORCEMENT AGENCIES, FIRE DEPARTMENTS, AND EMERGENCY MEDICAL SERVICES PROVIDERS

Sec. 85.141. MODEL POLICIES CONCERNING PERSONS IN CUSTODY. The department, in consultation with appropriate correctional and law enforcement agencies, fire departments, and emergency medical services providers, shall develop model policies regarding the handling, care, and treatment of persons with AIDS or HIV infection who are in the custody of the Texas Department of Criminal Justice, local law enforcement agencies, municipal and county correctional facilities, and district probation departments.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.142. ADOPTION OF POLICY. (a) Each state and local law enforcement agency, fire department, emergency medical services provider, municipal and county correctional facility, and district probation department shall adopt a policy for handling persons with AIDS or HIV infection who are in their custody or under their supervision.

(b) The policy must be substantially similar to a model policy developed by the department under Section 85.141.

(c) A policy adopted under this section applies to persons who contract or subcontract with an entity required to adopt the policy under Subsection (a).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.143. CONTENT OF POLICY. A policy adopted under this subchapter must:

(1) provide for periodic education of employees, inmates, and probationers concerning HIV;

(2) ensure that education programs for employees include information and training relating to infection control procedures and that employees have infection control supplies and equipment readily available; and

(3) ensure access to appropriate services and protect the confidentiality of medical records relating to HIV infection.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

SUBCHAPTER I. PREVENTION OF TRANSMISSION OF HIV AND HEPATITIS B VIRUS BY INFECTED HEALTH CARE WORKERS

Sec. 85.201. LEGISLATIVE FINDINGS. (a) The legislature finds that:

(1) the Centers for Disease Control and Prevention of the United States Public Health Service have made recommendations for preventing transmission of human immunodeficiency virus (HIV) and hepatitis B virus (HBV) to patients in the health care setting;

(2) the Centers for Disease Control and Prevention of the United States Public Health Service have found that when health care workers adhere to recommended infection-control procedures, the risk of transmitting HBV from an infected health care worker to a patient is small, and the risk of transmitting HIV is likely to be even smaller;

(3) the risk of transmission of HIV and HBV in health care settings will be minimized if health care workers adhere to the Centers for Disease Control and Prevention of the United States Public Health Service recommendations; and

(4) health care workers who perform exposure-prone procedures should know their HIV antibody status; health care workers who perform exposure-prone procedures and who do not have serologic evidence of immunity to HBV from vaccination or from previous infection should know their HBsAg status and, if that is positive, should also know their HBeAg status.

(b) Any testing for HIV antibody status shall comply with Subchapters C, D, and F, Chapter 81.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0288, eff. April 2, 2015.

Sec. 85.202. DEFINITIONS. In this subchapter:

(1) "Exposure-prone procedure" means a specific invasive procedure that poses a direct and significant risk of transmission of HIV or hepatitis B virus, as designated by a health professional association or health facility, as provided by Section 85.204(b)(4).

(2) "Health care worker" means a person who furnishes health care services in direct patient care situations under a license, certificate, or registration issued by this state or a person providing direct patient care in the course of a training or educational program.

(3) "Invasive procedure" means:

(A) a surgical entry into tissues, cavities, or organs; or

(B) repair of major traumatic injuries associated with any of the following:

(i) an operating or delivery room, emergency department, or outpatient setting, including a physician's or dentist's office;

(ii) cardiac catheterization or angiographic procedures;

(iii) a vaginal or cesarean delivery or other invasive obstetric procedure during which bleeding may occur; or

(iv) the manipulation, cutting, or removal of any oral or perioral tissues, including tooth structure, during which bleeding occurs or the potential for bleeding exists.

(4) "Universal precautions" means procedures for disinfection and sterilization of reusable medical devices and the appropriate use of infection control, including hand washing, the use of protective barriers, and the use and disposal of needles and other sharp instruments as those procedures are defined by the Centers for Disease Control and Prevention of the United States Public Health Service.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0289, eff. April 2, 2015.

Sec. 85.203. INFECTION CONTROL STANDARDS. (a) All health care workers shall adhere to universal precautions as defined by this subchapter.

(b) Health care workers with exudative lesions or weeping dermatitis shall refrain from all direct patient care and from handling patient care equipment and devices used in performing invasive procedures until the condition resolves.

(c) All institutions of higher education and professional and vocational schools training health care workers shall provide instruction on universal precautions.

(d) Health care institutions shall establish procedures for monitoring compliance with universal precautions.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

Sec. 85.204. MODIFICATION OF PRACTICE. (a) Except as provided by Subsections (b) and (c), a health care worker who is infected with HIV or who is infected with hepatitis B virus and is HBeAg positive may not perform an exposure-prone procedure.

(b)(1) A health care worker who is infected with HIV or who is infected with hepatitis B virus and is HBeAg positive may perform an exposure-prone procedure only if the health care worker has sought counsel from an expert review panel and been advised under what circumstances, if any, the health care worker may continue to perform the exposure-prone procedure.

(2) An expert review panel should include the health care worker's personal physician and experts with knowledge of infectious diseases, infection control, the epidemiology of HIV and hepatitis B virus, and procedures performed by the health care worker.

(3) All proceedings and communications of the expert review panel are confidential and release of information relating to a health care worker's HIV status shall comply with Chapter 81.

(4) Health professional associations and health facilities

should develop guidelines for expert review panels and identify exposure-prone procedures, as defined by this subchapter.

(c) A health care worker who performs an exposure-prone procedure as provided under Subsection (b) shall notify a prospective patient of the health care worker's seropositive status and obtain the patient's consent before the patient undergoes an exposure-prone procedure, unless the patient is unable to consent.

(d) To promote the continued use of the talents, knowledge, and skills of a health care worker whose practice is modified because of the worker's HIV or hepatitis B virus infection status, the worker should:

(1) be provided opportunities to continue patient care activities, if practicable; and

(2) receive career counseling and job retraining.

(e) A health care worker whose practice is modified because of hepatitis B virus infection may request periodic redeterminations by the expert review panel under Subsection (b) of any change in the worker's HBeAg status due to resolution of infection or as a result of treatment.

(f) A health care worker who is infected with HIV or who is infected with hepatitis B virus and is HBeAg positive who performs invasive procedures not identified as exposure-prone should not have his or her practice restricted, provided the infected health care worker adheres to the standards for infection control provided in Section 85.203.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

Sec. 85.205. DISCIPLINARY PROCEDURES. A health care worker who fails to comply with this subchapter is subject to disciplinary procedures by the appropriate licensing entity.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

Sec. 85.206. RETENTION OF LICENSE; PERMITTED ACTS. This subchapter does not:

(1) require the revocation of the license, registration, or

certification of a health care worker who is infected with HIV or hepatitis B virus;

(2) prohibit a health care worker who is infected with HIV or hepatitis B virus and who adheres to universal precautions, as defined by this subchapter, from:

(A) performing procedures not identified as exposure-prone; or

(B) providing health care services in emergency situations;

(3) prohibit a health care worker who is infected with HIV and who adheres to universal precautions from providing health care services, including exposure-prone procedures, to persons who are infected with HIV; or

(4) require the testing of health care workers.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

SUBCHAPTER J. HOME COLLECTION KITS FOR HIV INFECTION TESTING

Sec. 85.251. DEFINITIONS. In this subchapter:

(1) "Home collection kit" means a product sold to the general public and used by an individual to collect a specimen from the human body and to submit the specimen to a laboratory for testing and a report.

(2) "Service provider" means the manufacturer of a home collection kit or a person designated by the manufacturer to provide the services required by this subchapter.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.252. PROHIBITIONS RELATING TO HOME COLLECTION KIT. A person may not market, distribute, or sell a home collection kit for HIV infection testing in this state unless the kit complies with Chapter 431.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.253. PROHIBITIONS RELATING TO HOME TESTING. (a) A

person may not market, distribute, or sell a product to be used by a member of the public to test a specimen collected from the human body for HIV infection unless the kit complies with Chapter 431.

(b) This section does not apply to a product marketed, distributed, or sold only to physicians or other persons authorized by law to test for HIV infection a specimen collected from the human body.

(c) A person may not require an individual to be tested for HIV infection as provided in Section 81.102.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.254. PACKAGE OF SERVICES. A home collection kit for HIV infection testing shall be sold as part of a package of services that includes:

(1) laboratory testing by a qualified facility;

(2) reporting of test results;

(3) verification of positive test results;

(4) counseling as required by this subchapter; and

(5) information, upon request, describing how test results and related information are stored by the service provider, how long the information is retained, and under what circumstances the information may be communicated to other persons.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.255. QUALIFIED FACILITY. A laboratory facility that conducts testing of a specimen collected with a home collection kit for HIV infection testing must comply with the Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Section 263a).

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.256. ORAL REPORTING. A service provider shall report test results from a home collection kit for HIV infection testing orally to the individual tested. Notwithstanding Section 81.109, the test results may be provided by telephone.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.257. COUNSELING; COUNSELING PROTOCOLS. (a) A service provider shall provide pretesting counseling to an individual who is considering using a home collection kit for HIV infection testing. This counseling may be provided orally by telephone or through written information included with the home collection kit.

(b) At the time the test results are reported to the individual tested, the service provider shall provide counseling and appropriate referrals for care and treatment.

(c) Counseling provided by a service provider, including written information provided under Subsection (a) and referrals, must conform with counseling protocols adopted by the executive commissioner. Except as provided by Section 85.256, the counseling protocols must be consistent with the requirements of Section 81.109 and the protocols adopted under Section 85.081.

(d) Counseling provided by a service provider under this section must be provided in English and in Spanish. The department may require a service provider to provide counseling in another language if the department finds that the service provider is marketing home collection kits in a community in which a significant portion of the population speaks a language other than English or Spanish.

(e) A service provider, in providing counseling, may not:

(1) solicit the purchase of additional services or products; or

(2) refer the individual being counseled to an entity:

(A) that is owned or controlled by the service provider;

(B) that owns or controls the service provider;

(C) that is owned or controlled by an entity that owns or controls the service provider; or

(D) that has another ongoing financial relationship with the service provider.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0290, eff. April 2, 2015.

Sec. 85.258. LABELING. (a) A home collection kit for HIV infection testing shall meet the requirements of Chapter 431.

(b) In addition to the requirements in Subsection (a), the labeling shall explain which persons and entities will have access to the test results for the individual.

(c) In addition to the labeling requirements in Subsections (a) and (b), a home collection kit labeled in Spanish must also be available. The department may require a service provider to label a home collection kit in another language if the department finds that the service provider is marketing home collection kits in a community in which a significant portion of the population speaks a language other than English or Spanish.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0291, eff. April 2, 2015.

Sec. 85.259. ENFORCEMENT. A home collection kit for HIV infection testing is a "device" as that term is defined in Section 431.002 and is subject to the provisions for enforcement contained in Chapter 431. Any violation of the requirement in Section 85.258 shall be subject to the enforcement provisions of Chapter 431.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.260. CONFIDENTIALITY. (a) Any statement that an identifiable individual has or has not been tested with a home collection kit for HIV infection testing, including a statement or assertion that the individual is positive, is negative, is at risk, or has or does not have a certain level of antigen or antibody, is confidential as provided by Section 81.103.

(b) A person commits an offense if the person violates this section. The punishment for an offense under this section is the same as the punishment for an offense under Section 81.103.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.261. CERTAIN TECHNOLOGY PROHIBITED. A service provider may not use technology that permits the service provider to identify an individual to whom test results or counseling is provided or to identify the telephone number from which that individual is calling.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.262. REPORTS. A service provider shall report test results from a home collection kit for HIV infection testing in the manner provided by Subchapter C, Chapter 81.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

SUBCHAPTER K. TEXAS HIV MEDICATION ADVISORY COMMITTEE

Sec. 85.271. DEFINITIONS. In this subchapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(32), eff. April 2, 2015.

(2) "Committee" means the Texas HIV Medication Advisory Committee.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(32), eff. April 2, 2015.

(4) "Program" means the Texas HIV medication program established under Subchapter C.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(32), eff. April 2, 2015.

Sec. 85.272. TEXAS HIV MEDICATION ADVISORY COMMITTEE. (a) The executive commissioner shall establish the committee.

(b) The committee consists of 11 members appointed by the executive commissioner. The committee must include:

(1) three physicians who are actively engaged in the treatment of adults who are infected with HIV;

(2) one physician who is actively engaged in the treatment of infants and children who are infected with HIV;

(3) four consumers who are diagnosed with HIV;

(4) one person who is an administrator for a public, nonprofit hospital that provides services to individuals who are infected with HIV;

(5) one social worker who works with individuals who are infected with HIV; and

(6) one pharmacist who participates in the program.

(c) The department shall provide staff support for the committee.

(d) Except as provided by this subchapter, the committee is subject to Chapter 2110, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.273. DUTIES. (a) The committee shall advise the executive commissioner and the department in the development of procedures and guidelines for the program.

(b) The committee shall:

(1) review the program's goals and aims;

(2) evaluate the program's ongoing efforts;

(3) recommend both short-range and long-range goals and objectives for medication needs; and

(4) perform any other tasks assigned by the executive commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.274. TERMS. A committee member serves at the will of the executive commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.275. OFFICERS. (a) The committee shall select a

presiding officer and an assistant presiding officer from the committee members.

(b) An officer shall begin serving on March 1 of each odd-numbered year and serve until February 27 of the following odd-numbered year.

(c) An officer may continue to serve until a replacement is elected for the officer's position.

(d) The presiding officer shall:

(1) preside at all committee meetings attended by the presiding officer;

(2) call meetings in accordance with this subchapter;

(3) appoint subcommittees as necessary; and

(4) ensure annual reports are made to the commissioner.

(e) The presiding officer may serve as an ex officio member of any subcommittee.

(f) The assistant presiding officer shall:

(1) perform the duties of the presiding officer if the presiding officer is absent or is not able to perform those duties because of disability; and

(2) complete the unexpired portion of the presiding officer's term if the office of the presiding officer becomes vacant.

(g) The committee may elect a committee member to replace the assistant presiding officer if the office of the assistant presiding officer becomes vacant.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0292, eff. April 2, 2015.

Sec. 85.276. MEETINGS. (a) The committee shall meet only as necessary to conduct committee business.

(b) A meeting may be called by agreement between the department staff and:

(1) the presiding officer; or

(2) three or more members of the committee.

(c) The department staff shall:

(1) make meeting arrangements; and

(2) contact each committee member to determine the member's availability for a meeting date and place.

(d) The committee is not a "governmental body" as defined by Chapter 551, Government Code. However, each committee meeting must be announced and conducted in accordance with Chapter 551, Government Code, except that the provisions allowing executive sessions do not apply to the committee.

(e) Each member of the committee must be informed of a committee meeting at least five working days before the meeting is to take place.

(f) An agenda for each committee meeting must include an item entitled "public comment" under which any person may address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit for each comment.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.277. ATTENDANCE. (a) A member shall attend:

(1) a scheduled committee meeting; and

(2) a meeting of a subcommittee to which the member is assigned.

(b) A member shall notify the presiding officer or the appropriate department staff if the member is unable to attend a scheduled meeting.

(c) The committee shall include the attendance records of each member in the committee's annual report to the commissioner. The report must include a member's attendance at both committee and subcommittee meetings.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.278. PROCEDURES. (a) The committee shall use Robert's Rules of Order as the basis of parliamentary decisions except as provided by other law or rule.

(b) An action taken by the committee must be approved by a majority vote of the members present after a quorum is established.

(c) Each member shall have one vote.

(d) A member may not authorize another individual to represent the member by proxy.

(e) The committee shall make decisions in the discharge of the committee's duties without discrimination based on a person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(f) The department staff shall take minutes of each committee meeting. After the minutes are approved by the committee, the presiding officer shall sign the minutes.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.279. SUBCOMMITTEES. (a) The committee may establish subcommittees as necessary to assist the committee in performing the committee's duties.

(b) The presiding officer shall appoint committee members to serve on subcommittees and to act as subcommittee chairs. The presiding officer may appoint a person who is not a committee member to serve on a subcommittee.

(c) A subcommittee shall meet when called by the subcommittee's chair or when directed by the committee.

(d) A subcommittee chair shall make a regular report to the committee at each committee meeting or in an interim written report as needed. The report must include an executive summary or minutes of each subcommittee meeting.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.280. STATEMENT BY MEMBER; MEMBER DUTIES. (a) The executive commissioner, the department, and the committee may not be bound by any statement made or action taken by a committee member unless the member makes the statement or takes the action based on specific instructions from the executive commissioner, the department, or the committee.

(b) The committee and committee members may not participate in any legislative activity in the name of the executive commissioner,

the department, or the committee unless the committee or committee member obtains approval through the department's legislative process. Committee members may represent themselves or another entity in the legislative process.

(c) A committee member may not accept or solicit a benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(d) A committee member may not disclose confidential information acquired through the member's service on the committee.

(e) A committee member may not knowingly solicit, accept, or agree to accept a benefit for exercising the member's official powers or duties in favor of another person.

(f) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact and may not vote or otherwise participate in the matter.

(g) In this section, "personal or private interest" means a direct pecuniary interest in a matter but does not include a person's engagement in a profession, trade, or occupation if the person's interest is the same as any other person who is similarly engaged in the profession, trade, or occupation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.281. COMPENSATION; EXPENSES. (a) A committee member may receive reimbursement for expenses incurred for each day the member engages in official committee business if the reimbursement is authorized by the General Appropriations Act or through the budget execution process.

(b) A committee member is not entitled to a salary or stipend unless required by law.

(c) A committee member who is an employee of a state agency, other than the department, is not entitled to reimbursement for expenses from the department.

(d) A person who serves on a subcommittee and who is not a committee member is not entitled to reimbursement for expenses from the department.

(e) Only a consumer who is diagnosed with HIV and serves as a committee member is eligible for reimbursement of actual travel

expenses incurred.

(f) A committee member who is eligible for reimbursement of expenses shall submit to the department staff the member's receipts for the expenses and any required forms not later than 14 days after a committee meeting.

(g) A member shall make a request for reimbursement of expenses on an official state travel voucher prepared by the department staff.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.282. REPORTS. (a) The committee shall file an annual written report with the commissioner not later than March 31 of each year. The report must cover the meetings and activities of the committee for the year preceding the date of the report.

(b) The report must include:

(1) the meeting dates of the committee and any subcommittee;

(2) attendance records for each committee member;

(3) a brief description of any action taken by the committee;

(4) a description of how the committee has accomplished any specific tasks officially given to the committee;

(5) the status of any rules recommended by the committee; and

(6) the anticipated activities of the committee for the following year.

(c) The committee shall identify the costs for the committee's existence in the report, including the cost of department staff used to support the committee's activities and the source of funds used to support the committee's activities.

(d) The presiding officer and appropriate department staff shall sign the report.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

CHAPTER 86. BREAST CANCER AND LUNG CANCER
SUBCHAPTER B. BREAST CANCER SCREENING

Sec. 86.013. INFORMATION ON SUPPLEMENTAL BREAST CANCER SCREENING. (a) A mammography facility certified by the United States Food and Drug Administration or by a certification agency approved by the United States Food and Drug Administration shall:

(1) be aware of and comply with all applicable federal and state "dense breast" reporting requirements; and

(2) on completion of a mammogram provide to the patient:

(A) based on the patient's reported breast density, notice that includes one of the following:

(i) for a mammography report identifying the patient's breast density as "The breasts are almost entirely fatty" or "There are scattered areas of fibroglandular density," the statement: "Breast tissue can be either dense or not dense. Dense tissue makes it harder to find breast cancer on a mammogram and also raises the risk of developing breast cancer. Your breast tissue is not dense. Talk to your healthcare provider about breast density, risks for breast cancer, and your individual situation."; or

(ii) for a mammography report identifying the patient's breast density as "The breasts are heterogeneously dense, which may obscure small masses" or "The breasts are extremely dense, which lowers the sensitivity of mammography," the statement: "Breast tissue can be either dense or not dense. Dense tissue makes it harder to find breast cancer on a mammogram and also raises the risk of developing breast cancer. Your breast tissue is dense. In some people with dense tissue, other imaging tests in addition to a mammogram may help find cancers. Talk to your health care provider about breast density, risks for breast cancer, and your individual situation."; and

(B) notice that includes the statement:

"A report of your mammography results will be sent to you and your physician. You should contact your physician if you have any questions or concerns regarding this report."

(b) Notwithstanding any other law, this section does not create a cause of action or create a standard of care, obligation, or duty that provides a basis for a cause of action.

(c) The information required by this section or evidence that a person violated this section is not admissible in a civil, judicial, or administrative proceeding.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1154 (H.B. 2102), Sec. 2,

eff. September 1, 2011.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 796 (S.B. 1084), Sec. 1, eff. September 1, 2025.

CHAPTER 87. BIRTH DEFECTS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 87.001. DEFINITIONS. In this chapter:

(1) "Birth defect" means a physical or mental functional deficit or impairment in a human embryo, fetus, or newborn resulting from one or more genetic or environmental causes.

(2) "Communicable disease" has the meaning assigned by Section 81.003.

(3) Repealed by Acts 1995, 74th Leg., ch. 76, Sec. 8.134, eff. Sept. 1, 1995.

(4) "Environmental causes" means the sum total of all the conditions and elements that make up the surroundings and influence the development of an individual.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(33), eff. April 2, 2015.

(6) "Health professional" means an individual whose:

(A) vocation or profession is directly or indirectly related to the maintenance of health in another individual; and

(B) duties require a specified amount of formal education and may require a special examination, certificate, or license or membership in a regional or national association.

(7) "Health facility" includes:

(A) a general or special hospital licensed by the department under Chapter 241;

(B) a physician-owned or physician-operated clinic;

(C) a publicly or privately funded medical school;

(D) a state hospital operated by the department or a state supported living center operated by the Department of Aging and Disability Services;

(E) a genetic evaluation and counseling center;

(F) a public health clinic conducted by a local health unit, health department, or public health district organized and recognized under Chapter 121;

(G) a physician peer review organization; and

(H) another facility specified by department rule.

(8) "Midwife" has the meaning assigned by Section 203.002, Occupations Code.

(9) "Local health unit" has the meaning assigned by Section 121.004.

(10) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(33), eff. April 2, 2015.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.134, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 14.774, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0293, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(33), eff. April 2, 2015.

Sec. 87.002. CONFIDENTIALITY. (a) Except as specifically authorized by this chapter, reports, records, and information furnished to a department employee or to an authorized agent of the department that relate to cases or suspected cases of a health condition are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by this chapter.

(c) The department may release medical, epidemiological, or toxicological information:

(1) for statistical purposes, if released in a manner that prevents the identification of any person;

(2) with the consent of each person identified in the information or, if the person is a minor, the minor's parents, managing conservator, guardian, or other person who is legally authorized to consent;

(3) to medical personnel, appropriate state agencies, health authorities, regional directors, and public officers of counties and municipalities as necessary to comply with this chapter

and department rules relating to the identification, monitoring, and referral of children with birth defects;

(4) to appropriate federal agencies, such as the Centers for Disease Control and Prevention of the United States Public Health Service; or

(5) to medical personnel to the extent necessary to protect the health or life of the child identified in the information.

(d) The executive commissioner, the commissioner, another employee of the department, or an authorized agent may not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of or reports or information about a child identified or monitored for a birth defect by the department without the consent of the child's parents, managing conservator, guardian, or other person authorized by law of this state or another state or by a court order to give consent.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), 8.130, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0294, eff. April 2, 2015.

Sec. 87.003. CONTRACTS. The department may enter into contracts or agreements with persons as necessary to implement this chapter. The contracts or agreements may provide for payment by the state for supplies, equipment, data, and data collection and other services.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

Sec. 87.004. LIMITATION OF LIABILITY. A health professional, a health facility, or an administrator, officer, or employee of a health facility subject to this chapter is not civilly or criminally liable for divulging information required to be released under this chapter, except in a case of gross negligence or wilful misconduct.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

Sec. 87.005. COOPERATION OF GOVERNMENTAL ENTITIES. Another state board, commission, agency, or governmental entity capable of assisting the department in carrying out the intent of this chapter shall cooperate with the department and furnish expertise, services, and facilities to the program.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. BIRTH DEFECTS MONITORING PROGRAM

Sec. 87.021. SURVEILLANCE PROGRAM; REGISTRY ESTABLISHED. (a) The executive commissioner shall establish in the department a program to:

(1) identify and investigate certain birth defects in children; and

(2) maintain a central registry of cases of birth defects.

(b) The executive commissioner may authorize the department to implement a statewide program or to limit the program to a part or all of one or more public health regions, depending on the funding available to the department. In establishing the program, the executive commissioner shall consider:

(1) the number and geographic distribution of births in the state;

(2) the trained personnel and other departmental resources that may be assigned to the program activities; and

(3) the occurrence or probable occurrence of an urgent situation that requires or will require an unusual commitment of the department's personnel and other resources.

(c) The department shall design the program so that the program will:

(1) provide information to identify risk factors and causes of birth defects;

(2) provide information on other possible causes of birth defects;

(3) provide for the development of strategies to prevent birth defects;

(4) provide for interview studies about the causes of birth defects;

(5) together with other departmental programs, contribute birth defects data to a central registry;

(6) provide for the appointment of authorized agents to collect birth defects information; and

(7) provide for the active collection of birth defects information.

(d) The executive commissioner shall adopt rules to govern the operation of the program and carry out the intent of this chapter. At a minimum, the rules shall:

(1) use a medically recognized system to specify the birth defects to be identified and investigated;

(2) select a system for classifying the birth defects according to the public health significance of each defect to prioritize the use of resources;

(3) develop a system to select and specify the cases to be investigated;

(4) specify a system for selecting the demographic areas in which the department may undertake investigations; and

(5) prescribe the training and experience a person must have for appointment as an authorized agent of the department.

(e) In adopting the rules required by Subsection (d), the executive commissioner shall consider at least:

(1) the known incidence and prevalence rates of a birth defect in the state or portions of the state;

(2) the known incidence and prevalence rates of a particular birth defect in specific population groups who live in the state or portions of the state;

(3) the morbidity and mortality resulting from the birth defect; and

(4) the existence, cost, and availability of a strategy to prevent and treat the birth defect.

(f) In addition to providing for the active collection of birth defects information under Subsection (c)(7), the department may design the program to also provide for the passive collection of that information.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1042, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0295, eff. April 2, 2015.

Sec. 87.022. DATA COLLECTION. (a) To ensure an accurate source of data necessary to investigate the incidence, prevalence, and trends of birth defects, the executive commissioner may require a health facility, health professional, or midwife to make available for review by the department or by an authorized agent medical records or other information that is in the facility's, professional's, or midwife's custody or control and that relates to the occurrence of a birth defect specified by the executive commissioner.

(b) The executive commissioner by rule shall prescribe the manner in which records and other information are made available to the department.

(c) The executive commissioner shall adopt procedural rules to facilitate cooperation between the health care facility, health professional, or midwife and a department employee or authorized agent, including rules for notice, requests for medical records, times for record reviews, and record management during review.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0296, eff. April 2, 2015.

Sec. 87.023. REFERRAL FOR SERVICES. A child who meets the medical criteria prescribed by department rule, and the child's family, shall be referred to the department's case management program for guidance in applying for financial or medical assistance available through existing state and federal programs.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0297, eff. April 2, 2015.

SUBCHAPTER C. INVESTIGATIONS AND INSPECTIONS

Sec. 87.041. INVESTIGATIONS. (a) The department may conduct investigations, including epidemiological or toxicological

investigations, of cases of specified birth defects.

(b) The department may conduct these investigations to determine the nature and extent of the disease or the known or suspected cause of the birth defect and to formulate and evaluate control measures to protect the public health. The department's investigation is not limited to geographic, temporal, or occupational associations and may include investigation of past exposures.

(c) A person shall provide medical, demographic, epidemiological, toxicological, and environmental information to the department under this chapter.

(d) A person is not liable in damages or other relief for providing medical or other confidential information to the department during an epidemiological or toxicological investigation.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

Sec. 87.042. DEPARTMENTAL INVESTIGATORY POWERS. To conduct an investigation under this chapter, the commissioner or the commissioner's designee has the same authority to enter, inspect, investigate, and take samples and to do so in the same manner as is provided for communicable diseases under Sections 81.061, 81.063, 81.064, and 81.065.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.132, eff. Sept. 1, 1995.

SUBCHAPTER D. CENTRAL REGISTRY

Sec. 87.061. REGISTRY; CONFIDENTIALITY. (a) Information collected and analyzed by the department or an authorized agent under this chapter may be placed in a central registry to facilitate research and to maintain security. The department may also store information available from other departmental programs and information from other reporting systems and health care providers.

(b) The department shall use the registry to:

(1) investigate the causes of birth defects and other health conditions as authorized by Texas statutes;

(2) design and evaluate measures to prevent the occurrence of birth defects and other health conditions; and

(3) conduct other investigations and activities necessary for the executive commissioner and department to fulfill their obligation to protect the health of the public.

(c) The department may store in the central registry information that is obtained from the section of the birth certificate entitled "For Medical and Health Use Only." This information may be used only as provided by Section 192.002(b), relating to the form and contents of the birth certificate.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0298, eff. April 2, 2015.

Sec. 87.062. ACCESS TO INFORMATION. (a) Access to the central registry information is limited to authorized department employees and other persons with a valid scientific interest who are engaged in demographic, epidemiological, or other studies related to health and who agree in writing to maintain confidentiality.

(b) The department shall maintain a listing of each person who is given access to the information in the central registry. The listing shall include:

(1) the name of the person authorizing access;

(2) the name, title, and organizational affiliation of each person given access;

(3) the dates of access; and

(4) the specific purpose for which the information was used.

(c) The listing is public information, is open to the public under Chapter 552, Government Code, and may be inspected during the department's normal hours of operation.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.

Sec. 87.063. RESEARCH; REVIEW AND APPROVAL. (a) The commissioner and the department's committee for the protection of human subjects shall review each research proposal that requests the

use of information in the central registry. The executive commissioner shall adopt rules establishing criteria to be used in deciding if the research design should be approved. A proposal that meets the approval criteria is considered to establish a valid interest as required by Section 87.062(a), and the commissioner and the committee shall authorize the researcher to review the records relevant to the research proposal and to contact cases and controls.

(b) If an investigator using central registry data under a research design approved under this section believes it is necessary to contact case subjects and controls, the investigator must submit a protocol describing the purpose and method to the commissioner and the department's committee for the protection of human subjects. If the contact protocol is approved, the investigator is considered to have established a bona fide research, development, or planning purpose and is entitled to carry out the contacts without securing additional approvals or waivers from any entity.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.133, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0299, eff. April 2, 2015.

Sec. 87.064. REPORT OF CENTRAL REGISTRY ACTIVITIES AND FINDINGS. (a) The department shall publish an annual report of activities using data contained in the central registry. The report shall include:

(1) a description of research projects in progress since the last report and the sponsors and principal investigators directing each project;

(2) results of the completed research projects either as an abstract or a complete scientific paper that has been reviewed and approved by an appropriate jury;

(3) a summary of the statistical information compiled in the registry, including a specific discussion of any clusters, high or low incidences, or prevalences or trends encountered;

(4) any policy, research, educational, or other recommendations the department considers appropriate; and

(5) such other information the editors of the report find is appropriate.

(b) The department may publish periodic reports in addition to the annual report.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

Sec. 87.065. COORDINATION WITH MEXICO. In developing the central registry and conducting research in areas of this state that border Mexico, the department shall make every effort to coordinate its efforts with similar efforts and research programs in Mexico.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 88. REPORTS OF CHILDHOOD LEAD POISONING

Sec. 88.001. DEFINITIONS. In this chapter:

(1) "Child care" includes a school, preschool, kindergarten, nursery school, or other similar activity that provides care or instruction for young children.

(2) "Child care facility" means a public place or a residence in which a person furnishes child care.

(3) "Health authority" means a physician appointed as such under Chapter 121.

(4) "Health professional" means an individual whose:

(A) vocation or profession is directly or indirectly related to the maintenance of health in another individual; and

(B) duties require a specified amount of formal education and may require a special examination, certificate or license, or membership in a regional or national association.

(5) "Lead" includes metallic lead and materials containing metallic lead with a potential for release in sufficient concentrations to pose a threat to public health.

(6) "Reference level" means the presence of blood lead concentrations suspected to be associated with mental and physical disorders due to absorption, ingestion, or inhalation of lead as specified in the most recent reference value issued by the Centers for Disease Control and Prevention of the United States Public Health Service.

(7) "Lead poisoning" means the presence of a confirmed

venous blood level established by department rule in the range specified for medical evaluation and possible pharmacologic treatment in the most recent criteria issued by the Centers for Disease Control and Prevention of the United States Public Health Service.

(8) "Local health department" means a department created under Chapter 121.

(9) "Physician" means a person licensed to practice medicine by the Texas Medical Board.

(10) "Public health district" means a district created under Chapter 121.

(11) "Regional director" means a physician appointed under Section 121.007 as the chief administrative officer of a public health region as designated under Chapter 121.

(12) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(34), eff. April 2, 2015.

(13) "Child-occupied facility" means a building or part of a building, including a day-care center, preschool, or kindergarten classroom, that is visited regularly by the same child, six years of age or younger, at least two days in any calendar week if the visits are for at least:

(A) three hours each day; and

(B) 60 hours each year.

(14) "Lead hazard" means an item, surface coating, or environmental media that contains or is contaminated with lead and, when ingested or inhaled, may cause exposures that contribute to blood lead levels in children, including:

(A) an accessible painted surface or coating;

(B) an article for residential or consumer use;

(C) accessible soil and dust, including attic dust; and

(D) food, water, or remedies.

(15) "Certified lead risk assessor" means a person who has been certified by the department to conduct lead risk assessments, inspections, and lead-hazard screens, as defined by department rule.

(16) "Environmental lead investigation" means an investigation performed by a certified lead risk assessor of the home environment of, or other premises frequented by, a child who has a confirmed blood lead level warranting such an investigation, under the most recent criteria issued by the Centers for Disease Control and Prevention of the United States Public Health Service.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 52, eff. Jan. 1, 1996. Amended by Acts 2003, 78th Leg., ch. 740, Sec. 3, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 398 (S.B. 814), Sec. 1, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0300, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(34), eff. April 2, 2015.

Sec. 88.002. CONFIDENTIALITY. (a) Except as specifically authorized by this chapter, reports, records, and information furnished to a health authority, a regional director, or the department that relate to cases or suspected cases of children with reportable blood lead levels are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of childhood lead poisoning and children with reportable blood lead levels are not public information under the open records law, Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by this chapter.

(c) Medical, epidemiologic, or toxicologic information may be released:

(1) for statistical purposes if released in a manner that prevents the identification of any person;

(2) with the consent of each person identified in the information;

(3) to medical personnel, appropriate state agencies, health authorities, regional directors, and public officers of counties and municipalities as necessary to comply with this chapter and related rules;

(4) to appropriate federal agencies, such as the Centers for Disease Control and Prevention of the United States Public Health Service, except that the information must be limited to the information requested by the agency; or

(5) to medical personnel to the extent necessary in a medical emergency to protect the health or life of the child identified in the information.

(d) The commissioner, a regional director or other department employee, a health authority or employee of a public health district, a health authority or employee of a county or municipal health department, or a public official of a county or municipality may not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of or reports or information about a child identified, examined, or treated for lead poisoning or about a child possessing reportable blood lead levels by the department, a public health district, a local health department, or a health authority without the consent of the child's parents, managing conservator, guardian, or other person authorized by law to give consent.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 52, eff. Jan. 1, 1996.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0301, eff. April 2, 2015.

Sec. 88.0025. CHILDHOOD LEAD POISONING PREVENTION. The executive commissioner may adopt policies and procedures to promote the elimination of childhood lead poisoning within the state, and the department shall implement all adopted policies and procedures. The executive commissioner may adopt measures to:

(1) significantly reduce the incidence of childhood lead poisoning throughout the state;

(2) improve public awareness of lead safety issues and educate both property owners and tenants about practices that can reduce the incidence of lead poisoning; and

(3) encourage the testing of children likely to suffer the consequences of lead poisoning so that prompt diagnosis and treatment and the prevention of harm are possible.

Added by Acts 2003, 78th Leg., ch. 740, Sec. 4, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0302, eff. April 2, 2015.

Sec. 88.003. REPORTABLE HEALTH CONDITION. (a) Childhood blood lead levels that exceed the reference level are reportable.

(b) The executive commissioner by rule may designate:

(1) blood lead concentrations in children that must be reported; and

(2) the ages of children for whom the reporting requirements apply.

(c) The executive commissioner may adopt rules that establish a registry of children with blood lead levels that exceed the reference level and lead poisoning.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 52, eff. Jan. 1, 1996.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0303, eff. April 2, 2015.

Sec. 88.004. PERSONS REQUIRED TO REPORT. (a) A person required to report childhood blood lead levels shall report to the department in the manner specified by department rule. Except as provided by this section, a person required by this section to report must make the report immediately after the person gains knowledge of a child with a reportable blood lead level.

(b) A physician shall report a case or suspected case of childhood lead poisoning or of a child with a reportable blood lead level after the physician's first examination of a child for whom reporting is required by this chapter or department rule.

(c) A person in charge of an independent clinical laboratory, a hospital or clinic laboratory, or other facility in which a laboratory examination of a specimen derived from the human body yields evidence of a child with a reportable blood lead level shall report the findings to the department as required by department rule.

(d) If a report is not made as required by Subsection (b) or (c), the following persons shall report a child's reportable blood lead level and all information known concerning the child:

(1) the administrator of a hospital licensed under Chapter 241;

(2) a registered nurse;

(3) an administrator or director of a public or private child care facility;

(4) an administrator of a home and community support services agency;

(5) an administrator or health official of a public or private institution of higher education;

(6) a superintendent, manager, or health official of a public or private camp, home, or institution;

(7) a parent, managing conservator, or guardian; and

(8) a health professional.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 52, eff. Jan. 1, 1996. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0304, eff. April 2, 2015.

Sec. 88.005. REPORTING PROCEDURES. (a) The executive commissioner shall prescribe the form and method of reporting under this chapter, including a report in writing, by telephone, or by electronic data transmission.

(b) The executive commissioner by rule may require the reports to contain any information relating to a case that is necessary for the purposes of this chapter, including:

(1) the child's name, address, age, sex, and race;

(2) the child's blood lead concentration;

(3) the procedure used to determine the child's blood lead concentration; and

(4) the name of the attending physician.

(c) The commissioner may authorize an alternate routing of information in particular cases if the commissioner determines that the customary reporting procedure would cause the information to be unduly delayed.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 52, eff. Jan. 1, 1996. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0305, eff. April 2, 2015.

Sec. 88.006. REPORTS OF HOSPITALIZATION; DEATH. (a) A physician who attends a child during the child's hospitalization shall immediately notify the department if the physician knows or suspects that the child has lead poisoning or a blood lead level that exceeds the reference level and the physician believes the lead

poisoning or blood lead level resulted from the child's exposure to a dangerous level of lead that may be a threat to the public health.

(b) A physician who attends a child during the child's last illness shall immediately notify the department if the physician:

(1) knows or suspects that the child died of lead poisoning; and

(2) believes the lead poisoning resulted from the child's exposure to a dangerous level of lead that may be a threat to the public health.

(c) An attending physician, health authority, or regional director, with the consent of the child's survivors, may request an autopsy if the physician, health authority, or regional director needs further information concerning the cause of death in order to protect the public health. The health authority or regional director may order the autopsy to determine the cause of death if the child's survivors do not consent to the autopsy. The autopsy results shall be reported to the department.

Text of subsection effective until April 1, 2027

(d) A justice of the peace acting as coroner or a medical examiner in the course of an inquest under Chapter 49, Code of Criminal Procedure, who finds that a child's cause of death was lead poisoning that resulted from exposure to a dangerous level of lead that the justice of the peace or medical examiner believes may be a threat to the public health shall immediately notify the health authority or the regional director in the jurisdiction in which the finding is made.

Text of subsection effective on April 1, 2027

(d) A justice of the peace acting as coroner or a medical examiner in the course of an inquest under Chapter 49A, Code of Criminal Procedure, who finds that a child's cause of death was lead poisoning that resulted from exposure to a dangerous level of lead that the justice of the peace or medical examiner believes may be a threat to the public health shall immediately notify the health authority or the regional director in the jurisdiction in which the finding is made.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 52, eff. Jan. 1, 1996.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0306, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 202 (H.B. 1610), Sec. 2.10, eff. April 1, 2027.

Sec. 88.007. DEPARTMENT RULES FOR FOLLOW-UP CARE; COORDINATION OF CARE. (a) The executive commissioner may adopt rules establishing standards for follow-up care provided to children with a confirmed blood lead level that exceeds the reference level.

(b) Rules adopted under this section must meet any federal requirements for coordinated follow-up care for children with confirmed blood lead levels that exceed the reference level and may include, in a manner consistent with current federal guidelines:

(1) an environmental lead investigation of all or parts of a child's home environment, child-care facility, or child-occupied facility that may be a source of a lead hazard causing or contributing to the child's lead exposure; and

(2) guidance to parents, guardians, and consulting physicians on how to eliminate or control lead exposures that may be contributing to the child's blood lead level.

Added by Acts 2007, 80th Leg., R.S., Ch. 398 (S.B. 814), Sec. 2, eff. September 1, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0307, eff. April 2, 2015.

Sec. 88.008. ENVIRONMENTAL LEAD INVESTIGATIONS. (a) On receiving a report of a child with a confirmed blood lead level warranting an environmental lead investigation, the department or its authorized agent may conduct an environmental lead investigation of:

(1) the home environment in which the child resides, if the department or the department's authorized agent obtains the written consent of an adult occupant;

(2) any child-care facility with which the child has regular contact and that may be contributing to the child's blood lead level, if the department or the department's authorized agent obtains the written consent of the owner, operator, or principal of the facility; and

(3) any child-occupied facility with which the child has

regular contact and that may be contributing to the child's blood lead level, if the department or the department's authorized agent obtains the written consent of:

(A) the owner, operator, or principal of the facility; or

(B) an adult occupant of the facility if the facility is subject to a lease agreement.

(b) Notwithstanding the consent requirements under Subsection (a), consent for an investigation is not required to be in writing for an investigation related to a report of a child with a blood lead level of 45 micrograms per deciliter or more if a good faith attempt to contact the persons authorized to provide written consent under Subsection (a) has been unsuccessful.

Added by Acts 2007, 80th Leg., R.S., Ch. 398 (S.B. 814), Sec. 2, eff. September 1, 2007.

Sec. 88.009. ENVIRONMENTAL LEAD INVESTIGATION PROCEDURES. The executive commissioner may adopt rules establishing procedures for environmental lead investigations of dwellings and other premises subject to this chapter. The rules must meet, but may not exceed, any requirements established under regulations adopted by the federal Environmental Protection Agency under Subchapter IV, Toxic Substances Control Act (15 U.S.C. Section 2681 et seq.).

Added by Acts 2007, 80th Leg., R.S., Ch. 398 (S.B. 814), Sec. 2, eff. September 1, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0308, eff. April 2, 2015.

CHAPTER 89. SCREENING AND TREATMENT FOR TUBERCULOSIS IN JAILS AND OTHER CORRECTIONAL FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 89.001. DEFINITIONS. In this chapter:

(1) "Community corrections facility" means a facility established under Chapter 509, Government Code.

(2) "County jail" means a facility operated by or for a county for the confinement of persons accused or convicted of an

offense and includes:

(A) a facility operated by or for a county for the confinement of persons accused or convicted of an offense;

(B) a county jail or a correctional facility authorized by Subchapter F, Chapter 351, Local Government Code; and

(C) a county correctional center authorized by Subchapter H, Chapter 351, Local Government Code.

(3) "Governing body" means:

(A) the commissioners court of a county, for a county jail;

(B) the district judges governing a community corrections facility, for a community corrections facility;

(C) the governing body of a municipality, for a jail operated by or under contract to a municipality; or

(D) the community supervision and corrections department, for a jail operated under contract to a community supervision and corrections department.

(4) "Health authority" has the meaning assigned by Section 121.021.

(5) "Jail" means:

(A) a county jail; or

(B) a facility for the confinement of persons accused of an offense that is:

(i) operated by a municipality or a vendor under contract with a municipality under Subchapter F, Chapter 351, Local Government Code; or

(ii) operated by a vendor under contract with a community supervision and corrections department under Chapter 76, Government Code.

(6) "Local health department" means a health department created under Subchapter D, Chapter 121.

(7) "Physician" means a person licensed to practice medicine in a state of the United States.

(8) "Public health district" means a health district established under Subchapter E, Chapter 121.

(9) "Screening test" means a rapid analytical laboratory or other procedure to determine the need for further diagnostic evaluation.

(10) "Tuberculosis" means a disease caused by Mycobacterium tuberculosis or other members of the Mycobacterium tuberculosis

complex.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 7.07, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 348, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0309, eff. April 2, 2015.

Sec. 89.002. SCOPE OF CHAPTER. Except as provided by Subchapter E, this chapter applies only to a jail that:

(1) has a capacity of at least 100 beds; or

(2) houses inmates:

(A) transferred from a county that has a jail that has a capacity of at least 100 beds; or

(B) from another state.

Added by Acts 1997, 75th Leg., ch. 348, Sec. 2, eff. Sept. 1, 1997.

SUBCHAPTER B. SCREENING OF JAIL EMPLOYEES AND VOLUNTEERS

Sec. 89.011. SCREENING OF JAIL EMPLOYEES AND VOLUNTEERS. (a) The governing body of a jail or community corrections facility, through the community supervision and corrections department, shall require that each employee or volunteer working or providing services in a jail or a community corrections facility, who meets the screening guidelines prescribed by department rule, present to the governing body a certificate signed by a physician that states that:

(1) the employee or volunteer has been tested for tuberculosis infection in accordance with department rules; and

(2) the results of the test indicate that the person does not have tuberculosis.

(b) In lieu of a screening test, an employee or volunteer with a history of a positive screening test may provide:

(1) documentation of that positive test result and of any diagnostic and therapeutic follow-up; and

(2) a certificate signed by a physician that states that the person does not have tuberculosis.

(c) The health authority may require an employee or volunteer to have an additional screening test or medical examination if the

department determines that an additional test or examination is necessary and appropriate to protect the public health.

(d) An employee or volunteer is exempt from the screening test required by this section if:

(1) the screening test conflicts with the tenets of an organized religion to which the individual belongs; or

(2) the screening test is medically contraindicated based on an examination by a physician.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 348, Sec. 3, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0310, eff. April 2, 2015.

Sec. 89.012. FOLLOW-UP EVALUATIONS AND TREATMENT. (a) An employee or a volunteer with a positive screening test result must obtain a diagnostic evaluation from the person's own physician to determine if the person has tuberculosis.

(b) If the employee or volunteer has tuberculosis, the governing body may not permit the person to begin or continue the person's employment duties or volunteer services unless the person is under treatment for the disease by a physician and the person provides to the governing body a certificate signed by the attending physician stating that the patient is noninfectious.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 348, Sec. 4, eff. Sept. 1, 1997.

Sec. 89.013. CERTIFICATE REQUIRED. (a) The governing body or a designee of the governing body shall confirm that each employee or volunteer required to be screened under this subchapter has the required certificate.

(b) The governing body may not permit an employee or volunteer to carry out the person's duties if the person does not have the required certificate.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 348, Sec. 5, eff. Sept. 1, 1997.

Sec. 89.014. COST OF TESTS, FOLLOW-UP, AND TREATMENT. The employee or volunteer shall pay the expense of a screening test, diagnostic evaluation, or other professional medical service required under this subchapter unless the commissioners court, the governing body of a municipality, or a local health department or public health district elects to provide the service.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 348, Sec. 5, eff. Sept. 1, 1997.

SUBCHAPTER C. INMATE SCREENING AND TREATMENT

Sec. 89.051. INMATE SCREENING REQUIRED. (a) Each inmate in a jail or community corrections facility shall undergo a screening test for tuberculosis infection approved by the executive commissioner if:

(1) the inmate will probably be confined in jail or a community corrections facility for more than seven days; and

(2) the inmate meets the screening guidelines prescribed by department rules.

(b) The inmate must be tested on or before the seventh day after the day the inmate is first confined.

(c) An inmate listed by Subsection (a) is not required to be retested at each rebooking if the inmate is booked into a jail or a community corrections facility more than once during a 12-month period unless the inmate shows symptoms of tuberculosis or is known to have been exposed to tuberculosis.

(d) An inmate is exempt from the screening test required by this section if:

(1) the screening test conflicts with the tenets of an organized religion to which the individual belongs; or

(2) the screening test is medically contraindicated based on an examination by a physician.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 348, Sec. 6, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0311, eff. April 2, 2015.

Sec. 89.052. RESCREENING; DIAGNOSTIC EVALUATIONS. The department or a health authority may require a governing body to provide an additional screening test or a diagnostic evaluation if the department or health authority determines that an additional screening test or a diagnostic evaluation is necessary and appropriate to protect the health of the jail inmates, employees, volunteers, or the public.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 348, Sec. 7, eff. Sept. 1, 1997.

Sec. 89.053. FOLLOW-UP EVALUATIONS. (a) If an inmate has a confirmed positive screening test result, the governing body shall provide a diagnostic evaluation to determine whether the inmate has tuberculosis.

(b) The sheriff, jail administrator, or director of the community corrections facility shall provide appropriate accommodations to an inmate who has tuberculosis or is suspected of having tuberculosis, including respiratory isolation, if necessary, and adequate medical care and treatment that meet the accepted standards of medical practice.

(c) The jail or community corrections facility shall provide preventive therapy to an infected inmate if the preventive therapy is prescribed by the attending physician and the inmate consents to the treatment.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 348, Sec. 8, eff. Sept. 1, 1997.

Sec. 89.054. INMATE TRANSFER AND RELEASE. A copy of an inmate's medical records or documentation of screenings or treatment received during confinement must accompany an inmate transferred from one jail or community corrections facility to another or the Texas Department of Criminal Justice and be available for medical review on arrival of the inmate.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. REPORTING; RULEMAKING; MINIMUM STANDARDS

Sec. 89.071. REPORTING. (a) A case of tuberculosis shall be reported to the appropriate health authority or to the department not later than the third day after the day on which the diagnosis is suspected.

(b) The results of a screening test shall be reported to the department monthly in a manner approved by the department.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.

Sec. 89.072. RULEMAKING. The department shall recommend to the Commission on Jail Standards and the Texas Department of Criminal Justice rules to carry out this chapter, including rules describing:

(1) the types of screening tests and diagnostic evaluations and the scope of the professional examinations that may be used to meet the requirements of this chapter;

(2) the categories of employees, volunteers, or inmates who must have a screening test under this chapter;

(3) the form and content of the certificate required under Subchapter B for employees and volunteers;

(4) the deadlines for filing a certificate;

(5) the transfer of employee or volunteer certificates and inmate records between facilities;

(6) the frequency of screening tests for employees, volunteers, and inmates;

(7) the criteria for requiring an additional screening test or a diagnostic evaluation or examination; and

(8) the reporting of a screening test or an evaluation or examination result to the appropriate health authority or to the department.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 348, Sec. 9, eff. Sept. 1, 1997.

Sec. 89.073. ADOPTION OF LOCAL STANDARDS. (a) The standards prescribed by this chapter and the rules adopted by the executive commissioner relating to screening tests or examinations for tuberculosis required for certain employees and volunteers are minimum standards.

(b) With the prior approval of the department:

(1) a governing body may adopt and enforce standards for carrying out this chapter if the standards are compatible with and equal to or more stringent than the standards prescribed by this chapter and department rules; and

(2) a private facility may adopt and enforce standards for carrying out this chapter if the standards are compatible with and equal to or more stringent than the standards prescribed by this chapter and department rules.

(c) The executive commissioner shall adopt substantive and procedural rules to govern the submission of standards adopted under Subsection (b). At a minimum these rules must contain:

(1) a procedure for the submission of standards for departmental review; and

(2) an internal departmental appeal process by which a governing body or private entity may seek a review of the department's decision to reject proposed standards.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 348, Sec. 10, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0312, eff. April 2, 2015.

SUBCHAPTER E. CONTINUITY OF CARE

Sec. 89.101. DEFINITIONS. In this subchapter:

(1) "Corrections facility" means:

(A) a jail or community corrections facility, without regard to whether the jail or facility satisfies the requirements of Section 89.002;

(B) any correctional facility operated by or under contract with a division of the Texas Department of Criminal Justice; or

(C) a detention facility operated by the Texas Juvenile Justice Department.

(2) "Offender" means a juvenile or adult who is arrested or charged with a criminal offense.

Added by Acts 1997, 75th Leg., ch. 348, Sec. 11, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0313, eff. April 2, 2015.

Sec. 89.102. REPORT OF RELEASE. A corrections facility shall report to the department the release of an offender who is receiving treatment for tuberculosis. The department shall arrange for continuity of care for the offender.

Added by Acts 1997, 75th Leg., ch. 348, Sec. 11, eff. Sept. 1, 1997.

CHAPTER 92. INJURY PREVENTION AND CONTROL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 92.001. DEFINITIONS. In this chapter:

(1) "Injury" means damage to the body that results from intentional or unintentional acute exposure to thermal, mechanical, electrical, or chemical energy or from the absence of essentials such as heat or oxygen.

(2) "Reportable injury" means an injury or condition required to be reported under this subchapter.

(3) "Traumatic brain injury" means an acquired injury to the brain, including brain injuries caused by anoxia due to near drowning. The term does not include brain dysfunction caused by congenital or degenerative disorders or birth trauma.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.001 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.001 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 893, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1088, Sec. 3, eff. Sept. 1, 2003.

Sec. 92.002. REPORTABLE INJURY; RULES. (a) Spinal cord injuries, traumatic brain injuries, and submersion injuries are reportable to the department. The executive commissioner by rule shall define those terms for reporting purposes.

(b) The executive commissioner may adopt rules that require

other injuries to be reported under this subchapter.

(c) The executive commissioner shall maintain and revise, as necessary, the list of reportable injuries.

(d) The executive commissioner shall adopt rules necessary to administer this subchapter.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.002 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.002 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 893, Sec. 2, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1088, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0314, eff. April 2, 2015.

Sec. 92.003. REPORTING REQUIREMENTS. (a) The following persons shall report cases or suspected cases of reportable injuries to the department:

(1) a physician who diagnoses or treats a reportable injury; and

(2) a medical examiner or justice of the peace.

(b) The department may contact a physician attending a person with a case or suspected case of a reportable injury.

(c) The department shall prescribe the form and method of reporting. The department may require the reports to contain any information, including the person's name, address, age, sex, race, occupation, employer, and attending physician, necessary to achieve the purposes of this subchapter.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.003 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.003 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 893, Sec. 3, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1088, Sec. 5, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0315, eff.

April 2, 2015.

Sec. 92.004. POWERS AND DUTIES OF DEPARTMENT. (a) The department may enter into contracts or agreements as necessary to carry out this subchapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

(b) The department may seek, receive, and spend any funds received through appropriations, grants, donations, or contributions from public or private sources for the purpose of identifying, reporting, or preventing those injuries determined by the executive commissioner to be harmful or to be a threat to the public health.

(c) Subject to the confidentiality provisions of this subchapter, the department shall evaluate the reports of injuries to establish the nature and magnitude of the hazards associated with those injuries, to reduce the occurrence of those risks, and to establish any trends involved.

(d) The department may make inspections and investigations as authorized by this subchapter and other law.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.004 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.004 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1088, Sec. 6, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0316, eff. April 2, 2015.

Sec. 92.005. ACCESS TO INFORMATION. Subject to the confidentiality provisions of this subchapter, the department may collect, or cause to be collected, medical, demographic, or epidemiologic information from any medical or laboratory record or file to help the department in the epidemiologic investigation of injuries and their causes.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.005 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from

Health and Safety Code Sec. 88.005 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1088, Sec. 7, eff. Sept. 1, 2003.

Sec. 92.006. CONFIDENTIALITY. (a) All information and records relating to injuries are confidential, including information from injury investigations. That information may not be released or made public on subpoena or otherwise, except that release may be made:

(1) for statistical purposes, but only if a person is not identified;

(2) with the consent of each person identified in the information released; or

(3) to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named person.

(b) The executive commissioner shall adopt rules establishing procedures to ensure that all information and records maintained by the department under this subchapter are kept confidential and protected from release to unauthorized persons.

(c) The commissioner, the commissioner's designee, the executive commissioner, or an employee of the department or commission may not be examined in a judicial or other proceeding about the existence or contents of pertinent records of, investigation reports of, or reports or information about a person examined or treated for an injury without that person's consent.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.006 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.006 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1088, Sec. 8, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0317, eff. April 2, 2015.

Sec. 92.007. INVESTIGATIONS. (a) The department shall investigate the causes of injuries and methods of prevention.

(b) The department may enter at reasonable times and inspect

within reasonable limits a public place or building, including a public conveyance, in the department's duty to prevent an injury.

(c) The department may not enter a private residence to conduct an investigation about the causes of injuries without first receiving permission from a lawful adult occupant of the residence.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.007 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.007 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0318, eff. April 2, 2015.

Sec. 92.009. COORDINATION WITH TEXAS DEPARTMENT OF INSURANCE. The department and the Texas Department of Insurance shall enter into a memorandum of understanding which shall include the following:

(1) the department and the Texas Department of Insurance shall exchange relevant injury data on an ongoing basis notwithstanding Section 92.006;

(2) confidentiality of injury data provided to the department by the Texas Department of Insurance is governed by Subtitle A, Title 5, Labor Code;

(3) confidentiality of injury data provided to the Texas Department of Insurance by the department is governed by Section 92.006; and

(4) cooperation in conducting investigations of work-related injuries.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.009 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.009 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 893, Sec. 5, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 6.101, eff. September 1, 2005.

CHAPTER 93. PREVENTION OF CARDIOVASCULAR DISEASE AND STROKE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 93.001. DEFINITIONS. In this chapter:

(1) "Cardiovascular disease" means the group of diseases that target the heart and blood vessels and that are the result of complex interactions between multiple inherited traits and environmental factors.

(2) "Council" means the Council on Cardiovascular Disease and Stroke.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

Sec. 93.002. APPOINTMENT OF COUNCIL; TERMS OF MEMBERS. (a) The Council on Cardiovascular Disease and Stroke is composed of:

(1) 11 public members appointed by the governor, with the advice and consent of the senate, as follows:

(A) a licensed physician with a specialization in cardiology;

(B) a licensed physician with a specialization in neurology to treat stroke;

(C) a licensed physician employed in a primary care setting;

(D) a registered nurse with a specialization in quality improvement practices for cardiovascular disease and stroke;

(E) a registered and licensed dietitian;

(F) two persons with experience and training in public health policy, research, or practice;

(G) two consumer members, with special consideration given to persons actively participating in the Texas affiliates of the American Heart Association or American Stroke Association, managed care, or hospital or rehabilitation settings; and

(H) two members from the general public that have or care for persons with cardiovascular disease or stroke; and

(2) one nonvoting member representing each of the state agencies that oversee:

(A) health services;

(B) assistive and rehabilitative services; and

(C) aging and disability services.

(b) In appointing public members under Subsection (a)(1), the governor shall attempt to appoint female members and members of different minority groups, including African Americans, Hispanic Americans, Native Americans, and Asian Americans.

(c) The head of each agency overseeing services listed in Subsection (a)(2) shall appoint the agency's representative nonvoting member.

(d) Public members of the council serve staggered six-year terms, with the terms of three or four of the public members expiring February 1 of each odd-numbered year. A nonvoting member representing a state agency serves at the will of the appointing agency.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 6.01, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1176 (H.B. 3278), Sec. 5, eff. June 17, 2011.

Sec. 93.003. REIMBURSEMENT. (a) Except as provided by Subsection (b), a member of the council may be reimbursed for travel expenses incurred while conducting the business of the council at the same rate provided for state employees in the General Appropriations Act, provided funds are appropriated to the department for this purpose.

(b) If funds are not appropriated to support reimbursement of travel expenses, the commissioner may authorize reimbursement of the travel expenses incurred by a member while conducting the business of the council, as provided in the General Appropriations Act, if the commissioner finds on application of the member that travel for council business imposes a financial hardship on the member.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 2, eff. September 1, 2005.

Sec. 93.004. DUTIES OF DEPARTMENT; FUNDS. The department shall accept funds appropriated for the purposes of this chapter and shall allocate those funds. The council shall make recommendations to the department concerning the allocation of funds.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

Sec. 93.005. CONSULTANTS; ADVISORY COMMITTEE. To advise and assist the council with respect to the council's duties under this chapter, the council may appoint one or more:

(1) consultants to the council; or

(2) advisory committees under Chapter 2110, Government Code.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

Sec. 93.007. RESTRICTIONS ON COUNCIL APPOINTMENT, MEMBERSHIP, OR EMPLOYMENT. (a) A person is not eligible to serve as a public member if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds at the council's direction;

(2) owns or controls directly or indirectly more than a 10 percent interest in a business entity or other organization receiving funds at the council's direction; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department at the council's direction, other than compensation or reimbursement authorized by law for council membership, attendance, or expenses.

(b) A person who is required to register as a lobbyist under Chapter 305, Government Code, may not serve as a member of the council or act as the general counsel of the council.

(c) An officer, employee, or paid consultant of a trade association in the field of health care may not be a member or employee of the council. A person who is the spouse of an officer,

employee, or paid consultant of a trade association in the field of health care may not be a member of the council and may not be an employee, including an employee exempt from the state's position classification plan, who is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(d) For purposes of Subsection (c), a trade association is a nonprofit, cooperative, and voluntary association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.

Sec. 93.008. REMOVAL OF COUNCIL MEMBER. (a) It is a ground for removal from the council if a member:

(1) is not eligible for appointment to the council at the time of appointment as provided by Section 93.007(a);

(2) is not eligible to serve on the council as provided by Section 93.007(a);

(3) violates a prohibition established by Section 93.007(b) or (c);

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

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

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

(c) If the presiding officer of the council knows that a potential ground for removal exists, the presiding officer shall notify the governor of its existence.

(d) The council shall inform its members as often as necessary of:

(1) the qualifications for office prescribed by this

chapter; and

(2) the responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.

Sec. 93.009. PRESIDING OFFICER. The governor shall designate a member of the council as the presiding officer of the council to serve in that capacity at the will of the governor.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.

Sec. 93.010. STAFF SUPPORT. Each agency represented on the council:

(1) shall provide the council with staff support of specialists as needed; and

(2) may provide staff support to an advisory committee.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.

Sec. 93.012. MEETINGS. (a) The council shall meet at least quarterly and shall adopt rules for the conduct of its meetings.

(b) An action taken by the council must be approved by a majority of the voting members present.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.

Sec. 93.013. GIFTS AND GRANTS. (a) The council may receive gifts and grants from any public or private source to perform its duties under this chapter. The department shall accept the gifts on behalf of the council.

(b) The department may retain five percent of any monetary gifts accepted on behalf of the council to cover its costs in

administering this section.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0326, eff. April 2, 2015.

Sec. 93.014. FUNDS FOR CLINICAL RESEARCH. The council shall develop a policy governing the award of funds for clinical research that follows scientific peer review guidelines for primary and secondary prevention of heart disease or stroke or that follows other review procedures that are designed to distribute those funds on the basis of scientific merit.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0327, eff. April 2, 2015.

SUBCHAPTER B. POWERS AND DUTIES OF COUNCIL

Sec. 93.051. CARDIOVASCULAR DISEASE AND STROKE PREVENTION PLAN; DUTIES OF COUNCIL. (a) The council shall develop an effective and resource-efficient plan to reduce the morbidity, mortality, and economic burden of cardiovascular disease and stroke in this state. The council shall:

(1) conduct health education, public awareness, and community outreach activities that relate to primary and secondary prevention of cardiovascular disease and stroke;

(2) promote, enhance, and coordinate health education, public awareness, and community outreach activities that relate to primary and secondary prevention of cardiovascular disease and stroke and that are provided by private and other public organizations;

(3) coordinate activities with other entities that are concerned with medical conditions that are similar to cardiovascular disease and stroke or that have similar risk factors;

(4) identify to health care providers, employers, schools, community health centers, and other groups the benefits of

encouraging treatment, primary and secondary prevention, and public awareness of cardiovascular disease and stroke and recognize innovative and effective programs that achieve the objectives of improved treatment, prevention, and public awareness;

(5) provide guidance regarding the roles and responsibilities of government agencies, health care providers, employers, third-party payers, patients, and families of patients in the treatment, primary and secondary prevention, and public awareness of cardiovascular disease and stroke;

(6) improve access to treatment for and primary and secondary prevention of cardiovascular disease and stroke through public awareness programs, including access for uninsured individuals and individuals living in rural or underserved areas;

(7) assist communities to develop comprehensive local cardiovascular disease and stroke prevention programs;

(8) assist the Texas Education Agency and local school districts to promote a public school curriculum that includes physical, nutritional, and health education relating to cardiovascular disease and stroke prevention;

(9) establish appropriate forums, programs, or initiatives designed to educate the public regarding the impact of heart disease and stroke on women's health, with an emphasis on preventive health and healthy lifestyles; and

(10) evaluate and enhance the implementation and effectiveness of the program developed under this chapter.

(b) The council shall make written recommendations for performing its duties under this chapter to the department and the legislature.

(c) The council shall advise the legislature on legislation that is needed to develop further and maintain a statewide system of quality education services for all persons with cardiovascular disease or stroke. The council may develop and submit legislation to the legislature or comment on pending legislation that affects persons with cardiovascular disease and stroke.

(d) The council shall collaborate with the Governor's EMS and Trauma Advisory Council, the American Stroke Association, and other stroke experts to make recommendations to the department for rules on the recognition and rapid transportation of stroke patients to health care facilities capable of treating strokes 24 hours a day and recording stroke patient outcomes.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 6, eff. September 1, 2005.

Sec. 93.052. DATABASE OF CLINICAL RESOURCES. The council shall review available clinical resources and shall develop a database of recommendations for appropriate care and treatment of patients with cardiovascular disease or who have suffered from or are at risk for stroke. The council shall make the database accessible to the public.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

Sec. 93.053. CARDIOVASCULAR DISEASE AND STROKE DATABASE. (a) The council shall collect and analyze information related to cardiovascular disease and stroke at the state and regional level and, to the extent feasible, at the local level. The council shall obtain the information from federal and state agencies and from private and public organizations. The council shall maintain a database of this information.

(b) The database may include:

(1) information related to behavioral risk factors identified for cardiovascular disease and stroke;

(2) morbidity and mortality rates for cardiovascular disease and stroke; and

(3) community indicators relevant to cardiovascular disease and stroke.

(c) In compiling the database, the council may use information available from other sources, such as the Behavioral Risk Factor Surveillance System established by the Centers for Disease Control and Prevention, reports of hospital discharge data, and information included in death certificates.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

Sec. 93.054. INFORMATION RECEIVED FROM ANOTHER STATE AGENCY; CONFIDENTIALITY. (a) To perform its duties under this chapter, the council may request and receive information in the possession of any state agency. In addition to the restriction imposed by Subsection (b), information provided to the council under this subsection is subject to any restriction on disclosure or use of the information that is imposed by law on the agency from which the council obtained the information.

(b) Information in the possession of the council that identifies a patient or that is otherwise confidential under law is confidential, is excepted from required public disclosure under Chapter 552, Government Code, and may not be disclosed for any purpose.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

CHAPTER 94. STATE PLAN FOR HEPATITIS C; EDUCATION AND PREVENTION PROGRAM

Sec. 94.001. STATE PLAN FOR HEPATITIS C. (a) The department shall develop a state plan for prevention and treatment of hepatitis C. The plan must include strategies for prevention and treatment of hepatitis C in specific demographic groups that are disproportionately affected by hepatitis C, including persons infected with HIV, veterans, racial or ethnic minorities that suffer a higher incidence of hepatitis C, and persons who engage in high risk behavior, such as intravenous drug use.

(b) In developing the plan, the department shall seek the input of:

(1) the public, including members of the public that have hepatitis C;

(2) each state agency that provides services to persons with hepatitis C or the functions of which otherwise involve hepatitis C, including any appropriate health and human services agency described by Section 521.0001, Government Code;

(3) any advisory body that addresses issues related to hepatitis C;

(4) public advocates concerned with issues related to hepatitis C; and

(5) providers of services to persons with hepatitis C.

(c) The department shall update the state plan developed under this section biennially.

Added by Acts 2001, 77th Leg., ch. 918, Sec. 1, eff. June 14, 2001. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 10, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 13, eff. June 17, 2011.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.34, eff. April 1, 2025.

Sec. 94.002. HEPATITIS C EDUCATION AND PREVENTION PROGRAM. (a) The department shall develop a program to heighten awareness and enhance knowledge and understanding of hepatitis C. The department shall:

(1) conduct a seroprevalence study to estimate the current and future impact of hepatitis C on the state;

(2) conduct health education, public awareness, and community outreach activities to promote public awareness and knowledge about the risk factors, the value of early detection, available screening services, and the options available for the treatment of hepatitis C;

(3) provide training to public health clinic staff regarding the treatment, detection, and methods of transmission of hepatitis C;

(4) identify to health care providers and employers the benefits of disease awareness and prevention; and

(5) develop a prevention program to reduce the risk of transmission of hepatitis C.

(b) In developing the prevention program required by Subsection (a)(5), the department may forecast the economic and clinical impacts of hepatitis C and the impact of hepatitis C on quality of life. The department may develop the forecasts in conjunction with an academic medical center or a nonprofit institution with experience using disease management prospective modeling and simulation techniques.

Added by Acts 1999, 76th Leg., ch. 823, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 93.001 and amended by Acts 2001, 77th Leg., ch.

918, Sec. 1, eff. June 14, 2001.

Sec. 94.003. DEPARTMENT VOLUNTARY TESTING PROGRAMS. (a) The department shall establish voluntary hepatitis C testing programs to be performed at facilities providing voluntary HIV testing under Section 85.082 in each public health region to make confidential counseling and testing available.

(b) The department may contract with public and private entities to perform the testing as necessary according to local circumstances.

(c) The results of a test conducted by a testing program or department program under this section may not be used for insurance purposes, to screen or determine suitability for employment, or to discharge a person from employment.

(d) A person who intentionally violates Subsection (c) is liable to a person injured by the violation. The injured person may bring a civil action for damages and may recover for each violation from a person who violates Subsection (c):

(1) the greater of $1,000 or actual damages; and

(2) reasonable attorney's fees.

(e) In addition to the remedies provided by Subsection (d), the person may bring an action to restrain a violation or threatened violation of Subsection (c).

Added by Acts 1999, 76th Leg., ch. 823, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 93.002 by Acts 2001, 77th Leg., ch. 918, Sec. 1, eff. June 14, 2001.

CHAPTER 94A. STATE PLAN FOR STREPTOCOCCUS PNEUMONIAE; EDUCATION AND PREVENTION PROGRAM

Sec. 94A.001. STATE PLAN FOR STREPTOCOCCUS PNEUMONIAE. (a) The department, using existing resources and programs to the extent possible, shall develop a state plan for prevention and treatment of diseases caused by Streptococcus pneumoniae. The plan must include strategies for prevention and treatment of diseases caused by Streptococcus pneumoniae in specific demographic groups that are disproportionately affected by the diseases, including persons who are elderly, children under two years of age, persons living in long-

term care facilities, persons with a chronic heart or lung disease, smokers, and persons with asplenia.

(b) In developing the plan, the department shall seek the advice of:

(1) the public, including members of the public who have been infected with Streptococcus pneumoniae;

(2) each state agency that provides services to persons infected with Streptococcus pneumoniae or that is assigned duties related to diseases caused by Streptococcus pneumoniae, including any appropriate health and human services agency described by Section 521.0001, Government Code, the Employees Retirement System of Texas, and the Teacher Retirement System of Texas;

(3) any advisory body that addresses issues related to diseases caused by Streptococcus pneumoniae;

(4) public advocates concerned with issues related to diseases caused by Streptococcus pneumoniae;

(5) providers of services to persons with diseases caused by Streptococcus pneumoniae;

(6) a statewide professional association of physicians; and

(7) a statewide professional association of nurses.

(c) The department shall review and modify as necessary the state plan developed under this section at least once every five years and may update the state plan biennially.

Added by Acts 2017, 85th Leg., R.S., Ch. 994 (H.B. 970), Sec. 1, eff. September 1, 2017.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.35, eff. April 1, 2025.

Sec. 94A.002. STREPTOCOCCUS PNEUMONIAE EDUCATION AND PREVENTION PROGRAM. (a) The department shall develop a program to heighten awareness and enhance knowledge and understanding of Streptococcus pneumoniae.

(b) The program developed under Subsection (a) must require the department to:

(1) conduct health education, public awareness, and community outreach activities to promote public awareness and knowledge about the risk factors for, the value of early detection

of, available screening services for, and the options available for the treatment of diseases caused by Streptococcus pneumoniae; and

(2) post on the department's Internet website the options available for the prevention, treatment, and detection of diseases caused by Streptococcus pneumoniae and information on the risk factors for, method of transmission of, and value of early detection of the diseases.

(c) The department, using existing resources, may include in the program developed under Subsection (a) a study to estimate the current and future impact on this state of diseases caused by Streptococcus pneumoniae.

Added by Acts 2017, 85th Leg., R.S., Ch. 994 (H.B. 970), Sec. 1, eff. September 1, 2017.

CHAPTER 95. DIABETES

SUBCHAPTER A. RISK ASSESSMENT FOR TYPE 2 DIABETES

Sec. 95.001. DEFINITIONS. In this subchapter:

(1) "Acanthosis nigricans" means a light brown or black velvety, rough, or thickened area on the surface of the skin that may signal high insulin levels indicative of insulin resistance.

(2) "Advisory committee" means the Type 2 Diabetes Risk Assessment Program Advisory Committee established under Section 95.006.

(3) "Council" means the Texas Diabetes Council.

(4) "Office" means The University of Texas Rio Grande Valley Border Health Office.

(5) "Professional examination" means an evaluation performed by an appropriately licensed professional.

(6) "School" means an educational institution that admits children who are five years of age or older but younger than 21 years of age.

Added by Acts 2001, 77th Leg., ch. 1465, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 6, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 392 (S.B. 510), Sec. 3, eff.

September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 188 (S.B. 1467), Sec. 13, eff. May 30, 2021.

Sec. 95.002. TYPE 2 DIABETES EDUCATION AND RISK ASSESSMENT PROGRAM. (a) The office shall administer a risk assessment program for Type 2 diabetes in accordance with this chapter.

(b) The office, after reviewing recommendations made by the advisory committee, by rule shall coordinate the risk assessment for Type 2 diabetes of individuals who attend public or private schools located in Texas Education Agency Regional Education Service Centers 1, 2, 3, 4, 10, 11, 13, 15, 18, 19, and 20 and, by using existing funding as efficiently as possible or by using other available funding, in additional regional education service centers.

(c) The rules must include procedures necessary to administer the risk assessment program, including procedures that require each school to record and report risk assessment activities using:

(1) an existing database used to administer and track risk assessment data; or

(2) widely accepted surveillance software selected by the office.

(d) The office shall require a risk assessment for Type 2 diabetes to be performed at the same time hearing and vision screening is performed under Chapter 36 or spinal screening is performed under Chapter 37. The risk assessment for Type 2 diabetes should:

(1) identify students with acanthosis nigricans; and

(2) further assess students identified under Subdivision (1) to determine the students':

(A) body mass index; and

(B) blood pressure.

(e) The office may:

(1) coordinate the risk assessment for Type 2 diabetes activities of school districts, private schools, state agencies, volunteer organizations, universities, and other entities so that the efforts of each entity are complementary and not fragmented and duplicative; and

(2) provide technical assistance to those entities in developing risk assessment programs.

(f) The office shall:

(1) provide educational and other material to assist local risk assessment activities;

(2) monitor the quality of risk assessment activities provided under this chapter; and

(3) consult with the Texas Board of Nursing to determine the training requirements necessary for a nurse or other person to conduct risk assessment activities under this chapter.

(g) The office shall provide on the office's Internet website information on obesity, Type 2 diabetes, and related conditions to health care providers and update the information at least annually.

Added by Acts 2001, 77th Leg., ch. 1465, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1125, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 3, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0329, eff. April 2, 2015.

Sec. 95.003. COMPLIANCE WITH RISK ASSESSMENT REQUIREMENTS. (a) Each individual required by rules adopted under this chapter to be assessed shall undergo approved risk assessment for Type 2 diabetes. The individual shall comply with the requirements as soon as possible after the individual's admission to a school and as required by rule. The individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian may substitute a professional examination for the risk assessment.

(b) An individual is exempt from risk assessment if risk assessment conflicts with the tenets and practices of a recognized church or religious denomination of which the individual is an adherent or a member. To qualify for the exemption, the individual or, if the individual is a minor, the individual's parent, managing conservator, or guardian must submit to the chief administrator of the school on or before the day of the risk assessment process an affidavit stating the objections to the risk assessment.

(c) The chief administrator of each school shall ensure that each individual admitted to the school complies with the risk

assessment requirements set by the office or submits an affidavit of exemption.

Added by Acts 2001, 77th Leg., ch. 1465, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 3, eff. September 1, 2007.

Sec. 95.004. RECORDS; REPORTS. (a) The chief administrator of each school shall maintain, on a form prescribed by the office, risk assessment records for each individual in attendance and enter the risk assessment information for each individual on the surveillance software selected by the office. The risk assessment records are open for inspection by the office or the local health department.

(b) The office may, directly or through local health departments, enter a school and inspect records maintained by the school relating to risk assessment for Type 2 diabetes.

(c) An individual's risk assessment records may be transferred among schools without the consent of the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian.

(d) The person performing the risk assessment shall send a report indicating that an individual may be at risk for developing Type 2 diabetes to the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian. The report must include:

(1) an explanation of:

(A) the process for assessing risk for developing Type 2 diabetes;

(B) the reasons the individual was identified in the risk assessment process as being at risk for developing Type 2 diabetes;

(C) the risk factors associated with developing Type 2 diabetes; and

(D) the individual's body mass index;

(2) a statement concerning an individual's or family's need for further evaluation for Type 2 diabetes and related conditions;

(3) instructions to help the individual or family receive evaluation by a physician or other health care provider; and

(4) information on procedures for applying for the state child health plan program and the state Medicaid program.

(e) Each school shall submit to the office an annual report on the risk assessment status of the individuals in attendance during the reporting year and shall include in the report any other information required by the office.

(f) The report required under Subsection (e) must:

(1) be compiled from the information entered into the surveillance software;

(2) be on a form prescribed by the office; and

(3) be submitted according to the timetable established by the office's rules.

(g) After the end of the reporting period under Subsection (e), the office shall:

(1) analyze and compile a summary of the reports submitted by schools during that reporting period;

(2) file a copy of the summary with the advisory committee; and

(3) post on an Internet website accessible to each school required to submit a report under Subsection (e):

(A) the number of students and the percentage of the student population identified by each of those schools during the reporting period as at risk for Type 2 diabetes; and

(B) comparison data and analyses regarding the information required to be reported under that subsection.

(h) The office shall deliver to the chief administrator of each school and the school nurse or other person responsible for conducting risk assessment activities for the school under this chapter an annual summary compilation of the reports submitted by schools under Subsection (e).

(i) Not later than January 15 of each odd-numbered year, the office shall submit to the governor and the legislature a report relating to the implementation and effectiveness of the Type 2 diabetes risk assessment program established by this chapter that includes a detailed description of the expenses related to the program.

Added by Acts 2001, 77th Leg., ch. 1465, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 3, eff.

September 1, 2007.

Sec. 95.005. GIFTS AND GRANTS. The office may accept gifts, grants, and donations to support the Type 2 diabetes risk assessment program conducted under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 4, eff. September 1, 2007.

Sec. 95.006. ADVISORY COMMITTEE. (a) The Type 2 Diabetes Risk Assessment Program Advisory Committee is established to advise the office on the Type 2 diabetes risk assessment program conducted under this chapter.

(b) The advisory committee is composed of:

(1) the following representatives appointed by the executive director of the office:

(A) one representative of the office;

(B) one representative of the Texas Education Agency;

(C) one representative of the Texas Pediatric Society;

(D) one representative of the American Diabetes Association;

(E) one school nurse representative from an urban school located within the boundaries of a regional education service center;

(F) one parent or guardian of a child who resides within the boundaries of a regional education service center; and

(G) one person with knowledge and experience in health care in school settings; and

(2) the following representatives appointed by the chairman of the council:

(A) one representative of the council;

(B) one representative of the Texas Medical Association;

(C) one school district administrator representative from a school district located within the boundaries of a regional education service center;

(D) one school principal representative from a school district located within the boundaries of a regional education

service center; and

(E) one school nurse representative from a rural school located within the boundaries of a regional education service center.

(c) A person may not be a member of the advisory committee if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a health care profession or related business or another profession related to the operation of the council.

(d) The representative of the office appointed under Subsection (b)(1)(A) shall serve as the presiding officer of the advisory committee.

(e) The advisory committee shall meet at least twice a year and at other times at the call of the presiding officer. The advisory committee may meet by teleconference if an in-person meeting of all the members is not practicable.

(f) Members of the advisory committee may not receive compensation for service on the committee. An advisory committee member is entitled to reimbursement of travel expenses incurred by the member while conducting the business of the advisory committee to the extent that funds are available to the office for that purpose.

(g) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

(h) The advisory committee shall:

(1) recommend the person who should be responsible for conducting risk assessment activities under this chapter for schools that do not employ a school nurse;

(2) advise the office on the age groups that would benefit most from the risk assessment activities under this chapter;

(3) recommend a method to record and report the number of children who are identified in the risk assessment process as being at risk for having or developing Type 2 diabetes and who qualify for the national free or reduced-price lunch program established under 42 U.S.C. Section 1751 et seq.;

(4) recommend a deadline, which may not be later than the first anniversary of the date the advisory committee submits a recommendation to the office under this section, by which the office shall implement the advisory committee's recommended risk assessment activities, surveillance methods, reports, and quality improvements;

(5) contribute to the state plan for diabetes treatment developed by the council under Section 103.013 by providing

statistics and information on the risk assessment activities conducted under this chapter and recommendations for assisting children in this state at risk for developing Type 2 diabetes; and

(6) recommend any additional information to be included in the report required by Section 95.004.

(i) The advisory committee shall submit to the office a report of the recommendations developed under Subsection (h) not later than September 1 of each even-numbered year. The office, subject to the availability of funds, shall implement each advisory committee recommendation concerning the Type 2 diabetes risk assessment program.

(j) In this section, "regional education service center" means a Texas Education Agency Regional Education Service Center listed in Section 95.002(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 4, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 5.02, eff. June 17, 2011.

CHAPTER 95A. REPORTS ON PREVENTION AND TREATMENT OF DIABETES

Sec. 95A.001. DEFINITION. In this chapter, "council" means the Texas Diabetes Council.

Added by Acts 2011, 82nd Leg., R.S., Ch. 409 (S.B. 796), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0331, eff. April 2, 2015.

Sec. 95A.002. BIENNIAL REPORT ON COMMISSION'S PRIORITIES FOR ADDRESSING DIABETES. (a) The commission, in coordination with the council, shall prepare a biennial report that identifies the commission's priorities for addressing diabetes within the Medicaid population.

(b) Not later than December 1 of each even-numbered year, the commission shall submit the report to the legislature and the governor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 409 (S.B. 796), Sec. 1, eff. September 1, 2011.

CHAPTER 96. RESPIRATORY SYNCYTIAL VIRUS

Sec. 96.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(37), eff. April 2, 2015.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(37), eff. April 2, 2015.

(3) "Health facility" includes:

(A) a general or special hospital licensed by the department under Chapter 241;

(B) a physician-owned or physician-operated clinic;

(C) a publicly or privately funded medical school;

(D) a state hospital operated by the department or a state supported living center operated by the Department of Aging and Disability Services;

(E) a public health clinic conducted by a local health unit, health department, or public health district organized and recognized under Chapter 121; and

(F) another facility specified by a rule adopted by the executive commissioner.

(4) "Local health unit" has the meaning assigned by Section 121.004.

(5) "RSV" means respiratory syncytial virus.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0332, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(37), eff. April 2, 2015.

Sec. 96.002. CONFIDENTIALITY. (a) Except as specifically authorized by this chapter, reports, records, and information furnished to a department employee or to an authorized agent of the department that relate to cases or suspected cases of a health

condition are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by this chapter.

(c) The department may release medical, epidemiological, or toxicological information:

(1) for statistical purposes, if released in a manner that prevents the identification of any person;

(2) to medical personnel, appropriate state agencies, health authorities, regional directors, and public officers of counties and municipalities as necessary to comply with this chapter and rules relating to the identification, monitoring, and referral of children with RSV; or

(3) to appropriate federal agencies, such as the Centers for Disease Control and Prevention of the United States Public Health Service.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.

Sec. 96.003. LIMITATION OF LIABILITY. A health professional, a health facility, or an administrator, officer, or employee of a health facility subject to this chapter is not civilly or criminally liable for divulging information required to be released under this chapter, except in a case of gross negligence or wilful misconduct.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.

Sec. 96.004. COOPERATION OF GOVERNMENTAL ENTITIES. Another state board, commission, agency, or governmental entity capable of assisting the department in carrying out the intent of this chapter shall cooperate with the department and furnish expertise, services, and facilities to the sentinel surveillance program.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.

Sec. 96.005. SENTINEL SURVEILLANCE PROGRAM. (a) The executive commissioner shall establish in the department a program to:

(1) identify by sentinel surveillance RSV infection in children; and

(2) maintain a central database of laboratory-confirmed cases of RSV that can be used to investigate the incidence, prevalence, and trends of RSV.

(b) In establishing the sentinel surveillance program for RSV, the executive commissioner shall consider:

(1) the number and geographic distribution of children in the state;

(2) the location of health facilities that collect RSV information locally; and

(3) the use of existing data collected by health facilities.

(c) The executive commissioner shall adopt rules to govern the operation of the program and carry out the intent of this chapter, including rules that specify a system for selecting the demographic areas in which the department collects information.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.

Sec. 96.006. DATA COLLECTION. (a) To ensure an accurate source of data, the executive commissioner may require a health facility or health professional to make available for review by the department or by an authorized agent medical records or other information that is in the facility's or professional's custody or control and that relates to an occurrence of RSV.

(b) The executive commissioner by rule shall prescribe the manner in which data are reported to the department.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.

Sec. 96.007. DATABASE. (a) Information collected and analyzed by the department or an authorized agent under this chapter may be

placed in a central database to facilitate information sharing and provider education.

(b) The department may use the database to:

(1) design and evaluate measures to prevent the occurrence of RSV and other health conditions; and

(2) provide information and education to providers on the incidence of RSV infection.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.

CHAPTER 98. REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS AND PREVENTABLE ADVERSE EVENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 98.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 946 , Sec. 1.09(h)(1), eff. September 1, 2015.

(2) "Ambulatory surgical center" means a facility licensed under Chapter 243.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(38), eff. April 2, 2015.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(38), eff. April 2, 2015.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(38), eff. April 2, 2015.

(6) "General hospital" means a general hospital licensed under Chapter 241 or a hospital that provides surgical or obstetrical services and that is maintained or operated by this state. The term does not include a comprehensive medical rehabilitation hospital.

(7) "Health care-associated infection" means a localized or symptomatic condition resulting from an adverse reaction to an infectious agent or its toxins to which a patient is exposed in the course of the delivery of health care to the patient.

(8) "Health care facility" means a general hospital or an ambulatory surgical center.

(8-a) "Health care professional" means an individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term does not include a health care

facility.

(9) "Infection rate" means the number of health care-associated infections of a particular type at a health care facility divided by a numerical measure over time of the population at risk for contracting the infection, unless the term is modified by rule of the executive commissioner to accomplish the purposes of this chapter.

(10) Repealed by Acts 2019, 86th Leg., R.S., Ch. 512 (S.B. 384), Sec. 2(1), eff. September 1, 2019.

(10-a) "Potentially preventable complication" and "potentially preventable readmission" have the meanings assigned by Section 1002.001, Health and Safety Code.

(11) "Reporting system" means the Texas Health Care-Associated Infection and Preventable Adverse Events Reporting System.

(12) "Special care setting" means a unit or service of a general hospital that provides treatment to inpatients who require extraordinary care on a concentrated and continuous basis. The term includes an adult intensive care unit, a burn intensive care unit, and a critical care unit.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(b), eff. September 1, 2009.
Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.01, eff. September 28, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(38), eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.09(h)(1), eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 512 (S.B. 384), Sec. 2(1), eff. September 1, 2019.

SUBCHAPTER C. DUTIES OF DEPARTMENT; REPORTING SYSTEM

Sec. 98.101. RULEMAKING. (a) The executive commissioner may adopt rules for the department to implement this chapter.

(b) The executive commissioner may not adopt rules that conflict with or duplicate any federally mandated infection reporting

program or requirement.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Sec. 98.102. DEPARTMENTAL RESPONSIBILITIES; REPORTING SYSTEM. (a) The department shall establish the Texas Health Care-Associated Infection and Preventable Adverse Events Reporting System within the department. The purpose of the reporting system is to provide for:

(1) the reporting of health care-associated infections by health care facilities to the department;

(2) the reporting of health care-associated preventable adverse events by health care facilities to the department;

(3) the public reporting of information regarding the health care-associated infections by the department;

(4) the public reporting of information regarding health care-associated preventable adverse events by the department; and

(5) the education and training of health care facility staff by the department regarding this chapter.

(b) The reporting system shall provide a mechanism for this state to collect data, at state expense, through a secure electronic interface with health care facilities.

(c) The data reported by health care facilities to the department must contain sufficient patient identifying information to:

(1) avoid duplicate submission of records;

(2) allow the department to verify the accuracy and completeness of the data reported; and

(3) for data reported under Section 98.103, allow the department to risk adjust the facilities' infection rates.

(d) The department shall review the infection control and reporting activities of health care facilities to ensure the data provided by the facilities is valid and does not have unusual data patterns or trends that suggest implausible infection rates.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(e), eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.02, eff. September 28, 2011.

Sec. 98.103. REPORTABLE INFECTIONS. (a) A health care facility shall report to the department each health care-associated infection, including the causative pathogen if the infection is laboratory-confirmed, that occurs in the facility and that the federal Centers for Medicare and Medicaid Services requires a facility participating in the Medicare program to report through the federal Centers for Disease Control and Prevention's National Healthcare Safety Network, or its successor.

(a-1) A health care facility shall report each health care-associated infection to the department under this section regardless of the facility's participation in Medicare.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 512 (S.B. 384), Sec. 2(2), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 512 (S.B. 384), Sec. 2(2), eff. September 1, 2019.

(d) The department shall ensure that the health care-associated infections a health care facility is required to report under this section have the meanings assigned by the federal Centers for Disease Control and Prevention.

(d-1) The executive commissioner by rule may designate the federal Centers for Disease Control and Prevention's National Healthcare Safety Network, or its successor, to receive reports of health care-associated infections from health care facilities on behalf of the department. A health care facility must file a report required in accordance with a designation made under this subsection in accordance with the National Healthcare Safety Network's definitions, methods, requirements, and procedures. A health care facility shall authorize the department to have access to facility-specific data contained in a report filed with the National Healthcare Safety Network in accordance with a designation made under this subsection.

(e) A report made under this section must specify whether the infection resulted in the death of the patient while hospitalized.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 369 (H.B. 1362), Sec. 2, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.03, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1072 (H.B. 3285), Sec. 1, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 512 (S.B. 384), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 512 (S.B. 384), Sec. 2(2), eff. September 1, 2019.

Sec. 98.1045. REPORTING OF PREVENTABLE ADVERSE EVENTS. (a) Each health care facility shall report to the department the occurrence of any of the following preventable adverse events involving the facility's patient:

(1) a health care-associated adverse condition or event for which the Medicare program will not provide additional payment to the facility under a policy adopted by the federal Centers for Medicare and Medicaid Services; and

(2) subject to Subsection (b), an event included in the list of adverse events identified by the National Quality Forum that is not included under Subdivision (1).

(b) The executive commissioner may exclude an adverse event described by Subsection (a)(2) from the reporting requirement of Subsection (a) if the executive commissioner determines that the adverse event is not an appropriate indicator of a preventable adverse event.

(c) The executive commissioner by rule may designate an agency of the United States Department of Health and Human Services to receive reports of preventable adverse events by health care facilities on behalf of the department. A health care facility shall authorize the department to have access to facility-specific data contained in a report made in accordance with a designation made under this subsection.

Added by Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(f),

eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.04, eff. September 28, 2011.
Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.09(d), eff. September 1, 2015.

Sec. 98.1046. PUBLIC REPORTING OF CERTAIN POTENTIALLY PREVENTABLE EVENTS FOR HOSPITALS. (a) The department, using data submitted under Chapter 108, shall publicly report for hospitals in this state risk-adjusted outcome rates for those potentially preventable complications and potentially preventable readmissions that the department has determined to be the most effective measures of quality and efficiency.

(b) The department shall make the reports compiled under Subsection (a) available to the public on the department's Internet website.

(c) The department may not disclose the identity of a patient or health care professional in the reports authorized in this section.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.05, eff. September 28, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 3.32, eff. January 1, 2016.
Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.14(b), eff. September 1, 2015.

Sec. 98.1047. STUDIES ON LONG-TERM CARE FACILITY REPORTING OF ADVERSE HEALTH CONDITIONS. (a) The department shall study which adverse health conditions commonly occur in long-term care facilities and, of those health conditions, which are potentially preventable.

(b) The department shall develop recommendations for reporting adverse health conditions identified under Subsection (a).

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.05, eff. September 28, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 3.33, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.14(c), eff. September 1, 2015.

Sec. 98.106. DEPARTMENTAL SUMMARY. (a) The department shall compile and make available to the public a summary, by health care facility, of:

(1) the infections reported by facilities under Section 98.103, including whether the infections resulted in the death of the patient while hospitalized; and

(2) the preventable adverse events reported by facilities under Section 98.1045.

(b) Information included in the departmental summary with respect to infections reported by facilities under Section 98.103 must be risk adjusted and include a comparison of the risk-adjusted infection rates for each health care facility in this state that is required to submit a report under Section 98.103.

(c) The department shall publish the departmental summary in a format that is easy to read.

(d) The department shall publish the departmental summary at least annually and may publish the summary more frequently as the department considers appropriate. Data made available to the public must include aggregate data covering a period of at least a full calendar quarter.

(e) The executive commissioner by rule shall allow a health care facility to submit concise written comments regarding information contained in the departmental summary that relates to the facility. The department shall attach the facility's comments to the public report and the comments must be in the same format as the summary.

(f) The disclosure of written comments to the department by a health care facility as provided by Subsection (e) does not constitute a waiver of a privilege or protection under Section 98.109.

(g) The department shall make the departmental summary available on an Internet website administered by the department and may make the summary available through other formats accessible to the public. The website must contain a statement informing the

public of the option to report suspected health care-associated infections and preventable adverse events to the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(g), eff. September 1, 2009.
Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.07, eff. September 28, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1072 (H.B. 3285), Sec. 2, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.09(f), eff. September 1, 2015.

Sec. 98.1065. STUDY OF INCENTIVES AND RECOGNITION FOR HEALTH CARE QUALITY. The department shall conduct a study on developing a recognition program to recognize exemplary health care facilities for superior quality of health care and make recommendations based on that study.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.08, eff. September 28, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 3.34, eff. January 1, 2016.
Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.14(d), eff. September 1, 2015.

Sec. 98.107. EDUCATION AND TRAINING REGARDING REPORTING SYSTEM. The department shall provide education and training for health care facility staff regarding this chapter. The training must be reasonable in scope and focus primarily on:

(1) the implementation and management of a facility reporting mechanism;

(2) characteristics of the reporting system, including public reporting by the department and facility reporting to the department;

(3) confidentiality; and

(4) legal protections.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Sec. 98.108. FREQUENCY OF REPORTING. (a) The executive commissioner by rule shall establish the frequency of reporting by health care facilities required under Sections 98.103 and 98.1045.

(b) Except as provided by Subsection (c), facilities may not be required to report more frequently than quarterly.

(c) The executive commissioner may adopt rules requiring reporting more frequently than quarterly if more frequent reporting is necessary to meet the requirements for participation in the federal Centers for Disease Control and Prevention's National Healthcare Safety Network.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(h), eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.09, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.09(g), eff. September 1, 2015.

Sec. 98.109. CONFIDENTIALITY; PRIVILEGE. (a) Except as provided by Sections 98.1046, 98.106, and 98.110, all information and materials obtained or compiled or reported by the department under this chapter or compiled or reported by a health care facility under this chapter, and all related information and materials, are confidential and:

(1) are not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person; and

(2) may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

(b) The confidentiality protections under Subsection (a) apply without regard to whether the information or materials are obtained

from or compiled or reported by a health care facility or an entity that has an ownership or management interest in a facility.

(b-1) A state employee or officer may not be examined in a civil, criminal, or special proceeding, or any other proceeding, regarding the existence or contents of information or materials obtained, compiled, or reported by the department under this chapter.

(c) The transfer of information or materials under this chapter is not a waiver of a privilege or protection granted under law.

(d) The provisions of this section regarding the confidentiality of information or materials compiled or reported by a health care facility in compliance with or as authorized under this chapter do not restrict access, to the extent authorized by law, by the patient or the patient's legally authorized representative to records of the patient's medical diagnosis or treatment or to other primary health records.

(e) A department summary or disclosure may not contain information identifying a patient, employee, contractor, volunteer, consultant, health care professional, student, or trainee in connection with a specific incident.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(i), eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.10, eff. September 28, 2011.

Sec. 98.110. DISCLOSURE AMONG CERTAIN AGENCIES. (a) Notwithstanding any other law, the department may disclose information reported by health care facilities under Section 98.103 or 98.1045 to other programs within the department, to the commission, to other health and human services agencies, as defined by Section 521.0001, Government Code, and to the federal Centers for Disease Control and Prevention, or any other agency of the United States Department of Health and Human Services, for public health research or analysis purposes only, provided that the research or analysis relates to health care-associated infections or preventable adverse events. The privilege and confidentiality provisions

contained in this chapter apply to such disclosures.

(b) If the executive commissioner designates an agency of the United States Department of Health and Human Services to receive reports of health care-associated infections or preventable adverse events, that agency may use the information submitted for purposes allowed by federal law.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(j), eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.11, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0333, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.36, eff. April 1, 2025.

Sec. 98.111. CIVIL ACTION. Published infection rates or preventable adverse events may not be used in a civil action to establish a standard of care applicable to a health care facility.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(j), eff. September 1, 2009.

SUBCHAPTER D. ENFORCEMENT

Sec. 98.151. VIOLATIONS. (a) Except as provided by Subsection (b), a general hospital that violates this chapter or a rule adopted under this chapter is subject to the enforcement provisions of Subchapter C, Chapter 241, and rules adopted and enforced under that subchapter as if the hospital violated Chapter 241 or a rule adopted under that chapter.

(b) Subsection (a) does not apply to a comprehensive medical rehabilitation hospital as defined in Section 241.003.

(c) An ambulatory surgical center that violates this chapter or

a rule adopted under this chapter is subject to the enforcement provisions of Chapter 243 and rules adopted and enforced under that chapter as if the center violated Chapter 243 or a rule adopted under that chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

CHAPTER 99. OPEN BURN PIT REGISTRY

Sec. 99.001. DEFINITIONS. In this chapter:

(1) "Airborne hazard" means an airborne environmental contaminant, including open burn pit smoke, oil well fire smoke, sand, dust, or other particles, that may cause short-term or long-term health effects to a person exposed to the contaminant.

(2) "Open burn pit," also known as an "open air burn pit," means a site used for solid waste disposal by burning the waste in the outdoor air without the use of a commercially manufactured incinerator or other equipment specifically designed and manufactured for burning solid waste.

(3) "Service member" means an individual who is currently serving in:

(A) the armed forces of the United States;

(B) an auxiliary service of one of the armed forces of the United States, including the National Guard; or

(C) the state military forces as defined by Section 431.001, Government Code.

(4) "Veteran" means an individual who served in:

(A) the armed forces of the United States;

(B) an auxiliary service of one of the armed forces of the United States, including the National Guard; or

(C) the state military forces as defined by Section 431.001, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 153 (H.B. 306), Sec. 2, eff. September 1, 2019.

Sec. 99.002. RULES; MEMORANDUM OF UNDERSTANDING. (a) The executive commissioner shall adopt the rules necessary to administer this chapter and may enter into a memorandum of understanding with

the United States Department of Veterans Affairs as necessary to administer this chapter.

(b) A memorandum of understanding entered into under Subsection (a) must ensure that the United States Department of Veterans Affairs will maintain the confidentiality of a service member or veteran's personally identifying information that is submitted by the department to the Department of Veterans Affairs under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 153 (H.B. 306), Sec. 2, eff. September 1, 2019.

Sec. 99.003. OPEN BURN PIT REGISTRY. (a) For outreach and education related to exposure to open burn pit smoke or other airborne hazards by service members and veterans in this state, the department shall create and maintain an open burn pit registry of service members and veterans who were exposed to open burn pit smoke or other airborne hazards during their military service in:

(1) the Southwest Asia theater of operations on or after August 2, 1990;

(2) Operation Desert Shield or Desert Storm;

(3) Djibouti, Africa, on or after September 11, 2001;

(4) Operation Enduring Freedom, Iraqi Freedom, or New Dawn; or

(5) any other conflict or theater identified by the United States Department of Veterans Affairs.

(b) The department shall include for each entry in the open burn pit registry:

(1) the service member's or veteran's name, address, telephone number, and e-mail address;

(2) the location of the service member's or veteran's service and the period of service;

(3) any medical condition or death of the service member or veteran that may be related to exposure to open burn pit smoke or other airborne hazards; and

(4) any other information that the department or the United States Department of Veterans Affairs considers necessary.

(c) The department shall:

(1) share the information included in the department's open burn pit registry with the United States Department of Veterans

Affairs Airborne Hazards and Open Burn Pit Registry; and

(2) electronically link the open burn pit registry created under this chapter with the federal registry.

Added by Acts 2019, 86th Leg., R.S., Ch. 153 (H.B. 306), Sec. 2, eff. September 1, 2019.

Sec. 99.004. VOLUNTARY REGISTRATION. A service member or veteran described by Section 99.003, or a family member of that service member or veteran, may voluntarily register a case of exposure to open burn pit smoke or other airborne hazards with the department for inclusion in the registry.

Added by Acts 2019, 86th Leg., R.S., Ch. 153 (H.B. 306), Sec. 2, eff. September 1, 2019.

Sec. 99.005. CONFIDENTIALITY. Entries and information obtained under this chapter are confidential and are not subject to disclosure under Chapter 552, Government Code, are not subject to subpoena, and may not otherwise be released or made public except to the United States Department of Veterans Affairs as provided by Section 99.003.

Added by Acts 2019, 86th Leg., R.S., Ch. 153 (H.B. 306), Sec. 2, eff. September 1, 2019.

Sec. 99.006. OPEN BURN PIT INFORMATION. The department, with the assistance of the Texas Veterans Commission, shall develop and include on its Internet website information to inform service members, veterans, and their families about the:

(1) registration and use of the department's open burn pit registry and the United States Department of Veterans Affairs Airborne Hazards and Open Burn Pit Registry;

(2) most recent scientific developments on the health effects of exposure to open burn pit smoke and other airborne hazards and the status of any illness or condition that is presumed to be caused by exposure to open burn pit smoke or other airborne hazards as designated by the United States Department of Veterans Affairs;

(3) availability of any treatment offered by the United

States Department of Veterans Affairs for an illness or condition that may be caused by exposure to open burn pit smoke or other airborne hazards;

(4) process for applying to the United States Department of Veterans Affairs for service-related disability compensation for an illness or condition that may be related to exposure to open burn pit smoke or other airborne hazards, including the methods for documenting the illness or condition; and

(5) manner of appealing to the United States Department of Veterans Affairs an existing service-related disability rating decision or requesting an increased service-related disability rating based on an illness or condition that may be related to exposure to open burn pit smoke or other airborne hazards.

Added by Acts 2019, 86th Leg., R.S., Ch. 153 (H.B. 306), Sec. 2, eff. September 1, 2019.

Sec. 99.007. REPORT. Not later than December 1 of each even-numbered year following the creation of the registry, the department shall submit a report to the appropriate standing committees of the house of representatives and senate that includes:

(1) an assessment of the effectiveness of collection and maintenance of information on the health effects of exposure to open burn pit smoke and other airborne hazards; and

(2) any recommendation to improve the collection and maintenance of information about the health effects of exposure to open burn pit smoke and other airborne hazards.

Added by Acts 2019, 86th Leg., R.S., Ch. 153 (H.B. 306), Sec. 2, eff. September 1, 2019.

Sec. 99.008. OPEN BURN PIT REGISTRY FUND. (a) The open burn pit registry fund is a special fund in the state treasury outside the general revenue fund. The fund is composed of:

(1) money transferred to the fund at the direction of the legislature;

(2) gifts and grants contributed to the fund;

(3) the earnings of the fund; and

(4) money deposited to the credit of the fund under Section

504.679, Transportation Code.

(b) Money in the fund may be appropriated only to the department. The department may use the money only for the creation and maintenance of the open burn pit registry established under Section 99.003, except that the department may use the money for any other purpose of the department consistent with legislative appropriation of the money if the department finds that the registry is adequately funded and contributions to the fund exceed the amount necessary for the registry to be adequately funded.

Added by Acts 2023, 88th Leg., R.S., Ch. 128 (H.B. 1315), Sec. 2, eff. September 1, 2023.

CHAPTER 99A. STATE PLAN FOR ALZHEIMER'S DISEASE AND RELATED DISORDERS

Sec. 99A.001. DEVELOPMENT AND IMPLEMENTATION OF STATE PLAN. (a) The department, using existing resources and programs to the extent possible, shall develop and implement a state plan for education on and treatment of Alzheimer's disease and related disorders.

(b) The state plan must include strategies for:

(1) improving early detection of, reducing disease onset risks for, and improving treatment of Alzheimer's disease and related disorders for specific demographic groups;

(2) educating health care professionals, caregivers, and the public to increase awareness of Alzheimer's disease and related disorders;

(3) providing caregiver support;

(4) advancing basic science and applied research related to Alzheimer's disease and related disorders; and

(5) collecting and evaluating information on efforts to prevent and treat Alzheimer's disease and related disorders.

(c) The department shall develop the strategies described by Subsection (b)(1) in consultation with physicians and other health care providers licensed in this state who have clinical training and experience in caring for persons with Alzheimer's disease or related disorders.

Added by Acts 2019, 86th Leg., R.S., Ch. 6 (S.B. 999), Sec. 1, eff. September 1, 2019.

Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(55), eff. September 1, 2021.

Sec. 99A.002. COMMENTS FROM INTERESTED PARTIES. (a) In developing the state plan under Section 99A.001, the department shall seek comments from interested parties, including:

(1) members of the public with, or who care for persons with, Alzheimer's disease or related disorders;

(2) each state agency that provides services to persons with Alzheimer's disease or related disorders;

(3) any advisory body that addresses issues related to Alzheimer's disease or related disorders;

(4) public advocates concerned with issues related to Alzheimer's disease or related disorders;

(5) physicians and health care providers licensed in this state who have clinical training and experience in caring for persons with Alzheimer's disease or related disorders; and

(6) researchers of issues affecting persons with Alzheimer's disease or related disorders.

(b) On request of the department, the commission shall provide information and comments related to services provided to persons with Alzheimer's disease or related disorders.

(c) The department shall meet with interested parties at least two times each year to:

(1) facilitate comments on and discuss the progress of developing and implementing the state plan developed under this chapter; and

(2) gather information for the report required under Section 99A.004.

Added by Acts 2019, 86th Leg., R.S., Ch. 6 (S.B. 999), Sec. 1, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(55), eff. September 1, 2021.
Redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.002(10), eff. September 1, 2021.

Sec. 99A.003. REVIEW AND MODIFICATION OF STATE PLAN. The

department shall conduct a review and modify as necessary the state plan developed under this chapter at least once every five years.

Added by Acts 2019, 86th Leg., R.S., Ch. 6 (S.B. 999), Sec. 1, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(55), eff. September 1, 2021.

Sec. 99A.004. REPORT. Not later than September 1 of each even-numbered year, the department shall submit to the legislature a report on the development and implementation or the review or modification of the state plan developed under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 6 (S.B. 999), Sec. 1, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(55), eff. September 1, 2021.

Sec. 99A.005. GIFTS AND GRANTS. The department may accept gifts and grants from any source to fund the duties of the department under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 6 (S.B. 999), Sec. 1, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(55), eff. September 1, 2021.

Sec. 99A.006. NO CAUSE OF ACTION, DUTY, STANDARD OF CARE, OR LIABILITY CREATED. Notwithstanding any other law, Section 99A.001, including the use of or failure to use any information or materials developed or disseminated under that section, does not create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides a basis for a cause of action.

Added by Acts 2019, 86th Leg., R.S., Ch. 6 (S.B. 999), Sec. 1, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec.

21.001(55), eff. September 1, 2021.
Redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.002(11), eff. September 1, 2021.

CHAPTER 100. EMERGING AND NEGLECTED TROPICAL DISEASES

Sec. 100.001. DEFINITIONS. In this chapter:

(1) "Emerging disease" means a disease that is appearing in a specific population for the first time or that is increasing in incidence or geographic range.

(2) "Health facility" includes:

(A) a general or special hospital licensed by the department under Chapter 241;

(B) a physician-owned or physician-operated clinic;

(C) a publicly or privately funded medical school;

(D) a state hospital or state school maintained and managed by the department or the Department of Aging and Disability Services;

(E) a public health clinic conducted by a local health unit, health department, or public health district organized and recognized under Chapter 121; and

(F) another facility specified by a rule adopted by the executive commissioner.

(3) "Local health unit" has the meaning assigned by Section 121.004.

(4) "Neglected tropical disease" means a parasitic or bacterial disease that:

(A) occurs solely or principally in the tropics;

(B) is largely endemic in the developing world; and

(C) has a potential to spread through international travel or trade.

Added by Acts 2015, 84th Leg., R.S., Ch. 758 (H.B. 2055), Sec. 1, eff. September 1, 2015.

Sec. 100.002. CONFIDENTIALITY. (a) Except as specifically authorized by this chapter, reports, records, and information furnished to a department employee or to an authorized agent of the department that relate to cases or suspected cases of a health

condition are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of health conditions in the possession of the department under this chapter are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by this chapter.

(c) The department shall release medical, epidemiological, or toxicological information:

(1) to medical personnel, appropriate state agencies, health authorities, regional directors, and public officers of counties and municipalities as necessary to comply with this chapter and rules relating to the identification, monitoring, and referral of individuals infected with an emerging or neglected tropical disease; or

(2) to appropriate federal agencies, such as the Centers for Disease Control and Prevention of the United States Public Health Service.

(d) The department may release medical, epidemiological, or toxicological information for statistical purposes, if released in a manner that prevents the identification of any person.

Added by Acts 2015, 84th Leg., R.S., Ch. 758 (H.B. 2055), Sec. 1, eff. September 1, 2015.

Sec. 100.003. LIMITATION OF LIABILITY. A health professional, a health facility, or an administrator, officer, or employee of a health facility subject to this chapter is not civilly or criminally liable for divulging information required to be released under this chapter, except in a case of gross negligence or wilful misconduct.

Added by Acts 2015, 84th Leg., R.S., Ch. 758 (H.B. 2055), Sec. 1, eff. September 1, 2015.

Sec. 100.004. COOPERATION OF GOVERNMENTAL ENTITIES. Another state board, commission, agency, or governmental entity capable of assisting the department in carrying out the intent of this chapter shall cooperate with the department and furnish expertise, services, and facilities to the program.

Added by Acts 2015, 84th Leg., R.S., Ch. 758 (H.B. 2055), Sec. 1, eff. September 1, 2015.

Sec. 100.005. SENTINEL SURVEILLANCE PROGRAM. (a) The executive commissioner shall establish in the department a program to:

(1) identify by sentinel surveillance individuals infected with emerging or neglected tropical diseases;

(2) maintain a central database of laboratory-confirmed cases of emerging and neglected tropical diseases; and

(3) use the information in the database to investigate the incidence, prevalence, and trends of emerging and neglected tropical diseases.

(b) In establishing the sentinel surveillance program for emerging and neglected tropical diseases, the executive commissioner shall consider:

(1) the location of health facilities that collect locally emerging and neglected tropical disease information; and

(2) the use, privacy, and security of existing data collected by health facilities.

(c) The executive commissioner shall adopt rules to govern the operation of the program and carry out the intent of this chapter, including rules that:

(1) specify a system for selecting the demographic areas in which the department collects information; and

(2) identify the specific emerging and neglected tropical diseases that are included in the sentinel surveillance program and the manner in which diseases will be added to the program as necessary to reflect changing conditions.

Added by Acts 2015, 84th Leg., R.S., Ch. 758 (H.B. 2055), Sec. 1, eff. September 1, 2015.

Sec. 100.006. DATA COLLECTION. (a) To ensure an accurate source of data, the executive commissioner may require a health facility or health professional to make available for review by the department or by an authorized agent medical records or other information in the facility's or professional's custody or control

that relates to an occurrence of an emerging or neglected tropical disease.

(b) The department shall reimburse a health facility or health professional for the actual costs incurred by the facility or professional in making copies of medical records or other information available to the department.

(c) The executive commissioner by rule shall prescribe the manner in which information is reported to the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 758 (H.B. 2055), Sec. 1, eff. September 1, 2015.

Sec. 100.007. DATABASE. (a) Information collected and analyzed by the department or an authorized agent under this chapter may be placed in a central database to facilitate information sharing and provider education.

(b) The department may use the database to:

(1) design and evaluate measures to prevent the occurrence of emerging and neglected tropical diseases and other health conditions; and

(2) provide information and education to providers on the incidence of emerging and neglected tropical diseases.

Added by Acts 2015, 84th Leg., R.S., Ch. 758 (H.B. 2055), Sec. 1, eff. September 1, 2015.

Sec. 100.008. EDUCATIONAL AND INFORMATIONAL MATERIALS. The department shall make available to health facilities and health professionals:

(1) educational and informational materials concerning emerging and neglected tropical diseases; and

(2) information on the importance of monitoring and surveilling emerging and neglected tropical diseases.

Added by Acts 2015, 84th Leg., R.S., Ch. 758 (H.B. 2055), Sec. 1, eff. September 1, 2015.

CHAPTER 100A. UTERINE FIBROID EDUCATION AND RESEARCH

Sec. 100A.001. UTERINE FIBROID DATABASE. (a) Using available data collected by the department under Chapter 108, the department's Center for Health Statistics shall establish and maintain an electronic database of information related to uterine fibroids to increase awareness about uterine fibroids and ensure women receive the information and health care necessary to prevent and treat the condition. The database must include the:

(1) demographic attributes of women diagnosed with uterine fibroids; and

(2) treatments for uterine fibroids used by health care providers.

(b) Information regarding a woman who is diagnosed with or treated for uterine fibroids that is collected by the department and maintained in the database under Subsection (a):

(1) may not include any personally identifying information of the woman; and

(2) is confidential and may be used only by the department or other person on behalf of the department for uterine fibroid research.

Added by Acts 2021, 87th Leg., R.S., Ch. 480 (H.B. 1967), Sec. 1, eff. September 1, 2021.

Sec. 100A.002. UTERINE FIBROID EDUCATION. The department, in consultation with the Texas Medical Association, shall identify and post on the department's Internet website existing resources and educational materials on uterine fibroids to increase public awareness of uterine fibroids, including information on and awareness of the:

(1) women of a race or ethnicity that has a statistically elevated risk of developing uterine fibroids; and

(2) range of available treatment options for uterine fibroids that include non-hysterectomy treatments and procedures.

Added by Acts 2021, 87th Leg., R.S., Ch. 480 (H.B. 1967), Sec. 1, eff. September 1, 2021.

SUBTITLE E. HEALTH CARE COUNCILS AND RESOURCE CENTERS

CHAPTER 101. TEXAS COUNCIL ON ALZHEIMER'S DISEASE AND RELATED

DISORDERS

Sec. 101.001. DEFINITIONS. In this chapter:

(1) "Alzheimer's disease and related disorders support group" means a local, state, or national organization that:

(A) is established to provide support services to aid persons with Alzheimer's disease and related disorders and their caregivers;

(B) encourages research into the cause, prevention, treatment, and care of persons with Alzheimer's disease and related disorders; and

(C) is dedicated to the development of essential services for persons with Alzheimer's disease and related disorders and their caregivers.

(2) "Council" means the Texas Council on Alzheimer's Disease and Related Disorders.

(3) "Primary family caregiver" means an individual who is a relative of a person with Alzheimer's disease or related disorders, who has or has had a major responsibility for care and supervision of the person, and who is not a professional health care provider paid to care for the person.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0334, eff. April 2, 2015.

Sec. 101.002. COMPOSITION OF COUNCIL. (a) The Texas Council on Alzheimer's Disease and Related Disorders is composed of:

(1) five public members, one of whom is an individual related to a person with Alzheimer's disease or related disorders but who is not a primary family caregiver, one of whom is a primary family caregiver, two of whom are members of an Alzheimer's disease and related disorders support group, and one of whom is an interested citizen;

(2) seven professional members with special training and interest in Alzheimer's disease and related disorders, with one representative each from nursing facilities, physicians, nurses, public hospitals, private hospitals, home health agencies, and faculty of institutions of higher education; and

(3) the representative from the commission, department, and Department of Aging and Disability Services designated by the executive commissioner or commissioner of each agency, as applicable.

(b) The governor shall appoint two public members and two professional members, the lieutenant governor shall appoint two public members and two professional members, and the speaker of the house of representatives shall appoint one public member and three professional members.

(c) The governor shall designate a member of the council who is not an agency representative as the chairman of the council to serve in that capacity at the will of the governor.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 10.01, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0335, eff. April 2, 2015.

Sec. 101.0021. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the council if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of medicine; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of medicine.

(c) A person may not be a member of the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the council.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 10.02, eff. Sept. 1, 1999.

Sec. 101.0022. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the council that a member:

(1) does not have at the time of taking office the qualifications required by Section 101.002(a);

(2) does not maintain during service on the council the qualifications required by Section 101.002(a);

(3) is ineligible for membership under Section 101.0021;

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

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

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

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

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 10.02, eff. Sept. 1, 1999.

Sec. 101.0023. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section.

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

(1) the legislation that created the council;

(2) the programs operated by the council;

(3) the role and functions of the council;

(4) the rules of the council;

(5) the current budget for the council;

(6) the results of the most recent formal audit of the council;

(7) the requirements of:

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

(B) the public information law, Chapter 552, Government Code;

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

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the council or the Texas Ethics Commission.

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

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 10.02, eff. Sept. 1, 1999.

Sec. 101.004. TERMS; VACANCY. (a) Appointed council members serve for staggered six-year terms, with the terms of four members expiring August 31 of each odd-numbered year.

(b) If a vacancy occurs, the appropriate appointing authority shall appoint a person, in the same manner as the original appointment, to serve for the remainder of the unexpired term.

(c) A person who has served one full term is not eligible for reappointment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 494, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.005. COMPENSATION. (a) A member of the council is not entitled to compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing council duties.

(b) A representative of a state agency shall be reimbursed from

the funds of the agency the person represents. Other members shall be reimbursed from funds made available to the council.

(c) If funds are not made available to the council, members who are not representatives of state agencies serve at their own expense.

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

Sec. 101.006. MEETINGS. (a) The council shall meet at least twice each calendar year and at the call of the chairman.

(b) The council shall adopt rules for the conduct of its meetings.

(c) Any action taken by the council must be approved by a majority of the members present.

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

Sec. 101.0065. PUBLIC TESTIMONY. The council shall develop and implement policies that provide the public with a reasonable opportunity to appear before the council and to speak on any issue under the jurisdiction of the council.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 10.03, eff. Sept. 1, 1999.

Sec. 101.007. POWERS AND DUTIES OF COUNCIL. (a) The council shall:

(1) advise the department and recommend needed action for the benefit of persons with Alzheimer's disease and related disorders and for their caregivers;

(2) coordinate public and private family support networking systems for primary family caregivers;

(3) disseminate information on services and related activities for persons with Alzheimer's disease and related disorders to the medical and health care community, the academic community, primary family caregivers, advocacy associations, and the public;

(4) coordinate a volunteer assistance program primarily for in-home and respite care services;

(5) encourage research to benefit persons with Alzheimer's

disease and related disorders;

(6) recommend to the department disbursement of grants and funds available for the council; and

(7) facilitate coordination of state agency services and activities relating to persons with Alzheimer's disease and related disorders.

(b) The council is subject to Chapter 551, Government Code, and Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (82), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0336, eff. April 2, 2015.

Sec. 101.008. DUTIES OF DEPARTMENT. The department shall:

(1) provide administrative assistance, services, and materials to the council;

(2) accept, deposit, and disburse funds made available to the council at the direction of the executive commissioner;

(3) accept gifts and grants on behalf of the council from any public or private entity; and

(4) apply for and receive on behalf of the council any appropriations, gifts, or other funds from the state or federal government or any other public or private entity, subject to limitations and conditions prescribed by legislative appropriation.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0337, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 4, eff. September 1, 2021.

Sec. 101.0081. INFORMATION ABOUT STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to members of the council, as often as necessary, information regarding the requirements for office under this chapter, including information

regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 10.05, eff. Sept. 1, 1999.

Sec. 101.009. GIFTS AND GRANTS. (a) The council is encouraged to seek and the department may accept on behalf of the council a gift or grant from any public or private entity.

(b) The department shall deposit any money received under Subsection (a) in the state treasury to be used for the purposes of this chapter.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0338, eff. April 2, 2015.

Sec. 101.010. REPORT. Before September 1 of each even-numbered year, the council shall submit a biennial report of the council's activities and recommendations to the governor, lieutenant governor, speaker of the house of representatives, and members of the legislature.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0339, eff. April 2, 2015.

CHAPTER 101A. DEMENTIA PREVENTION AND RESEARCH INSTITUTE OF TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 101A.001. DEFINITIONS. In this chapter:

(1) "Institute" means the Dementia Prevention and Research Institute of Texas.

(2) "Oversight committee" means the Dementia Prevention and Research Institute of Texas Oversight Committee.

(3) "Peer review committee" means the Dementia Prevention and Research Institute of Texas Peer Review Committee.

(4) “Program integration committee” means the Dementia Prevention and Research Institute of Texas Program Integration Committee.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.002. PURPOSES. The Dementia Prevention and Research Institute of Texas is established to:

(1) create and expedite innovation in research on dementia, Alzheimer's disease, Parkinson's disease, and related disorders to improve the health of residents of this state, enhance the potential for a medical or scientific breakthrough in research on dementia, Alzheimer's disease, Parkinson's disease, and related disorders, and enhance the research superiority of this state regarding dementia, Alzheimer's disease, Parkinson's disease, and related disorders; and

(2) attract, create, or expand research capabilities of eligible institutions of higher education and other public or private entities by awarding grants to promote a substantial increase in research on dementia, Alzheimer's disease, Parkinson's disease, and related disorders, strategies for prevention of dementia, Alzheimer's disease, Parkinson's disease, and related disorders, and the creation of exceptional jobs in this state.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.003. SUNSET PROVISION. The Dementia Prevention and Research Institute of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the institute is abolished and this chapter expires September 1, 2035.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under

Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.004. STATE AUDITOR. Nothing in this chapter limits the authority of the state auditor under Chapter 321, Government Code, or other law.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

SUBCHAPTER B. POWERS AND DUTIES OF INSTITUTE

Sec. 101A.051. POWERS AND DUTIES. The institute:

(1) may award grants to institutions of learning, advanced medical research facilities, public or private persons, and collaboratives in this state to further the purposes of this chapter and Section 68, Article III, Texas Constitution, including:

(A) research, including translational and clinical research, into the causes of, means of prevention of, and treatment and rehabilitation for dementia, Alzheimer's disease, Parkinson's disease, and related disorders;

(B) research, including translational research, to develop therapies, protocols, medical pharmaceuticals, or procedures for the substantial mitigation of the symptoms of dementia, Alzheimer's disease, Parkinson's disease, and related disorders;

(C) facilities, equipment, and other costs related to research on dementia, Alzheimer's disease, Parkinson's disease, and related disorders; and

(D) prevention programs and strategies to mitigate the detrimental health impacts of dementia, Alzheimer's disease, Parkinson's disease, and related disorders;

(2) may collaborate with relevant state agencies, coordinating councils, and consortiums to enhance health care and research for dementia, Alzheimer's disease, Parkinson's disease, and related disorders;

(3) shall establish the appropriate standards and oversight bodies to ensure money authorized under this chapter is properly used

for the purposes of this chapter;

(4) may employ necessary staff to provide to the institute administrative support;

(5) may contract with another state agency to share the cost of administrative services, including grant accounting, grant monitoring, technical and document management of the grant application review process, legal services, and compliance services;

(6) shall monitor grant contracts authorized by this chapter and ensure each grant recipient complies with the terms and conditions of the contract;

(7) shall ensure all grant proposals comply with this chapter and rules adopted under this chapter before the proposals are submitted to the oversight committee for approval; and

(8) shall establish procedures to document compliance by the institute, institute employees, and institute committee members with all laws and rules governing the peer review process and conflicts of interest.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.052. CHIEF EXECUTIVE OFFICER; CHIEF COMPLIANCE OFFICER; ADDITIONAL OFFICERS. (a) The oversight committee shall hire a chief executive officer. The chief executive officer shall perform the duties required by this chapter and the duties designated by the oversight committee. The chief executive officer must have a demonstrated ability to lead and develop academic, commercial, and governmental partnerships and coalitions.

(b) The institute shall employ a chief compliance officer to monitor compliance with this chapter and rules adopted under this chapter and to report to the oversight committee incidents of noncompliance.

(c) The chief executive officer may hire any other officer position the chief executive officer determines necessary for the institute's efficient operation.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under

Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.053. ANNUAL PUBLIC REPORT; INTERNET POSTING. Not later than January 31 of each year, the institute shall prepare and submit to the governor, lieutenant governor, speaker of the house of representatives, and standing committee of each house of the legislature with primary jurisdiction over institute matters and post on the institute's Internet website a report on:

(1) the institute's activities under this chapter;

(2) a list of recipients of grants awarded during the preceding state fiscal year and the grant amount awarded to each recipient;

(3) any research accomplishments a grant recipient or the recipient's partners achieved during the preceding state fiscal year;

(4) an overview summary of the institute's most recent audited financial statement;

(5) an assessment of the relationship between the institute's grants and research program strategy;

(6) an estimate of the financial cost to this state of dementia, Alzheimer's disease, Parkinson's disease, and related disorders during the most recent state fiscal year for which data is available;

(7) a statement of the institute's compliance program activities, including any proposed legislation or other recommendations identified through the activities;

(8) for the preceding state fiscal year:

(A) a list of any conflict of interest requiring recusal under this chapter or rules adopted under this chapter;

(B) any unreported conflict of interest confirmed by an investigation conducted under Section 101A.254, including any institute actions regarding an unreported conflict of interest and subsequent investigation; and

(C) any waivers granted through the process established under Section 101A.253; and

(9) the institute's future direction.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under

Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.054. INDEPENDENT FINANCIAL AUDIT. (a) The institute shall annually commission a certified public accounting firm to perform an independent financial audit of its activities. The institute shall provide the audit to the comptroller.

(b) The comptroller shall:

(1) review and evaluate the audit and annually issue a public report of that review; and

(2) make recommendations concerning the institute's financial practices and performance.

(c) The oversight committee shall review the annual financial audit, the comptroller's public report and recommendations, and the financial practices of the institute.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.055. GRANT RECORDS; AUDIT OF ELECTRONIC GRANT MANAGEMENT SYSTEM. (a) The institute shall maintain complete records of:

(1) each grant application submitted to the institute, including each application funded by the institute or withdrawn after submission and the score the peer review committee assigns to each reviewed application in accordance with rules adopted under Section 101A.302;

(2) each grant recipient's financial reports, including the amount of matching money dedicated to the research specified for the grant award;

(3) each grant recipient's progress reports;

(4) the identity of each principal investor and owner of each grant recipient as provided by institute rules to determine any conflict of interest; and

(5) the institute's review of the grant recipient's financial reports and progress reports.

(b) The institute shall keep each record described by Subsection (a) until at least the 15th anniversary of the record's date of issuance.

(c) The institute shall have prepared periodic audits of any electronic grant management system used to maintain records of grant applications and grant awards. The institute shall timely address each weakness identified in an audit of the system.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.056. GIFTS AND GRANTS. (a) The institute may solicit and accept gifts and grants from any source for the purposes of this chapter.

(b) The institute may not supplement the salary of any institute employee or officer with a gift or grant the institute receives.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.057. PROHIBITED OFFICE LOCATION. An institute employee may not have an office located in a facility owned by an entity receiving or applying to receive money from the institute.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.058. COMPLIANCE PROGRAM; INVESTIGATIONS. (a) The institute shall establish a compliance program operating under the direction of the institute's chief compliance officer to monitor compliance with this chapter and rules adopted under this chapter and

for use in reporting incidents of noncompliance to the oversight committee.

(b) The chief compliance officer or the officer's designee shall attend and observe meetings of the peer review committee and the program integration committee to ensure compliance with this chapter and rules adopted under this chapter.

(c) The chief compliance officer shall submit a written report to the oversight committee confirming each grant application recommendation included on the list the program integration committee submits under Section 101A.302(a)(2) complies with the oversight committee's rules regarding grant award procedures. The report must contain all relevant information on:

(1) the peer review process for the grant application;

(2) the score the peer review committee assigns to the application;

(3) adherence to the conflict-of-interest notification and recusal process; and

(4) confirmation that a recommended grant applicant did not make any gift or grant prohibited by Section 101A.302(f).

(d) To ensure each grant recipient complies with reporting requirements included in the grant contract and the rules adopted under this chapter, the institute shall implement a system to:

(1) track the dates on which grant recipient reports are due and are received by the institute; and

(2) monitor the status of any required report a grant recipient does not timely submit to the institute.

(e) The chief compliance officer shall:

(1) monitor compliance with this section and the status of any required report a grant recipient does not timely submit to the institute; and

(2) notify the institute's general counsel and the oversight committee of a grant recipient who has not complied with the grant contract reporting requirements to allow the institute to suspend or terminate the contract as the institute determines appropriate.

(f) The chief compliance officer shall establish procedures for investigating allegations against oversight committee members, institute employees or contractors, grant applicants, or grant recipients for fraud, waste, or abuse of state resources. The procedures must include:

(1) private access to the compliance program office, such as a telephone hotline; and

(2) to the extent possible, preservation of the confidentiality of communications and the anonymity of a person who submits a compliance report related to fraud, waste, or abuse or participates in a compliance investigation.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

SUBCHAPTER C. OVERSIGHT COMMITTEE

Sec. 101A.101. COMPOSITION OF OVERSIGHT COMMITTEE. (a) The oversight committee is the institute's governing body.

(b) The oversight committee is composed of the following nine members:

(1) three members appointed by the governor;

(2) three members appointed by the lieutenant governor; and

(3) three members appointed by the speaker of the house of representatives.

(c) The oversight committee members must represent this state's geographic and cultural diversity.

(d) In making appointments to the oversight committee, the governor, lieutenant governor, and speaker of the house of representatives:

(1) must each appoint at least one person who is a physician or a scientist with extensive experience working with dementia, Alzheimer's disease, Parkinson's disease, or related disorders or in the field of public health; and

(2) should attempt to include persons affected by dementia, Alzheimer's disease, Parkinson's disease, or related disorders or family members or caregivers of patients with dementia, Alzheimer's disease, Parkinson's disease, or related disorders.

(e) A person may not be an oversight committee member if:

(1) the person or the person's spouse is employed by or participates in the management of an entity receiving money from the institute;

(2) the person or the person's spouse owns or controls,

directly or indirectly, an interest in an entity receiving money from the institute;

(3) the person or the person's spouse uses or receives a substantial amount of tangible goods, services, or money from the institute, other than reimbursement authorized by this chapter for oversight committee membership, attendance, or expenses; or

(4) the person is a member of the Cancer Prevention and Research Institute of Texas Oversight Committee established under Section 102.101.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.102. REMOVAL. (a) It is a ground for removal from the oversight committee that a member:

(1) is ineligible for membership under Section 101A.101(e);

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

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

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

(c) If the chief executive officer has knowledge that a potential ground for removal of a committee member exists, the chief executive officer shall notify the presiding officer of the oversight committee of the potential ground. The presiding officer shall then notify the appointing authority and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the chief executive officer shall notify the next highest ranking officer of the oversight committee, who shall then notify the appointing authority and the attorney general that a potential ground for removal exists.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under

Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.103. TERMS; VACANCY. (a) Oversight committee members appointed by the governor, lieutenant governor, and speaker of the house serve at the pleasure of the appointing authority for staggered six-year terms, with the terms of three members expiring on January 31 of each odd-numbered year.

(b) If a vacancy occurs on the oversight committee, the appropriate appointing authority shall appoint a successor in the same manner as the original appointment to serve for the remainder of the unexpired term. The appropriate appointing authority shall appoint the successor not later than the 30th day after the date the vacancy occurs.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.104. OFFICERS. (a) The oversight committee shall elect a presiding officer and assistant presiding officer from among its members every two years. The oversight committee may elect additional officers from among its members.

(b) The presiding officer and assistant presiding officer may not serve in the position to which the officer was elected for consecutive terms.

(c) The oversight committee shall:

(1) establish and approve duties and responsibilities for committee officers; and

(2) develop and implement policies that distinguish the responsibilities of the oversight committee and the committee's officers from the responsibilities of the chief executive officer and institute employees.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.105. EXPENSES. An oversight committee member is not entitled to compensation but is entitled to reimbursement for actual and necessary expenses incurred in attending committee meetings or performing other official duties authorized by the presiding officer.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.106. MEETINGS. (a) The oversight committee shall hold at least one public meeting each quarter of the calendar year, with appropriate notice and a formal public comment period.

(b) The oversight committee may conduct a closed meeting in accordance with Subchapter E, Chapter 551, Government Code, to discuss issues related to:

(1) managing, acquiring, or selling securities or other revenue-sharing obligations realized under the standards established as required by Section 101A.305; and

(2) an ongoing compliance investigation into issues related to fraud, waste, or abuse of state resources.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.107. POWERS AND DUTIES. (a) The oversight committee shall:

(1) hire a chief executive officer;

(2) annually set priorities for each grant program established under this chapter; and

(3) consider the priorities set under Subdivision (2) in awarding grants under this chapter.

(b) The oversight committee shall adopt a code of conduct applicable to each oversight committee member, program integration committee member, peer review committee member, and institute

employee that includes provisions prohibiting the member, employee, or member's or employee's spouse from:

(1) accepting or soliciting any gift, favor, or service that could reasonably influence the member or employee in the discharge of official duties or that the member, employee, or spouse knows or should know is being offered with the intent to influence the member's or employee's official conduct;

(2) accepting employment or engaging in any business or professional activity that would reasonably require or induce the member or employee to disclose confidential information acquired in the member's or employee's official position;

(3) accepting other employment or compensation that could reasonably impair the member's or employee's independent judgment in the performance of official duties;

(4) holding a personal investment or financial interest that could reasonably create a substantial conflict between the private interests and official duties of the member or employee;

(5) intentionally or knowingly soliciting, accepting, or agreeing to accept any benefit for exercising the member's official powers or performing the member's or employee's official duties in favor of another;

(6) directly or indirectly leasing to an entity that receives a grant from the institute any property, capital equipment, employee, or service;

(7) submitting a grant application for funding by the institute;

(8) serving on the board of directors of an organization established with a grant from the institute; or

(9) serving on the board of directors of a grant recipient.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.108. RULEMAKING AUTHORITY. The oversight committee may adopt rules to administer this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under

Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.109. FINANCIAL STATEMENT REQUIRED. Each oversight committee member shall file with the chief compliance officer a verified financial statement complying with Sections 572.022, 572.023, 572.024, 572.025, 572.0251, and 572.0252, Government Code, as required of a state officer by Section 572.021 of that code.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

SUBCHAPTER D. OTHER INSTITUTE COMMITTEES

Sec. 101A.151. PEER REVIEW COMMITTEE. (a) The oversight committee shall establish a peer review committee. The chief executive officer, with approval by a simple majority of the oversight committee members, shall appoint as members to the peer review committee:

(1) experts in fields related to dementia, Alzheimer's disease, Parkinson's disease, or related disorders, including research, health care, dementia, Alzheimer's disease, and Parkinson's disease treatment and prevention, and other study areas; and

(2) trained patient advocates who meet the qualifications adopted under Subsection (c).

(b) The oversight committee shall adopt a written policy on in-state or out-of-state residency requirements for peer review committee members.

(c) The oversight committee shall adopt rules regarding the qualifications required of a trained patient advocate for membership on the peer review committee. The rules must require the trained patient advocate to successfully complete science-based training.

(d) A peer review committee member may receive an honorarium. Subchapter B, Chapter 2254, Government Code, does not apply to an honorarium the member receives under this chapter.

(e) The chief executive officer, in consultation with the oversight committee, shall adopt a policy regarding honoraria and

document any change in the amount of honoraria paid to a peer review committee member, including information explaining the basis for that change.

(f) A peer review committee member may not serve on the board of directors or other governing board of an entity receiving a grant from the institute.

(g) Peer review committee members serve for terms as determined by the chief executive officer.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.152. PROGRAM INTEGRATION COMMITTEE. (a) The institute shall establish a program integration committee to carry out the duties assigned under this chapter.

(b) The program integration committee is composed of:

(1) the chief executive officer, who serves as the presiding officer of the program integration committee;

(2) three senior-level institute employees responsible for program policy and oversight, appointed by the chief executive officer with the approval of a majority of the oversight committee members; and

(3) the executive commissioner or the executive commissioner's designee.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.153. HIGHER EDUCATION ADVISORY COMMITTEE. (a) The higher education advisory committee is composed of the following members:

(1) one member appointed by the chancellor of The University of Texas System;

(2) one member appointed by the chancellor of The Texas A&M University System;

(3) one member appointed by the chancellor of the Texas Tech University System;

(4) one member appointed by the chancellor of the University of Houston System;

(5) one member appointed by the chancellor of the Texas State University System;

(6) one member appointed by the chancellor of the University of North Texas System;

(7) one member appointed by the president of Baylor College of Medicine; and

(8) one member appointed by the president of Rice University.

(b) The higher education advisory committee shall advise the oversight committee on issues, opportunities, the role of higher education, and other subjects involving research on dementia, Alzheimer's disease, Parkinson's disease, and related disorders.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.154. AD HOC ADVISORY COMMITTEE. (a) The oversight committee, as necessary, may create additional ad hoc advisory committees composed of experts to advise the oversight committee on issues relating to prevention of or research on dementia, Alzheimer's disease, Parkinson's disease, and related disorders or other issues related to dementia, Alzheimer's disease, Parkinson's disease, or related disorders.

(b) Ad hoc committee members serve for the terms the oversight committee determines.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.155. EXPENSES. Members of the higher education advisory committee created under Section 101A.153 or an ad hoc

advisory committee created under Section 101A.154 serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in attending committee meetings or performing other official duties authorized by the presiding officer.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

SUBCHAPTER E. DEMENTIA PREVENTION AND RESEARCH FUND

Sec. 101A.201. DEMENTIA PREVENTION AND RESEARCH FUND. (a) In this subchapter, "fund" means the Dementia Prevention and Research Fund established under Section 68, Article III, Texas Constitution. The fund is a special fund in the treasury outside the general revenue fund to be administered by the institute.

(b) The fund consists of:

(1) money transferred to the fund under Section 68, Article III, Texas Constitution;

(2) money the legislature appropriates, credits, or transfers to the fund; and

(3) gifts and grants, including grants from the federal government, and other donations received for the fund.

(c) The fund may only be used for the purposes authorized under Section 68, Article III, Texas Constitution, including:

(1) the award of grants for research on or prevention of dementia, Alzheimer's disease, Parkinson's disease, and related disorders and research facilities in this state to conduct that research;

(2) the purchase of, subject to the institute's approval, research facilities by or for a state agency or grant recipient; and

(3) the operation of the institute.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.202. AUTHORIZED USE OF GRANT MONEY; LIMITATIONS. (a)

A grant recipient awarded money from the fund may use the money for research consistent with the purposes of this chapter and in accordance with a contract between the grant recipient and the institute.

(b) Except as otherwise provided by this section, grant money awarded under this chapter may be used for authorized expenses, including:

(1) honoraria;

(2) travel;

(3) conference fees and expenses;

(4) consumable supplies;

(5) operating expenses;

(6) contracted research and development;

(7) capital equipment; and

(8) construction or renovation of state or private facilities.

(c) A grant recipient awarded money under this chapter for research on dementia, Alzheimer's disease, Parkinson's disease, or related disorders may not spend more than five percent of the money for indirect costs. In this subsection, "indirect costs" means business expenses not readily identified with a particular grant, contract, project, function, or activity that are necessary for the general operation of the organization or the performance of the organization's activities.

(d) Not more than five percent of the total amount of grant money awarded under this chapter in a state fiscal year may be used during that year for facility purchase, construction, remodel, or renovation purposes, and those expenditures must benefit research on dementia, Alzheimer's disease, Parkinson's disease, or related disorders.

(e) Not more than 10 percent of the total amount of grant money awarded under this chapter in a state fiscal year may be used during that year for prevention projects and strategies to mitigate the incidence of dementia, Alzheimer's disease, Parkinson's disease, or related disorders.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

SUBCHAPTER F. CONFLICTS OF INTEREST: DISCLOSURE; RECUSAL

Sec. 101A.251. CONFLICT OF INTEREST. (a) The oversight committee shall adopt conflict-of-interest rules, based on standards applicable to members of scientific review committees of the National Institutes of Health, to govern oversight committee members, program integration committee members, peer review committee members, and institute employees.

(b) An oversight committee member, program integration committee member, peer review committee member, or institute employee shall recuse the member or employee, as provided by Section 101A.252(a), (b), or (c), as applicable, if the member or employee, or a person who is related to the member or employee within the second degree of affinity or consanguinity, has a professional or financial interest in an entity awarded a grant or applying for a grant from the institute.

(c) For purposes of Subsection (b), a person has a professional interest in an entity awarded a grant or applying for a grant from the institute if the person:

(1) is a member of the board of directors, another governing board, or any committee of the entity, or of a foundation or similar organization affiliated with the entity, during the same grant cycle;

(2) serves as an elected or appointed officer of the entity;

(3) is an employee of or is negotiating future employment with the entity;

(4) represents the entity;

(5) is a professional associate of a primary member of the entity's project team;

(6) is, or within the preceding six years has been, a student, postdoctoral associate, or part of a laboratory research group for a primary member of the entity's project team;

(7) is engaged or is actively planning to be engaged in collaboration with a primary member of the entity's project team; or

(8) has long-standing scientific differences or disagreements with a primary member of the entity's project team, and those differences or disagreements:

(A) are known to the professional community; and

(B) could be perceived as affecting objectivity.

(d) For purposes of Subsection (b), a person has a financial interest in an entity awarded a grant or applying for a grant from the institute if the person:

(1) directly or indirectly owns or controls an ownership interest, including sharing in profits, proceeds, or capital gains, in an entity awarded a grant or applying for a grant from the institute; or

(2) could reasonably foresee that an action taken by the oversight committee, the program integration committee, a peer review committee, or the institute could result in a financial benefit to the person.

(e) Nothing in this chapter limits the oversight committee's authority to adopt additional conflict-of-interest standards.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.252. DISCLOSURE OF CONFLICT OF INTEREST; RECUSAL. (a) If an oversight committee member or program integration committee member has a conflict of interest described by Section 101A.251 regarding an application before the member for review or other action, the member:

(1) shall provide written notice to the chief executive officer and the presiding officer of the oversight committee or the next ranking member of the committee if the presiding officer has the conflict of interest;

(2) shall disclose the conflict of interest in an open meeting of the oversight committee;

(3) shall recuse themselves from participating in the review, discussion, deliberation, and vote on the application; and

(4) may not access information regarding the matter to be decided.

(b) If a peer review committee member has a conflict of interest described by Section 101A.251 regarding an application before the member's committee for review or other action, the member:

(1) shall provide written notice to the chief executive

officer of the conflict of interest;

(2) shall recuse themselves from participating in the review, discussion, deliberation, and vote on the application; and

(3) may not access information regarding the matter to be decided.

(c) If an institute employee has a conflict of interest described by Section 101A.251 regarding an application before the employee for review or other action, the employee:

(1) shall provide written notice to the chief executive officer of the conflict of interest;

(2) shall recuse themselves from participating in the review of the application; and

(3) may not access information regarding the matter to be decided.

(d) An oversight committee member, program integration committee member, peer review committee member, or institute employee with a conflict of interest may seek a waiver as provided by Section 101A.253.

(e) An oversight committee member, program integration committee member, peer review committee member, or institute employee who reports a potential conflict of interest or another impropriety or self-dealing of the member or employee and who fully complies with the recommendations of the institute's general counsel and recusal requirements is considered in compliance with the conflict-of-interest provisions of this chapter. The member or employee is subject to other applicable laws, rules, requirements, and prohibitions.

(f) An oversight committee member, program integration committee member, peer review committee member, or institute employee who intentionally violates this section is subject to removal from further participation in the institute's grant review process.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.253. EXCEPTIONAL CIRCUMSTANCES REQUIRING PARTICIPATION. The oversight committee shall adopt rules governing

the waiver of the conflict-of-interest requirements of this chapter under exceptional circumstances for an oversight committee member, program integration committee member, peer review committee member, or institute employee. The rules must:

(1) authorize the chief executive officer or an oversight committee member to propose granting a waiver by submitting to the oversight committee's presiding officer a written statement about the conflict of interest, the exceptional circumstance requiring the waiver, and any proposed limitations to the waiver;

(2) require a proposed waiver to be publicly reported at an oversight committee meeting;

(3) require a majority vote of the oversight committee members present and voting to grant a waiver;

(4) require any waiver granted to be included in the annual report required by Section 101A.053; and

(5) require the institute to retain documentation of each waiver granted.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.254. INVESTIGATION OF UNREPORTED CONFLICTS OF INTEREST. (a) An oversight committee member, program integration committee member, peer review committee member, or institute employee who becomes aware of an unreported potential conflict of interest described by Section 101A.251 shall immediately notify the chief executive officer of the potential conflict of interest. On receipt of the notification, the chief executive officer shall notify the institute's general counsel and the oversight committee's presiding officer, who shall determine the nature and extent of any unreported conflict.

(b) A grant applicant seeking an investigation regarding whether a prohibited conflict of interest was not reported shall file a written request with the chief executive officer. The applicant must:

(1) include in the request all facts regarding the alleged conflict of interest; and

(2) submit the request not later than the 30th day after the date the chief executive officer presents to the oversight committee final funding recommendations for the affected grant cycle.

(c) On receipt of notification of an alleged conflict of interest under Subsection (a) or (b), the institute's general counsel shall:

(1) investigate the matter; and

(2) provide to the chief executive officer and the oversight committee's presiding officer an opinion that includes:

(A) a statement of facts;

(B) a determination of whether a conflict of interest or another impropriety or self-dealing exists; and

(C) if the opinion provides that a conflict of interest or another impropriety or self-dealing exists, recommendations for an appropriate course of action.

(d) If the conflict of interest, impropriety, or self-dealing involves the oversight committee's presiding officer, the institute's general counsel shall provide the opinion to the next ranking oversight committee member who is not involved with the conflict of interest, impropriety, or self-dealing.

(e) After receiving the opinion and consulting with the oversight committee's presiding officer, the chief executive officer shall take action regarding the recusal of the individual from any discussion of or access to information related to the conflict of interest or other recommended action related to the impropriety or self-dealing. If the alleged conflict of interest, impropriety, or self-dealing is held by, or is an act of, the chief executive officer, the presiding officer of the oversight committee shall take actions regarding the recusal or other action.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.255. FINAL DETERMINATION OF UNREPORTED CONFLICT OF INTEREST. (a) The chief executive officer or, if applicable, the oversight committee's presiding officer shall make a determination regarding the existence of an unreported conflict of interest

described by Section 101A.251 or other impropriety or self-dealing. The determination must specify any actions to be taken to address the conflict of interest, impropriety, or self-dealing, including:

(1) reconsideration of the application; or

(2) referral of the application to another peer review committee for review.

(b) The determination made under Subsection (a) is considered final unless three or more oversight committee members request that the issue be added to the agenda of the oversight committee.

(c) The chief executive officer or, if applicable, the oversight committee's presiding officer, shall provide to the grant applicant requesting the investigation written notice of the final determination, including any further actions to be taken.

(d) Unless specifically determined by the chief executive officer or, if applicable, the presiding officer of the oversight committee, or the oversight committee, the validity of an action taken on a grant application is not affected by the fact that an individual who failed to report a conflict of interest participated in the action.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

SUBCHAPTER G. PROCEDURE FOR AWARDING GRANTS

Sec. 101A.301. PEER REVIEW PROCESS FOR GRANT AWARD. The institute shall establish a peer review process to evaluate and recommend all grants the oversight committee awards under this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.302. GRANT AWARD RULES AND PROCEDURES. (a) The oversight committee shall adopt rules regarding the procedure for awarding grants to an applicant under this chapter. The rules must

require:

(1) the peer review committee to score grant applications and make recommendations to the program integration committee and the oversight committee regarding the award of grants, including providing a prioritized list that:

(A) ranks the grant applications in the order the peer review committee determines applications should be funded; and

(B) includes information explaining each grant applicant's qualification under the peer review committee's standards for recommendation; and

(2) the program integration committee to submit to the oversight committee a list of grant applications the program integration committee by majority vote approved for recommendation that:

(A) includes documentation on the factors the program integration committee considered in making the recommendations;

(B) is substantially based on the list submitted by the peer review committee under Subdivision (1); and

(C) to the extent possible, gives priority to applications with proposals that:

(i) may lead to immediate or long-term medical and scientific breakthroughs in the areas of prevention or treatment for dementia, Alzheimer's disease, Parkinson's disease, and related disorders;

(ii) strengthen and enhance fundamental scientific research on dementia, Alzheimer's disease, Parkinson's disease, and related disorders;

(iii) ensure a comprehensive coordinated approach to research on dementia, Alzheimer's disease, Parkinson's disease, and related disorders;

(iv) are interdisciplinary or interinstitutional;

(v) align with state priorities and needs, including priorities and needs outlined in other state agency strategic plans, or that address federal or other major research sponsors' priorities in scientific or technological research in the fields of dementia, Alzheimer's disease, Parkinson's disease, and related disorders;

(vi) are matched with money provided by a private or nonprofit entity or institution of higher education;

(vii) are collaborative between any combination of

private and nonprofit entities, public or private agencies or institutions in this state, and public or private institutions outside this state;

(viii) benefit the residents of this state, including a demonstrable economic development benefit to this state;

(ix) enhance research superiority at institutions of higher education in this state by creating new research superiority, attracting existing research superiority from institutions outside this state and other research entities, or attracting from outside this state additional researchers and resources; and

(x) expedite innovation and product development, attract private sector entities to stimulate a substantial increase in high-quality jobs, and increase higher education applied science or technology research capabilities.

(b) A peer review committee member may not attempt to use the committee member's official position to influence a decision to approve or award a grant or contract to the committee member's employer.

(c) A program integration committee member may not discuss a grant applicant recommendation with an oversight committee member unless the program integration committee has submitted the list required under Subsection (a)(2).

(d) Two-thirds of the oversight committee members present and voting must vote to approve each grant award recommendation of the program integration committee. If the oversight committee does not approve a grant award recommendation of the program integration committee, a statement explaining the reasons the recommendation was not followed must be included in the minutes of the meeting.

(e) The oversight committee may not award more than $300 million in grants under this chapter in a state fiscal year.

(f) The oversight committee may not award a grant to an applicant who has made a gift or grant to the institute, an oversight committee member, or an institute employee on or after January 1, 2026. This section does not apply to gifts, fees, honoraria, or other items also excepted under Section 36.10, Penal Code.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas

Constitution.

Sec. 101A.303. MULTIYEAR PROJECTS. (a) The oversight committee may approve the award of grant money for a multiyear project.

(b) The oversight committee shall specify the total amount of money approved to fund the multiyear project. For purposes of this chapter, the total amount is considered to have been awarded in the state fiscal year the peer review committee approved the project. The institute shall disburse only the money to be spent during that fiscal year. The institute shall disburse the remaining grant money as the money is needed in each subsequent state fiscal year.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.304. CONTRACT TERMS. (a) Before disbursing grant money awarded under this chapter, the institute shall execute a written contract with the grant recipient. The contract shall:

(1) specify that except for awards to state agencies or public institutions of higher education, if all or any part of the grant amount is used to build a capital improvement:

(A) the state retains a lien or other interest in the capital improvement in proportion to the percentage of the grant amount used to pay for the capital improvement; and

(B) the grant recipient shall, if the capital improvement is sold:

(i) repay to this state the grant money used to pay for the capital improvement, with interest at the rate and according to the other terms provided by the contract; and

(ii) share with this state a proportionate amount of any profit realized from the sale;

(2) specify that if the grant recipient has not used awarded grant money for the purposes for which the grant was intended, the recipient shall repay that grant amount and any related interest applicable under the contract to this state at the agreed

rate and on the agreed terms;

(3) specify that if the grant recipient fails to meet the terms and conditions of the contract, the institute may terminate the contract using the written process prescribed in the contract and require the recipient to repay the awarded grant money and any related interest applicable under the contract to this state at the agreed rate and on the agreed terms;

(4) include terms relating to intellectual property rights consistent with the standards developed by the oversight committee under Section 101A.305;

(5) require, in accordance with Subsection (b), the grant recipient to dedicate an amount of matching money equal to one-half of the amount of the grant awarded and specify the amount of matching money to be dedicated;

(6) specify the period in which the grant award must be spent; and

(7) include the specific deliverables of the project that is the subject of the grant proposal.

(b) Before the institute may disburse grant money, the grant recipient must certify the recipient has available an unexpended amount of money equal to one-half of the grant amount dedicated to the research specified in the grant proposal. The institute shall adopt rules specifying a grant recipient's obligations under this chapter. At a minimum, the rules must:

(1) allow an institution of higher education or a private or independent institution of higher education, as those terms are defined by Section 61.003, Education Code, a research institute or center affiliated with the institution, or a not-for-profit hospital system, to credit toward the recipient's matching money the dollar amount equivalent to the difference between the indirect cost rate negotiated by the federal government for research grants awarded to the recipient and the indirect cost rate authorized by Section 101A.202(c);

(2) specify that:

(A) the recipient of more than one grant award under this chapter may provide matching money certification at an institutional level;

(B) the recipient of a multiyear grant award may yearly certify matching money; and

(C) grant money may not be disbursed to the recipient

until the annual certification of the matching money has been approved;

(3) specify that money for certification purposes may include:

(A) federal money;

(B) the fair market value of drug development support provided to the recipient by the National Institutes of Health or other similar programs;

(C) this state's money;

(D) other states' money; and

(E) nongovernmental money, including money from private sources, foundation grants, gifts, and donations;

(4) specify that the following items may not be used for certification purposes:

(A) in-kind costs;

(B) volunteer services provided to the recipient;

(C) noncash contributions;

(D) the recipient's preexisting real estate, including buildings, facilities, and land;

(E) deferred giving, including a charitable remainder annuity trust, charitable remainder unitrust, or pooled income fund; or

(F) any other items the institute determines;

(5) require the recipient's certification to be included in the grant award contract;

(6) specify that the recipient's failure to provide certification serves as grounds for terminating the grant award contract;

(7) require the recipient to maintain adequate documentation supporting the source and use of the money required by this subsection and to provide documentation to the institute on request; and

(8) require the institute to establish a procedure to annually review the documentation supporting the source and use of money reported in the required certification.

(c) The institute shall establish a policy on advance payments to grant recipients.

(d) The oversight committee shall adopt rules to administer this section.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.305. PATENT ROYALTIES AND LICENSE REVENUES PAID TO STATE. (a) The oversight committee shall establish standards requiring all grant awards to be subject to an intellectual property agreement that allows this state to collect royalties, income, and other benefits, including interest or proceeds resulting from securities and equity ownership, realized as a result of projects undertaken with grant money awarded under this chapter.

(b) In determining this state's interest in any intellectual property rights, the oversight committee shall balance the opportunity of this state to benefit from the patents, royalties, licenses, and other benefits that result from basic research, therapy development, and clinical trials with the need to ensure that essential medical research is not unreasonably hindered by the intellectual property agreement and that the agreement does not unreasonably remove the incentive of the individual researcher, research team, or institution.

(c) The oversight committee may authorize the institute to execute a contract with one or more qualified third parties for assistance with the management, accounting, and disposition of this state's interest in securities, equities, royalties, income, and other benefits realized from grant money awarded under this chapter. The institute shall implement practices and procedures for the management, accounting, and disposition of securities, equities, royalties, income, and other benefits the institute determines are in this state's best interest.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.306. PREFERENCE FOR TEXAS SUPPLIERS. In a good faith effort to achieve a goal of more than 50 percent of purchases from

suppliers in this state, the oversight committee shall establish standards to ensure grant recipients purchase goods and services from suppliers in this state to the extent reasonably possible.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.307. HISTORICALLY UNDERUTILIZED BUSINESSES. The oversight committee shall establish standards to ensure grant recipients purchase goods and services from historically underutilized businesses as defined by Section 2161.001, Government Code, and any other applicable state law.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.308. GRANT COMPLIANCE AND PROGRESS EVALUATION. (a) The institute shall require as a condition of a grant awarded under this chapter that the grant recipient submit to regular inspection reviews of the grant project by institute employees to ensure compliance with the terms of the grant contract and ongoing progress, including the scientific merit of the research.

(b) The chief executive officer shall report at least annually to the oversight committee on the progress and continued merit of the projects awarded grants by the institute.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.309. MEDICAL AND RESEARCH ETHICS. A project awarded a grant under this chapter must comply with all applicable federal and state laws regarding the conduct of the research or a prevention

project.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

Sec. 101A.310. PUBLIC INFORMATION; CONFIDENTIAL INFORMATION. (a) The following information is public information and may be disclosed under Chapter 552, Government Code:

(1) a grant applicant's name and address;

(2) the amount of money requested in an applicant's grant proposal;

(3) the type of research on dementia, Alzheimer's disease, Parkinson's disease, or related disorders to be addressed under a grant proposal; and

(4) any other information the institute designates with the consent of a grant applicant.

(b) To protect the actual or potential value of information submitted to the institute by an applicant for or recipient of a grant under this chapter, the following information submitted by the applicant or recipient is confidential and is not subject to disclosure under Chapter 552, Government Code, or any other law:

(1) all information, other than the information described under Subsection (a), contained in a grant application, peer review evaluation, award contract, or progress report relating to a product, device, or process, the application or use of the product, device, or process, and all technological and scientific information, including computer programs, developed wholly or partly by the applicant or recipient, regardless of whether patentable or capable of being registered under copyright or trademark laws, that has a potential for being sold, traded, or licensed for a fee; and

(2) the plans, specifications, blueprints, and designs, including related proprietary information, of a scientific research and development facility.

(c) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) information that directly or indirectly reveals the identity of an individual who reports fraud, waste, or abuse of state

resources to the institute's compliance program office, seeks guidance from the office, or participates in an investigation conducted under the compliance program;

(2) information that directly or indirectly reveals the identity of an individual who is alleged to have or may have planned, initiated, or participated in activities specified in a report submitted to the office if, after completing an investigation, the office determines the report to be unsubstantiated or without merit; and

(3) other information collected or produced in a compliance program investigation if releasing the information would interfere with an ongoing compliance investigation.

(d) Subsection (c) does not apply to information related to an individual who consents to the information's disclosure.

(e) Information made confidential or excepted from public disclosure by this section may be made available, on request and in compliance with applicable laws and procedures, to the following:

(1) a law enforcement agency or prosecutor;

(2) a governmental agency responsible for investigating the matter specified in a compliance report, including the Texas Workforce Commission civil rights division or the Equal Employment Opportunity Commission; or

(3) a committee member or institute employee who is responsible under institutional policy for a compliance program investigation or for a review of a compliance program investigation.

(f) A disclosure under Subsection (e) is not a voluntary disclosure for purposes of Section 552.007, Government Code.

(g) The institute shall post on the institute's Internet website records that pertain specifically to any gift, grant, or other consideration provided to the institute, an institute employee, or an oversight committee member, in the employee's or member's official capacity. The posted information must include each donor's name and the amount and date of the donor's donation.

Added by Acts 2025, 89th Leg., R.S., Ch. 137 (S.B. 5), Sec. 1, eff. December 1, 2025, subject to resolution of an election contest under Chapter 233, Election Code, relating to Article III, Section 68, Texas Constitution.

CHAPTER 102. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 102.001. DEFINITIONS. In this chapter:

(1) "Institute" means the Cancer Prevention and Research Institute of Texas.

(2) "Oversight committee" means the Cancer Prevention and Research Institute of Texas Oversight Committee.

(2-a) "Program integration committee" means the Cancer Prevention and Research Institute of Texas Program Integration Committee.

(3) "Research and prevention programs committee" means a Cancer Prevention and Research Institute of Texas Scientific Research and Prevention Programs committee appointed by the chief executive officer.

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

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 1, eff. June 14, 2013.

Sec. 102.002. PURPOSES. The Cancer Prevention and Research Institute of Texas is established to:

(1) create and expedite innovation in the area of cancer research and in enhancing the potential for a medical or scientific breakthrough in the prevention of cancer and cures for cancer;

(2) attract, create, or expand research capabilities of public or private institutions of higher education and other public or private entities that will promote a substantial increase in cancer research and in the creation of high-quality new jobs in this state; and

(3) develop and implement the Texas Cancer Plan.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.06, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 36, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.003. SUNSET PROVISION. The Cancer Prevention and Research Institute of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the institute is abolished and this chapter expires September 1, 2029.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 4.24, eff. Nov. 12, 1991; Acts 1999, 76th Leg., ch. 36, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1227 (H.B. 1116), Sec. 2.02, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.
Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.02, eff. June 15, 2007.
Reenacted by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.002, eff. September 1, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 521 (S.B. 81), Sec. 2, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 850 (S.B. 713), Sec. 4.01, eff. June 16, 2021.

Sec. 102.004. STATE AUDITOR. Nothing in this chapter limits the authority of the state auditor under Chapter 321, Government Code, or other law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 2, eff. June 14, 2013.

SUBCHAPTER B. POWERS AND DUTIES OF INSTITUTE

Sec. 102.051. POWERS AND DUTIES. (a) The institute:

(1) may make grants to provide funds to public or private persons to implement the Texas Cancer Plan, and may make grants to

institutions of learning and to advanced medical research facilities and collaborations in this state for:

(A) research into the causes of and cures for all types of cancer in humans;

(B) facilities for use in research into the causes of and cures for cancer;

(C) research, including translational research, to develop therapies, protocols, medical pharmaceuticals, or procedures for the cure or substantial mitigation of all types of cancer in humans; and

(D) cancer prevention and control programs in this state to mitigate the incidence of all types of cancer in humans;

(2) may support institutions of learning and advanced medical research facilities and collaborations in this state in all stages in the process of finding the causes of all types of cancer in humans and developing cures, from laboratory research to clinical trials and including programs to address the problem of access to advanced cancer treatment;

(3) may establish the appropriate standards and oversight bodies to ensure the proper use of funds authorized under this chapter for cancer research and facilities development;

(4) may employ necessary staff to provide administrative support;

(5) shall continuously monitor contracts and agreements authorized by this chapter and ensure that each grant recipient complies with the terms and conditions of the grant contract;

(6) shall ensure that all grant proposals comply with this chapter and rules adopted under this chapter before the proposals are submitted to the oversight committee for approval; and

(7) shall establish procedures to document that the institute, its employees, and its committee members appointed under this chapter comply with all laws and rules governing the peer review process and conflicts of interest.

(b) The institute shall work to implement the Texas Cancer Plan and continually monitor and revise the Texas Cancer Plan as necessary.

(c) The institute shall employ a chief compliance officer to monitor and report to the oversight committee regarding compliance with this chapter and rules adopted under this chapter.

(d) The chief compliance officer shall:

(1) ensure that all grant proposals comply with this chapter and rules adopted under this chapter before the proposals are submitted to the oversight committee for approval; and

(2) attend and observe the meetings of the program integration committee to ensure compliance with this chapter and rules adopted under this chapter.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 3, eff. June 14, 2013.

Sec. 102.0511. CHIEF EXECUTIVE OFFICER; OTHER OFFICERS. (a) The oversight committee shall hire a chief executive officer. The chief executive officer shall perform the duties required by this chapter or designated by the oversight committee.

(b) The chief executive officer must have a demonstrated ability to lead and develop academic, commercial, and governmental partnerships and coalitions.

(c) The chief executive officer shall hire:

(1) one chief scientific officer;

(2) one chief operating officer;

(3) one chief product development officer; and

(4) one chief prevention officer.

(d) The officers described by Subsections (c)(1)-(4) shall report directly to the chief executive officer and assist the chief executive officer in collaborative outreach to further cancer research and prevention.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 4, eff. June 14, 2013.

Sec. 102.052. ANNUAL PUBLIC REPORT; INTERNET POSTING. (a) Not later than January 31 of each year, the institute shall submit to the lieutenant governor, the speaker of the house of representatives, the governor, and the standing committee of each house of the legislature with primary jurisdiction over institute matters and post on the institute's Internet website a report outlining the institute's

activities, grants awarded, grants in progress, research accomplishments, and future program directions. The report must include:

(1) the number and dollar amounts of research and facilities grants;

(2) identification of the grant recipients for the reported year;

(3) the institute's administrative expenses;

(4) an assessment of the availability of funding for cancer research from sources other than the institute;

(5) a summary of findings of research funded by the institute, including promising new research areas;

(6) an assessment of the relationship between the institute's grants and the overall strategy of its research program;

(7) a statement of the institute's strategic research and financial plans;

(8) an estimate of how much cancer has cost the state during the year, including the amounts spent by the state relating to cancer by the child health program, the Medicaid program, the Teacher Retirement System of Texas, and the Employees Retirement System of Texas;

(9) a statement of the institute's compliance program activities, including any proposed legislation or other recommendations identified through the activities; and

(10) for the previous 12 months, a list of any conflicts of interest under this chapter or rules adopted under this chapter, any conflicts of interest that require recusal under Section 102.1061, any unreported conflicts of interest confirmed by an investigation conducted under Section 102.1063, including any actions taken by the institute regarding an unreported conflict of interest and subsequent investigation, and any waivers granted through the process established under Section 102.1062.

(b) The institute shall submit the annual public report to the governor and the legislature.

(c) The institute shall post on the institute's Internet website the list described by Subsection (a)(10).

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 5, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 6, eff. June 14, 2013.

Sec. 102.053. INDEPENDENT FINANCIAL AUDIT FOR REVIEW BY COMPTROLLER. (a) The institute shall annually commission an independent financial audit of its activities from a certified public accounting firm. The institute shall provide the audit to the comptroller. The comptroller shall review and evaluate the audit and annually issue a public report of that review. The comptroller shall make recommendations concerning the institute's financial practices and performance.

(b) The oversight committee shall review the annual financial audit, the comptroller's report and evaluation of that audit, and the financial practices of the institute.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.0535. GRANT RECORDS. (a) The institute shall maintain complete records of:

(1) the review of each grant application submitted to the institute, including the score assigned to each grant application reviewed by a research and prevention programs committee in accordance with rules adopted under Section 102.251(a)(1), even if the grant application is not funded by the institute or is withdrawn after submission to the institute;

(2) each grant recipient's financial reports, including the amount of matching funds dedicated to the research specified for the grant award;

(3) each grant recipient's progress reports;

(4) for the purpose of determining any conflict of interest, the identity of each principal investor and owner of each grant recipient as provided by institute rules; and

(5) the institute's review of the grant recipient's financial reports and progress reports.

(b) The institute shall have periodic audits made of any electronic grant management system used to maintain records of grant applications and grant awards under this section. The institute shall address in a timely manner each weakness identified in an audit of the system.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 7, eff. June 14, 2013.

Sec. 102.054. GIFTS AND GRANTS. The institute may solicit and accept gifts and grants from any source for the purposes of this chapter.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.055. QUARTERLY MEETINGS. The oversight committee shall hold a public meeting at least once in each quarter of the calendar year, with appropriate notice and with a formal public comment period.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.056. SALARY. (a) The institute may not supplement the salary of any institute employee with a gift or grant received by the institute.

(b) The institute may supplement the salary of the chief scientific officer. Funding for a salary supplement for the chief scientific officer may only come from legislative appropriations or bond proceeds.

(c) The institute may not supplement the salary of the chief executive officer. The salary of the chief executive officer may only be paid from legislative appropriations.

Added by Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 2, eff.

June 19, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 8, eff. June 14, 2013.

Sec. 102.057. PROHIBITED OFFICE LOCATION. An institute employee may not have an office in a facility owned by an entity receiving or applying to receive money from the institute.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 9, eff. June 14, 2013.

SUBCHAPTER C. OVERSIGHT COMMITTEE

Sec. 102.101. COMPOSITION OF OVERSIGHT COMMITTEE. (a) The Cancer Prevention and Research Institute of Texas Oversight Committee is the governing body of the institute.

(b) The oversight committee is composed of the following nine members:

(1) three members appointed by the governor;

(2) three members appointed by the lieutenant governor; and

(3) three members appointed by the speaker of the house of representatives.

(c) The members of the oversight committee must represent the geographic and cultural diversity of the state.

(d) In making appointments to the oversight committee, the governor, lieutenant governor, and speaker of the house of representatives:

(1) must each appoint at least one person who is a physician or a scientist with extensive experience in the field of oncology or public health; and

(2) should attempt to include cancer survivors and family members of cancer patients if possible.

(e) A person may not be a member of the oversight committee if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving money from the institute;

(2) owns or controls, directly or indirectly, an interest

in a business entity or other organization receiving money from the institute; or

(3) uses or receives a substantial amount of tangible goods, services, or money from the institute, other than reimbursement authorized by this chapter for oversight committee membership, attendance, or expenses.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 10, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 521 (S.B. 81), Sec. 7, eff. September 1, 2017.

Sec. 102.102. REMOVAL. (a) It is a ground for removal from the oversight committee that a member:

(1) is ineligible for membership under Section 102.101(e);

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

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

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

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff.

November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 11, eff. June 14, 2013.

Sec. 102.103. TERMS; VACANCY. (a) Oversight committee members appointed by the governor, lieutenant governor, and speaker of the house serve at the pleasure of the appointing office for staggered six-year terms, with the terms of three members expiring on January 31 of each odd-numbered year.

(b) Not later than the 30th day after the date an oversight committee member's term expires, the appropriate appointing authority shall appoint a replacement.

(c) If a vacancy occurs on the oversight committee, the appropriate appointing authority shall appoint a successor, in the same manner as the original appointment, to serve for the remainder of the unexpired term. The appropriate appointing authority shall appoint the successor not later than the 30th day after the date the vacancy occurs.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 3, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 12, eff. June 14, 2013.

Sec. 102.104. OFFICERS. (a) The oversight committee shall elect a presiding officer and assistant presiding officer from among its members every two years. The oversight committee may elect additional officers from among its members.

(b) The presiding officer and assistant presiding officer may not serve in the position to which the officer was elected for two consecutive terms.

(c) The oversight committee shall:

(1) establish and approve duties and responsibilities for officers of the committee; and

(2) develop and implement policies that distinguish the

responsibilities of the oversight committee and the committee's officers from the responsibilities of the chief executive officer and the employees of the institute.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 13, eff. June 14, 2013.

Sec. 102.105. EXPENSES. A member of the oversight committee is not entitled to compensation but is entitled to reimbursement for actual and necessary expenses incurred in attending meetings of the committee or performing other official duties authorized by the presiding officer.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.106. CONFLICT OF INTEREST. (a) The oversight committee shall adopt conflict-of-interest rules, based on standards applicable to members of scientific review committees of the National Institutes of Health, to govern members of the oversight committee, the program integration committee, the research and prevention programs committees, and institute employees.

(b) An institute employee, oversight committee member, program integration committee member, or research and prevention programs committee member shall recuse himself or herself, as provided by Section 102.1061(a), (b), or (c) as applicable, if the employee or member, or a person who is related to the employee or member within the second degree of affinity or consanguinity, has a professional or financial interest in an entity receiving or applying to receive money from the institute.

(c) A person has a professional interest in an entity receiving or applying to receive money from the institute if the person:

(1) is a member of the board of directors, another governing board, or any committee of the entity, or of a foundation or similar organization affiliated with the entity, during the same

grant cycle;

(2) serves as an elected or appointed officer of the entity or of a foundation or similar organization affiliated with the entity;

(3) is an employee of or is negotiating future employment with the entity or with a foundation or similar organization affiliated with the entity;

(4) represents the entity or a foundation or similar organization affiliated with the entity;

(5) is a professional associate of a primary member of the entity's research or prevention program team;

(6) is, or within the preceding six years has been, a student, postdoctoral associate, or part of a laboratory research group for a primary member of the entity's research or prevention program team;

(7) is engaged or is actively planning to be engaged in collaboration with a primary member of the entity's research or prevention program team; or

(8) has long-standing scientific differences or disagreements with a primary member of the entity's research or prevention program team, and those differences:

(A) are known to the professional community; and

(B) could be perceived as affecting objectivity.

(d) A person has a financial interest in an entity receiving or applying to receive money from the institute if the person:

(1) owns or controls, directly or indirectly, an ownership interest, including sharing in profits, proceeds, or capital gains, in an entity receiving or applying to receive money from the institute or in a foundation or similar organization affiliated with the entity; or

(2) could reasonably foresee that an action taken by the institute, a research and prevention programs committee, the program integration committee, or the oversight committee could result in a financial benefit to the person.

(e) Nothing in this chapter limits the authority of the oversight committee to adopt additional conflict-of-interest standards.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff.

November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 14, eff. June 14, 2013.

Sec. 102.1061. DISCLOSURE OF CONFLICT OF INTEREST; RECUSAL. (a) If an oversight committee member or program integration committee member has a conflict of interest as described by Section 102.106 regarding an application that comes before the member for review or other action, the member shall:

(1) provide written notice to the chief executive officer and the presiding officer of the oversight committee or the next ranking member of the committee if the presiding officer has the conflict of interest;

(2) disclose the conflict of interest in an open meeting of the oversight committee; and

(3) recuse himself or herself from participating in the review, discussion, deliberation, and vote on the application and from accessing information regarding the matter to be decided.

(b) If an institute employee has a conflict of interest described by Section 102.106 regarding an application that comes before the employee for review or other action, the employee shall:

(1) provide written notice to the chief executive officer of the conflict of interest; and

(2) recuse himself or herself from participating in the review of the application and be prevented from accessing information regarding the matter to be decided.

(c) If a research and prevention programs committee member has a conflict of interest described by Section 102.106 regarding an application that comes before the member's committee for review or other action, the member shall:

(1) provide written notice to the chief executive officer of the conflict of interest; and

(2) recuse himself or herself from participating in the review, discussion, deliberation, and vote on the application and from accessing information regarding the matter to be decided.

(d) An oversight committee member, program integration committee member, research and prevention programs committee member, or institute employee with a conflict of interest may seek a waiver as provided by Section 102.1062.

(e) An oversight committee member, program integration committee member, research and prevention programs committee member, or institute employee who reports a potential conflict of interest or another impropriety or self-dealing of the member or employee and who fully complies with the recommendations of the general counsel and recusal requirements is considered in compliance with the conflict-of-interest provisions of this chapter. The member or employee is subject to other applicable laws, rules, requirements, and prohibitions.

(f) An oversight committee member, program integration committee member, research and prevention programs committee member, or institute employee who intentionally violates this section is subject to removal from further participation in the institute's grant review process.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 15, eff. June 14, 2013.

Sec. 102.1062. EXCEPTIONAL CIRCUMSTANCES REQUIRING PARTICIPATION. The oversight committee shall adopt rules governing the waiver of the conflict-of-interest requirements of this chapter under exceptional circumstances for an oversight committee member, program integration committee member, research and prevention programs committee member, or institute employee. The rules must:

(1) authorize the chief executive officer or an oversight committee member to propose the granting of a waiver by submitting to the presiding officer of the oversight committee a written statement about the conflict of interest, the exceptional circumstance requiring the waiver, and any proposed limitations to the waiver;

(2) require a proposed waiver to be publicly reported at a meeting of the oversight committee;

(3) require a majority vote of the oversight committee members present and voting to grant a waiver;

(4) require any waiver granted to be reported annually to the lieutenant governor, the speaker of the house of representatives, the governor, and the standing committee of each house of the legislature with primary jurisdiction over institute matters; and

(5) require the institute to retain documentation of each waiver granted.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 15, eff. June 14, 2013.

Sec. 102.1063. INVESTIGATION OF UNREPORTED CONFLICTS OF INTEREST. (a) An oversight committee member, a program integration committee member, a research and prevention programs committee member, or an institute employee who becomes aware of a potential conflict of interest described by Section 102.106 that has not been reported shall immediately notify the chief executive officer of the potential conflict of interest. On notification, the chief executive officer shall notify the presiding officer of the oversight committee and the general counsel, who shall determine the nature and extent of any unreported conflict.

(b) A grant applicant seeking an investigation regarding whether a prohibited conflict of interest was not reported shall file a written request with the institute's chief executive officer. The applicant must:

(1) include in the request all facts regarding the alleged conflict of interest; and

(2) submit the request not later than the 30th day after the date the chief executive officer presents final funding recommendations for the affected grant cycle to the oversight committee.

(c) On notification of an alleged conflict of interest under Subsection (a) or (b), the institute's general counsel shall:

(1) investigate the matter; and

(2) provide to the chief executive officer and presiding officer of the oversight committee an opinion that includes:

(A) a statement of facts;

(B) a determination of whether a conflict of interest or another impropriety or self-dealing exists; and

(C) if the opinion provides that a conflict of interest or another impropriety or self-dealing exists, recommendations for an appropriate course of action.

(d) If the conflict of interest, impropriety, or self-dealing involves the presiding officer of the oversight committee, the institute's general counsel shall provide the opinion to the next ranking oversight committee member who is not involved with the conflict of interest, impropriety, or self-dealing.

(e) After receiving the opinion and consulting with the presiding officer of the oversight committee, the chief executive officer shall take action regarding the recusal of the individual from any discussion of or access to information related to the conflict of interest or other recommended action related to the impropriety or self-dealing. If the alleged conflict of interest, impropriety, or self-dealing is held by, or is an act of, the chief executive officer, the presiding officer of the oversight committee shall take actions regarding the recusal or other action.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 15, eff. June 14, 2013.

Sec. 102.1064. FINAL DETERMINATION OF UNREPORTED CONFLICT OF INTEREST. (a) The chief executive officer or, if applicable, the presiding officer of the oversight committee shall make a determination regarding the existence of an unreported conflict of interest described by Section 102.1063 or other impropriety or self-dealing. The determination must specify any actions to be taken to address the conflict of interest, impropriety, or self-dealing, including:

(1) reconsideration of the application; or

(2) referral of the application to another research and prevention programs committee for review.

(b) The determination made under Subsection (a) is considered final unless three or more oversight committee members request that the issue be added to the agenda of the oversight committee.

(c) The chief executive officer or, if applicable, the presiding officer of the oversight committee, shall provide written notice of the final determination, including any further actions to be taken, to the grant applicant requesting the investigation.

(d) Unless specifically determined by the chief executive officer or, if applicable, the presiding officer of the oversight committee, or the oversight committee, the validity of an action taken on a grant application is not affected by the fact that an individual who failed to report a conflict of interest participated in the action.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 15, eff. June 14, 2013.

Sec. 102.107. POWERS AND DUTIES. (a) The oversight committee shall:

(1) hire a chief executive officer;

(2) annually set priorities as prescribed by the legislature for each grant program that receives money under this chapter; and

(3) consider the priorities set under Subdivision (2) in awarding grants under this chapter.

(b) The oversight committee may conduct a closed meeting in accordance with Subchapter E, Chapter 551, Government Code, to discuss issues related to managing, acquiring, or selling securities or other revenue-sharing obligations realized under the standards established as required by Section 102.256.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 16, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 521 (S.B. 81), Sec. 3, eff. September 1, 2017.

Sec. 102.108. RULEMAKING AUTHORITY. The oversight committee may adopt rules to administer this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 4, eff. June 19, 2009.

Sec. 102.109. CODE OF CONDUCT. (a) The oversight committee shall adopt a code of conduct applicable to each oversight committee member, program integration committee member, and institute employee.

(b) The code of conduct at a minimum must include provisions prohibiting the member, the employee, or the member's or employee's spouse from:

(1) accepting or soliciting any gift, favor, or service that could reasonably influence the member or employee in the discharge of official duties or that the member, employee, or spouse

of the member or employee knows or should know is being offered with the intent to influence the member's or employee's official conduct;

(2) accepting employment or engaging in any business or professional activity that would reasonably require or induce the member or employee to disclose confidential information acquired in the member's or employee's official position;

(3) accepting other employment or compensation that could reasonably impair the member's or employee's independent judgment in the performance of official duties;

(4) making personal investments or having a financial interest that could reasonably create a substantial conflict between the member's or employee's private interest and the member's or employee's official duties;

(5) intentionally or knowingly soliciting, accepting, or agreeing to accept any benefit for exercising the member's official powers or performing the member's or employee's official duties in favor of another;

(6) leasing, directly or indirectly, any property, capital equipment, employee, or service to any entity that receives a grant from the institute;

(7) submitting a grant application for funding by the institute;

(8) serving on the board of directors of an organization established with a grant from the institute; or

(9) serving on the board of directors of a grant recipient.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 17, eff. June 14, 2013.

Sec. 102.110. FINANCIAL STATEMENT REQUIRED. Each member of the oversight committee shall file with the chief compliance officer a verified financial statement complying with Sections 572.022 through 572.0252, Government Code, as required of a state officer by Section 572.021, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 17, eff. June 14, 2013.

SUBCHAPTER D. COMMITTEES

Sec. 102.151. SCIENTIFIC RESEARCH AND PREVENTION PROGRAMS COMMITTEE.

(a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 368, Sec. 16, eff. June 19, 2009.

(a-1) The oversight committee shall establish research and prevention programs committees. The chief executive officer, with approval by simple majority of the members of the oversight committee, shall appoint as members of research and prevention programs committees experts in the field of cancer research and prevention, including qualified trained cancer patient advocates who meet the qualifications developed by rule as provided by Subsection (c).

(b) The institute shall adopt a written policy on in-state or out-of-state residency requirements for members of the research and prevention programs committees.

(c) The oversight committee shall adopt rules regarding the qualifications required for an individual who will serve as a trained cancer patient advocate committee member for a research and prevention programs committee. The rules must require a trained cancer patient advocate to receive science-based training.

(d) A member of a scientific research and prevention programs committee may receive an honorarium. Subchapter B, Chapter 2254, Government Code, does not apply to an honorarium made to a committee member under this chapter.

(e) The chief executive officer, in consultation with the oversight committee, shall adopt a policy and document any change in the amount of honorarium paid to a member of a research and prevention programs committee, including information explaining the basis for changing the amount.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 5, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 16, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 18, eff. June 14, 2013.

Sec. 102.152. TERMS OF RESEARCH AND PREVENTION PROGRAMS COMMITTEE MEMBERS. Members of a research and prevention programs committee serve for terms as determined by the chief executive officer.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.
Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 6, eff. June 19, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 19, eff. June 14, 2013.

Sec. 102.153. EXPENSES. Members of the university advisory committee or any ad hoc advisory committee appointed under this subchapter serve without compensation but are entitled to reimbursement for actual and necessary expenses in attending meetings of the committee or performing other official duties authorized by the presiding officer.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.
Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 8, eff. June 19, 2009.

Sec. 102.154. UNIVERSITY ADVISORY COMMITTEE. (a) The Cancer Prevention and Research Institute of Texas University Advisory Committee is composed of the following members:

(1) two members appointed by the chancellor of The University of Texas System to represent:

(A) The University of Texas Southwestern Medical Center;

(B) The University of Texas Medical Branch at Galveston;

(C) The University of Texas Health Science Center at Houston;

(D) The University of Texas Health Science Center at San Antonio;

(E) The University of Texas Health Center at Tyler; or

(F) The University of Texas M. D. Anderson Cancer Center;

(2) one member appointed by the chancellor of The Texas A&M University System to represent:

(A) The Texas A&M University System Health Science Center; or

(B) the teaching hospital for The Texas A&M Health Science Center College of Medicine;

(3) one member appointed by the chancellor of the Texas Tech University System to represent the Texas Tech University Health Sciences Center;

(4) one member appointed by the chancellor of the University of Houston System to represent the system;

(5) one member appointed by the chancellor of the Texas State University System to represent the system;

(6) one member appointed by the chancellor of the University of North Texas System to represent the system;

(7) one member appointed by the president of Baylor College of Medicine;

(8) one member appointed by the president of Rice University; and

(9) members appointed at the executive director's discretion by the chancellors of other institutions.

(b) The university advisory committee shall advise the oversight committee and a research and prevention programs committee regarding the role of institutions of higher education in cancer research.

Added by Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 9, eff. June 19, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 179 (H.B. 1844), Sec. 14, eff. September 1, 2013.

Sec. 102.155. AD HOC ADVISORY COMMITTEE. (a) The oversight committee shall create an ad hoc committee of experts to address childhood cancers. The oversight committee, as necessary, may create additional ad hoc committees of experts to advise the oversight

committee on issues relating to cancer.

(b) Ad hoc committee members shall serve for a period determined by the oversight committee.

Added by Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 9, eff. June 19, 2009.

Sec. 102.156. CONFLICT OF INTEREST. (a) A member of a research and prevention programs committee appointed under this subchapter shall disclose in writing to the chief executive officer if the member has a professional or financial interest, as defined by Section 102.106, in an entity that has a direct interest in a matter that comes before the member's committee.

(b) The member shall recuse himself or herself in the manner described by Section 102.1061 from the committee's deliberations and actions on the matter in Subsection (a) and may not participate in the committee's decision on the matter.

(c) A member of a research and prevention programs committee appointed under this chapter may not serve on the board of directors or other governing board of an entity receiving a grant from the institute or of a foundation or similar organization affiliated with the entity.

Added by Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 9, eff. June 19, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 20, eff. June 14, 2013.

SUBCHAPTER E. CANCER PREVENTION AND RESEARCH FUND

Sec. 102.201. CANCER PREVENTION AND RESEARCH FUND. (a) The cancer prevention and research fund is a dedicated account in the general revenue fund.

(b) The cancer prevention and research fund consists of:

(1) appropriations of money to the fund by the legislature, except that the appropriated money may not include the proceeds from the issuance of bonds authorized by Section 67, Article III, Texas Constitution;

(2) gifts, grants, including grants from the federal

government, and other donations received for the fund; and

(3) interest earned on the investment of money in the fund.

(c) The fund may be used only to pay for:

(1) grants for cancer research and for cancer research facilities in this state to realize therapies, protocols, and medical procedures for the cure or substantial mitigation of all types of cancer in humans;

(2) the purchase, subject to approval by the institute, of laboratory facilities by or on behalf of a state agency or grant recipient;

(3) grants to public or private persons to implement the Texas Cancer Plan;

(4) the operation of the institute;

(5) grants for cancer prevention and control programs in this state to mitigate the incidence of all types of cancer in humans; and

(6) debt service on bonds issued as authorized by Section 67, Article III, Texas Constitution.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 21, eff. June 14, 2013.

Sec. 102.202. ISSUANCE OF GENERAL OBLIGATION BONDS. (a) The institute may request the Texas Public Finance Authority to issue and sell general obligation bonds of the state as authorized by Section 67, Article III, Texas Constitution.

(b) The Texas Public Finance Authority may not issue and sell general obligation bonds authorized by this section before January 1, 2008, and may not issue and sell more than $300 million in general obligation bonds authorized by this section in a state fiscal year.

(c) The institute shall determine, and include in its request for issuing bonds, the amount, exclusive of costs of issuance, of the bonds to be issued and the preferred time for issuing the bonds.

(d) The Texas Public Finance Authority shall issue the bonds in accordance with and subject to Chapter 1232, Government Code, and Texas Public Finance Authority rules. The bonds may be issued in

installments.

(e) Proceeds of the bonds issued under this section shall be deposited in separate funds or accounts, in the state treasury, as shall be set out in the proceedings authorizing the bonds.

(f) The proceeds of the bonds may be used only to:

(1) make grants authorized by Section 67, Article III, Texas Constitution;

(2) purchase laboratory facilities approved by the institute;

(3) pay costs of operating the institute; or

(4) pay the costs of issuing the bonds and related bond administration costs of the Texas Public Finance Authority.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.203. AUTHORIZED USE OF FUNDS. (a) A person awarded money from the cancer prevention and research fund or from bond proceeds under this subchapter may use the money for research consistent with the purpose of this chapter and in accordance with a contract between the person and the institute.

(b) Except as otherwise provided by this section, money awarded under this subchapter may be used for authorized expenses, including honoraria, salaries and benefits, travel, conference fees and expenses, consumable supplies, other operating expenses, contracted research and development, capital equipment, construction or renovation of state or private facilities, and reimbursement for costs of participation incurred by cancer clinical trial participants, including transportation, lodging, and any costs reimbursed under the cancer clinical trial participation program established under Chapter 51.

(c) A person receiving money under this subchapter for cancer research may not spend more than five percent of the money for indirect costs. For purposes of this subsection, "indirect costs" means the expenses of doing business that are not readily identified with a particular grant, contract, project, function, or activity, but are necessary for the general operation of the organization or the performance of the organization's activities.

(d) Not more than five percent of the money awarded under this subchapter may be used for facility purchase, construction, remodel, or renovation purposes during any year. Expenditures of money awarded under this subchapter for facility purchase, construction, remodel, or renovation projects must benefit cancer prevention and research.

(e) Not more than 10 percent of the money appropriated by the legislature for grants in a state fiscal year may be used for cancer prevention and control programs during that year.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 10, eff. June 19, 2009.

Acts 2017, 85th Leg., R.S., Ch. 521 (S.B. 81), Sec. 4, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1157 (H.B. 3147), Sec. 3, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.002(12), eff. September 1, 2021.

Sec. 102.204. PREFERENCE FOR TEXAS BUSINESSES. If the Texas Public Finance Authority contracts with a private entity to issue the bonds under this subchapter, the Texas Public Finance Authority shall consider contracting with an entity that has its principal place of business in this state and shall include using a historically underutilized business as defined by Section 2161.001, Government Code.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

SUBCHAPTER F. PROCEDURE FOR MAKING AWARDS

Sec. 102.251. RULES FOR GRANT AWARD PROCEDURE. (a) The oversight committee shall issue rules regarding the procedure for awarding grants to an applicant under this chapter. The rules must include the following procedures:

(1) a research and prevention programs committee shall score grant applications and make recommendations to the program integration committee, established under Section 102.264, and the oversight committee regarding the award of cancer research and prevention grants, including a prioritized list that:

(A) ranks the grant applications in the order the committee determines applications should be funded; and

(B) includes information explaining how each grant application on the list meets the research and prevention programs committee's standards for recommendation;

(2) the program integration committee shall submit to the oversight committee a list of grant applications the program integration committee by majority vote approved for recommendation that:

(A) includes documentation on the factors the program integration committee considered in making the grant recommendations;

(B) is substantially based on the list submitted by the research and prevention programs committee under Subdivision (1); and

(C) to the extent possible, gives priority to proposals that:

(i) could lead to immediate or long-term medical and scientific breakthroughs in the area of cancer prevention or cures for cancer;

(ii) strengthen and enhance fundamental science in cancer research;

(iii) ensure a comprehensive coordinated approach to cancer research;

(iv) are interdisciplinary or interinstitutional;

(v) address federal or other major research sponsors' priorities in emerging scientific or technology fields in the area of cancer prevention or cures for cancer;

(vi) are matched with funds available by a private or nonprofit entity and institution or institutions of higher education;

(vii) are collaborative between any combination of private and nonprofit entities, public or private agencies or institutions in this state, and public or private institutions outside this state;

(viii) have a demonstrable economic development benefit to this state;

(ix) enhance research superiority at institutions of higher education in this state by creating new research superiority, attracting existing research superiority from institutions not located in this state and other research entities, or enhancing existing research superiority by attracting from outside this state additional researchers and resources;

(x) expedite innovation and product development, attract, create, or expand private sector entities that will drive a substantial increase in high-quality jobs, and increase higher education applied science or technology research capabilities; and

(xi) address the goals of the Texas Cancer Plan; and

(3) the institute's chief compliance officer shall compare each grant application submitted to the institute to a list of donors from any nonprofit organization established to provide support to the institute compiled from information made available under Section 102.262(c) before the application is submitted to a research and prevention programs committee for review and again before any grant is awarded to the applicant.

(b) A member of a research and prevention programs committee may not attempt to use the committee member's official position to influence a decision to approve or award a grant or contract to the committee member's employer.

(c) The chief executive officer shall submit a written affidavit for each grant application recommendation included on the list submitted to the oversight committee under Subsection (a)(2). The affidavit must contain all relevant information on:

(1) the peer review process for the grant application;

(2) the application's peer review score assigned by the research and prevention programs committee; and

(3) if applicable, the intellectual property and other due diligence reviews of the application.

(d) A member of the program integration committee may not discuss a grant applicant recommendation with a member of the oversight committee unless the chief executive officer and the program integration committee have fulfilled the requirements of Subsections (a)(2) and (c), as applicable.

(e) The institute may not award a grant to an applicant who has made a gift or grant to the institute or a nonprofit organization established to provide support to the institute.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.
Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 11, eff. June 19, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 22, eff. June 14, 2013.

Sec. 102.252. FUNDING RECOMMENDATIONS. Two-thirds of the members of the oversight committee present and voting must vote to approve each funding recommendation of the program integration committee. If the oversight committee does not approve a funding recommendation of the program integration committee, a statement explaining the reasons a funding recommendation was not followed must be included in the minutes of the meeting.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.
Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 12, eff. June 19, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 23, eff. June 14, 2013.

Sec. 102.253. MAXIMUM AMOUNT OF ANNUAL AWARDS. The oversight committee may not award more than $300 million in grants under Subchapter E in a fiscal year.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.255. CONTRACT TERMS. (a) The oversight committee shall negotiate on behalf of the state regarding awarding, by grant, money under this chapter.
(b) Before awarding a grant under Subchapter E, the committee shall enter into a written contract with the grant recipient. The contract may specify that:

(1) if all or any portion of the amount of the grant is used to build a capital improvement:

(A) the state retains a lien or other interest in the capital improvement in proportion to the percentage of the grant amount used to pay for the capital improvement; and

(B) the grant recipient shall, if the capital improvement is sold:

(i) repay to the state the grant money used to pay for the capital improvement, with interest at the rate and according to the other terms provided by the contract; and

(ii) share with the state a proportionate amount of any profit realized from the sale;

(2) if the grant recipient has not used grant money awarded under Subchapter E for the purposes for which the grant was intended, the recipient shall repay that amount and any related interest applicable under the contract to the state at the agreed rate and on the agreed terms; and

(3) if the grant recipient fails to meet the terms and conditions of the contract, the institute may terminate the contract using the written process prescribed in the contract and require the recipient to repay the grant money awarded under Subchapter E and any related interest applicable under the contract to this state at the agreed rate and on the agreed terms.

(c) The contract must:

(1) include terms relating to intellectual property rights consistent with the standards developed by the oversight committee under Section 102.256;

(2) require, in accordance with Subsection (d), the grant recipient to dedicate an amount of matching funds equal to one-half of the amount of the research grant awarded; and

(3) specify:

(A) the amount of matching funds to be dedicated under Subdivision (2);

(B) the period in which the grant award must be spent;

(C) the name of the research project to which matching funds are to be dedicated; and

(D) the specific deliverables of the project that is the subject of the grant proposal.

(d) Before the oversight committee may make for cancer research any grant of any proceeds of the bonds issued under Subchapter E, the

recipient of the grant must certify that the recipient has an amount of funds equal to one-half of the grant and dedicate those funds to the research that is the subject of the grant request. The institute shall adopt rules specifying how a grant recipient fulfills obligations under this subchapter. At a minimum, the rules must:

(1) allow a grant recipient that is a public or private institution of higher education, as defined by Section 61.003, Education Code, to credit toward the recipient's matching funds the dollar amount equivalent to the difference between the indirect cost rate authorized by the federal government for research grants awarded to the recipient and the indirect cost rate authorized by Section 102.203(c);

(2) require that a grant recipient certify before the distribution of any money awarded under a grant for cancer research:

(A) that encumbered funds equal to one-half of the amount of the total grant award are available and not yet expended for research that is the subject of the grant; or

(B) if the grant recipient is a public or private institution of higher education, the indirect cost rate authorized by the federal research grants awarded to the recipient;

(3) specify that:

(A) a grant recipient receiving more than one grant award may provide matching funds certification at an institutional level;

(B) the recipient of a multiyear grant award may certify matching funds on a yearly basis; and

(C) grant funds may not be distributed to the grant recipient until the annual certification of the matching funds has been approved;

(4) specify that money used for purposes of certification may include:

(A) federal funds, including funds provided under the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) and the fair market value of drug development support provided to the recipient by the National Cancer Institute or other similar programs;

(B) funds of this state;

(C) funds of other states; and

(D) nongovernmental funds, including private funds, foundation grants, gifts, and donations;

(5) specify that the following items do not qualify for

purposes of the certification required by this subsection:

(A) in-kind costs;

(B) volunteer services furnished to a grant recipient;

(C) noncash contributions;

(D) income earned by the grant recipient that is not available at the time of the award;

(E) preexisting real estate of the grant recipient, including buildings, facilities, and land;

(F) deferred giving, including a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund; or

(G) other items as may be determined by the oversight committee;

(6) require a grant recipient and the institute to include the certification in the grant award contract;

(7) specify that a grant recipient's failure to provide certification shall serve as grounds for terminating the grant award contract;

(8) require a grant recipient to maintain adequate documentation supporting the source and use of the funds required by this subsection and to provide documentation to the institute upon request; and

(9) require that the institute establish a procedure to conduct an annual review of the documentation supporting the source and use of funds reported in the required certification.

(e) The institute shall adopt a policy on advance payments to grant recipients.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 13, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 24, eff. June 14, 2013.

Sec. 102.256. PATENT ROYALTIES AND LICENSE REVENUES PAID TO STATE. (a) The oversight committee shall establish standards that require all grant awards to be subject to an intellectual property

agreement that allows the state to collect royalties, income, and other benefits, including interest or proceeds resulting from securities and equity ownership, realized as a result of projects undertaken with money awarded under Subchapter E.

(b) In determining the state's interest in any intellectual property rights, the oversight committee shall balance the opportunity of the state to benefit from the patents, royalties, licenses, and other benefits that result from basic research, therapy development, and clinical trials with the need to ensure that essential medical research is not unreasonably hindered by the intellectual property agreement and that the agreement does not unreasonably remove the incentive on the part of the individual researcher, research team, or institution.

(c) The oversight committee may transfer its management and disposition authority over the state's interest in securities, equities, royalties, income, and other benefits realized as a result of projects undertaken with money awarded under Subchapter E to the Texas Treasury Safekeeping Trust Company. If the oversight committee transfers management and disposition authority under this subsection, the trust company has any power necessary to accomplish the purposes of this section.

(d) In managing the assets described by Subsection (c) through procedures and subject to restrictions that the Texas Treasury Safekeeping Trust Company considers appropriate, the trust company may acquire, exchange, sell, supervise, manage, or retain any kind of investment that a prudent investor, exercising reasonable care, skill, and caution, would acquire, exchange, sell, or retain in light of the purposes, terms, distribution requirements, and other circumstances then prevailing pertinent to each investment, including the requirements prescribed by Subsection (b) and the purposes described by Section 102.002. The trust company may charge a fee to recover the reasonable and necessary costs incurred in managing assets under this section.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 448 (S.B. 1421), Sec. 1, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 521 (S.B. 81), Sec. 6, eff.

September 1, 2017.

Sec. 102.257. MULTIYEAR PROJECTS. The oversight committee may grant funds for a multiyear project. The oversight committee must specify the total amount of money approved to fund the multiyear project. The total amount specified is considered for purposes of this subchapter to have been awarded in the state fiscal year that the project is approved by the research and prevention programs committee. The institute shall distribute only the money that will be expended during that fiscal year. The remaining money shall be distributed by the institute as the money is needed in each subsequent fiscal year.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 521 (H.B. 2251), Sec. 6, eff. June 17, 2011.

Sec. 102.258. PREFERENCE FOR TEXAS SUPPLIERS. The oversight committee shall establish standards to ensure that grant recipients purchase goods and services from suppliers in this state to the extent reasonably possible, in a good faith effort to achieve a goal of more than 50 percent of such purchases from suppliers in this state.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.259. HISTORICALLY UNDERUTILIZED BUSINESSES. The oversight committee shall establish standards to ensure that grant recipients purchase goods and services from historically underutilized businesses as defined by Chapter 2161, Government Code, and any other applicable state law.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff.

November 6, 2007.

Sec. 102.260. GRANT EVALUATION. (a) The oversight committee shall require as a condition of a grant that the grant recipient submit to regular inspection reviews of the grant project by institute staff, including progress oversight reviews, to ensure compliance with the terms of the award and to ensure the scientific merit of the research.

(b) The chief executive officer shall determine the grant review process under this section. The chief executive officer may terminate grants that do not meet contractual obligations.

(c) The chief executive officer shall report at least annually to the oversight committee on the progress and continued merit of each research program funded by the institute.

(d) The institute shall establish and implement reporting requirements to ensure that each grant recipient complies with the terms and conditions in the grant contract, including verification of the amounts of matching funds dedicated to the research that is the subject of the grant award to the grant recipient.

(e) The institute shall implement a system to:

(1) track the dates on which grant recipient reports are due and are received by the institute; and

(2) monitor the status of any required report that is not timely submitted to the institute by a grant recipient.

(f) The chief compliance officer shall monitor compliance with this section and at least annually shall inquire into and monitor the status of any required report that is not timely submitted to the institute by a grant recipient. The chief compliance officer shall notify the general counsel and the oversight committee of a grant recipient that has not maintained compliance with the reporting requirements or matching funds provisions of the grant contract to allow the institute to begin suspension or termination of the grant contract under Subsection (b). This subsection does not limit other remedies available under the grant contract.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 14, eff.

June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 25, eff. June 14, 2013.

Sec. 102.261. MEDICAL ETHICS. Any research project that receives money under Subchapter E must:

(1) be conducted with full consideration for the ethical and medical implications of the research; and

(2) comply with all federal and state laws regarding the conduct of research.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.262. PUBLIC INFORMATION. (a) The following information is public information and may be disclosed under Chapter 552, Government Code:

(1) the applicant's name and address;

(2) the amount of funding applied for;

(3) the type of cancer to be addressed under the proposal; and

(4) any other information designated by the institute with the consent of the grant applicant.

(b) In order to protect the actual or potential value of information submitted to the institute by an applicant for or recipient of an institute grant, the following information submitted by such applicant or recipient is confidential and is not subject to disclosure under Chapter 552, Government Code, or any other law:

(1) all information, except as provided in Subsection (a), that is contained in a grant award contract between the institute and a grant recipient, relating to a product, device, or process, the application or use of such a product, device, or process, and all technological and scientific information, including computer programs, developed in whole or in part by an applicant for or recipient of an institute grant, regardless of whether patentable or capable of being registered under copyright or trademark laws, that has a potential for being sold, traded, or licensed for a fee; and

(2) the plans, specifications, blueprints, and designs, including related proprietary information, of a scientific research and development facility.

(c) The records of a nonprofit organization established to provide support to the institute are public information subject to Chapter 552, Government Code.

(d) The institute shall post on the institute's Internet website records that pertain specifically to any gift, grant, or other consideration provided to the institute, an institute employee, or a member of an institute committee. The posted information must include each donor's name and the amount and date of the donor's donation.

Added by Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 15, eff. June 19, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 448 (S.B. 1421), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 761 (S.B. 895), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 26, eff. June 14, 2013.

Sec. 102.263. COMPLIANCE PROGRAM. (a) In this section, "compliance program" means a process to assess and ensure compliance by the institute's committee members and employees with applicable laws, rules, and policies, including matters of:

(1) ethics and standards of conduct;

(2) financial reporting;

(3) internal accounting controls; and

(4) auditing.

(b) The institute shall establish a compliance program that operates under the direction of the institute's chief compliance officer. The institute may establish procedures, such as a telephone hotline, to allow private access to the compliance program office and to preserve the confidentiality of communications and the anonymity of a person making a compliance report or participating in a compliance investigation.

(c) The following are confidential and are not subject to

disclosure under Chapter 552, Government Code:

(1) information that directly or indirectly reveals the identity of an individual who made a report to the institute's compliance program office, sought guidance from the office, or participated in an investigation conducted under the compliance program;

(2) information that directly or indirectly reveals the identity of an individual who is alleged to have or may have planned, initiated, or participated in activities that are the subject of a report made to the office if, after completing an investigation, the office determines the report to be unsubstantiated or without merit; and

(3) other information that is collected or produced in a compliance program investigation if releasing the information would interfere with an ongoing compliance investigation.

(d) Subsection (c) does not apply to information related to an individual who consents to disclosure of the information.

(e) Information made confidential or excepted from public disclosure by this section may be made available to the following on request in compliance with applicable laws and procedures:

(1) a law enforcement agency or prosecutor;

(2) a governmental agency responsible for investigating the matter that is the subject of a compliance report, including the Texas Workforce Commission civil rights division or the federal Equal Employment Opportunity Commission; or

(3) a committee member or institute employee who is responsible under institutional policy for a compliance program investigation or for a review of a compliance program investigation.

(f) A disclosure under Subsection (e) is not a voluntary disclosure for purposes of Section 552.007, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 27, eff. June 14, 2013.

Sec. 102.2631. COMPLIANCE MATTERS; CLOSED MEETING. The oversight committee may conduct a closed meeting under Chapter 551, Government Code, to discuss an ongoing compliance investigation into issues related to fraud, waste, or abuse of state resources.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 27,

eff. June 14, 2013.

Sec. 102.264. PROGRAM INTEGRATION COMMITTEE. (a) The institute shall establish a program integration committee. The committee is composed of the following five members:

(1) the chief executive officer;

(2) the chief scientific officer;

(3) the chief product development officer;

(4) the commissioner of state health services; and

(5) the chief prevention officer.

(b) The committee has the duties assigned under this chapter.

(c) The chief executive officer shall serve as the presiding officer of the program integration committee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 27, eff. June 14, 2013.

SUBCHAPTER G. CANCER PREVENTION AND RESEARCH INTEREST AND SINKING FUND

Sec. 102.270. ESTABLISHMENT OF FUND. (a) The cancer prevention and research interest and sinking fund is a dedicated account in the general revenue fund.

(b) The fund consists of:

(1) patent, royalty, and license fees and other income received under a contract entered into as provided by Section 102.255; and

(2) interest earned on the investment of money in the fund.

(c) The fund may be used only to pay for debt service on bonds issued as authorized by Section 67, Article III, Texas Constitution, at a time and in a manner to be determined by the legislature in the General Appropriations Act.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 28, eff. June 14, 2013.

CHAPTER 103. TEXAS DIABETES COUNCIL

Sec. 103.001. DEFINITIONS. In this chapter:

(1) "Council" means the Texas Diabetes Council.

(2) "Person with diabetes" means a person diagnosed by a physician in accordance with nationally recognized standards as having diabetes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 452 (S.B. 2151), Sec. 1, eff. September 1, 2019.

Sec. 103.002. COMPOSITION OF COUNCIL. (a) The Texas Diabetes Council is composed of 11 citizen members appointed from the public and one representative each from the department, the commission, the Employees Retirement System of Texas, the Teacher Retirement System of Texas, and the Texas Workforce Commission vocational rehabilitation services division.

(b) The governor, with the advice and consent of the senate, shall appoint the following citizen members:

(1) a licensed physician with a specialization in treating diabetes;

(2) a registered nurse with a specialization in diabetes education and training;

(3) a registered and licensed dietitian with a specialization in the diabetes education field;

(4) a person with experience and training in public health policy;

(5) three consumer members, with special consideration given to persons active in the Texas affiliates of the Juvenile Diabetes Research Foundation (JDRF), the American Association of Diabetes Educators, or the American Diabetes Association; and

(6) four members from the general public with expertise or demonstrated commitment to diabetes issues.

(b-1) In making appointments under this section, the governor shall attempt to appoint members of different minority groups including females, African-Americans, Hispanic-Americans, Native Americans, and Asian-Americans.

(c) The commissioner, executive commissioner, executive director of the Employees Retirement System of Texas, executive director of the Teacher Retirement System of Texas, and the director of the Texas Workforce Commission vocational rehabilitation services

division shall appoint that agency's representative to the council. Agency representatives shall be nonvoting members of the council.

(d) Appointments to the council shall be made without regard to the race, color, disability, creed, sex, religion, age, or national origin of the appointees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 6.39, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 12.01, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1170, Sec. 10.01, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1176 (H.B. 3278), Sec. 6, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0340, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 452 (S.B. 2151), Sec. 2, eff. September 1, 2019.

Sec. 103.0024. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section.

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

(1) the legislation that created the council;

(2) the programs operated by the council;

(3) the role and functions of the council;

(4) the rules of the council;

(5) the current budget for the council;

(6) the results of the most recent formal audit of the council;

(7) the requirements of:

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

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001,

Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the council or the Texas Ethics Commission.

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

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 12.03, eff. Sept. 1, 1999.

Sec. 103.0025. INFORMATION ABOUT STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to members of the council, as often as necessary, information regarding the requirements for office under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 12.03, eff. Sept. 1, 1999.

Sec. 103.004. RESTRICTIONS ON COUNCIL APPOINTMENT, MEMBERSHIP, OR EMPLOYMENT. (a) A person is not eligible for appointment or service as a citizen member if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds at the council's direction;

(2) owns or controls directly or indirectly more than a 10 percent interest in a business entity or other organization receiving funds at the council's direction; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department at the council's direction, other than compensation or reimbursement authorized by law for council membership, attendance, or expenses.

(b) A person who is required to register as a lobbyist under Chapter 305, Government Code, may not serve as a member of the

council or act as the general counsel.

(c) An officer, employee, or paid consultant of a trade association in the field of health care may not be a member or employee of the council. A person who is the spouse of an officer, employee, or paid consultant of a trade association in the field of health care may not be a member of the council and may not be an employee, including an employee exempt from the state's position classification plan, who is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(d) For purposes of Subsection (c), a trade association is a nonprofit, cooperative, and voluntary association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

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

Sec. 103.005. TERMS. (a) Council members appointed by the governor serve for staggered six-year terms, with the terms of three or four members expiring February 1 of each odd-numbered year.

(b) A council member appointed as a representative of an agency serves at the will of the appointing agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 269, Sec. 2, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1285, Sec. 3.01, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1170, Sec. 10.02, eff. Sept. 1, 2003.

Sec. 103.006. CHAIRMAN. The governor shall designate a member of the council as the chairman of the council to serve in that capacity at the will of the governor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 12.02, eff. Sept. 1, 1999.

Sec. 103.007. REMOVAL OF COUNCIL MEMBER. (a) It is a ground for removal from the council if a member:

(1) is not eligible for appointment to the council at the time of appointment as provided by Section 103.004(a);

(2) is not eligible to serve on the council as provided by Section 103.004(a);

(3) violates a prohibition established by Section 103.004(b) or (c);

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

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

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

(c) If the chairman of the council has knowledge that a potential ground for removal exists, the chairman shall notify the governor of its existence.

(d) The council shall inform its members as often as necessary of:

(1) the qualifications for office prescribed by this chapter; and

(2) their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

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

Sec. 103.008. VACANCY. (a) The office of a member appointed by an agency becomes vacant when the person terminates employment with the agency or when the agency elects to replace the person as provided by Section 103.005.

(b) If the office of a member who is an agency representative becomes vacant, the commissioner or executive commissioner, as appropriate, of that agency shall appoint an agency representative to serve for the remainder of that member's term.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1285, Sec. 3.02, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0341, eff. April 2, 2015.

Sec. 103.009. REIMBURSEMENT. The department shall reimburse council and advisory committee members for travel and other necessary expenses incurred in performing official duties as provided by Section 2110.004, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0342, eff. April 2, 2015.

Sec. 103.010. STAFF AND ADMINISTRATIVE SUPPORT. (a) Each agency represented on the council shall provide the council with periodic staff support of specialists as needed and may provide staff support to an advisory committee.

(b) The department shall provide administrative support to the council by providing research services and preparing any reports required under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 452 (S.B. 2151), Sec. 3, eff. September 1, 2019.

Sec. 103.011. ADVISORY COMMITTEES; WORK GROUPS. (a) The council may establish advisory committees or work groups that the council considers necessary and may determine the appropriate membership for each committee or group.

(b) The council shall specify the purpose and duties of each advisory committee or work group and shall specify any product the committee is required to develop.

(c) Members of an advisory committee or work group serve at the will of the council. The council may dissolve an advisory committee or work group when necessary.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 452 (S.B. 2151), Sec. 4, eff. September 1, 2019.

Sec. 103.012. MEETINGS. (a) The council shall meet at least quarterly and shall adopt rules for the conduct of its meetings.

(b) Any action taken by the council must be approved by a majority of the voting members present.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 269, Sec. 3, eff. Sept. 1, 1991.

Sec. 103.013. STATE PLAN. (a) The council shall develop and implement a state plan for diabetes treatment, education, and training to ensure that:

(1) this chapter is properly implemented by the agencies affected;

(2) incentives are offered for private sources to maintain present commitments and to assist in developing new programs; and

(3) a procedure for review of individual complaints about services provided under this chapter is implemented.

(b) The state plan may include provisions to ensure that:

(1) individual and family needs are assessed statewide and all available resources are coordinated to meet those needs; and

(2) health care provider needs are assessed statewide and strategies are developed to meet those needs.

(b-1) The state plan may include provisions to address obesity treatment, education, and training related to:

(1) obesity-dependent diabetes; and

(2) the health impacts of obesity on a person with diabetes.

(c) The council shall make written recommendations for performing its duties under this chapter to the executive commissioner and the legislature. If the council considers a recommendation that will affect an agency not represented on the council, the council shall seek the advice and assistance of the agency before taking action on the recommendation. The council's recommendations shall be implemented by the agencies affected by the

recommendations.

(d) The council shall submit the state plan to the state agency designated as the state health planning and development agency not later than November 1 of each odd-numbered year.

(e) Each state agency affected by the state plan shall:

(1) determine what resources would be required to implement the portions of the state plan affecting that agency; and

(2) determine whether that agency will seek funds to implement that portion of the state plan.

(f) Not later than November 1 of each even-numbered year, each state agency affected by the state plan, other than a state agency represented on the council, shall report to the council, the Legislative Budget Board, and the Governor's Office of Budget and Planning:

(1) information determined under Subsection (e); and

(2) each deviation from the council's proposed plan, including an explanation for the deviation.

(g) The report required under Subsection (f) may be published electronically on a state agency's Internet website. A state agency that electronically publishes a report under this subsection shall notify each agency entitled to receive a copy of the report that the report is available on the agency's Internet website on or before the date the report is due.

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

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 64, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0343, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 452 (S.B. 2151), Sec. 5, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 14, eff. September 1, 2021.

Sec. 103.0131. ASSESSMENT OF PROGRAMS TO PREVENT AND TREAT DIABETES. (a) In conjunction with developing each state plan described in Section 103.013, the council shall conduct a statewide assessment of existing programs for the prevention of diabetes and

treatment of individuals with diabetes that are administered by the commission or a health and human services agency, as defined by Section 521.0001, Government Code. As part of the assessment, the council shall collect data regarding:

(1) the number of individuals served by the programs;

(2) the areas where services to prevent diabetes and treat individuals with diabetes are unavailable; and

(3) the number of health care providers treating individuals with diabetes under the programs.

(b) Not later than November 1 of each odd-numbered year, the council shall submit to the governor, the lieutenant governor, and the legislature a written report containing the findings of the assessment conducted under Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 409 (S.B. 796), Sec. 2, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0344, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.37, eff. April 1, 2025.

Sec. 103.014. POWERS AND DUTIES. (a) The council shall address contemporary issues affecting health promotion services in the state, including:

(1) professional and patient education;

(2) evidence-based diabetes self-management education strategies;

(3) evidence-based strategies to achieve the council's mission;

(4) state expenditures for the prevention, detection, management, and treatment of diabetes and obesity; and

(5) public awareness of the specific risks and benefits of prevention, detection, management, and treatment of diabetes, including obesity-dependent diabetes.

(b) The council shall advise the legislature on legislation that is needed to develop further and maintain a statewide system of quality education services for all persons with diabetes. The council may develop and submit legislation to the legislature or

comment on pending legislation that affects persons with diabetes.

(c) The council may establish priorities and make recommendations for program expenditures that align with the council's mission.

(d) The council may engage in studies that it determines are necessary or suitable under the state plan as provided by this chapter.

(e) The department shall accept funds appropriated for the purposes of this chapter and shall allocate those funds. The council shall make recommendations to the department concerning the allocation of funds.

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

Acts 2019, 86th Leg., R.S., Ch. 452 (S.B. 2151), Sec. 6, eff. September 1, 2019.

Sec. 103.015. GIFTS AND GRANTS. (a) The council may receive gifts and grants from any public or private source to perform its duties under this chapter. The department shall accept the gifts on behalf of the council and shall deposit any funds accepted under this section to the credit of the general revenue fund.

(b) The department may retain five percent of any monetary gifts accepted on behalf of the council to cover its costs in administering this section.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0345, eff. April 2, 2015.

Sec. 103.016. PUBLIC INFORMATION AND PARTICIPATION; COMPLAINTS. (a) The council shall prepare information of public interest describing the functions of the council and describing council procedures by which complaints are filed with and resolved by the council. The council shall make the information available to the general public and appropriate state agencies.

(b) The council by rule shall establish methods by which consumers or service recipients are notified of the name, mailing

address, and telephone number of the council for the purpose of directing complaints to the council.

(c) The council shall develop and implement policies that provide the public with a reasonable opportunity to appear before the council and to speak on any issue under the jurisdiction of the council.

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

Sec. 103.017. PUBLIC AWARENESS AND TRAINING. (a) The department, commission, and Texas Workforce Commission vocational rehabilitation services division shall work with the council to jointly develop, produce, and implement a general public awareness strategy focusing on diabetes, its complications, and techniques for achieving good management. Each agency shall pay for the costs of producing and disseminating information on diabetes to clients served by that agency.

(b) The strategy developed under Subsection (a) must include a plan under which the council provides public awareness information through businesses, civic organizations, and similar entities.

(c) The department, commission, and Texas Workforce Commission vocational rehabilitation services division may jointly develop and implement a statewide plan for conducting regional training sessions for public and private service providers, including institutional health care providers, who have routine contact with persons with diabetes.

(d) The council must approve the strategies and plans developed under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.40, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1285, Sec. 4.01, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1176 (H.B. 3278), Sec. 7, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0346, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 452 (S.B. 2151), Sec. 7, eff. September 1, 2019.

Sec. 103.0175. MATERIALS FOR SCHOOL-BASED AND SCHOOL-LINKED CLINICS. The council, in consultation with the department and the Texas Education Agency, shall develop and make available materials that provide information about diabetes to be distributed to students and the parents of students by health clinics at public primary or secondary schools.

Added by Acts 1997, 75th Leg., ch. 1285, Sec. 4.01, eff. Sept. 1, 1997.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 452 (S.B. 2151), Sec. 8, eff. September 1, 2019.

Sec. 103.019. AUDIT. The financial transactions pertaining to the council are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 39, eff. Sept. 1, 1991.

CHAPTER 104A. HEALTH PROFESSIONS WORKFORCE COORDINATING COUNCIL

Sec. 104A.001. DEFINITION. In this chapter, "council" means the Health Professions Workforce Coordinating Council.

Added by Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Sec. 1, eff. September 1, 2025.

Sec. 104A.002. ESTABLISHMENT; ADMINISTRATIVE ATTACHMENT. (a) The Health Professions Workforce Coordinating Council is established to study and develop a strategic approach for ensuring a thriving health care system and health professions workforce in this state.

(b) The council is administratively attached to the department. The department shall provide administrative support to the council.

Added by Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Sec. 1, eff. September 1, 2025.

Sec. 104A.003. MEMBERSHIP. (a) The council is composed of:

(1) at least one representative appointed by the executive director or governing body of each of the following:

(A) the department;

(B) the commission;

(C) the Texas Education Agency;

(D) the Texas Higher Education Coordinating Board;

(E) the Texas Workforce Commission;

(F) the Texas Board of Chiropractic Examiners;

(G) the State Board of Dental Examiners;

(H) the Texas Medical Board;

(I) the Texas Board of Nursing;

(J) the Texas Optometry Board;

(K) the Texas State Board of Pharmacy;

(L) the Executive Council of Physical Therapy and Occupational Therapy Examiners;

(M) the Texas Behavioral Health Executive Council;

(N) the State Board of Veterinary Medical Examiners; and

(O) the Texas Veterinary Medical Association; and

(2) four members with relevant health care experience, including experience in health professions workforce planning or complex health care data analysis, appointed by the governor.

(b) A council member serves at the pleasure of the appointing authority.

(c) A vacancy on the council shall be filled in the same manner as the original appointment.

Added by Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Sec. 1, eff. September 1, 2025.

Sec. 104A.004. DUTIES. The council shall:

(1) compile from each state agency with a representative appointed to the council under Section 104A.003(a)(1) information regarding the health professions workforce, including:

(A) high school graduation rates from the Texas Education Agency;

(B) higher education graduation and certification rates from the Texas Higher Education Coordinating Board;

(C) health professions workforce shortages;

(D) the number of licensed health care professionals regulated by each participating licensing state agency;

(E) federal labor statistics regarding health professions; and

(F) any other information relevant to the supply and demand of health care professionals;

(2) prepare the strategic plan described by Section 104A.005; and

(3) establish the work group described by Section 104A.006.

Added by Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Sec. 1, eff. September 1, 2025.

Sec. 104A.005. STRATEGIC PLAN. (a) The council shall examine the health professions in this state based on the information compiled under Section 104A.004(1) and biennially prepare a health professions strategic plan. The plan must:

(1) include a data analysis model demonstrating the supply, demand, production, and projected need for the next 10 years of the health professions workforce;

(2) define targeted goals and objectives for the health professions workforce, including short-term and long-term strategies for each state agency participating in the council and local workforce planning agencies to build a thriving health care system;

(3) identify immediate shortages in health professions;

(4) define goals for this state to support the health care needs of a growing population;

(5) examine this state's capacity to satisfy future health profession demands based on the existing education programs offered and current trends of interstate migration, attrition, and other relevant workforce factors;

(6) propose recommendations to realign existing workforce and education programs;

(7) propose the development of additional education programs for health professions that align with the long-term goals and projections identified in the plan;

(8) identify systemic causes of workforce shortages for health professions; and

(9) inventory programs and services, including state funding amounts provided for workforce planning and preparation and for health professional education.

(b) Not later than October 1 of each even-numbered year, the council shall complete and publish on the council's Internet website the strategic plan described by Subsection (a).

Added by Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Sec. 1, eff. September 1, 2025.

Sec. 104A.006. WORK GROUP. (a) The council shall establish a work group to examine the health professions and health care education programs that provide a gateway into a variety of health professions. The work group consists of members of the council or their designees.

(b) The work group shall:

(1) identify sources for gathering information on gateway health professions; and

(2) build a data analysis model to monitor the historical growth of gateway health professions.

Added by Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Sec. 1, eff. September 1, 2025.

Sec. 104A.007. NURSING ADVISORY COMMITTEE. (a) The council shall establish a nursing advisory committee to assist the council with its duties. A majority of the members of the advisory committee must be nurses, and the advisory committee:

(1) must include:

(A) members of associations representing nurses, educators of nurses, and employers of nurses;

(B) members representing the Texas Board of Nursing; and

(C) at least one member who is a nurse researcher; and

(2) may include other members who are public or private sector health care experts, nurses, nurse educators, employers of nurses, or consumers of nursing services.

(b) The nursing advisory committee shall:

(1) review policies governing data collection and reports

published under Chapter 105 that relate to the nursing profession;

(2) subject to approval of the council, develop priorities and an operations plan for the nursing resource section established under Section 105.002(b); and

(3) review reports and information before dissemination by the council.

(c) A nurse member of the nursing advisory committee and a nurse member of the council shall co-chair the committee.

(d) Chapter 2110, Government Code, does not apply to the nursing advisory committee formed under this section.

(e) Meetings of the nursing advisory committee under this section are subject to Chapter 551, Government Code.

Added by Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Sec. 1, eff. September 1, 2025.

Sec. 104A.008. DEPARTMENT AUTHORITY TO COLLECT DATA. Nothing in this chapter may be construed to limit the collection of health care facility data by the department or a program the department administers in accordance with other law.

Added by Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Sec. 1, eff. September 1, 2025.

CHAPTER 105. HEALTH PROFESSIONS RESOURCE CENTER

Sec. 105.001. DEFINITIONS. In this chapter:

(1) "Health profession" means any health or allied health profession that is licensed, certified, or registered by a state board, agency, or association.

(2) "Council" means the Health Professions Workforce Coordinating Council.

(3) "Freestanding emergency medical care facility" means a facility licensed under Chapter 254.

(4) "Home health agency" means a home and community support services agency licensed under Chapter 142.

(5) "Hospital" means a general or special hospital licensed under Chapter 241, a private mental hospital licensed under Chapter 577, or a hospital that is maintained or operated by this state or an agency of this state.

(6) "Nursing facility" means an institution licensed under Chapter 242.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 40, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 1386, Sec. 3, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1088 (H.B. 2696), Sec. 1, eff. June 19, 2015.
Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Sec. 7, eff. September 1, 2025.

Sec. 105.002. ESTABLISHMENT OF CENTER. (a) In conjunction with the Texas Higher Education Coordinating Board and in such a way as to avoid duplication of effort, the council shall establish a comprehensive health professions resource center for the collection and analysis of educational and employment trends for health professions in this state.

(b) In conjunction with the nursing advisory committee formed under Section 104A.007, to avoid duplication of effort, and to the extent funding is available through fees collected under Section 301.155(c), Occupations Code, the council shall establish a nursing resource section within the center for the collection and analysis of educational and employment trends for nurses in this state.

(c) If the nursing resource section established under Subsection (b) is funded from surcharges collected under Section 301.155(c), Occupations Code, the council shall provide the Texas Board of Nursing with an annual accounting of the money received from the board. The council may expend a reasonable amount of the money to pay administrative costs of maintaining the nursing resource section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 40, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 1386, Sec. 4, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 728, Sec. 9, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 1, eff. May 20, 2005.
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 62, eff. September 1, 2007.

Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Sec. 8, eff. September 1, 2025.

Sec. 105.003. COLLECTION OF DATA. (a) The council shall place a high priority on collecting and disseminating data on health professions demonstrating an acute shortage in this state, including:

(1) data concerning nursing personnel; and

(2) data concerning the health professions in which shortages occur in rural areas.

(b) To the extent possible, the council may collect the data from existing sources that the council determines are credible. The council may enter agreements with those sources that establish guidelines concerning the identification, acquisition, transfer, and confidentiality of the data.

(c) The Department of Information Resources, through the state electronic Internet portal and in consultation with the council and the Health Professions Council, shall add and label as "mandatory" the following fields on an application or renewal form for a license, certificate, or registration for a person subject to Subsection (c-2):

(1) full name and last four digits of social security number;

(2) full mailing address; and

(3) educational background and training, including basic health professions degree, school name and location of basic health professions degree, and graduation year for basic health professions degree, and, as applicable, highest professional degree obtained, related professional school name and location, and related graduation year.

(c-1) The Department of Information Resources, through the state electronic Internet portal and in consultation with the council and the Health Professions Council, shall add the following fields on an application or renewal form for a license, certificate, or registration for a person subject to Subsection (c-2):

(1) date and place of birth;

(2) sex;

(3) race and ethnicity;

(4) location of high school;

(5) mailing address of primary practice;

(6) number of hours per week spent at primary practice location;

(7) description of primary practice setting;

(8) primary practice information, including primary specialty practice, practice location zip code, and county; and

(9) information regarding any additional practice, including description of practice setting, practice location zip code, and county.

(c-2) The following health professionals are subject to this section:

(1) audiologists;

(2) chiropractors;

(3) licensed professional counselors;

(4) licensed chemical dependency counselors;

(5) dentists;

(6) dental hygienists;

(7) emergency medical services personnel;

(8) marriage and family therapists;

(9) medical radiologic technologists;

(10) licensed vocational nurses;

(11) registered nurses;

(12) certified nurse aides;

(13) occupational therapists;

(14) optometrists;

(15) pharmacists;

(16) physical therapists;

(17) physicians;

(18) physician assistants;

(19) psychologists;

(20) social workers; and

(21) speech-language pathologists.

(c-3) The relevant members of the Health Professions Council shall encourage each person described by Subsection (c-2) licensed, certified, or registered under that council's authority to submit application and renewal information under Subsections (c) and (c-1) through the system developed by the Department of Information Resources and the state electronic Internet portal.

(d) To the extent feasible, the council shall use a researcher with a doctorate in nursing to collect, analyze, and disseminate nursing data that may be used to predict supply and demand for

nursing personnel in this state using appropriate federal or state supply-and-demand models. The nursing data must at least:

(1) include demographics, areas of practice, supply, demand, and migration; and

(2) be analyzed to identify trends relating to numbers and geographical distribution, practice setting, and area of practice and, to the extent possible, compare those trends with corresponding national trends.

(e) Data received under this section by the nursing resource section established under Section 105.002 that contains information identifying specific patients or health care facilities is confidential, is not subject to disclosure under Chapter 552, Government Code, and may not be released unless all identifying information is removed.

(f) The relevant members of the Health Professions Council, in conjunction with the Department of Information Resources, shall ensure that the information collected under Subsections (c) and (c-1) is transmitted to the statewide health coordinating council. The council shall store the information as needed and conduct related workforce studies, including a determination of the geographical distribution of the reporting professionals.

(g) The relevant members of the Health Professions Council, in conjunction with the Department of Information Resources, shall ensure that the following information is submitted to the statewide health coordinating council for a person subject to Subsection (c-2):

(1) certification, registration, or license number;

(2) issuance date;

(3) method of certification, registration, or licensure; and

(4) certification, registration, or licensure status.

(h) The Department of Information Resources shall work with the health occupation regulatory agencies that are members of the Health Professions Council to minimize the costs to Health Professions Council members of obtaining the information under Subsections (c) and (c-1). The Department of Information Resources shall provide the Health Professions Council with the appropriate federal information processing standards code based on the information in Subsections (c-1)(8) and (9).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 40, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 1386, Sec. 5, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 728, Sec. 10, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 2, eff. May 20, 2005.
Acts 2007, 80th Leg., R.S., Ch. 486 (S.B. 29), Sec. 1, eff. March 1, 2008.
Acts 2011, 82nd Leg., R.S., Ch. 973 (H.B. 1504), Sec. 27, eff. June 17, 2011.

Sec. 105.004. REPORTS. (a) The council may use the data collected and analyzed under this chapter to publish reports regarding:
(1) the educational and employment trends for health professions;
(2) the supply and demand of health professions; and
(3) other issues, as necessary, concerning health professions in this state.
(b) The council shall publish reports regarding the data collected and analyzed under this chapter related to:
(1) the educational and employment trends of nursing professionals;
(2) the supply and demand of nursing professionals; and
(3) other issues, as determined necessary by the council, concerning nursing professionals in this state.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 40, eff. Sept. 1, 1991.
Amended by Acts 1997, 75th Leg., ch. 1386, Sec. 6, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 728, Sec. 11, eff. June 20, 2003.

Sec. 105.005. RULES. The executive commissioner may adopt rules to govern the reporting and collection of data.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 40, eff. Sept. 1, 1991.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 10, eff. June 19, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0352, eff. April 2, 2015.

Sec. 105.006. ASSISTANCE OF OTHER STATE AGENCIES. The Texas Higher Education Coordinating Board or the department may require the assistance of other state agencies or institutions of higher education for the development of, or the collection of data for, any report.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 40, eff. Sept. 1, 1991. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10.001(a), eff. Sept. 1, 2003.

Sec. 105.009. RESEARCH REGARDING GRADUATE MEDICAL EDUCATION SYSTEM. (a) The comprehensive health professions resource center shall conduct research:

(1) to identify all medical specialties and subspecialties that are at critical shortage levels in this state, together with the geographic location of the physicians in those specialties and subspecialties; and

(2) regarding the overall supply of physicians in this state and any other issues that are relevant to the status of the state's graduate medical education system and the ability of that system to meet the current and future health care needs of this state.

(b) Not later than May 1 of each even-numbered year, the council shall report the results of the center's research to the Legislative Budget Board, the Texas Higher Education Coordinating Board, the office of the governor, and the standing committees of each house of the legislature with primary jurisdiction over state finance or appropriations.

Added by Acts 2015, 84th Leg., R.S., Ch. 321 (S.B. 18), Sec. 7, eff. September 1, 2015.

Sec. 105.011. WORKPLACE VIOLENCE PREVENTION GRANT PROGRAM. (a) To the extent funding is available, the nursing resource section established under Section 105.002 shall administer a grant program to fund innovative approaches for reducing verbal and physical violence against nurses in hospitals, freestanding emergency medical care

facilities, nursing facilities, and home health agencies.

(b) The nursing resource section shall require a grant recipient to submit periodic reports describing the outcome of the activities funded through the grant, including any change in the severity and frequency of verbal and physical violence against nurses.

(c) Repealed by Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Sec. 11(2), eff. September 1, 2025.

(d) The department shall provide administrative assistance to the nursing resource section in administering the grant program under this section.

(e) The executive commissioner shall adopt rules to implement the grant program, including rules governing the submission and approval of grant requests and establishing a reporting procedure for grant recipients.

(f) The nursing resource section may use money transferred to the department from the Texas Board of Nursing under Section 301.155, Occupations Code, to fund the grants authorized by this section.

(g) At least annually, the nursing resource section shall publish a report describing the grants awarded under this section, including the amount of the grant, the purpose of the grant, and the reported outcome of the approach adopted by the grant recipient.

Added by Acts 2017, 85th Leg., R.S., Ch. 406 (H.B. 280), Sec. 1, eff. September 1, 2017.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Sec. 11(2), eff. September 1, 2025.

CHAPTER 107A. CENTER FOR ELIMINATION OF DISPROPORTIONALITY AND DISPARITIES

Sec. 107A.001. CENTER FOR ELIMINATION OF DISPROPORTIONALITY AND DISPARITIES. The executive commissioner shall maintain a center for elimination of disproportionality and disparities in the commission to:

(1) assume a leadership role in working or contracting with state and federal agencies, universities, private interest groups, communities, foundations, and offices of minority health to develop health initiatives to decrease or eliminate health and health access

disparities among racial, multicultural, disadvantaged, ethnic, and regional populations, including appropriate language services; and

(2) maximize use of existing resources without duplicating existing efforts.

Redesignated from Health and Safety Code, Subchapter G, Chapter 12 and amended by Acts 2007, 80th Leg., R.S., Ch. 222 (H.B. 1396), Sec. 1, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 121 (S.B. 501), Sec. 2, eff. May 21, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0353, eff. April 2, 2015.

Sec. 107A.002. POWERS OF CENTER. The center may:

(1) provide a central information and referral source, including a clearinghouse for health disparities information, and serve as the primary state resource in coordinating, planning, and advocating access to health care services to eliminate health disparities in this state;

(2) coordinate conferences and other training opportunities to increase skills among state agencies and government staff in management and in the appreciation of cultural diversity;

(3) pursue and administer grant funds for innovative projects for communities, groups, and individuals;

(4) provide recommendations and training in improving minority recruitment in state agencies;

(5) publicize information regarding health disparities and minority health issues through the use of the media;

(6) network with existing minority organizations, community-based health groups, and statewide health coalitions;

(7) solicit, receive, and spend grants, gifts, and donations from public and private sources; and

(8) contract with public and private entities in the performance of its responsibilities.

Redesignated from Health and Safety Code, Subchapter G, Chapter 12 and amended by Acts 2007, 80th Leg., R.S., Ch. 222 (H.B. 1396), Sec. 1, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 121 (S.B. 501), Sec. 2, eff. May 21, 2011.

Sec. 107A.003. FUNDING. The commission may distribute to the center unobligated and unexpended appropriations to be used to carry out its powers.

Redesignated from Health and Safety Code, Subchapter G, Chapter 12 and amended by Acts 2007, 80th Leg., R.S., Ch. 222 (H.B. 1396), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 121 (S.B. 501), Sec. 2, eff. May 21, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0354, eff. April 2, 2015.

CHAPTER 108. HEALTH CARE DATA COLLECTION

Sec. 108.001. DEPARTMENT DUTIES. The department shall administer this chapter and report to the governor, the legislature, and the public.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.002. DEFINITIONS. In this chapter:

(1) "Accurate and consistent data" means data that has been edited by the department and subject to provider validation and certification.

(3) "Certification" means the process by which a provider confirms the accuracy and completeness of the data set required to produce the public use data file in accordance with department rule.

(4) "Charge" or "rate" means the amount billed by a provider for specific procedures or services provided to a patient before any adjustment for contractual allowances. The term does not include copayment charges to enrollees in health benefit plans charged by providers paid by capitation or salary.

(4-a) "Commission" means the Health and Human Services Commission.

(6) "Data" means information collected under Section 108.0065 or 108.009 in the form initially received.

(8) "Edit" means to use an electronic standardized process developed and implemented by department rule to identify potential errors and mistakes in data elements by reviewing data fields for the presence or absence of data and the accuracy and appropriateness of data.

(9) "Health benefit plan" means a plan provided by:

(A) a health maintenance organization; or

(B) an approved nonprofit health corporation that is certified under Section 162.001, Occupations Code, and that holds a certificate of authority issued by the commissioner of insurance under Chapter 844, Insurance Code.

(10) "Health care facility" means:

(A) a hospital;

(B) an ambulatory surgical center licensed under Chapter 243;

(C) a chemical dependency treatment facility licensed under Chapter 464;

(D) a renal dialysis facility;

(E) a birthing center;

(F) a rural health clinic;

(G) a federally qualified health center as defined by 42 U.S.C. Section 1396d(l)(2)(B);

(H) a freestanding imaging center; or

(I) a freestanding emergency medical care facility, as defined by Section 254.001, including a freestanding emergency medical care facility that is exempt from the licensing requirements of Chapter 254 under Section 254.052(8).

(11) "Health maintenance organization" means an organization as defined in Section 843.002, Insurance Code.

(12) "Hospital" means a public, for-profit, or nonprofit institution licensed or owned by this state that is a general or special hospital, private mental hospital, chronic disease hospital, or other type of hospital.

(13) "Outcome data" means measures related to the provision of care, including:

(A) patient demographic information;

(B) patient length of stay;
(C) mortality;
(D) co-morbidity;
(E) complications; and
(F) charges.

(14) "Physician" means an individual licensed under the laws of this state to practice medicine under Subtitle B, Title 3, Occupations Code.

(15) "Provider" means a physician or health care facility.

(16) "Provider quality" means the extent to which a provider renders care that, within the capabilities of modern medicine, obtains for patients medically acceptable health outcomes and prognoses, after severity adjustment.

(17) "Public use data" means patient level data relating to individual hospitalizations that has not been summarized or analyzed, that has had patient identifying information removed, that identifies physicians only by use of uniform physician identifiers, and that is severity and risk adjusted, edited, and verified for accuracy and consistency. Public use data may exclude some data elements submitted to the department.

(19) "Severity adjustment" means a method to stratify patient groups by degrees of illness and mortality.

(20) "Uniform patient identifier" means a number assigned by the department to an individual patient and composed of numeric, alpha, or alphanumeric characters.

(21) "Uniform physician identifier" means a number assigned by the department to an individual physician and composed of numeric, alpha, or alphanumeric characters.

(22) "Validation" means the process by which a provider verifies the accuracy and completeness of data and corrects any errors identified before certification in accordance with department rule.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1460, Sec. 8.02, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.775, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.523, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 7, eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.01, eff. September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.07(b), eff. September 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 1, eff. September 1, 2019.

Sec. 108.006. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND DEPARTMENT. (a) The department shall develop a statewide health care data collection system to collect health care charges, utilization data, provider quality data, and outcome data to facilitate the promotion and accessibility of cost-effective, good quality health care. The executive commissioner or department, as applicable, shall perform the following duties:

(1) the department shall direct the collection, dissemination, and analysis of data under this chapter;

(2) the department shall collect the data under this chapter;

(3) the executive commissioner shall adopt policies and rules necessary to carry out this chapter, including rules concerning data collection requirements;

(4) the department shall build on and not duplicate other data collection required by state or federal law, by an accreditation organization, or by department rule;

(5) working with appropriate agencies, the department, with the approval of the executive commissioner, shall review public health data collection programs in this state and recommend, where appropriate, consolidation of the programs and any legislation necessary to effect the consolidation;

(6) the department shall assure that public use data is made available and accessible to interested persons;

(7) the executive commissioner shall prescribe by rule the process for providers to submit data consistent with Section 108.009;

(8) the executive commissioner shall adopt by rule and the department shall implement a methodology to collect and disseminate data reflecting provider quality in accordance with Section 108.010;

(9) the department shall make reports to the legislature, the governor, and the public on:

(A) the charges and rate of change in the charges for health care services in this state;

(B) the effectiveness of the department in carrying out the legislative intent of this chapter;

(C) if applicable, any recommendations on the need for further legislation; and

(D) the quality and effectiveness of health care and access to health care for all citizens of this state;

(10) the department shall develop an annual work plan and establish priorities to accomplish its duties;

(11) the department shall provide consumer education on the interpretation and understanding of the public use or provider quality data before the data is disseminated to the public;

(12) the department shall work with the commission and each health and human services agency that administers a part of the state Medicaid program to avoid duplication of expenditures of state funds for computer systems, staff, or services in the collection and analysis of data relating to the state Medicaid program;

(13) the department shall work with the Department of Information Resources in developing and implementing the statewide health care data collection system and maintain consistency with Department of Information Resources standards; and

(14) the department shall develop and implement a health care information plan to:

(A) support public health and preventative health initiatives;

(B) assist in the delivery of primary and preventive health care services;

(C) facilitate the establishment of appropriate benchmark data to measure performance improvements;

(D) establish and maintain a systematic approach to the collection, storage, and analysis of health care data for longitudinal, epidemiological, and policy impact studies; and

(E) develop and use system-based protocols to identify individuals and populations at risk.

(b) The department may:

(1) employ a director and other staff, including administrative personnel, necessary to comply with this chapter and rules adopted under this chapter;

(2) engage professional consultants as it considers necessary to the performance of its duties; and

(3) apply for and receive any appropriation, donation, or other funds from the state or federal government or any other public or private source, subject to Section 108.015 and limitations and conditions provided by legislative appropriation.

(b-1) The executive commissioner may adopt rules clarifying which health care facilities must provide data under this chapter.

(c) The department may not establish or recommend rates of payment for health care services.

(d) The department may not take an action that affects or relates to the validity, status, or terms of an interagency agreement without the executive commissioner's approval.

(e) In the collection of data, the department shall consider the research and initiatives being pursued by the United States Department of Health and Human Services, the National Committee for Quality Assurance, and The Joint Commission to reduce potential duplication or inconsistencies. The executive commissioner may not adopt rules that conflict with or duplicate any federally mandated data collection programs or requirements of comparable scope.

(f) The executive commissioner shall prescribe by rule a public use data file minimum data set that maintains patient confidentiality and establishes data accuracy and consistency.

(g) The public use data file minimum data set as defined by department rule is subject to annual review by the department. The purpose of the review is to evaluate requests to modify the existing minimum data set and editing process. A decision to modify the minimum data set by the addition or deletion of data elements shall include consideration of the value of the specific data to be added or deleted and the technical feasibility of establishing data accuracy and consistency. The department may also consider the costs to the department and providers associated with modifying the minimum data set.

(h) In accordance with Section 108.0135, the department may

release data collected under Section 108.009 that is not included in the public use data file minimum data set established under Subsection (f).

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 6, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.0065. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT RELATING TO MEDICAID MANAGED CARE. (a) In this section, "Medicaid managed care organization" means a managed care organization, as defined by Section 540.0001, Government Code, that is contracting with the commission to implement the Medicaid managed care program under Chapter 540 or 540A, Government Code, as applicable.

(b) The commission may direct the department to collect data under this chapter with respect to Medicaid managed care organizations. The department shall coordinate the collection of the data with the collection of data for health benefit plan providers, but with the approval of the commission may collect data in addition to the data otherwise required of health benefit plan providers.

(c) Each Medicaid managed care organization shall provide to the department the data required by the executive commissioner in the form required by the executive commissioner or, if the data is also being submitted to the commission, in the form required by the commission.

(d) Dissemination of data collected under this section is subject to Sections 108.010, 108.011, 108.012, 108.013, 108.014, and 108.0141.

(e) The commission shall analyze the data collected in accordance with this section and shall use the data to:

(1) evaluate the effectiveness and efficiency of the Medicaid managed care system;

(2) determine the extent to which Medicaid managed care does or does not serve the needs of Medicaid recipients in this state; and

(3) assess the cost-effectiveness of the Medicaid managed

care system in comparison to the fee-for-service system, considering any improvement in the quality of care provided.

(h) The commission, using existing funds, may contract with an entity to comply with the requirements under Subsection (e).

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 8.03, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 11, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(5), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 14, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(85), eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.38, eff. April 1, 2025.

Sec. 108.007. REVIEW POWERS. (a) The department, subject to reasonable rules and guidelines, may:

(1) inspect documents and records used by data sources that are required to compile data and reports; and

(2) compel providers to produce accurate documents and records.

(b) The department may enter into a memorandum of understanding with a state agency, including the division of the commission responsible for the state Medicaid program, or with a school of public health or another institution of higher education, to share data and expertise, to obtain data for the department, or to make data available to the department. An agreement entered into under this subsection must protect patient confidentiality.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.0085. DUTIES OF ATTORNEY GENERAL. The attorney general shall furnish the department with advice and legal assistance that may be required to implement this chapter.

Added by Acts 1997, 75th Leg., ch. 261, Sec. 8, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.009. DATA SUBMISSION AND COLLECTION. (a) The department may collect, and, except as provided by Subsection (d), providers shall submit to the department or another entity as determined by the department, all data required by this section. The data shall be collected according to uniform submission formats, coding systems, and other technical specifications necessary to make the incoming data substantially valid, consistent, compatible, and manageable using electronic data processing, if available.

(b) The executive commissioner shall adopt rules to implement the data submission requirements imposed by Subsection (a) in appropriate stages to allow for the development of efficient systems for the collection and submission of the data. A rule adopted by the executive commissioner that requires submission of a data element that, before adoption of the rule, was not required to be submitted may not take effect before the 90th day after the date the rule is adopted and must take effect not later than the first anniversary after the date the rule is adopted.

(c) The department or another entity as determined by the department to collect data from a provider under Subsection (a) shall maintain a database that does not include identifying information for use as authorized by law, including this chapter.

(d) The department may not collect data from individual physicians or from an entity that is composed entirely of physicians and that is a professional association organized under the former Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes) or formed under the Texas Professional Association Law, as described by Section 1.008(l), Business Organizations Code, a limited liability partnership organized under former Section 3.08, Texas Revised Partnership Act (Article 6132b-3.08, Vernon's Texas Civil Statutes), or formed as described by Subchapter J, Chapter 152,

Business Organizations Code, or a limited liability company organized under the former Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes) or formed under the Texas Limited Liability Company Law, as described by Section 1.008(e), Business Organizations Code, except to the extent the entity owns and operates a health care facility in this state. This subsection does not prohibit the release of data about physicians using uniform physician identifiers that has been collected from a health care facility under this chapter.

(e) The department shall establish the single collection point for receipt of data from providers. With the approval of the executive commissioner, the department may transfer collection of any data required to be collected by the department under any other law to the statewide health care data collection system.

(f) The executive commissioner may not require providers to submit data more frequently than quarterly, but providers may submit data on a more frequent basis.

(g) The department shall coordinate data collection with the data collection formats used by federally qualified health centers. To satisfy the requirements of this chapter:

(1) a federally qualified health center shall submit annually to the department a copy of the Medicaid cost report of federally qualified health centers; and

(2) a provider receiving federal funds under 42 U.S.C. Section 254b or 254c shall submit annually to the department a copy of the Uniform Data System data report developed by the United States Department of Health and Human Services.

(h) The department shall coordinate data collection with the data submission formats used by hospitals and other providers. The department shall accept data in the format developed by the American National Standards Institute or its successor or other nationally accepted standardized forms that hospitals and other providers use for other complementary purposes.

(i) The executive commissioner shall develop by rule reasonable alternate data submission procedures for providers that do not possess electronic data processing capacity.

(k) The department shall collect health care data elements relating to payer type, the racial and ethnic background of patients, and the use of health care services by consumers. The department shall prioritize data collection efforts on inpatient and outpatient

surgical and radiological procedures from hospitals, ambulatory surgical centers, and free-standing imaging centers.

(m) To the extent feasible, the department shall obtain from public records the information that is available from those records.

(o) A provider of a health benefit plan shall annually submit to the department aggregate data by service area required by the Healthcare Effectiveness Data and Information Set (HEDIS) as operated by the National Committee for Quality Assurance. The department may approve the submission of data in accordance with other methods generally used by the health benefit plan industry. If the Healthcare Effectiveness Data and Information Set does not generally apply to a health benefit plan, the department shall require submission of data in accordance with other methods. This subsection does not relieve a health care facility that provides services under a health benefit plan from the requirements of this chapter. Information submitted under this section is subject to Section 108.011 but is not subject to Section 108.010.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 9, 14, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 4, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 3, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.03, eff. September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.07(b), eff. September 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 344 (H.B. 764), Sec. 1, eff. September 1, 2015.

Sec. 108.0095. NOTIFICATION OF DATA COLLECTION. (a) A provider shall provide to a patient whose data is being collected under this chapter written notice on a form prescribed by the department of the collection of the patient's data for health care

purposes.

(b) The notice provided under this section must include the name of the agency or entity receiving the data and of an individual within the agency or entity whom the patient may contact regarding the collection of data.

(c) The department shall include the notice required under this section on an existing department form and make the form available on the department's Internet website.

Added by Acts 2015, 84th Leg., R.S., Ch. 344 (H.B. 764), Sec. 2, eff. September 1, 2015.

Sec. 108.010. COLLECTION AND DISSEMINATION OF PROVIDER QUALITY DATA. (a) Subject to Section 108.009, the department shall collect data reflecting provider quality based on a methodology and review process established through the executive commissioner's rulemaking process. The methodology shall identify and measure quality standards and adhere to any federal mandates.

(b) The department shall study and analyze initial methodologies for obtaining provider quality data, including outcome data.

(c) The department shall test the methodology by collecting provider quality data for one year, subject to Section 108.009. The department may test using pilot methodologies. After collecting provider quality data for one year, the department shall report findings applicable to a provider to that provider and allow the provider to review and comment on the initial provider quality data applicable to that provider. The department shall verify the accuracy of the data during this review and revision process. After the review and revision process, provider quality data for subsequent reports shall be published and made available to the public, on a time schedule the department considers appropriate.

(d) If the department determines that provider quality data to be published under Subsection (c) does not provide the intended result or is inaccurate or inappropriate for dissemination, the department is not required to publish the data or reports based in whole or in part on the data. This subsection does not affect the release of public use data in accordance with Section 108.011 or the release of information submitted under Section 108.009(o).

(e) The executive commissioner shall adopt rules allowing a provider to submit concise written comments regarding any specific provider quality data to be released concerning the provider. The department shall make the comments available to the public at the office of the department and in an electronic form accessible through the Internet. The comments shall be attached to any public release of provider quality data. Providers shall submit the comments to the department to be attached to the public release of provider quality data in the same format as the provider quality data that is to be released.

(f) The methodology adopted for measuring quality shall include case-mix qualifiers, severity adjustment factors, adjustments for medical education and research, and any other factors necessary to accurately reflect provider quality.

(g) In addition to the requirements of this section, any release of provider quality data shall comply with Sections 108.011(e) and (f).

(h) A provider quality data report may not identify an individual physician by name, but must identify the physician by the uniform physician identifier designated by the department under Section 108.011(c).

(i) The department shall release provider quality data in an aggregate form without uniform physician identifiers when the cell size of the data is below the minimum size established by department rule that would enable identification of an individual patient or physician.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 10, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 5, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.011. DISSEMINATION OF PUBLIC USE DATA AND DEPARTMENT PUBLICATIONS. (a) The department shall promptly provide public use data and data collected in accordance with Section 108.009(o) to those requesting it. The public use data does not include provider quality data prescribed by Section 108.010 or confidential data

prescribed by Section 108.013.

(b) Subject to the restrictions on access to department data prescribed by Sections 108.010 and 108.013, and using the public use data and other data, records, and matters of record available to it, the department shall prepare and issue reports to the governor, the legislature, and the public as provided by this section and Section 108.006(a). The department must issue the reports at least annually.

(c) Subject to the restrictions on access to department data prescribed by Sections 108.010 and 108.013, the department shall use public use data to prepare and issue reports that provide information relating to providers, such as the incidence rate of selected medical or surgical procedures. The reports must provide the data in a manner that identifies individual providers, including individual physicians, and that identifies and compares data elements for all providers. Individual physicians may not be identified by name, but shall be identified by uniform physician identifiers. The executive commissioner by rule shall designate the characters to be used as uniform physician identifiers.

(c-1) The department shall use public use data to prepare and issue reports that provide information for review and analysis by the commission relating to services that are provided in a niche hospital, as defined by Section 105.002, Occupations Code, and that are provided by a physician with an ownership interest in the niche hospital.

(c-2) Subsection (c-1) does not apply to an ownership interest in publicly available shares of a registered investment company, such as a mutual fund, that owns publicly traded equity securities or debt obligations issued by a niche hospital or an entity that owns the niche hospital.

(d) The executive commissioner shall adopt procedures to establish the accuracy and consistency of the public use data before releasing the public use data to the public. The department may adopt additional procedures as the department determines necessary. The procedures adopted under this subsection must meet available best practices and national standards for public research on and consumer use of health care data collected by governmental agencies.

(e) If public use data is requested from the department about a specific provider, the department shall notify the provider about the release of the data. This subsection does not authorize the provider to interfere with the release of that data.

(f) A report issued by the department shall include a reasonable review and comment period for the affected providers before public release of the report.

(g) The executive commissioner shall adopt rules allowing a provider to submit concise written comments regarding any specific public use data to be released concerning the provider. The department shall make the comments available to the public at the office of the department and in an electronic form accessible through the Internet. The comments shall be attached to any public release of the public use data. Providers shall submit the comments to the department to be attached to the public release of public use data in the same format as the public use data that is to be released.

(h) Tapes containing public use data and provider quality reports that are released to the public must include general consumer education material, including an explanation of the benefits and limitations of the information provided in the public use data and provider quality reports.

(i) The department shall release public use data in an aggregate form without uniform physician identifiers when the cell size of the data is below the minimum size established by department rule that would enable identification of an individual patient or physician.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 11, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 6, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 836 (S.B. 872), Sec. 4, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 344 (H.B. 764), Sec. 3, eff. September 1, 2015.

Sec. 108.012. COMPUTER ACCESS TO DATA. (a) The department shall provide a means for computer-to-computer access to the public use data. All reports shall maintain patient confidentiality as provided by Section 108.013.

(b) The department may charge a person requesting public use or

provider quality data a fee for the data. The fees may reflect the quantity of information provided and the expense incurred by the department in collecting and providing the data. The executive commissioner by rule shall set the fees at a level that will raise revenue sufficient for the operation of the department. The department may not charge a fee for providing public use data to another state agency.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 11, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.013. CONFIDENTIALITY AND GENERAL ACCESS TO DATA. (a) The data received by the department under this chapter shall be used by the department and commission only for the benefit of the public. Subject to specific limitations established by this chapter and department rule, the department shall make determinations on requests for information in favor of access.

(b) The executive commissioner by rule shall designate the characters to be used as uniform patient identifiers. The basis for assignment of the characters and the manner in which the characters are assigned are confidential.

(c) Unless specifically authorized by this chapter, the department may not release and a person or entity may not gain access to any data obtained under this chapter:

(1) that could reasonably be expected to reveal the identity of a patient;

(2) that could reasonably be expected to reveal the identity of a physician;

(3) disclosing provider discounts or differentials between payments and billed charges;

(4) relating to actual payments to an identified provider made by a payer; or

(5) submitted to the department in a uniform submission format that is not included in the public use data set established under Sections 108.006(f) and (g), except in accordance with Section

108.0135.

(d) Except as provided by this section, all data collected and used by the department under this chapter is subject to the confidentiality provisions and criminal penalties of:

(1) Section 311.037;

(2) Section 81.103; and

(3) Section 159.002, Occupations Code.

(e) Data on patients and compilations produced from the data collected that identify patients are not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this section; or

(2) admissible in any civil, administrative, or criminal proceeding.

(f) Data on physicians and compilations produced from the data collected that identify physicians are not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this section; or

(2) admissible in any civil, administrative, or criminal proceeding.

(g) Unless specifically authorized by this chapter, the department may not release data elements in a manner that will reveal the identity of a patient. The department may not release data elements in a manner that will reveal the identity of a physician.

(h) Subsections (c) and (g) do not prohibit the release of a uniform physician identifier in conjunction with associated public use data in accordance with Section 108.011 or a provider quality report in accordance with Section 108.010.

(i) Notwithstanding any other law and except as provided by this section, the department may not provide information made confidential by this section to any other agency of this state.

(j) The executive commissioner shall by rule develop and implement a mechanism to comply with Subsections (c)(1) and (2).

(k) The department may disclose data collected under this chapter that is not included in public use data to any department or commission program if the disclosure is reviewed and approved by the institutional review board under Section 108.0135.

(l) Confidential data collected under this chapter that is disclosed to a department or commission program remains subject to

the confidentiality provisions of this chapter and other applicable law. The department shall identify the confidential data that is disclosed to a program under Subsection (k). The program shall maintain the confidentiality of the disclosed confidential data.

(m) The following provisions do not apply to the disclosure of data to a department or commission program:

(1) Section 81.103;

(2) Sections 108.010(g) and (h);

(3) Sections 108.011(e) and (f);

(4) Section 311.037; and

(5) Section 159.002, Occupations Code.

(n) Nothing in this section authorizes the disclosure of physician identifying data.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 12, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 7, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.776, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.04, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 344 (H.B. 764), Sec. 4, eff. September 1, 2015.

Sec. 108.0131. LIST OF PURCHASERS OR RECIPIENTS OF DATA. The department shall post on the department's Internet website a list of each entity that purchases or receives data collected under this chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.06, eff. September 28, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.0132. PROHIBITED CHARGE TO CERTAIN STATE AGENCIES FOR DATA. The department may not charge a fee to the commission or any other health and human services agency for the use of any data collected under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 344 (H.B. 764), Sec. 5, eff. September 1, 2015.

Sec. 108.0135. INSTITUTIONAL REVIEW BOARD. (a) The department shall establish an institutional review board to review and approve requests for access to data not contained in public use data. The members of the institutional review board must have experience and expertise in ethics, patient confidentiality, and health care data.

(b) To assist the institutional review board in determining whether to approve a request for information, the executive commissioner shall adopt rules similar to the federal Centers for Medicare and Medicaid Services' guidelines on releasing data.

(c) A request for information other than public use data must be made on the form prescribed by the department.

(d) Any approval to release information under this section must require that the confidentiality provisions of this chapter be maintained and that any subsequent use of the information conform to the confidentiality provisions of this chapter.

Added by Acts 1999, 76th Leg., ch. 802, Sec. 8, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 6, eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.05, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.0136. REPORT; NOTIFICATION OF CYBER ATTACK. (a) The department shall prepare for the commissioner an annual report describing the security measures taken to protect data collected under this chapter and any breaches, attempted cyber attacks, and security issues related to the data that are encountered during the calendar year.

(b) The report described by this section is not subject to Chapter 552, Government Code, but may be released on request to a member of the legislature.

(c) If a cyber attack occurs targeting data collected under this chapter, the department shall notify the Department of Public Safety of the State of Texas and the Federal Bureau of Investigation of the attack.

Added by Acts 2015, 84th Leg., R.S., Ch. 344 (H.B. 764), Sec. 6, eff. September 1, 2015.

Sec. 108.014. CIVIL PENALTY. (a) A person who knowingly or negligently releases data in violation of this chapter is liable for a civil penalty of not more than $10,000.

(b) A person who fails to supply available data under Sections 108.009 and 108.010 is liable for a civil penalty of not less than $1,000 or more than $10,000 for each act of violation.

(c) The attorney general, at the request of the department, shall enforce this chapter. The venue of an action brought under this section is in Travis County.

(d) A civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the general revenue fund to the credit of the health care information account.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 802, Sec. 9, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.0141. CRIMINAL PENALTY. (a) A person who knowingly accesses data in violation of this chapter or who with criminal negligence releases data in violation of this chapter commits an offense.

(b) An offense under this section is a state jail felony.

Added by Acts 1997, 75th Leg., ch. 261, Sec. 13, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 802, Sec. 10, eff. Sept. 1, 1999.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.015. CONFLICT OF INTEREST. The department may not accept a donation from a person required to provide data under this chapter or from a person or business entity who provides goods or services to the department for compensation.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.016. SUNSET REVIEW. Unless the department is continued in existence in accordance with Chapter 325, Government Code (Texas Sunset Act), after the review required by Section 1001.003, this chapter expires on the date the department is abolished under that section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 919 (H.B. 1394), Sec. 2, eff. June 14, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 4.02, eff. September 1, 2015.

CHAPTER 109. STATEWIDE BEHAVIORAL HEALTH COORDINATING COUNCIL

Sec. 109.001. DEFINITION. In this chapter, "council" means the Statewide Behavioral Health Coordinating Council.

Added by Acts 2019, 86th Leg., R.S., Ch. 1167 (H.B. 3285), Sec. 5, eff. September 1, 2019.

Sec. 109.002. STATEWIDE BEHAVIORAL HEALTH STRATEGIC PLAN. In preparing the statewide behavioral health strategic plan, the council

shall incorporate, as a separate part of that plan, strategies regarding substance abuse issues that are developed by the council in cooperation with the Texas Medical Board and the Texas State Board of Pharmacy, including strategies for:

(1) addressing the challenges of existing prevention, intervention, and treatment programs;

(2) evaluating substance use disorder prevalence involving the abuse of opioids;

(3) identifying substance abuse treatment services availability and gaps; and

(4) collaborating with state agencies to expand substance abuse treatment services capacity in this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 1167 (H.B. 3285), Sec. 5, eff. September 1, 2019.

CHAPTER 110. TASK FORCE ON PATIENT SOLICITATION

Sec. 110.001. DEFINITION. In this chapter, "task force" means the task force on patient solicitation created under this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 527 (H.B. 4454), Sec. 1, eff. September 1, 2025.

Sec. 110.002. PURPOSE. The task force is established to study and make recommendations on preventing conduct that violates Chapter 164 of this code or Chapter 102, Occupations Code, and to improve enforcement of those chapters.

Added by Acts 2025, 89th Leg., R.S., Ch. 527 (H.B. 4454), Sec. 1, eff. September 1, 2025.

Sec. 110.003. MEMBERSHIP. (a) The task force is composed of eight members as follows:

(1) four members the executive commissioner appoints; and

(2) four members the attorney general appoints.

(b) Each task force member must have expertise in the field of health care or advertising.

(c) Task force members serve without compensation.

Added by Acts 2025, 89th Leg., R.S., Ch. 527 (H.B. 4454), Sec. 1, eff. September 1, 2025.

Sec. 110.004. ADMINISTRATIVE ATTACHMENT. The task force is administratively attached to the commission.

Added by Acts 2025, 89th Leg., R.S., Ch. 527 (H.B. 4454), Sec. 1, eff. September 1, 2025.

Sec. 110.005. ACCESS TO INFORMATION; CONFIDENTIALITY OF PROVIDED INFORMATION. The attorney general and the commission shall provide the task force with information the task force requests to allow the task force to fulfill its duties. Information provided under this section is confidential and is not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2025, 89th Leg., R.S., Ch. 527 (H.B. 4454), Sec. 1, eff. September 1, 2025.

Sec. 110.006. REPORT. Not later than December 1 of each even-numbered year, the task force shall submit to the legislature a report that includes:

(1) a summary of civil or criminal actions brought on behalf of the state and administrative actions by state regulatory agencies in the preceding biennium for conduct that violates Chapter 164 of this code or Chapter 102, Occupations Code; and

(2) legislative recommendations for preventing conduct that violates Chapter 164 of this code or Chapter 102, Occupations Code, and improving enforcement of those chapters.

Added by Acts 2025, 89th Leg., R.S., Ch. 527 (H.B. 4454), Sec. 1, eff. September 1, 2025.

CHAPTER 113. TEXAS CHILD MENTAL HEALTH CARE CONSORTIUM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 113.0001. DEFINITIONS. In this chapter:

(1) "Community mental health provider" means an entity that

provides mental health care services at a local level, including a local mental health authority.

(2) "Consortium" means the Texas Child Mental Health Care Consortium.

(3) "Executive committee" means the executive committee of the consortium.

(4) "Rural health clinic" means a rural health clinic, as defined by 42 C.F.R. Section 491.2, that is:

(A) accredited by an accreditation organization, a participant in the federal Medicare program, or both; and

(B) located in a county that does not contain a general hospital or special hospital, as those terms are defined by Section 241.003.

(5) "Rural hospital" has the meaning assigned by Section 548.0351, Government Code.

(6) "Rural hospital organization" has the meaning assigned by Section 526.0321, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 707 (H.B. 18), Sec. 11, eff. June 20, 2025.

SUBCHAPTER B. CONSORTIUM

Sec. 113.0051. ESTABLISHMENT; PURPOSE. The Texas Child Mental Health Care Consortium is established to:

(1) leverage the expertise and capacity of the health-related institutions of higher education listed in Section 113.0052(1) to address urgent mental health challenges and improve the mental health care system in this state in relation to children and adolescents; and

(2) enhance the state's ability to address mental health care needs of children and adolescents through collaboration of the health-related institutions of higher education listed in Section 113.0052(1).

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

Sec. 113.0052. COMPOSITION. The consortium is composed of:

(1) the following health-related institutions of higher education:

(A) Baylor College of Medicine;

(B) Texas A&M University System Health Science Center;

(C) Texas Tech University Health Sciences Center;

(D) Texas Tech University Health Sciences Center at El Paso;

(E) University of North Texas Health Science Center at Fort Worth;

(F) The Dell Medical School at The University of Texas at Austin;

(G) The University of Texas Medical Branch at Galveston;

(H) The University of Texas Health Science Center at Houston;

(I) The University of Texas Health Science Center at San Antonio;

(J) The University of Texas Rio Grande Valley School of Medicine;

(K) The University of Texas Health Science Center at Tyler; and

(L) The University of Texas Southwestern Medical Center;

(2) the commission;

(3) the Texas Higher Education Coordinating Board;

(4) three nonprofit organizations that focus on mental health care, designated by a majority of the members described by Subdivision (1);

(5) each regional education service center established under Chapter 8, Education Code, that the executive commissioner identifies as a center predominately serving school districts classified as rural by the National Center for Education Statistics of the United States Department of Education; and

(6) any other entity that the executive committee considers necessary.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 150 (S.B. 850), Sec. 1, eff. September 1, 2023.

Sec. 113.0053. ADMINISTRATIVE ATTACHMENT. The consortium is administratively attached to the Texas Higher Education Coordinating Board for the purpose of receiving and administering appropriations and other funds under this chapter. The board is not responsible for providing to the consortium staff, human resources, contract monitoring, purchasing, or any other administrative support services.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

SUBCHAPTER C. EXECUTIVE COMMITTEE

Sec. 113.0101. EXECUTIVE COMMITTEE COMPOSITION. (a) The consortium is governed by an executive committee composed of the following members:

(1) the chair of the academic department of psychiatry of each of the health-related institutions of higher education listed in Section 113.0052(1) or a licensed psychiatrist, including a child-adolescent psychiatrist, designated by the chair to serve in the chair's place;

(2) a representative of the commission with expertise in the delivery of mental health care services, appointed by the executive commissioner;

(3) a representative of the commission with expertise in mental health facilities, appointed by the executive commissioner;

(4) a representative of the Texas Higher Education Coordinating Board, appointed by the commissioner of the coordinating board;

(5) a representative of each nonprofit organization described by Section 113.0052(4) that is part of the consortium, designated by a majority of the members described by Subdivision (1);

(6) a representative of a hospital system in this state, designated by a majority of the members described by Subdivision (1);

(7) a representative selected from among the regional education service centers described by Section 113.0052(5), appointed by the executive commissioner; and

(8) any other representative designated:

(A) under Subsection (b); or

(B) by a majority of the members described by Subdivision (1) at the request of the executive committee.

(b) The president of each of the health-related institutions of higher education listed in Section 113.0052(1) may designate a representative to serve on the executive committee.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 150 (S.B. 850), Sec. 2, eff. September 1, 2023.

Sec. 113.0102. TERMS; VACANCY. (a) Except as provided by Subsection (b), the executive committee shall establish:

(1) the terms of executive committee members; and

(2) procedures for the reappointment of members.

(b) An executive committee member described by Section 113.0101(a)(7) serves a two-year term and is eligible for reappointment.

(c) A vacancy on the executive committee shall be filled in the same manner as the original appointment.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 150 (S.B. 850), Sec. 3, eff. September 1, 2023.

Sec. 113.0103. PRESIDING OFFICER. The executive committee shall elect a presiding officer from among the membership of the executive committee.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

Sec. 113.0104. STATEWIDE BEHAVIORAL HEALTH COORDINATING

COUNCIL. The consortium shall designate a member of the executive committee to represent the consortium on the statewide behavioral health coordinating council.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

Sec. 113.0105. GENERAL DUTIES. The executive committee shall:

(1) coordinate the provision of funding to the health-related institutions of higher education listed in Section 113.0052(1) to carry out the purposes of this chapter;

(2) establish procedures and policies for the administration of funds under this chapter;

(3) monitor funding and agreements entered into under this chapter to ensure recipients of funding comply with the terms and conditions of the funding and agreements; and

(4) establish procedures to document compliance by executive committee members and staff with applicable laws governing conflicts of interest.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

SUBCHAPTER D. ACCESS TO CARE

Sec. 113.0151. CHILD PSYCHIATRY ACCESS NETWORK AND TELEMEDICINE AND TELEHEALTH PROGRAMS. (a) The consortium shall establish a network of comprehensive child psychiatry access centers. A center established under this section shall:

(1) be located at a health-related institution of higher education listed in Section 113.0052(1); and

(2) provide consultation services and training opportunities for pediatricians and primary care providers operating in the center's geographic region to better care for children and youth with behavioral health needs.

(b) The consortium shall establish or expand telemedicine or telehealth programs for identifying and assessing behavioral health needs and providing access to mental health care services. The consortium shall implement this subsection with a focus on the behavioral health needs of at-risk children and adolescents.

(c) A health-related institution of higher education listed in Section 113.0052(1) may enter into a memorandum of understanding with a community mental health provider to:

(1) establish a center under Subsection (a); or

(2) establish or expand a program under Subsection (b).

(d) The consortium shall leverage the resources of a hospital system under Subsection (a) or (b) if the hospital system:

(1) provides consultation services and training opportunities for pediatricians and primary care providers that are consistent with those described by Subsection (a); and

(2) has an existing telemedicine or telehealth program for identifying and assessing the behavioral health needs of and providing access to mental health care services for children and adolescents.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

Sec. 113.0152. CONSENT REQUIRED FOR SERVICES TO MINOR. (a) A person may provide mental health care services to a child younger than 18 years of age through a program established under this subchapter only if the person obtains the written consent of the parent or legal guardian of the child.

(b) The consortium shall develop and post on its Internet website a model form for a parent or legal guardian to provide consent under this section.

(c) This section does not apply to services provided by a school counselor in accordance with Section 33.005, 33.006, or 33.007, Education Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

Sec. 113.0153. REIMBURSEMENT FOR SERVICES. A child psychiatry access center established under Section 113.0151(a) may not submit an insurance claim or charge a pediatrician or primary care provider a fee for providing consultation services or training opportunities under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

SUBCHAPTER D-1. RURAL PEDIATRIC MENTAL HEALTH CARE ACCESS PROGRAM

Sec. 113.0181. MENTAL HEALTH CARE ACCESS PROGRAM FOR RURAL HOSPITALS AND RURAL HEALTH CLINICS. (a) Using the network of comprehensive child psychiatry access centers established under Section 113.0151, the consortium shall establish or expand provider consultation programs to assist health care practitioners providing services at rural hospitals or rural health clinics to:

(1) identify and assess the behavioral health needs of pediatric and perinatal patients seeking services at the hospital or clinic; and

(2) identify necessary mental health care services to improve access to mental health care services for pediatric and perinatal patients seeking services at the hospital or clinic.

(b) The consortium, in collaboration with a rural hospital organization, shall develop a plan to establish, under the authority provided in Section 113.0151(b) and not later than September 1, 2026, telemedicine or telehealth programs to identify and assess behavioral health needs and provide access to mental health care services for pediatric patients seeking services at rural hospitals or rural health clinics. The plan may include limitations on the hours of the day during which services provided by the telemedicine or telehealth programs are available. The plan shall provide access to mental health care services for pediatric patients seeking services at the rural hospital or rural health clinic at the same or a substantially similar level as the mental health care services provided to students attending school in a school district for which the consortium has made available mental health care services under this chapter.

(c) On or after September 1, 2026, and subject to available appropriations, the consortium shall establish a program establishing or expanding telemedicine or telehealth programs to identify and assess behavioral health needs and provide access to mental health care services for pediatric patients seeking services at rural hospitals or rural health clinics.

Added by Acts 2025, 89th Leg., R.S., Ch. 707 (H.B. 18), Sec. 12, eff. June 20, 2025.

Sec. 113.0182. CONSENT REQUIRED FOR SERVICES TO MINOR. (a) A person may provide mental health care services to a child younger than 18 years of age through a program established under this subchapter only if the person obtains the written consent of the parent or legal guardian of the child or, if the parent or legal guardian is not known or available, the adult with whom the child primarily resides.

(b) The consortium shall develop and post on the consortium's Internet website a model form for a person to provide consent under this section.

(c) Written consent obtained under Subsection (a) is not valid if the consent authorizes the provision of a mental health care service to a child that affirms the child's perception of the child's gender if that perception is inconsistent with the child's biological sex.

Added by Acts 2025, 89th Leg., R.S., Ch. 707 (H.B. 18), Sec. 12, eff. June 20, 2025.

SUBCHAPTER E. CHILD MENTAL HEALTH WORKFORCE

Sec. 113.0201. CHILD PSYCHIATRY WORKFORCE EXPANSION. (a) The executive committee may provide funding to a health-related institution of higher education listed in Section 113.0052(1) for the purpose of funding:

(1) two full-time psychiatrists who treat children and adolescents to serve as academic medical director at a facility operated by a community mental health provider; and

(2) two new resident rotation positions.

(b) An academic medical director described by Subsection (a) shall collaborate and coordinate with a community mental health provider to expand the amount and availability of mental health care resources by developing training opportunities for residents and supervising residents at a facility operated by the community mental health provider.

(c) An institution of higher education that receives funding under Subsection (a) shall require that psychiatric residents participate in rotations through the facility operated by the

community mental health provider in accordance with Subsection (b).

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

Sec. 113.0202. CHILD AND ADOLESCENT PSYCHIATRY FELLOWSHIP. (a) The executive committee may provide funding to a health-related institution of higher education listed in Section 113.0052(1) for the purpose of funding a physician fellowship position that will lead to a medical specialty in the diagnosis and treatment of psychiatric and associated behavioral health issues affecting children and adolescents.

(b) The funding provided to a health-related institution of higher education under this section must be used to increase the number of fellowship positions at the institution and may not be used to replace existing funding for the institution.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

SUBCHAPTER F. MISCELLANEOUS PROVISIONS

Text of section as amended by Acts 2025, 89th Leg., R.S., Ch. 1066 (H.B. 6), Sec. 20

For text of section as amended by Acts 2025, 89th Leg., R.S., Ch. 707 (H.B. 18), Sec. 13, see other Sec. 113.0251.

Sec. 113.0251. BIENNIAL REPORT. Not later than December 1 of each even-numbered year, the consortium shall prepare and submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committee of each house of the legislature with primary jurisdiction over behavioral health issues and post on its Internet website a written report that outlines:

(1) the activities and objectives of the consortium;

(2) the health-related institutions of higher education listed in Section 113.0052(1) that receive funding by the executive committee;

(3) during the preceding two years, the percentage of participants in the Texas Child Health Access through Telemedicine program operated by the consortium:

(A) who were prescribed a psychotropic drug by the consortium;

(B) who were referred to a health provider for further mental health services;

(C) who completed program treatment goals; and

(D) who were provided information on consortium research programs on the participant's discharge from the program;

(4) during the preceding two years, the percentage of potential participants:

(A) for whom a parent or legal guardian declined to give informed consent to participate in the program; and

(B) who were referred to but not enrolled in the program because the potential participant needed more emergent care; and

(5) any legislative recommendations based on the activities and objectives described by Subdivision (1).

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 1066 (H.B. 6), Sec. 20, eff. June 20, 2025.

Text of section as amended by Acts 2025, 89th Leg., R.S., Ch. 707 (H.B. 18), Sec. 13

For text of section as amended by Acts 2025, 89th Leg., R.S., Ch. 1066 (H.B. 6), Sec. 20, see other Sec. 113.0251.

Sec. 113.0251. BIENNIAL REPORT. Not later than December 1 of each even-numbered year, the consortium shall prepare and submit to the governor, the lieutenant governor, the speaker of the house of representatives, the standing committee of each house of the legislature with primary jurisdiction over behavioral health issues, and the Legislative Budget Board and post on its Internet website a written report that outlines:

(1) the activities and objectives of the consortium;

(2) the health-related institutions of higher education listed in Section 113.0052(1) that receive funding by the executive committee;

(3) the rural hospitals and rural health clinics to which

the program established under Section 113.0181 provided mental health access services;

(4) the cost to maintain the mental health care access program established under Subchapter D-1; and

(5) any legislative recommendations based on the activities and objectives described by Subdivision (1).

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 707 (H.B. 18), Sec. 13, eff. June 20, 2025.

Sec. 113.0252. APPROPRIATION CONTINGENCY. The consortium is required to implement a provision of this chapter only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the consortium may, but is not required to, implement a provision of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

CHAPTER 117. PUBLIC HEALTH FUNDING AND POLICY COMMITTEE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 117.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(46), eff. April 2, 2015.

(2) "Committee" means the Public Health Funding and Policy Committee established under Section 117.051.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(46), eff. April 2, 2015.

(4) "Local health department" means a local health department established under Subchapter D, Chapter 121.

(5) "Local health entity" means a local health unit, a local health department, or a public health district.

(6) "Local health unit" has the meaning assigned by Section 121.004.

(7) "Public health district" means a health district

established under Subchapter E, Chapter 121.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(46), eff. April 2, 2015.

Sec. 117.002. APPLICATION OF SUNSET ACT. The Public Health Funding and Policy Committee is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished and this chapter expires September 1, 2027.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 4.06, eff. June 10, 2019.

Sec. 117.003. ADMINISTRATIVE COSTS. To the extent that a term or condition of a federal grant or federal law does not limit the use of federal grant money, the department or a local health entity may use federal grant money to pay the administrative costs incurred by the department or the local health entity in implementing and administering this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

SUBCHAPTER B. ESTABLISHMENT OF COMMITTEE

Sec. 117.051. ESTABLISHMENT OF COMMITTEE. The commissioner shall establish the Public Health Funding and Policy Committee within the department.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.052. APPOINTMENT OF MEMBERS. (a) The commissioner shall appoint nine members to the committee as follows:

(1) two regional health directors, each of whom is serving as a health authority in a municipality or county;

(2) one local health entity representative of a municipality or county with a population of 50,000 or less;

(3) one local health entity representative from a municipality or county with a population greater than 50,000 but less than 250,000;

(4) one local health entity representative from a municipality or county with a population of at least 250,000;

(5) two local health entity representatives, each of whom serves in a municipality or county as the health authority; and

(6) two representatives of schools of public health at institutions of higher education in this state.

(b) In making appointments under Subsections (a)(2), (3), (4), and (5), the commissioner shall select the members from nominations by associations representing local health departments, county governments, and municipal governments.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.053. TERMS; VACANCY. (a) Committee members serve staggered six-year terms, with the terms of three members expiring on February 1 of each odd-numbered year.

(b) If a vacancy occurs on the committee, a person shall be appointed to fill the vacancy for the unexpired term in the same manner as the original appointment.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.054. COMPENSATION AND REIMBURSEMENT. A committee member is not entitled to compensation for service on the committee and is not entitled to reimbursement for any travel expenses.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.055. PRESIDING OFFICER. The presiding officer is elected by a majority vote of all the committee members.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.056. MEETINGS. (a) The committee shall meet at least quarterly or more frequently at the call of the presiding officer.

(b) To ensure appropriate representation from all areas of this state, the committee may meet by videoconference or telephone conference call. A meeting held by videoconference or telephone conference call under this subsection must comply with the requirements applicable to a telephone conference call under Sections 551.125(c), (d), (e), and (f), Government Code. Sections 551.125(b) and 551.127, Government Code, do not apply to the committee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

SUBCHAPTER C. DUTIES OF COMMITTEE

Sec. 117.101. GENERAL DUTIES OF COMMITTEE. (a) The committee shall:

(1) define the core public health services a local health entity should provide in a county or municipality;

(2) evaluate public health in this state and identify initiatives for areas that need improvement;

(3) identify all funding sources available for use by local health entities to perform core public health functions;

(4) establish public health policy priorities for this state; and

(5) at least annually, make formal recommendations to the department regarding:

(A) the use and allocation of funds available exclusively to local health entities to perform core public health functions;

(B) ways to improve the overall public health of citizens in this state;

(C) methods for transitioning from a contractual relationship between the department and the local health entities to a cooperative-agreement relationship between the department and the local health entities; and

(D) methods for fostering a continuous collaborative relationship between the department and the local health entities.

(b) Recommendations made under Subsection (a)(5)(A) must be in accordance with:

(1) prevailing epidemiological evidence, variations in geographic and population needs, best practices, and evidence-based interventions related to the populations to be served;

(2) state and federal law; and

(3) federal funding requirements.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.102. PUBLIC TESTIMONY. (a) At least semiannually, the committee shall:

(1) invite public health stakeholders, including federal public health officials, county and municipal governments, schools of public health at institutions of higher education, and federally qualified health centers, to give oral or written testimony to the committee; and

(2) provide opportunities for the general public to give oral or written testimony to the committee.

(b) The committee shall consult with public health stakeholders to carry out the general duties of the committee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.103. ANNUAL REPORT. Beginning in 2012, not later than November 30 of each year the committee shall file a report on the implementation of this chapter with the governor, the lieutenant governor, and the speaker of the house of representatives.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.104. SUPPORT STAFF. Using existing personnel and videoconferencing equipment, local health entities or their designees may assist the committee in the performance of its duties under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.105. OPEN MEETINGS ACT. Except as provided by Section 117.056, the committee is subject to Chapter 551, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

Sec. 117.151. ANNUAL REPORT. (a) Beginning in 2012, not later than November 30 of each year the department shall file an annual report with the governor, the lieutenant governor, and the speaker of the house of representatives detailing:

(1) the implementation of the committee's recommendations described in Section 117.101(a)(5); and

(2) an explanation of the department's reasons for not implementing a recommendation.

(b) A decision by the department not to implement a recommendation of the committee must be based on:

(1) a lack of available funding;

(2) evidence that the recommendation is not in accordance with prevailing epidemiological evidence, variations in geographic and population needs, best practices, or evidence-based interventions related to the populations to be served;

(3) evidence that implementing the recommendation would violate state or federal law; or

(4) evidence that the recommendation would violate federal funding requirements.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.152. COLLABORATIVE RELATIONSHIP WITH LOCAL HEALTH ENTITIES. The department shall establish a continuous collaborative relationship with local health departments.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

CHAPTER 118. PALLIATIVE CARE INTERDISCIPLINARY ADVISORY COUNCIL

Sec. 118.001. DEFINITION. In this chapter, "advisory council" means the Palliative Care Interdisciplinary Advisory Council established under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.002. ESTABLISHMENT; PURPOSE. The commission shall establish the Palliative Care Interdisciplinary Advisory Council to assess the availability of patient-centered and family-focused palliative care in this state.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.004. MEMBERS. (a) The advisory council is composed of the members appointed by the executive commissioner as provided by this section.

(b) The advisory council must include:

(1) at least five physician members, including two who are board certified in hospice and palliative care and one who is board certified in pain management;

(2) three palliative care practitioner members, including two advanced practice registered nurses who are board certified in hospice and palliative care and one physician assistant who has experience providing palliative care;

(3) four health care professional members, including a nurse, a social worker, a pharmacist, and a spiritual care

professional, with:

(A) experience providing palliative care to pediatric, youth, or adult populations;

(B) expertise in palliative care delivery in an inpatient, outpatient, or community setting; or

(C) expertise in interdisciplinary palliative care;

(4) at least three members with experience as an advocate for patients and the patients' family caregivers and who are independent of a hospital or other health care facility, including at least one member who is a representative of an established patient advocacy organization; and

(5) ex officio representatives of the commission or another state agency as the executive commissioner determines appropriate.

(c) Advisory council members serve at the pleasure of the executive commissioner.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.005. TERMS; VACANCY. (a) An advisory council member serves a four-year term.

(b) If a vacancy occurs on the advisory council, a person shall be appointed to fill the vacancy for the unexpired term.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.006. OFFICERS. Advisory council members shall:

(1) elect a chair and a vice chair; and

(2) establish the duties of the chair and the vice chair.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.007. MEETINGS. The executive commissioner shall set a time and place for regular meetings, which must occur at least twice each year.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.008. COMPENSATION AND REIMBURSEMENT. A member of the advisory council may not receive compensation for service on the advisory council but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the advisory council, as provided by the General Appropriations Act.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.009. DUTIES. The advisory council shall consult with and advise the commission on matters related to the establishment, maintenance, operation, and outcome evaluation of the palliative care consumer and professional information and education program established under Section 118.011.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.010. REPORT. Not later than October 1 of each even-numbered year, the advisory council shall submit a biennial report to the standing committees of the senate and the house of representatives with primary jurisdiction over health matters on:

(1) the advisory council's assessment of the availability of palliative care in this state for patients in the early stages of serious disease;

(2) the advisory council's analysis of barriers to greater access to palliative care; and

(3) the advisory council's analysis of the policies, practices, and protocols in this state concerning patients' rights related to palliative care, including:

(A) whether a palliative care team member may introduce palliative care options to a patient without the consent of the patient's attending physician;

(B) the practices and protocols for discussions between a palliative care team member and a patient on life-sustaining

treatment or advance directives decisions; and

(C) the practices and protocols on informed consent and disclosure requirements for palliative care services.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.011. INFORMATION AND EDUCATION PROGRAM. (a) The commission, in consultation with the advisory council, shall establish a statewide palliative care consumer and professional information and education program to ensure that comprehensive and accurate information and education about palliative care are available to the public, health care providers, and health care facilities.

(b) The commission shall make available on its Internet website information and resources regarding palliative care, including:

(1) links to external resources regarding palliative care;

(2) continuing education opportunities for health care providers;

(3) information about palliative care delivery in the home, primary, secondary, and tertiary environments; and

(4) consumer educational materials regarding palliative care, including hospice care.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.012. PROTECTIONS. Notwithstanding any other law, the advisory council and the information and education program established under this chapter do not create a cause of action or create a standard of care, obligation, or duty that provides a basis for a cause of action.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

CHAPTER 119. TEXAS HEALTH IMPROVEMENT NETWORK

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 119.001. DEFINITION. In this chapter, "network" means the Texas Health Improvement Network established under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.001 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

SUBCHAPTER B. NETWORK

Sec. 119.051. ESTABLISHMENT; PURPOSE.(a) The Texas Health Improvement Network is established to address urgent health care challenges and improve the health care system in this state and the nation and to develop, based on population health research, health care initiatives, policies, and best practices.

(b) The purpose of the network is to:

(1) reduce the per capita costs of health care;

(2) improve the individual experience of health care, including the quality of care and patient satisfaction; and

(3) improve the health of residents of this state.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.051 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.052. COMPOSITION OF NETWORK. The network consists of experts in:

(1) general public health and other medical fields;

(2) mental health;

(3) nursing;

(4) pharmacy;

(5) social work;

(6) health economics;

(7) health policy and law;

(8) epidemiology;

(9) biostatistics;

(10) health informatics;

(11) health services research;
(12) engineering; and
(13) computer science.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.052 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.053. DUTIES. (a) The network shall establish as its primary goals:

(1) evaluating and eliminating health disparities in this state, including racial, ethnic, geographic, and income-related or education-related disparities; and

(2) health care cost containment and the economic analysis of health policy.

(b) The network shall:

(1) function as an incubator and evaluator of health improvement practices; and

(2) support local communities in this state by offering leadership training, data analytics, community health assessments, and grant writing support to local communities.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.053 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.054. ADMINISTRATIVE ATTACHMENT TO THE UNIVERSITY OF TEXAS SYSTEM. (a) The network is administratively attached to The University of Texas System.

(b) The University of Texas System shall administer and coordinate the network and provide administrative support to the network as necessary to carry out the purposes of this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.

Redesignated from Health and Safety Code, Section 118.054 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.055. GIFTS AND GRANTS. The network may accept and administer gifts and grants to fund the network from an individual, corporation, trust, or foundation or the federal government, subject to any limitations or conditions imposed by law.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.055 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.056. REPORT. The network shall report the results of the network's efforts, findings, and activities to the legislature, state and federal partners, and other interested entities.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.056 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

SUBCHAPTER C. ADVISORY COUNCIL

Sec. 119.101. ADVISORY COUNCIL. The network shall establish an advisory council to advise the network on the health care needs of this state.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.101 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.102. COMPOSITION OF ADVISORY COUNCIL. The advisory

council is composed of:

(1) members who are appointed by an executive officer of The University of Texas System and nominated by participants in the network and who are:

(A) state and national leaders in population health;

(B) experts in traditional public health and medical fields; and

(C) leaders in the fields of behavioral health, business, insurance, philanthropy, education, and health law and policy; and

(2) representatives from the department and the commission, selected by the executive head of the agency.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.102 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.103. TERMS. Members of the advisory council serve staggered three-year terms, with the terms of one-third of the members expiring on January 1 of each year.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.103 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.104. PRESIDING OFFICER. The executive officer of The University of Texas System who appoints members to the advisory council shall appoint a presiding officer from among the members to serve a one-year term.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.104 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.105. MEETINGS. The advisory council shall meet at the call of the presiding officer or at other times that the council determines are necessary or appropriate.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.105 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.106. COMPENSATION AND REIMBURSEMENT. A member of the advisory council may not receive compensation for service on the advisory council but may be reimbursed for travel expenses incurred by the member while conducting the business of the advisory council, if funds are available for that purpose, as provided by the General Appropriations Act.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.106 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.107. APPLICABILITY OF OTHER LAW. Chapter 2110, Government Code, does not apply to the advisory council.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.107 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

CHAPTER 119A. PEDIATRIC ACUTE-ONSET NEUROPSYCHIATRIC SYNDROME ADVISORY COUNCIL

Sec. 119A.001. DEFINITION. In this chapter, "advisory council" means the Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory

Council established under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff. September 1, 2019.

Sec. 119A.002. ESTABLISHMENT OF ADVISORY COUNCIL. The Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory Council is established to advise the commission and the legislature on research, diagnosis, treatment, and education related to pediatric acute-onset neuropsychiatric syndrome.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff. September 1, 2019.

Sec. 119A.003. APPOINTMENT OF ADVISORY COUNCIL MEMBERS. (a) The advisory council is composed of the following 19 members:

(1) one member designated by the executive commissioner;

(2) two members of the senate appointed by the lieutenant governor;

(3) two members of the house of representatives appointed by the speaker of the house of representatives; and

(4) 14 members appointed by the governor with the following qualifications:

(A) three members who are health care providers, as defined by Section 161.201;

(B) one member who is a licensed health care provider with expertise in treating persons with pediatric acute-onset neuropsychiatric syndrome, including pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections, and autism;

(C) one member who is a pediatrician with experience treating persons with pediatric acute-onset neuropsychiatric syndrome, including pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections;

(D) one member who is a child psychiatrist with experience treating persons with pediatric acute-onset neuropsychiatric syndrome, including pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections;

(E) one member with experience in conducting research

on pediatric acute-onset neuropsychiatric syndrome, including pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections, obsessive-compulsive disorder, tic disorders, and other neurological disorders;

(F) one member who is a social worker;

(G) one member who is a representative of the Texas Education Agency with expertise in special education services;

(H) one member who is a psychologist licensed under Chapter 501, Occupations Code;

(I) one member who is a representative of a professional organization in this state for school nurses;

(J) one member who is a representative of an advocacy and support group in this state for individuals affected by pediatric acute-onset neuropsychiatric syndrome, including pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections;

(K) one member who is a representative of an advocacy and support group in this state for individuals affected by autism; and

(L) one member who is a parent of a child who has been diagnosed with pediatric acute-onset neuropsychiatric syndrome or autism.

(b) The member designated by the executive commissioner serves as an ex officio nonvoting member. In the event of a tie vote among the members of the advisory council, the member designated by the executive commissioner may cast the deciding vote.

(c) Each member of the advisory council must be a citizen of this state.

(d) An advisory council member appointed under Subsection (a)(2) or (3) may designate another individual to serve in the member's place on the advisory council at the pleasure of the member. An advisory council member who designates another individual to serve in the member's place under this subsection shall provide written notification to the chair of the advisory council.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff. September 1, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 746 (H.B. 3808), Sec. 1, eff. September 1, 2023.

Sec. 119A.004. TERMS; VACANCY. (a) Advisory council members appointed by the lieutenant governor and the speaker of the house of representatives serve terms that coincide with the advisory council members' terms of office. The remaining members serve two-year terms.

(b) A vacancy on the advisory council shall be filled in the same manner as the original appointment.

(c) A member appointed to fill a vacancy holds the office for the unexpired portion of the term.

(d) Each member may be reappointed to serve on the advisory council.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff. September 1, 2019.

Sec. 119A.005. CHAIR AND VICE CHAIR. Members of the advisory council shall elect from among its members by a majority vote a chair and vice chair.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff. September 1, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 746 (H.B. 3808), Sec. 2, eff. September 1, 2023.

Sec. 119A.006. MEETINGS; QUORUM. (a) The advisory council shall meet at times and locations as determined by the chair or a majority of the members of the advisory council.

(b) A majority of the members of the advisory council constitute a quorum.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff. September 1, 2019.

Sec. 119A.007. ANNUAL REPORT. (a) Not later than September 1 of each year, the advisory council shall prepare and submit to the governor, legislature, and commission a written report that includes recommendations on:

(1) practice guidelines for the diagnosis and treatment of pediatric acute-onset neuropsychiatric syndrome, including pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections;

(2) mechanisms to increase clinical awareness and education regarding pediatric acute-onset neuropsychiatric syndrome, including pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections, among physicians, including pediatricians, school-based health centers, and mental health care providers;

(3) strategies for outreach to educators and parents to increase awareness of pediatric acute-onset neuropsychiatric syndrome, including pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections; and

(4) developing a network of volunteer experts on the diagnosis and treatment of pediatric acute-onset neuropsychiatric syndrome, including pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections, to assist in the delivery of education and outreach.

(b) Notwithstanding any other law, this section, including any action taken under this section to develop or disseminate information or materials, does not create a civil or administrative cause of action or a civil or criminal liability and does not create a standard of care, obligation, or duty that provides the basis for a cause of action.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff. September 1, 2019.

Sec. 119A.008. COMPENSATION AND REIMBURSEMENT. A member of the advisory council is not entitled to compensation or reimbursement for expenses incurred in performing advisory council duties.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff. September 1, 2019.

Sec. 119A.009. SUNSET PROVISION. The Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory Council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the advisory council is abolished and this

chapter expires September 1, 2033.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 2.01, eff. June 18, 2023.

Sec. 119A.010. APPLICABILITY OF OTHER LAW. Chapter 2110, Government Code, does not apply to the advisory council.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff. September 1, 2019.

For expiration of this chapter, see Section 119B.007.

CHAPTER 119B. TEXAS NUTRITION ADVISORY COMMITTEE

Sec. 119B.001. DEFINITION. In this chapter, "advisory committee" means the Texas Nutrition Advisory Committee.

Added by Acts 2025, 89th Leg., R.S., Ch. 1179 (S.B. 25), Sec. 8, eff. September 1, 2025.

Sec. 119B.002. ADVISORY COMMITTEE ESTABLISHED. The Texas Nutrition Advisory Committee is established to develop nutritional guidelines for residents of this state. The advisory committee is administratively attached to the department.

Added by Acts 2025, 89th Leg., R.S., Ch. 1179 (S.B. 25), Sec. 8, eff. September 1, 2025.

Sec. 119B.003. MEMBERSHIP. (a) The advisory committee is composed of seven members appointed by the governor, including at least:

(1) one expert in metabolic health, culinary medicine, lifestyle medicine, or integrative medicine;

(2) one licensed physician certified in functional medicine;

(3) one member representing the Texas Department of Agriculture;

(4) one member representing a rural community;

(5) one member representing an urban community; and

(6) one pediatrician specializing in metabolic health.

(b) In appointing the advisory committee members, the governor must:

(1) consider recommendations provided by:

(A) the chair of the senate committee on health and human services;

(B) the chair of the house of representatives committee on public health; and

(C) the chair of the house of representatives committee on human services; and

(2) ensure not more than two members are affiliated with an academic or health-related institution of higher education if the appointment could reasonably create a conflict of interest between the goals of the advisory committee and the goals of the institution.

(c) An individual is ineligible for appointment to the advisory committee if the individual:

(1) owns or controls an ownership interest in a food, beverage, dietary supplement, or pharmaceutical manufacturing company; or

(2) is related within the third degree of consanguinity or affinity, as determined by Chapter 573, Government Code, to an individual who owns or controls an ownership interest in a food, beverage, dietary supplement, or pharmaceutical manufacturing company.

(d) Before accepting an appointment under this section, an individual must disclose all past or existing affiliations with a food, beverage, dietary supplement, or pharmaceutical manufacturing company or any other affiliation that could reasonably create a conflict of interest with the goals of the advisory committee. An advisory committee member who fails to disclose an affiliation described by this subsection is subject to removal by the governor.

(e) Advisory committee members serve staggered four-year terms.

Added by Acts 2025, 89th Leg., R.S., Ch. 1179 (S.B. 25), Sec. 8, eff. September 1, 2025.

Sec. 119B.004. ADVISORY COMMITTEE DUTIES. The advisory committee shall:

(1) examine the impact of nutrition on human health and examine the connection between ultra-processed foods, including foods containing artificial color and food additives, and the prevalence of chronic diseases and other chronic health issues;

(2) provide an independent review of scientific studies analyzing the effects of ultra-processed foods on human health;

(3) provide education on the effects of ultra-processed foods on human health; and

(4) develop and maintain dietary and nutritional guidelines based on the consensus of available scientific studies and information concerning diet and nutrition.

Added by Acts 2025, 89th Leg., R.S., Ch. 1179 (S.B. 25), Sec. 8, eff. September 1, 2025.

Sec. 119B.005. ANNUAL REPORT. Not later than September 1 of each year, the advisory committee shall prepare and submit to the department, the governor, the lieutenant governor, the speaker of the house of representatives, and each standing committee of the legislature with primary jurisdiction over health and safety a written report that includes:

(1) a summary of the scientific studies;

(2) nutritional guidelines incorporating any new scientific findings; and

(3) any other recommendations the advisory committee considers appropriate based on new scientific studies.

Added by Acts 2025, 89th Leg., R.S., Ch. 1179 (S.B. 25), Sec. 8, eff. September 1, 2025.

Sec. 119B.006. DEPARTMENT NUTRITIONAL GUIDELINES WEB PAGE. (a) The department shall post on a publicly available web page on the department's Internet website the guidelines developed under Section 119B.004 in a manner that is easily accessible and readily understandable.

(b) The department shall annually update information posted under this section based on the report submitted under Section

119B.005.

Added by Acts 2025, 89th Leg., R.S., Ch. 1179 (S.B. 25), Sec. 8, eff. September 1, 2025.

Sec. 119B.007. EXPIRATION. The advisory committee is abolished and this chapter expires December 31, 2032.

Added by Acts 2025, 89th Leg., R.S., Ch. 1179 (S.B. 25), Sec. 8, eff. September 1, 2025.

Sec. 119B.008. RULES. The executive commissioner of the Health and Human Services Commission may adopt rules as necessary to implement this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 1179 (S.B. 25), Sec. 8, eff. September 1, 2025.

SUBTITLE F. LOCAL REGULATION OF PUBLIC HEALTH

CHAPTER 120. TASK FORCE OF BORDER HEALTH OFFICIALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 120.001. DEFINITIONS. In this chapter:

Text of subdivision effective until September 1, 2026

(1) "Border region" means the area consisting of the counties immediately adjacent to the international boundary between the United States and Mexico.

Text of subdivision effective on September 1, 2026

(1) "Border region" has the meaning assigned to "Texas-Mexico border region" by Section 2056.002, Government Code.

(2) "Task force" means the Task Force of Border Health Officials.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 933 (H.B. 1240), Sec. 5, eff. September 1, 2026.

Sec. 120.002. SUNSET PROVISION. The task force is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the task force is abolished and this chapter expires September 1, 2029.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 120.051. TASK FORCE; DUTIES. (a) The department shall establish the Task Force of Border Health Officials to advise the commissioner:

(1) on policy priorities addressing major issues affecting the border region residents' health and health conditions;

(2) on raising public awareness of the issues described by Subdivision (1); and

(3) on other health issues impacting the border region as determined by the commissioner, including:

(A) barriers to accessing health care;

(B) health problems affecting the region, including:

(i) diabetes;

(ii) infant mortality;

(iii) heart disease and stroke;

(iv) obesity;

(v) cervical cancer; and

(vi) communicable diseases, including tuberculosis;

(C) factors that impede access to health care, including:

(i) socioeconomic conditions;

(ii) linguistic and cultural barriers;

(iii) low population density; and

(iv) lack of health insurance;

(D) surveillance and tracking of communicable diseases, environmental factors, and other factors negatively influencing health;

(E) standardization of data to ensure compatibility with data collected by border states on both sides of the

international border with Mexico;

(F) public health infrastructure that includes education and research institutions to train culturally competent health care providers;

(G) establishment of local and regional public health programs that build on local resources and maximize the use of public dollars to address the needs of the indigent population; and

(H) collaboration and cooperation with Mexican counterparts of the task force at the state and federal level, and collaboration with federal counterparts in the United States.

(b) The task force shall study and make recommendations relating to the health problems, conditions, challenges, and needs of the population in the border region.

(c) The task force shall submit a report of recommendations to the commissioner for short-term and long-term border plans, as described by Subchapter C, not later than November 1 of each even-numbered year.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.

Sec. 120.052. COLLABORATION WITH OFFICE OF BORDER HEALTH. The Office of Border Health established under Section 12.071 shall provide staff support to the task force and any other assistance as needed or required by the task force, if practicable.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.

Sec. 120.053. COMPOSITION; TERMS. (a) The task force is composed of:

(1) the health department directors appointed under Section 121.033 from:

(A) each county in the border region; and

(B) each municipality in the border region that has a sister city in Mexico;

(2) two ex officio nonvoting members who are members of the legislature:

(A) one of whom is appointed by the lieutenant

governor; and

(B) one of whom is appointed by the speaker of the house of representatives; and

(3) additional members appointed by the commissioner.

(b) The commissioner shall designate a chair and vice chair of the task force from among the task force members.

(c) The members appointed by the lieutenant governor and the speaker of the house of representatives serve three-year terms.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.

Sec. 120.054. MEETINGS. (a) The task force shall meet at least quarterly each fiscal year. Members may hold meetings by conference calls and through videoconference in accordance with Section 551.127, Government Code.

(b) Section 551.125, Government Code, applies to a meeting held by conference call under this section, except that Section 551.125(b), Government Code, does not apply.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.

Sec. 120.055. COMPENSATION AND REIMBURSEMENT. A task force member is not entitled to compensation or reimbursement for expenses incurred in performing the member's duties.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.

SUBCHAPTER C. BORDER HEALTH IMPROVEMENT PLAN

Sec. 120.101. SHORT-TERM AND LONG-TERM PLANS. (a) The task force shall make recommendations to the commissioner for short-term and long-term border health improvement plans. The short-term plan shall identify health objectives proposed to be accomplished before the fourth anniversary of the date the plan is adopted. The long-term plan shall identify health objectives proposed to be accomplished before the ninth anniversary of the date the plan is

adopted.

(b) The commissioner shall review the task force's recommendations and, based on those recommendations, recommend short-term and long-term border health improvement plans to the executive commissioner, identifying specific health objectives that may be implemented under existing law.

(c) The executive commissioner shall adopt short-term and long-term border health improvement plans and direct the department to implement the portions of the plans that may be implemented within existing appropriations under existing law.

(d) Not later than September 1 of each even-numbered year, the executive commissioner shall submit a report detailing the actions taken by the task force. The report must include:

(1) the status of all projects and activities involving the health issues described under Section 120.051(a)(3);

(2) the funding for the expenditures; and

(3) recommendations for legislation necessary to implement the short-term and long-term border health improvement plans.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.

Sec. 120.102. APPLICATION OF OTHER LAW. Chapter 2110, Government Code, does not apply to the task force.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.

Sec. 120.103. ASSISTANCE FROM STATE AGENCIES AND POLITICAL SUBDIVISIONS. At the request of the task force, a state agency or political subdivision of this state may cooperate with the task force to the greatest extent practicable to fully implement the task force's statutory duties.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.

CHAPTER 121. LOCAL PUBLIC HEALTH REORGANIZATION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 121.001. SHORT TITLE. This chapter may be cited as the Local Public Health Reorganization Act.

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

Sec. 121.002. DEFINITIONS. In this chapter:

(1) "Essential public health services" means services to:

(A) monitor the health status of individuals in the community to identify community health problems;

(B) diagnose and investigate community health problems and community health hazards;

(C) inform, educate, and empower the community with respect to health issues;

(D) mobilize community partnerships in identifying and solving community health problems;

(E) develop policies and plans that support individual and community efforts to improve health;

(F) enforce laws and rules that protect the public health and ensure safety in accordance with those laws and rules;

(G) link individuals who have a need for community and personal health services to appropriate community and private providers;

(H) ensure a competent workforce for the provision of essential public health services;

(I) research new insights and innovative solutions to community health problems; and

(J) evaluate the effectiveness, accessibility, and quality of personal and population-based health services in a community.

(2) "Physician" means a person licensed to practice medicine by the Texas Medical Board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1378, Sec. 1, eff. June 19, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0361, eff. April 2, 2015.

Sec. 121.003. POWERS OF MUNICIPALITIES AND COUNTIES. (a) The governing body of a municipality or the commissioners court of a county may enforce any law that is reasonably necessary to protect the public health.

(b) The governing bodies of municipalities and the commissioners courts of counties may cooperate with one another in making necessary improvements and providing services to promote the public health in accordance with Chapter 791, Government Code.

(c) The commissioners court of a county may grant authority under this subsection to a county employee who is trained by a health authority appointed by the county under Section 121.021, by a local health department established under Section 121.031, or by a public health district established under Section 121.041 and who is not a peace officer. The court may grant to the employee the power to issue a citation in an unincorporated area of the county to enforce any law or order of the commissioners court that is reasonably necessary to protect the public health. A citation issued under this subsection must state the name of the person cited, the violation charged, and the time and place the person is required to appear in court. If a person who receives a citation under this subsection fails to appear on the return date of the citation, the court may issue a warrant for the person's arrest for the violation described in the citation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 562, Sec. 1, eff. Aug. 26, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0362, eff. April 2, 2015.

Sec. 121.0035. REGULATION OF MOBILE FOOD UNITS AND ROADSIDE FOOD VENDORS IN CERTAIN POPULOUS AREAS. (a) In this section, "mobile food unit" and "roadside food vendor" have the meanings assigned under Section 437.001.

(b) A municipality with a population of 1.5 million or more and a county with a population of 3.4 million or more shall enforce state law and rules adopted under state law concerning mobile food units and roadside food vendors in the same manner that the county or municipality enforces other health and safety regulations relating to

food service.

Added by Acts 2005, 79th Leg., Ch. 1288 (H.B. 2507), Sec. 1, eff. September 1, 2005.

Sec. 121.004. LOCAL HEALTH UNITS. A local health unit is a division of municipal or county government that provides public health services but does not provide each service listed under Section 121.006(d) or required of a public health district under Section 121.043(a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0363, eff. April 2, 2015.

Sec. 121.005. STATE AND LOCAL AFFILIATION; CONTRACTS. (a) A local health unit, local health department, or public health district may become affiliated with the department to facilitate the exchange of information and the coordination of public health services.

(b) To be affiliated with the department, a local health unit, local health department, or public health district must annually provide to the department information relating to:

(1) services provided;

(2) staffing patterns; and

(3) funding sources and budget.

(c) The department may contract with a local health unit, local health department, or public health district for the provision of public health services.

(d) The executive commissioner may adopt rules necessary to implement this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0364, eff. April 2, 2015.

Sec. 121.006. PUBLIC HEALTH SERVICES FEES; STATE SUPPORT. (a)

The governing body of a municipality, the commissioners court of a county, or the administrative board of a public health district may adopt ordinances or rules to charge fees for public health services.

(b) A municipality, county, or public health district may not deny public health services to an individual because of inability to pay for the services. A municipality, county, or public health district shall provide for the reduction or waiver of a fee for an individual who cannot pay for services in whole or in part.

(c) Chapter 783, Government Code, and standards adopted under that chapter control, if applicable, if the local health unit, local health department, or public health district receives state support for the provision of public health services.

(c-1) A fee for a public health service charged in the jurisdiction of a public health district may be uniform throughout the district regardless of which governmental entity member of the district charges the fee. The fee may be set at an amount up to the highest amount charged by any governmental entity member of the district.

(d) In this section, "public health services" means:

(1) personal health promotion and maintenance services;

(2) infectious disease control and prevention services;

(3) environmental and consumer health programs;

(4) public health education and information services;

(5) laboratory services; and

(6) administrative services.

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

Acts 2007, 80th Leg., R.S., Ch. 810 (S.B. 1380), Sec. 1, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0365, eff. April 2, 2015.

Sec. 121.0065. GRANTS FOR ESSENTIAL PUBLIC HEALTH SERVICES. (a) Subject to the availability of funds, the department shall administer a program under which appropriated money may be granted to counties, municipalities, public health districts, and other political subdivisions for use by the counties, municipalities, public health districts, and other political subdivisions to provide

or pay for essential public health services.

(b) The grants authorized by Subsection (a) shall be distributed equally between urban and rural areas of the state.

(c) The executive commissioner shall adopt rules governing:

(1) the allocation formula for grants awarded under this section;

(2) the manner in which a municipality, county, public health district, or other political subdivision applies for a grant;

(3) the procedures for awarding grants; and

(4) the minimum essential public health services to be provided under the grant and other standards applicable to the services to be provided under the grant.

(d) A municipality, county, public health district, or other political subdivision that receives a grant under this section, in consultation with the department, shall develop a plan to evaluate the effectiveness, accessibility, and quality of the essential public health services that are provided under the grant. The plan must:

(1) identify the outcomes that are intended to result from the use of the grant money and establish a mechanism to measure those outcomes; and

(2) establish performance standards for the delivery of essential public health services and a mechanism to measure compliance with those standards.

(e) The governing body of the municipality, the commissioners court of the county, or the members of a public health district may appoint a local health board to monitor the use of the money received under this section.

(f) A public health board established under Section 121.034 or 121.046 may serve as the local health board authorized under Subsection (e).

(g) The governing body of the municipality or the commissioners court of a county may serve as the local health board authorized under Subsection (e). If the governing body of the municipality or the commissioners court of the county elects to serve as the local health board, the governing body or commissioners court may appoint an advisory committee to advise the governing body or commissioners court with respect to the use of the money granted under this section.

(h) Chapter 783, Government Code, and standards adopted under that chapter control if applicable to a grant made under this

section.

Added by Acts 1999, 76th Leg., ch. 1378, Sec. 2, eff. June 19, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0366, eff. April 2, 2015.

Sec. 121.0066. ESSENTIAL PUBLIC HEALTH SERVICES PROVIDED BY DEPARTMENT. (a) Subject to the availability of funds, the department may provide essential public health services for a population for which a municipality, county, public health district, or other political subdivision is not receiving a grant to provide those services under Section 121.0065.

(b) Subject to the availability of funds, the department shall develop a plan that complies with Section 121.0065(d) to evaluate the effectiveness, accessibility, and quality of essential public health services provided under this section.

Added by Acts 1999, 76th Leg., ch. 1378, Sec. 2, eff. June 19, 1999.

Sec. 121.007. PUBLIC HEALTH REGIONS. (a) The department may designate geographic areas of the state as public health regions to provide public health services.

(b) The department shall appoint a physician to serve as regional director for each public health region. The regional director is the chief administrative officer of the region. The department shall establish the qualifications and terms of employment of a regional director.

(c) The department may require a regional director to perform the duties of a health authority. The regional director may perform those duties, as authorized by the department, in a jurisdiction in the region in which the health authority fails to perform duties prescribed under Section 121.024. The regional director shall perform the duties of a health authority in a jurisdiction in the region in which there is not a health authority.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 118, Sec. 1, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1378, Sec. 3, 8, eff. June 19, 1999.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0367, eff. April 2, 2015.

Sec. 121.008. ANNUAL CONFERENCE. (a) The department shall hold an annual conference for health authorities and for directors of local health departments and public health districts. The commissioner or the commissioner's designee shall preside over the conference.

(b) A county or municipality may pay necessary expenses incurred by its health authority or director in attending the conference.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0368, eff. April 2, 2015.

SUBCHAPTER B. HEALTH AUTHORITIES

Sec. 121.021. HEALTH AUTHORITY. A health authority is a physician appointed under the provisions of this chapter to administer state and local laws relating to public health within the appointing body's jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 118, Sec. 2, eff. Sept. 1, 1991.

Sec. 121.022. QUALIFICATIONS. (a) A health authority must be:

(1) a competent physician with a reputable professional standing who is legally qualified to practice medicine in this state; and

(2) a resident of this state.

(b) To be qualified to serve as a health authority, the appointee must:

(1) take and subscribe to the official oath; and

(2) file a copy of the oath and appointment with the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0369, eff. April 2, 2015.

Sec. 121.023. TERM OF OFFICE. A health authority serves for a term of two years and may be appointed to successive terms.

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

Sec. 121.024. DUTIES. (a) A health authority is a state officer when performing duties prescribed by state law.

(b) A health authority shall perform each duty that is:

(1) necessary to implement and enforce a law to protect the public health; or

(2) prescribed by the department.

(c) The duties of a health authority include:

(1) establishing, maintaining, and enforcing quarantine in the health authority's jurisdiction;

(2) aiding the department in relation to local quarantine, inspection, disease prevention and suppression, birth and death statistics, and general sanitation in the health authority's jurisdiction;

(3) reporting the presence of contagious, infectious, and dangerous epidemic diseases in the health authority's jurisdiction to the department in the manner and at the times prescribed by the department;

(4) reporting to the department on any subject on which it is proper for the department to direct that a report be made; and

(5) aiding the department in the enforcement of the following in the health authority's jurisdiction:

(A) proper rules, requirements, and ordinances;

(B) sanitation laws;

(C) quarantine rules; and

(D) vital statistics collections.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0370, eff.

April 2, 2015.

Sec. 121.0245. DUTIES OF PART-TIME HEALTH AUTHORITY. (a) If a physician appointed to serve as health authority for a county serves in that office part-time, the physician may:

(1) coordinate with the director of the local health department for the county in the performance of the duties imposed by Section 121.024(c)(3); and

(2) notify the department that the physician serves part-time in the office of health authority for the county.

(b) If the department provides information to a physician who serves part-time as health authority for a county, the department shall also provide the information to the director of the local health department for the county.

Added by Acts 2021, 87th Leg., R.S., Ch. 566 (S.B. 464), Sec. 2, eff. June 14, 2021.

Sec. 121.025. REMOVAL FROM OFFICE. A health authority may be removed from office for cause under the personnel procedures applicable to the heads of departments of the local government that the health authority serves.

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

Sec. 121.026. EXPIRATION AND EXTENSION OF CERTAIN PUBLIC HEALTH ORDERS ISSUED BY HEALTH AUTHORITY. (a) This section applies only to a public health order imposed on more than one individual, animal, place, or object.

(b) A public health order issued by a health authority under this chapter or other law expires on the 15th day following the date the order is issued unless, before the 15th day by majority vote:

(1) the governing body of a municipality or the commissioners court of a county that appointed the health authority extends the order for a longer period; or

(2) if the health authority is jointly appointed by a municipality and county, the commissioner's court of the county extends the order for a longer period.

Added by Acts 2021, 87th Leg., R.S., Ch. 862 (S.B. 967), Sec. 1, eff. September 1, 2021.

SUBCHAPTER C. MUNICIPALITIES AND COUNTIES WITHOUT ORGANIZED LOCAL PUBLIC HEALTH DEPARTMENTS OR DISTRICTS

Sec. 121.028. APPOINTMENT OF HEALTH AUTHORITY. (a) The governing body of a municipality or the commissioners court of a county that has not established a local health department or a public health district may appoint a physician as health authority to administer state and local laws relating to public health in the municipality's or county's jurisdiction.

(b) The governing body of a municipality or the commissioners court of a county described by Subsection (a) that is receiving a grant under Section 121.0065 shall appoint a physician as health authority.

(c) An individual appointed to serve as health authority for a county or municipality may serve as the health authority for one or more other jurisdictions under an interlocal contract made in accordance with Chapter 791, Government Code.

Added by Acts 1991, 72nd Leg., ch. 118, Sec. 3, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 1378, Sec. 4, eff. June 19, 1999.

Sec. 121.029. DELEGATION OF AUTHORITY. (a) A health authority, unless otherwise restricted by law, may delegate a power or duty imposed on the health authority by the department, or by this or any other law, to a properly qualified physician to act while the health authority is absent or incapacitated.

(b) The physician designated by the health authority must:

(1) meet the qualifications set out in Section 121.022(a);

(2) be appointed as a designee in the same manner as the appointment of the health authority;

(3) take, subscribe, and file the official oath and appointment with the department as required by Section 121.022(b); and

(4) file a certified copy of the written delegation with the department.

(c) The delegation is effective during the term of the health authority who made the delegation; however, the health authority may limit the time to a shorter duration in the written delegation of authority.

(d) The health authority is responsible for the acts of the physician to whom the health authority has delegated the power or duty.

(e) The entity that appoints the health authority and the designee health authority must adopt procedures for the service of the designee as health authority under this section. The procedures shall prevent duplication of authority between the health authority and the designee and provide notice to the department when authority is transferred.

Added by Acts 1991, 72nd Leg., ch. 118, Sec. 3, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0371, eff. April 2, 2015.

SUBCHAPTER D. LOCAL HEALTH DEPARTMENTS

Sec. 121.031. ESTABLISHMENT. The governing body of a municipality or the commissioners court of a county may establish a local health department by majority vote.

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

Sec. 121.032. POWERS AND DUTIES. A local health department may perform all public health functions that the municipality or county that establishes the local health department may perform.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1378, Sec. 5, eff. June 19, 1999.

Sec. 121.033. DEPARTMENT DIRECTOR. (a) The governing body of a municipality or the commissioners court of a county shall appoint the director of the municipality's or county's local health department.

(b) The director is the chief administrative officer of the

local health department, and if the director is a physician, the director is the health authority in the local health department's jurisdiction.

(c) The governing body of a municipality or the commissioners court of a county may designate a person to perform its appointment duties under this section.

(d) A director of a local health department who is not a physician shall appoint a physician as the health authority in the local health department's jurisdiction, subject to the approval of the governing body or the commissioners court, as appropriate, and the department.

(e) The governing body or the commissioners court, as appropriate, shall set the compensation of the director and the health authority in its jurisdiction, except that the compensation, including a salary, may be allowed only for services actually rendered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.07(a), eff. Sept. 1, 1989. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0372, eff. April 2, 2015.

Sec. 121.0331. DELEGATION OF AUTHORITY. (a) A health authority, unless otherwise restricted by law, may delegate a power or duty imposed on the health authority by the department, or by this or any other law, to a properly qualified physician who is employed by the municipality's or county's local health department to act while the health authority is absent or incapacitated.

(b) The physician designated by the health authority must:

(1) meet the qualifications set out in Section 121.022(a);

(2) be appointed as a designee in the same manner as the appointment of the health authority;

(3) take, subscribe, and file the official oath and appointment with the department as required by Section 121.022(b); and

(4) file a certified copy of the written delegation with the department.

(c) The delegation is effective during the term of the health

authority who made the delegation; however, the health authority may limit the delegation to a shorter duration in the written delegation of authority.

(d) The health authority is responsible for the acts of the physician to whom the health authority has delegated the power or duty.

(e) The entity or entities that appoint the health authority and the designee health authority must adopt procedures for the service of the designee as health authority under this section. The procedures shall prevent duplication of authority between the health authority and the designee and provide notice to the department when authority is transferred.

Added by Acts 1991, 72nd Leg., ch. 118, Sec. 7, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0373, eff. April 2, 2015.

Sec. 121.034. PUBLIC HEALTH BOARD. (a) The governing body of a municipality that establishes a local health department may provide for the creation of an administrative or advisory public health board and the appointment of representatives to that board.

(b) The commissioners court of a county that establishes a local health department may provide for the creation of an advisory public health board and the appointment of representatives to that board.

(c) The director of the local health department is an ex officio, nonvoting member of any public health board established for the local health department.

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

SUBCHAPTER E. PUBLIC HEALTH DISTRICTS

Sec. 121.041. ESTABLISHMENT. By a majority vote of each governing body, a public health district may be established by:

(1) two or more counties;

(2) two or more municipalities;

(3) a county and one or more municipalities in the county; or

(4) two or more counties and one or more municipalities in those counties.

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

Sec. 121.042. ADMISSION TO DISTRICT. (a) Any governmental entity, including a school district, may apply to become a member of a public health district.

(b) The governing body of each member shall review the application.

(c) The governmental entity may be admitted to membership on terms acceptable to the applicant and the members if a majority of the governing body of each member approves the application.

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

Sec. 121.043. POWERS AND DUTIES. (a) A public health district may perform any public health function that any of its members may perform unless otherwise restricted by law.

(b) For purposes of Section 121.005, a public health district shall be identified by its program of public health services and shall, at a minimum, provide the services listed under Section 121.006(d).

(c) A public health district may sue and be sued.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 476, Sec. 3, eff. Aug. 26, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0374, eff. April 2, 2015.

Sec. 121.044. COOPERATIVE AGREEMENT. (a) The members of a public health district shall prepare a written cooperative agreement that sets out fully the terms of operation of the district.

(b) The terms in a cooperative agreement must include:

(1) organizational structure;

(2) financial administration; and

(3) procedures for:

(A) modification of the cooperative agreement;
(B) admission, withdrawal, and expulsion of members;
(C) dissolution of the district; and
(D) selection and removal of a director.

(c) A cooperative agreement must be:
(1) approved by the governing body of each member; and
(2) signed by the appropriate officers of each governing body.

(d) A modification of a cooperative agreement must be in writing. A modification is effective on approval by the governing body of each member.

(e) A copy of a cooperative agreement and of each modification shall be:
(1) included in the minutes of the governing body of each member; and
(2) filed with the clerk of each county and municipality in the district and with the department.

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

Sec. 121.045. DISTRICT DIRECTOR. (a) The members of a public health district shall appoint the director of the district.

(b) The director is the chief administrative officer of the public health district, and if the director is a physician, the director is the health authority in the district's jurisdiction.

(c) A member may designate a person to perform its appointment duties under this section.

(d) A director of a public health district who is not a physician shall appoint a physician as the health authority for the district, subject to the approval of the members and the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.07(a), eff. Sept. 1, 1989. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0375, eff. April 2, 2015.

Sec. 121.0451. DELEGATION OF AUTHORITY. (a) A health authority, unless otherwise restricted by law, may delegate a power

or duty imposed on the health authority by the department, or by this or any other law, to a properly qualified physician who is employed by the public health district to act while the health authority is absent or incapacitated.

(b) The physician designated by the health authority must:

(1) meet the qualifications set out in Section 121.022(a);

(2) be appointed as a designee in the same manner as the appointment of the health authority;

(3) take, subscribe, and file the official oath and appointment with the department as required by Section 121.022(b); and

(4) file a certified copy of the written delegation with the department.

(c) The delegation is effective during the term of the health authority who made the delegation; however, the health authority may limit the delegation to a shorter duration in the written delegation of authority.

(d) The health authority is responsible for the acts of the physician to whom the health authority has delegated the power or duty.

(e) The entity or entities that appoint the health authority and the designee health authority must adopt procedures for the service of the designee as health authority under this section. The procedures shall prevent duplication of authority between the health authority and the designee and provide notice to the department when authority is transferred.

Added by Acts 1991, 72nd Leg., ch. 118, Sec. 7, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0376, eff. April 2, 2015.

Sec. 121.046. PUBLIC HEALTH BOARD. (a) The cooperative agreement of a public health district may provide for the creation of an advisory or administrative public health board.

(b) An advisory public health board shall advise the members and director on matters of public health.

(c) An administrative public health board may adopt substantive and procedural rules that are necessary and appropriate to promote

and preserve the health and safety of the public. However, an administrative board may not adopt a rule that is not specifically authorized by state law, conflicts with a law of this state, or conflicts with an ordinance of a municipality or county in the district.

(d) A public health board may perform any function relating to the operation of the public health district that is required under the cooperative agreement.

(e) The terms of a cooperative agreement that provides for a public health board must include:

(1) the composition and number of the representatives that compose the public health board;

(2) a method for appointing representatives to the public health board;

(3) the length of the representatives' terms, which must be staggered;

(4) a requirement that a representative must have resided in the district for at least three years before the date of the representative's appointment;

(5) a requirement that each representative serve without compensation;

(6) the manner in which a vacancy is filled for an unexpired term;

(7) the procedure and substantive criteria for the removal of a representative; and

(8) a description of the relationship between the director and the public health board.

(f) The director is an ex officio, nonvoting member of a public health board established by the cooperative agreement.

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

Sec. 121.047. FINANCES. The members of a public health district shall pay the costs necessary to operate the district, including costs for:

(1) staff salaries;

(2) supplies;

(3) suitable offices;

(4) health and clinic centers;

(5) health services and facilities; and
(6) maintenance.

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

SUBCHAPTER F. PUBLIC HEALTH CONSORTIUM

Sec. 121.101. DEFINITION. In this chapter, "consortium" means the public health consortium established under this subchapter.

Added by Acts 1999, 76th Leg., ch. 1378, Sec. 6, eff. June 19, 1999.

Sec. 121.102. CONSORTIUM ESTABLISHED. Subject to availability of funds, the department shall establish a public health consortium composed of:
(1) The University of Texas Health Science Center at San Antonio;
(2) The University of Texas M. D. Anderson Cancer Center;
(3) The University of Texas Southwestern Medical Center;
(4) The University of Texas Medical Branch at Galveston;
(5) The University of Texas Health Science Center at Houston;
(6) The University of Texas Health Science Center at Tyler;
(7) the Texas Tech University Health Sciences Center;
(8) The Texas A&M University Health Science Center;
(9) the University of North Texas Health Science Center at Fort Worth; and
(10) any other public institution of higher education that elects to participate in the consortium.

Added by Acts 1999, 76th Leg., ch. 1378, Sec. 6, eff. June 19, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 179 (H.B. 1844), Sec. 15, eff. September 1, 2013.

Sec. 121.103. GENERAL DUTIES. (a) Subject to the availability of funds, the department, in consultation with the consortium and local health units, local health departments, and public health districts, shall:

(1) develop curricula to provide training to public health workers;

(2) conduct research on improving health status outcomes and methods of monitoring those outcomes;

(3) develop performance standards for local health units, local health departments, and public health districts;

(4) develop competency certification standards for public health workers; and

(5) study the technology infrastructure available to local health units, local health departments, and public health districts and improve the use of this infrastructure to permit:

(A) statewide communication relating to disease surveillance and reporting of public health information; and

(B) immediate access to public health information and collaboration among public health professionals.

(b) The training curricula described by Subsection (a)(1) may include training for local health authorities.

Added by Acts 1999, 76th Leg., ch. 1378, Sec. 6, eff. June 19, 1999.

CHAPTER 122. POWERS AND DUTIES OF COUNTIES AND MUNICIPALITIES RELATING TO PUBLIC HEALTH

Sec. 122.001. COUNTY FUNDING FOR PUBLIC HEALTH AND SANITATION. The commissioners court of a county may appropriate and spend money from the county general revenues for public health and sanitation in the county.

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

Sec. 122.002. HEALTH UNIT IN COUNTY WITH POPULATION OF LESS THAN 22,000. (a) The commissioners court of a county with a population of less than 22,000 may impose an ad valorem tax at a rate not to exceed five cents on each $100 of the taxable value of property taxable by the county for:

(1) the creation of a county health unit;

(2) vaccines and medical services required to immunize schoolchildren and indigent persons from communicable diseases; and

(3) medical treatment for indigent persons who are not entitled to treatment under Chapter 61 (Indigent Health Care and

Treatment Act).

(b) This section is effective for a county only if it is approved by a majority of the voters of the county at an election called for that purpose by the commissioners court on receipt of a petition signed by at least five percent of the property taxpaying voters in the county.

(c) The commissioners court may pay not more than half of the costs of medical treatment and immunization for an indigent person who is not entitled to treatment under Chapter 61 (Indigent Health Care and Treatment Act).

(d) A commissioners court that creates a county health unit under this section shall create a county health unit fund. The proceeds of the tax shall be deposited to the credit of that fund. Amounts in the fund shall be used for the purposes for which the commissioners court may impose a tax under Subsection (a).

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

Sec. 122.003. HEALTH UNIT IN COUNTY WITH POPULATION OF 22,200 TO 22,500. (a) The commissioners court of a county with a population of 22,200 to 22,500 may impose an ad valorem tax at a rate not to exceed 10 cents on each $100 of the taxable value of property taxable by the county for:

(1) the creation of a county health unit;

(2) vaccines and medical services required to immunize schoolchildren and indigent persons from communicable diseases; and

(3) medical treatment or hospitalization of indigent persons who are not entitled to treatment or hospitalization under Chapter 61 (Indigent Health Care and Treatment Act).

(b) The commissioners court may pay not more than half of the costs of medical treatment or hospitalization for an indigent person who is not entitled to treatment under Chapter 61 (Indigent Health Care and Treatment Act).

(c) A commissioners court that creates a county health unit under this section shall create a county health unit fund. The proceeds of the tax shall be deposited to the credit of that fund. Amounts in the fund shall be used for the purposes for which the commissioners court may impose a tax under Subsection (a).

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

Sec. 122.004. APPROPRIATION TO HOSPITAL ESTABLISHED BY DONATION. If a fund of at least $50,000 is left by will or otherwise to establish and maintain a hospital in a municipality with a population of at least 10,000, the governing body of that municipality or the commissioners court of the county in which the municipality is located may make an appropriation to the hospital, in an amount that the governing body or commissioners court considers proper, to provide hospitalization and medical and surgical services for indigent residents of the municipality or county who are sick or wounded.

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

Sec. 122.005. POWERS OF TYPE A GENERAL-LAW MUNICIPALITY. (a) The governing body of a Type A general-law municipality may take any action necessary or expedient to promote health or suppress disease, including actions to:

(1) prevent the introduction of a communicable disease into the municipality, including stopping, detaining, and examining a person coming from a place that is infected or believed to be infected with a communicable disease;

(2) establish, maintain, and regulate hospitals in the municipality or in any area within five miles of the municipal limits; or

(3) abate any nuisance that is or may become injurious to the public health.

(b) The governing body of a Type A general-law municipality may adopt rules:

(1) necessary or expedient to promote health or suppress disease; or

(2) to prevent the introduction of a communicable disease into the municipality, including quarantine rules, and may enforce those rules in the municipality and in any area within 10 miles of the municipality.

(c) The governing body of a Type A general-law municipality may fine a person who fails or refuses to observe the orders and rules of the health authority.

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

Sec. 122.006. POWERS OF HOME-RULE MUNICIPALITIES. A home-rule municipality may:

(1) adopt rules to protect the health of persons in the municipality, including quarantine rules to protect the residents against communicable disease; and

(2) provide for the establishment of quarantine stations, emergency hospitals, and other hospitals.

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

Sec. 122.007. ESTABLISHMENT OF MEDICAL CLINICS IN CERTAIN COUNTIES. (a) The commissioners court of a county with a population of less than 20,000 may establish a medical clinic for the provision of health care services.

(b) The commissioners court may determine the types of health care services to be provided at the clinic, including medical care and treatment provided by a licensed physician, nursing care provided by a registered nurse, and dental care provided by a licensed dentist.

(c) The commissioners court may:

(1) purchase land on which to construct the clinic;

(2) construct the clinic, lease space for the clinic, or purchase and develop an existing building for the clinic; and

(3) operate or contract for the operation of the clinic.

(d) A county with a population of less than 20,000 that constructs a medical clinic under this section may continue to operate the clinic and exercise the powers provided by this section after the county exceeds that population.

Added by Acts 1991, 72nd Leg., ch. 758, Sec. 1, eff. Aug. 26, 1991.

Sec. 122.008. EMPLOYMENT FOR PUBLIC SCHOOLS AND COMPENSATION. (a) The commissioners court of a county may employ one or more registered nurses to visit the public schools in the county.

(b) A nurse employed under Subsection (a) shall:

(1) investigate the health conditions and sanitary

surroundings of the schools and the personal, physical, and health condition of students in the schools;

(2) cooperate with the department and local health authorities; and

(3) perform other duties required by the commissioners court.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 4, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0377, eff. April 2, 2015.

SUBTITLE G. LICENSES AND OTHER REGULATION

CHAPTER 141. YOUTH CAMPS

Sec. 141.001. SHORT TITLE. This chapter may be cited as the Texas Youth Camp Safety and Health Act.

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

Sec. 141.002. DEFINITIONS. In this chapter:

(1) "Cabin" means a structure used to provide temporary sleeping quarters for campers.

(1-a) "Camper" means a minor who is attending a youth camp on a day care or boarding basis.

(2) "Day camp" includes any camp that primarily operates during any portion of the day between 7 a.m. and 10 p.m. for a period of four or more consecutive days but may incidentally offer not more than two overnight stays each camp session. The term does not include a facility required to be licensed with the Department of Family and Protective Services.

(2-a) "Floodplain" has the meaning assigned by Section 762.001.

(2-b) "Floodway" means an area identified on the most recent flood hazard map published by the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. Section 4001 et seq.) as a regulatory floodway.

(2-c) "Governmental entity" means this state or a state agency or political subdivision of this state.

(3) "Person" means an individual, partnership, corporation,

association, or organization.

(4) "Resident youth camp" includes any camp that for a period of four or more days continuously provides residential services, including overnight accommodations for the duration of the camp session.

(5) "Youth camp" means a facility or property, other than a facility required to be licensed by the Department of Family and Protective Services, that:

(A) has the general characteristics of a day camp, resident camp, or travel camp;

(B) is used primarily or partially for recreational, athletic, religious, or educational activities; and

(C) accommodates at least five minors who attend or temporarily reside at the camp for all or part of at least four days.

(6) "Youth camp operator" means a person who owns, operates, controls, or supervises a youth camp, regardless of profit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 251, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.076, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0378, eff. April 2, 2015.

Acts 2025, 89th Leg., 2nd C.S., Ch. 2 (H.B. 1), Sec. 2, eff. September 5, 2025.

Acts 2025, 89th Leg., 2nd C.S., Ch. 3 (S.B. 1), Sec. 2, eff. September 5, 2025.

Sec. 141.0021. EXEMPTION. This chapter does not apply to a facility or program operated by or on the campus of an institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, that is regularly inspected by one or more local governmental entities for compliance with health and safety standards.

Added by Acts 2003, 78th Leg., ch. 1302, Sec. 1, eff. June 20, 2003.

Sec. 141.0025. WAIVER; APPEAL. (a) The department may grant a

waiver from the requirements of this chapter to a program that:

(1) is sponsored by a religious organization as defined by Section 464.051;

(2) has been in operation for at least 30 consecutive years;

(3) operates one camp for not more than seven days in any year;

(4) has not more than 80 campers;

(5) is conducted by adult participants who are all volunteers;

(6) operates in a county with a population of at least 4,000 but not more than 4,350; and

(7) ensures that background checks are conducted on and the training required under Section 141.0095 is completed by each adult participating in the program.

(b) A waiver granted by the department under Subsection (a) is valid until the waiver is revoked for cause by the department.

(c) A person who operates a program for which an application for a waiver under this section has been denied or for which a waiver under this section has been revoked may appeal the action in the manner provided for appeal of contested cases under Chapter 2001, Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 1146 (H.B. 492), Sec. 1, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 69, eff. September 1, 2023.

Sec. 141.003. LICENSE REQUIRED. A person may not own, operate, control, or supervise a youth camp unless the person:

(1) holds a license issued under this chapter for that camp; and

(2) complies with this chapter and department rules and orders.

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

Sec. 141.0035. LICENSE FEES. (a) The executive commissioner

by rule shall establish the amount of the fee for obtaining or renewing a license under this chapter. The executive commissioner shall set the fee in a reasonable amount designed to recover the direct and indirect costs to the department of administering and enforcing this chapter. The executive commissioner may set fees in a different amount for resident youth camps and day youth camps to reflect differences in the costs of administering and enforcing this chapter for resident and day camps.

(b) Repealed by Acts 2025, 89th Leg., 2nd C.S., Ch. 3 (S.B. 1), Sec. 7, eff. September 5, 2025.

Added by Acts 2003, 78th Leg., ch. 1110, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0379, eff. April 2, 2015.

Acts 2025, 89th Leg., 2nd C.S., Ch. 3 (S.B. 1), Sec. 7, eff. September 5, 2025.

Sec. 141.004. LICENSE APPLICATION AND ISSUANCE. (a) To obtain a license, a person must submit a license application accompanied by a license fee in an amount set by the executive commissioner by rule.

(b) On receiving a license application, the department shall inspect the applicant's facilities, operations, and premises and shall issue a license to each applicant who will operate a youth camp in accordance with this chapter and rules adopted under this chapter.

(c) The department shall issue serially numbered licenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 251, Sec. 2, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 1110, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0380, eff. April 2, 2015.

Sec. 141.005. LICENSE RENEWAL. (a) A person holding a license issued under this chapter must:

(1) renew the license annually by submitting a renewal application on a date determined by department rule on a form provided by the department; and

(2) submit a renewal application not later than the 30th day after the date the person:

(A) alters the boundaries of a youth camp operated by the person;

(B) completes construction of one or more new cabins located on the premises of the camp; or

(C) completes any renovation to one or more existing cabins located on the premises of the camp that:

(i) increases or decreases the number of beds in an affected cabin; or

(ii) alters the method of ingress or egress to an affected cabin.

(b) The application must be accompanied by a renewal fee in an amount set by the executive commissioner by rule.

(c) The department may not renew the license of a youth camp which has not corrected deficiencies before the application for renewal is submitted. The executive commissioner shall adopt substantive and procedural rules for the submission by a youth camp operator of evidence that a deficiency or deficiencies have been corrected.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 251, Sec. 3, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1373, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1110, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0381, eff. April 2, 2015.

Acts 2025, 89th Leg., 2nd C.S., Ch. 2 (H.B. 1), Sec. 3, eff. September 5, 2025.

Acts 2025, 89th Leg., 2nd C.S., Ch. 3 (S.B. 1), Sec. 3, eff. September 5, 2025.

Sec. 141.0051. LICENSE; CONSIDERATION OF CERTAIN CONVICTIONS. In making a determination on issuance, renewal, or revocation of a youth camp operator's license, the department shall consider whether the youth camp employs an individual who was convicted of an act of sexual abuse, as defined by Section 21.02, Penal Code, that occurred at the camp.

Added by Acts 2019, 86th Leg., R.S., Ch. 1325 (H.B. 4372), Sec. 1, eff. September 1, 2019.

Sec. 141.0052. PROHIBITED LICENSURE OF YOUTH CAMPS WITHIN FLOODPLAIN; EXCEPTION. (a) The department shall not issue or renew a youth camp license for a youth camp that operates one or more cabins located within a floodplain.

(b) Notwithstanding Subsection (a), the department may issue or renew a license to a youth camp described by Subsection (a) only if:

(1) each cabin location within a floodplain is a result of the cabin's proximity to a lake, pond, or other still body of water that:

(A) is not connected to a stream, river, or other watercourse; or

(B) is dammed; or

(2) each cabin is at least 1,000 feet from a floodway.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 3 (S.B. 1), Sec. 4, eff. September 5, 2025.

Sec. 141.0056. ONLINE YOUTH CAMP REGISTRY. The department shall post, maintain, and update on the department's Internet website a list of each youth camp with an active license issued under this chapter.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 3 (S.B. 1), Sec. 4, eff. September 5, 2025.

Sec. 141.006. PRINCIPAL AUTHORITY FOR YOUTH CAMPS. The department is the principal authority on matters relating to health and safety conditions at youth camps. In addition to the powers and duties established by this chapter, the department has any other powers necessary and convenient to carry out its responsibilities under this chapter.

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

Sec. 141.007. INSPECTIONS. (a) An employee or agent of the department may enter any property for which a license is issued under this chapter, property for which a license application to operate a youth camp is pending, or property on which a youth camp is in operation to investigate and inspect conditions relating to the health and safety of the campers.

(b) An employee or agent who enters a youth camp to investigate and inspect conditions shall notify the person in charge of the camp of the inspector's presence and shall present proper credentials. The department may exercise the remedies authorized by Section 141.015(b) if the employee or agent is not allowed to enter.

(c) The executive commissioner may prescribe reasonable record-keeping requirements for licensed youth camps, including a requirement that the youth camp keep records relating to matters involving the health and safety of campers. An employee or agent of the department may examine, during regular business hours, any records relating to the health and safety of campers.

(d) An employee or agent of the department who enters a youth camp to investigate and inspect conditions shall:

(1) notify the person in charge of the camp or the person's designee of any violations as they are discovered; and

(2) allow the camp to correct the violations while the investigation and inspection is occurring.

(e) The department may not extend or delay an investigation or inspection to allow the youth camp to correct a violation under Subsection (d)(2).

(f) An employee or agent of the department performing an investigation and inspection under this section may not report a violation that is significant under the department's rules if the violation is corrected during the investigation and inspection.

(g) A penalty may not be imposed on a youth camp for a violation that is significant under the department's rules if the violation is corrected during an investigation and inspection under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 636, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0382, eff. April 2, 2015.

Sec. 141.0071. ADDITIONAL INSPECTION REQUIRED; PARENTAL COMPLAINTS. (a) A youth camp operator shall include in a prominent place on the youth camp's publicly accessible Internet website a clearly marked link to the youth camp program web page on the department's Internet website for campers, parents, and camp staff and volunteers to use to report the camp's noncompliance with this chapter.

(b) The department shall investigate each complaint filed with the department for a youth camp to ensure the youth camp operator is properly implementing the camp's approved emergency plan submitted as required under Section 141.0091 and the camp complies with this chapter.

(c) A department investigation under this section must include an inspection to ensure the youth camp's compliance with this chapter. The inspection shall be performed in the same manner as an inspection under Section 141.007.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 2 (H.B. 1), Sec. 5, eff. September 5, 2025.

Sec. 141.008. ADOPTION OF RULES; EXEMPTION FROM APPLICATION OF CERTAIN RULES. (a) The executive commissioner may adopt rules to implement this chapter. In adopting the rules the executive commissioner shall comply with Subchapter B, Chapter 2001, Government Code, including Sections 2001.032(b) and 2001.033, Government Code.

(b) A youth camp operator may grant an exemption from compliance with a rule that requires physical examinations or inoculations for children or staff if the exemption is requested on the grounds of religious convictions.

(c) The department shall review the camper to counselor ratios for overnight stays at youth camps and provide to the executive commissioner recommendations regarding minimum camper to counselor ratios. The executive commissioner by rule shall establish minimum camper to counselor ratios for overnight stays at youth camps.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 636, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0383, eff. April 2, 2015.

Acts 2025, 89th Leg., 2nd C.S., Ch. 2 (H.B. 1), Sec. 4, eff. September 5, 2025.

Acts 2025, 89th Leg., 2nd C.S., Ch. 3 (S.B. 1), Sec. 5, eff. September 5, 2025.

Sec. 141.0081. YOUTH CAMP SAFETY MULTIDISCIPLINARY TEAM. (a) The Youth Camp Safety Multidisciplinary Team is created within the department and is composed of at least one representative from:

(1) the department;

(2) the Texas Division of Emergency Management;

(3) the Texas Department of Insurance State Fire Marshal's Office;

(4) the Parks and Wildlife Department;

(5) the Texas Water Development Board;

(6) the Texas A&M Forest Service; and

(7) the Department of Public Safety.

(b) The commissioner or the commissioner's designee shall serve as the chair of the team.

(c) The team shall meet regularly to develop proposed minimum standards for youth camps under this chapter. The team shall present the proposed minimum standards to the executive commissioner as recommendations for adoption.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 2 (H.B. 1), Sec. 5, eff. September 5, 2025.

Sec. 141.0085. REPORTS OF ABUSE; DUTIES OF YOUTH CAMP OPERATOR. (a) The executive commissioner by rule shall establish a procedure for the department to forward a report of alleged abuse of a camper that is received by the department to the Department of Family and Protective Services or another appropriate agency.

(b) If a law enforcement agency notifies a youth camp operator of the investigation or conviction of an individual who is employed by the camp for an act of sexual abuse, as defined by Section 21.02, Penal Code, that occurred at the camp, the operator shall:

(1) immediately notify the department of the investigation

or conviction; and

(2) retain all records related to the investigation or conviction until the department notifies the camp that the record retention is no longer required.

Added by Acts 2019, 86th Leg., R.S., Ch. 1325 (H.B. 4372), Sec. 1, eff. September 1, 2019.

Sec. 141.009. STANDARDS. The executive commissioner by rule shall establish health and safety standards for youth camps. The standards may relate to:

(1) adequate and proper supervision at all times of camp activities;

(2) qualifications for directors, supervisors, and staff and sufficient numbers of those persons;

(3) proper safeguards for sanitation and public health;

(4) adequate medical services for personal health and first aid;

(5) proper procedures for food preparation, handling, and mass feeding;

(6) healthful and sufficient water supply;

(7) proper waste disposal;

(8) proper water safety procedures for swimming pools, lakes, and waterways;

(9) safe boating equipment;

(10) proper maintenance and safe use of motor vehicles;

(11) safe buildings and physical facilities;

(12) proper fire precautions;

(13) safe and proper recreational and other equipment;

(14) proper regard for density and use of the premises; and

(15) records of criminal convictions of camp personnel.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1373, Sec. 3, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0384, eff. April 2, 2015.

Sec. 141.0091. ADDITIONAL HEALTH AND SAFETY STANDARDS;

EMERGENCY PLAN. (a) As part of the health and safety standards established under Section 141.009, the executive commissioner by rule shall make applicable to a youth camp the requirements of Chapter 762 in the same manner as those requirements apply to a campground under that chapter.

(b) The executive commissioner by rule shall require a youth camp operator in the emergency plan the operator develops for a youth camp to:

(1) specify muster zones for campers and camp staff to gather in an emergency event that requires evacuation from any location within the premises of the camp;

(2) establish procedures for responding to an emergency event, other than an event addressed by Section 762.002, including:

(A) a lost camper;

(B) a fire on the premises of the camp;

(C) a severe injury, severe illness, serious accident, or death of one or more campers, visitors, camp staff, or camp volunteers that occurs:

(i) on camp premises; or

(ii) while under the supervision of camp staff;

(D) an aquatic emergency if the camp borders a watercourse, lake, pond, or any other body of water;

(E) an epidemic;

(F) an unauthorized or unknown individual present on the camp's premises;

(G) a transportation emergency; and

(H) any other natural disaster or emergency event required under department rules;

(3) establish procedures to identify and account for each camper affected by the emergency event;

(4) establish procedures to notify and communicate with:

(A) local emergency management services, including the emergency management director or coordinator designated under Section 418.1015, Government Code, by the political subdivision within which the camp is located;

(B) camp administrative and medical services staff; and

(C) the parents or legal guardians of each camper identified under Subdivision (3); and

(5) designate a camp emergency preparedness coordinator.

(c) The executive commissioner by rule shall require a youth

camp operator to, at each youth camp the operator operates:

(1) maintain an operable radio capable of providing real-time weather alerts issued by the National Weather Service or a similar professional weather service at the camp;

(2) install and maintain at the camp an emergency warning system that:

(A) is capable of alerting all campers and camp occupants of an emergency; and

(B) includes a public address system operable without reliance on an Internet connection;

(3) monitor safety alerts issued:

(A) by the National Weather Service or a similar professional weather service; and

(B) by local river authorities, if applicable to the camp, or through other local emergency notification systems; and

(4) certify the operator's compliance with this subsection.

(d) In developing a youth camp's emergency plan, a youth camp operator must annually submit the initial or updated plan to the department for approval in the form and manner the department prescribes.

(e) If the department determines a youth camp's submitted emergency plan does not meet the minimum standards prescribed by department rules, the youth camp operator shall revise and resubmit the plan not later than the 45th day after the date the operator receives notice from the department of the plan's deficiencies.

(f) A youth camp operator shall include any updated youth camp emergency plan as an attachment to each application to renew the operator's license under Section 141.005.

(g) Notwithstanding Section 762.002(c), not later than the 10th business day following the date the department approves a youth camp's emergency plan or, if the department determines the plan is deficient under Subsection (e), the camp's revised emergency plan, the operator shall provide a copy of the plan to:

(1) for a camp located in a municipality, the emergency management director or coordinator designated under Section 418.1015, Government Code, for the municipality; and

(2) the emergency management director or coordinator designated under Section 418.1015, Government Code, for the county.

(h) In developing a youth camp's emergency plan, a youth camp operator may consult with an emergency management director or

coordinator described by Subsection (g).

(i) The department shall store in a digital database each emergency plan submitted to the department under this section or Section 762.002 and provide access to that database to:

(1) the Texas Division of Emergency Management; and

(2) each member of the Youth Camp Safety Multidisciplinary Team created under Section 141.0081.

(j) A youth camp operator shall:

(1) provide the most recent version of a youth camp's emergency plan submitted under this section to the parent or legal guardian of:

(A) a camper who is participating in a camp session; or

(B) a prospective camper who is registered to participate in a future camp session;

(2) notify the parent or legal guardian of a camper or prospective camper described by Subdivision (1) if any area of the camp is located within a floodplain; and

(3) ensure the parent or legal guardian signs and submits to the operator a statement acknowledging receipt of the notice required under Subdivision (2).

(k) Not more than 48 hours after each youth camp session begins, the youth camp operator or a youth camp staff member shall conduct a mandatory safety orientation that:

(1) notifies each camper of the camp's boundaries and any hazards present on the camp premises;

(2) instructs each camper on behavioral expectations in an emergency event; and

(3) provides each camper developmentally appropriate instruction on the appropriate actions and procedures to follow in an emergency event, in accordance with the camp's emergency plan required under this section and Section 762.002.

(l) At least once a year, a youth camp operator shall:

(1) provide each youth camp staff member and volunteer with a copy of the camp's most recent emergency plan;

(2) ensure each staff member and volunteer successfully completes training on the camp's emergency plan in compliance with any minimum standards and required hours established by department rule;

(3) instruct each staff member and volunteer on the proper procedures to follow in an emergency event under the plan; and

(4) maintain written records documenting each staff member's and volunteer's successful completion of the training required under this subsection.

(m) A youth camp operator shall:

(1) conspicuously post in each cabin on the youth camp premises the proper evacuation route described in the youth camp's emergency plan; and

(2) ensure each evacuation route on the camp premises is illuminated at night.

(n) Notwithstanding Section 141.0025, the department shall not grant a waiver from a requirement prescribed under this section or Chapter 762.

(o) An emergency plan submitted to, received by, or accessed by the department, the Texas Division of Emergency Management, an emergency management director or coordinator designated under Section 418.1015, Government Code, or any other governmental entity under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 2 (H.B. 1), Sec. 5, eff. September 5, 2025.
Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 3 (S.B. 1), Sec. 4, eff. September 5, 2025.

Sec. 141.0092. REDUNDANT INTERNET CONNECTIONS REQUIRED. (a) In this section, "broadband service" has the meaning assigned by Section 490I.0101, Government Code.

(b) A youth camp operator shall provide and maintain for a youth camp:

(1) Internet services through a broadband service that connects to the Internet using end-to-end fiber optic facilities; and

(2) a secondary Internet connection through a broadband service distinct from the service described under Subdivision (1).

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 2 (H.B. 1), Sec. 5, eff. September 5, 2025.
Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 3 (S.B. 1), Sec. 4, eff. September 5, 2025.

Sec. 141.0093. REQUIRED NOTICE FOR MODIFICATION OF CERTAIN YOUTH CAMP STRUCTURES OR ACTIVITY LOCATIONS. (a) A youth camp operator shall notify the department, in the form and manner prescribed by the department, of any modification to:

(1) a structure intended to facilitate youth camp activities; or

(2) the location of a camp activity on the camp's premises.

(b) On receiving notification of a modification described by Subsection (a), the department may require the youth camp operator to update the youth camp's emergency plan under Section 141.0091.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 2 (H.B. 1), Sec. 5, eff. September 5, 2025.

Sec. 141.0094. DENIAL OR SUSPENSION OF LICENSE FOR NONCOMPLIANCE. (a) The department shall not issue a license or renew a license for a youth camp under this chapter if the youth camp operator is not in compliance with Sections 141.0091 and 141.0092 or a rule adopted under those sections.

(b) The department shall suspend a youth camp license issued by the department if the camp or youth camp operator is in violation of Section 141.0091 or 141.0092. The department may reinstate the license only on or after the date the department determines the camp and the operator are in compliance with Sections 141.0091 and 141.0092.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 2 (H.B. 1), Sec. 5, eff. September 5, 2025.

Sec. 141.0095. TRAINING AND EXAMINATION PROGRAM. (a) A person holding a license issued under this chapter may not employ or accept the volunteer service of an individual for a position involving contact with campers at a youth camp unless:

(1) the individual submits to the person or the youth camp has on file documentation that verifies the individual within the preceding two years successfully completed the training and examination program required by this section; or

(2) the individual successfully completes the youth camp's training and examination program, which must be approved by the

department as required by this section, during the individual's first workweek and the youth camp issues and files documentation verifying that fact.

(b) A person holding a license issued under this chapter must retain in the person's records a copy of the documentation required or issued under Subsection (a) for each employee or volunteer until the second anniversary of the examination date.

(c) A person applying for or holding an employee or volunteer position involving contact with campers at a youth camp must successfully complete the training and examination program on sexual abuse and child molestation required by this section during the applicable period described by Subsection (a).

(d) In accordance with this section, the executive commissioner by rule shall establish criteria and guidelines for training and examination programs on sexual abuse and child molestation. The department may approve training and examination programs offered by trainers under contract with youth camps or by online training organizations or may approve programs offered in another format authorized by the department.

(e) A training and examination program on sexual abuse and child molestation approved by the department must include training and an examination on:

(1) the definitions and effects of sexual abuse and child molestation;

(2) the typical patterns of behavior and methods of operation of child molesters and sex offenders that put children at risk;

(3) the warning signs and symptoms associated with sexual abuse or child molestation, recognition of the signs and symptoms, and the recommended methods of reporting suspected abuse; and

(4) the recommended rules and procedures for youth camps to implement to address, reduce, prevent, and report suspected sexual abuse or child molestation.

(f) The department may assess a fee in the amount set by the executive commissioner by rule as necessary to cover the costs of administering this section to each person that applies for the department's approval of a training and examination program on sexual abuse and child molestation under this section.

(g) The department at least every five years shall review each training and examination program on sexual abuse and child

molestation approved by the department to ensure the program continues to meet the criteria and guidelines established by rule under this section.

Added by Acts 2005, 79th Leg., Ch. 860 (S.B. 990), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0385, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.10(b), eff. September 1, 2015.

Sec. 141.010. ADVISORY COMMITTEE. (a) The executive commissioner shall appoint a committee to advise the executive commissioner in the development of standards and procedures, make recommendations to the executive commissioner regarding the content of the rules adopted to implement this chapter, and perform any other functions requested by the executive commissioner in the implementation and administration of the chapter.

(b) The advisory committee may not exceed nine members, at least two of whom shall be members of the general public. The other members should be experienced camping professionals who represent the camping communities of the state. In making the appointments, the executive commissioner shall attempt to reflect the geographic diversity of the state in proportion to the number of camps licensed by the department in each geographic area of the state.

(c) Advisory committee members serve for staggered six-year terms, with the terms of three members expiring on August 31 of each odd-numbered year.

(d) A vacancy on the advisory committee is filled by the executive commissioner in the same manner as other appointments to the advisory committee.

(e) The advisory committee will meet annually and at the call of the commissioner.

(f) The advisory committee may elect a chairperson, vice-chairperson, and secretary from among its members and may adopt rules for the conduct of its own activities.

Added by Acts 1991, 72nd Leg., ch. 251, Sec. 4, eff. Sept. 1, 1991.
Amended by Acts 2003, 78th Leg., ch. 636, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0387, eff. April 2, 2015.

Sec. 141.011. OPERATOR'S DUTY. A youth camp operator shall provide each camper with safe and healthful conditions, facilities, and equipment that are free from recognized hazards that cause or may tend to cause death, serious illness, or bodily harm.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 141.010 by Acts 1991, 72nd Leg., ch. 251, Sec. 4, eff. Sept. 1, 1991.

Sec. 141.0111. REQUIRED INFORMATION ABOUT ABUSE REPORTING. A youth camp operator shall develop and maintain a written policy regarding the method for reporting to the department suspected abuse occurring at the camp. The operator on request of any person shall provide a copy of the policy to the person.

Added by Acts 2019, 86th Leg., R.S., Ch. 1325 (H.B. 4372), Sec. 2, eff. September 1, 2019.

Sec. 141.0112. REQUIRED NOTICE ABOUT YOUTH CAMP COMPLAINTS AND DISCIPLINARY ACTIONS. (a) The department shall post on the department's Internet website each youth camp compliance order issued by the department until at least the third anniversary of the date the compliance order was finally adjudicated.

(b) A youth camp operator shall include on the camp's publicly accessible Internet website a clearly marked link to the youth camp program web page on the department's Internet website.

Added by Acts 2019, 86th Leg., R.S., Ch. 1325 (H.B. 4372), Sec. 2, eff. September 1, 2019.

Sec. 141.012. LICENSE REVOCATION. (a) If the department finds that a violation of this chapter or a rule adopted under this chapter has occurred or is occurring at a youth camp for which a license has

been issued, the department shall give written notice to the licensee setting forth the nature of the violation and demanding that the violation cease.

(b) The department may initiate proceedings to revoke the license if the licensee refuses or fails to comply with the notice in the time and manner directed in the notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Sec. 141.011 by Acts 1991, 72nd Leg., ch. 251, Sec. 4, eff. Sept. 1, 1991.

Sec. 141.013. HEARINGS. (a) The department may:

(1) call and conduct hearings;

(2) administer oaths;

(3) receive evidence;

(4) issue subpoenas for witnesses, papers, and documents related to the hearing; and

(5) make findings of fact and decisions concerning the administration of this chapter and rules adopted under this chapter.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(47), eff. April 2, 2015.

(c) Reasonable notice of the hearing shall be given to all involved parties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Sec. 141.012 by Acts 1991, 72nd Leg., ch. 251, Sec. 4, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0388, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0389, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(47), eff. April 2, 2015.

Sec. 141.014. JUDICIAL REVIEW. A person affected by a ruling, order, or other act of the department may appeal the action.

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

Renumbered from Sec. 141.013 by Acts 1991, 72nd Leg., ch. 251, Sec. 4, eff. Sept. 1, 1991.

Sec. 141.015. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule or order adopted under this chapter is subject to a civil penalty of not less than $50 or more than $1,000 for each act of violation.

(b) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule or order adopted under this chapter, the department may bring a civil action in a district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment of a civil penalty; or

(3) both injunctive relief and a civil penalty.

(c) The district court, on a finding that the person is violating this chapter or a rule or order adopted under this chapter, shall grant the injunctive relief, assess a civil penalty, or both, as warranted by the facts.

(d) The department may petition a district court for a temporary restraining order to immediately halt a violation or other action creating an emergency condition if it appears that a person:

(1) is violating or threatening to violate this chapter or a rule or order adopted under this chapter; or

(2) is taking any other action that creates an emergency condition that constitutes an imminent danger to the health, safety, or welfare of campers at a youth camp.

(e) An action for injunctive relief, recovery of a civil penalty, or both, may be brought in the county in which the defendant resides or in which the violation or threat of violation occurs.

(f) In an action for injunctive relief under this section, the court may grant any prohibitory or mandatory injunction warranted by the facts, including temporary restraining orders, temporary injunctions, and permanent injunctions. The court shall grant injunctive relief without a bond or other undertaking by the department.

(g) An appellate court shall give precedence to an action brought under this section over other cases of a different nature on the docket of the court.

(h) A civil penalty recovered in an action brought by the department under this chapter shall be deposited to the credit of the youth camp health and safety fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 141.014 by Acts 1991, 72nd Leg., ch. 251, Sec. 4, eff. Sept. 1, 1991.

Sec. 141.016. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty if a person violates this chapter or a rule or order adopted or license issued under this chapter.

(b) In determining the amount of the penalty, the department shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) such other matters as justice may require.

(c) The penalty may not exceed $1,000 a day for each violation.

(d) Each day a violation continues may be considered a separate violation.

Added by Acts 1991, 72nd Leg., ch. 251, Sec. 5, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1373, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 636, Sec. 4, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0390, eff. April 2, 2015.

Sec. 141.017. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a person charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the administrative law judge shall make findings of fact and shall issue a written proposal for decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the person charged with the violation does not request a hearing, the department may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be

warranted.

(d) After making a determination under this section that a penalty is to be assessed against a person, the department shall issue an order requiring that the person pay the penalty.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(47), eff. April 2, 2015.

Added by Acts 1991, 72nd Leg., ch. 251, Sec. 5, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0391, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(47), eff. April 2, 2015.

Sec. 141.018. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the department shall inform the person against whom the order is issued of the amount of the penalty for the violation.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

(1) pay the penalty in full; or

(2) file a petition for judicial review of the department's order contesting the amount of the penalty, the fact of the violation, or both.

(b-1) Within the period prescribed by Subsection (b), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) posting with the court a supersedeas bond for the amount of the penalty; or

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(b-2) If the department receives a copy of an affidavit under Subsection (b-1)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(c) A bond posted under this section must be in a form approved by the court and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to, post the bond with, or file the affidavit with the court within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

Added by Acts 1991, 72nd Leg., ch. 251, Sec. 5, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0392, eff. April 2, 2015.

Sec. 141.019. REFUND OF ADMINISTRATIVE PENALTY. On the date the court's judgment that an administrative penalty against a person should be reduced or not assessed becomes final, the court shall order that:

(1) the appropriate amount of any penalty payment plus accrued interest be remitted to the person not later than the 30th day after that date; or

(2) the bond be released, if the person has posted a bond.

Added by Acts 1991, 72nd Leg., ch. 251, Sec. 5, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0393, eff. April 2, 2015.

Sec. 141.020. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the department may bring a civil action to recover an administrative penalty under this

chapter.

Added by Acts 1991, 72nd Leg., ch. 251, Sec. 5, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0394, eff. April 2, 2015.

CHAPTER 142. HOME AND COMMUNITY SUPPORT SERVICES

SUBCHAPTER A. HOME AND COMMUNITY SUPPORT SERVICES LICENSE

Sec. 142.001. DEFINITIONS. In this chapter:

(1) "Administrative support site" means a facility or site where a home and community support services agency performs administrative and other support functions but does not provide direct home health, hospice, or personal assistance services.

(2) "Alternate delivery site" means a facility or site, including a residential unit or an inpatient unit:

(A) that is owned or operated by a hospice;

(B) that is not the hospice's principal place of business;

(C) that is located in the geographical area served by the hospice; and

(D) from which the hospice provides hospice services.

(3) "Bereavement" means the process by which a survivor of a deceased person mourns and experiences grief.

(4) "Bereavement services" means support services offered to a family during bereavement.

(5) "Branch office" means a facility or site in the geographical area served by a home and community support agency where home health or personal assistance services are delivered or active client records are maintained.

(6) "Certified agency" means a home and community support services agency, or a portion of the agency, that:

(A) provides a home health service; and

(B) is certified by an official of the United States Department of Health and Human Services as in compliance with conditions of participation in Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.).

(7) "Certified home health services" means home health services that are provided by a certified agency.

(8) "Chief financial officer" means an individual who is responsible for supervising and managing all financial activities for a home and community support services agency.

(9) "Controlling person" means a person who controls a home and community support services agency or other person as described by Section 142.0012.

(10) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(48), eff. April 2, 2015.

(11) "Counselor" means an individual qualified under Medicare standards to provide counseling services, including bereavement, dietary, spiritual, and other counseling services, to both the client and the family.

(11-a) "Department" means the Department of Aging and Disability Services.

(11-b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(48), eff. April 2, 2015.

(11-c) "Habilitation" means habilitation services, as defined by Section 542.0001, Government Code, delivered by a licensed home and community support services agency.

(12) "Home and community support services agency" means a person who provides home health, hospice, habilitation, or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location.

(12-a) "Home and community support services agency administrator" or "administrator" means the person who is responsible for implementing and supervising the administrative policies and operations of the home and community support services agency and for administratively supervising the provision of all services to agency clients on a day-to-day basis.

(13) "Home health service" means the provision of one or more of the following health services required by an individual in a residence or independent living environment:

(A) nursing, including blood pressure monitoring and diabetes treatment;

(B) physical, occupational, speech, or respiratory therapy;

(C) medical social service;

(D) intravenous therapy;

(E) dialysis;

(F) service provided by unlicensed personnel under the delegation or supervision of a licensed health professional;

(G) the furnishing of medical equipment and supplies, excluding drugs and medicines; or

(H) nutritional counseling.

(14) "Hospice" means a person licensed under this chapter to provide hospice services, including a person who owns or operates a residential unit or an inpatient unit.

(15) "Hospice services" means services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a client or a client's family as part of a coordinated program consistent with the standards and rules adopted under this chapter. These services include support services for terminally ill patients and their families that:

(A) are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement;

(B) are provided by a medically directed interdisciplinary team; and

(C) may be provided in a home, nursing home, residential unit, or inpatient unit according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice client.

(16) "Inpatient unit" means a facility that provides a continuum of medical or nursing care and other hospice services to clients admitted into the unit and that is in compliance with:

(A) the conditions of participation for inpatient units adopted under Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.); and

(B) standards adopted under this chapter.

(17) "Independent living environment" means:

(A) a client's individual residence, which may include a group home or foster home; or

(B) other settings where a client participates in activities, including school, work, or church.

(18) "Interdisciplinary team" means a group of individuals who work together in a coordinated manner to provide hospice services and must include a physician, registered nurse, social worker, and counselor.

(19) "Investigation" means an inspection or survey conducted by a representative of the department to determine if a licensee is in compliance with this chapter.

(20) Repealed by Acts 2019, 86th Leg., R.S., Ch. 609 (S.B. 916), Sec. 3, eff. June 10, 2019.

(21) "Person" means an individual, corporation, or association.

(22) "Personal assistance service" means routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes:

(A) personal care;

(B) health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Texas Board of Nursing under the terms of a memorandum of understanding executed by the board and the department; and

(C) health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or that a registered nurse determines do not require delegation.

(22-a) "Personal care" means the provision of one or more of the following services required by an individual in a residence or independent living environment:

(A) bathing;

(B) dressing;

(C) grooming;

(D) feeding;

(E) exercising;

(F) toileting;

(G) positioning;

(H) assisting with self-administered medications;

(I) routine hair and skin care; and

(J) transfer or ambulation.

(23) "Place of business" means an office of a home and community support services agency that maintains client records or directs home health, hospice, habilitation, or personal assistance services. The term does not include an administrative support site.

(24) "Residence" means a place where a person resides and

includes a home, a nursing home, a convalescent home, or a residential unit.

(25) "Residential unit" means a facility that provides living quarters and hospice services to clients admitted into the unit and that is in compliance with standards adopted under this chapter.

(26) "Respite services" means support options that are provided temporarily for the purpose of relief for a primary caregiver in providing care to individuals of all ages with disabilities or at risk of abuse or neglect.

(27) "Social worker" means an individual licensed as a social worker under Chapter 505, Occupations Code.

(28) "Support services" means social, spiritual, and emotional care provided to a client and a client's family by a hospice.

(29) "Terminal illness" means an illness for which there is a limited prognosis if the illness runs its usual course.

(30) "Volunteer" means an individual who provides assistance to a home and community support services agency without compensation other than reimbursement for actual expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 42, 43, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 800, Sec. 3, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 276, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 702, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.193, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 892, Sec. 25, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 63, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.01, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 9, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0395, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(48), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 609 (S.B. 916), Sec. 2, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 609 (S.B. 916), Sec. 3, eff. June 10, 2019.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.39, eff. April 1, 2025.

Sec. 142.0011. SCOPE, PURPOSE, AND IMPLEMENTATION. (a) The purpose of this chapter is to ensure that home and community support services agencies in this state deliver the highest possible quality of care. This chapter and the rules adopted under this chapter establish minimum standards for acceptable quality of care, and a violation of a minimum standard established or adopted under this chapter is a violation of law. For purposes of this chapter, components of quality of care include:

(1) client independence and self-determination;

(2) humane treatment;

(3) continuity of care;

(4) coordination of services;

(5) professionalism of service providers;

(6) quality of life;

(7) client satisfaction with services; and

(8) person-centered service delivery.

(b) The executive commissioner shall protect clients of home and community support services agencies by adopting rules relating to quality of care and quality of life.

(c) The department shall protect clients of home and community support services agencies by:

(1) regulating those agencies;

(2) strictly monitoring factors relating to the health, safety, welfare, and dignity of each client;

(3) imposing prompt and effective remedies for violations of this chapter and rules and standards adopted under this chapter;

(4) enabling agencies to provide person-centered services that allow clients to maintain the highest possible degree of independence and self-determination; and

(5) providing the public with helpful and understandable

information relating to agencies in this state.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0396, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 2, eff. September 1, 2015.

Sec. 142.0012. CONTROLLING PERSON. (a) A person is a controlling person if the person, acting alone or with others, has the ability to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a home and community support services agency or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company or other business entity that operates or contracts with others for the operation of a home and community support services agency;

(2) a person who is a controlling person of a management company or other business entity that operates a home and community support services agency or that contracts with another person for the operation of a home and community support services agency; and

(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of a home and community support services agency, is in a position of actual control or authority with respect to the agency, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the agency.

(c) A controlling person described by Subsection (b)(3) does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of a home and community support services agency.

(d) The executive commissioner may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0397, eff. April 2, 2015.

Sec. 142.002. LICENSE REQUIRED. (a) Except as provided by Section 142.003, a person, including a health care facility licensed under this code, may not engage in the business of providing home health, hospice, habilitation, or personal assistance services, or represent to the public that the person is a provider of home health, hospice, habilitation, or personal assistance services for pay without a home and community support services agency license authorizing the person to perform those services issued by the department for each place of business from which home health, hospice, habilitation, or personal assistance services are directed. A certified agency must have a license to provide certified home health services.

(b) A person who is not licensed to provide home health services under this chapter may not indicate or imply that the person is licensed to provide home health services by the use of the words "home health services" or in any other manner.

(c) A person who is not licensed to provide hospice services under this chapter may not use the word "hospice" in a title or description of a facility, organization, program, service provider, or services or use any other words, letters, abbreviations, or insignia indicating or implying that the person holds a license to provide hospice services under this chapter.

(d) A license to provide hospice services issued under this chapter authorizes a hospice to own or operate a residential unit or inpatient unit at the licensed site in compliance with the standards and rules adopted under this chapter.

(e) A license issued under this chapter may not be transferred to another person, but may be transferred from one location to another location. A change of ownership or location shall be reported to the department.

(f) A person who is not licensed to provide personal assistance services under this chapter may not indicate or imply that the person is licensed to provide personal assistance services by the use of the words "personal assistance services" or in any other manner.

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

by Acts 1993, 73rd Leg., ch. 800, Sec. 4, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 198, Sec. 2.194, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 3, eff. September 1, 2015.

Sec. 142.0025. TEMPORARY LICENSE. If a person is in the process of becoming certified by the United States Department of Health and Human Services to qualify as a certified agency, the department may issue a temporary home and community support services agency license to the person authorizing the person to provide certified home health services. A temporary license is effective as provided by rules adopted by the executive commissioner.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 44, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 5, eff. Sept. 1, 1993.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.02, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 10, eff. September 1, 2011.

Sec. 142.003. EXEMPTIONS FROM LICENSING REQUIREMENT. (a) The following persons need not be licensed under this chapter:

(1) a physician, dentist, registered nurse, occupational therapist, or physical therapist licensed under the laws of this state who provides home health services to a client only as a part of and incidental to that person's private office practice;

(2) a registered nurse, licensed vocational nurse, physical therapist, occupational therapist, speech therapist, medical social worker, or any other health care professional as determined by the department who provides home health services as a sole practitioner;

(3) a registry that operates solely as a clearinghouse to put consumers in contact with persons who provide home health, hospice, habilitation, or personal assistance services and that does not maintain official client records, direct client services, or compensate the person who is providing the service;

(4) an individual whose permanent residence is in the

client's residence;

(5) an employee of a person licensed under this chapter who provides home health, hospice, habilitation, or personal assistance services only as an employee of the license holder and who receives no benefit for providing the services, other than wages from the license holder;

(6) a home, nursing home, convalescent home, assisted living facility, special care facility, or other institution for individuals who are elderly or who have disabilities that provides home health or personal assistance services only to residents of the home or institution;

(7) a person who provides one health service through a contract with a person licensed under this chapter;

(8) a durable medical equipment supply company;

(9) a pharmacy or wholesale medical supply company that does not furnish services, other than supplies, to a person at the person's house;

(10) a hospital or other licensed health care facility that provides home health or personal assistance services only to inpatient residents of the hospital or facility;

(11) a person providing home health or personal assistance services to an injured employee under Title 5, Labor Code;

(12) a visiting nurse service that:

(A) is conducted by and for the adherents of a well-recognized church or religious denomination; and

(B) provides nursing services by a person exempt from licensing by Section 301.004, Occupations Code, because the person furnishes nursing care in which treatment is only by prayer or spiritual means;

(13) an individual hired and paid directly by the client or the client's family or legal guardian to provide home health or personal assistance services;

(14) a business, school, camp, or other organization that provides home health or personal assistance services, incidental to the organization's primary purpose, to individuals employed by or participating in programs offered by the business, school, or camp that enable the individual to participate fully in the business's, school's, or camp's programs;

(15) a person or organization providing sitter-companion services or chore or household services that do not involve personal

care, health, or health-related services;

(16) a licensed health care facility that provides hospice services under a contract with a hospice;

(17) a person delivering residential acquired immune deficiency syndrome hospice care who is licensed and designated as a residential AIDS hospice under Chapter 248;

(18) the Texas Department of Criminal Justice;

(19) a person that provides home health, hospice, habilitation, or personal assistance services only to persons receiving benefits under:

(A) the home and community-based services (HCS) waiver program;

(B) the Texas home living (TxHmL) waiver program;

(C) the STAR + PLUS or other Medicaid managed care program under the program's HCS or TxHmL certification; or

(D) Section 542.0152, Government Code;

(20) a person who provides intellectual and developmental disabilities habilitative specialized services under Medicaid and is:

(A) a certified HCS or TxHmL provider; or

(B) a local intellectual and developmental disability authority contracted under Section 534.105; or

(21) an individual who provides home health or personal assistance services as the employee of a consumer or an entity or employee of an entity acting as a consumer's fiscal agent under Subchapter C, Chapter 546, Government Code.

(b) A home and community support services agency that owns or operates an administrative support site is not required to obtain a separate license under this chapter for the administrative support site.

(c) A hospice that operates or provides hospice services to an inpatient unit under a contract with a licensed health care facility is not required to obtain an alternate delivery site license for that inpatient unit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 6, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 769, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 276, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.777, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.55, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1310 (S.B. 7), Sec. 1.02, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 4, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 958 (S.B. 1808), Sec. 1, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.40, eff. April 1, 2025.

Sec. 142.004. LICENSE APPLICATION. (a) An applicant for a license to provide home health, hospice, habilitation, or personal assistance services must:

(1) file a written application on a form prescribed by the department indicating the type of service the applicant wishes to provide;

(2) cooperate with any surveys required by the department for a license; and

(3) pay the license fee prescribed by this chapter.

(b) In addition to the requirements of Subsection (a), if the applicant is a certified agency when the application for a license to provide certified home health services is filed, the applicant must maintain its Medicare certification. If the applicant is not a certified agency when the application for a license to provide certified home health services is filed, the applicant must establish that it is in the process of receiving its certification from the United States Department of Health and Human Services.

(c) The executive commissioner by rule shall require that, at a minimum, before the department may approve a license application, the applicant must provide to the department:

(1) documentation establishing that, at a minimum, the applicant has sufficient financial resources to provide the services required by this chapter and by the department during the term of the license;

(2) a list of the management personnel for the proposed home and community support services agency, a description of personnel qualifications, and a plan for providing continuing training and education for the personnel during the term of the license;

(3) documentation establishing that the applicant is capable of meeting the minimum standards established by the executive commissioner relating to the quality of care;

(4) a plan that provides for the orderly transfer of care of the applicant's clients if the applicant cannot maintain or deliver home health, hospice, habilitation, or personal assistance services under the license;

(5) identifying information on the home and community support services agency owner, administrator, and chief financial officer to enable the department to conduct criminal background checks on those persons;

(6) identification of any controlling person with respect to the applicant; and

(7) documentation relating to any controlling person identified under Subdivision (6), if requested by the department and relevant to the controlling person's compliance with any applicable licensing standard required or adopted under this chapter.

(d) Information received by the department relating to the competence and financial resources of the applicant or a controlling person with respect to the applicant is confidential and may not be disclosed to the public.

(e) A home and community support services agency owned or operated by a state agency directly providing services is not required to provide the information described in Subsections (c)(1) and (5).

(f) The department shall evaluate and consider all information collected during the application process.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 45, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 800, Sec. 7, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 276, Sec. 4, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0398, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 5, eff. September 1, 2015.

Sec. 142.005. COMPLIANCE RECORD IN OTHER STATES. The department may require an applicant or license holder to provide the department with information relating to compliance by the applicant, the license holder, or a controlling person with respect to the applicant or license holder with regulatory requirements in any other state in which the applicant, license holder, or controlling person operates or operated a home and community support services agency.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 5, eff. Sept. 1, 1999.

Sec. 142.006. LICENSE ISSUANCE; TERM. (a) The department shall issue a home and community support services agency license to provide home health, hospice, habilitation, or personal assistance services for each place of business to an applicant if:

(1) the applicant:

(A) qualifies for the license to provide the type of service that is to be offered by the applicant;

(B) submits an application and license fee as required by this chapter; and

(C) complies with all applicable licensing standards required or adopted under this chapter; and

(2) any controlling person with respect to the applicant complies with all applicable licensing standards required or adopted under this chapter.

(b) A license issued under this chapter expires three years after the date of issuance. The executive commissioner by rule may adopt a system under which licenses expire on various dates during the three-year period. For the year in which a license expiration date is changed, the commission shall prorate the license fee on a monthly basis. Each license holder shall pay only that portion of the license fee allocable to the number of months for which the license is valid. A license holder shall pay the total license renewal fee at the time of renewal. The commission may issue an initial license for a shorter term to conform expiration dates for a locality or an applicant. The commission may issue a temporary license to an applicant for an initial license.

(c) The department may find that a home and community support services agency has satisfied the requirements for licensing if the agency is accredited by an accreditation organization, such as The

Joint Commission or the Community Health Accreditation Program, and the department finds that the accreditation organization has standards that meet or exceed the requirements for licensing under this chapter. A license fee is required of the home and community support services agency at the time of a license application.

(d) to (f) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1).

(g) The license must designate the types of services that the home and community support services agency is authorized to provide at or from the designated place of business. The types of services that may be designated include dialysis and habilitation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 8, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 276, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 5, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0399, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 6, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1160 (H.B. 3193), Sec. 1, eff. September 1, 2019.

Sec. 142.00605. PERSONAL ASSISTANCE SERVICES PROVIDED WITHOUT LICENSE TO CERTAIN INDIVIDUALS; CRIMINAL OFFENSE. (a) A person commits an offense if the person:

(1) is required to hold a license under this chapter; and

(2) provides without holding the required license personal assistance services to a resident of an assisted living facility, as defined by Section 247.002.

(b) An offense under this section is a Class A misdemeanor, except the offense is a felony of the third degree if the person has been previously convicted of an offense under this section.

Added by Acts 2025, 89th Leg., R.S., Ch. 410 (H.B. 2510), Sec. 1, eff. September 1, 2025.

Sec. 142.0061. POSSESSION OF STERILE WATER OR SALINE. A home and community support services agency or its employees who are registered nurses or licensed vocational nurses may purchase, store, or transport for the purpose of administering to their home health or hospice patients under physician's orders:

(1) sterile water for injection and irrigation; and

(2) sterile saline for injection and irrigation.

Added by Acts 1993, 73rd Leg., ch. 16, Sec. 1, eff. April 2, 1993. Amended by Acts 1993, 73rd Leg., ch. 789, Sec. 23, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 307, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1129, Sec. 1, eff. Sept. 1, 1997.

Sec. 142.0062. POSSESSION OF CERTAIN VACCINES OR TUBERCULIN. (a) A home and community support services agency or its employees who are registered nurses or licensed vocational nurses may purchase, store, or transport for the purpose of administering to the agency's employees, home health or hospice patients, or patient family members under physician's standing orders the following dangerous drugs:

(1) hepatitis B vaccine;

(2) influenza vaccine;

(3) tuberculin purified protein derivative for tuberculosis testing;

(4) pneumococcal polysaccharide vaccine; and

(5) any other vaccine approved, authorized for emergency use, or otherwise permitted for use by the United States Food and Drug Administration to treat or mitigate the spread of a communicable disease, as defined by Section 81.003.

(b) A home and community support services agency that purchases, stores, or transports a vaccine or tuberculin under this section shall ensure that any standing order for the vaccine or tuberculin:

(1) is signed and dated by the physician;

(2) identifies the vaccine or tuberculin covered by the order;

(3) indicates that the recipient of the vaccine or tuberculin has been assessed as an appropriate candidate to receive

the vaccine or tuberculin and has been assessed for the absence of any contraindication;

(4) indicates that appropriate procedures are established for responding to any negative reaction to the vaccine or tuberculin; and

(5) orders that a specific medication or category of medication be administered if the recipient has a negative reaction to the vaccine or tuberculin.

Added by Acts 1997, 75th Leg., ch. 1129, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.195, eff. Sept. 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 49 (H.B. 797), Sec. 1, eff. May 18, 2021.

Sec. 142.0063. POSSESSION OF CERTAIN DANGEROUS DRUGS. (a) A home and community support services agency in compliance with this section or its employees who are registered nurses or licensed vocational nurses may purchase, store, or transport for the purpose of administering to their home health or hospice patients in accordance with Subsection (c) the following dangerous drugs:

(1) any of the following items in a sealed portable container of a size determined by the dispensing pharmacist:

(A) 1,000 milliliters of 0.9 percent sodium chloride intravenous infusion;

(B) 1,000 milliliters of five percent dextrose in water injection; or

(C) sterile saline; or

(2) not more than five dosage units of any of the following items in an individually sealed, unused portable container:

(A) heparin sodium lock flush in a concentration of 10 units per milliliter or 100 units per milliliter;

(B) epinephrine HCl solution in a concentration of 1 to 1,000;

(C) diphenhydramine HCl solution in a concentration of 50 milligrams per milliliter;

(D) methylprednisolone in a concentration of 125 milligrams per two milliliters;

(E) naloxone in a concentration of one milligram per milliliter in a two-milliliter vial;

(F) promethazine in a concentration of 25 milligrams per milliliter;

(G) glucagon in a concentration of one milligram per milliliter;

(H) furosemide in a concentration of 10 milligrams per milliliter;

(I) lidocaine 2.5 percent and prilocaine 2.5 percent cream in a five-gram tube; or

(J) lidocaine HCl solution in a concentration of one percent in a two-milliliter vial.

(b) A home and community support services agency or the agency's authorized employees may purchase, store, or transport dangerous drugs in a sealed portable container under this section only if the agency has established policies and procedures to ensure that:

(1) the container is handled properly with respect to storage, transportation, and temperature stability;

(2) a drug is removed from the container only on a physician's written or oral order;

(3) the administration of any drug in the container is performed in accordance with a specific treatment protocol; and

(4) the agency maintains a written record of the dates and times the container is in the possession of a registered nurse or licensed vocational nurse.

(c) A home and community support services agency or the agency's authorized employee who administers a drug listed in Subsection (a) may administer the drug only in the patient's residence under physician's orders in connection with the provision of emergency treatment or the adjustment of:

(1) parenteral drug therapy; or

(2) vaccine or tuberculin administration.

(d) If a home and community support services agency or the agency's authorized employee administers a drug listed in Subsection (a) pursuant to a physician's oral order, the physician shall promptly send a signed copy of the order to the agency, and the agency shall:

(1) not later than 24 hours after receipt of the order, reduce the order to written form and send a copy of the form to the

dispensing pharmacy by mail or facsimile transmission; and

(2) not later than 20 days after receipt of the order, send a copy of the order as signed by and received from the physician to the dispensing pharmacy.

(e) A pharmacist that dispenses a sealed portable container under this section shall ensure that the container:

(1) is designed to allow access to the contents of the container only if a tamper-proof seal is broken;

(2) bears a label that lists the drugs in the container and provides notice of the container's expiration date, which is the earlier of:

(A) the date that is six months after the date on which the container is dispensed; or

(B) the earliest expiration date of any drug in the container; and

(3) remains in the pharmacy or under the control of a pharmacist, registered nurse, or licensed vocational nurse.

(f) If a home and community support services agency or the agency's authorized employee purchases, stores, or transports a sealed portable container under this section, the agency shall deliver the container to the dispensing pharmacy for verification of drug quality, quantity, integrity, and expiration dates not later than the earlier of:

(1) the seventh day after the date on which the seal on the container is broken; or

(2) the date for which notice is provided on the container label.

(g) A pharmacy that dispenses a sealed portable container under this section shall take reasonable precautionary measures to ensure that the home and community support services agency receiving the container complies with Subsection (f). On receipt of a container under Subsection (f), the pharmacy shall perform an inventory of the drugs used from the container and shall restock and reseal the container before delivering the container to the agency for reuse.

Added by Acts 1997, 75th Leg., ch. 1129, Sec. 1, eff. Sept. 1, 1997.

Sec. 142.0065. DISPLAY OF LICENSE. A license issued under this chapter shall be displayed in a conspicuous place in the designated

place of business and must show:

(1) the name and address of the licensee;

(2) the name of the owner or owners, if different from the information provided under Subdivision (1);

(3) the license expiration date; and

(4) the types of services authorized to be provided under the license.

Added by Acts 1993, 73rd Leg., ch. 800, Sec. 9, eff. Sept. 1, 1993.

Sec. 142.007. NOTICE OF DRUG TESTING POLICY. An agency licensed under this chapter shall provide to the following persons a written statement describing the agency's policy for the drug testing of employees who have direct contact with clients:

(1) each person applying for services from the agency; and

(2) any person requesting the information.

Added by Acts 1999, 76th Leg., ch. 1020, Sec. 1, eff. Sept. 1, 1999.

Sec. 142.008. BRANCH OFFICE. (a) The department may issue a branch office license to a person who holds a license to provide home health or personal assistance services.

(b) The executive commissioner by rule shall establish eligibility requirements for a branch office license.

(c) A branch office license expires on the same date as the license to provide home health or personal assistance services held by the applicant for the branch office license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 10, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0400, eff. April 2, 2015.

Sec. 142.0085. ALTERNATE DELIVERY SITE LICENSE. (a) The department shall issue an alternate delivery site license to a qualified hospice.

(b) The executive commissioner by rule shall establish

standards required for the issuance of an alternate delivery site license.

(c) An alternate delivery site license expires on the same date as the license to provide hospice services held by the hospice.

Added by Acts 1993, 73rd Leg., ch. 800, Sec. 11, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0401, eff. April 2, 2015.

Sec. 142.009. SURVEYS; CONSUMER COMPLAINTS. (a) The department or its representative may enter the premises of a license applicant or license holder at reasonable times to conduct a survey incidental to the issuance of a license and at other times as the department considers necessary to ensure compliance with this chapter and the rules adopted under this chapter.

(a-1) A license applicant or license holder must provide the department representative conducting the survey with a reasonable and safe workspace at the premises. The executive commissioner may adopt rules to implement this subsection.

(b) A home and community support services agency shall provide each person who receives home health, hospice, habilitation, or personal assistance services with a written statement that contains the name, address, and telephone number of the department and a statement that informs the recipient that a complaint against a home and community support services agency may be directed to the department.

(c) The department or its authorized representative shall investigate each complaint received regarding the provision of home health, hospice, habilitation, or personal assistance services and may, as a part of the investigation:

(1) conduct an unannounced survey of a place of business, including an inspection of medical and personnel records, if the department has reasonable cause to believe that the place of business is in violation of this chapter or a rule adopted under this chapter;

(2) conduct an interview with a recipient of home health, hospice, habilitation, or personal assistance services, which may be conducted in the recipient's home if the recipient consents;

(3) conduct an interview with a family member of a

recipient of home health, hospice, habilitation, or personal assistance services who is deceased or other person who may have knowledge of the care received by the deceased recipient of the home health, hospice, habilitation, or personal assistance services; or

(4) interview a physician or other health care practitioner, including a member of the personnel of a home and community support services agency, who cares for a recipient of home health, hospice, habilitation, or personal assistance services.

(d) The reports, records, and working papers used or developed in an investigation made under this section are confidential and may not be released or made public except:

(1) to a state or federal agency;

(2) to federal, state, or local law enforcement personnel;

(3) with the consent of each person identified in the information released;

(4) in civil or criminal litigation matters or licensing proceedings as otherwise allowed by law or judicial rule;

(5) on a form developed by the department that identifies any deficiencies found without identifying a person, other than the home and community support services agency;

(6) on a form required by a federal agency if:

(A) the information does not reveal the identity of an individual, including a patient or a physician or other medical practitioner;

(B) the service provider subject to the investigation had a reasonable opportunity to review the information and offer comments to be included with the information released or made public; and

(C) the release of the information complies with any other federal requirement; or

(7) as provided by Section 142.0092.

(e) The department's representative shall hold a conference with the person in charge of the home and community support services agency before beginning the on-site survey to explain the nature and scope of the survey. When the survey is completed, the department's representative shall hold a conference with the person who is in charge of the agency and shall identify any records that were duplicated. Agency records may be removed from an agency only with the agency's consent.

(f) At the conclusion of a survey or complaint investigation,

the department shall fully inform the person who is in charge of the home and community support services agency of the preliminary findings of the survey at an exit conference and shall give the person a reasonable opportunity to submit additional facts or other information to the department's authorized representative in response to those findings. The response shall be made a part of the record of the survey for all purposes. The department's representative shall leave a written list of the preliminary findings with the agency at the exit conference.

(g) After a survey of a home and community support services agency by the department, the department shall provide to the home and community support services agency administrator:

(1) specific and timely written notice of the official findings of the survey, including:

(A) the specific nature of the survey;

(B) any alleged violations of a specific statute or rule;

(C) the specific nature of any finding regarding an alleged violation or deficiency; and

(D) if a deficiency is alleged, the severity of the deficiency;

(2) information on the identity, including the name, of each department representative conducting or reviewing the results of the survey and the date on which the department representative acted on the matter; and

(3) if requested by the agency, copies of all documents relating to the survey maintained by the department or provided by the department to any other state or federal agency that are not confidential under state law.

(g-1) If the department or the department's authorized representative discovers any additional violations during the review of field notes or preparation of the official statement of deficiencies for a home and community support services agency, the department or the department's representative shall conduct an additional exit conference regarding the additional violations. The additional exit conference must be held in person and may not be held over the telephone, by e-mail, or by facsimile transmission.

(h) Except for the investigation of complaints, a home and community support services agency licensed by the department under this chapter is not subject to additional surveys relating to home

health, hospice, or personal assistance services while the agency maintains accreditation for the applicable service from The Joint Commission, the Community Health Accreditation Program, or other accreditation organizations that meet or exceed the regulations adopted under this chapter. Each provider must submit to the department documentation from the accrediting body indicating that the provider is accredited when the provider is applying for the initial license and annually when the license is renewed.

(i) Except as provided by Subsection (h), the department may not renew an initial home and community support services agency license unless the department has conducted an initial on-site survey of the agency.

(j) Except as provided by Subsections (h) and (l), a survey may be conducted within 18 months after a survey for an initial license. After that time, an on-site survey must be conducted at least every 36 months.

(k) If a person is renewing or applying for a license to provide more than one type of service under this chapter, the surveys required for each of the services the license holder or applicant seeks to provide shall be completed during the same surveyor visit.

(l) The department and other state agencies that are under the commission and that contract with home and community support services agencies to deliver services for which a license is required under this chapter shall execute a memorandum of understanding that establishes procedures to eliminate or reduce duplication of standards or conflicts between standards and of functions in license, certification, or compliance surveys and complaint investigations. The memorandum of understanding must be approved by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 46, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 800, Sec. 12, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 276, Sec. 7, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.56, 2.156(a)(1), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 6, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. 344), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.03, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 11, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0402, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 7, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 13, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 7, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 4, eff. September 1, 2023.

Sec. 142.0091. TRAINING. (a) The department shall provide specialized training to representatives of the department who survey home and community support services agencies. The training must include information relating to:

(1) the conduct of appropriate surveys that do not focus exclusively on medical standards under an acute care model;

(2) acceptable delegation of nursing tasks; and

(3) the provision of person-centered services.

(b) In developing and updating the training required by Subsection (a), the department shall consult with and include providers of home health, hospice, habilitation, and personal assistance services, recipients of those services and their family members, and representatives of appropriate advocacy organizations.

(c) The department at least semiannually shall provide joint training for home and community support services agencies and surveyors on subjects that address the 10 most common violations of federal or state law by home and community support services agencies. The department may charge a home and community support services agency a fee, not to exceed $50 per person, for the training.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 8, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.04, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.05, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 12, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 13, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 8, eff. September 1, 2015.

Sec. 142.0092. CONSUMER COMPLAINT DATA. (a) The department shall maintain records or documents relating to complaints directed to the department by consumers of home health, hospice, habilitation, or personal assistance services. The department shall organize the records or documents according to standard, statewide categories as determined by the department. In determining appropriate categories, the department shall make distinctions based on factors useful to the public in assessing the quality of services provided by a home and community support services agency, including whether the complaint:

(1) was determined to be valid or invalid;

(2) involved significant physical harm or death to a patient;

(3) involved financial exploitation of a patient; or

(4) resulted in any sanction imposed against the agency.

(b) The department shall make the information maintained under this section available to the public in a useful format that does not identify individuals implicated in the complaints.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 8, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 9, eff. September 1, 2015.

Sec. 142.0093. RETALIATION PROHIBITED. (a) A person licensed under this chapter may not retaliate against another person for filing a complaint, presenting a grievance, or providing in good faith information relating to home health, hospice, habilitation, or personal assistance services provided by the license holder.

(b) This section does not prohibit a license holder from

terminating an employee for a reason other than retaliation.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 8, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 10, eff. September 1, 2015.

Sec. 142.0094. USE OF REGULATORY SURVEY REPORTS AND OTHER DOCUMENTS. (a) Except as otherwise provided by this section, a survey report or other document prepared by the department that relates to regulation of a home and community support services agency is not admissible as evidence in a civil action to prove that the agency violated a standard prescribed under this chapter.

(b) Subsection (a) does not:

(1) bar the admission into evidence of department survey reports or other documents in an enforcement action in which the state or an agency or political subdivision of the state is a party, including:

(A) an action seeking injunctive relief under Section 142.013;

(B) an action seeking imposition of a civil penalty under Section 142.014;

(C) a contested case hearing involving imposition of an administrative penalty under Section 142.017; and

(D) a contested case hearing involving denial, suspension, or revocation of a license issued under this chapter;

(2) bar the admission into evidence of department survey reports or other documents that are offered:

(A) to establish warning or notice to a home and community support services agency of a relevant department determination; or

(B) under any rule or evidentiary predicate of the Texas Rules of Evidence;

(3) prohibit or limit the testimony of a department employee, in accordance with the Texas Rules of Evidence, as to observations, factual findings, conclusions, or determinations that a home and community support services agency violated a standard prescribed under this chapter if the observations, factual findings, conclusions, or determinations were made in the discharge of the

employee's official duties for the department; or

(4) prohibit or limit the use of department survey reports or other documents in depositions or other forms of discovery conducted in connection with a civil action if use of the survey reports or other documents appears reasonably calculated to lead to the discovery of admissible evidence.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 8, eff. Sept. 1, 1999.

Sec. 142.0095. INVESTIGATIONS OF HOME AND COMMUNITY SUPPORT SERVICES AGENCIES PROVIDING HOSPICE SERVICES. The commission or its authorized representative shall investigate an allegation of abuse, neglect, or exploitation of a client of any age of a home and community support services agency if:

(1) the abuse, neglect, or exploitation occurs when the client is receiving inpatient hospice services; and

(2) the alleged perpetrator of the abuse, neglect, or exploitation is an employee, volunteer, contractor, or subcontractor of the home and community support services agency.

Added by Acts 2019, 86th Leg., R.S., Ch. 878 (H.B. 3079), Sec. 1, eff. June 10, 2019.

Sec. 142.010. FEES. (a) The executive commissioner by rule shall set license fees for home and community support services agencies in amounts that are reasonable to meet the costs of administering this chapter, except that the fees may not be less than $600 or more than $2,625 for a license to provide home health, hospice, habilitation, or personal assistance services.

(b) The executive commissioner shall consider the size of the home and community support services agency, the number of clients served, the number of services provided, and the necessity for review of other accreditation documentation in determining the amount collected by the department for initial and renewal license fees.

(c) A fee charged under this section is nonrefundable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 13, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 5, eff. Sept. 1, 1997.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 7, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0403, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 11, eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 1160 (H.B. 3193), Sec. 2, eff. September 1, 2019.

Sec. 142.0104. CHANGE IN APPLICATION INFORMATION. (a) If certain application information as specified by department rule changes after the applicant submits an application to the department for a license under this chapter or after the department issues the license, the license holder shall report the change to the department and pay a fee not to exceed $50 not later than the time specified by department rule.

(b) The executive commissioner by rule shall:

(1) specify the information provided in an application that a license holder shall report to the department if the information changes;

(2) prescribe the time for reporting a change in the application information required by Subdivision (1);

(3) establish which changes required to be reported under Subdivision (1) will require department evaluation and approval; and

(4) set the amount of a late fee to be assessed against a license holder who fails to report a change in the application information within the time prescribed under Subdivision (2).

Added by Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.06, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 14, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0404, eff. April 2, 2015.

Sec. 142.0105. LICENSE RENEWAL. (a) A person who is otherwise

eligible to renew a license may renew an unexpired license by submitting a completed application for renewal and paying the required renewal fee to the department not later than the 45th day before the expiration date of the license. A person whose license has expired may not engage in activities that require a license.

(b) An applicant for a license renewal who submits an application later than the 45th day before the expiration date of the license is subject to a late fee in accordance with department rules.

(c) Not later than the 120th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department. The written notice must include an application for license renewal and instructions for completing the application.

Added by Acts 1999, 76th Leg., ch. 887, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 8, eff. September 1, 2007.

Sec. 142.011. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department may deny a license application or suspend or revoke the license of a person who:

(1) fails to comply with the rules or standards for licensing required by this chapter; or

(2) engages in conduct that violates Section 102.001, Occupations Code.

(b) The department may immediately suspend or revoke a license when the health and safety of persons are threatened. If the department issues an order of immediate suspension or revocation, the department shall immediately give the chief executive officer of the home and community support services agency adequate notice of the action taken, the legal grounds for the action, and the procedure governing appeal of the action. A person whose license is suspended or revoked under this subsection is entitled to a hearing not later than the seventh day after the effective date of the suspension or revocation.

(c) The department may suspend or revoke a home and community support services agency's license to provide certified home health

services if the agency fails to maintain its certification qualifying the agency as a certified agency. A home and community support services agency that is licensed to provide certified home health services and that submits a request for a hearing as provided by Subsection (d) is subject to the requirements of this chapter relating to a home and community support services agency that is licensed to provide home health services, but not certified home health services, until the suspension or revocation is finally determined by the department or, if the license is suspended or revoked, until the last day for seeking review of the department order or a later date fixed by order of the reviewing court.

(d) A person whose application is denied or whose license is suspended or revoked is entitled to a hearing if the person submits a written request to the commission. Chapter 2001, Government Code, and the department's rules for contested case hearings apply to hearings conducted under this section and to appeals from department decisions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 47, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 800, Sec. 14, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 276, Sec. 9, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.07, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 15, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0405, eff. April 2, 2015.

Sec. 142.012. POWERS AND DUTIES. (a) The executive commissioner shall adopt rules necessary to implement this chapter. The executive commissioner may adopt rules governing the duties and responsibilities of home and community support services agency administrators, including rules regarding:

(1) an administrator's management of daily operations of the home and community support services agency;

(2) an administrator's responsibility for supervising the

provision of quality care to agency clients;

(3) an administrator's implementation of agency policy and procedures; and

(4) an administrator's responsibility to be available to the agency at all times in person or by telephone.

(b) The executive commissioner by rule shall set minimum standards for home and community support services agencies licensed under this chapter that relate to:

(1) qualifications for professional and nonprofessional personnel, including volunteers;

(2) supervision of professional and nonprofessional personnel, including volunteers;

(3) the provision and coordination of treatment and services, including support and bereavement services, as appropriate;

(4) the management, ownership, and organizational structure, including lines of authority and delegation of responsibility and, as appropriate, the composition of an interdisciplinary team;

(5) clinical and business records;

(6) financial ability to carry out the functions as proposed;

(7) safety, fire prevention, and sanitary standards for residential units and inpatient units; and

(8) any other aspects of home health, hospice, habilitation, or personal assistance services as necessary to protect the public.

(c) The initial minimum standards adopted under Subsection (b) for hospice services must be at least as stringent as the conditions of participation for a Medicare certified provider of hospice services in effect on April 30, 1993, under Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.).

(d) The department shall prescribe forms necessary to perform its duties.

(e) The department shall require each person or home and community support services agency providing home health, hospice, habilitation, or personal assistance services to implement and enforce the applicable provisions of Chapter 102, Human Resources Code.

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

by Acts 1993, 73rd Leg., ch. 800, Sec. 15, eff. Sept. 1, 1993.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.08, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 16, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 12, eff. September 1, 2015.

Sec. 142.013. INJUNCTION. (a) A district court, on petition of the department and on a finding by the court that a person is violating this chapter, may by injunction:

(1) prohibit the person from continuing the violation; or

(2) grant any other injunctive relief warranted by the facts.

(b) The attorney general shall institute and conduct a suit authorized by this section at the request of the department and in the name of the state.

(c) A suit for injunctive relief must be brought in Travis County.

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

Sec. 142.014. CIVIL PENALTY. (a) A person who engages in the business of providing home health, hospice, habilitation, or personal assistance service, or represents to the public that the person is a provider of home health, hospice, habilitation, and personal assistance services for pay, without a license issued under this chapter authorizing the services that are being provided is liable for a civil penalty of not less than $1,000 or more than $2,500 for each day of violation. Penalties may be appropriated only to the department and to administer this chapter.

(b) An action to recover a civil penalty is in addition to an action brought for injunctive relief under Section 142.013 or any other remedy provided by law. The attorney general shall bring suit on behalf of the state to collect the civil penalty.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 16, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 13, eff. September 1, 2015.

Sec. 142.0145. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty against a home and community support services agency that violates Section 166.004.

(b) A penalty assessed under this section shall be $500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 2.02, eff. Sept. 1, 1999.

Sec. 142.017. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates:

(1) this chapter or a rule adopted under this chapter; or

(2) Section 102.001, Occupations Code, if the violation relates to the provision of home health, hospice, habilitation, or personal assistance services.

(b) The penalty shall be not less than $100 or more than $1,000 for each violation. Each day of a violation that occurs before the day on which the person receives written notice of the violation from the department does not constitute a separate violation and shall be considered to be one violation. Each day of a continuing violation that occurs after the day on which the person receives written notice of the violation from the department constitutes a separate violation.

(c) The executive commissioner by rule shall specify each violation for which the department may assess an administrative penalty. In determining which violations warrant penalties, the department shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and

(2) whether the affected home and community support

services agency had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction.

(d) The executive commissioner by rule shall establish a schedule of appropriate and graduated penalties for each violation based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or safety of clients;

(2) the history of previous violations by the person or a controlling person with respect to that person;

(3) whether the affected home and community support services agency had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction;

(4) the amount necessary to deter future violations;

(5) efforts made to correct the violation; and

(6) any other matters that justice may require.

(e) Except as provided by Subsection (j), the executive commissioner by rule shall provide the home and community support services agency with a reasonable period of time following the first day of a violation to correct the violation before the department assesses an administrative penalty if a plan of correction has been implemented.

(f) An administrative penalty may not be assessed for minor violations unless those violations are of a continuing nature or are not corrected.

(g) The executive commissioner shall establish a system to ensure standard and consistent application of penalties regardless of the home and community support services agency location.

(h) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

(i) The department may not assess an administrative penalty against a state agency.

(j) The department may assess an administrative penalty without providing a reasonable period of time to the agency to correct the violation if the violation:

(1) results in serious harm or death;

(2) constitutes a serious threat to health or safety;

(3) substantially limits the agency's capacity to provide care;

(4) is a violation in which a person:

(A) makes a false statement, that the person knows or should know is false, of a material fact:

(i) on an application for issuance or renewal of a license or in an attachment to the application; or

(ii) with respect to a matter under investigation by the department;

(B) refuses to allow a representative of the department to inspect a book, record, or file required to be maintained by an agency;

(C) wilfully interferes with the work of a representative of the department or the enforcement of this chapter;

(D) wilfully interferes with a representative of the department preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter;

(E) fails to pay a penalty assessed by the department under this chapter not later than the 10th day after the date the assessment of the penalty becomes final; or

(F) fails to submit:

(i) a plan of correction not later than the 10th day after the date the person receives a statement of licensing violations; or

(ii) an acceptable plan of correction not later than the 30th day after the date the person receives notification from the department that the previously submitted plan of correction is not acceptable;

(5) is a violation of Section 142.0145; or

(6) involves the rights of the elderly under Chapter 102, Human Resources Code.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 276, Sec. 10, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.778, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 9, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0406, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 14, eff. September 1, 2015.

Sec. 142.0171. NOTICE; REQUEST FOR HEARING. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice shall include:

(1) a brief summary of the alleged violation;

(2) a statement of the amount of the proposed penalty based on the factors listed in Section 142.017(d); and

(3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date on which the notice is received, the person notified may accept the determination of the department made under this section, including the proposed penalty, or may make a written request for a hearing on that determination.

(c) If the person notified of the violation accepts the determination of the department or if the person fails to respond in a timely manner to the notice, the department shall order the person to pay the proposed penalty.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0407, eff. April 2, 2015.

Sec. 142.0172. HEARING; ORDER. (a) If the person notified requests a hearing, the department shall refer the case to the State Office of Administrative Hearings and an administrative law judge of that office shall conduct the hearing.

(a-1) The department shall give written notice of the hearing to the person.

(b) The administrative law judge shall make findings of fact and conclusions of law and shall promptly issue to the department a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the administrative law judge, the department by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0408, eff. April 2, 2015.

Sec. 142.0173. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. (a) The department shall give notice of the order under Section 142.0172(c) to the person alleged to have committed the violation. The notice must include:

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

(2) the amount of any penalty assessed; and

(3) a statement of the right of the person to judicial review of the order.

(b) Not later than the 30th day after the date on which the decision is final as provided by Chapter 2001, Government Code, the person shall:

(1) pay the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within 10 days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

(e) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the penalty.

(f) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty under Subsection (b)(2) and if that amount is reduced or is not upheld by the court, the court shall order that the department pay the appropriate amount plus accrued interest to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the

interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person paid the penalty under Subsection (c)(1)(A), or gave a supersedeas bond, and if the amount of the penalty is not upheld by the court, the court shall order the release of the escrow account or bond. If the person paid the penalty under Subsection (c)(1)(A) and the amount of the penalty is reduced, the court shall order that the amount of the penalty be paid to the department from the escrow account and that the remainder of the account be released. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997.

Sec. 142.0174. USE OF ADMINISTRATIVE PENALTY. An administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 786 (S.B. 52), Sec. 1, eff. September 1, 2005.

Sec. 142.0175. EXPENSES AND COSTS FOR COLLECTION OF CIVIL OR ADMINISTRATIVE PENALTY. (a) If the attorney general brings an action against a person under Section 142.013 or 142.014 or to enforce an administrative penalty assessed under Section 142.0173 and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(b) For purposes of this section, reasonable expenses and costs include expenses incurred by the department and the attorney general in the investigation, initiation, and prosecution of an action, including reasonable investigative costs, attorney's fees, witness fees, and deposition expenses.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997.

Sec. 142.018. REPORTS OF ABUSE, EXPLOITATION, OR NEGLECT. (a) In this section, "abuse," "exploitation," and "neglect" have the meanings applicable through a rule adopted by the executive commissioner under Section 48.002(c), Human Resources Code, except that if the executive commissioner has not adopted applicable rules under that section, the statutory definitions of those terms under Section 48.002(a), Human Resources Code, shall be used.

(b) A home and community support services agency that has cause to believe that a person receiving services from the agency has been abused, exploited, or neglected by an employee of the agency shall report the information to the commission.

(c) This section does not affect the duty or authority of any state agency to conduct an investigation of alleged abuse, exploitation, or neglect as provided by other law. An investigation of alleged abuse, exploitation, or neglect may be conducted without an on-site survey, as appropriate.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 11, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.197, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 3, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0409, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 5, eff. September 1, 2023.

Sec. 142.019. CERTAIN PHYSICIAN REFERRALS PROHIBITED. A physician may not refer a patient to a home and community support services agency if the referral violates 42 U.S.C. Section 1395nn and its subsequent amendments.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 11, eff. Sept. 1, 1999.

Sec. 142.020. DISPOSAL OF SPECIAL OR MEDICAL WASTE. (a) A

home and community support services agency that generates special or medical waste while providing home health services must dispose of the waste in the same manner that the home and community support services agency disposes of special or medical waste generated in the agency's office location.

(b) A home and community support services agency shall provide both verbal and written instructions to the agency's client regarding the proper procedure for disposing of sharps. Sharps include hypodermic needles; hypodermic syringes with attached needles; scalpel blades; razor blades, disposable razors, and disposable scissors used in medical procedures; and intravenous stylets and rigid introducers.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 12, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1317, Sec. 1, eff. Sept. 1, 1999.

Sec. 142.0201. REGISTRATION FOR EVACUATION; DISASTER PREPAREDNESS. A home and community support services agency shall:

(1) assist clients as necessary with registering for disaster evacuation assistance through 2-1-1 services provided by the Texas Information and Referral Network; and

(2) counsel clients as necessary regarding disaster preparedness.

Added by Acts 2009, 81st Leg., R.S., Ch. 459 (H.B. 2558), Sec. 1, eff. June 19, 2009.

SUBCHAPTER B. PERMITS TO ADMINISTER MEDICATION

Sec. 142.021. ADMINISTRATION OF MEDICATION. A person may not administer medication to a client of a home and community support services agency unless the person:

(1) holds a license under state law that authorizes the person to administer medication;

(2) holds a permit issued under Section 142.025 and acts under the delegated authority of a person who holds a license under state law that authorizes the person to administer medication;

(3) administers a medication to a client of a home and community support service agency in accordance with rules of the Texas Board of Nursing that permit delegation of the administration

of medication to a person not holding a permit under Section 142.025; or

(4) administers noninjectable medication under circumstances authorized by the memorandum of understanding executed by the department and the Texas Board of Nursing.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 19, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 8, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 65, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0410, eff. April 2, 2015.

Sec. 142.022. EXEMPTIONS FOR NURSING STUDENTS AND MEDICATION AIDE TRAINEES. (a) Sections 142.021 and 142.029 do not apply to:

(1) a graduate nurse holding a temporary permit issued by the Texas Board of Nursing;

(2) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;

(3) a graduate vocational nurse holding a temporary permit issued by the Texas Board of Nursing;

(4) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(5) a trainee in a medication aide training program approved by the department under Section 142.024 who is administering medications as part of the trainee's clinical experience.

(b) The administration of medications by persons exempted under Subdivisions (1) through (4) of Subsection (a) is governed by the terms of the memorandum of understanding executed by the department and the Texas Board of Nursing.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 4, eff. June 19, 1990. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.009, eff.

Feb. 1, 2004.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 66, eff. September 1, 2007.

Sec. 142.023. RULES FOR ADMINISTRATION OF MEDICATION. The executive commissioner by rule shall establish:

(1) minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to a home health medication aide;

(2) curricula to train a home health medication aide;

(3) minimum standards for the approval of home health medication aide training programs and for rescinding approval;

(4) the acts and practices that are allowed or prohibited to a permit holder; and

(5) minimum standards for on-site supervision of a permit holder by a registered nurse.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 20, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0411, eff. April 2, 2015.

Sec. 142.024. HOME HEALTH MEDICATION AIDE TRAINING PROGRAMS. (a) An application for the approval of a home health medication aide training program must be made to the department on a form prescribed by the department and under department rules.

(b) The department shall approve a home health medication aide training program that meets the minimum standards adopted under Section 142.023. The department may review the approval annually.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 21, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0412, eff. April 2, 2015.

Sec. 142.025. ISSUANCE AND RENEWAL OF HOME HEALTH MEDICATION AIDE PERMIT. (a) To be issued or to have renewed a home health medication aide permit, a person shall apply to the department on a form prescribed by the department and under department rules.

(b) The department shall prepare and conduct an examination for the issuance of a permit.

(c) The department shall require a permit holder to satisfactorily complete a continuing education course approved by the department for renewal of the permit.

(d) The department shall issue a permit or renew a permit to an applicant who:

(1) meets the minimum requirements adopted under Section 142.023;

(2) successfully completes the examination or the continuing education requirements; and

(3) pays a nonrefundable application fee specified in department rules.

(e) A permit is valid for one year and is not transferable.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 22, 23, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0413, eff. April 2, 2015.

Sec. 142.026. FEES FOR ISSUANCE AND RENEWAL OF HOME HEALTH MEDICATION AIDE PERMIT. (a) The executive commissioner by rule shall set the fees in amounts reasonable and necessary to recover the amount projected by the department as required to administer its functions under this subchapter. The fees may not exceed:

(1) $25 for a combined permit application and examination fee; and

(2) $15 for a renewal permit application fee.

(b) Fees received under this section may only be appropriated to the department to administer this subchapter.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June

19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 24, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0414, eff. April 2, 2015.

Sec. 142.027. VIOLATION OF HOME HEALTH MEDICATION AIDE PERMITS. (a) For the violation of this subchapter or a rule adopted under this subchapter, the department may:

(1) deny, suspend, revoke, or refuse to renew a permit;

(2) suspend a permit in an emergency; or

(3) rescind training program approval.

(b) Except as provided by Section 142.028, the procedure by which the department takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by the department's rules for a formal hearing and by Chapter 2001, Government Code.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 25, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 142.028. EMERGENCY SUSPENSION OF HOME HEALTH MEDICATION AIDE PERMITS. (a) The department shall issue an order to suspend a permit issued under Section 142.025 if the department has reasonable cause to believe that the conduct of the permit holder creates an imminent danger to the public health or safety.

(b) An emergency suspension is effective immediately without a hearing on notice to the permit holder.

(c) If requested in writing by a permit holder whose permit is suspended, the department shall conduct a hearing to continue, modify, or rescind the emergency suspension.

(d) The hearing must be held not earlier than the 10th day or later than the 30th day after the date on which the hearing request is received.

(e) The hearing and an appeal from a disciplinary action related to the hearing are governed by the department's rules for a

formal hearing and Chapter 2001, Government Code.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 26, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 142.029. ADMINISTRATION OF MEDICATION; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly administers medication to a client of a home and community support services agency and the person is not authorized to administer the medication under Section 142.021 or 142.022.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 27, eff. Sept. 1, 1993.

Sec. 142.030. DISPENSING DANGEROUS DRUGS OR CONTROLLED SUBSTANCES; CRIMINAL PENALTY. (a) A person authorized by this subchapter to administer medication to a client of a home and community support services agency may not dispense dangerous drugs or controlled substances without complying with Subtitle J, Title 3, Occupations Code.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 28, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 1420, Sec. 14.779, eff. Sept. 1, 2001.

SUBCHAPTER C. DISPOSAL OF CONTROLLED SUBSTANCE PRESCRIPTION DRUGS BY HOSPICE SERVICE PROVIDER

Sec. 142.041. DEFINITION. In this subchapter, "license holder" means a home and community support services agency licensed under this chapter to provide hospice services.

Added by Acts 2019, 86th Leg., R.S., Ch. 829 (H.B. 2594), Sec. 1, eff.

September 1, 2019.

Sec. 142.042. POLICY. (a) A license holder may adopt written policies and procedures related to the disposal of a patient's unused controlled substance prescription drugs on the patient's death or in other circumstances in which disposal is appropriate.

(b) A license holder that adopts policies and procedures under this section shall:

(1) provide a copy of the policies and procedures to the patient and the patient's family;

(2) discuss the policies and procedures with the patient and the patient's family in a language and manner the patient and patient's family understand; and

(3) document in the patient's clinical record that the policies and procedures were provided and discussed under Subdivisions (1) and (2).

Added by Acts 2019, 86th Leg., R.S., Ch. 829 (H.B. 2594), Sec. 1, eff. September 1, 2019.

Sec. 142.043. EMPLOYEE TRAINING. (a) This section applies to an employee of a license holder who is a health care professional licensed under Title 3, Occupations Code.

(b) A license holder may provide training to the employees described by Subsection (a) regarding the secure and responsible disposal of controlled substance prescription drugs in a manner that discourages abuse, misuse, or diversion.

Added by Acts 2019, 86th Leg., R.S., Ch. 829 (H.B. 2594), Sec. 1, eff. September 1, 2019.

Sec. 142.044. AUTHORIZED DISPOSAL. (a) If the license holder has complied with Section 142.042(b) with respect to a patient, a health care professional employee who has completed the training under Section 142.043(b) may confiscate and dispose of a patient's controlled substance prescription drug if:

(1) the patient has died;

(2) the drug has expired; or

(3) the patient's physician has given written instructions that the patient should no longer use the drug.

(b) The employee confiscating the controlled substance prescription drug shall dispose of the drug in a manner consistent with recommendations of the United States Food and Drug Administration and the laws of this state.

(c) The disposal of a controlled substance prescription drug under this section must occur at the location at which the drug was confiscated and be witnessed by another person 18 years of age or older.

(d) After disposing of the controlled substance prescription drug, the employee shall document in the patient's record:

(1) the name of the drug;

(2) the dosage of the drug the patient was receiving;

(3) the route of controlled substance prescription drug administration;

(4) the quantity of the controlled substance prescription drug originally dispensed and the quantity of the drug remaining; and

(5) the time, date, and manner of disposal.

(e) An employee shall document in a patient's file if a family member of the patient prevented the confiscation and disposal of a controlled substance prescription drug as authorized under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 829 (H.B. 2594), Sec. 1, eff. September 1, 2019.

CHAPTER 142A. SUPPORTIVE PALLIATIVE CARE SERVICES

Sec. 142A.0001. DEFINITION. In this chapter, "supportive palliative care" means physician-directed interdisciplinary patient- and family-centered care provided to a patient with a serious illness without regard to the patient's age or terminal prognosis that:

(1) may be provided concurrently with methods of treatment or therapies that seek to cure or minimize the effects of the patient's illness; and

(2) seeks to optimize the quality of life for a patient with a life-threatening or life-limiting illness and the patient's family through various methods, including methods that seek to:

(A) anticipate, prevent, and treat the patient's total

suffering related to the patient's physical, emotional, social, and spiritual condition;

(B) address the physical, intellectual, emotional, cultural, social, and spiritual needs of the patient; and

(C) facilitate for the patient regarding treatment options, education, informed consent, and expression of desires.

Added by Acts 2019, 86th Leg., R.S., Ch. 609 (S.B. 916), Sec. 1, eff. June 10, 2019.

Sec. 142A.0002. REFERENCE IN OTHER LAW. Notwithstanding any other law, a reference in this code or other law to palliative care means supportive palliative care.

Added by Acts 2019, 86th Leg., R.S., Ch. 609 (S.B. 916), Sec. 1, eff. June 10, 2019.

CHAPTER 143. INDUSTRIAL HOMEWORK

Sec. 143.001. DEFINITIONS. In this chapter:

(1) "Employer" means a person who, directly, indirectly, or through an employee, agent, independent contractor, or any other person, delivers to another person materials for articles that are:

(A) to be manufactured in a home and returned to the employer; and

(B) not for the personal use of the employer or a member of the employer's family.

(2) "Home" means a room, house, apartment, or other premises, whichever is most extensive, that is used in whole or in part as a dwelling.

(3) "Industrial homework" means the manufacture, in a home, of articles for an employer.

(4) "Manufacture" includes preparation, alteration, repair, or finishing, in whole or in part, for profit or compensation.

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

Sec. 143.002. EMPLOYER'S PERMIT REQUIRED. (a) An employer may not deliver materials for industrial homework to any person in this

state without an employer's permit issued by the board.

(b) If the employer is not a resident of this state, the employer's agent must hold the employer's permit.

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

Sec. 143.003. EMPLOYER'S PERMIT APPLICATION AND ISSUANCE; TERM. (a) An applicant must apply for an employer's permit in the form prescribed by board rule.

(b) The application must be accompanied by a $50 permit fee.

(c) An employer's permit is valid for one year from the date of issuance.

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

Sec. 143.004. SUSPENSION OR REVOCATION OF EMPLOYER'S PERMIT. The board may suspend or revoke an employer's permit if the board finds that the employer has violated this chapter or has failed to comply with a provision of the permit.

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

Sec. 143.005. HOMEWORKER'S CERTIFICATE REQUIRED. (a) A person may not engage in industrial homework without a homeworker's certificate issued by the board.

(b) A homeworker's certificate is valid only for work performed by the certificate holder in the certificate holder's home.

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

Sec. 143.006. HOMEWORKER'S CERTIFICATE APPLICATION AND ISSUANCE; TERM. (a) An applicant must apply for a homeworker's certificate in the form prescribed by board rule. Each applicant must present a health certificate or other evidence of good health as required by the board.

(b) The application must be accompanied by a fee in an amount set by the board, but not to exceed 50 cents.

(c) A homeworker's certificate is valid for one year from the date of issuance.

(d) The board may not issue a homeworker's certificate to a person who:

(1) is younger than 15 years of age;

(2) suffers from a communicable disease; or

(3) lives in a home that is not clean, sanitary, and free from communicable diseases.

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

Sec. 143.007. SUSPENSION OR REVOCATION OF HOMEWORKER'S CERTIFICATE. The board may suspend or revoke a homeworker's certificate if the board finds that the industrial homeworker:

(1) is performing industrial homework in violation of the conditions under which the certificate was issued or in violation of this chapter; or

(2) has allowed a person who does not hold a homeworker's certificate to assist the homeworker in performing the industrial homework.

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

Sec. 143.008. PROHIBITION ON ISSUANCE OF PERMIT OR CERTIFICATE. The board may not issue an employer's permit or a homeworker's certificate to authorize industrial homework or the delivery of materials for industrial homework if the board determines that the industrial homework:

(1) is injurious to the health or welfare of industrial homeworkers in that industry or to the public; or

(2) makes it unduly difficult to maintain or enforce health standards established by law or rule for factory workers in that industry.

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

Sec. 143.009. ORDER PROHIBITING CERTAIN INDUSTRIAL HOMEWORK; HEARING. (a) The board by order shall prohibit industrial homework

in a certain industry and shall require employers in that industry to stop delivering in this state any materials for that industrial homework if the board determines, after investigation, that the industrial homework may not be continued in that industry without injuring the health and welfare of industrial homeworkers in that industry or of the public.

(b) Before adopting an order under Subsection (a), the board must hold a public hearing at which an opportunity to be heard must be afforded to any person having an interest in the subject matter of the hearing, including:

(1) an employer or a representative of employers; or

(2) an industrial homeworker or a representative of industrial homeworkers.

(c) The board must give public notice of the hearing:

(1) not later than the 30th day before the date on which the hearing is held; and

(2) in a manner determined by the board.

(d) The board shall hold the hearing in the place the board determines to be most convenient to the employers and industrial homeworkers affected by the order.

(e) The board shall determine the effective date of the order, which may not be less than 90 days after the date of its adoption.

(f) After an order becomes effective, a person holding an employer's permit may not deliver materials for the industrial homework prohibited by the order.

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

Sec. 143.010. GENERAL POWERS AND DUTIES OF BOARD. (a) The board may adopt rules necessary to implement this chapter and shall enforce this chapter.

(b) The board or the board's representative shall conduct all inspections and investigations necessary to enforce this chapter.

(c) The board or the board's representative may:

(1) administer oaths;

(2) take affidavits;

(3) issue subpoenas;

(4) compel the attendance of witnesses and the production of books, contracts, documents, or any other evidence;

(5) hear testimony under oath; and

(6) take depositions of witnesses who reside in this state or outside this state in the manner provided by law for similar depositions in civil actions in a justice court.

(d) A subpoena or commission to take testimony shall be issued under the seal of the board.

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

Sec. 143.011. PROHIBITION ON CERTAIN DELIVERIES BY EMPLOYER. An employer may not deliver or cause to be delivered any materials for industrial homework to a person who does not possess an employer's permit or a homeworker's certificate issued in accordance with this chapter.

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

Sec. 143.012. RECORD REQUIREMENTS; INVESTIGATION. (a) A person who holds an employer's permit may not deliver or cause to be delivered or received materials for industrial homework or receive an article as a result of industrial homework unless the employer keeps a record of:

(1) the persons engaged in industrial homework on materials delivered by that employer;

(2) the places where those persons work;

(3) the articles that those persons have manufactured;

(4) the agents or contractors to whom the employer has delivered materials for industrial homework; and

(5) the persons from whom the employer has received materials for industrial homework.

(b) The employer shall maintain and report the information in the manner prescribed by board rule and on forms that the board may provide.

(c) The information and records required by this section may be used by the board only to enforce this chapter and may not be published or disclosed except to representatives of the board enforcing this chapter.

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

Sec. 143.013. LABEL REQUIREMENT. (a) An employer may not deliver or cause to be delivered materials for industrial homework unless there has been conspicuously affixed to those materials a label or other identifying trademark that bears the employer's name and address printed or written legibly in English.

(b) The label must be affixed to the package or container in which the materials are delivered or are to be kept if it is impossible to affix the label to the materials.

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

Sec. 143.014. DISPOSITION OF UNLAWFULLY MANUFACTURED ARTICLES. (a) The board may remove from a home articles that are being manufactured in the home in violation of this chapter and materials used to manufacture those articles.

(b) The board shall give notice of the removal by registered mail to the person whose name and address are affixed to the materials as provided by Section 143.013.

(c) The board may retain the materials or articles until they are claimed by the employer, and if they are not claimed before the 31st day after the date on which the notice is sent, the board may destroy or otherwise dispose of the materials or articles.

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

Sec. 143.015. CRIMINAL PENALTY. (a) An employer commits an offense if the employer:

(1) violates Section 143.002;

(2) refuses to allow the board or its representative to enter the employer's place of business to conduct an investigation authorized by this chapter;

(3) refuses to permit the board or its representative to inspect or copy the employer's records or other documents related to the enforcement of this chapter;

(4) makes an oral statement that the employer is required by the commissioner to make and the statement made is false; or

(5) otherwise violates this chapter or any provision of the

employer's permit.

(b) A person commits an offense if the person violates a rule adopted by the board.

(c) An offense under this section is a misdemeanor punishable by a fine of not less than $25 or more than $200, imprisonment for not less than 30 days or more than 60 days, or both.

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

CHAPTER 144. RENDERERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 144.002. DEFINITIONS. In this chapter:

(1) "Dead animal" means the whole or substantially whole carcass of a dead or fallen domestic animal, or domesticated wild animal, that was not slaughtered for human consumption.

(2) "Dead animal hauler" means a person who collects and disposes of dead animals for commercial purposes.

(3) "Disposal" means the burying, burning, cooking, processing, or rendering of dead animals or of renderable raw materials.

(4) "Employee" means a person who:

(A) is a legal employee of a rendering establishment; and

(B) handles or operates rendering equipment, utensils, containers, vehicles, or packaging materials owned or leased by the rendering establishment.

(5) "Nuisance" means any situation or condition that constitutes a nuisance under Section 341.011.

(6) "Person" means an individual, firm, partnership, association, corporation, trust, company, or organization, and includes an agent, officer, or employee of that individual or entity.

(7) "Processing" means an operation or combination of operations through which materials derived from a dead animal or renderable raw material sources are:

(A) prepared for disposal at a rendering establishment;

(B) stored; or

(C) treated for commercial use or disposition, other than as food for human consumption.

(8) "Related station" means an operation or facility that

is necessary or incidental to the operation of a rendering establishment and that is operated or maintained separately from the rendering establishment.

(9) "Rendering business" means the collection, transportation, disposal, or storage of dead animals or renderable raw materials for commercial purposes at locations where dead animals or renderable raw materials are rendered, boiled, processed, stored, transferred, or otherwise prepared, either as a separate business or in connection with any other established business.

(10) "Rendering establishment" means an establishment or part of an establishment, a plant, or any other premises at which dead animals or renderable raw materials are rendered, boiled, processed, or otherwise prepared to obtain a product for commercial use or disposition, other than as food for human consumption. The term includes all other operations and facilities that are necessary or incidental to the establishment.

(11) "Renderable raw material" means any unprocessed or partially processed material of animal or plant origin, other than a dead animal, that is processed by rendering establishments. The term includes:

(A) animals, poultry, or fish slaughtered or processed for human consumption but that are unsuitable for that use;

(B) the inedible products and by-products of animals, poultry, or fish slaughtered or processed for human consumption;

(C) parts from dead animals;

(D) whole or partial carcasses of dead poultry or fish;

(E) waste cooking greases; and

(F) recyclable cooking oil.

(12) "Recyclable cooking oil" means any unprocessed or partially processed grease, fat, or oil previously used in the cooking or preparation of food for human consumption and intended for recycling by being used or reused as:

(A) an ingredient in a process to make a product; or

(B) an effective substitute for a commercial product.

(13) "Renderable raw material hauler" means a person who collects or transports renderable raw materials for commercial purposes.

(14) "Transfer station" means a facility at which renderable raw materials are transferred from one conveyance to another.

(15) "Waste cooking grease" means any unprocessed or partially processed grease, fat, or oil previously used in the cooking or preparation of food for human consumption and no longer suitable for such use.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 1, eff. Sept. 1, 1999.

Sec. 144.003. CONSTRUCTION OF OTHER LAWS. (a) This chapter does not affect:

(1) Chapter 141, Agriculture Code; or

(2) any state law or a rule of any public regulatory body that relates to the control of water or air pollution.

(b) This chapter does not affect a municipality's power to regulate by ordinance rendering businesses within the boundaries of the municipality. However, each rendering establishment, related station, transfer station, dead animal hauler, or renderable raw material hauler subject to a municipal ordinance shall comply with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 2, eff. Sept. 1, 1999.

SUBCHAPTER C. OPERATING PROCEDURES

Sec. 144.021. GENERAL REQUIREMENTS FOR RENDERING OPERATIONS. Each rendering establishment, related station, transfer station, dead animal hauler, or renderable raw material hauler shall adopt operating procedures that:

(1) provide for the sanitary performance of rendering operations and processes;

(2) prevent the spread of infectious or noxious materials; and

(3) ensure that finished products are free from disease-producing organisms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 6, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0416, eff.

April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.005, eff. September 1, 2015.

Sec. 144.022. RECORDS. (a) Each rendering establishment, related station, or dead animal hauler shall have a dead animal log that meets the requirements prescribed by department rule. The name of the rendering establishment, related station, or dead animal hauler must be on the front of the log.

(b) A rendering establishment, related station, or dead animal hauler that receives a dead animal shall enter the following information in the log:

(1) the date and time of the pickup of the dead animal;

(2) the name of the driver of the collection vehicle;

(3) a description of the dead animal;

(4) the location of the dead animal, including the county; and

(5) the owner of the dead animal, if known.

(c) The rendering establishment, related station, or dead animal hauler shall also keep a record in the log, or in an appendix to the log, of the general route followed in making the collection.

(d) The log is subject to inspection at all reasonable times by the department or a person with written authorization from the department.

(e) This section does not apply to a renderable raw material hauler.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0417, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.006, eff. September 1, 2015.

Sec. 144.023. VEHICLES. (a) A vehicle used to transport dead animals or renderable raw materials to or from a rendering establishment must:

(1) be leak-proof and maintained in a manner that precludes

the creation of a nuisance; and

(2) comply with each applicable requirement for operation on the public roads or highways, including applicable insurance requirements and gross vehicle weight limitations.

(b) A collection vehicle shall be held to a minimum number of stops, and the stops shall be brief, while traveling to the establishment with dead animals or renderable raw materials. Each collection vehicle shall be washed and sanitized at the end of each day's operations.

(c) A truck bed used to transport dead animals or renderable raw materials shall be thoroughly washed and sanitized before use for the transport of finished rendered products. A truck bed used to transport dead animals or renderable raw materials to a rendering establishment, or to transfer finished rendered products from an establishment, shall, before being used to transport any product intended for human consumption, be thoroughly sanitized with a bactericidal agent that is safe for use in a rendering establishment. A truck bed may not be used to transport dead animals or renderable raw materials at the same time the truck bed or any part of the truck bed is used to transport any product intended for human consumption, notwithstanding the manner in which part of the truck bed is sealed or separated from the remainder of the bed.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 3.030(3), eff. September 1, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 3.030(3), eff. September 1, 2015.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 7, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.007, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.008, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.030(3), eff. September 1, 2015.

Sec. 144.024. TREATMENT OF DEAD ANIMALS OR RENDERABLE RAW MATERIALS. (a) Dead animals or renderable raw materials received by

a rendering establishment shall either be immediately placed in the rendering process or stored for not more than 48 hours in a manner that precludes the creation of a nuisance or a malodorous condition.

(b) Cooking or other dehydration operations shall be conducted in a manner that prevents the survival of disease-producing organisms in the processed material. Adequate and suitable means for the treatment of cooking vapors shall be provided and operated in a manner that controls odors.

(c) All cooked or finished materials shall be kept apart from areas where dead animals or renderable raw materials are kept in a manner that prevents contamination.

(d) If a person intends to use oil or grease as an ingredient in livestock feed or in topical cosmetic products, the person may not contaminate or commingle waste cooking greases or recyclable cooking oils with grease trap waste, grit trap waste, or any other substance that would render the greases or oils harmful or otherwise unsuitable for use as an ingredient in livestock feed or in topical cosmetic products.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 8, eff. Sept. 1, 1999.

Sec. 144.025. FLOORS. (a) During operations, the floors in processing areas shall be kept reasonably free from processing wastes, including:

(1) blood;
(2) manure;
(3) scraps;
(4) grease;
(5) water;
(6) dirt; and
(7) litter.

(b) The floors shall be thoroughly cleaned at the end of each day's operations.

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

Sec. 144.026. WASTE TREATMENT. (a) Waste shall be handled and disposed of in a manner that prevents contamination of:

(1) the water supply;
(2) processing equipment;
(3) packaging materials; and
(4) finished products.

(b) Liquid waste shall be treated in the manner required by the department and disposed of in a manner approved by department rule.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0418, eff. April 2, 2015.

Sec. 144.027. EMPLOYEE FACILITIES. (a) Adequate and convenient toilet facilities for employees shall be located in an establishment.

(b) An adequate number of lavatory facilities for employees to wash their hands shall be provided at convenient locations in the establishment and must be supplied with warm water under pressure and with soap or another detergent.

(c) A drinking water supply shall be provided at convenient locations in the establishment for the use of employees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.009, eff. September 1, 2015.

Sec. 144.028. HYGIENE REQUIREMENTS. A person engaging in rendering processes or operations shall wear washable garments and accessories and conform to hygienic practices.

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

Sec. 144.029. SANITARY CONDITIONS REQUIRED. (a) The premises of a rendering establishment shall be kept clean and neat, in good repair, and reasonably free from:
(1) undue collection of refuse;
(2) waste materials;

(3) rodent infestation;
(4) insect breeding places;
(5) standing water; and
(6) other objectionable conditions.

(b) Equipment and utensils shall be provided as necessary for the rendering establishment to conduct operations in a sanitary manner.

(c) Rodents, roaches, and other vermin shall be controlled.

(d) Hide storage facilities shall be in closed areas separate from all other areas.

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

Sec. 144.030. COLLECTION CONTAINER REQUIREMENTS. (a) A container in which dead animals or renderable raw materials are accumulated by a producer at collecting points for pickup by a dead animal hauler or renderable raw material hauler must remain on the premises at each collecting point.

(b) The owner of the containers shall maintain the containers in a leak-proof and sanitary condition and shall replace them as necessary.

(c) The transportation, delivery, transfer, loading, and off-loading of dead animals and renderable raw materials shall be performed in a manner that prevents the release of animal parts and spills or leaks of renderable raw materials from containers. A release of dead animal parts or spill or leak of renderable raw materials shall immediately be cleaned up and reported in the log required by Section 144.022.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 9, eff. Sept. 1, 1999.

SUBCHAPTER G. ADMINISTRATIVE AND ENFORCEMENT PROVISIONS; PENALTIES

Sec. 144.078. INJUNCTION. (a) The attorney general may bring an action in any district court of this state that has jurisdiction and venue for an injunction to compel compliance with this chapter or to restrain any actual or threatened violation of this chapter.

(b) The court may enter an order or judgment to award a preliminary or final injunction as it considers appropriate.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 3.030(15), eff. September 1, 2015.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 21, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.010, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.030(15), eff. September 1, 2015.

Sec. 144.079. PROHIBITED ACTS. (a) A person may not receive, hold, slaughter, butcher, or otherwise process any animal as food for human consumption in a building or compartmented area of a building used as a rendering establishment or related station.

(b) A person may not steal, misappropriate, contaminate, or damage recyclable cooking oil or containers of recyclable cooking oil.

(c) A renderer, hauler, or any other person may not knowingly take possession of stolen recyclable cooking oil.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 22, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.011, eff. September 1, 2015.

CHAPTER 145. TANNING FACILITIES

Sec. 145.002. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 3.030(23), eff. September 1, 2015.

(2) "Fitzpatrick scale" means the following scale for classifying a skin type, based on the skin's reaction to the first 10 to 45 minutes of sun exposure after the winter season:

Skin Type	Sunburning and Tanning History
1	Always burns easily; never tans
2	Always burns easily; tans minimally
3	Burns moderately; tans gradually
4	Burns minimally; always tans well

5 Rarely burns; tans profusely
6 Never burns; deeply pigmented

(3) "Health authority" has the meaning assigned by Section 121.021.

(4) "Operator" means an owner of a tanning facility or an agent of an owner of a tanning facility.

(5) "Person" means an individual, partnership, corporation, or association.

(6) "Phototherapy device" means a piece of equipment that emits ultraviolet radiation and is used by a health care professional in the treatment of disease.

(7) "Tanning device" means a device under Section 431.002 and includes any equipment, including a sunlamp, tanning booth, and tanning bed, that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers and is used for the tanning of human skin. The term also includes any accompanying equipment, including protective eyewear, timers, and handrails.

(8) "Tanning facility" means a business that provides persons access to or use of tanning devices.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 684, Sec. 1, eff. June 15, 1995; Acts 2001, 77th Leg., ch. 473, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.030(23), eff. September 1, 2015.

Sec. 145.003. EXEMPTION. This chapter does not apply to a phototherapy device used by or under the supervision of a licensed physician trained in the use of phototherapy devices.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.

Sec. 145.004. COMPLIANCE WITH LAW. (a) A tanning device used by a tanning facility must comply with all applicable federal and state laws and regulations.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 3.030(24), eff. September 1, 2015.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 684, Sec. 2, eff. June 15, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0431, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.030(24), eff. September 1, 2015.

Sec. 145.005. CUSTOMER NOTICE; LIABILITY. (a) A tanning facility shall give each customer a written statement warning that:

(1) failure to use the eye protection provided to the customer by the tanning facility may result in damage to the eyes;

(2) overexposure to ultraviolet light causes burns;

(3) repeated exposure may result in premature aging of the skin and skin cancer;

(4) abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain:

(A) foods;

(B) cosmetics; or

(C) medications, including:

(i) tranquilizers;

(ii) diuretics;

(iii) antibiotics;

(iv) high blood pressure medicines; or

(v) birth control pills;

(5) any person taking a prescription or over-the-counter drug should consult a physician before using a tanning device;

(6) a person with skin that always burns easily and never tans should avoid a tanning device; and

(7) a person with a family or past medical history of skin cancer should avoid a tanning device.

(b) Compliance with the notice requirement does not affect the liability of a tanning facility operator or a manufacturer of a tanning device.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 473, Sec. 2, eff. Sept. 1, 2001.

Sec. 145.006. WARNING SIGNS. (a) A tanning facility shall post a warning sign in a conspicuous location where it is readily visible by persons entering the establishment. The sign must have dimensions of at least 11 inches by 17 inches and must contain the following wording:

Repeated exposure to ultraviolet radiation may cause chronic sun damage characterized by wrinkling, dryness, fragility, bruising of the skin, and skin cancer.

DANGER: ULTRAVIOLET RADIATION

Failure to use protective eyewear may result in severe burns or permanent injury to the eyes.

Medications or cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a sunlamp if you are using medications, have a history of skin problems, or believe you are especially sensitive to sunlight. Pregnant women or women taking oral contraceptives who use this product may develop discolored skin.

A tanning facility operator who violates a law relating to the operation of a tanning facility is subject to a civil or criminal penalty. If you suspect a violation, please contact your local law enforcement authority or local health authority.

IF YOU DO NOT TAN IN THE SUN, YOU ARE UNLIKELY TO TAN FROM USE OF AN ULTRAVIOLET LAMP OR SUNLAMP.

(b) A tanning facility operator shall also post a warning sign at each tanning device in a conspicuous location that is readily visible to a person about to use the device. The sign must have dimensions of at least 11 inches by 17 inches and must contain the following wording:

DANGER: ULTRAVIOLET RADIATION

1. Follow the manufacturer's instructions for use of this device.

2. Avoid too frequent or lengthy exposure. As with natural sunlight, exposure can cause serious eye and skin injuries and allergic reactions. Repeated exposure may cause skin cancer.

3. Wear protective eyewear. Failure to use protective eyewear may result in severe burns or permanent damage to the eyes.

4. Do not sunbathe before or after exposure to ultraviolet radiation from sunlamps.

5. Medications or cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a sunlamp if

you are using medication, have a history of skin problems, or believe you are especially sensitive to sunlight. Pregnant women or women using oral contraceptives who use this product may develop discolored skin.

A tanning facility operator who violates a law relating to the operation of a tanning facility is subject to a civil or criminal penalty. If you suspect a violation, please contact your local law enforcement authority or local health authority.

IF YOU DO NOT TAN IN THE SUN, YOU ARE UNLIKELY TO TAN FROM USE OF THIS DEVICE.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.030(25), eff. September 1, 2015.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 684, Sec. 3, eff. June 15, 1995; Acts 2001, 77th Leg., ch. 473, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0432, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.012, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.030(25), eff. September 1, 2015.

Sec. 145.007. PROHIBITED CLAIMS ABOUT SAFETY. A tanning facility operator may not claim or distribute promotional materials that claim that using a tanning device is safe or free from risk or that using a tanning device will result in medical or health benefits.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 684, Sec. 4, eff. June 15, 1995.

Sec. 145.008. OPERATIONAL REQUIREMENTS. (a) A tanning facility shall have an operator present during operating hours. The operator must:

(1) be sufficiently knowledgeable in the correct operation of the tanning devices used at the facility;

(2) instruct, inform, and assist each customer in the

proper use of the tanning devices;

(3) complete and maintain records required by this chapter; and

(4) explain or otherwise inform each customer initially using the tanning facility of:

(A) the potential hazards of and protective measures necessary for ultraviolet radiation;

(B) the requirement that protective eyewear be worn while using a tanning device;

(C) the possibility of photosensitivity or of a photoallergic reaction to certain drugs, medicine, or other agents when a person is subjected to the sun or ultraviolet radiation;

(D) the correlation between skin type and exposure time;

(E) the maximum exposure time to the facility's devices;

(F) the biological process of tanning; and

(G) the dangers of and the necessity to avoid overexposure to ultraviolet radiation.

(b) Before each use of a tanning device, the operator shall provide with each device clean and properly sanitized protective eyewear that protects the eyes from ultraviolet radiation and allows adequate vision to maintain balance. The protective eyewear shall be located in the immediate area of each tanning device and shall be provided without charge to each user of a tanning device. The operator may not allow a person to use a tanning device if that person does not use protective eyewear that meets the requirements of the United States Food and Drug Administration. The operator also shall show each customer how to use suitable physical aids, such as handrails and markings on the floor, to maintain proper exposure distance as recommended by the manufacturer of the tanning device.

(c) The tanning facility operator shall clean and properly sanitize the body contact surfaces of a tanning device after each use of the tanning device.

(d) The tanning facility shall use a timer with an accuracy of at least plus or minus 10 percent of the maximum timer interval of the tanning device. The operator shall limit the exposure time of a customer on a tanning device to the maximum exposure time recommended by the manufacturer. A timer shall be located so that a customer cannot set or reset the customer's exposure time. The operator shall

control the temperature of the customer contact surfaces of a tanning device and the surrounding area so that it may not exceed 100 degrees Fahrenheit.

(e) Before a customer uses a tanning facility's tanning device for the first time and each time a person executes or renews a contract to use a tanning facility, the person must provide photo identification and sign a written statement acknowledging that the person has read and understood the required warnings before using the device and agrees to use protective eyewear.

(f) To ensure the proper operation of the tanning equipment, a tanning facility may not allow a person younger than 18 years of age to use a tanning device.

(g) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1381, Sec. 2, eff. September 1, 2013.

(h) When a tanning device is in use by a person, another person may not be allowed in the area of the tanning device.

(i) A record of each customer using a tanning device shall be maintained at the tanning facility at least until the third anniversary of the date of the customer's last use of a tanning device. The record shall include:

(1) the date and time of the customer's use of a tanning device;

(2) the length of time the tanning device was used;

(3) any injury or illness resulting from the use of a tanning device;

(4) any written informed consent statement required to be signed under Subsection (e);

(5) the customer's skin type, as determined by the customer by using the Fitzpatrick scale for classifying a skin type;

(6) whether the customer has a family history of skin cancer; and

(7) whether the customer has a past medical history of skin cancer.

(j) An operator shall keep an incident log at each tanning facility. The log shall be maintained at the tanning facility at least until the third anniversary of the date of an incident. The log shall include each:

(1) alleged injury;

(2) use of a tanning device by a customer not wearing protective eyewear;

(3) mechanical problem with a tanning device; and

(4) customer complaint.

(k) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 3.030(26), eff. September 1, 2015.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 684, Sec. 5, eff. June 15, 1995; Acts 2001, 77th Leg., ch. 473, Sec. 4, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 626 (H.B. 1310), Sec. 1, eff. January 1, 2010.

Acts 2013, 83rd Leg., R.S., Ch. 1381 (S.B. 329), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1381 (S.B. 329), Sec. 2, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0433, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.013, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.030(26), eff. September 1, 2015.

Sec. 145.0096. CERTAIN ADVERTISING PROHIBITED. (a) This section applies only to a business that:

(1) is operated under a license or permit as a sexually oriented business issued in accordance with Section 243.007, Local Government Code; or

(2) offers, as its primary business, a service or the sale, rental, or exhibition of a device or other item that is intended to provide sexual stimulation or sexual gratification to a customer.

(a-1) A business to which this section applies may not use the word "tan" or "tanning" in a sign or any other form of advertising.

(b) A person commits an offense if the person violates Subsection (a-1). Except as provided by Subsection (c), an offense under this subsection is a Class C misdemeanor.

(c) If it is shown on the trial of an offense under Subsection (b) that the person has previously been convicted of an offense under that subsection, the offense is a Class A misdemeanor.

Added by Acts 1995, 74th Leg., ch. 684, Sec. 7, eff. June 15, 1995.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.014, eff. September 1, 2015.

Sec. 145.011. ACCESS TO RECORDS. (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 3.030(30), eff. September 1, 2015.
(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 3.030(30), eff. September 1, 2015.
(c) A person who is required to maintain records under this chapter or a person in charge of the custody of those records shall, at the request of a health authority, permit the health authority access to copy or verify the records at reasonable times.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 684, Sec. 9, eff. June 15, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0436, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.015, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.016, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.030(30), eff. September 1, 2015.

Sec. 145.0121. CIVIL PENALTY; INJUNCTION. (a) If it appears that a person has violated or is violating this chapter, the attorney general, or the district, county, or municipal attorney in the jurisdiction where the violation is alleged to have occurred or may occur, may institute a civil suit for:
(1) an order enjoining the violation;
(2) a permanent or temporary injunction, a temporary restraining order, or other appropriate remedy;
(3) the assessment and recovery of a civil penalty; or
(4) both injunctive relief and a civil penalty.
(b) A civil penalty may not exceed $25,000 a day for each violation. Each day the violation occurs constitutes a separate violation for the purposes of the assessment of a civil penalty.

(c) In determining the amount of the civil penalty, the court hearing the matter shall consider:

(1) the person's history of previous violations;

(2) the seriousness of the violation;

(3) the hazard to the health and safety of the public;

(4) the demonstrated good faith of the person charged; and

(5) any other matter as justice may require.

(d) Venue for a suit brought under this section is the municipality or county in which the violation occurred or in Travis County.

(e) A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

(f) The attorney general may recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty under this section, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses. The expenses recovered by the attorney general shall be used by the attorney general.

Added by Acts 1995, 74th Leg., ch. 684, Sec. 11, eff. June 15, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0438, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.017, eff. September 1, 2015.

Sec. 145.013. CRIMINAL PENALTY. (a) A person, other than a customer, commits an offense if the person violates this chapter.

(b) An offense under this chapter is a Class A misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 684, Sec. 12, eff. June 15, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.018, eff. September 1, 2015.

Sec. 145.016. DISCLOSURE OF RECORD PROHIBITED; EXCEPTION. (a) Except as provided by Subsection (b), an operator or other person may

not disclose a customer record required by Section 145.008(i).

(b) An operator or other person may disclose a customer record:

(1) if the customer, or a person authorized to act on behalf of the customer, requests the record;

(2) if a health authority requests the record under Section 145.011;

(3) if the customer consents in writing to the disclosure to another person;

(4) in a criminal proceeding in which the customer is a victim, witness, or defendant;

(5) if the record is requested in a criminal or civil proceeding by court order or subpoena; or

(6) as otherwise required by law.

Added by Acts 2001, 77th Leg., ch. 473, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.019, eff. September 1, 2015.

CHAPTER 146. TATTOO AND CERTAIN BODY PIERCING STUDIOS

Sec. 146.001. DEFINITIONS. In this chapter:

(1) "Body piercing" means the creation of an opening in an individual's body, other than in an individual's earlobe, to insert jewelry or another decoration.

(1-a) "Body piercer" means a person who performs body piercing.

(2) "Body piercing studio" means a facility in which body piercing is performed.

(3) "Tattoo" means the practice of producing an indelible mark or figure on the human body by scarring or inserting a pigment under the skin using needles, scalpels, or other related equipment. The term includes the application of permanent cosmetics.

(4) "Tattooist" means a person who performs tattooing.

(5) "Tattoo studio" means an establishment or facility in which tattooing is performed.

(6) "Temporary location" means a fixed location at which an individual operator performs tattooing or body piercing for a specified period of not more than seven days in conjunction with a single event or celebration, where the primary function of the event

or celebration is tattooing or body piercing.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 936, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1226, Sec. 1, eff. Sept. 1, 2003.

Sec. 146.002. LICENSE REQUIRED. (a) A person may not conduct, operate, or maintain a tattoo studio unless the person holds a license issued by the department to operate the tattoo studio. Except as provided by Section 146.0025, a person may not conduct, operate, or maintain a body piercing studio unless the person holds a license issued by the department to operate the body piercing studio.

(b) Except as provided by Section 146.0025, a person may not practice tattooing or body piercing at a temporary location unless the person holds a temporary location license for tattooing or body piercing, as appropriate, issued by the department.

(c) The license must be displayed in a prominent place in the tattoo or body piercing studio or temporary location.

(d) Tattooing and body piercing are permitted only at a location that is in compliance with this chapter and rules adopted under this chapter.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 936, Sec. 3, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 3, eff. Sept. 1, 1999.

Sec. 146.0025. EXEMPTIONS FROM LICENSING REQUIREMENTS; EAR PIERCING ESTABLISHMENTS EXEMPT. (a) This chapter does not apply to:

(1) a medical facility licensed under other law;

(2) an office or clinic of a person licensed by the Texas Medical Board;

(3) a person who performs only ear piercing; or

(4) a facility in which only ear piercing is performed.

(b) A person who conducts, operates, or maintains a facility, office, or clinic described by Subsection (a)(1), (2), or (4) is not required to obtain a license under this chapter to operate that facility.

Added by Acts 1999, 76th Leg., ch. 516, Sec. 3, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0440, eff. April 2, 2015.

Sec. 146.003. LICENSE APPLICATION. (a) To receive a tattoo studio license, body piercing studio license, or temporary location license, a person must submit a signed, verified license application to the department on a form prescribed by the department and must submit an application fee. In addition, the person must submit evidence from the appropriate zoning officials in the municipality or county in which the studio is proposed to be located that confirms that the studio is in compliance with existing zoning codes applicable to the studio.

(b) The department may issue a license or temporary location license for a tattoo or body piercing studio after determining that the studio is in compliance with applicable statutes, rules, and zoning codes.

(c) Repealed by Acts 1999, 76th Leg., ch. 1528, Sec. 9(1), eff. September 1, 1999.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 936, Sec. 4, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 4, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1528, Sec. 1, 9(1), eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0441, eff. April 2, 2015.

Sec. 146.004. LICENSE TERM; RENEWAL. (a) A tattoo studio or body piercing studio license is valid for two years from the date of issuance. A temporary tattooing or body piercing location license is valid for a specified period not to exceed seven days.

(b) A tattoo studio or body piercing studio license may be renewed on payment of the required renewal fee.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 936, Sec. 5, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 5, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0442, eff. April 2, 2015.

Sec. 146.0041. GENERAL GROUNDS FOR REFUSAL. (a) The department may refuse to issue an original or renewal tattoo studio or body piercing studio license if it has reasonable grounds to believe and finds that any of the following circumstances exist:

(1) the applicant has been convicted of a violation of this chapter during the two years immediately preceding the filing of the application;

(2) three years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for a conviction associated with tattooing or body piercing;

(3) the applicant violated or caused to be violated a provision of this chapter or a rule adopted under this chapter involving moral turpitude during the six months immediately preceding the filing of the application;

(4) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application;

(5) the applicant is indebted to the state for a fee or penalty imposed by this chapter or by rule adopted under this chapter;

(6) the applicant is a minor; or

(7) the applicant does not provide an adequate building available at the address for which the license is sought before conducting any activity authorized by the license.

(b) The department may refuse to issue or renew, for a period of one year from the date of application for the initial or renewal license, a tattoo studio or body piercing studio license for a premises where a shooting, stabbing, or other violent act or an offense involving drugs occurred that involved a license applicant, license holder, or registrant under this chapter or a patron or employee of the studio.

Added by Acts 2003, 78th Leg., ch. 1226, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0443, eff.

April 2, 2015.

Sec. 146.0042. REVOCATION OR SUSPENSION OF LICENSE. (a) In Subsection (b), "license holder" includes each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock.

(b) The department may suspend for not more than 60 days or revoke an original or renewal tattoo studio or body piercing studio license if it is found, after notice and hearing, that any of the following is true:

(1) the license holder has been finally convicted of a violation of this chapter;

(2) the license holder violated a provision of this chapter or a rule adopted under this chapter;

(3) the license holder made a false or misleading statement in connection with the original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the department;

(4) the license holder is indebted to the state for fees or payment of penalties imposed by this chapter or by a rule adopted under this chapter;

(5) the license holder knowingly misrepresented to a customer or the public any tattoo or body piercing jewelry sold by the license holder; or

(6) the license holder was intoxicated on the licensed premises.

(c) The department may refuse to renew or, after notice and hearing, suspend for not more than 60 days or revoke a tattoo studio or body piercing studio license if the department finds that the license holder is shown on the records of the comptroller as being subject to a final determination of taxes due and payable under Chapter 151, Tax Code, or is shown on the records of the comptroller as being subject to a final determination of taxes due and payable under Chapter 321, Tax Code.

(d) If a license holder cannot be located for any notice required under this section, the department shall provide notice by posting a copy of the order on the front door of the licensed premises.

Added by Acts 2003, 78th Leg., ch. 1226, Sec. 3, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0444, eff. April 2, 2015.

Sec. 146.005. FEES. The executive commissioner by rule shall set license and license renewal fees in amounts necessary to administer this chapter.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 1226, Sec. 4, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0445, eff. April 2, 2015.
Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 5, eff. September 1, 2021.

Sec. 146.006. CHANGE OF LOCATION. (a) A person holding a tattoo studio or body piercing studio license under this chapter who intends to change the location of the tattoo or body piercing studio shall notify the department in writing of that intent not less than 30 days before the change is to occur. The notice shall include the street address of the new location and the name and residence address of the individual in charge of the business at the new location.
(b) Not later than the 10th day after the change of location is complete, a person holding a license under this chapter shall notify the department in writing and shall verify the information submitted under Subsection (a).
(c) Notice under this section must be sent to the department's central office by certified mail, return receipt requested.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 936, Sec. 6, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 6, eff. Sept. 1, 1999.

Sec. 146.007. COMPLIANCE WITH CHAPTER AND RULES. (a) A person who owns, operates, or maintains a tattoo or body piercing studio or

practices tattooing or body piercing at a temporary location shall comply with this chapter, Chapter 431, and rules adopted under this chapter and Chapter 431.

(b) The department may enforce Chapter 431 in relation to a drug, cosmetic, or device that is used in tattooing and that is not otherwise subject to that chapter as if the drug, cosmetic, or device satisfied the definitions assigned those terms under Section 431.002.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 936, Sec. 7, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 7, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1528, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0446, eff. April 2, 2015.

Sec. 146.0075. REQUIRED HUMAN TRAFFICKING TRAINING. (a) Each employee of a tattoo studio or body piercing studio within the time prescribed by rules adopted by the executive commissioner shall complete a training course approved by the executive commissioner on identifying and assisting victims of human trafficking.

(b) The executive commissioner shall approve training courses on human trafficking prevention, including at least one course that is available without charge. The department shall post the list of the approved training courses on the department's Internet website.

(c) A tattoo studio or body piercing studio shall post signs relating to human trafficking as required by Section 402.0351, Government Code.

Added by Acts 2025, 89th Leg., R.S., Ch. 250 (H.B. 1778), Sec. 1.08, eff. September 1, 2025.

Sec. 146.008. ASEPTIC TECHNIQUES. A person who owns, operates, or maintains a tattoo or body piercing studio and each tattooist or person who performs body piercing who works in the studio or at a temporary location shall take precautions to prevent the spread of infection, including:

(1) using germicidal soap to clean the hands of the tattooist or person who performs body piercing and the skin area of

the client to be tattooed or pierced;

(2) wearing clean apparel and rubber gloves;

(3) using sterile tools and equipment as provided by Section 146.011; and

(4) keeping the tattoo or body piercing studio or temporary location in a sanitary condition.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 936, Sec. 8, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 8, eff. Sept. 1, 1999.

Sec. 146.010. SANITATION REQUIREMENTS. (a) The executive commissioner by rule shall establish sanitation requirements for tattoo and body piercing studios and any other necessary requirements relating to the building or part of the building in which a tattoo or body piercing studio is located.

(b) A person who owns, operates, or maintains a tattoo or body piercing studio shall comply with the rules adopted under this section.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 936, Sec. 10, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 10, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0447, eff. April 2, 2015.

Sec. 146.011. TOOLS AND EQUIPMENT. (a) A tattooist or person who performs body piercing shall use tools and equipment for tattooing or body piercing that have been properly sterilized and kept in a sterile condition.

(b) A tattooist or person who performs body piercing shall sterilize tools and equipment used on one client before using them on another client.

(c) Tools and equipment shall be sterilized by:

(1) the use of a dry heat sterilizer; or

(2) steam pressure treatment in an autoclave.

(d) All needles and instruments shall be kept in a clean, dust-tight container when not in use.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 516, Sec. 11, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1528, Sec. 3, eff. Sept. 1, 1999.

Sec. 146.012. TATTOOS PROHIBITED FOR CERTAIN PERSONS. (a) A tattooist may not tattoo:

(1) except as provided by Subsection (a-1), a person younger than 18 years of age; or

(2) a person who the tattooist suspects is under the influence of alcohol or drugs.

(a-1) A tattooist may tattoo a person younger than 18 years of age if:

(1) the tattoo will cover a tattoo that contains:

(A) obscene or offensive language or symbols;

(B) gang-related names, symbols, or markings;

(C) drug-related names, symbols, or pictures; or

(D) other words, symbols, or markings that the person's parent or guardian considers would be in the best interest of the person to cover; and

(2) the person has obtained consent from the person's parent or guardian to cover the tattoo.

(b) The consent required by Subsection (a-1) may be satisfied by the individual's parent or guardian:

(1) being physically present at the tattoo studio at the time the tattooing is performed;

(2) executing an affidavit stating that the person is the parent or guardian of the individual on whom the tattooing is to be performed;

(3) presenting evidence of the person's identity to the person who will perform the tattooing; and

(4) presenting evidence of the person's status as parent or guardian of the individual who will receive the tattoo.

(c) A person younger than 18 years of age commits an offense if the person falsely states that the person is 18 years of age or older or presents any document that indicates that the person is 18 years of age or older to a person engaged in the operation of a tattoo studio. An offense under this subsection is a Class B misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 936, Sec. 11, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1528, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1226, Sec. 5, eff. Sept. 1, 2003.

Sec. 146.0124. BODY PIERCING PROHIBITED FOR CERTAIN PERSONS. A person may not perform body piercing if the person suspects that the individual on whom the body piercing is to be performed is under the influence of alcohol or drugs.

Added by Acts 1999, 76th Leg., ch. 516, Sec. 12, eff. Sept. 1, 1999.

Sec. 146.0125. BODY PIERCING PROHIBITED WITHOUT PARENTAL CONSENT; EXCEPTION. (a) A person may not perform body piercing on an individual younger than 18 years of age without the consent of a parent, managing conservator, or guardian of the individual.

(b) The consent must indicate the part of the person's body that may be pierced.

(c) The consent required by Subsections (a) and (b) may be satisfied by the individual's parent or guardian:

(1) being physically present at the body piercing studio at the time the body piercing is performed;

(2) executing an affidavit stating that the person is the parent or guardian of the individual on whom the body piercing is to be performed;

(3) presenting evidence of the person's identity to the person who will perform the body piercing; and

(4) presenting evidence of the person's status as parent or guardian of the individual who will receive the body piercing.

(d) A person younger than 18 years of age commits an offense if the person falsely states that the person is 18 years of age or older or presents any document that indicates that the person is 18 years of age or older to a person engaged in the operation of a body piercing studio. An offense under this subsection is a Class B misdemeanor.

Added by Acts 1999, 76th Leg., ch. 516, Sec. 12, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1226, Sec. 6, eff. Sept. 1, 2003.

Sec. 146.0126. TONGUE SPLITTING PROHIBITED. (a) For purposes of this section, "tongue splitting" means cutting a human tongue into two or more parts.

(b) A person may not perform tongue splitting.

Added by Acts 2003, 78th Leg., ch. 1226, Sec. 7, eff. Sept. 1, 2003.

Sec. 146.013. MAINTENANCE OF RECORDS. (a) A tattooist shall maintain a permanent record of each person tattooed by the tattooist for a period established by department rule. A person who performs body piercing shall maintain a permanent record of each individual whose body is pierced by the person for a period established by department rule.

(b) The record shall be available for inspection on the request of the department.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 516, Sec. 13, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0448, eff. April 2, 2015.

Sec. 146.014. REPORT OF INFECTION. A person who owns, operates, or maintains a tattoo or body piercing studio shall report to the department any infection resulting from tattooing or body piercing as soon as it becomes known.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 936, Sec. 12, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 14, eff. Sept. 1, 1999.

Sec. 146.015. RULES; ENFORCEMENT. (a) The executive commissioner shall adopt rules to implement this chapter.

(b) The department shall enforce this chapter and the rules adopted under this chapter and may issue orders to compel compliance.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0449, eff. April 2, 2015.

Sec. 146.016. INSPECTIONS. (a) The department shall inspect a tattoo or body piercing studio to determine if the studio complies with this chapter and the rules adopted under this chapter.

(b) A person who owns, operates, or maintains a tattoo or body piercing studio shall allow inspection of the studio by the department at any time the studio is in operation.

(c) The department shall inform the person who owns, operates, or maintains a tattoo or body piercing studio of any violation discovered by the department under this section and shall give the person a reasonable period in which to take necessary corrective action.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 936, Sec. 13, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 15, eff. Sept. 1, 1999.

Sec. 146.017. LICENSE DENIAL, SUSPENSION, OR REVOCATION. (a) The department may refuse to issue a license or suspend or revoke a license issued under this chapter if an applicant or license holder does not comply with this chapter or a rule adopted or order issued under this chapter.

(b) The refusal to issue a license, the suspension or revocation of a license, and any appeals are governed by the department's formal hearing procedures and the procedures for a contested case hearing under Chapter 2001, Government Code. A person may appeal a final decision of the department as provided by that chapter.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1528, Sec. 5, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0450, eff. April 2, 2015.

Sec. 146.018. OFFENSE; CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter or a rule adopted under this chapter.

(b) An offense under this section is a Class A misdemeanor.

(c) Each day of violation constitutes a separate offense.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Jan. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 1528, Sec. 6, eff. Sept. 1, 1999.

Sec. 146.019. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty against a person who violates a rule adopted under Section 146.007 or an order adopted or license issued under this chapter.

(b) The penalty for a violation may be in an amount not to exceed $5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

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

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amounts necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) The department shall issue an order that states the facts on which a determination that a violation occurred is based, including an assessment of the penalty.

(e) The department shall give written notice of the order to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the

notice, the person in writing may accept the determination and recommended penalty of the department or may make written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the department, the department by order shall impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the department shall refer the case to the State Office of Administrative Hearings and an administrative law judge of that office shall hold the hearing. The department shall give written notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the department's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the department's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by

the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(l) The department on receipt of a copy of an affidavit under Subsection (k)(2) may file, with the court within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the department:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if

the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

(s) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(52), eff. April 2, 2015.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(51), (55), (59), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1528, Sec. 7, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0451, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(52), eff. April 2, 2015.

Sec. 146.020. CIVIL PENALTY; INJUNCTION. (a) If it appears that a person has violated or is violating this chapter or an order issued or a rule adopted under this chapter, the commissioner may request the attorney general or the district attorney, county attorney, or municipal attorney in the jurisdiction where the violation is alleged to have occurred, is occurring, or may occur to institute a civil suit for:

(1) an order enjoining the violation;

(2) a permanent or temporary injunction, a temporary restraining order, or other appropriate remedy, if the department shows that the person has engaged in or is engaging in a violation;

(3) the assessment and recovery of a civil penalty; or

(4) both injunctive relief and a civil penalty.

(b) A civil penalty may not exceed $5,000 a day for each violation. Each day the violation occurs constitutes a separate violation for the purposes of the assessment of a civil penalty.

(c) In determining the amount of the civil penalty, the court hearing the matter shall consider:

(1) the person's history of previous violations;
(2) the seriousness of the violation;
(3) the hazard to the health and safety of the public;
(4) the demonstrated good faith of the person charged; and
(5) any other matter as justice may require.

(d) Venue for a suit brought under this section is in the county in which the violation occurred or in Travis County.

(e) A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

(f) The commissioner or the attorney general may recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty under this section, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses. The expenses recovered by the commissioner under this section may be used for the administration and enforcement of this chapter. The expenses recovered by the attorney general may be used by the attorney general for any purpose.

Added by Acts 1999, 76th Leg., ch. 1528, Sec. 8, eff. Sept. 1, 1999.

Sec. 146.021. EMERGENCY ORDERS. (a) The commissioner may, with or without notice or hearing, issue an emergency order relating to regulation under this chapter of a tattooist or body piercer, or to the operation of a tattoo studio or body piercing studio, if the commissioner finds:

(1) that:

(A) the operation of the tattoo studio or body piercing studio or the performance of tattooing or body piercing by the tattooist or body piercer presents an immediate and serious threat to human health; or

(B) a shooting, stabbing, or other violent act or an offense involving drugs:

(i) occurred at the tattoo studio or body piercing studio; or

(ii) involved the tattooist or body piercer; and

(2) that other procedures available to the department to remedy or prevent the threat will result in an unreasonable delay.

(b) If the commissioner issues an emergency order under this section without a hearing, the department shall set a hearing under

Chapter 2001, Government Code, to affirm, modify, or set aside the emergency order.

(c) If the license holder cannot be located for a notice required under this section, the department shall provide notice by posting a copy of the order on the front door of the premises of the license holder.

Added by Acts 2003, 78th Leg., ch. 1226, Sec. 8, eff. Sept. 1, 2003. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 6, eff. September 1, 2021.

CHAPTER 147. E-CIGARETTE RETAILER PERMITS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 147.0001. DEFINITIONS. In this chapter:

(1) "Commercial business location" means the entire premises occupied by a permit applicant or a person required to hold a permit under this chapter.

(2) "E-cigarette" has the meaning assigned by Section 161.081.

(3) "E-cigarette retailer" means a person who engages in the business of selling e-cigarettes to consumers, including a person who sells e-cigarettes to consumers through a marketplace.

(4) "Marketplace" has the meaning assigned by Section 151.0242, Tax Code.

(5) "Permit holder" means a person who obtains a permit under Section 147.0052.

(6) "Place of business" means:

(A) a commercial business location where e-cigarettes are sold;

(B) a commercial business location where e-cigarettes are kept for sale or consumption or otherwise stored; or

(C) a vehicle from which e-cigarettes are sold.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0002. INAPPLICABILITY TO CERTAIN PRODUCTS. This chapter does not apply to a product described by Section 161.0815.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0003. HEARINGS. Unless otherwise provided by this chapter, the comptroller shall conduct all hearings required by this chapter in accordance with Chapter 2001, Government Code. The comptroller may designate one or more representatives to conduct the hearings and may prescribe the rules of procedure governing the hearings.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0004. RULES. The comptroller may adopt rules to implement this chapter, including rules exempting a person who sells e-cigarettes to consumers through a marketplace from the requirements of this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. PERMITS

Sec. 147.0051. E-CIGARETTE RETAILER PERMIT REQUIRED. (a) A person may not engage in business as an e-cigarette retailer in this state unless the person has been issued a permit from the comptroller.

(b) An e-cigarette retailer shall obtain a permit for each place of business owned or operated by the e-cigarette retailer. The comptroller may not issue a permit for a place of business that is a residence or a unit in a public storage facility.

(c) The comptroller shall prescribe the form and content of an application for a permit and provide the form on request.

(d) The applicant shall accurately complete all information required by the application and provide the comptroller with additional information the comptroller considers necessary.

(e) Each applicant that applies for a permit to sell e-cigarettes from a vehicle must provide the make, model, vehicle identification number, registration number, and any other information

concerning the vehicle the comptroller requires.

(f) All financial information provided under this section is confidential and not subject to Chapter 552, Government Code.

(g) Permits for engaging in business as an e-cigarette retailer are governed exclusively by the provisions of this code.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0052. ISSUANCE OF PERMIT. (a) The comptroller shall issue a permit to an applicant if the comptroller:

(1) has received an application and fee;

(2) does not reject the application and deny the permit under Section 147.0053; and

(3) determines that issuing the permit will not jeopardize the administration and enforcement of this chapter.

(b) The permit shall be issued for a designated place of business, except as provided by Section 147.0056.

(c) The permits are nonassignable.

(d) The permit must indicate the type of permit and authorize the sale of e-cigarettes in this state. The permit must show that it is revocable and shall be forfeited or suspended if the conditions of issuance, provisions of this chapter, or rules of the comptroller are violated.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0053. DENIAL OF PERMIT. The comptroller may reject an application and deny a permit if the comptroller finds, after notice and opportunity for hearing, any of the following:

(1) the premises where business will be conducted are not adequate to protect the e-cigarettes; or

(2) the applicant or managing employee, or if the applicant is a corporation, an officer, director, manager, or any stockholder who holds directly or through family or partner relationship 10 percent or more of the corporation's stock, or, if the applicant is a partnership, a partner or manager:

(A) has failed to disclose any information required by

Sections 147.0051(d) and (e); or

(B) has previously violated provisions of this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0054. PERMIT PERIOD; FEES. (a) A permit required by this chapter expires on the last day of May of each even-numbered year.

(b) An application for a permit required by this chapter must be accompanied by a fee of:

(1) one-half of the amount of the fee for a retailer's permit required by Section 154.111(b), Tax Code, if at the time of application the applicant holds a valid retailer's permit under Section 154.101, 154.102, or 155.041, Tax Code, for the same place of business; or

(2) the amount of the fee for a retailer's permit required by Section 154.111(b), Tax Code.

(c) For a new permit required by Section 147.0051, the comptroller shall prorate the fee according to the number of months remaining during the period that the permit is to be in effect.

(d) A person who does not obtain a renewal permit in a timely manner must pay a late fee of $50 in addition to the application fee for the permit.

(e) If on the date of issuance a permit will expire within three months, the comptroller may collect the prorated permit fee or the fee for the current period and, with the consent of the permit holder, may collect the fee for the next permit period and issue a permit or permits for both periods, as applicable.

(f) A person issued a permit for a place of business that permanently closes before the permit expiration date is not entitled to a refund of the permit fee.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0055. PAYMENT FOR PERMITS. (a) An applicant for a permit required by Section 147.0051 shall send the required fee with the application.

(b) The payment must be made in cash or by money order, check, or credit card.

(c) The comptroller may not issue a permit in exchange for a check until after the comptroller receives full payment on the check.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0056. DISPLAY OF PERMIT. (a) A permit holder shall keep the permit on public display at the place of business for which the permit was issued.

(b) A permit holder who has a permit assigned to a vehicle shall post the permit in a conspicuous place on the vehicle.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0057. REVENUE. Revenue from the sale of e-cigarette retailer's permits shall be deposited as provided by Section 161.0903 and may be appropriated only as provided by that section.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

SUBCHAPTER C. PERMIT SUSPENSION AND REVOCATION

Sec. 147.0101. FINAL SUSPENSION OR REVOCATION OF PERMIT. (a) The comptroller may revoke or suspend a permit holder's permit if the comptroller finds, after notice and hearing as provided by this section, that the permit holder violated this chapter or a rule adopted under this chapter.

(b) If the comptroller intends to suspend or revoke a permit, the comptroller shall provide the permit holder with written notice that includes a statement:

(1) of the reason for the intended revocation or suspension;

(2) that the permit holder is entitled to a hearing by the comptroller on the proposed suspension or revocation; and

(3) of the date, time, and place of the hearing.

(c) The comptroller shall deliver the written notice by personal service or by mail to the permit holder's mailing address as it appears in the comptroller's records. Service by mail is complete when the notice is deposited with the United States Postal Service.

(d) The comptroller shall give the permit holder notice before the 10th day before the final hearing.

(e) A permit holder may appeal the comptroller's decision to a district court in Travis County not later than the 30th day after the date the comptroller's decision becomes final.

(f) A person whose permit is suspended or revoked may not sell, offer for sale, or distribute e-cigarettes from the place of business to which the permit applied until a new permit is granted or the suspension is removed.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0102. SUMMARY SUSPENSION OF PERMIT. (a) The comptroller may suspend a permit holder's permit without notice or a hearing for the permit holder's failure to comply with this chapter or a rule adopted under this chapter if the permit holder's continued operation constitutes an immediate and substantial threat.

(b) If the comptroller summarily suspends a permit holder's permit, proceedings for a preliminary hearing before the comptroller or the comptroller's representative must be initiated simultaneously with the summary suspension. The preliminary hearing shall be set for a date not later than the 10th day after the date of the summary suspension, unless the parties agree to a later date.

(c) At the preliminary hearing, the permit holder must show cause why the permit should not remain suspended pending a final hearing on suspension or revocation.

(d) Chapter 2001, Government Code, does not apply to a summary suspension under this section.

(e) To initiate a proceeding to suspend summarily a permit holder's permit, the comptroller shall serve notice on the permit holder informing the permit holder of the right to a preliminary hearing before the comptroller or the comptroller's representative and of the time and place of the preliminary hearing. The notice must be personally served on the permit holder or an officer,

employee, or agent of the permit holder or sent by certified or registered mail, return receipt requested, to the permit holder's mailing address as it appears in the comptroller's records. The notice must state the alleged violations that constitute the grounds for summary suspension. The suspension is effective at the time the notice is served. If notice is served in person, the permit holder shall immediately surrender the permit to the comptroller. If notice is served by mail, the permit holder shall immediately return the permit to the comptroller.

(f) Section 147.0101, governing hearings for final suspension or revocation of a permit under this chapter, governs a final administrative hearing.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

SUBCHAPTER D. PENALTIES

Sec. 147.0151. PENALTIES. (a) A person violates this chapter if the person:

(1) engages in the business of an e-cigarette retailer without a permit; or

(2) is a person who is subject to a provision of this chapter or a rule adopted by the comptroller under this chapter and who violates the provision or rule.

(b) A person who violates this section shall pay to the state a penalty of not more than $2,000 for each violation.

(c) Each day on which a violation occurs is a separate violation.

(d) The attorney general shall bring suit to recover penalties under this section.

(e) A suit under this section may be brought in Travis County or another county having jurisdiction.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0152. FAILURE TO HAVE PERMIT; OFFENSE. (a) A person commits an offense if the person acts as an e-cigarette retailer and:

(1) receives or possesses e-cigarettes without having a

permit;

(2) receives or possesses e-cigarettes without having a permit posted where it can be easily seen by the public; or

(3) sells e-cigarettes without having a permit.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

SUBTITLE H. PUBLIC HEALTH PROVISIONS

CHAPTER 161. PUBLIC HEALTH PROVISIONS

SUBCHAPTER A. IMMUNIZATIONS

Sec. 161.0001. DEFINITIONS. In this subchapter:

(1) "Data elements" means the information:

(A) a health care provider who administers a vaccine is required to record in a medical record under 42 U.S.C. Section 300aa-25, as amended, including:

(i) the date the vaccine is administered;

(ii) the vaccine manufacturer and lot number of the vaccine;

(iii) any adverse or unexpected events for a vaccine; and

(iv) the name, the address, and if appropriate, the title of the health care provider administering the vaccine; and

(B) specified in rules adopted to implement Section 161.00705.

(1-a) "First responder" means:

(A) any federal, state, local, or private personnel who may respond to a disaster, including:

(i) public health and public safety personnel;

(ii) commissioned law enforcement personnel;

(iii) fire protection personnel, including volunteer firefighters;

(iv) emergency medical services personnel, including hospital emergency facility staff;

(v) a member of the National Guard;

(vi) a member of the Texas State Guard; or

(vii) any other worker who responds to a disaster in the worker's scope of employment; or

(B) any related personnel that provide support services during the prevention, response, and recovery phases of a disaster.

(1-b) "Immediate family member" means the parent, spouse, child, or sibling of a person who resides in the same household as the person.

(1-c) "Individual's legally authorized representative" means:

(A) a parent, managing conservator, or guardian of an individual, if the individual is a minor;

(B) a guardian of the individual, if the individual has been adjudicated incompetent to manage the individual's personal affairs; or

(C) an agent of the individual authorized under a durable power of attorney for health care.

(2) "Payor" means an insurance company, a health maintenance organization, or another organization that pays a health care provider to provide health care benefits, including providing immunizations.

(3) "Electronically," as related to a communication authorized under this chapter, means by e-mail, text message, online communication, or another electronic method of communication approved by the department.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.01, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 803 (S.B. 1409), Sec. 1, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 4.03, eff. September 1, 2009.

Sec. 161.001. LIABILITY OF PERSON WHO ORDERS OR ADMINISTERS IMMUNIZATION. (a) A person who administers or authorizes the administration of a vaccine or immunizing agent is not liable for an injury caused by the vaccine or immunizing agent if the immunization is required by department rule or is otherwise required by law or

other rules.

(b) A person who administers or authorizes the administration of a vaccine or immunizing agent is not liable or responsible for the failure to immunize a child because of the failure or refusal of a parent, managing conservator, or guardian to consent to the vaccination or immunization required under this chapter. Consent to the vaccination or immunization must be given in the manner authorized by Chapter 32, Family Code.

(c) A person who fails to comply with Section 161.004 is not liable or responsible for that failure, and that failure does not create a cause of action.

(d) This section does not apply to a negligent act in administering the vaccine or immunizing agent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 43, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 7.40, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0454, eff. April 2, 2015.

Sec. 161.002. INADMISSIBILITY OF IMMUNIZATION SURVEY INFORMATION. Information obtained from a physician's medical records by a person conducting an immunization survey for the department is not admissible as evidence in a suit against the physician that involves an injury relating to the immunization of an individual.

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

Sec. 161.003. IMMUNIZATION REMINDER NOTICES. (a) In a program administered by the department in which an immunization reminder notice is sent regarding the immunization of a child, the notice must be sent without discrimination based on the legitimacy of the child.

(b) The reminder notice must be addressed to an adult or parent and may not use:

(1) an indication of the marital status of the addressee; or

(2) the terms "Mr.," "Mrs.," "Miss," or "Ms."

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

Sec. 161.004. STATEWIDE IMMUNIZATION OF CHILDREN. (a) Every child in the state shall be immunized against vaccine preventable diseases caused by infectious agents in accordance with the immunization schedule adopted in department rules.

(b) Hospitals shall be responsible for:

(1) referring newborns for immunization at the time the newborn screening test is performed;

(2) reviewing the immunization history of every child admitted to the hospital or examined in the hospital's emergency room or outpatient clinic; and

(3) administering needed vaccinations or referring the child for immunization.

(c) Physicians shall be responsible for reviewing the immunization history of every child examined and administering any needed vaccinations or referring the child for immunization.

(d) A child is exempt from an immunization required by this section if:

(1) a parent, managing conservator, or guardian states that the immunization is being declined for reasons of conscience, including a religious belief; or

(2) the immunization is medically contraindicated based on the opinion of a physician licensed by any state in the United States who has examined the child.

(e) For purposes of this section, "child" means a person under 18 years of age.

(f) The executive commissioner shall adopt rules that are necessary to administer this section.

(g) A parent, managing conservator, or guardian may choose the health care provider who administers the vaccine or immunizing agent under this chapter.

Added by Acts 1993, 73rd Leg., ch. 43, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.162, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0455, eff. April 2, 2015.

Sec. 161.0041. IMMUNIZATION EXEMPTION AFFIDAVIT FORM. (a) A person claiming an exemption from a required immunization based on reasons of conscience, including a religious belief, under Section 161.004 of this code, Section 38.001, 51.9192, or 51.933, Education Code, or Section 42.043, Human Resources Code, must complete an affidavit on a form provided by the department stating the reason for the exemption. This subsection does not apply to a person claiming the exemption using the Internet-based process under Section 51.9192(d-3), Education Code.

(b) The affidavit must be signed by the person claiming the exemption or, if the person is a minor, the person's parent, managing conservator, or guardian, and the affidavit must be notarized.

(c) The department shall develop a blank affidavit form for a person to use in claiming an exemption from a required immunization under this section and post the affidavit form in a printable format on the department's Internet website. A person claiming an exemption from a required immunization may also obtain the affidavit form by submitting a written request for the affidavit form to the department. A person may not be required to provide any information to obtain a blank affidavit form under this subsection.

(d) The affidavit form shall contain a statement indicating that the person or, if a minor, the person's parent, managing conservator, or guardian understands the benefits and risks of immunizations and the benefits and risks of not being immunized.

(e) The department may maintain a record of the total number of times an affidavit form was accessed on the department's Internet website or requested under Subsection (c). The department may not maintain a record of any personally identifying information of individuals who download, access, request, or submit an affidavit form under this section.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.163, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 729 (S.B. 62), Sec. 2, eff. October 1, 2013.

Acts 2025, 89th Leg., R.S., Ch. 563 (H.B. 1586), Sec. 1, eff. September 1, 2025.

Sec. 161.005. IMMUNIZATIONS REQUIRED. (a) On admission of a child to a mental health facility of the department, a state supported living center of the Department of Aging and Disability Services, or a facility of the Texas Department of Criminal Justice or the Texas Juvenile Justice Department, the facility physician shall review the immunization history of the child and administer any needed vaccinations or refer the child for immunization.

(b) The department and the executive commissioner have the same powers and duties under this section as the department and the executive commissioner have under Sections 38.001 and 51.933, Education Code. In addition, the provisions of those sections relating to provisional admissions and exceptions apply to this section.

(c) A facility covered by this section shall keep an individual immunization record during the individual's period of admission, detention, or commitment in the facility, and the records shall be open for inspection at all reasonable times by a representative of the local health department or the department.

(d) This section does not affect the requirements of Section 38.001 or 51.933, Education Code, or Section 42.043, Human Resources Code.

Added by Acts 1993, 73rd Leg., ch. 43, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.41, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0456, eff. April 2, 2015.

Sec. 161.0051. REQUIRED IMMUNIZATIONS FOR NURSING HOMES. (a) This section applies only to a nursing home that:

(1) is an institution licensed under Chapter 242; and

(2) serves residents who are elderly persons as defined by Section 242.002.

(b) The executive commissioner by rule may require nursing facilities to offer, in accordance with an immunization schedule adopted in department rules, immunizations to elderly residents or to

staff who are in contact with elderly residents against diseases that the executive commissioner determines to be:

(1) caused by infectious agents;

(2) potentially deadly; and

(3) preventable by vaccine.

(c) The executive commissioner by rule shall require nursing homes to offer, in accordance with an immunization schedule adopted in department rules:

(1) pneumococcal vaccine to elderly residents; and

(2) influenza vaccine to elderly residents and to staff who are in contact with elderly residents.

Added by Acts 1999, 76th Leg., ch. 259, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0457, eff. April 2, 2015.

Sec. 161.0052. IMMUNIZATION OF ELDERLY PERSONS BY HOSPITALS, END STAGE RENAL DISEASE FACILITIES, AND PHYSICIANS' OFFICES. (a) In this section:

(1) "Elderly person" means a person who is 65 years of age or older.

(2) "End stage renal disease facility" has the meaning assigned by Section 251.001.

(3) "Hospital" has the meaning assigned by Section 241.003.

(b) The executive commissioner by rule shall require a hospital to inform each elderly person admitted to the hospital for a period of 24 hours or more that the pneumococcal and influenza vaccines are available. If the elderly person requests a vaccine, and if a physician, or an advanced nurse practitioner or physician assistant on behalf of a physician, determines that the vaccine is in the person's best interest, the hospital must make the vaccination available to the person before the person is discharged from the hospital.

(c) The executive commissioner by rule shall require an end stage renal disease facility to offer, to the extent possible as determined by the facility, the opportunity to receive the pneumococcal and influenza vaccines to each elderly person who receives ongoing care at the facility if a physician, or an advanced

nurse practitioner or physician assistant on behalf of a physician, determines that the vaccine is in the person's best interest. If the facility decides it is not feasible to offer the vaccine, the facility must provide the person with information on other options for obtaining the vaccine.

(d) The Texas Medical Board by rule shall require a physician responsible for the management of a physician's office that provides ongoing medical care to elderly persons to offer, to the extent possible as determined by the physician, the opportunity to receive the pneumococcal and influenza vaccines to each elderly person who receives ongoing care at the office. If the physician decides it is not feasible to offer the vaccine, the physician must provide the person with information on other options for obtaining the vaccine.

(e) Rules adopted under this section must require that:

(1) a hospital, end stage renal disease facility, or physician's office:

(A) offer the influenza vaccine in October and November, and if the vaccine is available, December; and

(B) offer the pneumococcal vaccine year-round; and

(2) a person administering a vaccine:

(A) ask whether the elderly person is currently vaccinated against the influenza virus or pneumococcal disease, as appropriate;

(B) administer the vaccine under institution-approved or physician-approved protocols after making an assessment for contraindications; and

(C) permanently document the vaccination in the elderly person's medical records.

(f) In adopting rules under this section, the executive commissioner and the Texas Medical Board shall consider the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(g) Rules adopted under this section may consider the potential for a shortage of a vaccine.

(h) The department shall make available to hospitals and end stage renal disease facilities, and the Texas Medical Board shall make available to physicians' offices, educational and informational materials concerning vaccination against influenza virus and pneumococcal disease.

Added by Acts 2005, 79th Leg., Ch. 368 (S.B. 1330), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0458, eff. April 2, 2015.

Sec. 161.006. DEPARTMENT IMMUNIZATION SERVICE. The department, to the extent permitted by law, is authorized to pay employees who are exempt or not exempt for purposes of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) on a straight-time basis for work on a holiday or for regular compensatory time hours when the taking of regular compensatory time off would be disruptive to normal business operations. Authorization for payment under this section is limited to work directly related to immunizations.

Added by Acts 1993, 73rd Leg., ch. 43, Sec. 3, eff. Sept. 1, 1993.

Sec. 161.007. IMMUNIZATION REGISTRY; REPORTS TO DEPARTMENT. (a) The department, for the primary purpose of establishing and maintaining a single repository of accurate, complete, and current immunization records to be used in aiding, coordinating, and promoting efficient and cost-effective communicable disease prevention and control efforts, shall establish and maintain an immunization registry. The executive commissioner by rule shall develop guidelines to:

(1) protect the confidentiality of patients in accordance with Section 159.002, Occupations Code;

(2) inform the individual or the individual's legally authorized representative about the registry and that registry information may be released under Section 161.00735;

(3) require the written or electronic consent of the individual or the individual's legally authorized representative before any information relating to the individual is included in the registry;

(4) permit the individual or the individual's legally authorized representative to withdraw consent for the individual to be included in the registry; and

(5) determine the process by which consent is verified,

including affirmation by a health care provider, birth registrar, regional health information exchange, or local immunization registry that consent has been obtained.

(a-1) The written or electronic consent required by Subsection (a)(3) for an individual younger than 18 years of age is required to be obtained only one time. The written or electronic consent of the individual's parent, managing conservator, or guardian must be submitted to the department before the individual's 18th birthday. After consent is submitted, the individual's immunization information may be included in the registry until the individual becomes 26 years of age unless the consent is withdrawn in writing or electronically, or renewed after the individual's 18th birthday as provided by Subsection (a-2). A parent, managing conservator, or guardian of a minor may provide the consent by using an electronic signature on the minor's birth certificate.

(a-2) The written or electronic consent required by Subsection (a)(3) for an individual who is 18 years of age or older is required to be obtained only one time and must be received from the individual before the information may be released. An individual's legally authorized representative or the individual, after the individual has attained 18 years of age, may consent in writing or electronically for the individual's information to remain in the registry. The consent of the representative or individual is valid until the individual or the individual's legally authorized representative withdraws consent in writing or electronically. The department may not include in the registry the immunization information of an individual who is 26 years of age or older until written or electronic consent has been obtained as provided by this subsection. The department shall coordinate with the Texas Education Agency to distribute materials described in Section 161.0095(a)(2) to students and parents through local school districts.

(a-3) The executive commissioner by rule shall develop guidelines and procedures for obtaining consent from an individual after the individual's 18th birthday, including procedures for retaining immunization information in a separate database that is inaccessible by any person other than the department during the eight-year period during which an individual who is 18 years of age or older may consent to inclusion in the registry under Subsection (a-2).

(a-4) After an individual's 18th birthday, the department shall

make a reasonable effort to provide notice to an individual whose immunization information is included in the registry with consent that was provided by a parent, managing conservator, or guardian under Subsection (a-1). The reasonable effort shall include at least two attempts by the department to provide the notice required by this subsection by telephone or e-mail, by regular mail to the individual's last known address, or by general outreach efforts through the individual's health care provider, school district, or institution of higher education. The notice must inform the individual that the individual's immunization records will be included in the registry until the date of the individual's 26th birthday unless the individual or the individual's legally authorized representative:

(1) withdraws consent in writing or electronically before that date; or

(2) provides consent for the records to continue to be included in the registry as provided by Subsection (a-2).

(a-5) After an individual's 25th birthday, the department shall make a reasonable effort to provide notice to an individual whose immunization information is included in the registry with consent that was provided under Subsection (a-1) and has not been renewed under Subsection (a-2). The reasonable effort shall include at least two attempts by the department to provide the notice required by this subsection by telephone or e-mail, by regular mail to the individual's last known address, or by general outreach efforts through the individual's health care provider or institution of higher education. The notice must inform the individual that the individual's immunization records will be included in the immunization registry until the individual's 26th birthday unless the individual or the individual's legally authorized representative renews consent as provided by Subsection (a-2).

(a-6) The department shall make a reasonable effort to obtain current contact information for written or electronic notices sent by the department under Subsection (a-5) that are returned due to incorrect address information.

(b) Except as provided by Section 161.0071, the immunization registry must contain information on the immunization history that is obtained by the department under:

(1) this section of each individual for whom consent has been obtained in accordance with guidelines adopted under Subsection

(a);

(2) Section 161.00705 of persons immunized to prepare for or in response to a declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency;

(3) Section 161.00706 of first responders or their immediate family members; and

(4) Section 161.00735 of persons evacuated or relocated to this state because of a disaster.

(b-1) The department shall remove from the registry information for any individual for whom consent has been withdrawn. The department may not retain individually identifiable information about any individual:

(1) for whom consent has been withdrawn;

(2) for whom a consent for continued inclusion in the registry following the end of the declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency has not been received under Section 161.00705(f);

(3) for whom a request to be removed from the registry has been received under Section 161.00706(e);

(4) for whom consent for continued inclusion in the registry following the end of a disaster has not been received under Section 161.00735(f); or

(5) for whom a request to remove information from the registry has been received under Section 161.00735(g).

(c) A payor that receives data elements from a health care provider who administers an immunization to an individual younger than 18 years of age shall provide the data elements to the department. A payor is required to provide the department with only the data elements the payor receives from a health care provider. A payor that receives data elements from a health care provider who administers an immunization to an individual 18 years of age or older may provide the data elements to the department. The data elements shall be submitted in a format prescribed by the department. The department shall verify consent before including the reported information in the immunization registry. The department may not retain individually identifiable information about an individual for whom consent cannot be verified.

(d) A health care provider who administers an immunization to

an individual younger than 18 years of age shall provide data elements regarding an immunization to the department. A health care provider who administers an immunization to an individual 18 years of age or older may submit data elements regarding an immunization to the department. At the request and with the authorization of the health care provider, the data elements may be submitted through a health information exchange as defined by Section 182.151. The data elements shall be submitted in a format prescribed by the department. The department shall verify consent before including the information in the immunization registry. The department may not retain individually identifiable information about an individual for whom consent cannot be verified.

(e) The department shall provide notice to a health care provider that submits an immunization history for an individual for whom consent cannot be verified. The notice shall contain instructions for obtaining consent in accordance with guidelines adopted under Subsection (a) and resubmitting the immunization history to the department.

(f) The department and health care providers may use the registry to provide notices by mail, telephone, personal contact, or other means to an individual or the individual's legally authorized representative regarding an individual who is due or overdue for a particular type of immunization according to the department's immunization schedule for children or another analogous schedule recognized by the department for individuals 18 years of age or older. The department shall consult with health care providers to determine the most efficient and cost-effective manner of using the registry to provide those notices.

(g) The department shall provide instruction and education to providers about the immunization registry provider application and enrollment process. The department shall:

(1) initially target providers in the geographic regions of the state with immunization rates below the state average for preschool children; and

(2) expedite the processing of provider applications.

(h) Nothing in this section diminishes a parent's, managing conservator's, or guardian's responsibility for having a child immunized properly, subject to Section 161.004(d).

(i) A person, including a health care provider, payor, or an employee of the department who submits or obtains in good faith

immunization data elements to or from the department in compliance with the provisions of this section and any rules adopted under this section is not liable for any civil damages.

(j) Except as provided by Sections 161.00705, 161.00706, 161.00735(b), and 161.008, information obtained by the department for the immunization registry is confidential and may be disclosed only with the written or electronic consent of the individual or the individual's legally authorized representative.

(k) The executive commissioner shall adopt rules to implement this section.

Added by Acts 1997, 75th Leg., ch. 900, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.780, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1081, Sec. 2.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.03, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0459, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 764 (H.B. 2171), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 6, eff. September 1, 2015.

Sec. 161.00705. RECORDING ADMINISTRATION OF IMMUNIZATION AND MEDICATION FOR DISASTERS AND EMERGENCIES. (a) The department shall maintain a registry of persons who receive an immunization or antiviral administered to prepare for a potential disaster, public health disaster, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency or in response to a declared disaster, public health disaster, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency. A health care provider who administers an immunization or antiviral shall provide the data elements to the department. At the request and with the authorization of the health

care provider, the data elements may be provided through a health information exchange as defined by Section 182.151.

(b) The department shall maintain the registry as part of the immunization registry required by Section 161.007.

(c) The department shall track adverse reactions to an immunization or antiviral administered to prepare for a potential disaster, public health disaster, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency or in response to a declared disaster, public health disaster, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency. A health care provider who administers an immunization or antiviral may provide data related to adverse reactions to the department.

(d) Sections 161.007, 161.0071, 161.0072, and 161.0074 apply to the data elements submitted to the department under this section, unless a provision in those sections conflicts with a requirement in this section.

(e) The executive commissioner by rule shall determine the period during which the information collected under this section must remain in the immunization registry following the end of the disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

(f) Unless an individual or the individual's legally authorized representative consents in writing or electronically to continued inclusion of the individual's information in the registry, the department shall remove the immunization records collected under this section from the registry on expiration of the period prescribed under Subsection (e).

(g) The immunization information of a child or other individual received by the department under this section, including individually identifiable information, may be released only:

(1) on consent of the individual or, if a child, the child's parent, managing conservator, or guardian; or

(2) to a state agency or health care provider consistent with the purposes of this subchapter or the purposes of aiding or coordinating communicable disease prevention and control efforts during a declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

(h) The report required under Section 161.0074 must also

include the number of complaints received by the department related to the department's failure to remove information from the registry as required by Subsection (f).

(i) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.02, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 3, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0460, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 7, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 13, eff. June 16, 2021.

Sec. 161.00706. FIRST RESPONDER IMMUNIZATION INFORMATION. (a) A person 18 years of age or older who is a first responder or an immediate family member of a first responder may:

(1) request that a health care provider who administers an immunization to the person provide data elements regarding the immunization to the department for inclusion in the immunization registry; or

(2) provide the person's immunization history directly to the department for inclusion in the immunization registry.

(b) A health care provider, on receipt of a request under Subsection (a)(1), shall submit the data elements to the department in a format prescribed by the department. At the request and with the authorization of the health care provider, the data elements may be submitted through a health information exchange as defined by Section 182.151. The department shall verify the person's request before including the information in the immunization registry.

(c) The executive commissioner shall:

(1) develop rules to ensure that immunization history submitted under Subsection (a)(2) is medically verified immunization information;

(2) develop guidelines for use by the department in

informing first responders about the registry and that registry information may be released under Section 161.00735; and

(3) adopt rules necessary for the implementation of this section.

(d) Except as provided by Section 161.00735, a person's immunization history or data received by the department under this section may be released only on consent of the person or to any health care provider licensed or otherwise authorized to administer vaccines.

(e) A person whose immunization records are included in the immunization registry as authorized by this section may request in writing or electronically that the department remove that information from the registry. Not later than the 10th day after receiving a request under this subsection, the department shall remove the person's immunization records from the registry.

(f) The report required under Section 161.0074 must also include the number of complaints received by the department related to the department's failure to comply with requests for removal of information from the registry under Subsection (e).

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.02, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 2, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0461, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 8, eff. September 1, 2015.

Sec. 161.00707. INFORMATION AND EDUCATION FOR FIRST RESPONDERS. The department shall develop a program for informing first responders about the immunization registry and educating first responders about the benefits of being included in the immunization registry, including:

(1) ensuring that first responders receive necessary immunizations to prevent the spread of communicable diseases to which

a first responder may be exposed during a public health emergency, declared disaster, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency; and

(2) preventing duplication of vaccinations.

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.02, eff. September 1, 2007.

Sec. 161.00708. ACCESS TO FIRST RESPONDER IMMUNIZATION HISTORY. (a) The department shall establish a process to provide an employer of a first responder with direct access to the first responder's immunization information in the immunization registry for verification of the first responder's immunization history. The process must require a first responder to provide electronic or written consent before the employer is granted direct access to the first responder's immunization information in the immunization registry. A first responder may withdraw consent at any time.

(b) The department may establish a process to provide a first responder with access to the first responder's immunization information in the immunization registry.

Added by Acts 2019, 86th Leg., R.S., Ch. 259 (H.B. 1256), Sec. 1, eff. September 1, 2019.

Sec. 161.0071. NOTICE OF RECEIPT OF REGISTRY DATA; EXCLUSION FROM REGISTRY. (a) The first time the department receives registry data for an individual for whom the department has received consent to be included in the registry, the department shall send notice to the individual or the individual's legally authorized representative disclosing:

(1) that providers and payors may be sending the individual's immunization information to the department;

(2) the information that is included in the registry;

(3) the persons to whom the information may be released under Sections 161.00735(b) and 161.008(d);

(4) the purpose and use of the registry;

(5) the procedure to exclude an individual from the registry; and

(6) the procedure to report a violation if an individual's

information is included in the registry after exclusion has been requested or consent has been withdrawn.

(b) On discovering that consent to be included in the registry has not been granted or has been withdrawn, the department shall exclude the individual's immunization records from the registry and any other registry-related department record that individually identifies the individual.

(c) On receipt of a written or electronic request to exclude an individual's immunization records from the registry, the department shall send to the individual or the individual's legally authorized representative who makes the request a written confirmation of receipt of the request for exclusion and shall exclude the individual's records from the registry.

(d) The department commits a violation if the department fails to exclude an individual's immunization information from the registry as required by Subsection (b) or (c).

(e) The department shall accept a written or electronic statement from an individual or the individual's legally authorized representative communicating to the department that an individual's information should be excluded from the registry, including a statement on a minor's birth certificate, as a request for exclusion under Subsection (c).

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 3, eff. September 1, 2009.

Sec. 161.0072. PROVIDING IMMUNIZATION INFORMATION TO DEPARTMENT. (a) If the individual or the individual's legally authorized representative has reasonable concern that the individual's health care provider is not submitting the immunization history to the department, the individual or the individual's legally authorized representative may provide the individual's immunization history directly to the department to be included in the immunization registry.

(b) The individual or the individual's legally authorized

representative may send evidence of the individual's immunization history to the department electronically, by facsimile transmission, or by mail. The evidence may include a copy of:

(1) the individual's medical record indicating the immunization history;

(2) an invoice from a health care provider for the immunization; or

(3) documentation showing that a claim for the immunization was paid by a payor.

(c) The executive commissioner shall develop rules to ensure that the immunization history submitted by an individual or the individual's legally authorized representative is medically verified immunization information.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 6, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0462, eff. April 2, 2015.

Sec. 161.0073. REGISTRY CONFIDENTIALITY. (a) Except as provided by Sections 161.00705 and 161.00735, information that individually identifies an individual that is received by the department for the immunization registry is confidential and may be used by the department for registry purposes only.

(b) Unless specifically authorized under this subchapter, the department may not release registry information to any individual or entity without the consent of the individual or the individual's legally authorized representative.

(c) A person required to report information to the department for registry purposes or authorized to receive information from the registry may not disclose the individually identifiable information of an individual to any other person without the written or electronic consent of the individual or the individual's legally authorized representative, except as provided by Sections 161.007, 161.00705, 161.00706, and 161.008 of this code, Chapter 159, Occupations Code, or Section 602.053, Insurance Code.

(d) Registry information is not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this subchapter; or

(2) admissible in any civil, administrative, or criminal proceeding.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.127, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.04, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 7, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 4, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 9, eff. September 1, 2015.

Sec. 161.00735. RELEASE AND RECEIPT OF REGISTRY DATA IN DISASTER. (a) In this section, "disaster" means a disaster declared by the president of the United States, the governor of this state, or the governor of another state.

(b) If the department determines that residents of this state have evacuated or relocated to another state in response to a disaster, the department may release registry data, except registry data obtained under Section 161.00705, to the appropriate health authority of that state or to local health authorities in that state.

(c) The department may receive immunization information from a health authority of another state or from a local health authority in another state if the department determines that residents of that state have evacuated or relocated to this state in response to a disaster. The department shall include information received under this subsection in the registry. Notwithstanding Section 161.007, the department is not required to obtain written consent for the inclusion in the registry of information received under this subsection.

(d) Immunization information received under Subsection (c) is subject to Section 161.0073, and may not be released except as

authorized by this chapter.

(e) The executive commissioner by rule shall determine the period during which the information collected under Subsection (c) must remain in the immunization registry following the end of the disaster.

(f) Unless an individual or, if a child, the child's parent, managing conservator, or guardian consents in writing to continued inclusion of the individual's or child's information in the registry, the department shall remove the immunization records collected under Subsection (c) from the registry on the expiration of the period prescribed by Subsection (e).

(g) If an individual or, if a child, the child's parent, managing conservator, or guardian requests in writing that the individual's or child's information obtained under Subsection (c) be removed from the registry, the department shall remove that information from the registry.

(h) The executive commissioner shall make every effort to enter into a memorandum of agreement with each state to which residents of this state are likely to evacuate in a disaster on:

(1) the release and use of registry information under this section to the appropriate health authority or local health authority of that state, including the length of time the information may be retained by that state; and

(2) the receipt and use of information submitted by the health authority or local health authority of that state for inclusion in the registry under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 5, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0463, eff. April 2, 2015.

Sec. 161.0074. REPORT TO LEGISLATURE. (a) The department shall report to the Legislative Budget Board, the governor, the lieutenant governor, the speaker of the house of representatives, and appropriate committees of the legislature not later than September 30 of each even-numbered year.

(b) The department shall use the report required under

Subsection (a) to develop ways to increase immunization rates using state and federal resources.

(c) The report must:

(1) include the current immunization rates by geographic region of the state, where available;

(2) focus on the geographic regions of the state with immunization rates below the state average for preschool children;

(3) describe the approaches identified to increase immunization rates in underserved areas and the estimated cost for each;

(4) identify changes to department procedures needed to increase immunization rates;

(5) identify the services provided under and provisions of contracts entered into by the department to increase immunization rates in underserved areas;

(6) identify performance measures used in contracts described by Subdivision (5);

(7) include the number and type of exemptions used in the past year;

(8) include the number of complaints received by the department related to the department's failure to comply with requests for exclusion of individuals from the registry;

(9) identify all reported incidents of discrimination for requesting exclusion from the registry or for using an exemption for a required immunization; and

(10) include ways to increase provider participation in the registry.

(d) If a public health disaster was declared under Chapter 81 during the preceding two years, in addition to the information required under Subsection (c), for immunizations that immunize an individual against the communicable disease subject to the declaration the report must:

(1) include information by county on the accessibility to the immunizations of county residents by age, race, and geographic location, provided the information does not personally identify any individual;

(2) identify and assess disparities in access to the immunizations by age, race, and geographic location, including an assessment of immunization accessibility in each county;

(3) include the estimated economic benefit to this state of

reducing disparities in immunization accessibility;

(4) include recommendations for reducing disparities in immunization accessibility; and

(5) include recommendations for legislative action to increase immunization rates.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 611 (S.B. 1353), Sec. 1, eff. June 14, 2021.

Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 7, eff. September 1, 2021.

Sec. 161.0075. IMMUNITY FROM LIABILITY. Except as provided by Section 161.009, the following persons subject to this subchapter that act in compliance with Sections 161.007, 161.00705, 161.00706, 161.0071, 161.0073, 161.0074, and 161.008 are not civilly or criminally liable for furnishing the information required under this subchapter:

(1) a payor;

(2) a health care provider who administers immunizations; and

(3) an employee of the department.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.05, eff. September 1, 2007.

Sec. 161.0076. COMPLIANCE WITH FEDERAL LAW. If the provisions of this chapter relating to the use or disclosure of information in the registry are more stringent than the Health Insurance Portability and Accountability Act and Privacy Standards, as defined by Section 181.001, then the use or disclosure of information in the registry is governed by this chapter.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.

Sec. 161.008. IMMUNIZATION RECORD. (a) An immunization record is part of the immunization registry.

(b) An immunization record contains the:

(1) name and date of birth of the person immunized;

(2) dates of immunization;

(3) types of immunization administered; and

(4) name and address of the health care provider administering the immunization.

(b-1) An immunization record provided by a health care provider as required by Section 161.00705 for inclusion in the immunization registry during a public health disaster declared under Chapter 81 must contain the race, age, ethnicity, and county of residence of the individual immunized. This subsection applies only to immunizations that immunize an individual against the communicable disease subject to the declaration.

(c) The department may obtain the data constituting an immunization record for an individual from a public health district, a local health department, the individual or the individual's legally authorized representative, a physician to the individual, a payor, or any health care provider licensed or otherwise authorized to administer vaccines. The department shall verify consent before including the reported information in the immunization registry. The department may not retain individually identifiable information about an individual for whom consent cannot be verified.

(d) The department may release the data constituting an immunization record for the individual to:

(1) any entity that is described by Subsection (c);

(2) a school or child care facility in which the individual is enrolled;

(3) a state agency having legal custody of the individual; or

(4) an employer of a first responder or a first responder in accordance with Section 161.00708.

(e) An individual or the individual's legally authorized representative may obtain and on request to the department shall be provided with all individually identifiable immunization registry information concerning the individual.

(f) A person, including a health care provider, a payor, or an employee of the department, that submits in good faith an immunization history or data to or obtains in good faith an

immunization history or data from the department in compliance with the provisions of this section and any rules adopted under this section is not liable for any civil damages.

(g) The department may release nonidentifying summary statistics related to the registry that do not individually identify an individual.

(h) The executive commissioner shall adopt rules to implement this section.

(i) At the request and with the authorization of the applicable health care provider, immunization history or data may be submitted to or obtained by the department through a health information exchange as defined by Section 182.151.

Added by Acts 1997, 75th Leg., ch. 900, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1081, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 8, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0464, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 10, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 259 (H.B. 1256), Sec. 2, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 611 (S.B. 1353), Sec. 2, eff. June 14, 2021.

Sec. 161.0085. COVID-19 VACCINE PASSPORTS PROHIBITED. (a) In this section, "COVID-19" means the 2019 novel coronavirus disease.

(b) A governmental entity in this state may not issue a vaccine passport, vaccine pass, or other standardized documentation to certify an individual's COVID-19 vaccination status to a third party for a purpose other than health care or otherwise publish or share any individual's COVID-19 immunization record or similar health information for a purpose other than health care.

(c) A business in this state may not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access

to, or to receive service from the business. A business that fails to comply with this subsection is not eligible to receive a grant or enter into a contract payable with state funds.

(d) Notwithstanding any other law, each appropriate state agency shall ensure that businesses in this state comply with Subsection (c) and may require compliance with that subsection as a condition for a license, permit, or other state authorization necessary for conducting business in this state.

(e) This section may not be construed to:

(1) restrict a business from implementing COVID-19 screening and infection control protocols in accordance with state and federal law to protect public health; or

(2) interfere with an individual's right to access the individual's personal health information under federal law.

Added by Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 14, eff. June 16, 2021.

Sec. 161.0086. COVID-19 VACCINATION ADMINISTRATION REQUIREMENTS. (a) In this section:

(1) "COVID-19" means the 2019 novel coronavirus disease.

(2) "Health care provider" means an individual licensed or otherwise authorized by this state to administer vaccines.

(b) Before administering a COVID-19 vaccination to an individual, a health care provider must obtain the individual's written informed consent, or if the individual is a minor or lacks the mental capacity to provide informed consent, the parent, guardian, or conservator who may provide written informed consent on the individual's behalf. The informed consent required under this section must include an acknowledgment that the individual providing informed consent received the information sheet described by Subsection (c).

(c) The department shall develop a standardized information sheet that includes information on:

(1) the benefits and risks associated with COVID-19 vaccination, including potential side effects;

(2) the expedited manner in which the COVID-19 vaccine was developed;

(3) whether long-term scientific studies have been

performed on the COVID-19 vaccine;

(4) whether manufacturers of the COVID-19 vaccine are subject to civil liability for any injuries caused by the vaccine; and

(5) the federal Vaccine Adverse Event Reporting System, including clear instructions for reporting any vaccine-related injury or reaction.

(d) The appropriate licensing authority may impose disciplinary action on a health care provider who administers a COVID-19 vaccination in violation of this section in the same manner and using the same procedures as the authority uses to impose disciplinary action on a provider who violates the authority's licensing or other regulatory laws or rules.

Added by Acts 2025, 89th Leg., R.S., Ch. 1106 (H.B. 4535), Sec. 1, eff. September 1, 2025.

Sec. 161.009. PENALTIES FOR DISCLOSURE OF INFORMATION. (a) A person commits an offense if the person:

(1) negligently releases or discloses immunization registry information in violation of Section 161.007, 161.0071, 161.0073, or 161.008;

(2) fails to exclude an individual's immunization information in violation of Section 161.0071;

(3) fails to remove a person's immunization information in violation of Section 161.00705, 161.00706, or 161.00735; or

(4) negligently uses information in the immunization registry to solicit new patients or clients or for other purposes that are not associated with immunization or quality-of-care purposes, unless authorized under this section.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 900, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 1081, Sec. 5.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.06, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 9, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 6, eff.

September 1, 2009.

Sec. 161.0095. EDUCATION PROGRAMS AND INFORMATION. (a) The department shall develop:

(1) continuing education programs for health care providers relating to immunizations and the vaccines for children program operated by the department under authority of 42 U.S.C. Section 1396s; and

(2) educational information, for health care providers, health care clinics, hospitals, and any other health care facility that provides health care to children 14 to 18 years of age, relating to the immunization registry and the option for an individual who is 18 years of age or older to consent to submission and retention of the individual's information in the immunization registry.

(b) The department shall establish a work group to assist the department in developing the continuing education programs and educational information. The work group shall include physicians, nurses, department representatives, representatives of managed care organizations that provide health care services under Chapter 540 or 540A, Government Code, as applicable, representatives of health plan providers that provide health care services under Chapter 62, and members of the public.

Added by Acts 2003, 78th Leg., ch. 613, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 10, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.41, eff. April 1, 2025.

Sec. 161.010. IMMUNIZATION EDUCATION; STATEWIDE COALITION. (a) The department shall establish a continuous statewide education program to educate the public about the importance of immunizing children and the risks and contraindications of an immunization.

(b) The department shall increase coordination among public and private local, regional, and statewide entities that have an interest in immunizations.

Added by Acts 2003, 78th Leg., ch. 125, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.0101. INCREASE IMMUNIZATION AWARENESS. (a) The department shall develop new public-private partnerships and work with existing public-private partnership programs, including the Seniors and Volunteers Program For Childhood Immunization, to increase public and private awareness of and support for early childhood immunizations.

(b) The department shall work with the Texas Education Agency to increase immunization awareness and participation among parents of preschool and school-age children by:

(1) jointly applying for federal funds for immunization awareness and vaccination programs; and

(2) creating partnerships with public and private health, service, and education organizations, including parent-teacher associations, the United Way, schools, local businesses, community-based organizations, chambers of commerce, and athletic booster clubs, to increase awareness and participation in the state's early childhood vaccination program.

(c) The department shall work to increase immunization awareness and participation among parents of children in child-care facilities, as defined by Section 42.002, Human Resources Code, in the state's early childhood vaccination program by publishing on the department's website information about the benefits of annual immunization against influenza for children aged six months to five years. The department shall work with the Department of Family and Protective Services and with child-care facilities to ensure that the information is annually distributed to parents in August or September.

Added by Acts 2003, 78th Leg., ch. 844, Sec. 1, eff. Sept. 1, 2003. Renumbered from Health and Safety Code, Section 161.010 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(44), eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 922 (H.B. 3184), Sec. 1, eff. June 15, 2007.

Sec. 161.0102. VACCINES FOR CHILDREN PROGRAM; INFLUENZA

VACCINES. (a) In this section, "vaccines for children program" means the program operated by the department under authority of 42 U.S.C. Section 1396s, as amended.

(b) The department shall allow each health care provider participating in the vaccines for children program to:

(1) select influenza vaccines from the list of all influenza vaccines that:

(A) are approved by the United States Food and Drug Administration and recommended by the federal Advisory Committee on Immunization Practices; and

(B) are either:

(i) within the limits of the vaccines annually allocated by the Centers for Disease Control and Prevention of the United States Public Health Service to the department for the vaccines for children program; or

(ii) not offered in the annual allocation under Subparagraph (i), but are available from the Centers for Disease Control and Prevention of the United States Public Health Service and for which the Centers for Disease Control and Prevention awards to the department additional funds; and

(2) use both inactivated influenza vaccines and live, attenuated influenza vaccines.

Added by Acts 2007, 80th Leg., R.S., Ch. 397 (S.B. 811), Sec. 1, eff. June 15, 2007.

Sec. 161.0103. REQUIRED REPORT OF CERTAIN VACCINE-RELATED ADVERSE EVENTS. (a) In this section, "serious adverse event" means an event that:

(1) results in death;

(2) is considered life-threatening;

(3) results in inpatient hospitalization or an extension of the duration of an existing hospitalization;

(4) results in a persistent or significant incapacity or substantial disruption of an individual's ability to perform normal life functions;

(5) results in a congenital anomaly or birth defect; or

(6) results in a medically important condition that, based on the physician's reasonable medical judgment, may require medical

or surgical intervention to prevent an outcome described by Subdivisions (1) through (5).

(b) This section applies only to a vaccine that is:

(1) experimental or investigational; or

(2) authorized or approved for emergency use by the United States Food and Drug Administration.

(c) Notwithstanding Subsection (b), this section does not apply to a vaccine administered as part of a clinical trial.

(d) Notwithstanding any other law, a physician shall report to the federal Vaccine Adverse Event Reporting System any serious adverse event the physician's patient suffers if:

(1) the physician:

(A) diagnoses the patient with a condition related to the serious adverse event; and

(B) knows the patient received a vaccination to which this section applies; and

(2) the patient suffers the serious adverse event before the first anniversary of the date the patient was vaccinated.

(e) A physician who violates this section is subject to:

(1) for an initial violation, non-disciplinary corrective action by the Texas Medical Board; and

(2) for each subsequent violation, disciplinary action by the Texas Medical Board as if the physician violated Subtitle B, Title 3, Occupations Code.

(f) For purposes of non-disciplinary corrective action or disciplinary action imposed under Subsection (e), the Texas Medical Board may not consider a violation of this section after the third anniversary of the date of the violation. The Texas Medical Board shall retain information on each violation of this section in the physician's permanent record.

(g) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2025, 89th Leg., R.S., Ch. 767 (S.B. 269), Sec. 1, eff. September 1, 2025.

Sec. 161.01035. PROVIDER CHOICE SYSTEM. (a) The department shall implement a provider choice system for the vaccines for children program operated by the department under authority of 42

U.S.C. Section 1396s and the adult safety net vaccination program.

(b) The department shall ensure that eligible health care providers participating in the vaccines for children program or the adult safety net vaccination program may select any licensed vaccine, including combination vaccines and any dosage forms that:

(1) are recommended by the federal Advisory Committee on Immunization Practices;

(2) are made available to the department by the Centers for Disease Control and Prevention of the United States Public Health Service; and

(3) for adult vaccines, are on the department-approved list of vaccines offered by the adult safety net vaccination program.

(c) For the purposes of this section, "equivalent vaccines" means two or more vaccines, excluding the influenza vaccine, that meet all of the following:

(1) protect a recipient of a vaccine against the same infection or infections;

(2) require the same number of doses;

(3) have similar safety and efficacy profiles; and

(4) are recommended for comparable populations by the Centers for Disease Control and Prevention of the United States Public Health Service.

(d) The department shall provide a vaccine selected by a health care provider under Subsection (b) only if the cost to the department of providing the vaccine is not more than 115 percent of the lowest-priced equivalent vaccine.

(e) This section does not apply in the event of a disaster or public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

(f) The department shall convene the immunization work group established under Section 161.0095 and solicit its recommendations regarding development of a plan for the implementation of the provider choice system under this section. The plan shall include the education of participating health care providers about:

(1) procedures and distribution systems of the Centers for Disease Control and Prevention of the United States Public Health Service; and

(2) vaccine options, the enrollment process, ordering, accountability, and reporting procedures.

Added by Acts 2009, 81st Leg., R.S., Ch. 258 (H.B. 448), Sec. 1, eff. September 1, 2009.

Sec. 161.0104. DISASTER PREPARATION. The department shall consult with public health departments and appropriate health care providers to identify adult immunizations that may be necessary to respond to or prepare for a disaster or public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.07, eff. September 1, 2007.
Renumbered from Health and Safety Code, Section 161.0102 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(52), eff. September 1, 2009.

Sec. 161.0105. LIMITATION ON LIABILITY. (a) A health care provider who acts in compliance with Sections 161.007, 161.00705, 161.00706, and 161.008 and any rules adopted under those sections is not civilly or criminally liable for furnishing the information required under those sections. This subsection does not apply to criminal liability established under Section 161.009.

(b) A person who administers a vaccination under a department program may be held liable only to the extent the person would be liable if the person administered the vaccination outside the program. The person is not liable for damages arising from the acts or omissions of another person acting under the program or the department.

(c) The immunity created by this section is in addition to any immunity created by Sections 161.001 and 161.007(i).

Added by Acts 2003, 78th Leg., ch. 844, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.08, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0465, eff. April 2, 2015.

Sec. 161.0106. RESPIRATORY SYNCYTIAL VIRUS; IMMUNIZATION. As part of the education programs under Sections 161.0095 and 161.010, the department shall include information about:

(1) respiratory syncytial virus and the importance of preventative activities for children at risk of contracting the virus;

(2) respiratory syncytial virus prophylaxis for children who are at high risk of complications from the disease; and

(3) immunization for respiratory syncytial virus when a vaccine is recommended and available.

Added by Acts 2005, 79th Leg., Ch. 115 (S.B. 1211), Sec. 1, eff. September 1, 2005.

Sec. 161.0107. ELECTRONIC MEDICAL RECORDS SYSTEMS. (a) In this section:

(1) "Electronic medical records software package or system" means an electronic system for maintaining medical records in the clinical setting.

(2) "Medical records" has the meaning assigned by Section 151.002, Occupations Code.

(b) A person who sells, leases, or otherwise provides an electronic medical records software package or system to a person who administers immunizations in this state or to an entity that manages records for the person shall provide, as part of the electronic medical records software package or system, the ability to:

(1) electronically interface with the immunization registry created under this subchapter; and

(2) generate electronic reports that contain the fields necessary to populate the immunization registry.

(c) The executive commissioner by rule shall specify:

(1) the fields necessary to populate the immunization registry, including a field that indicates the patient's consent to be listed in the immunization registry has been obtained; and

(2) the data standards that must be used for electronic submission of immunization information.

(d) The data standards specified under Subsection (b) must be compatible with the standards for immunization information transmission adopted by the Healthcare Information Technology

Standards Panel sponsored by the American National Standards Institute and included in certification criteria by the Certification Commission for Healthcare Information Technology.

Added by Acts 2007, 80th Leg., R.S., Ch. 352 (S.B. 204), Sec. 1, eff. June 15, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0466, eff. April 2, 2015.

Sec. 161.0108. INJUNCTION. (a) The attorney general may bring an action in the name of the state to enjoin a violation of Section 161.0107.

(b) If the state prevails in a suit under this section, the attorney general may recover on behalf of the state reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Added by Acts 2007, 80th Leg., R.S., Ch. 352 (S.B. 204), Sec. 1, eff. June 15, 2007.

Sec. 161.0109. HUMAN PAPILLOMAVIRUS; VACCINES EDUCATION MATERIALS. (a) The department, using existing resources, shall produce and distribute informational materials regarding vaccines against human papillomavirus that are approved by the United States Food and Drug Administration for human use. The materials must include information relating to the effectiveness, availability, and contraindications of the vaccines. The materials must be available in English and in Spanish.

(b) The department shall collaborate with the Cancer Prevention and Research Institute of Texas or its successor entity to develop educational programs for parents regarding human papillomavirus and promoting awareness of a minor's need for preventive services for cervical cancer and its precursors.

(c) The department shall develop and maintain an Internet website that targets the public and health care professionals and provides accurate, comprehensive information on all aspects of cervical cancer prevention, including vaccination against human papillomavirus.

Added by Acts 2007, 80th Leg., R.S., Ch. 59 (H.B. 1379), Sec. 1, eff. September 1, 2007.
Renumbered from Health and Safety Code, Section 161.0107 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(53), eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0467, eff. April 2, 2015.

SUBCHAPTER B. HEALTH INSPECTION OF PRIVATE RESIDENCE

Sec. 161.011. PERMISSION REQUIRED. A person, including an officer or agent of this state or of an instrumentality or political subdivision of this state, may not enter a private residence to conduct a health inspection without first receiving:

(1) permission obtained from a lawful adult occupant of the residence; or

(2) an authorization to inspect the residence for a specific public health purpose by a magistrate or by an order of a court of competent jurisdiction on a showing of a probable violation of a state health law, a control measure under Chapter 81, or a health ordinance of a political subdivision.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.189, eff. Sept. 1, 2003.

Sec. 161.012. CRIMINAL PENALTIES. (a) A person commits an offense if the person violates Section 161.011. An offense under this subsection is punishable by confinement in the Texas Department of Criminal Justice for not more than two years, a fine of not more than $1,000, or both.

(b) A person commits an offense if the person knowingly gives evidence obtained in violation of Section 161.011 to the federal government or to an instrumentality of the federal government. An offense under this subsection is punishable by confinement in the county jail for not more than one year, a fine of not more than $500, or both.

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

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.092, eff. September 1, 2009.

SUBCHAPTER C. PROVISION OF INFORMATION RELATING TO CERTAIN HEALTH CONDITIONS

Sec. 161.021. AUTHORIZATION TO PROVIDE INFORMATION; USE OF INFORMATION; LIABILITY. (a) Unless prohibited by other law, a person, including a hospital, sanatorium, nursing facility, rest home, medical society, cancer registry, or other organization, may provide interviews, reports, statements, memoranda, or other information relating to the condition and treatment of any person, to be used in a study to reduce morbidity or mortality or to identify persons who may need immunization, to:

(1) the department;

(2) a person that makes inquiries under immunization surveys conducted for the department;

(3) a medical organization;

(4) a hospital;

(5) a hospital committee; or

(6) a cancer registry, including a cancer registry of a cancer treatment center.

(b) A person is not liable for damages or other relief for:

(1) providing the information;

(2) releasing or publishing the findings or conclusions to advance medical research or medical education; or

(3) releasing or publishing a general summary of those studies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 343, Sec. 3, eff. May 27, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 23.03, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0468, eff. April 2, 2015.

Sec. 161.0211. EPIDEMIOLOGIC OR TOXICOLOGIC INVESTIGATIONS. (a) Under its duty to protect the public health, the department shall conduct epidemiologic or toxicologic investigations of human

illnesses or conditions and of environmental exposures that are harmful or believed to be harmful to the public health.

(b) The department may conduct those investigations to determine the nature and extent of the disease or environmental exposure believed to be harmful to the public health. Any findings or determinations from such investigations that relate to environmental exposures believed to be harmful to the public shall be reported in writing to the Texas Commission on Environmental Quality, and the two agencies shall coordinate corrective measures as appropriate. The department shall use generally accepted methods of epidemiology or toxicology in the conduct of an investigation.

(c) A person shall provide medical, demographic, epidemiologic, toxicologic, or environmental information to the department as described by Section 81.061(c).

(d) A person is not liable for damages or other relief for providing medical or other confidential information to the department during an epidemiologic or toxicologic investigation.

Added by Acts 1993, 73rd Leg., ch. 34, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 65, eff. September 1, 2013.

Sec. 161.0212. RIGHT OF ENTRY. To conduct an epidemiologic or toxicologic investigation, the commissioner or the commissioner's designee has the same authority to investigate, sample, inspect, and enter as that described by Sections 81.061, 81.063, 81.064, and 81.065.

Added by Acts 1993, 73rd Leg., ch. 34, Sec. 1, eff. Sept. 1, 1993.

Sec. 161.0213. CONFIDENTIALITY. Reports, records, and information furnished to the commissioner or the commissioner's designee or the Texas Commission on Environmental Quality that relate to an epidemiologic or toxicologic investigation of human illnesses or conditions and of environmental exposures that are harmful or believed to be harmful to the public health are not public information under Chapter 552, Government Code, and are subject to the same confidentiality requirements as described by Section 81.046.

Added by Acts 1993, 73rd Leg., ch. 34, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0469, eff. April 2, 2015.

Sec. 161.022. USE AND PUBLICATION RESTRICTIONS; CONFIDENTIALITY. (a) The department, a medical organization, a hospital, a hospital committee, or a cancer registry may use or publish information under Section 161.021 only to advance medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of the studies may be released by those persons for general publication.

(b) The identity of a person whose condition or treatment has been studied is confidential and may not be revealed except in immunization surveys conducted for the department to identify persons who need immunization.

(c) Interviews, reports, statements, memoranda, and other information, other than immunization information, furnished under this chapter and any findings or conclusions resulting from the study of that information, are privileged.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 343, Sec. 4, eff. May 27, 1997.

Sec. 161.023. NO LIABILITY FOR REPORTS TO MEDICAL COMMITTEE. (a) This section applies to:

(1) a physician, hospital, medical organization, university health science center, university medical school, or an officer or employee of that person or entity; and

(2) a health maintenance organization or an officer, employee, or agent of the health maintenance organization, including an independent practice association or other physician association contracting with the health maintenance organization.

(b) A person or entity covered by this section is not liable for damages to any person for furnishing information, reports, or records to a medical committee relating to a patient:

(1) examined or treated by the physician; or

(2) treated or confined in:

(A) the hospital;

(B) a clinic or facility staffed or operated by a university health science center or university medical school; or

(C) a hospital, clinic, or facility staffed, operated, or used by a health maintenance organization.

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

Sec. 161.024. APPLICATION TO HEALTH MAINTENANCE ORGANIZATION. This subchapter does not apply to a function of a health maintenance organization other than medical peer review and quality assurance conducted under Chapter 843, Insurance Code, the rules adopted under that chapter, or other applicable state and federal statutes and rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.524, eff. Sept. 1, 2003.

SUBCHAPTER D. MEDICAL COMMITTEES, MEDICAL PEER REVIEW COMMITTEES, AND COMPLIANCE OFFICERS

Sec. 161.031. MEDICAL COMMITTEE DEFINED. (a) In this subchapter, "medical committee" includes any committee, including a joint committee, of:

(1) a hospital;

(2) a medical organization;

(3) a university medical school or health science center;

(4) a health maintenance organization licensed under Chapter 843, Insurance Code, including an independent practice association or other physician association whose committee or joint committee is a condition of contract with the health maintenance organization;

(5) an extended care facility;

(6) a hospital district; or

(7) a hospital authority.

(b) The term includes a committee appointed ad hoc to conduct a specific investigation or established under state or federal law or rule or under the bylaws or rules of the organization or institution.

(c) The term includes a committee, including a joint committee, of one or more health care systems if each health care system includes one or more of the entities listed in Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 655, Sec. 1, eff. June 11, 1997; Acts 1999, 76th Leg., ch. 908, Sec. 3, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.525, eff. Sept. 1, 2003.

Sec. 161.0315. AUTHORITY OF GOVERNING BODY TO FORM COMMITTEE TO EVALUATE MEDICAL AND HEALTH CARE SERVICES. (a) The governing body of a hospital, medical organization, university medical school or health science center, health maintenance organization, extended care facility, hospital district, or hospital authority may form a medical peer review committee, as defined by Section 151.002, Occupations Code, or a medical committee, as defined by Section 161.031, to evaluate medical and health care services, except as provided by this section.

(b) Except as provided by Subsection (d), a medical peer review committee or medical committee formed by the governing body of a hospital district may not evaluate medical and health care services provided by a health care facility that:

(1) contracts with the district to provide those services; and

(2) has formed a medical peer review committee or medical committee to evaluate the services provided by the facility.

(c) A hospital district may require in a contract with a health care facility described by Subsection (b) a provision that allows the governing body of the district to appoint a specified number of members to the facility's medical peer review committee or medical committee to evaluate medical and health care services for which the district contracts with the facility to provide. The governing body of a hospital district may receive a report from the facility's medical peer review committee or medical committee under this section in a closed meeting. A report, information, or a record that the district receives from the facility related to a review action conducted under the terms of the contract is:

(1) confidential;

(2) not subject to disclosure under Chapter 552, Government

Code; and

(3) subject to the same confidentiality and disclosure requirements to which a report, information, or record of a medical peer review committee under Section 160.007, Occupations Code, is subject.

(d) If a hospital district and a health care facility described by Subsection (b) do not agree on a contract provision described by Subsection (c), the hospital district has, with respect to a review action for the evaluation of medical and health care services provided by the facility under a contract with the district, a right to:

(1) initiate the review action;

(2) appoint from the medical staff of the facility a number of members to the facility's medical peer review committee or medical committee equal to the number of members appointed to the committee by the facility to conduct the review action, without regard to whether the district initiates the action; and

(3) receive records, information, or reports from the medical peer review committee or medical committee related to the review action.

(e) The governing body of a hospital district may receive a report under Subsection (d)(3) in a closed meeting. A report, information, or a record that the hospital district receives under Subsection (d)(3) is:

(1) confidential;

(2) not subject to disclosure under Chapter 552, Government Code; and

(3) subject to the same confidentiality and disclosure requirements to which a report, information, or record of a medical peer review committee under Section 160.007, Occupations Code, is subject.

(f) A medical peer review committee or medical committee formed by the governing body of a hospital district may compile a report, information, or record of the medical and health care services provided by a health care facility described by Subsection (b) and submit the compilation to the facility's medical peer review committee or medical committee. A report, information, or record compiled under this subsection is:

(1) confidential;

(2) not subject to disclosure under Chapter 552, Government

Code; and

(3) subject to the same confidentiality and disclosure requirements to which a report, information, or record of a medical peer review committee under Section 160.007, Occupations Code, is subject.

Added by Acts 1999, 76th Leg., ch. 908, Sec. 6, eff. June 18, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.781, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 721, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0470, eff. April 2, 2015.

Sec. 161.032. RECORDS AND PROCEEDINGS CONFIDENTIAL. (a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.

(b) Notwithstanding Section 551.002, Government Code, the following proceedings may be held in a closed meeting following the procedures prescribed by Subchapter E, Chapter 551, Government Code:

(1) a proceeding of a medical peer review committee, as defined by Section 151.002, Occupations Code, or medical committee; or

(2) a meeting of the governing body of a public hospital, hospital district, hospital authority, or health maintenance organization of a public hospital, hospital authority, hospital district, or state-owned teaching hospital at which the governing body receives records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer.

(c) Records, information, or reports of a medical committee, medical peer review committee, or compliance officer and records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under Chapter 552, Government Code.

(d) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.

(e) The records, information, and reports received or maintained by a compliance officer retain the protection provided by

this section only if the records, information, or reports are received, created, or maintained in the exercise of a proper function of the compliance officer as provided by the Office of Inspector General of the United States Department of Health and Human Services.

(f) This section and Subchapter A, Chapter 160, Occupations Code, do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, hospital district, hospital authority, or extended care facility.

(g) Notwithstanding any other provision of this section, the records of a medical committee of a university medical school or a health science center, including a joint committee, may be disclosed to the extent required under federal law as a condition on the receipt of federal money.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 625, Sec. 6, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 908, Sec. 4, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 1511, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 66, eff. September 1, 2013.

Sec. 161.033. IMMUNITY FOR COMMITTEE MEMBERS. A member of a medical committee is not liable for damages to a person for an action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the committee member.

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

SUBCHAPTER E. REPORTS OF GUNSHOT WOUNDS AND CONTROLLED SUBSTANCE OVERDOSES

Sec. 161.041. MANDATORY REPORTING OF GUNSHOT WOUNDS. A physician who attends or treats, or who is requested to attend or treat, a bullet or gunshot wound, or the administrator, superintendent, or other person in charge of a hospital, sanitorium,

or other institution in which a bullet or gunshot wound is attended or treated or in which the attention or treatment is requested, shall report the case at once to the law enforcement authority of the municipality or county in which the physician practices or in which the institution is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.042. MANDATORY REPORTING OF CONTROLLED SUBSTANCE OVERDOSES. (a) A physician who attends or treats, or who is requested to attend or treat, an overdose of a controlled substance listed in Penalty Group 1 under Section 481.102 or a controlled substance listed in Penalty Group 1-B under Section 481.1022, or the administrator, superintendent, or other person in charge of a hospital, sanitorium, or other institution in which an overdose of a controlled substance listed in Penalty Group 1 under Section 481.102 or a controlled substance listed in Penalty Group 1-B under Section 481.1022 is attended or treated or in which the attention or treatment is requested, shall report the case at once to the department.

(b) A physician or other person who reports an overdose of a controlled substance under this section shall include in the report information regarding the date of the overdose, the type of controlled substance used, the sex and approximate age of the person attended or treated for the overdose or for whom treatment was sought, the symptoms associated with the overdose, the extent of treatment made necessary by the overdose, and the patient outcome. The physician or other person making the report may provide other demographic information concerning the person attended or treated or for whom treatment was sought but may not disclose the person's name or address or any other information concerning the person's identity.

(c) A hospital, sanitorium, or other institution that makes a report under this section is not subject to civil or criminal liability for damages arising out of the report. An individual who makes a good-faith report under this section is not subject to civil or criminal liability for damages arising out of the report.

Added by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 17, eff. September 1, 2021.

Sec. 161.043. CRIMINAL PENALTY. (a) A person commits an offense if the person is required to report under this subchapter and intentionally fails to report.

(b) An offense under this section is a misdemeanor punishable by confinement in jail for not more than six months or by a fine of not more than $100.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health and Safety Code Sec. 161.042 and amended by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.044. CONTROLLED SUBSTANCE OVERDOSE INFORMATION REPOSITORY. (a) The department shall maintain a central repository for the collection and analysis of information relating to incidents of a controlled substance overdose for which a physician or other person is required to report to the department under Section 161.042. The department may not include in the repository any information the physician or other person is precluded from reporting under that section.

(b) The department shall release statistical information contained in the central repository on the request of a medical professional or representative of a law enforcement agency.

Added by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.045. MANDATORY REPORTING OF CONTROLLED SUBSTANCE OVERDOSES FOR PUBLIC SAFETY MAPPING. (a) In this section:

(1) "Controlled substance" has the meaning assigned by Section 481.002.

(2) "Emergency medical services personnel" has the meaning assigned by Section 773.003.

(3) "Opioid antagonist" has the meaning assigned by Section 483.101.

(4) "Overdose" means an acute condition caused by abuse or misuse of a controlled substance evidenced by symptoms such as

extreme physical illness, decreased level of consciousness, respiratory depression, coma, or death.

(b) This section applies only to emergency medical services personnel operating within the geographical jurisdiction of a local health authority or law enforcement agency, as applicable, that has entered into a participation agreement for overdose mapping under Section 370.007, Local Government Code.

(c) A person to whom this section applies who responds to an overdose incident shall report information about the incident as soon as possible to the local health authority or law enforcement agency, as applicable, that has entered into the participation agreement under Section 370.007, Local Government Code. A person satisfies the requirements of this section by reporting information to either the appropriate local health authority or law enforcement agency.

(d) A report under this section must include, if possible:

(1) the date and time of the overdose incident;

(2) the approximate location of the overdose incident, using:

(A) an address;

(B) the latitude and longitude of the location; or

(C) the location data from a cellular device;

(3) whether an opioid antagonist was administered, and if so, the number of doses and the type of delivery; and

(4) whether the overdose was fatal or nonfatal.

(e) A person who reports information about an overdose incident under this section in good faith is not subject to civil or criminal liability for making the report.

(f) A law enforcement agency may use information received from a report under this section only for mapping overdose locations for public safety purposes.

(g) Information in a report described by this section is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 204 (S.B. 1319), Sec. 1, eff. September 1, 2023.

SUBCHAPTER F. DISCLOSURE OF CERTAIN AGREEMENTS FOR PAYMENT OF LABORATORY TESTS

Sec. 161.061. LABORATORY INFORMATION REQUIRED. (a) A person licensed in this state to practice medicine, dentistry, podiatry, veterinary medicine, or chiropractic may not agree with a clinical, bioanalytical, or hospital laboratory to make payments to the laboratory for individual tests, combinations of tests, or test series for a patient unless:

(1) the person discloses on the bill or statement to the patient or to a third party payor the name and address of the laboratory and the net amount paid to or to be paid to the laboratory; or

(2) discloses in writing on request to the patient or third party payor the net amount.

(b) The disclosure permitted by Subsection (a)(2) must show the charge for the laboratory test or test series and may include an explanation, in net dollar amounts or percentages, of the charge from the laboratory, the charge for handling, and an interpretation charge.

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

Sec. 161.062. GROUNDS FOR LICENSE DENIAL. The agency responsible for licensing and regulating a person subject to this subchapter may, in addition to any other authority granted, deny a license application or other permission to practice if the person violates this subchapter.

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

SUBCHAPTER G. HUMAN MILK BANKS

Sec. 161.071. MINIMUM GUIDELINES FOR HUMAN DONOR MILK BANKS. The department shall establish minimum guidelines for the procurement, processing, distribution, or use of human milk by donor milk banks.

Added by Acts 2001, 77th Leg., ch. 379, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER H. DISTRIBUTION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS

Sec. 161.081. DEFINITIONS. In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(1-a) (A) "E-cigarette" means:

(i) an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device; or

(ii) a consumable liquid solution or other material aerosolized or vaporized during the use of an electronic cigarette or other device described by this subdivision, regardless of whether the liquid solution or material contains nicotine.

(B) The term "e-cigarette" does not include a prescription medical device, prescription medication, or other prescribed substance unrelated to the cessation of smoking.

(C) The term "e-cigarette" includes:

(i) a device described by this subdivision regardless of whether the device is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and

(ii) a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.

(1-b) "Minor" means a person under 21 years of age.

(2) "Permit holder" has the meaning assigned by Section 147.0001 of this code or Section 154.001 or 155.001, Tax Code, as applicable.

(3) "Retail sale" means a transfer of possession from a retailer to a consumer in connection with a purchase, sale, or exchange for value of cigarettes, e-cigarettes, or tobacco products.

(4) "Retailer" means a person who engages in the practice of selling cigarettes, e-cigarettes, or tobacco products to consumers and includes the owner of a coin-operated cigarette, e-cigarette, or tobacco product vending machine. The term includes a retailer as defined by Section 154.001 or 155.001, Tax Code, and an e-cigarette retailer as defined by Section 147.0001 of this code, as applicable.

(5) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

(6) "Wholesaler" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as applicable.

Amended by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 2, eff. October 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 1, eff. September 1, 2019.
Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 2, eff. September 1, 2021.
Acts 2025, 89th Leg., R.S., Ch. 1150 (S.B. 2024), Sec. 1, eff. September 1, 2025.

Sec. 161.0815. NONAPPLICABILITY. This subchapter does not apply to a product that is:
(1) approved by the United States Food and Drug Administration for use in the treatment of nicotine or smoking addiction; and
(2) labeled with a "Drug Facts" panel in accordance with regulations of the United States Food and Drug Administration.

Added by Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 2, eff. September 1, 2019.

Sec. 161.082. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 21 YEARS OF AGE PROHIBITED; PROOF OF AGE REQUIRED. (a) A person commits an offense if the person, with criminal negligence:
(1) sells, gives, or causes to be sold or given a cigarette, e-cigarette, or tobacco product to someone who is younger than 21 years of age; or
(2) sells, gives, or causes to be sold or given a cigarette, e-cigarette, or tobacco product to another person who intends to deliver it to someone who is younger than 21 years of age.
(b) If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which cigarettes, e-cigarettes, or tobacco products are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.
(c) An offense under this section is a Class C misdemeanor.

(d) It is a defense to prosecution under Subsection (a)(1) that the person to whom the cigarette, e-cigarette, or tobacco product was sold or given presented to the defendant apparently valid proof of identification.

(e) A proof of identification satisfies the requirements of Subsection (d) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 21 years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.

(f) It is an exception to the application of Subsection (a)(1) that the person to whom the cigarette, e-cigarette, or tobacco product was sold:

(1) is at least 18 years of age; and

(2) presented at the time of purchase a valid military identification card of the United States military forces or the state military forces.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 50, eff. Sept. 1, 1991. Renumbered from Health and Safety Code Sec. 161.081 and amended by Acts 1997, 75th Leg., ch. 671, Sec. 1.01.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 4, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 3, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 4, eff. September 1, 2019.

Sec. 161.0825. USE OF CERTAIN ELECTRONICALLY READABLE INFORMATION. (a) In this section, "transaction scan device" means a device capable of deciphering electronically readable information on a driver's license, commercial driver's license, or identification certificate.

(b) A person may access electronically readable information on a driver's license, commercial driver's license, or identification

certificate for the purpose of complying with Section 161.082.

(c) Information accessed under this section may not be sold or otherwise disseminated to a third party for any purpose, including any marketing, advertising, or promotional activities. The information may be obtained by court order or on proper request by the comptroller, a law enforcement officer, or a law enforcement agency.

(d) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

(e) It is an affirmative defense to prosecution under Section 161.082 that:

(1) a transaction scan device identified a license or certificate as valid and the defendant accessed the information and relied on the results in good faith; or

(2) if the defendant is the owner of a store in which cigarettes, e-cigarettes, or tobacco products are sold at retail, the offense under Section 161.082 occurs in connection with a sale by an employee of the owner, and the owner had provided the employee with:

(A) a transaction scan device in working condition; and

(B) adequate training in the use of the transaction scan device.

Added by Acts 2005, 79th Leg., Ch. 391 (S.B. 1465), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 5, eff. October 1, 2015.

Sec. 161.083. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 30 YEARS OF AGE. (a) A person may not sell, give, or cause to be sold or given a cigarette, e-cigarette, or tobacco product to someone who is younger than 30 years of age unless the person to whom the cigarette, e-cigarette, or tobacco product was sold or given presents an apparently valid proof of identification.

(a-1) Repealed by Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 19, eff. September 1, 2019.

(b) A retailer shall adequately supervise and train the retailer's agents and employees to prevent a violation of Subsection

(a).

(c) A proof of identification described by Section 161.082(e) satisfies the requirements of Subsection (a).

(d) Notwithstanding any other provision of law, a violation of this section is not a violation of this subchapter for purposes of Section 161.0901.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Jan. 1, 1998. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 5, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 6, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 19, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 3, eff. September 1, 2021.

Sec. 161.084. WARNING NOTICE. (a) Each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which the cigarettes, e-cigarettes, or tobacco products may be purchased.

(b) The sign must include the statement:

PURCHASING OR ATTEMPTING TO PURCHASE CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY A PERSON UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO A PERSON UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO $500, MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert toll-free telephone number). PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT. THE PROHIBITIONS ON THE PURCHASE OR ATTEMPT TO PURCHASE DESCRIBED ABOVE DO NOT APPLY TO A PERSON WHO IS IN THE UNITED STATES MILITARY FORCES OR STATE MILITARY FORCES.

(c) The comptroller by rule shall determine the design and size of the sign.

(d) The comptroller on request shall provide the sign without

charge to any person who sells cigarettes, e-cigarettes, or tobacco products. The comptroller may provide the sign without charge to distributors of cigarettes, e-cigarettes, or tobacco products or wholesale dealers of cigarettes, e-cigarettes, or tobacco products in this state for distribution to persons who sell cigarettes, e-cigarettes, or tobacco products. A distributor or wholesale dealer may not charge for distributing a sign under this subsection.

(e) A person commits an offense if the person fails to display a sign as prescribed by this section. An offense under this subsection is a Class C misdemeanor.

(f) The comptroller may accept gifts or grants from any public or private source to perform the comptroller's duties under this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 50, eff. Sept. 1, 1991. Renumbered from Health and Safety Code Sec. 161.082 and amended by Acts 1997, 75th Leg., ch. 671, Sec. 1.01. Amended by Acts 2001, 77th Leg., ch. 1141, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 62 (S.B. 91), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 8, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 7, eff. September 1, 2019.

Sec. 161.085. NOTIFICATION OF EMPLOYEES AND AGENTS. (a) Each retailer shall notify each individual employed by that retailer who is to be engaged in retail sales of cigarettes, e-cigarettes, or tobacco products that state law:

(1) prohibits the sale or distribution of cigarettes, e-cigarettes, or tobacco products to any person who is younger than 21 years of age as provided by Section 161.082 and that a violation of that section is a Class C misdemeanor; and

(2) requires each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine to post a warning notice as provided by Section 161.084, requires each

employee to ensure that the appropriate sign is always properly displayed while that employee is exercising the employee's duties, and provides that a violation of Section 161.084 is a Class C misdemeanor.

(b) The notice required by this section must be provided within 72 hours of the date an individual begins to engage in retail sales of cigarettes, e-cigarettes, or tobacco products. The individual shall signify that the individual has received the notice required by this section by signing a form stating that the law has been fully explained, that the individual understands the law, and that the individual, as a condition of employment, agrees to comply with the law.

(c) Each form signed by an individual under this section shall indicate the date of the signature and the current address and social security number of the individual. The retailer shall retain the form signed by each individual employed as a retail sales clerk until the 60th day after the date the individual has left the employer's employ.

(d) A retailer required by this section to notify employees commits an offense if the retailer fails, on demand of a peace officer or an agent of the comptroller, to provide the forms prescribed by this section. An offense under this section is a Class C misdemeanor.

(e) It is a defense to prosecution under Subsection (d) to show proof that the employee did complete, sign, and date the forms required by Subsections (b) and (c). Proof must be shown to the comptroller or an agent of the comptroller not later than the seventh day after the date of a demand under Subsection (d).

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Jan. 1, 1998. Amended by Acts 2001, 77th Leg., ch. 1141, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 9, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 8, eff. September 1, 2019.

Sec. 161.086. VENDOR ASSISTED SALES REQUIRED; VENDING

MACHINES. (a) Except as provided by Subsection (b), a retailer or other person may not:

(1) offer cigarettes, e-cigarettes, or tobacco products for sale in a manner that permits a customer direct access to the cigarettes, e-cigarettes, or tobacco products; or

(2) install or maintain a vending machine containing cigarettes, e-cigarettes, or tobacco products.

(b) Subsection (a) does not apply to:

(1) a facility or business that is not open to persons younger than 21 years of age at any time;

(2) that part of a facility or business that is a humidor or other enclosure designed to store cigars in a climate-controlled environment and that is not open to persons younger than 21 years of age at any time; or

(3) a premises for which a person holds a package store permit issued under the Alcoholic Beverage Code and that is not open to persons younger than 21 years of age at any time.

(c) The comptroller or a peace officer may, with or without a warrant, seize, seal, or disable a vending machine installed or maintained in violation of this section. Property seized under this subsection must be seized in accordance with, and is subject to forfeiture to the state in accordance with, Subchapter H, Chapter 154, Tax Code, and Subchapter E, Chapter 155, Tax Code.

(d) A person commits an offense if the person violates Subsection (a). An offense under this subsection is a Class C misdemeanor.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Jan. 1, 1998. Amended by Acts 1999, 76th Leg., ch. 567, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 10, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 9, eff. September 1, 2019.

Sec. 161.087. DISTRIBUTION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS. (a) A person may not distribute:

(1) a free sample of a cigarette, e-cigarette, or tobacco product; or

(2) a coupon or other item that the recipient may use to receive a free cigarette, e-cigarette, or tobacco product or a sample cigarette, e-cigarette, or tobacco product.

(a-1) A person may not distribute to persons younger than 21 years of age a coupon or other item that the recipient may use to receive a discounted cigarette, e-cigarette, or tobacco product.

(b) Except as provided by Subsection (c), a person, including a permit holder, may not accept or redeem, offer to accept or redeem, or hire a person to accept or redeem:

(1) a coupon or other item that the recipient may use to receive a free cigarette, e-cigarette, or tobacco product or a sample cigarette, e-cigarette, or tobacco product; or

(2) a coupon or other item that the recipient may use to receive a discounted cigarette, e-cigarette, or tobacco product if the recipient is younger than 21 years of age.

(b-1) A coupon or other item that a recipient described by Subsection (b) may use to receive a discounted cigarette, e-cigarette, or tobacco product may not be redeemable through mail or courier delivery.

(c) Subsections (a)(2), (a-1), (b), and (b-1) do not apply to a transaction between permit holders unless the transaction is a retail sale.

(d) A person commits an offense if the person violates this section. An offense under this subsection is a Class C misdemeanor.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 11, eff. October 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 12, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 10, eff. September 1, 2019.

Sec. 161.0875. SALE OF E-CIGARETTE NICOTINE CONTAINERS. (a) A person may not sell or cause to be sold a container that contains liquid with nicotine and that is an accessory for an e-cigarette unless:

(1) the container satisfies the child-resistant effectiveness standards under 16 C.F.R. Section 1700.15(b)(1) when tested in accordance with the method described by 16 C.F.R. Section 1700.20; or

(2) the container is a cartridge that is prefilled and sealed by the manufacturer and is not intended to be opened by a consumer.

(b) If the federal government adopts standards for the packaging of a container described by Subsection (a), a person who complies with those standards is considered to be in compliance with this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 13, eff. October 1, 2015.

Sec. 161.0876. PROHIBITED E-CIGARETTE PRODUCTS. (a) For purposes of this section, "e-cigarette product" means a consumable liquid solution or other material aerosolized or vaporized during the use of an electronic cigarette or other device described by Section 161.081(1-a), regardless of whether the liquid solution or material contains nicotine. The term does not include a prescription medication or other prescribed substance unrelated to the cessation of smoking.

(b) A person commits an offense if the person markets, advertises, sells, offers for sale, or causes to be sold an e-cigarette product:

(1) in a product container that:

(A) depicts a cartoon-like fictional character that mimics a character primarily aimed at entertaining minors;

(B) imitates or mimics trademarks or trade dress of products that are or have been primarily marketed to minors;

(C) includes a symbol that is primarily used to market products to minors;

(D) includes an image or name of a celebrity; or

(E) includes an image that resembles a food product, including candy or juice;

(2) in a product shape or design disguised to appear as an alternative product, including a product in the shape or design of:

(A) a school or office supply, such as a highlighter,

marker, ink pen, or pencil;

(B) a smart phone, smart watch, smart phone case, or smart watch case;

(C) headphones, including ear buds;

(D) clothing;

(E) a backpack;

(F) a cosmetic, including lipstick; or

(G) a toy;

(3) that is wholly or partially manufactured in or marketed as being manufactured in:

(A) China; or

(B) a country designated as a foreign adversary by the United States secretary of commerce under 15 C.F.R. Section 791.4; or

(4) that contains, is mixed with, or is marketed as containing or being mixed with any cannabinoids, alcohol, kratom, kava, mushrooms, tianeptine, or any derivatives of those substances.

(c) An offense under this section is a Class A misdemeanor.

Added by Acts 2023, 88th Leg., R.S., Ch. 919 (H.B. 4758), Sec. 2, eff. January 1, 2024.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 1150 (S.B. 2024), Sec. 2, eff. September 1, 2025.

Sec. 161.088. ENFORCEMENT; UNANNOUNCED INSPECTIONS. (a) The comptroller shall enforce this subchapter in partnership with local law enforcement agencies and with their cooperation and shall ensure the state's compliance with Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x-26) and any implementing regulations adopted by the United States Department of Health and Human Services. Except as expressly authorized by law, the comptroller may not adopt any rules governing the subject matter of this subchapter or Subchapter K, N, or O.

(b) The comptroller may make block grants to counties and municipalities to be used by local law enforcement agencies to enforce this subchapter and Subchapter R in a manner that can reasonably be expected to reduce the extent to which cigarettes, e-cigarettes, and tobacco products are sold or distributed, including by delivery sale, to persons who are younger than 21 years of age.

At least annually, random unannounced inspections shall be conducted at various locations where cigarettes, e-cigarettes, and tobacco products are sold or distributed, including by delivery sale, to ensure compliance with this subchapter and Subchapter R. The comptroller shall rely, to the fullest extent possible, on local law enforcement agencies to enforce this subchapter and Subchapter R.

(c) To facilitate the effective administration and enforcement of this subchapter, the comptroller may enter into interagency contracts with other state agencies, and those agencies may assist the comptroller in the administration and enforcement of this subchapter.

(d) The use of a person younger than 21 years of age to act as a minor decoy to test compliance with this subchapter and Subchapter R shall be conducted in a fashion that promotes fairness. A person may be enlisted by the comptroller or a local law enforcement agency to act as a minor decoy only if the following requirements are met:

(1) written parental consent is obtained for the use of a person younger than 18 years of age to act as a minor decoy to test compliance with this subchapter and Subchapter R;

(2) at the time of the inspection, order, or delivery, the minor decoy is younger than 21 years of age;

(3) the minor decoy has an appearance that would cause a reasonably prudent seller of cigarettes, e-cigarettes, or tobacco products to request identification and proof of age;

(4) the minor decoy carries either the minor's own identification showing the minor's correct date of birth or carries no identification, and a minor decoy who carries identification presents it on request to any seller of or any person who delivers cigarettes, e-cigarettes, or tobacco products; and

(5) the minor decoy answers truthfully any questions about the minor's age at the time of the inspection, order, or delivery.

(e) The comptroller shall annually prepare for submission by the governor to the secretary of the United States Department of Health and Human Services the report required by Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x-26).

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1156, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 14, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 11, eff. September 1, 2019.

Sec. 161.089. PREEMPTION OF LOCAL LAW. (a) Except as provided by Subsection (b), this subchapter does not preempt a local regulation of the sale, distribution, or use of cigarettes or tobacco products or affect the authority of a political subdivision to adopt or enforce an ordinance or requirement relating to the sale, distribution, or use of cigarettes or tobacco products if the regulation, ordinance, or requirement:

(1) is compatible with and equal to or more stringent than a requirement prescribed by this subchapter; or

(2) relates to an issue that is not specifically addressed by this subchapter or Chapter 154 or 155, Tax Code.

(b) A political subdivision may not adopt or enforce an ordinance or requirement relating to the lawful age to sell, distribute, or use cigarettes, e-cigarettes, or tobacco products that is more stringent than a requirement prescribed by this subchapter.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 12, eff. September 1, 2019.

Sec. 161.090. REPORTS OF VIOLATION. A local or state law enforcement agency or other governmental unit shall notify the comptroller, on the 10th day of each month, or the first working day after that date, of any violation of this subchapter that occurred in the preceding month that the agency or unit detects, investigates, or prosecutes.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 161.0901. DISCIPLINARY ACTION AGAINST CIGARETTE, E-

CIGARETTE, AND TOBACCO PRODUCT RETAILERS. (a) A retailer is subject to disciplinary action as provided by this section if an agent or employee of the retailer commits an offense under this subchapter.

(b) If the comptroller finds, after notice and an opportunity for a hearing as provided by Chapter 2001, Government Code, that a permit holder has violated this subchapter at a place of business for which a permit is issued, the comptroller may suspend the permit for that place of business and administratively assess a fine as follows:

(1) for the first violation of this subchapter during the 24-month period preceding the violation at that place of business, the comptroller may require the permit holder to pay a fine in an amount not to exceed $1,000;

(2) for the second violation of this subchapter during the 24-month period preceding the most recent violation at that place of business, the comptroller may require the permit holder to pay a fine in an amount not to exceed $2,000; and

(3) for the third violation of this subchapter during the 24-month period preceding the most recent violation at that place of business, the comptroller may:

(A) require the permit holder to pay a fine in an amount not to exceed $3,000; and

(B) suspend the permit for that place of business for not more than five days.

(c) Except as provided by Subsection (e), for the fourth or a subsequent violation of this subchapter during the 24-month period preceding the most recent violation at that place of business, the comptroller shall revoke the permit issued under Chapter 147 of this code or Chapter 154 or 155, Tax Code, as applicable. If the permit holder does not hold a permit under Chapter 147 of this code or Chapter 154 or 155, Tax Code, the comptroller shall revoke the permit issued under Section 151.201, Tax Code.

(d) A permit holder whose permit has been revoked under this section may not apply for a permit for the same place of business before the expiration of six months after the effective date of the revocation.

(e) For purposes of this section, the comptroller may suspend a permit for a place of business but may not revoke the permit under Subsection (c) if the comptroller finds that:

(1) the permit holder has not violated this subchapter more than seven times at the place of business in the 48-month period

preceding the violation in question;

(2) the permit holder requires its employees to attend a comptroller-approved seller training program;

(3) the employees have actually attended a comptroller-approved seller training program; and

(4) the permit holder has not directly or indirectly encouraged the employees to violate the law.

(f) The comptroller may adopt rules to implement this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 4, eff. September 1, 2021.

Sec. 161.0902. E-CIGARETTE REPORT. (a) Not later than January 5th of each odd-numbered year, the department shall report to the governor, lieutenant governor, and speaker of the house of representatives on the status of the use of e-cigarettes in this state.

(b) The report must include, at a minimum:

(1) a baseline of statistics and analysis regarding retail compliance with this subchapter and Subchapter R;

(2) a baseline of statistics and analysis regarding illegal e-cigarette sales, including:

(A) sales to minors;

(B) enforcement actions concerning minors; and

(C) sources of citations;

(3) e-cigarette controls and initiatives by the department, or any other state agency, including an evaluation of the effectiveness of the controls and initiatives;

(4) the future goals and plans of the department to decrease the use of e-cigarettes;

(5) the educational programs of the department and the effectiveness of those programs; and

(6) the incidence of use of e-cigarettes by regions in this state, including use of e-cigarettes by ethnicity.

(c) The department may include the report required by this section with a similar report for cigarettes or tobacco products required by law.

Added by Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 15, eff. October 1, 2015.

Sec. 161.0903. USE OF CERTAIN REVENUE. Revenue from fees collected under Section 161.123 and from the sale of permits under Chapter 147 of this code, retailer permits under Chapter 154, Tax Code, and retailer permits under Chapter 155, Tax Code, shall be deposited in the general revenue fund and may be appropriated only as provided by this section. The revenue shall be appropriated, in order of priority, to:

(1) the comptroller for the purpose of administering retailer permitting under Chapter 147 of this code and Chapters 154 and 155, Tax Code; and

(2) the comptroller for the purpose of administering and enforcing this subchapter and Subchapters K and N.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 4, eff. September 1, 2021.

SUBCHAPTER J. EXPOSURE TO LEAD

Sec. 161.101. TESTS FOR EXPOSURE TO LEAD. (a) At the request of an attending physician, the department shall conduct tests for lead poisoning if the physician suspects that a person has been exposed to lead and that the person may have been harmed by that exposure.

(b) The department shall charge only for the cost to the department of conducting the test.

(c) The executive commissioner shall adopt rules to implement this section.

Acts 1991, 72nd Leg., ch. 695, Sec. 1, eff. Aug. 26, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0472, eff. April 2, 2015.

SUBCHAPTER K. PROHIBITION OF CERTAIN CIGARETTE, E-CIGARETTE, OR TOBACCO PRODUCT ADVERTISING; FEE

Sec. 161.121. DEFINITIONS. In this subchapter:

(1) "Church" means a facility that is owned by a religious organization and that is used primarily for religious services.

(2) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(2-a) "E-cigarette" has the meaning assigned by Section 161.081.

(3) "School" means a private or public elementary or secondary school.

(4) "Sign" means an outdoor medium, including a structure, display, light device, figure, painting, drawing, message, plaque, poster, or billboard, that is:

(A) used to advertise or inform; and

(B) visible from the main-traveled way of a street or highway.

(5) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 5.02(a), eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997.

Amended by:

Acts 2025, 89th Leg., R.S., Ch. 101 (S.B. 1316), Sec. 2, eff. September 1, 2025.

Sec. 161.122. PROHIBITION RELATING TO CERTAIN SIGNS; EXCEPTIONS. (a) Except as provided by this section, a sign containing an advertisement for cigarettes, e-cigarettes, or tobacco products may not be located closer than 1,000 feet to a church or school.

(b) The measurement of the distance between the sign containing an advertisement for cigarettes, e-cigarettes, or tobacco products and an institution listed in Subsection (a) is from the nearest property line of the institution to a point on a street or highway closest to the sign, along street lines and in direct lines across intersections.

(c) This section does not apply to a sign located on or in a facility owned or leased by a professional sports franchise or in a facility where professional sports events are held at least 10 times during a 12-month period.

(d) In Subsection (c), a "facility" includes a stadium, arena, or events center and any land or property owned or leased by the

professional sports franchise that is connected to or immediately contiguous to the stadium, arena, or events center.

(e) Subsection (a) does not apply to a sign containing an advertisement for cigarettes, e-cigarettes, or tobacco products that, before September 1, 1997, was located closer than 1,000 feet to a church or school but that was not located closer than 500 feet to the church or school.

(f) A person commits an offense if the person places or authorizes the placement of a sign in violation of this section. An offense under this subsection is a Class C misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 5.02(a), eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 209, Sec. 1, eff. Oct. 1, 2003.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 101 (S.B. 1316), Sec. 3, eff. September 1, 2025.

Sec. 161.123. ADVERTISING FEE. (a) A purchaser of advertising is liable for and shall remit to the comptroller a fee that is 10 percent of the gross sales price of any outdoor advertising of cigarettes and tobacco products in this state.

(b) The comptroller shall collect the fee as provided in this section.

(c) The liability for the payment of fees under this section may not be nullified by contract.

(d) The comptroller shall establish by rule the periods for collection of the fees and the methods of payment and shall adopt other rules necessary to administer and enforce this section.

(e) In this section, "gross sales price" means the sum of:

(1) production costs;

(2) media cost; and

(3) cost of sales or commissions paid to an agency or broker.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 5, eff.

September 1, 2021.

Sec. 161.124. PROHIBITED IMAGES AND SIGNAGE; CRIMINAL OFFENSE. (a) In this section, "e-cigarette" and "retailer" have the meanings assigned by Section 161.081.

(b) A retailer commits an offense if the retailer uses in any manner related to the retailer's marketing, advertising, or sale of cigarettes, e-cigarettes, or tobacco products a sign, logo, or other design mark that:

(1) depicts a cartoon-like fictional character primarily aimed at entertaining minors;

(2) imitates or mimics the trademarks or visual appearance of products primarily marketed to minors;

(3) includes a symbol primarily used to market products to minors;

(4) includes an image of a celebrity; or

(5) includes an image resembling a food product, such as candy or juice.

(c) An offense under this section is a Class B misdemeanor.

Added by Acts 2025, 89th Leg., R.S., Ch. 697 (S.B. 1313), Sec. 2, eff. September 1, 2025.

Sec. 161.125. ADMINISTRATIVE PENALTY. (a) The comptroller by order may impose an administrative penalty against a purchaser of advertising required to comply with Section 161.123 who violates that section or a rule or order adopted under that section.

(b) The penalty for a violation may be in an amount not to exceed $5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

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

(1) the amount of fees due and owing;

(2) attempted concealment of misconduct by the person who committed the violation;

(3) premeditated misconduct by the person who committed the violation;

(4) intentional misconduct by the person who committed the violation;

(5) the motive of the person who committed the violation;

(6) prior misconduct of a similar or related nature by the person who committed the violation;

(7) prior written warnings or written admonishments from any government agency or official regarding statutes or regulations pertaining to the misconduct;

(8) violation by the person who committed the violation of an order of the comptroller;

(9) lack of rehabilitative potential or likelihood for future misconduct of a similar nature;

(10) relevant circumstances increasing the seriousness of the misconduct; and

(11) any other matter justice may require.

(d) The comptroller shall prescribe the procedure by which the comptroller may impose an administrative penalty under this section.

(e) A proceeding under this section is subject to Chapter 2001, Government Code.

(f) If the comptroller by order finds that a violation has occurred and imposes an administrative penalty, the comptroller shall give notice to the person of the comptroller's order. The notice must include a statement of the rights of the person to judicial review of the order.

(g) If the purchaser of advertising does not pay the amount of the penalty, the comptroller may refer the matter to the attorney general for collection of the amount of the penalty.

(h) A penalty collected under this section shall be deposited in the general revenue fund.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997.

SUBCHAPTER L. ABUSE, NEGLECT, AND UNPROFESSIONAL OR UNETHICAL CONDUCT IN HEALTH CARE FACILITIES

Sec. 161.131. DEFINITIONS. In this subchapter:

(1) "Abuse" has the meaning assigned by the federal Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. Section 10801 et seq.).

(2) "Comprehensive medical rehabilitation" means the provision of rehabilitation services that are designed to improve or

minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share the responsibility to achieve team treatment goals for the person.

(3) "Hospital" has the meaning assigned by Section 241.003.

(4) "Illegal conduct" means conduct prohibited by law.

(5) "Inpatient mental health facility" has the meaning assigned by Section 571.003.

(6) "License" means a state agency permit, certificate, approval, registration, or other form of permission required by state law.

(7) "Mental health facility" has the meaning assigned by Section 571.003.

(8) "Neglect" has the meaning assigned by the federal Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. Section 10801 et seq.).

(9) "State health care regulatory agency" means a state agency that licenses a health care professional.

(10) "Treatment facility" has the meaning assigned by Section 464.001.

(11) "Unethical conduct" means conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(12) "Unprofessional conduct" means conduct prohibited under rules adopted by the state licensing agency for the respective profession.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0473, eff. April 2, 2015.

Sec. 161.132. REPORTS OF ABUSE AND NEGLECT OR OF ILLEGAL, UNPROFESSIONAL, OR UNETHICAL CONDUCT. (a) A person, including an employee, volunteer, or other person associated with an inpatient

mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation services, who reasonably believes or who knows of information that would reasonably cause a person to believe that the physical or mental health or welfare of a patient or client of the facility who is receiving chemical dependency, mental health, or rehabilitation services has been, is, or will be adversely affected by abuse or neglect caused by any person shall as soon as possible report the information supporting the belief to the agency that licenses the facility or to the appropriate state health care regulatory agency.

(b) An employee of or other person associated with an inpatient mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation services, including a health care professional, who reasonably believes or who knows of information that would reasonably cause a person to believe that the facility or an employee of or health care professional associated with the facility has, is, or will be engaged in conduct that is or might be illegal, unprofessional, or unethical and that relates to the operation of the facility or mental health, chemical dependency, or rehabilitation services provided in the facility shall as soon as possible report the information supporting the belief to the agency that licenses the facility or to the appropriate state health care regulatory agency.

(c) The requirement prescribed by this section is in addition to the requirements provided by Chapter 261, Family Code, and Chapter 48, Human Resources Code.

(d) The executive commissioner by rule for the department and the Department of Aging and Disability Services, and each state health care regulatory agency by rule, shall:

(1) prescribe procedures for the investigation of reports received under Subsection (a) or (b) and for coordination with and referral of reports to law enforcement agencies or other appropriate agencies; and

(2) prescribe follow-up procedures to ensure that a report referred to another agency receives appropriate action.

(e) Each hospital, inpatient mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, volunteers, employees, and visitors a statement of the duty to report under this section. The statement must be in

English and in a second language and contain a toll-free telephone number that a person may call to report.

(f) The executive commissioner by rule and each state health care regulatory agency by rule shall provide for appropriate disciplinary action against a health care professional licensed by the agency who fails to report as required by this section.

(g) An individual who in good faith reports under this section is immune from civil or criminal liability arising from the report. That immunity extends to participation in an administrative or judicial proceeding resulting from the report but does not extend to an individual who caused the abuse or neglect or who engaged in the illegal, unprofessional, or unethical conduct.

(h) A person commits an offense if the person:

(1) intentionally, maliciously, or recklessly reports false material information under this section; or

(2) fails to report as required by Subsection (a).

(i) An offense under Subsection (h) is a Class A misdemeanor.

(j) In this section, "abuse" includes coercive or restrictive actions that are illegal or not justified by the patient's condition and that are in response to the patient's request for discharge or refusal of medication, therapy, or treatment.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.41, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0474, eff. April 2, 2015.

Sec. 161.133. INSERVICE TRAINING. (a) The executive commissioner by rule shall require each inpatient mental health facility, treatment facility, or hospital that provides comprehensive medical rehabilitation services to annually provide as a condition of continued licensure a minimum of eight hours of inservice training designed to assist employees and health care professionals associated with the facility in identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct by or in the facility.

(a-1) The training required under Subsection (a) may be provided:

(1) in person; or

(2) through a live, interactive, instructor-led, and electronic method that uses synchronous audiovisual interaction between the instructor and employees.

(b) The rules must prescribe:

(1) minimum standards for the training program; and

(2) a means for monitoring compliance with the requirement.

(c) The department shall review and the executive commissioner shall modify the rules as necessary not later than the last month of each state fiscal year.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0475, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 970 (S.B. 437), Sec. 1, eff. September 1, 2025.

Sec. 161.134. RETALIATION AGAINST EMPLOYEES PROHIBITED. (a) A hospital, mental health facility, or treatment facility may not suspend or terminate the employment of or discipline or otherwise discriminate against an employee for reporting to the employee's supervisor, an administrator of the facility, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule of another agency.

(b) A hospital, mental health facility, or treatment facility that violates Subsection (a) is liable to the person discriminated against. A person who has been discriminated against in violation of Subsection (a) may sue for injunctive relief, damages, or both.

(c) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(d) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(e) In addition to amounts recovered under Subsections (c) and (d), a plaintiff is entitled to, if applicable:

(1) reinstatement in the plaintiff's former position;

(2) compensation for lost wages; and

(3) reinstatement of lost fringe benefits or seniority rights.

(f) A plaintiff suing under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff's employment was suspended or terminated, or that the employee was disciplined or discriminated against, for making a report related to a violation if the suspension, termination, discipline, or discrimination occurs before the 60th day after the date on which the plaintiff made a report in good faith.

(g) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff was employed by the defendant; or

(2) the defendant conducts business.

(h) A person who alleges a violation of Subsection (a) must sue under this section before the 180th day after the date the alleged violation occurred or was discovered by the employee through the use of reasonable diligence.

(i) This section does not abrogate any other right to sue or interfere with any other cause of action.

(j) Each hospital, mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, employees, and visitors a statement that employees and staff are protected from discrimination or retaliation for reporting a violation of law. The statement must be in English and in a second language.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0476, eff. April 2, 2015.

Sec. 161.135. RETALIATION AGAINST NONEMPLOYEES PROHIBITED. (a) A hospital, mental health facility, or treatment facility may not retaliate against a person who is not an employee for reporting a violation of law, including a violation of this chapter, a rule

adopted under this chapter, or a rule of another agency.

(b) A hospital, mental health facility, or treatment facility that violates Subsection (a) is liable to the person retaliated against. A person who has been retaliated against in violation of Subsection (a) may sue for injunctive relief, damages, or both.

(c) A person suing under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff was retaliated against if:

(1) before the 60th day after the date on which the plaintiff made a report in good faith, the hospital, mental health facility, or treatment facility:

(A) discriminates in violation of Section 161.134 against a relative who is an employee of the facility;

(B) transfers, disciplines, suspends, terminates, or otherwise discriminates against the person or a relative who is a volunteer in the facility or who is employed under the patient work program administered by the department;

(C) commits or threatens to commit, without justification, the person or a relative of the person; or

(D) transfers, discharges, punishes, or restricts the privileges of the person or a relative of the person who is receiving inpatient or outpatient services in the facility; or

(2) a person expected to testify on behalf of the plaintiff is intentionally made unavailable through an action of the facility, including a discharge, resignation, or transfer.

(d) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(e) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(f) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff received care or treatment; or

(2) the defendant conducts business.

(g) This section does not abrogate any other right to sue or interfere with any other cause of action.

(h) Each hospital, mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients,

residents, employees, and visitors a statement that nonemployees are protected from discrimination or retaliation for reporting a violation of law. The statement must be in English and in a second language. The sign may be combined with the sign required by Section 161.134(j).

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0477, eff. April 2, 2015.

Sec. 161.136. BROCHURE RELATING TO SEXUAL EXPLOITATION. (a) A state health care regulatory agency by rule may require a mental health services provider licensed by that agency to provide a standardized written brochure, in wording a patient can understand, that summarizes the law prohibiting sexual exploitation of patients. The brochure must be available in English and in a second language.

(b) The brochure shall include:

(1) procedures for filing a complaint relating to sexual exploitation, including any toll-free telephone number available; and

(2) the rights of a victim of sexual exploitation.

(c) In this section, "mental health services provider" has the meaning assigned by Section 81.001, Civil Practice and Remedies Code.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Sec. 161.137. PENALTIES. In addition to the penalties prescribed by this subchapter, a violation of a provision of this subchapter by an individual or facility that is licensed by a state health care regulatory agency is subject to the same consequence as a violation of the licensing law applicable to the individual or facility or of a rule adopted under that licensing law.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

SUBCHAPTER M. MEDICAL OR MENTAL HEALTH RECORDS

Sec. 161.201. DEFINITION. In this subchapter, "health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide or render health care in the ordinary course of business or practice of a profession.

Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995.

Sec. 161.202. FEES. (a) A health care provider or health care facility may not charge a fee for a medical or mental health record requested by a patient or former patient, or by an attorney or other authorized representative of the patient or former patient, for use in supporting an application for disability benefits or other benefits or assistance the patient or former patient may be eligible to receive based on that patient's or former patient's disability, or an appeal relating to denial of those benefits or assistance under:

(1) Chapter 31, Human Resources Code;

(2) the state Medicaid program;

(3) Title II, the federal Social Security Act, as amended (42 U.S.C. Section 401 et seq.);

(4) Title XVI, the federal Social Security Act, as amended (42 U.S.C. Section 1382 et seq.);

(5) Title XVIII, the federal Social Security Act, as amended (42 U.S.C. Section 1395 et seq.);

(6) 38 U.S.C. Section 1101 et seq., as amended; or

(7) 38 U.S.C. Section 1501 et seq., as amended.

(b) A health care provider or health care facility may charge a fee for the medical or mental health record of a patient or former patient requested by a state or federal agency in relation to the patient or former patient's application for benefits or assistance under Subsection (a) or an appeal relating to denial of those benefits or assistance.

(c) A person, including a state or federal agency, that requests a record under this section shall include with the request a statement or document from the department or agency that administers the issuance of the assistance or benefits that confirms the application or appeal.

(d) A health care provider or health facility is not required to provide more than one complete record for a patient or former

patient requested under Subsection (a)(6) or (7) without charge. If additional material is added to the patient or former patient's record, on request the health care provider or health facility shall supplement the record provided under Subsection (a)(6) or (7) without charge. This subsection does not affect the ability of a person to receive a medical or mental health record under Subsections (a)(1)-(5).

Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995. Amended by Acts 1999, 76th Leg., ch. 201, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.203. DISTRIBUTION OF RECORDS. A health care provider or health care facility shall provide to the requestor a medical or mental health record requested under Section 161.202 not later than the 30th day after the date on which the provider or facility receives the request.

Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995.

Sec. 161.204. APPLICATION OF OTHER LAW. This subchapter controls over Section 611.0045 of this code and Section 159.006, Occupations Code, and any other provision that authorizes the charging of a fee for providing medical or mental health records.

Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.783, eff. Sept. 1, 2001.

SUBCHAPTER N. E-CIGARETTE AND TOBACCO USE BY MINORS

Sec. 161.251. DEFINITIONS. In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(1-a) "E-cigarette" has the meaning assigned by Section 161.081.

(1-b) "Minor" means a person under 21 years of age.

(2) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 17, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 13, eff. September 1, 2019.

Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR RECEIPT OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY MINORS PROHIBITED. (a) An individual who is younger than 21 years of age commits an offense if the individual:

(1) possesses, purchases, consumes, or accepts a cigarette, e-cigarette, or tobacco product; or

(2) falsely represents himself or herself to be 21 years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a cigarette, e-cigarette, or tobacco product.

(b) It is an exception to the application of this section that the individual younger than 21 years of age possessed the cigarette, e-cigarette, or tobacco product in the presence of an employer of the individual, if possession or receipt of the cigarette, e-cigarette, or tobacco product is required in the performance of the employee's duties as an employee.

(c) It is an exception to the application of this section that the individual younger than 21 years of age is participating in an inspection or test of compliance in accordance with Section 161.088.

(c-1) It is an exception to the application of this section that the individual younger than 21 years of age:

(1) is at least 18 years of age; and

(2) presents at the time of purchase a valid military identification card of the United States military forces or the state military forces.

(d) An offense under this section is punishable by a fine not to exceed $100.

(e) On conviction of an individual under this section, the court shall give notice to the individual that the individual may apply to the court to have the individual's conviction expunged as provided by Section 161.255 on or after the individual's 21st

birthday.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 19, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 14, eff. September 1, 2019.

Sec. 161.253. E-CIGARETTE AND TOBACCO AWARENESS PROGRAM; COMMUNITY SERVICE. (a) On conviction of an individual for an offense under Section 161.252, the court shall suspend execution of sentence and shall require the defendant to attend an e-cigarette and tobacco awareness program approved by the commissioner. The court may require the parent or guardian of the defendant to attend the e-cigarette and tobacco awareness program with the defendant.

(b) On request, an e-cigarette and tobacco awareness program may be taught in languages other than English.

(c) If the defendant resides in a rural area of this state or another area of this state in which access to an e-cigarette and tobacco awareness program is not readily available, the court shall require the defendant to perform eight to 12 hours of e-cigarette- and tobacco-related community service instead of attending the e-cigarette and tobacco awareness program.

(d) The e-cigarette and tobacco awareness program and the e-cigarette- and tobacco-related community service are remedial and are not punishment.

(e) Not later than the 90th day after the date of a conviction under Section 161.252, the defendant shall present to the court, in the manner required by the court, evidence of satisfactory completion of the e-cigarette and tobacco awareness program or the e-cigarette- and tobacco-related community service.

(f) On receipt of the evidence required under Subsection (e), the court shall:

(1) if the defendant has been previously convicted of an offense under Section 161.252, execute the sentence, and at the discretion of the court, reduce the fine imposed to not less than half the fine previously imposed by the court; or

(2) if the defendant has not been previously convicted of

an offense under Section 161.252, discharge the defendant and dismiss the complaint or information against the defendant.

(g) If the court discharges the defendant under Subsection (f)(2), the defendant is released from all penalties and disabilities resulting from the offense except that the defendant is considered to have been convicted of the offense if the defendant is subsequently convicted of an offense under Section 161.252 committed after the dismissal under Subsection (f)(2).

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 20, eff. October 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 21, eff. October 1, 2015.

Sec. 161.255. EXPUNGEMENT OF CONVICTION. (a) An individual convicted of an offense under Section 161.252 may apply to the court to have the conviction expunged on or after the individual's 21st birthday. The court shall order the conviction and any complaint, verdict, sentence, or other document relating to the offense to be expunged from the individual's record and the conviction may not be shown or made known for any purpose.

(b) The court shall charge an applicant a reimbursement fee in the amount of $30 for each application for expungement filed under this section to defray the cost of notifying state agencies of orders of expungement under this section.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.
Amended by:

Acts 2005, 79th Leg., Ch. 886 (S.B. 1426), Sec. 5, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 22, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 15, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 2.50, eff. January 1, 2020.

Sec. 161.256. JURISDICTION OF COURTS. A justice court or municipal court may exercise jurisdiction over any matter in which a court under this subchapter may impose a requirement that a defendant attend an e-cigarette and tobacco awareness program or perform e-cigarette- and tobacco-related community service.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 23, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 16, eff. September 1, 2019.

Sec. 161.257. APPLICATION OF OTHER LAW. Title 3, Family Code, does not apply to a proceeding under this subchapter.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.

SUBCHAPTER O. PREVENTION OF TOBACCO AND E-CIGARETTE USE BY MINORS

Sec. 161.301. TOBACCO AND E-CIGARETTE USE PUBLIC AWARENESS CAMPAIGN. (a) The department shall develop and implement a public awareness campaign designed to reduce the use by minors in this state of tobacco and e-cigarettes as defined by Section 161.081. The campaign may use advertisements or similar media to provide educational information about tobacco and e-cigarette use.

(b) The department may contract with another person to develop and implement the public awareness campaign. The contract shall be awarded on the basis of competitive bids.

(c) A contract awarded under Subsection (b) may be awarded only to a business that has a proven background in advertising and public relations campaigns.

(d) The department may not award a contract under Subsection (b) to:

(1) a person or entity that is required to register with the Texas Ethics Commission under Chapter 305, Government Code, except as provided by Subsection (f);

(2) any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity described by Subdivision (1) and not described by Subsection (f); or

(3) a person or entity who has been hired to represent associations or other entities for the purpose of affecting the outcome of legislation, agency rules, or other government policies through grassroots or media campaigns.

(e) The persons or entities described by Subsection (d) are not eligible to receive the money or participate either directly or indirectly in the public awareness campaign.

(f) A registrant under Chapter 305, Government Code, is not ineligible under Subsections (d) and (e) if the person is required to register under that chapter solely because the person communicates directly with a member of the executive branch to influence administrative action concerning a matter relating to the purchase of products or services by a state agency.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1174 (H.B. 3445), Sec. 6, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0478, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 25, eff. October 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 26, eff. October 1, 2015.

Sec. 161.302. GRANT PROGRAM FOR YOUTH GROUPS. (a) The entity administering Section 161.301 shall also develop and implement a grant program to support youth groups that include as a part of the group's program components related to reduction of use by the group's members of tobacco and e-cigarettes as defined by Section 161.081.

(b) "Youth group" means a nonprofit organization that:

(1) is chartered as a national or statewide organization;

(2) is organized and operated exclusively for youth recreational or educational purposes and that includes, as part of the group's program, in addition to the components described by Subsection (a), components relating to:

(A) prevention of drug abuse;

(B) character development;

(C) citizenship training; and

(D) physical and mental fitness;

(3) has been in existence for at least 10 years; and

(4) has a membership of which at least 65 percent is younger than 22 years of age.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 27, eff. October 1, 2015.

SUBCHAPTER P. DISCLOSURE OF INGREDIENTS IN CIGARETTES AND TOBACCO PRODUCTS

Sec. 161.351. DEFINITIONS. In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(2) "Manufacturer" has the meanings assigned by Sections 154.001 and 155.001, Tax Code.

(3) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 161.251 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999.

Sec. 161.352. REPORT TO DEPARTMENT. (a) Each manufacturer shall file with the department an annual report for each cigarette or tobacco product distributed in this state, stating the identity of each ingredient in the cigarette or tobacco product, listed in descending order according to weight, measure, or numerical count, other than:

(1) tobacco;

(2) water; or

(3) a reconstituted tobacco sheet made wholly from tobacco.

(b) This section does not require a manufacturer to disclose the specific amount of any ingredient in a cigarette or tobacco product if that ingredient has been approved as safe when burned and inhaled by the United States Food and Drug Administration or a

successor entity.

(c) The executive commissioner by rule shall establish the time for filing an annual report under this section and shall prescribe the form for the report.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 161.252 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 19.02(12), eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0479, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 8, eff. September 1, 2021.

Sec. 161.354. PUBLIC INFORMATION. (a) Except as provided by Subsections (b), (c), and (d), information included in a report filed under this subchapter is public information and is not confidential unless it is determined to be confidential under this section.

(b) The department may not disclose information under Subsection (a) until the department has obtained the advice of the attorney general under this section with respect to the particular information to be disclosed. If the attorney general determines that the disclosure of particular information would constitute an unconstitutional taking of property, the information is confidential and the department shall exclude that information from disclosure.

(c) Information included in a report filed under this subchapter is confidential if the department determines that there is no reasonable scientific basis for concluding that the availability of the information could reduce risks to public health.

(d) Information included in a report filed under this subchapter is confidential under Chapter 552, Government Code, if the information would be excepted from public disclosure as a trade secret under state or federal law.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 161.254 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999.

Sec. 161.355. INJUNCTION. (a) A district court, on petition of the department and on a finding by the court that a manufacturer has failed to file the report required by Section 161.352, may by injunction:

(1) prohibit the sale or distribution in this state of a cigarette or tobacco product manufactured by the manufacturer; or

(2) grant any other injunctive relief warranted by the facts.

(b) The attorney general shall institute and conduct a suit authorized by this section at the request of the department and in the name of the state.

(c) A suit for injunctive relief must be brought in Travis County.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 161.255 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 19.02(13), eff. Sept. 1, 1999.

Sec. 161.356. COMPLIANCE WITH FEDERAL LAW. A person is considered to have complied with this subchapter if the person complies with Subchapter IX of 21 U.S.C. Chapter 9 and rules adopted under that subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 28, eff. October 1, 2015.

SUBCHAPTER Q. INSTALLATION OF ASBESTOS

Sec. 161.401. DEFINITIONS. In this subchapter:

(1) "Asbestos" means the asbestiform varieties of chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite.

(2) "Contractor" means a person who constructs, repairs, or maintains a public building as an independent contractor. The term includes a subcontractor.

(3) "Public building" means a building used or to be used for purposes that provide for public access or occupancy. The term does not include:

(A) an industrial facility to which access is limited

principally to employees of the facility because of processes or functions that are hazardous to human safety or health;

(B) a federal building or installation;

(C) a private residence;

(D) an apartment building with not more than four dwelling units; or

(E) a manufacturing facility or building that is part of a facility to which access is limited to workers and invited guests under controlled conditions.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.402. MATERIAL SAFETY DATA SHEET REQUIRED; ASBESTOS INSTALLATION OR REINSTALLATION PROHIBITED. The executive commissioner shall adopt rules designating the materials or replacement parts for which a person must obtain a material safety data sheet before installing the materials or parts in a public building. A person may not install materials or replacement parts in a public building if:

(1) the person does not obtain a required material safety data sheet; or

(2) the materials or parts, according to the material safety data sheet, contain more than one percent asbestos and there is an alternative material or part.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0481, eff. April 2, 2015.

Sec. 161.403. INJUNCTION. (a) The attorney general or the appropriate district or county attorney, in the name of the state, may bring an action for an injunction or other process against a contractor who is violating or threatening to violate this subchapter. The action may be brought in a district court of Travis County or of a county in which any part of the violation or threatened violation occurs.

(b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining

order, temporary injunction, or permanent injunction.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.404. CIVIL PENALTY. (a) A contractor who violates this subchapter is subject to a civil penalty not to exceed $10,000 a day for each violation. Each day of violation constitutes a separate violation for purposes of penalty assessment.

(b) In determining the amount of the civil penalty, the court shall consider:

(1) the contractor's previous violations;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) whether the health and safety of the public was threatened by the violation;

(4) the demonstrated good faith of the contractor; and

(5) the amount necessary to deter future violations.

(c) The attorney general or the appropriate district or county attorney, in the name of the state, may bring an action under this section in a district court of Travis County or of a county in which any part of the violation occurs.

(d) The party bringing the suit may:

(1) combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 161.403; or

(2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(e) A penalty collected under this section by the attorney general shall be deposited in the state treasury to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.405. RECOVERY OF COSTS. The party bringing a suit under Section 161.403 or 161.404 may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.406. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a contractor who violates this subchapter.

(b) The amount of the penalty may not exceed $10,000 a day for a violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(c) The penalty amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter a future violation;

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

(d) The enforcement of the penalty may be stayed during the time the order is under judicial review if the contractor pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A contractor who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the department to contest the affidavit as provided by those rules.

(e) The attorney general may sue to collect the penalty.

(f) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.407. REMEDIES CUMULATIVE. The civil penalty, administrative penalty, and injunction authorized by this subchapter are in addition to any other civil, administrative, or criminal action provided by law.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER R. DELIVERY SALES OF CIGARETTES AND E-CIGARETTES

Sec. 161.451. DEFINITIONS. In this subchapter:

(1) "Delivery sale" means a sale of cigarettes or e-cigarettes to a consumer in this state in which the purchaser submits the order for the sale by means of a telephonic or other method of voice transmission, by using the mails or any other delivery service, or through the Internet or another on-line service, or the cigarettes or e-cigarettes are delivered by use of the mails or another delivery service. A sale of cigarettes or e-cigarettes is a delivery sale regardless of whether the seller is located within or without this state. A sale of cigarettes or e-cigarettes not for personal consumption to a person who is a wholesale dealer or a retail dealer is not a delivery sale.

(2) "Delivery service" means a person, including the United States Postal Service, that is engaged in the commercial delivery of letters, packages, or other containers.

(2-a) "E-cigarette" has the meaning assigned by Section 161.081.

(3) "Shipping container" means a container in which cigarettes or e-cigarettes are shipped in connection with a delivery sale.

(4) "Shipping documents" means a bill of lading, airbill, United States Postal Service form, or any other document used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 30, eff. October 1, 2015.

Sec. 161.452. REQUIREMENTS FOR DELIVERY SALES. (a) A person may not make a delivery sale of cigarettes or e-cigarettes to an individual who is under the age prescribed by Section 161.082.

(b) A person taking a delivery sale order of cigarettes shall comply with:

(1) the age verification requirements prescribed by Section 161.453;

(2) the disclosure requirements prescribed by Section 161.454;

(3) the registration and reporting requirements prescribed by Section 161.456;

(4) the tax collection requirements prescribed by Section 161.457; and

(5) each law of this state that generally applies to sales of cigarettes that occur entirely within this state, including a law:

(A) imposing a tax; or

(B) prescribing a permitting or tax-stamping requirement.

(c) A person taking a delivery sale order of e-cigarettes shall comply with:

(1) the age verification requirements prescribed by Section 161.453;

(2) the disclosure requirements prescribed by Section 161.454;

(3) the registration and reporting requirements prescribed by Section 161.456; and

(4) each law of this state that generally applies to sales of e-cigarettes that occur entirely within this state.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 31, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 17, eff. September 1, 2019.

Sec. 161.453. AGE VERIFICATION REQUIREMENT. (a) A person may not mail or ship cigarettes in connection with a delivery sale order unless before mailing or shipping the cigarettes the person accepting the delivery sale order first:

(1) obtains from the prospective customer a certification that includes:

(A) reliable confirmation that the purchaser is at least 21 years of age; and

(B) a statement signed by the prospective purchaser in writing and under penalty of law:

(i) certifying the prospective purchaser's address and date of birth;

(ii) confirming that the prospective purchaser understands that signing another person's name to the certification is illegal, that sales of cigarettes to an individual under the age prescribed by Section 161.082 are illegal under state law, and that the purchase of cigarettes by an individual under that age is illegal under state law; and

(iii) confirming that the prospective purchaser wants to receive mailings from a tobacco company;

(2) makes a good faith effort to verify the information contained in the certification provided by the prospective purchaser under Subdivision (1) against a commercially available database or obtains a photocopy or other image of a government-issued identification bearing a photograph of the prospective purchaser and stating the date of birth or age of the prospective purchaser;

(3) sends to the prospective purchaser, by e-mail or other means, a notice that complies with Section 161.454; and

(4) for an order made over the Internet or as a result of an advertisement, receives payment for the delivery sale from the prospective purchaser by a credit or debit card that has been issued in the purchaser's name or by check.

(b) A person taking a delivery sale order may request that a prospective purchaser provide the purchaser's e-mail address.

(c) A person may not mail or ship e-cigarettes in connection with a delivery sale order unless before accepting a delivery sale order the person verifies that the prospective purchaser is at least 21 years of age through a commercially available database or aggregate of databases that is regularly used for the purpose of age and identity verification. After the order is accepted, the person must use a method of mailing or shipping that requires an adult signature.

(d) A retailer in this state that otherwise complies with applicable laws relating to retail sales and primarily sells e-cigarettes may comply with Subsection (c) by:

(1) verifying the age of the prospective purchaser with a commercially available database or a photocopy or other image of a government-issued identification bearing a photograph of the prospective purchaser and stating the date of birth or age of the prospective purchaser;

(2) obtaining a written statement signed by the prospective purchaser, under penalty of law, certifying the prospective

purchaser's address and date of birth; and

(3) receiving payment for the delivery sale from the prospective purchaser by a credit card or debit card that has been issued in the prospective purchaser's name or by a check that is associated with a bank account in the prospective purchaser's name.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 32, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 18, eff. September 1, 2019.

Sec. 161.454. DISCLOSURE REQUIREMENTS. (a) The notice required by Section 161.453(a)(3) for a delivery sale of cigarettes must include a prominent and clearly legible statement that:

(1) cigarette sales to individuals who are below the age prescribed by Section 161.082 are illegal under state law;

(2) sales of cigarettes are restricted to those individuals who provide verifiable proof of age in accordance with Section 161.453; and

(3) cigarette sales are taxable under Chapter 154, Tax Code, and an explanation of how that tax has been or is to be paid with respect to the delivery sale.

(b) A delivery sale of an e-cigarette must include a prominent and clearly legible statement that:

(1) e-cigarette sales to individuals younger than the age prescribed by Section 161.082 are illegal under state law; and

(2) e-cigarette sales are restricted to individuals who provide verifiable proof of age in accordance with Section 161.453.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 33, eff. October 1, 2015.

Sec. 161.456. REGISTRATION AND REPORTING REQUIREMENTS. (a) A person may not make a delivery sale or ship cigarettes or e-cigarettes in connection with a delivery sale unless the person first

files with the comptroller a statement that includes:

(1) the person's name and trade name; and

(2) the address of the person's principal place of business and any other place of business, and the person's telephone number and e-mail address.

(b) Except as provided by Subsection (d), not later than the 10th day of each month, each person who has made a delivery sale or shipped or delivered cigarettes or e-cigarettes in connection with a delivery sale during the previous month shall file with the comptroller a memorandum or a copy of the invoice that provides for each delivery sale:

(1) the name, address, telephone number, and e-mail address of the individual to whom the delivery sale was made;

(2) the brand or brands of the cigarettes or e-cigarettes that were sold; and

(3) the quantity of cigarettes or e-cigarettes that were sold.

(c) With respect to cigarettes, a person who complies with 15 U.S.C. Section 376, as amended, is considered to have complied with this section.

(d) A person is exempt from the requirement of filing with the comptroller a memorandum or a copy of an invoice under Subsection (b) if, in the two years preceding the date the report is due, the person has not violated this subchapter and has not been reported under Section 161.090 to the comptroller as having violated Subchapter H.

(e) A person required to submit a memorandum or a copy of an invoice under Subsection (b) shall submit a memorandum or a copy of an invoice to the comptroller for each delivery sale of a cigarette or e-cigarette in the previous two years unless the person has previously submitted the memorandum or copy to the comptroller.

(f) A person shall maintain records of compliance with this section until at least the fourth anniversary of the date the record was prepared.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 35, eff. October 1, 2015.

Sec. 161.457. COLLECTION OF TAXES. A person who makes a delivery sale shall collect and remit to the comptroller any taxes imposed by this state in relation to the delivery sale. A person is not required to collect and remit any taxes for which the person has obtained proof, in the form of the presence of applicable tax stamps or otherwise, that the taxes have already been paid to this state.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.458. GENERAL OFFENSES. (a) A person commits an offense if the person violates a provision of this subchapter for which a criminal penalty is not otherwise provided.

(b) An offense under Subsection (a) is a Class C misdemeanor.

(c) If it is shown on the trial of a person that the person has previously been convicted of an offense under this section, the offense is a Class B misdemeanor.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.459. KNOWING VIOLATION. (a) A person who knowingly violates a provision of this subchapter or who knowingly submits a certification under Section 161.453(a)(1) in another person's name commits an offense.

(b) An offense under this section is a felony of the third degree.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.460. CIVIL PENALTY FOR NONPAYMENT OF TAX. A person who fails to pay a tax imposed in connection with a delivery sale shall pay to the state a civil penalty in an amount equal to five times the amount of the tax due. The penalty provided by this section is in addition to any other penalty provided by law.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.461. FORFEITURE. (a) Cigarettes or e-cigarettes sold

or that a person attempted to sell in a delivery sale that does not comply with this subchapter are forfeited to the state and shall be destroyed.

(b) A fixture, equipment, or other material or personal property on the premises of a person who, with the intent to defraud this state, fails to comply with this subchapter is forfeited to the state.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 36, eff. October 1, 2015.

Sec. 161.462. ENFORCEMENT. The attorney general or the attorney general's designee may bring an action in a court of this state to prevent or restrain a violation of this subchapter by any person or by a person controlling such a person.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER S. ALLOCATION OF KIDNEYS AND OTHER ORGANS AVAILABLE FOR TRANSPLANT

Sec. 161.471. DEFINITIONS. In this subchapter:

(1) "Auxiliary aids and services" means:

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) provision of information in a format readily accessible and understandable to individuals with cognitive, neurological, developmental, or intellectual disabilities;

(D) acquisition or modification of equipment or devices; and

(E) other services and actions similar to those described by Paragraphs (A), (B), (C), and (D).

(2) "Disability" has the meaning assigned by the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

(3) "Health care facility" means a facility licensed, certified, or otherwise authorized to provide health care in the ordinary course of business, including a hospital, nursing facility, laboratory, intermediate care facility, mental health facility, transplant center, and any other facility for individuals with intellectual or developmental disabilities.

(4) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to provide health care in the ordinary course of business or professional practice, including a physician, hospital, nursing facility, laboratory, intermediate care facility, mental health facility, transplant center, and any other facility for individuals with intellectual or developmental disabilities.

(5) "Organ procurement organization" means an organization that is a qualified organ procurement organization under 42 U.S.C. Section 273 that is currently certified or recertified in accordance with that federal law.

Added by Acts 2003, 78th Leg., ch. 926, Sec. 1, eff. June 20, 2003. Renumbered from Health and Safety Code, Section 161.451 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(45), eff. September 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 45 (H.B. 119), Sec. 2, eff. September 1, 2021.

Sec. 161.472. FORMATION OF KIDNEY SHARING POOL AND DISTRIBUTION TO LONGEST WAITING PATIENTS. (a) Under the system for allocating kidneys available for transplant in this state, to the extent allowed by federal law, a statewide pool of 20 percent of the kidneys from deceased donors of each blood type recovered by each organ procurement organization that has a defined service area that includes all or part of this state is provided to a special pool for redistribution to patients who have been waiting the longest for transplantation in this state.

(b) Medically eligible patients with low panel reactive antibodies of less than 10 percent who, in terms of accumulated waiting time, comprise the top 20 percent of all patients waiting will be put in a pool. As one of those patients receives a

transplant, the patient will be replaced in the pool, in turn, by the next longest waiting patient. Only accumulated waiting time will be used to establish priority access to the pool.

(c) With the exception of assigning points for a six antigen match with zero antigen mismatch, assigning points for human leukocyte antigen (HLA) match will be eliminated by organ procurement organizations that are participating in the pool established under Subsection (a).

(d) After a patient has qualified for entry into the pool established under Subsection (b), the order of distribution is based solely on the length of time each patient has waited.

(e) Use of the pools will be managed by the federal Organ Procurement and Transplantation Network.

(f) A panel of appropriate physician specialists of Texas' Organ Procurement and Transplantation Network members will monitor the listing of patients and the appropriate use of the pools.

Added by Acts 2003, 78th Leg., ch. 926, Sec. 1, eff. June 20, 2003. Renumbered from Health and Safety Code, Section 161.452 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(45), eff. September 1, 2005.

Sec. 161.473. DISCRIMINATION ON BASIS OF DISABILITY PROHIBITED. (a) A health care provider may not, solely on the basis of an individual's disability:

(1) determine an individual is ineligible to receive an organ transplant;

(2) deny medical or other services related to an organ transplant, including evaluation, surgery, counseling, and postoperative treatment;

(3) refuse to refer the individual to a transplant center or other related specialist for evaluation or receipt of an organ transplant; or

(4) refuse to place the individual on an organ transplant waiting list or place the individual at a position lower in priority on the list than the position the individual would have been placed if not for the individual's disability.

(b) Notwithstanding Subsection (a), a health care provider may consider an individual's disability when making a treatment

recommendation or decision solely to the extent that a physician, following an individualized evaluation of the potential transplant recipient, determines the disability is medically significant to the organ transplant. This section does not require a referral or recommendation for, or the performance of, a medically inappropriate organ transplant.

(c) A health care provider may not consider an individual's inability to independently comply with post-transplant medical requirements as medically significant for the purposes of Subsection (b) if the individual has:

(1) a known disability; and

(2) the necessary support system to assist the individual in reasonably complying with the requirements.

(d) A health care facility shall make reasonable modifications in policies, practices, or procedures as necessary to allow individuals with a disability access to organ transplant-related services, including transplant-related counseling, information, or treatment, unless the health care facility can demonstrate that making the modifications would fundamentally alter the nature of the services or would impose an undue hardship on the facility. Reasonable modifications in policies, practices, and procedures may include:

(1) communicating with persons supporting or assisting with the individual's postsurgical and post-transplant care, including medication; and

(2) considering the support available to the individual in determining whether the individual is able to reasonably comply with post-transplant medical requirements, including support provided by:

(A) family;

(B) friends; or

(C) home and community-based services, including home and community-based services funded by:

(i) Medicaid;

(ii) Medicare;

(iii) a health plan in which the individual is enrolled; or

(iv) any other program or source of funding available to the individual.

(e) A health care provider shall make reasonable efforts to comply with the policies, practices, and procedures, as applicable,

developed by a health care facility under Subsection (d), as necessary to allow an individual with a known disability access to organ transplant-related services, including transplant-related counseling, information, or treatment, unless the health care provider can demonstrate that compliance would fundamentally alter the nature of the services or would impose an undue hardship on the health care provider.

(f) A health care provider shall make reasonable efforts to provide auxiliary aids and services to an individual with a known disability seeking organ transplant-related services, including organ transplant-related counseling, information, or treatment, as necessary to allow the individual access to those services, unless the health care provider can demonstrate that providing the transplant-related services with auxiliary aids and services present would fundamentally alter the transplant-related services provided or would impose an undue hardship on the health care provider.

(g) A health care provider shall comply with the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) to the extent that Act applies to a health care provider. This subsection may not be construed to require a health care provider to comply with that Act if the Act does not otherwise require compliance by the health care provider.

(h) This section applies to each stage of the organ transplant process.

(i) A violation of this section is grounds for disciplinary action by the regulatory agency that issued a license, certificate, or other authority to a health care provider who committed the violation. Before a regulatory agency may take disciplinary action against a health care provider for a violation, the applicable regulatory agency shall:

(1) notify the health care provider of the agency's finding that the health care provider has violated or is violating this section or a rule adopted under this section; and

(2) provide the health care provider with an opportunity to correct the violation without penalty or reprimand.

(j) A physician who in good faith makes a determination that an individual's disability is medically significant to the organ transplant, as described by Subsection (b), does not violate this section.

(k) A health care provider who in good faith makes a treatment

recommendation or decision on the basis of a physician's determination that an individual's disability is medically significant to the organ transplant, as described by Subsection (b), does not violate this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 45 (H.B. 119), Sec. 3, eff. September 1, 2021.

Sec. 161.474. DISCRIMINATION ON BASIS OF VACCINATION STATUS PROHIBITED. (a) A health care provider may not, solely on the basis of an individual's vaccination status:

(1) determine an individual is ineligible to receive an organ transplant;

(2) deny medical or other services related to an organ transplant, including evaluation, surgery, counseling, and postoperative treatment;

(3) refuse to refer the individual to a transplant center or other related specialist for evaluation or receipt of an organ transplant; or

(4) refuse to place the individual on an organ transplant waiting list or place the individual at a position lower in priority on the list than the position the individual would have been placed if not for the individual's vaccination status.

(b) Notwithstanding Subsection (a), a health care provider may consider an individual's vaccination status when making a treatment recommendation or decision solely to the extent that a physician, following an individualized evaluation of the potential transplant recipient, determines the vaccination status is medically significant to the organ transplant. This section does not require a referral or recommendation for, or the performance of, a medically inappropriate organ transplant.

(c) This section applies to each stage of the organ transplant process.

(d) A person may not take an adverse action or impose a penalty of any kind against a health care provider based solely on the fact that the health care provider complied with Subsection (a).

(e) A physician who in good faith makes a determination that an individual's vaccination status is medically significant to the organ transplant, as described by Subsection (b), does not violate this

section.

(f) A health care provider may:

(1) develop alternative risk mitigation strategies, including antibody testing, prophylactic treatments, and antiviral therapy, in lieu of requiring a vaccination; and

(2) inform patients of the risks and benefits of receiving a vaccination.

Added by Acts 2025, 89th Leg., R.S., Ch. 450 (H.B. 4076), Sec. 1, eff. September 1, 2025.

SUBCHAPTER T. INFORMATION FOR PARENTS OF NEWBORN CHILDREN

Sec. 161.501. RESOURCE PAMPHLET AND RESOURCE GUIDE PROVIDED TO PARENTS OF NEWBORN CHILDREN. (a) A hospital, birthing center, physician, nurse midwife, or midwife who provides prenatal care to a pregnant woman during gestation or at delivery of an infant shall:

(1) provide the woman and the father of the infant, if possible, or another adult caregiver for the infant, with a resource pamphlet that includes:

(A) a list of the names, addresses, and phone numbers of professional organizations that provide postpartum counseling and assistance to parents relating to postpartum depression and other emotional trauma associated with pregnancy and parenting;

(B) information regarding the prevention of shaken baby syndrome including:

(i) techniques for coping with anger caused by a crying baby;

(ii) different methods for preventing a person from shaking a newborn, infant, or other young child;

(iii) the dangerous effects of shaking a newborn, infant, or other young child; and

(iv) the symptoms of shaken baby syndrome and who to contact, as recommended by the American Academy of Pediatrics, if a parent suspects or knows that a baby has been shaken in order to receive prompt medical treatment;

(C) a list of diseases for which a child is required by state law to be immunized and the appropriate schedule for the administration of those immunizations;

(D) the appropriate schedule for follow-up procedures

for newborn screening;

(E) information regarding sudden infant death syndrome, including current recommendations for infant sleeping conditions to lower the risk of sudden infant death syndrome;

(F) educational information in both English and Spanish on:

(i) pertussis disease and the availability of a vaccine to protect against pertussis, including information on the Centers for Disease Control and Prevention recommendation that parents receive Tdap during the postpartum period to protect newborns from the transmission of pertussis; and

(ii) the incidence of cytomegalovirus, birth defects caused by congenital cytomegalovirus, and available resources for the family of an infant born with congenital cytomegalovirus;

(G) the danger of heatstroke for a child left unattended in a motor vehicle; and

(H) information about Medicaid benefits for children, including eligibility requirements and the process for applying for those benefits;

(2) if the woman is a recipient of medical assistance under Chapter 32, Human Resources Code, provide the woman and the father of the infant, if possible, or another adult caregiver with:

(A) a resource guide that includes information in both English and Spanish relating to the development, health, and safety of a child from birth until age five, including information relating to:

(i) selecting and interacting with a primary health care practitioner and establishing a "medical home" for the child;

(ii) dental care;

(iii) effective parenting;

(iv) child safety;

(v) the importance of reading to a child;

(vi) expected developmental milestones;

(vii) health care resources available in the state;

(viii) selecting appropriate child care;

(ix) other resources available in the state; and

(x) how to contact the commission to report the child's birth for the purpose of enrolling the newborn child in Medicaid; and

(B) a written notice developed by the commission

informing the woman, father, or other caregiver that the newborn child is automatically eligible for Medicaid and that the woman's Medicaid identification number may be used on reimbursement claims for services provided to the woman's newborn child until the child is enrolled in Medicaid and assigned a separate Medicaid identification number;

(3) document in the woman's record that the woman received the resource pamphlet described in Subdivision (1) and the resource guide and notice described in Subdivision (2), if applicable; and

(4) retain the documentation for at least five years in the hospital's, birthing center's, physician's, nurse midwife's, or midwife's records.

(b) A hospital, birthing center, physician, nurse midwife, or midwife:

(1) may use the pamphlet provided on the department's website or an alternative pamphlet that provides the information required by Subsection (a)(1); and

(2) may use the resource guide provided on the department's website or an alternative guide that provides the information required by Subsection (a)(2).

(c) The department may make available online and distribute an existing publication created by another health and human services agency as the resource guide required by Subsection (a)(2).

Redesignated from Health and Safety Code, Subchapter R, Chapter 161 and amended by Acts 2005, 79th Leg., Ch. 696 (S.B. 316), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 106 (H.B. 1510), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 171 (H.B. 1240), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 575 (H.B. 3336), Sec. 1, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0482, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1081 (H.B. 2574), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1163 (S.B. 791), Sec. 3, eff. September 1, 2015.

Acts 2025, 89th Leg., R.S., Ch. 645 (H.B. 3940), Sec. 2, eff. September 1, 2025.

Sec. 161.502. DUTIES OF DEPARTMENT, EXECUTIVE COMMISSIONER, AND COMMISSION. (a) The department shall:

(1) establish guidelines for the provision of the information required by Section 161.501;

(2) make available on the department's website:

(A) a printable version of the pamphlet required by Section 161.501(a)(1); and

(B) a printable version of the resource guide required by Section 161.501(a)(2);

(3) update the list of resources and required immunizations in the pamphlet required under Subdivision (2)(A) quarterly;

(4) make the pamphlet and resource guide required by Section 161.501 available for distribution to hospitals, physicians, birthing centers, nurse midwives, and midwives; and

(5) coordinate funding for the development, publication, and distribution of the informational pamphlet and resource guide with other health and human services agencies, and solicit funding for the department's duties under this subchapter through means other than appropriations, such as gifts, grants, and sales of sponsorship or advertising.

(b) The department may include additional information in the pamphlet or resource guide as appropriate for parents of newborns.

(c) The executive commissioner shall develop specific performance measures by which the commission may evaluate the effectiveness of the resource guide under Section 161.501(a)(2) in:

(1) reducing costs to the state; and

(2) improving outcomes for children.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(7), eff. September 1, 2021.

Redesignated from Health and Safety Code, Subchapter R, Chapter 161 and amended by Acts 2005, 79th Leg., Ch. 696 (S.B. 316), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 171 (H.B. 1240), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0483, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0484, eff. April 2, 2015.
Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(7), eff. September 1, 2021.

Sec. 161.503. LIABILITY NOT CREATED. This subchapter does not create civil or criminal liability.

Redesignated from Health and Safety Code, Subchapter R, Chapter 161 and amended by Acts 2005, 79th Leg., Ch. 696 (S.B. 316), Sec. 1, eff. September 1, 2005.

SUBCHAPTER U. INFORMATION REGARDING PROGRAMS FOR MILITARY PERSONNEL AND THEIR FAMILIES

Sec. 161.551. DEFINITIONS. (a) In this subchapter, "servicemember" means a member or former member of the state military forces or a component of the United States armed forces, including a reserve component.
(b) In this section, "state military forces" has the meaning assigned by Section 437.001, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1381 (S.B. 1058), Sec. 6, eff. September 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.11, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0485, eff. April 2, 2015.

Sec. 161.552. DIRECTORY OF SERVICES. (a) The department and commission shall compile, maintain, and disseminate through the Texas Information and Referral Network and through other appropriate media, a directory of services and other resources, tools, and counseling programs available to servicemembers and their immediate family.
(b) The directory must include:
(1) information regarding counseling services that:

(A) facilitate the reintegration of the servicemember into civilian and family life;

(B) identify and treat stress disorders, trauma, and traumatic brain injury;

(C) address parenting and family well-being, employment, and substance abuse issues; and

(D) provide crisis intervention services;

(2) to the greatest degree possible in the judgment of the department, all private and public community, state, and national resources that protect and promote the health and well-being of servicemembers and their immediate family and that are accessible in the state directly or through electronic media, print media, or the Internet; and

(3) other resources that support the health of servicemembers and their families.

(c) The department and commission shall organize the directory in a manner that allows a person to locate services in a specific community in the state.

(d) The department and commission shall develop and maintain the directory in collaboration with local, state, and national private and government organizations, including:

(1) the United States Veterans Health Administration;

(2) the United States Department of Defense;

(3) the Texas military forces;

(4) the Texas Veterans Commission; and

(5) other public and private national and community-based organizations that provide support to servicemembers and their families.

(e) The department shall provide the directory to the Texas Information and Referral Network of the commission in the time periods and in the manner and format specified by the Texas Information and Referral Network.

(f) The department shall provide the directory on the department's website or through links appearing on the department's website.

Added by Acts 2007, 80th Leg., R.S., Ch. 1381 (S.B. 1058), Sec. 6, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 2.10, eff.

September 1, 2013.

SUBCHAPTER V. FEE ON CIGARETTES AND CIGARETTE TOBACCO PRODUCTS MANUFACTURED BY CERTAIN COMPANIES

Sec. 161.601. PURPOSE. The purpose of this subchapter is to:

(1) recover health care costs to the state imposed by non-settling manufacturers;

(2) prevent non-settling manufacturers from undermining this state's policy of reducing underage smoking by offering cigarettes and cigarette tobacco products at prices that are substantially below the prices of cigarettes and cigarette tobacco products of other manufacturers;

(3) protect the tobacco settlement agreement and funding, which has been reduced because of the growth of sales of non-settling manufacturer cigarettes and cigarette tobacco products, for programs that are funded wholly or partly by payments to this state under the tobacco settlement agreement and recoup for this state settlement payment revenue lost because of sales of non-settling manufacturer cigarettes and cigarette tobacco products;

(4) ensure evenhanded treatment of manufacturers and further protect the tobacco settlement agreement and funding by imposing a partial payment obligation on non-settling manufacturers that already make payments on Texas sales under the master settlement agreement until a credit amendment to that agreement that will provide those manufacturers with a credit for payments to Texas is effective; and

(5) provide funding for any purpose the legislature determines.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.602. DEFINITIONS. In this subchapter:

(1) "Brand family" means each style of cigarettes or cigarette tobacco products sold under the same trademark. The term includes any style of cigarettes or cigarette tobacco products that have a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indication of product

identification that is identical to, similar to, or identifiable with a previously known brand of cigarettes or cigarette tobacco products.

(2) "Cigarette" means a roll for smoking that is:

(A) made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and

(B) not a cigar.

(3) "Cigarette tobacco product" means roll-your-own tobacco or tobacco that, because of the tobacco's appearance, type, packaging, or labeling, is suitable for use in making cigarettes and is likely to be offered to or purchased by a consumer for that purpose.

(4) "Credit amendment" means an amendment to the master settlement agreement that offers a credit to subsequent participating manufacturers for fees paid under this subchapter with respect to their products in a form agreed on by settling states, as defined in the master settlement agreement, with aggregate allocable shares, as defined in the master settlement agreement, equal to at least 99.937049 percent; by the original participating manufacturers, as defined in the master settlement agreement; and by subsequent participating manufacturers whose aggregate market share, expressed as a percentage of the total number of individual cigarettes sold in the United States, the District of Columbia, and Puerto Rico during the calendar year at issue, as measured by excise taxes collected by the federal government, and in the case of cigarettes sold in Puerto Rico, by arbitrios de cigarillos collected by the Puerto Rico taxing authority, is greater than 2.5 percent. For purposes of the calculation of subsequent participating manufacturer market share under this subchapter, 0.09 ounces of roll-your-own tobacco constitutes one cigarette.

(5) "Distributor" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as appropriate.

(6) "Fee" or "monthly fee" means the fee imposed under Section 161.603.

(7) "Manufacturer" means a person that manufactures, fabricates, or assembles cigarettes or cigarette tobacco products, or causes or arranges for the manufacture, fabrication, or assembly of cigarettes or cigarette tobacco products for sale or distribution. For purposes of this subchapter, the term includes a person that is the first importer into the United States of cigarettes or cigarette

tobacco products manufactured, fabricated, or assembled outside the United States.

(8) "Master settlement agreement" means the settlement agreement entered into on November 23, 1998, by 46 states and leading United States tobacco manufacturers, as amended as of September 1, 2013.

(9) "Non-settling manufacturer" means a manufacturer of cigarettes or cigarette tobacco products that did not sign a tobacco settlement agreement described by Subdivision (15).

(10) "Non-settling manufacturer cigarettes" means cigarettes of a non-settling manufacturer.

(11) "Non-settling manufacturer cigarette tobacco products" means cigarette tobacco products of a non-settling manufacturer.

(12) "Released claim" means:

(A) "released claims" as that term is defined in the agreement described by Subdivision (15)(A); and

(B) all claims encompassed in Paragraph 7 of the agreement described by Subdivision (15)(B).

(13) "Settling manufacturer" means a manufacturer of cigarettes or cigarette tobacco products that signed a tobacco settlement agreement described by Subdivision (15).

(14) "Subsequent participating manufacturer" has the same meaning provided for that term in the master settlement agreement, except that the term excludes any settling manufacturer under the tobacco settlement agreement described by Subdivision (15)(B). A manufacturer may not be treated as a subsequent participating manufacturer for purposes of Section 161.604(c) unless it has provided to the comptroller notice and proof, in the form and manner the comptroller may prescribe, that it is a subsequent participating manufacturer.

(15) "Tobacco settlement agreement" means either:

(A) the Comprehensive Settlement Agreement and Release filed on January 16, 1998, in the United States District Court, Eastern District of Texas, in the case styled The State of Texas v. The American Tobacco Co., et al., No. 5-96CV-91, and all subsequent amendments; or

(B) the settlement agreement entered into on March 20, 1997, regarding the matter described in Paragraph (A), but only as to companies that signed that agreement on that date.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.603. FEE IMPOSED. (a) A fee is imposed on the sale, use, consumption, or distribution in this state of:

(1) non-settling manufacturer cigarettes if a stamp is required to be affixed to a package of those cigarettes under Section 154.041, Tax Code;

(2) non-settling manufacturer cigarettes that are sold, purchased, or distributed in this state but that are not required to have a stamp affixed to a package of those cigarettes under Chapter 154, Tax Code;

(3) non-settling manufacturer cigarette tobacco products that are subject to the tax imposed by Section 155.0211, Tax Code; and

(4) non-settling manufacturer cigarette tobacco products that are sold, purchased, or distributed in this state but that are not subject to the tax imposed by Section 155.0211, Tax Code.

(b) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that a settling manufacturer claims as its own, and that are included in computing payments to be made by that settling manufacturer, under the tobacco settlement agreement described by Section 161.602(15)(A).

(c) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that are sold into another state for resale to consumers outside of this state, provided that the sale is reported to the state into which the cigarettes are sold under 15 U.S.C. Section 376.

(d) The fee imposed by this section is in addition to any other privilege, license, fee, or tax required or imposed by state law.

(e) Except as otherwise provided by this subchapter, the fee imposed by this section is imposed, collected, paid, administered, and enforced in the same manner as the taxes imposed by Chapter 154 or 155, Tax Code, as appropriate.

(f) The fee imposed by this section shall be collected only once on each cigarette or cigarette tobacco product on which it is due.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1,

eff. September 1, 2013.

Sec. 161.604. RATE OF FEE. (a) For cigarettes or cigarette tobacco products sold, used, consumed, or distributed in this state, as provided by Section 161.603, during the 2013 calendar year, the fee is imposed at the rate of 2.75 cents for:

(1) each non-settling manufacturer cigarette; and

(2) each 0.09 ounces of non-settling manufacturer cigarette tobacco product described by Section 161.602(3).

(b) Beginning in January 2014, and in January of each subsequent year, the comptroller shall adjust the rate of the fee by increasing the rate in effect on the date the adjustment is made by the greater of:

(1) three percent; or

(2) the actual total percentage change in the Consumer Price Index for All Urban Consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, during the preceding calendar year, calculated by comparing the CPI-U for December of the preceding calendar year with the CPI-U for December a year earlier.

(b-1) The adjusted rate of the fee determined under Subsection (b) takes effect on February 1 of the year in which the adjusted rate is determined and remains in effect until January 31 of the following year.

(c) Notwithstanding Subsection (a), the rate of the fee on the cigarettes and cigarette tobacco products of a subsequent participating manufacturer shall, for calendar months beginning before the effective date of a credit amendment, be calculated by substituting 0.75 cents for 2.75 cents in Subsection (a). For calendar months beginning on or after the effective date of a credit amendment, the rate of the fee on the cigarettes and cigarette tobacco products of subsequent participating manufacturers shall be the same as the rate that applies for those months to the cigarettes of non-settling manufacturers who are not subsequent participating manufacturers.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 33 (S.B. 1390), Sec. 1, eff. September 1, 2017.

Sec. 161.605. DISTRIBUTOR'S REPORT AND PAYMENT OF MONTHLY FEE. (a) A distributor required to file a report under Section 154.210 or 155.111, Tax Code, shall, in addition to the information required by those sections, include in that required report, as appropriate:

(1) the number and denominations of stamps affixed to individual packages of non-settling manufacturer cigarettes during the preceding month;

(2) the amount of non-settling manufacturer cigarette tobacco products subject to the tax imposed by Section 155.0211, Tax Code, during the preceding month;

(3) the number of individual packages of non-settling manufacturer cigarettes and the amount of non-settling manufacturer cigarette tobacco products not subject to the tax imposed by Chapter 154, Tax Code, or Section 155.0211, Tax Code, sold or purchased in this state or otherwise distributed in this state for sale in the United States;

(4) a calculation of the monthly fee required to be paid by the distributor; and

(5) any other information the comptroller considers necessary or appropriate to determine the amount of the fee imposed by this subchapter or to enforce this subchapter.

(b) A distributor shall include with the report required under this section the fee imposed under Section 161.603 based on the non-settling manufacturer cigarettes and cigarette tobacco products required to be included in the distributor's report under this section and calculated using the rate under Section 161.604.

(c) The information required by Subsections (a)(1), (2), and (3) must be itemized for each place of business and by manufacturer and brand family.

(d) The requirement to report information under this section shall be enforced in the same manner as the requirement to deliver to or file with the comptroller a report required under Section 154.210 or 155.111, Tax Code, as appropriate.

(e) Notwithstanding any other law, a distributor that remits a monthly fee under this section is entitled to a stamping allowance of three percent of the face value of all stamps purchased under Section

154.041, Tax Code, for providing the service of affixing stamps to cigarette packages.

(f) Information obtained from a report provided under Subsection (a) regarding cigarettes or cigarette tobacco products sold, purchased, or otherwise distributed by a non-settling manufacturer may be disclosed by the comptroller to the manufacturer or to the authorized representative of the manufacturer.

(g) The comptroller shall, for the purpose of assisting distributors in calculating the monthly fee, publish and maintain on the comptroller's Internet website:

(1) a list of the names and brand families of settling manufacturers;

(2) a list of each non-settling manufacturer showing whether that manufacturer:

(A) is a subsequent participating manufacturer; or

(B) is not a subsequent participating manufacturer; and

(3) the effective date of any credit amendment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 33 (S.B. 1390), Sec. 2, eff. September 1, 2017.

Sec. 161.606. REPORT TO ATTORNEY GENERAL BEFORE OFFERING NON-SETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE. (a) If cigarettes or cigarette tobacco products of a non-settling manufacturer were not offered for sale or distribution in this state on September 1, 2013, the non-settling manufacturer shall, before the date the cigarettes or cigarette tobacco products are offered for sale or distribution in this state, provide to the attorney general on a form prescribed by the attorney general:

(1) the non-settling manufacturer's complete name, address, and telephone number;

(2) the date that the non-settling manufacturer will begin offering cigarettes or cigarette tobacco products for sale or distribution in this state;

(3) the names of the brand families of the cigarettes or

cigarette tobacco products that the non-settling manufacturer will offer for sale or distribution in this state;

(4) a statement that the non-settling manufacturer intends to comply with this subchapter; and

(5) the name, address, telephone number, and signature of an officer of the non-settling manufacturer attesting to all of the included information.

(b) The attorney general shall make the information provided under this section available to the comptroller.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.607. PENALTIES FOR NONCOMPLIANCE. Cigarettes and cigarette tobacco products of a non-settling manufacturer that are sold, used, consumed, or distributed in this state in violation of this subchapter, including cigarettes and cigarette tobacco products for which full payment of the fee imposed under Section 161.603 is not made, shall be treated as cigarettes or cigarette tobacco products for which the tax assessed by Chapter 154 or 155, Tax Code, as appropriate, has not been paid, and the distributor or non-settling manufacturer is subject to all penalties imposed by those chapters for violations of those chapters.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.608. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS. A non-settling manufacturer shall appoint and engage a resident agent for service of process.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.609. AUDIT OR INSPECTION. The comptroller or attorney general is entitled to conduct reasonable periodic audits or inspections of the financial records of a non-settling manufacturer and its distributors to ensure compliance with this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.610. COMPTROLLER INFORMATION SHARING. On request, the comptroller shall report annually to the independent auditor or other entities responsible for making calculations or other determinations under a tobacco settlement agreement or the master settlement agreement, as the master settlement agreement may be amended or supplemented by some or all of the parties thereto, the volume of cigarettes on which the fee required under Section 161.603 is paid, itemized by cigarette manufacturer and brand family.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.611. REVENUE DEPOSITED IN GENERAL REVENUE FUND. The revenue from the fees imposed by this subchapter shall be deposited in the state treasury to the credit of the general revenue fund.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.612. RELEASED CLAIMS. All fees paid by a manufacturer under this subchapter shall apply on a dollar for dollar basis to reduce any judgment or settlement on a released claim brought against the manufacturer that made the payment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.613. APPLICATION OF SUBCHAPTER. (a) This subchapter applies without regard to Section 154.022, Tax Code, or any other law that might be read to create an exemption for interstate sales.

(b) This subchapter does not apply to a tobacco product described by Section 155.001(15)(C), Tax Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1,

eff. September 1, 2013.

Sec. 161.614. RULES. The comptroller may issue rules and regulations as necessary to carry out or enforce this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

SUBCHAPTER W. INFORMATION REGARDING DOWN SYNDROME

Sec. 161.651. DEFINITIONS. In this subchapter:

(1) "Down syndrome" means a chromosomal condition caused by the presence of an extra whole or partial copy of chromosome 21.

(2) "Health care provider" has the meaning assigned by Section 34.001 and includes a genetic counselor.

Added by Acts 2015, 84th Leg., R.S., Ch. 811 (H.B. 3374), Sec. 1, eff. September 1, 2015.

Sec. 161.652. INFORMATION REGARDING DOWN SYNDROME. (a) The department shall make available information regarding Down syndrome that includes:

(1) information addressing physical, developmental, educational, and psychosocial outcomes, life expectancy, clinical course, and intellectual and functional development for individuals with Down syndrome;

(2) information regarding available treatment options for individuals with Down syndrome;

(3) contact information for national and local Down syndrome education and support programs, services, and organizations, including organizations in Houston, Dallas, San Antonio, and Austin, and information hotlines, resource centers, and clearinghouses; and

(4) any other information required by the department.

(b) The information described by Subsection (a) must be:

(1) current, evidence-based information that:

(A) has been reviewed by medical experts and local Down syndrome organizations; and

(B) does not explicitly or implicitly present pregnancy termination as an option when a prenatal test indicates that the

unborn child has Down syndrome; and

(2) published in English and Spanish.

(c) The department shall make the information described by Subsection (a) available on the department's Internet website in a format that may be easily printed. The department may provide the information described by Subsection (a) in writing to health care providers if the department determines that providing written information is cost-effective.

Added by Acts 2015, 84th Leg., R.S., Ch. 811 (H.B. 3374), Sec. 1, eff. September 1, 2015.

Sec. 161.653. DUTY OF HEALTH CARE PROVIDER. (a) A health care provider who administers or causes to be administered a test for Down syndrome or who initially diagnoses a child with Down syndrome shall provide the information described by Section 161.652 to:

(1) expectant parents who receive a prenatal test result indicating a probability or diagnosis that the unborn child has Down syndrome; or

(2) a parent of a child who receives:

(A) a test result indicating a probability or diagnosis that the child has Down syndrome; or

(B) a diagnosis of Down syndrome.

(b) In addition to providing the information described by Subsection (a), a health care provider may provide additional information about Down syndrome that is current and evidence-based and has been reviewed by medical experts and national Down syndrome organizations.

(c) Notwithstanding any other law, this section does not impose a standard of care or create an obligation or duty that provides a basis for a cause of action against a health care provider. A health care provider may not be held civilly or criminally liable for failing to provide information as required by Subsection (a).

Added by Acts 2015, 84th Leg., R.S., Ch. 811 (H.B. 3374), Sec. 1, eff. September 1, 2015.

SUBCHAPTER X. INFORMATION REGARDING RISK OF IMPAIRED FERTILITY FROM CANCER TREATMENTS

Sec. 161.681. NOTICE FOR CHILDREN RECEIVING CHEMOTHERAPY OR RADIATION. (a) A health care facility at which a child will begin receiving chemotherapy or radiation that may directly or indirectly cause impaired fertility must, before the treatment begins, notify the child's parents or legal guardians of the risk of impaired fertility from treatment.

(b) The department shall develop and make available a written notice for a health care facility to use for purposes of this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 819 (H.B. 1649), Sec. 1, eff. September 1, 2023.

SUBCHAPTER Y. GENDER TRANSITIONING AND GENDER REASSIGNMENT PROCEDURES AND TREATMENTS FOR CERTAIN CHILDREN

Sec. 161.701. DEFINITIONS. In this subchapter:

(1) "Child" means an individual who is younger than 18 years of age.

(2) "Health care provider" means a person other than a physician who is licensed, certified, or otherwise authorized by this state's laws to provide or render health care or to dispense or prescribe a prescription drug in the ordinary course of business or practice of a profession.

(3) "Medicaid" means the medical assistance program established under Chapter 32, Human Resources Code.

(4) "Physician" means a person licensed to practice medicine in this state.

Added by Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 2, eff. September 1, 2023.
Redesignated from Health and Safety Code, Subchapter X, Chapter 161 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(20), eff. September 1, 2025.

Sec. 161.702. PROHIBITED PROVISION OF GENDER TRANSITIONING OR GENDER REASSIGNMENT PROCEDURES AND TREATMENTS TO CERTAIN CHILDREN. For the purpose of transitioning a child's biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child's perception of the child's sex if

that perception is inconsistent with the child's biological sex, a physician or health care provider may not knowingly:

(1) perform a surgery that sterilizes the child, including:

(A) castration;

(B) vasectomy;

(C) hysterectomy;

(D) oophorectomy;

(E) metoidioplasty;

(F) orchiectomy;

(G) penectomy;

(H) phalloplasty; and

(I) vaginoplasty;

(2) perform a mastectomy;

(3) provide, prescribe, administer, or dispense any of the following prescription drugs that induce transient or permanent infertility:

(A) puberty suppression or blocking prescription drugs to stop or delay normal puberty;

(B) supraphysiologic doses of testosterone to females; or

(C) supraphysiologic doses of estrogen to males; or

(4) remove any otherwise healthy or non-diseased body part or tissue.

Added by Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 2, eff. September 1, 2023.
Redesignated from Health and Safety Code, Subchapter X, Chapter 161 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(20), eff. September 1, 2025.

Sec. 161.703. EXCEPTIONS. (a) Section 161.702 does not apply to the provision by a physician or health care provider, with the consent of the child's parent or legal guardian, of:

(1) puberty suppression or blocking prescription drugs for the purpose of normalizing puberty for a minor experiencing precocious puberty; or

(2) appropriate and medically necessary procedures or treatments to a child who:

(A) is born with a medically verifiable genetic

disorder of sex development, including:

(i) 46,XX chromosomes with virilization;

(ii) 46,XY chromosomes with undervirilization; or

(iii) both ovarian and testicular tissue; or

(B) does not have the normal sex chromosome structure for male or female as determined by a physician through genetic testing.

(b) Section 161.702 does not apply to the provision of a prescription drug to a child that is otherwise prohibited by that section if:

(1) the prescription drug is part of a continuing course of treatment that the child began before June 1, 2023; and

(2) the child attended 12 or more sessions of mental health counseling or psychotherapy during a period of at least six months before the date the course of treatment described by Subdivision (1) began.

(c) A child to whom the exception under Subsection (b) applies:

(1) shall wean off the prescription drug over a period of time and in a manner that is safe and medically appropriate and that minimizes the risk of complications; and

(2) may not switch to or begin a course of treatment on another prescription drug that a physician or health care provider is prohibited from providing to the child under Section 161.702 or otherwise receive a procedure or treatment prohibited by that section.

Added by Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 2, eff. September 1, 2023.
Redesignated from Health and Safety Code, Subchapter X, Chapter 161 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(20), eff. September 1, 2025.

Sec. 161.704. PROHIBITED USE OF PUBLIC MONEY. Public money may not directly or indirectly be used, granted, paid, or distributed to any health care provider, medical school, hospital, physician, or any other entity, organization, or individual that provides or facilitates the provision of a procedure or treatment to a child that is prohibited under Section 161.702.

Added by Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 2, eff.

September 1, 2023.
Redesignated from Health and Safety Code, Subchapter X, Chapter 161 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(20), eff. September 1, 2025.

Sec. 161.705. PROHIBITED STATE HEALTH PLAN REIMBURSEMENT. The commission may not provide Medicaid reimbursement and the child health plan program established by Chapter 62 may not provide reimbursement to a physician or health care provider for provision of a procedure or treatment to a child that is prohibited under Section 161.702.

Added by Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 2, eff. September 1, 2023.
Redesignated from Health and Safety Code, Subchapter X, Chapter 161 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(20), eff. September 1, 2025.

Sec. 161.706. ATTORNEY GENERAL ENFORCEMENT. (a) If the attorney general has reason to believe that a person is committing, has committed, or is about to commit a violation of Section 161.702, the attorney general may bring an action to enforce this subchapter to restrain or enjoin the person from committing, continuing to commit, or repeating the violation.

(b) Venue for an action brought under this section is in a district court of Travis County or the county where the violation occurred or is about to occur.

Added by Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 2, eff. September 1, 2023.
Redesignated from Health and Safety Code, Subchapter X, Chapter 161 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(20), eff. September 1, 2025.

SUBCHAPTER Z. PERINATAL PALLIATIVE CARE

Sec. 161.751. PURPOSE OF SUBCHAPTER. The purpose of this subchapter is to ensure a pregnant woman whose unborn child is diagnosed with a life-threatening or life-limiting illness or medical

condition is informed of the availability of perinatal palliative care.

Added by Acts 2025, 89th Leg., R.S., Ch. 808 (S.B. 1233), Sec. 3, eff. September 1, 2025.

Sec. 161.752. DEFINITIONS. In this subchapter:

(1) "Health care provider" has the meaning assigned by Section 34.001.

(2) "Perinatal palliative care" means the provision of comprehensive, supportive care to reduce the suffering of a woman who is pregnant or delivers a child, her unborn child or infant, and her family, from diagnosis of the unborn child's life-threatening or life-limiting illness or medical condition through the duration of the perinatal period and possible death as a result of the illness or condition. The care may be provided concurrently with methods of treatment or therapies that seek to cure or minimize the effects of the illness or condition. The term:

(A) includes medical, social, and mental health care, including counseling regarding treatment options, education, informed consent, and expression of desires, and health care provided by maternal-fetal medical specialists, obstetricians, neonatologists, anesthesia specialists, specialty nurses, clergy, social workers, and other individuals focused on alleviating fear and pain and ensuring the woman, her unborn child or infant, and her family experience a supportive environment; and

(B) does not include an act or omission intended to cause or hasten an unborn child's death.

(3) "Perinatal period" means the period beginning at conception and ending on an infant's first birthday.

Added by Acts 2025, 89th Leg., R.S., Ch. 808 (S.B. 1233), Sec. 3, eff. September 1, 2025.

Sec. 161.753. PERINATAL PALLIATIVE CARE INFORMATIONAL MATERIALS. (a) The commission, in collaboration with the department and the Palliative Care Interdisciplinary Advisory Council established under Chapter 118, shall develop perinatal palliative care informational materials and post the materials on the

commission's Internet website. The materials must include:

(1) a description of the health care and other services available through perinatal palliative care; and

(2) information about medical assistance benefits that may be available for prenatal care, childbirth, and perinatal palliative care.

(b) The commission shall develop, regularly update, and publish a geographically indexed list of perinatal palliative care providers and programs in this state. The list must include the name, physical address, and phone number of each provider or program. The commission may include perinatal palliative care providers and programs in other states that provide care to residents of this state but may not include an abortion provider, as defined by Section 171.002, or an affiliate, as defined by Section 2273.001, Government Code, of an abortion provider unless the provider or affiliate performs abortions only during a medical emergency as defined by Section 171.002.

(c) The commission shall post on the commission's Internet website the list of perinatal palliative care providers and programs, including the contact information, and note the providers and programs that provide services free of charge.

Added by Acts 2025, 89th Leg., R.S., Ch. 808 (S.B. 1233), Sec. 3, eff. September 1, 2025.

Sec. 161.754. PERINATAL PALLIATIVE CARE CERTIFICATION FORM. The commission, in collaboration with the department, shall develop a form on which a pregnant woman certifies she received the perinatal palliative care informational materials and list of the perinatal palliative care providers and programs described by Section 161.753.

Added by Acts 2025, 89th Leg., R.S., Ch. 808 (S.B. 1233), Sec. 3, eff. September 1, 2025.

Sec. 161.755. HEALTH CARE PROVIDER DUTIES ON DIAGNOSIS OF UNBORN CHILD'S LIFE-THREATENING OR LIFE-LIMITING ILLNESS OR MEDICAL CONDITION. A health care provider who diagnoses a pregnant woman's unborn child as having a life-threatening or life-limiting illness or medical condition shall, at the time of the diagnosis:

(1) provide the pregnant woman with a written copy of:

(A) the perinatal palliative care informational materials and list of the perinatal palliative care providers and programs described by Section 161.753; and

(B) the perinatal palliative care certification form described by Section 161.754; and

(2) obtain from the pregnant woman the signed perinatal palliative care certification form and place the form in the pregnant woman's medical records.

Added by Acts 2025, 89th Leg., R.S., Ch. 808 (S.B. 1233), Sec. 3, eff. September 1, 2025.

Sec. 161.756. EXCEPTION. A health care provider is not required to provide the perinatal palliative care informational materials or perinatal palliative care certification form under this subchapter if the health care provider verifies the pregnant woman's medical record contains a signed perinatal palliative care certification form for that pregnancy as required under Section 161.755(2).

Added by Acts 2025, 89th Leg., R.S., Ch. 808 (S.B. 1233), Sec. 3, eff. September 1, 2025.

Sec. 161.757. COMPLAINTS; DISCIPLINARY ACTION; ADMINISTRATIVE PENALTY. (a) If a health care provider fails to provide to a pregnant woman the perinatal palliative care informational materials as required by Section 161.755, the woman may submit a complaint to the commission in the form and manner the commission prescribes.

(b) A health care provider who violates Section 161.755 is subject to disciplinary action by the state licensing agency that regulates the provider. On determining the provider committed a violation, the agency shall:

(1) for an initial violation, issue a written warning to the provider; and

(2) for each subsequent violation, impose on the provider an administrative penalty in the amount of $1,000.

Added by Acts 2025, 89th Leg., R.S., Ch. 808 (S.B. 1233), Sec. 3, eff.

September 1, 2025.

CHAPTER 162. BLOOD BANKS AND DONATION OF BLOOD

Sec. 162.001. DEFINITIONS. In this chapter:

(1) "Blood bank" means a facility that obtains blood from voluntary donors, as that term is defined by the United States Food and Drug Administration, the AABB (formerly known as the American Association of Blood Banks), and the American Red Cross Blood Services and that is registered or licensed by the Center for Biologics Evaluation and Research of the United States Food and Drug Administration and accredited by the AABB or the American Red Cross Blood Services, or is qualified for membership in the American Association of Tissue Banks. The term includes a blood center, regional collection center, tissue bank, and transfusion service.

(2) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Public Health Service.

(3) "HIV" means human immunodeficiency virus.

(4) "Adult stem cell" means an undifferentiated cell that is:

(A) found in differentiated tissue; and

(B) able to renew itself and differentiate to yield all or nearly all of the specialized cell types of the tissue from which the cell originated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.08(a), eff. Sept. 1, 1989. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0486, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 992 (H.B. 177), Sec. 2, eff. September 1, 2015.

Sec. 162.002. REQUIRED TESTING OF BLOOD. (a) For each donation of blood, a blood bank shall require the donor to submit to tests for communicable diseases, including tests for AIDS, HIV, or hepatitis, and serological tests for contagious venereal diseases.

(b) A blood bank is not required to obtain the donor's informed

consent before administering tests for infectious diseases and is not required to provide counseling concerning the test results.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0487, eff. April 2, 2015.

Sec. 162.003. CONFIDENTIALITY OF BLOOD BANK RECORDS. The medical and donor records of a blood bank are confidential and may not be disclosed except as provided by this chapter.

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

Sec. 162.004. DISCLOSURE REQUIRED BY LAW. A blood bank shall disclose all information required by law, including HIV test results, to:

(1) the department and a local health authority as required under Chapter 81 (Communicable Disease Prevention and Control Act);

(2) the Centers for Disease Control and Prevention of the United States Public Health Service, as required by federal law or regulation; or

(3) any other local, state, or federal entity, as required by law, rule, or regulation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0488, eff. April 2, 2015.

Sec. 162.005. DISCLOSURE TO CERTAIN PHYSICIANS OR PERSON TESTED. A blood bank shall disclose blood test results and the name of the person tested to:

(1) the physician or other person authorized by law who ordered the test;

(2) the physician attending the person tested; or

(3) the person tested or a person legally authorized to consent to the test on behalf of the person tested.

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

Sec. 162.006. DISCLOSURE TO OTHER BLOOD BANKS. (a) A blood bank may report to other blood banks the name of a donor with a possible communicable disease according to positive blood test results.

(b) A blood bank that reports a donor's name to other blood banks under this section may not disclose the communicable disease that the donor has or is suspected of having.

(c) A blood bank that reports as provided by this section does not breach a confidence arising out of any confidential relationship.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0489, eff. April 2, 2015.

Sec. 162.007. REPORT TO RECIPIENT OR TRANSFUSER. (a) A blood bank shall report blood test results for blood confirmed as HIV positive by the normal procedures blood banks presently use or found to be contaminated by any other communicable disease to:

(1) the hospital or other facility in which the blood was transfused or provided;

(2) the physician who transfused the infected blood; or

(3) the recipient of the blood.

(b) A blood bank may report blood test results for statistical purposes.

(c) A blood bank that reports test results under this section may not disclose the name of the donor or person tested or any other information that could result in the disclosure of the donor's or person's identity, including an address, social security number, designated recipient, or replacement donation information.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0490, eff. April 2, 2015.

Sec. 162.008. PROCEDURES FOR NOTIFYING BLOOD RECIPIENTS. Each hospital, physician, health agency, and other transfuser of blood shall strictly follow the official "Operation Look-Back" procedure of the American Association of Blood Banks or the American Red Cross Blood Services in notifying past and future recipients of blood. The only exception to notifying a recipient of blood is if the recipient is dead or cannot be located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.08(b), eff. Sept. 1, 1989.

Sec. 162.009. PROVISION OF BLOOD SAMPLES FOR TESTING. On request, a blood bank shall provide blood samples to hospitals, laboratories, and other blood banks for additional, repetitive, or different testing.

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

Sec. 162.010. GENERAL POWERS AND DUTIES OF COURT. (a) After notice and hearing, a court of competent jurisdiction may require a blood bank to provide a recipient of blood from the blood bank with the results of tests of the blood of each donor of blood transfused into the recipient. The court may also require the test results to be given to an heir, parent, or guardian of the recipient, or a personal representative of the recipient's estate. The test results must be given in accordance with Section 162.007.

(b) If a blood bank fails to or cannot provide the test results as required under Subsection (a), the court may require the blood bank to use every reasonable effort, including any effort directed by the court, to locate any donor of the blood in question. The court may require the blood bank to obtain from that donor a blood sample for testing and may direct the blood bank to provide blood test results, samples of the blood, or both, to an independent laboratory designated by the court for testing. The results of the independent laboratory test must be made available to the recipient, an heir, parent, or guardian of the recipient, or the personal representative of the recipient's estate.

(c) Section 162.002 applies if a blood bank requires a donor to provide a blood sample for testing under Subsection (b).

(d) If a blood test result is positive or if the blood bank fails to or cannot provide a blood test result or blood sample as required under Subsection (b), the court may require the blood bank to provide any information that the court determines is necessary to satisfy the court that the blood bank has complied in all respects with this section and the court's order or has demonstrated every reasonable effort to comply. The blood bank must provide the information to the judge of the court in camera and under seal.

(e) The court may not disclose to any other person the name of a donor or any other information that could result in the disclosure of a donor's identity, including an address, social security number, designated recipient, or replacement donation information. However, on the motion of any party, the court shall order the taking of the donor's deposition at a specified time and in a manner that maintains the donor's anonymity.

(f) The court may not deny a party's attorney the right to orally cross-examine the donor.

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

Sec. 162.011. DISCOVERY POWERS OF COURT. (a) A court of competent jurisdiction shall exercise the discovery powers granted in this section on the motion of any party. The court shall exercise the powers to the extent reasonably necessary to obtain information from or relating to a donor if that information:

(1) is reasonably calculated to lead to the discovery of admissible evidence regarding any matter relevant to the subject matter of a pending proceeding; and

(2) cannot otherwise be obtained without threatening the disclosure of the name of a donor or other information that could result in the disclosure of a donor's identity, including an address, social security number, designated recipient, or replacement donation information.

(b) This section does not apply to information obtainable under Section 162.010.

(c) The court may:

(1) order the deposition of any witness, including a donor, orally, on written questions and cross-questions propounded by the parties, or both; and

(2) compel the production of documents and things.

(d) A subpoena issued to a donor under this section may be served only in person at the donor's residence address. On a showing that service in person cannot be made at the donor's residence despite diligent efforts to do so, the court may order service on the donor at other places as directed by the court.

(e) The court shall deliver to the parties all discoverable information obtained through the exercise of powers provided by this section, including testimony, documents, or things. The court shall first delete from that information the name of any donor or any other information that could result in the disclosure of a donor's identity, including information described by Subsection (a)(2). The court may substitute fictitious names, such as "John Doe," or make other changes as necessary to protect the confidentiality of the donor's identity in the information made available to the parties.

(f) The court may not disclose confidential donor information to any person other than a person acting under Section 162.010(e) or (f). That person may not disclose the information to others.

(g) The exercise of the court's powers under this section is governed by the Texas Rules of Civil Procedure, except to the extent of any conflict with this section.

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

Sec. 162.012. LIMITATION ON LIABILITY. (a) A donor who provides information or blood samples under Section 162.010 is immune from all liability arising out of the donation of the blood transfused into a recipient.

(b) A blood bank is not liable for the disclosure of information to a court in accordance with an order issued under Sections 162.010(b)-(f).

(c) A presumption of negligence or causation does not attach to a donor's positive test result if the test result is obtained after the donation of blood or blood components that is the subject of discovery as provided under Section 162.011.

(d) Except as provided by Section 162.013 or 162.014, a person who negligently or intentionally discloses blood bank records in violation of this chapter is liable only for actual damages resulting from the negligent or intentional disclosure.

(e) This chapter does not give rise to any liability under Subchapter E, Chapter 17, Business & Commerce Code (Deceptive Trade Practices-Consumer Protection Act).

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

Sec. 162.013. CIVIL PENALTY. (a) A person who is injured by a violation of Section 162.006, 162.007, 162.010, or 162.011 may bring a civil action for damages. In addition, any person may bring an action to restrain such a violation or threatened violation.

(b) If it is found in a civil action that a person has violated a section listed in Subsection (a), that person is liable for:

(1) actual damages;

(2) a civil penalty of not more than $1,000; and

(3) court costs and reasonable attorney's fees incurred by the person bringing the action.

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

Sec. 162.014. CRIMINAL PENALTY. (a) A person commits an offense if the person discloses information in violation of Section 162.006, 162.007, 162.010, or 162.011.

(b) An offense under this section is a Class C misdemeanor.

(c) Each disclosure made in violation of Section 162.006 or 162.007 constitutes a separate offense.

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

Sec. 162.015. DONATION OF BLOOD BY PERSONS YOUNGER THAN 18 YEARS OF AGE. A person who is 17 years of age may consent to the donation of the person's blood or blood components. A person younger than 18 years of age may not receive any compensation from a blood bank for a donation of the person's blood or blood components.

Added by Acts 1993, 73rd Leg., ch. 160, Sec. 1, eff. Sept. 1, 1993.

Sec. 162.016. BE A BLOOD DONOR ACCOUNT; DEDICATION. (a) The

be a blood donor account is a separate account in the general revenue fund. The account is composed of:

(1) money deposited to the credit of the account under Section 504.641, Transportation Code; and

(2) gifts, grants, donations, and legislative appropriations.

(b) The department administers the account.

(b-1) The department may spend money credited to the account or money deposited to the associated trust fund account created under Section 504.6012, Transportation Code, only to:

(1) make grants to nonprofit blood centers in this state for programs to recruit and retain volunteer blood donors; and

(2) defray the cost of administering the account.

(c) The department may accept gifts, grants, and donations from any source for the benefit of the account. The executive commissioner of the Health and Human Services Commission by rule shall establish guidelines for spending money described by Subsection (b-1).

Added by Acts 2003, 78th Leg., ch. 1320, Sec. 9, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0491, eff. April 2, 2015.

Sec. 162.018. BROCHURE ON UMBILICAL CORD BLOOD OPTIONS. (a) The executive commissioner shall prepare and update as necessary a brochure based on nationally accepted, peer reviewed, scientific research information regarding stem cells contained in the umbilical cord blood after delivery of an infant. The information in the brochure must include:

(1) the current and potential uses, risks, and benefits of stem cells contained in umbilical cord blood to a potential recipient of donated stem cells, including a biological family member, extended family member, or nonrelated individual;

(2) the options available for future use or storage of umbilical cord blood after delivery of an infant, including:

(A) discarding the stem cells;

(B) donating the stem cells to a public umbilical cord blood bank;

(C) storing the stem cells in a private family umbilical cord blood bank for use by immediate and extended family members; and

(D) storing the stem cells for immediate and extended family use through a family or sibling donor banking program that provides free collection, processing, and storage when a medical need exists;

(3) the medical process used to collect umbilical cord blood after delivery of an infant;

(4) any risk associated with umbilical cord blood collection to the mother and the infant;

(5) any costs that may be incurred by a pregnant woman who chooses to donate or store umbilical cord blood after delivery of the woman's infant; and

(6) the average cost of public and private umbilical cord blood banking.

(b) The department shall make the brochure available on the department's website and shall distribute the brochure on request to physicians or other persons permitted by law to attend a pregnant woman during gestation or at delivery of an infant.

Added by Acts 2007, 80th Leg., R.S., Ch. 104 (H.B. 709), Sec. 1, eff. May 17, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0492, eff. April 2, 2015.

Sec. 162.019. DUTY OF CERTAIN PROFESSIONALS. (a) Except as otherwise provided by this section, a physician or other person permitted by law to attend a pregnant woman during gestation or at delivery of an infant shall provide the woman with the brochure described in Section 162.018 before the third trimester of the woman's pregnancy or as soon as reasonably feasible.

(b) A person described in Subsection (a) who attends a pregnant woman during delivery of her infant shall permit the mother to arrange for umbilical cord blood storage or donation if the mother requests unless, in the opinion of the person, the donation threatens the health of the mother or her infant.

(c) A person described by Subsection (a) is not required to

distribute the brochure under Subsection (a) or to permit for the arrangement of umbilical cord blood storage or donation under Subsection (b) if the action conflicts with the person's religious beliefs and the person makes this fact known to the mother as soon as reasonably feasible.

(d) A person described by Subsection (a) is not required to distribute the brochure under Subsection (a) while treating the pregnant woman for an emergency condition or when the mother presents in labor and delivers the infant during that presentation.

(e) A person described by Subsection (a) is not required to distribute the brochure under Subsection (a) if the woman provides the person with a written statement that she chooses to view the materials on the website described by Section 162.018(b).

(f) A person described by Subsection (a) who fails to distribute the brochure is not subject to discipline by the appropriate licensing agency and a cause of action is not created by any failure to distribute the brochure as required by this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 104 (H.B. 709), Sec. 1, eff. May 17, 2007.

Sec. 162.020. ADULT STEM CELL COLLECTION. Blood obtained by a blood bank may be used for the collection of adult stem cells if the donor consents in writing to that use.

Added by Acts 2015, 84th Leg., R.S., Ch. 992 (H.B. 177), Sec. 3, eff. September 1, 2015.

CHAPTER 163. EDUCATION PROGRAM ABOUT SEXUAL CONDUCT AND SUBSTANCE ABUSE

Sec. 163.001. PROGRAM. (a) The department shall develop a model public health education program suitable for school-age children and shall make the program available to any person on request. The program should emphasize:

(1) that abstinence from sexual intercourse is the most effective protection against unwanted teenage pregnancy, sexually transmitted diseases, and acquired immune deficiency syndrome (AIDS) when transmitted sexually;

(2) that abstinence from sexual intercourse outside of

lawful marriage is the expected societal standard for school-age unmarried persons; and

(3) the physical, emotional, and psychological dangers of substance abuse, including the risk of acquired immune deficiency syndrome (AIDS) through the sharing of needles during intravenous drug usage.

(b) Course materials and instruction relating to sexual education or sexually transmitted diseases should be age appropriate.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 51, eff. Sept. 1, 1991.

Sec. 163.002. INSTRUCTIONAL ELEMENTS. Course materials and instruction relating to sexual education or sexually transmitted diseases should include:

(1) an emphasis on sexual abstinence as the only completely reliable method of avoiding unwanted teenage pregnancy and sexually transmitted diseases;

(2) an emphasis on the importance of self-control, responsibility, and ethical conduct in making decisions relating to sexual behavior;

(3) statistics, based on the latest medical information, that indicate the efficacy of the various forms of contraception;

(4) information concerning the laws relating to the financial responsibilities associated with pregnancy, childbirth, and child rearing;

(5) information concerning the laws prohibiting sexual abuse and the legal and counseling options available to victims of sexual abuse;

(6) information on how to cope with and rebuff unwanted physical and verbal sexual advances, as well as the importance of avoiding the sexual exploitation of other persons;

(7) psychologically sound methods of resisting unwanted peer pressure; and

(8) emphasis, provided in a factual manner and from a public health perspective, that homosexuality is not a lifestyle acceptable to the general public and that homosexual conduct is a criminal offense under Section 21.06, Penal Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 51, eff. Sept. 1, 1991.

Sec. 163.003. ADDITIONAL INSTRUCTIONAL ELEMENTS REGARDING HUMAN PAPILLOMAVIRUS. Course materials and instruction relating to sexually transmitted diseases must be available in English and in Spanish and should include:

(1) the following specific information on human papillomavirus:

(A) that sexual intercourse is not required to become infected with human papillomavirus and that the avoidance of skin-to-skin contact involving the genital areas offers the best protection;

(B) that both males and females may be infected with human papillomavirus and symptoms may not be present;

(C) that younger women are at greater risk of human papillomavirus infection than older women; and

(D) that human papillomavirus may be transmitted to an infant during childbirth;

(2) information regarding the role of human papillomavirus in the development of genital warts, cervical cancer, and other diseases; and

(3) information regarding the continuing need for women to undergo Pap smear testing, even if they have received a vaccination against human papillomavirus.

Added by Acts 2007, 80th Leg., R.S., Ch. 59 (H.B. 1379), Sec. 2, eff. September 1, 2007.

CHAPTER 164. TREATMENT FACILITIES MARKETING AND ADMISSION PRACTICES

Sec. 164.001. SHORT TITLE. This chapter may be cited as the Treatment Facilities Marketing Practices Act.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.002. LEGISLATIVE PURPOSE. The purpose of this chapter is to safeguard the public against fraud, deceit, and misleading marketing practices and to foster and encourage competition and fair dealing by mental health facilities and chemical dependency facilities by prohibiting or restricting practices by which the public has been injured in connection with the marketing and advertising of mental health services and the admission of patients.

Nothing in this chapter should be construed to prohibit a mental health facility or chemical dependency facility from advertising its services in a general way or promoting its specialized services. However, the public should be able to clearly distinguish between the marketing activities of the facility and its clinical functions.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 527 (H.B. 4454), Sec. 2, eff. September 1, 2025.

Sec. 164.003. DEFINITIONS. In this chapter:

(1) "Advertising" or "advertise" means a solicitation or inducement, through print or electronic media, including radio, television, the Internet, or direct mail, to purchase the services provided by a treatment facility.

(2) "Chemical dependency" has the meaning assigned by Section 462.001.

(3) "Chemical dependency facility" means a treatment facility as that term is defined by Section 462.001.

(4) "Intervention and assessment service" means a service that offers assessment, counseling, evaluation, intervention, or referral services or makes treatment recommendations to an individual with respect to mental illness or chemical dependency.

(5) "Mental health facility" means:

(A) a "mental health facility" as defined by Section 571.003;

(B) a residential treatment facility, other than a mental health facility, in which persons are treated for emotional problems or disorders in a 24-hour supervised living environment; and

(C) a day activity and health services facility as defined by Section 103.003, Human Resources Code.

(6) "Mental health professional" means a:

(A) "physician" as defined by Section 571.003;

(B) "licensed professional counselor" as defined by Section 503.002, Occupations Code;

(C) "chemical dependency counselor" as defined by Section 504.001, Occupations Code;

(D) "psychologist" offering "psychological services" as defined by Section 501.003, Occupations Code;

(E) "registered nurse" licensed under Chapter 301, Occupations Code;

(F) "vocational nurse" licensed under Chapter 301, Occupations Code;

(G) "licensed marriage and family therapist" as defined by Section 502.002, Occupations Code; and

(H) "social worker" as defined by Section 505.002, Occupations Code.

(7) "Mental health services" has the meaning assigned by Section 531.002.

(8) "Mental illness" has the meaning assigned by Section 571.003.

(9) "Referral source" means a person who is in a position to refer or who refers a person to a treatment facility. "Referral source" does not include a physician, an insurer, a health maintenance organization (HMO), a preferred provider arrangement (PPA), or other third party payor or discount provider organization (DPO) where the insurer, HMO, PPA, third party payor, or DPO pays in whole or in part for the treatment of mental illness or chemical dependency.

(10) "Treatment facility" means a chemical dependency facility and a mental health facility.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.784, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 2.010, eff. Feb. 1, 2004.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0493, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 3, eff. June 19, 2015.

Acts 2025, 89th Leg., R.S., Ch. 527 (H.B. 4454), Sec. 3, eff. September 1, 2025.

Sec. 164.004. EXEMPTIONS. This chapter does not apply to:

(1) a treatment facility:

(A) operated by the department, a federal agency, or a political subdivision; or

(B) funded by the department;

(2) a community center established under Subchapter A, Chapter 534, or a facility operated by a community center; or

(3) a facility owned and operated by a nonprofit or not-for-profit organization offering counseling concerning family violence, help for runaway children, or rape.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 96, Sec. 1, eff. May 20, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0494, eff. April 2, 2015.

Sec. 164.005. CONDITIONING EMPLOYEE OR AGENT RELATIONSHIPS ON PATIENT REVENUE. A treatment facility may not permit or provide compensation or anything of value to its employees or agents, condition employment or continued employment of its employees or agents, set its employee or agent performance standards, or condition its employee or agent evaluations, based on:

(1) the number of patient admissions resulting from an employee's or agent's efforts;

(2) the number or frequency of telephone calls or other contacts with referral sources or patients if the purpose of the telephone calls or contacts is to solicit patients for the treatment facility; or

(3) the existence of or volume of determinations made respecting the length of patient stay.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.006. SOLICITING AND CONTRACTING WITH CERTAIN REFERRAL SOURCES. A treatment facility or a person employed or under contract with a treatment facility, if acting on behalf of the treatment facility, may not:

(1) contact a referral source or potential client for the

purpose of soliciting, directly or indirectly, a referral of a patient to the treatment facility without disclosing its soliciting agent's, employee's, or contractor's affiliation with the treatment facility;

(2) offer to provide or provide mental health or chemical dependency services to a public or private school in this state, on a part-time or full-time basis, or the services of any of its employees or agents who make, or are in a position to make, a referral, if the services are provided on an individual basis to individual students or their families. Nothing herein prohibits a treatment facility from:

(A) offering or providing educational programs in group settings to public schools in this state if the affiliation between the educational program and the treatment facility is disclosed;

(B) providing counseling services to a public school in this state in an emergency or crisis situation if the services are provided in response to a specific request by a school; provided that, under no circumstances may a student be referred to the treatment facility offering the services; or

(C) entering into a contract under Section 464.020 with the board of trustees of a school district with a disciplinary alternative education program, or with the board's designee, for the provision of chemical dependency treatment services;

(3) provide to an entity of state or local government, on a part-time or full-time basis, the mental health or chemical dependency services of any of its employees, agents, or contractors who make or are in a position to make referrals unless:

(A) the treatment facility discloses to the governing authority of the entity:

(i) the employee's, agent's, or contractor's relationship to the facility; and

(ii) the fact that the employee, agent, or contractor might make a referral, if permitted, to the facility; and

(B) the employee, agent, or contractor makes a referral only if:

(i) the treatment facility obtains the governing authority's authorization in writing for the employee, agent, or contractor to make the referrals; and

(ii) the employee, agent, or contractor discloses to the prospective patient the employee's, agent's, or contractor's

relationship to the facility at initial contact;

(4) in relation to intervention and assessment services, contract with, offer to remunerate, or remunerate a person who operates an intervention and assessment service that makes referrals to a treatment facility for inpatient or outpatient treatment of mental illness or chemical dependency unless the intervention and assessment service is:

(A) operated by a community mental health and intellectual disability center the commission funds;

(B) operated by a county or regional medical society;

(C) a qualified mental health referral service as defined by Section 164.007; or

(D) owned and operated by a nonprofit or not-for-profit organization offering counseling concerning family violence, help for runaway children, or rape; or

(5) contract with a marketing provider who agrees to provide general referrals or leads for the placement of prospective patients with a service provider or in a recovery residence through a call center or Internet website presence, unless the terms of that contract are disclosed to the prospective patient.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1112, Sec. 3, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1055, Sec. 28, eff. June 20, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0495, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 527 (H.B. 4454), Sec. 4, eff. September 1, 2025.

Sec. 164.007. QUALIFIED MENTAL HEALTH REFERRAL SERVICE: DEFINITION AND STANDARDS. (a) A qualified mental health referral service means a service that conforms to all of the following standards:

(1) the referral service does not exclude as a participant in the referral service an individual who meets the qualifications for participation and qualifications for participation cannot be based in whole or in part on an individual's or entity's affiliation

or nonaffiliation with other participants in the referral service;

(2) a payment the participant makes to the referral service is assessed equally against and collected equally from all participants, and is only based on the cost of operating the referral service and not on the volume or value of any referrals to or business otherwise generated by the participants of the referral service;

(3) the referral service imposes no requirements on the manner in which the participant provides services to a referred person, except that the referral service may require that the participant charge the person referred at the same rate as it charges other persons not referred by the referral service, or that these services be furnished free of charge or at a reduced charge;

(4) a referral made to a mental health professional or chemical dependency treatment facility is made only in accordance with Subdivision (1) and the referral service does not make referrals to mental health facilities other than facilities maintained or operated by the department, community mental health centers, or other political subdivisions, provided that a physician may make a referral directly to any mental health facility;

(5) the referral service is staffed by appropriately licensed and trained mental health professionals and a person who makes assessments for the need for treatment of mental illness or chemical dependency is a mental health professional as defined by this chapter;

(6) in response to each inquiry or after personal assessment, the referral service makes referrals, on a clinically appropriate, rotational basis, to at least three mental health professionals or chemical dependency treatment facilities whose practice addresses or facilities are located in the county of residence of the person seeking the referral or assessment, but if there are not three providers in the inquirer's county of residence, the referral service may include additional providers from other counties nearest the inquirer's county of residence;

(7) no information that identifies the person seeking a referral, such as name, address, or telephone number, is used, maintained, distributed, or provided for a purpose other than making the requested referral or for administrative functions necessary to operating the referral service;

(8) the referral service makes the following disclosures to

each person seeking a referral:

(A) the manner in which the referral service selects the group of providers participating in the referral service;

(B) whether the provider participant has paid a fee to the referral service;

(C) the manner in which the referral service selects a particular provider from its list of provider participants to which to make a referral;

(D) the nature of the relationship or any affiliation between the referral service and the group of provider participants to whom it could make a referral; and

(E) the nature of any restriction that would exclude a provider from continuing as a provider participant;

(9) the referral service maintains each disclosure in a written record certifying that the disclosure has been made and the record certifying that the disclosure has been made is signed by either the person seeking a referral or by the person making the disclosure on behalf of the referral service; and

(10) if the referral service refers callers to a 1-900 telephone number or another telephone number that requires the payment of a toll or fee payable to or collected by the referral service, the referral service discloses the per minute charge.

(b) A qualified mental health referral service may not limit participation by a person for a reason other than:

(1) failure to have a current, valid license without limitation to practice in this state;

(2) failure to maintain professional liability insurance while participating in the service;

(3) a decision by a peer review committee that the person has failed to meet prescribed standards or has not acted in a professional or ethical manner;

(4) termination of the contract between the participant and the qualified mental health referral service by either party under the terms of the contract; or

(5) significant dissatisfaction of consumers that is documented and verifiable.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0496, eff. April 2, 2015.

Sec. 164.008. OPERATING AN INTERVENTION AND ASSESSMENT SERVICE. A treatment facility may not own, operate, manage, or control an intervention and assessment service that makes referrals to a treatment facility for inpatient treatment of mental illness or chemical dependency unless the intervention and assessment service:

(1) is a qualified mental health referral service under Section 164.007;

(2) discloses in all advertising the relationship between the treatment facility and the intervention and assessment service; and

(3) discloses to each person contacting the service, at the time of initial contact, the relationship between the treatment facility and the intervention and assessment service.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.009. DISCLOSURES AND REPRESENTATIONS. (a) A treatment facility may not admit a patient to its facilities without fully disclosing to the patient or, if the patient is a minor, the patient's parent, managing conservator, or guardian, in, if possible, the primary language of the patient, managing conservator, or guardian, as the case may be, the following information in writing before admission:

(1) the treatment facility's estimated average daily charge for inpatient treatment with an explanation that the patient may be billed separately for services provided by mental health professionals;

(2) the name of the attending physician, if the treatment facility is a mental health facility, or the name of the attending mental health professional, if the facility is a chemical dependency facility; and

(3) the current "patient's bill of rights" as adopted by the executive commissioner that sets out restrictions to the patient's freedom that may be imposed on the patient during the

patient's stay in a treatment facility.

(b) A treatment facility may not misrepresent to a patient or the parent, guardian, managing conservator, or spouse of a patient, the availability or amount of insurance coverage available to the prospective patient or the amount and percentage of a charge for which the patient will be responsible.

(c) A treatment facility may not represent to a patient who requests to leave a treatment facility against medical advice that:

(1) the patient will be subject to an involuntary commitment proceeding or subsequent emergency detention unless that representation is made by a physician or on the written instruction of a physician who has evaluated the patient within 48 hours of the representation; or

(2) the patient's insurance company will refuse to pay all or any portion of the medical expenses previously incurred.

(d) A mental health facility may not represent or recommend that a prospective patient should be admitted for inpatient treatment unless the representation is made by a licensed physician or, subsequent to evaluation by a licensed physician, by a mental health professional.

(e) A chemical dependency facility may not represent or recommend that a prospective patient should be admitted to a facility for treatment unless and until:

(1) the prospective patient has been evaluated, in person, by a mental health professional; and

(2) a mental health professional determines that the patient meets the facility's admission standards.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0497, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1211 (S.B. 1560), Sec. 1, eff. June 19, 2015.

Sec. 164.010. PROHIBITED ACTS. It is a violation of this chapter, in connection with the marketing of mental health services, for a person to:

(1) advertise, expressly or impliedly, the services of a treatment facility through the use of:

(A) promises of cure or guarantees of treatment results that cannot be substantiated; or

(B) any unsubstantiated claims;

(2) advertise, expressly or impliedly, the availability of intervention and assessment services unless and until the services are available and are provided by mental health professionals licensed or certified to provide the particular service;

(3) fail to disclose before soliciting a referral source or prospective patient to induce a person to use the services of the treatment facility an affiliation between a treatment facility and its soliciting agents, employees, or contractors;

(4) obtain or disclose information considered confidential by state or federal law regarding a person for the purpose of soliciting that person to use the services of a treatment facility unless and until consent is obtained from the person or, in the case of a minor, the person's parent, managing conservator, or legal guardian or another person with authority to give that authorization;

(5) represent that a referral service is a qualified mental health referral service unless and until the referral service complies with Section 164.007;

(6) make a false or misleading statement or provide false or misleading information about the treatment facility's services or location in the treatment facility's advertising media or on its Internet website; or

(7) provide a link on the treatment facility's Internet website that redirects the user to another Internet website containing false or misleading statements or information described by Subdivision (6).

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 527 (H.B. 4454), Sec. 5, eff. September 1, 2025.

Sec. 164.011. INJUNCTION. (a) If it appears that a person is in violation of this chapter, the attorney general, a district

attorney, or a county attorney may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties of not less than $2,000 and not more than $25,000 per violation.

(b) A civil action filed under this section shall be filed in a district court in Travis County or in the county in which the defendant resides.

(c) The attorney general, a district attorney, or a county attorney may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, under this section, including court costs, reasonable attorney fees, investigative costs, witness fees, and deposition expenses.

(d) A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to that local government.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 527 (H.B. 4454), Sec. 6, eff. September 1, 2025.

Sec. 164.012. PENALTIES. In addition to the penalties prescribed by this chapter, a violation of a provision of this chapter by an individual or treatment facility that is licensed by a state health care regulatory agency is subject to the same consequences as a violation of the licensing law applicable to the individual or treatment facility or of a rule adopted under that licensing law.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.013. DECEPTIVE TRADE PRACTICES. A person may bring suit under Subchapter E, Chapter 17, Business & Commerce Code, for a violation of this chapter, and a public or private right or remedy prescribed by that subchapter may be used to enforce this chapter.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.014. RULE-MAKING AUTHORITY. The executive commissioner may adopt rules interpreting the provisions of this chapter relating to the activities of a chemical dependency facility or mental health facility under the department's jurisdiction.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0498, eff. April 2, 2015.

CHAPTER 165. BREAST-FEEDING

SUBCHAPTER A. BREAST-FEEDING RIGHTS AND POLICIES

Sec. 165.001. LEGISLATIVE FINDING. The legislature finds that breast-feeding a baby is an important and basic act of nurture that must be encouraged in the interests of maternal and child health and family values. In compliance with the breast-feeding promotion program established under the federal Child Nutrition Act of 1966 (42 U.S.C. Section 1771 et seq.), the legislature recognizes breast-feeding as the best method of infant nutrition.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.

Sec. 165.002. RIGHT TO BREAST-FEED OR EXPRESS BREAST MILK. A mother is entitled to breast-feed her baby or express breast milk in any location in which the mother's presence is otherwise authorized.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 731 (H.B. 541), Sec. 1, eff. September 1, 2019.

Sec. 165.003. BUSINESS DESIGNATION AS "MOTHER-FRIENDLY". (a) A business may use the designation "mother-friendly" in its promotional materials if the business develops a policy supporting the practice of worksite breast-feeding that addresses the following:

(1) work schedule flexibility, including scheduling breaks and work patterns to provide time for expression of milk;

(2) the provision of accessible locations allowing privacy;

(3) access nearby to a clean, safe water source and a sink for washing hands and rinsing out any needed breast-pumping equipment; and

(4) access to hygienic storage alternatives in the workplace for the mother's breast milk.

(b) The business shall submit its breast-feeding policy to the department. The department shall maintain a list of "mother-friendly" businesses covered under this section and shall make the list available for public inspection.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.

Sec. 165.004. SERVICES PROVIDED BY STATE AGENCIES. Any state agency that administers a program providing maternal or child health services shall provide information that encourages breast-feeding to program participants who are pregnant women or mothers with infants.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.

SUBCHAPTER B. DEMONSTRATION PROJECT

Sec. 165.031. LEGISLATIVE RECOGNITION. The legislature recognizes a mother's responsibility to both her job and her child when she returns to work and acknowledges that a woman's choice to breast-feed benefits the family, the employer, and society.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.

Sec. 165.032. DEMONSTRATION PROJECT. (a) The department shall establish a demonstration project in Travis County to provide access to worksite breast-feeding for department employees who are mothers with infants.

(b) The department shall administer the demonstration project and shall determine the benefits of, potential barriers to, and potential costs of implementing worksite breast-feeding support policies for state employees.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.

Sec. 165.033. BREAST-FEEDING POLICY. The department shall develop recommendations supporting the practice of worksite breast-feeding that address the following:

(1) work schedule flexibility, including scheduling breaks and work patterns to provide time for expression of milk;

(2) the provision of accessible locations allowing privacy;

(3) access nearby to a clean, safe water source and a sink for washing hands and rinsing out any needed breast-pumping equipment; and

(4) access to hygienic storage alternatives in the workplace for the mother's breast milk.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.

CHAPTER 166. ADVANCE DIRECTIVES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 166.001. SHORT TITLE. This chapter may be cited as the Advance Directives Act.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.002. DEFINITIONS. In this chapter:

(1) "Advance directive" means:

(A) a directive, as that term is defined by Section 166.031;

(B) an out-of-hospital DNR order, as that term is defined by Section 166.081; or

(C) a medical power of attorney under Subchapter D.

(2) "Artificially administered nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the gastrointestinal tract.

(3) "Attending physician" means a physician selected by or assigned to a patient who has primary responsibility for a patient's treatment and care.

(4) "Competent" means possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(5) "Declarant" means a person who has executed or issued a directive under this chapter.

(5-a) "Digital signature" means an electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature.

(5-b) "Electronic signature" means a facsimile, scan, uploaded image, computer-generated image, or other electronic representation of a manual signature that is intended by the person using it to have the same force and effect of law as a manual signature.

(6) "Ethics or medical committee" means a committee established under Sections 161.031-161.033.

(7) "Health care or treatment decision" means consent, refusal to consent, or withdrawal of consent to health care, treatment, service, or a procedure to maintain, diagnose, or treat an individual's physical or mental condition, including such a decision on behalf of a minor.

(8) "Incompetent" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(9) "Irreversible condition" means a condition, injury, or illness:

(A) that may be treated but is never cured or eliminated;

(B) that leaves a person unable to care for or make decisions for the person's own self; and

(C) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

(10) "Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and

artificially administered nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(11) "Medical power of attorney" means a document delegating to an agent authority to make health care decisions executed or issued under Subchapter D.

(12) "Physician" means:

(A) a physician licensed by the Texas Medical Board; or

(B) a properly credentialed physician who holds a commission in the uniformed services of the United States and who is serving on active duty in this state.

(13) "Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care. A patient who has been admitted to a program under which the person receives hospice services provided by a home and community support services agency licensed under Chapter 142 is presumed to have a terminal condition for purposes of this chapter.

(14) "Witness" means a person who may serve as a witness under Section 166.003.

(15) "Cardiopulmonary resuscitation" means any medical intervention used to restore circulatory or respiratory function that has ceased.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1228, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0499, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 435 (H.B. 3074), Sec. 1, eff. September 1, 2015.

Sec. 166.003. WITNESSES. In any circumstance in which this chapter requires the execution of an advance directive or the issuance of a nonwritten advance directive to be witnessed:

(1) each witness must be a competent adult; and

(2) at least one of the witnesses must be a person who is not:

(A) a person designated by the declarant to make a health care or treatment decision;

(B) a person related to the declarant by blood or marriage;

(C) a person entitled to any part of the declarant's estate after the declarant's death under a will or codicil executed by the declarant or by operation of law;

(D) the attending physician;

(E) an employee of the attending physician;

(F) an employee of a health care facility in which the declarant is a patient if the employee is providing direct patient care to the declarant or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or

(G) a person who, at the time the written advance directive is executed or, if the directive is a nonwritten directive issued under this chapter, at the time the nonwritten directive is issued, has a claim against any part of the declarant's estate after the declarant's death.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 435 (H.B. 3074), Sec. 2, eff. September 1, 2015.

Sec. 166.004. STATEMENT RELATING TO ADVANCE DIRECTIVE. (a) In this section, "health care provider" means:

(1) a hospital;

(2) an institution licensed under Chapter 242, including a skilled nursing facility;

(3) a home and community support services agency;

(4) an assisted living facility; and

(5) a special care facility.

(b) A health care provider shall maintain written policies regarding the implementation of advance directives. The policies must include a clear and precise statement of any procedure the health care provider is unwilling or unable to provide or withhold in accordance with an advance directive.

(c) Except as provided by Subsection (g), the health care provider shall provide written notice to an individual of the written policies described by Subsection (b). The notice must be provided at the earlier of:

(1) the time the individual is admitted to receive services from the health care provider; or

(2) the time the health care provider begins providing care to the individual.

(d) If, at the time notice is to be provided under Subsection (c), the individual is incompetent or otherwise incapacitated and unable to receive the notice required by this section, the provider shall provide the required written notice, in the following order of preference, to:

(1) the individual's legal guardian;

(2) a person responsible for the health care decisions of the individual;

(3) the individual's spouse;

(4) the individual's adult child;

(5) the individual's parent; or

(6) the person admitting the individual.

(e) If Subsection (d) applies and except as provided by Subsection (f), if a health care provider is unable, after diligent search, to locate an individual listed by Subsection (d), the health care provider is not required to provide the notice.

(f) If an individual who was incompetent or otherwise incapacitated and unable to receive the notice required by this section at the time notice was to be provided under Subsection (c) later becomes able to receive the notice, the health care provider shall provide the written notice at the time the individual becomes able to receive the notice.

(g) This section does not apply to outpatient hospital services, including emergency services.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1,

1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0500, eff. April 2, 2015.

Sec. 166.005. ENFORCEABILITY OF ADVANCE DIRECTIVES EXECUTED IN ANOTHER JURISDICTION. An advance directive or similar instrument validly executed in another state or jurisdiction shall be given the same effect as an advance directive validly executed under the law of this state. This section does not authorize the administration, withholding, or withdrawal of health care otherwise prohibited by the laws of this state.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.006. EFFECT OF ADVANCE DIRECTIVE ON INSURANCE POLICY AND PREMIUMS. (a) The fact that a person has executed or issued an advance directive does not:

(1) restrict, inhibit, or impair in any manner the sale, procurement, or issuance of a life insurance policy to that person; or

(2) modify the terms of an existing life insurance policy.

(b) Notwithstanding the terms of any life insurance policy, the fact that life-sustaining treatment is withheld or withdrawn from an insured qualified patient under this chapter does not legally impair or invalidate that person's life insurance policy and may not be a factor for the purpose of determining, under the life insurance policy, whether benefits are payable or the cause of death.

(c) The fact that a person has executed or issued or failed to execute or issue an advance directive may not be considered in any way in establishing insurance premiums.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.007. EXECUTION OF ADVANCE DIRECTIVE MAY NOT BE REQUIRED. A physician, health facility, health care provider,

insurer, or health care service plan may not require a person to execute or issue an advance directive as a condition for obtaining insurance for health care services or receiving health care services.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.008. CONFLICT BETWEEN ADVANCE DIRECTIVES. To the extent that a treatment decision or an advance directive validly executed or issued under this chapter conflicts with another treatment decision or an advance directive executed or issued under this chapter, the treatment decision made or instrument executed later in time controls.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.009. CERTAIN LIFE-SUSTAINING TREATMENT NOT REQUIRED. This chapter may not be construed to require the provision of life-sustaining treatment that cannot be provided to a patient without denying the same treatment to another patient.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.010. APPLICABILITY OF FEDERAL LAW RELATING TO CHILD ABUSE AND NEGLECT. This chapter is subject to applicable federal law and regulations relating to child abuse and neglect to the extent applicable to the state based on its receipt of federal funds.

Added by Acts 2003, 78th Leg., ch. 1228, Sec. 2, eff. June 20, 2003.

Sec. 166.011. DIGITAL OR ELECTRONIC SIGNATURE. (a) For an advance directive in which a signature by a declarant, witness, or notary public is required or used, the declarant, witness, or notary public may sign the directive or a written revocation of the directive using:

(1) a digital signature that:

(A) uses an algorithm approved by the department;

(B) is unique to the person using it;

(C) is capable of verification;

(D) is under the sole control of the person using it;

(E) is linked to data in a manner that invalidates the digital signature if the data is changed;

(F) persists with the document and not by association in separate files; and

(G) is bound to a digital certificate; or

(2) an electronic signature that:

(A) is capable of verification;

(B) is under the sole control of the person using it;

(C) is linked to data in a manner that invalidates the electronic signature if the data is changed; and

(D) persists with the document and not by association in separate files.

(b) In approving an algorithm for purposes of Subsection (a)(1)(A), the department may consider an algorithm approved by the National Institute of Standards and Technology.

(c) The executive commissioner by rule shall modify the advance directive forms required under this chapter as necessary to provide for the use of a digital or electronic signature that complies with the requirements of this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 2, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0501, eff. April 2, 2015.

SUBCHAPTER B. DIRECTIVE TO PHYSICIANS

Sec. 166.031. DEFINITIONS. In this subchapter:

(1) "Directive" means an instruction made under Section 166.032, 166.034, or 166.035 to administer, withhold, or withdraw life-sustaining treatment in the event of a terminal or irreversible condition.

(2) "Qualified patient" means a patient with a terminal or irreversible condition that has been diagnosed and certified in

writing by the attending physician.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 208, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 107, Sec. 5.04, eff. Aug. 30, 1993. Renumbered from Sec. 672.002 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.032. WRITTEN DIRECTIVE BY COMPETENT ADULT; NOTICE TO PHYSICIAN. (a) A competent adult may at any time execute a written directive.

(b) Except as provided by Subsection (b-1), the declarant must sign the directive in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The witnesses must sign the directive.

(b-1) The declarant, in lieu of signing in the presence of witnesses, may sign the directive and have the signature acknowledged before a notary public.

(c) A declarant may include in a directive directions other than those provided by Section 166.033 and may designate in a directive a person to make a health care or treatment decision for the declarant in the event the declarant becomes incompetent or otherwise mentally or physically incapable of communication.

(d) A declarant shall notify the attending physician of the existence of a written directive. If the declarant is incompetent or otherwise mentally or physically incapable of communication, another person may notify the attending physician of the existence of the written directive. The attending physician shall make the directive a part of the declarant's medical record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 209, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 291, Sec. 1, eff. Jan. 1, 1998. Renumbered from Sec. 672.003 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 3, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 435 (H.B. 3074), Sec. 3, eff. September 1, 2015.

Sec. 166.033. FORM OF WRITTEN DIRECTIVE. A written directive may be in the following form:

DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

Instructions for completing this document:

This is an important legal document known as an Advance Directive. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences.

In addition to this advance directive, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

DIRECTIVE

I, _____, recognize that the best health care is based upon a partnership of trust and communication with my physician. My physician and I will make health care or treatment decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:

_____ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

_____ I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

_____ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

_____ I request that I be kept alive in this irreversible condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

Additional requests: (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificially administered nutrition and hydration, intravenous antibiotics, etc. Be sure to state whether you do or do not want the particular treatment.)

After signing this directive, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided and I would not be given available life-sustaining treatments.

If I do not have a Medical Power of Attorney, and I am unable to make my wishes known, I designate the following person(s) to make health care or treatment decisions with my physician compatible with my personal values:

1. _____

2. _____

(If a Medical Power of Attorney has been executed, then an agent already has been named and you should not list additional names in this document.)

If the above persons are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas. If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort. I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant. This directive will remain in effect until I revoke it. No other person may do so.

Signed_____ Date_____ City, County, State of Residence _____

Two competent adult witnesses must sign below, acknowledging the signature of the declarant. The witness designated as Witness 1 may not be a person designated to make a health care or treatment decision for the patient and may not be related to the patient by blood or marriage. This witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of a health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of a health care facility in which the patient is being cared for or of any parent organization of the health care facility.

Witness 1 _____ Witness 2 _____

Definitions:

"Artificially administered nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under

the skin in the subcutaneous tissues, or in the gastrointestinal tract.

"Irreversible condition" means a condition, injury, or illness:

(1) that may be treated, but is never cured or eliminated;

(2) that leaves a person unable to care for or make decisions for the person's own self; and

(3) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificially administered nutrition and hydration. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

"Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important

persons in your life.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 209, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 291, Sec. 2, eff. Jan. 1, 1998. Renumbered from Sec. 672.004 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 435 (H.B. 3074), Sec. 4, eff. September 1, 2015.

Sec. 166.034. ISSUANCE OF NONWRITTEN DIRECTIVE BY COMPETENT ADULT QUALIFIED PATIENT. (a) A competent qualified patient who is an adult may issue a directive by a nonwritten means of communication.

(b) A declarant must issue the nonwritten directive in the presence of the attending physician and two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2).

(c) The physician shall make the fact of the existence of the directive a part of the declarant's medical record, and the names of the witnesses shall be entered in the medical record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.005 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.035. EXECUTION OF DIRECTIVE ON BEHALF OF PATIENT YOUNGER THAN 18 YEARS OF AGE. The following persons may execute a directive on behalf of a qualified patient who is younger than 18 years of age:

(1) the patient's spouse, if the spouse is an adult;

(2) the patient's parents; or

(3) the patient's legal guardian.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.006 by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.036. NOTARIZED DOCUMENT NOT REQUIRED; REQUIREMENT OF SPECIFIC FORM PROHIBITED. (a) Except as provided by Section 166.032(b-1), a written directive executed under Section 166.033 or 166.035 is effective without regard to whether the document has been notarized.

(b) A physician, health care facility, or health care professional may not require that:

(1) a directive be notarized; or

(2) a person use a form provided by the physician, health care facility, or health care professional.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 4, eff. September 1, 2009.

Sec. 166.037. PATIENT DESIRE SUPERSEDES DIRECTIVE. The desire of a qualified patient, including a qualified patient younger than 18 years of age, supersedes the effect of a directive.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Sec. 672.007 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.038. PROCEDURE WHEN DECLARANT IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) This section applies when an adult qualified patient has executed or issued a directive and is incompetent or otherwise mentally or physically incapable of communication.

(b) If the adult qualified patient has designated a person to make a treatment decision as authorized by Section 166.032(c), the attending physician and the designated person may make a treatment decision in accordance with the declarant's directions.

(c) If the adult qualified patient has not designated a person to make a treatment decision, the attending physician shall comply with the directive unless the physician believes that the directive does not reflect the patient's present desire.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from 672.008 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.039. PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED A DIRECTIVE AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) If an adult qualified patient has not executed or issued a directive and is incompetent or otherwise mentally or physically incapable of communication, the attending physician and the patient's legal guardian or an agent under a medical power of attorney may make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment from the patient.

(b) If the patient does not have a legal guardian or an agent under a medical power of attorney, the attending physician and one person, if available, from one of the following categories, in the following priority, may make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment:

(1) the patient's spouse;

(2) the patient's reasonably available adult children;

(3) the patient's parents; or

(4) the patient's nearest living relative.

(c) A treatment decision made under Subsection (a) or (b) must be based on knowledge of what the patient would desire, if known.

(d) A treatment decision made under Subsection (b) must be documented in the patient's medical record and signed by the attending physician.

(e) If the patient does not have a legal guardian and a person listed in Subsection (b) is not available, a treatment decision made under Subsection (b) must be concurred in by another physician who is not involved in the treatment of the patient or who is a representative of an ethics or medical committee of the health care facility in which the person is a patient.

(f) The fact that an adult qualified patient has not executed or issued a directive does not create a presumption that the patient does not want a treatment decision to be made to withhold or withdraw life-sustaining treatment.

(g) A person listed in Subsection (b) who wishes to challenge a treatment decision made under this section must apply for temporary guardianship under Chapter 1251, Estates Code. The court may waive

applicable fees in that proceeding.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 291, Sec. 3, eff. Jan. 1, 1998. Renumbered from Sec. 672.009 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0502, eff. April 2, 2015.

Sec. 166.040. PATIENT CERTIFICATION AND PREREQUISITES FOR COMPLYING WITH DIRECTIVE. (a) An attending physician who has been notified of the existence of a directive shall provide for the declarant's certification as a qualified patient on diagnosis of a terminal or irreversible condition.

(b) Before withholding or withdrawing life-sustaining treatment from a qualified patient under this subchapter, the attending physician must determine that the steps proposed to be taken are in accord with this subchapter and the patient's existing desires.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 14, Sec. 6.01, eff. Nov. 12, 1991. Renumbered from Sec. 672.010 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.041. DURATION OF DIRECTIVE. A directive is effective until it is revoked as prescribed by Section 166.042.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.011 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.042. REVOCATION OF DIRECTIVE. (a) A declarant may revoke a directive at any time without regard to the declarant's mental state or competency. A directive may be revoked by:

(1) the declarant or someone in the declarant's presence and at the declarant's direction canceling, defacing, obliterating, burning, tearing, or otherwise destroying the directive;

(2) the declarant signing and dating a written revocation that expresses the declarant's intent to revoke the directive; or

(3) the declarant orally stating the declarant's intent to revoke the directive.

(b) A written revocation executed as prescribed by Subsection (a)(2) takes effect only when the declarant or a person acting on behalf of the declarant notifies the attending physician of its existence or mails the revocation to the attending physician. The attending physician or the physician's designee shall record in the patient's medical record the time and date when the physician received notice of the written revocation and shall enter the word "VOID" on each page of the copy of the directive in the patient's medical record.

(c) An oral revocation issued as prescribed by Subsection (a)(3) takes effect only when the declarant or a person acting on behalf of the declarant notifies the attending physician of the revocation. The attending physician or the physician's designee shall record in the patient's medical record the time, date, and place of the revocation, and, if different, the time, date, and place that the physician received notice of the revocation. The attending physician or the physician's designees shall also enter the word "VOID" on each page of the copy of the directive in the patient's medical record.

(d) Except as otherwise provided by this subchapter, a person is not civilly or criminally liable for failure to act on a revocation made under this section unless the person has actual knowledge of the revocation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.012 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.043. REEXECUTION OF DIRECTIVE. A declarant may at any time reexecute a directive in accordance with the procedures prescribed by Section 166.032, including reexecution after the declarant is diagnosed as having a terminal or irreversible condition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.013 and amended by Acts 1999, 76th Leg., ch.

450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.044. LIMITATION OF LIABILITY FOR WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING PROCEDURES. (a) A physician or health care facility that causes life-sustaining treatment to be withheld or withdrawn from a qualified patient in accordance with this subchapter is not civilly liable for that action unless the physician or health care facility fails to exercise reasonable care when applying the patient's advance directive.

(b) A health professional, acting under the direction of a physician, who participates in withholding or withdrawing life-sustaining treatment from a qualified patient in accordance with this subchapter is not civilly liable for that action unless the health professional fails to exercise reasonable care when applying the patient's advance directive.

(c) A physician, or a health professional acting under the direction of a physician, who participates in withholding or withdrawing life-sustaining treatment from a qualified patient in accordance with this subchapter is not criminally liable or guilty of unprofessional conduct as a result of that action unless the physician or health professional fails to exercise reasonable care when applying the patient's advance directive.

(d) The standard of care that a physician, health care facility, or health care professional shall exercise under this section is that degree of care that a physician, health care facility, or health care professional, as applicable, of ordinary prudence and skill would have exercised under the same or similar circumstances in the same or a similar community.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.015 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.0445. LIMITATION ON LIABILITY FOR PERFORMING CERTAIN MEDICAL PROCEDURES. (a) A physician or a health care professional acting under the direction of a physician is not subject to civil liability for participating in a medical procedure performed under Section 166.046(d-2).

(b) A physician or a health care professional acting under the direction of a physician is not subject to criminal liability for participating in a medical procedure performed under Section 166.046(d-2) unless:

(1) the physician or health care professional in participating in the medical procedure acted with a specific malicious intent to cause the death of the patient and that conduct significantly hastened the patient's death; and

(2) the hastening of the patient's death is not attributable to the risks associated with the medical procedure.

(c) A physician or a health care professional acting under the direction of a physician has not engaged in unprofessional conduct by participating in a medical procedure performed under Section 166.046(d-2) unless the physician or health care professional in participating in the medical procedure acted with a specific malicious intent to harm the patient.

Added by Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 1, eff. September 1, 2023.

Sec. 166.045. LIABILITY FOR FAILURE TO EFFECTUATE DIRECTIVE. (a) A physician, health care facility, or health care professional who has no knowledge of a directive is not civilly or criminally liable for failing to act in accordance with the directive.

(b) A physician, or a health professional acting under the direction of a physician, is subject to review and disciplinary action by the appropriate licensing board for failing to effectuate a qualified patient's directive in violation of this subchapter or other laws of this state. This subsection does not limit remedies available under other laws of this state.

(c) If an attending physician refuses to comply with a directive or treatment decision and does not wish to follow the procedure established under Section 166.046, life-sustaining treatment shall be provided to the patient, but only until a reasonable opportunity has been afforded for the transfer of the patient to another physician or health care facility willing to comply with the directive or treatment decision.

(d) A physician, health professional acting under the direction of a physician, or health care facility is not civilly or criminally

liable or subject to review or disciplinary action by the person's appropriate licensing board if the person has complied with the procedures outlined in Section 166.046.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.016 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.046. PROCEDURE IF NOT EFFECTUATING DIRECTIVE OR TREATMENT DECISION FOR CERTAIN PATIENTS. (a) This section applies only to health care and treatment for a patient who is determined to be incompetent or is otherwise mentally or physically incapable of communication.

(a-1) If an attending physician refuses to honor an advance directive of or health care or treatment decision made by or on behalf of a patient to whom this section applies, the physician's refusal shall be reviewed by an ethics or medical committee. The attending physician may not be a member of that committee during the review. The patient shall be given life-sustaining treatment during the review.

(a-2) An ethics or medical committee that reviews a physician's refusal to honor an advance directive or health care or treatment decision under Subsection (a-1) shall consider the patient's well-being in conducting the review but may not make any judgment on the patient's quality of life. For purposes of this section, a decision by the committee based on any of the considerations described by Subdivisions (1) through (5) is not a judgment on the patient's quality of life. If the review requires the committee to determine whether life-sustaining treatment requested in the patient's advance directive or by the person responsible for the patient's health care decisions is medically inappropriate, the committee shall consider whether provision of the life-sustaining treatment:

(1) will prolong the natural process of dying or hasten the patient's death;

(2) will result in substantial, irremediable, and objectively measurable physical pain that is not outweighed by the benefit of providing the treatment;

(3) is medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems

not outweighed by the benefit of providing the treatment;

(4) is consistent with the prevailing standard of care; or

(5) is contrary to the patient's clearly documented desires.

(b) The person responsible for the patient's health care decisions:

(1) shall be informed in writing not less than seven calendar days before the meeting called to discuss the patient's directive, unless the period is waived by written mutual agreement, of:

(A) the ethics or medical committee review process and any other related policies and procedures adopted by the health care facility, including any policy described by Subsection (b-1);

(B) the rights described in Subdivisions (3)(A)-(D);

(C) the date, time, and location of the meeting;

(D) the work contact information of the facility's personnel who, in the event of a disagreement, will be responsible for overseeing the reasonable effort to transfer the patient to another physician or facility willing to comply with the directive;

(E) the factors the committee is required to consider under Subsection (a-2); and

(F) the language in Section 166.0465;

(2) at the time of being informed under Subdivision (1), shall be provided:

(A) a copy of the appropriate statement set forth in Section 166.052; and

(B) a copy of the registry list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer or to assist in locating a provider willing to accept transfer that is posted on the website maintained by the department under Section 166.053; and

(3) is entitled to:

(A) attend and participate in the meeting as scheduled by the committee;

(B) receive during the meeting a written statement of the first name, first initial of the last name, and title of each committee member who will participate in the meeting;

(C) subject to Subsection (b-1):

(i) be accompanied at the meeting by the patient's spouse, parents, adult children, and not more than four additional

individuals, including legal counsel, a physician, a health care professional, or a patient advocate, selected by the person responsible for the patient's health care decisions; and

(ii) have an opportunity during the open portion of the meeting to either directly or through another individual attending the meeting:

(a) explain the justification for the health care or treatment request made by or on behalf of the patient;

(b) respond to information relating to the patient that is submitted or presented during the open portion of the meeting; and

(c) state any concerns of the person responsible for the patient's health care decisions regarding compliance with this section or Section 166.0465, including stating an opinion that one or more of the patient's disabilities are not relevant to the committee's determination of whether the medical or surgical intervention is medically appropriate;

(D) receive a written notice of:

(i) the decision reached during the review process accompanied by an explanation of the decision, including, if applicable, the committee's reasoning for affirming that requested life-sustaining treatment is medically inappropriate;

(ii) the patient's major medical conditions as identified by the committee, including any disability of the patient considered by the committee in reaching the decision, except the notice is not required to specify whether any medical condition qualifies as a disability;

(iii) a statement that the committee has complied with Subsection (a-2) and Section 166.0465; and

(iv) the health care facilities contacted before the meeting as part of the transfer efforts under Subsection (d) and, for each listed facility that denied the request to transfer the patient and provided a reason for the denial, the provided reason;

(E) receive a copy of or electronic access to the portion of the patient's medical record related to the treatment received by the patient in the facility for the period of the patient's current admission to the facility; and

(F) receive a copy of or electronic access to all of the patient's reasonably available diagnostic results and reports related to the medical record provided under Paragraph (E).

(b-1) A health care facility may adopt and implement a written policy for meetings held under this section that is reasonable and necessary to:

(1) facilitate information sharing and discussion of the patient's medical status and treatment requirements, including provisions related to attendance, confidentiality, and timing regarding any agenda item; and

(2) preserve the effectiveness of the meeting, including provisions disclosing that the meeting is not a legal proceeding and the committee will enter into an executive session for deliberations.

(b-2) Notwithstanding Subsection (b)(3), the following individuals may not attend or participate in the executive session of an ethics or medical committee under this section:

(1) the physicians or health care professionals providing health care and treatment to the patient; or

(2) the person responsible for the patient's health care decisions or any person attending the meeting under Subsection (b)(3)(C)(i).

(b-3) If the health care facility or person responsible for the patient's health care decisions intends to have legal counsel attend the meeting of the ethics or medical committee, the facility or person, as applicable, shall make a good faith effort to provide written notice of that intention not less than 48 hours before the meeting begins.

(c) The written notice required by Subsection (b)(3)(D)(i) must be included in the patient's medical record.

(d) After written notice is provided under Subsection (b)(1), the patient's attending physician shall make a reasonable effort to transfer the patient to a physician who is willing to comply with the directive. The health care facility's personnel shall assist the physician in arranging the patient's transfer to:

(1) another physician;

(2) an alternative care setting within that facility; or

(3) another facility.

(d-1) If another health care facility denies the patient's transfer request, the personnel of the health care facility assisting with the patient's transfer efforts under Subsection (d) shall make a good faith effort to inquire whether the facility that denied the patient's transfer request would be more likely to approve the transfer request if a medical procedure, as that term is defined in

this section, is performed on the patient.

(d-2) If the patient's advance directive or the person responsible for the patient's health care decisions is requesting life-sustaining treatment that the attending physician has decided and the ethics or medical committee has affirmed is medically inappropriate:

(1) the attending physician or another physician responsible for the care of the patient shall perform on the patient each medical procedure that satisfies all of the following conditions:

(A) in the attending physician's judgment, the medical procedure is reasonable and necessary to help effect the patient's transfer under Subsection (d);

(B) an authorized representative for another health care facility with the ability to comply with the patient's advance directive or the health care or treatment decision made by or on behalf of the patient has expressed to the personnel described by Subsection (b)(1)(D) or the attending physician that the facility is more likely to accept the patient's transfer to the other facility if the medical procedure is performed on the patient;

(C) in the medical judgment of the physician who would perform the medical procedure, performing the medical procedure is:

(i) within the prevailing standard of medical care; and

(ii) not medically contraindicated or medically inappropriate under the circumstances;

(D) in the medical judgment of the physician who would perform the medical procedure, the physician has the training and experience to perform the medical procedure;

(E) the physician who would perform the medical procedure has medical privileges at the facility where the patient is receiving care authorizing the physician to perform the medical procedure at the facility;

(F) the facility where the patient is receiving care has determined the facility has the resources for the performance of the medical procedure at the facility; and

(G) the person responsible for the patient's health care decisions provides consent on behalf of the patient for the medical procedure; and

(2) the person responsible for the patient's health care

decisions is entitled to receive:

(A) a delay notice:

(i) if, at the time the written decision is provided as required by Subsection (b)(3)(D)(i), a medical procedure satisfies all of the conditions described by Subdivision (1); or

(ii) if:

(a) at the time the written decision is provided as required by Subsection (b)(3)(D)(i), a medical procedure satisfies all of the conditions described by Subdivision (1) except Subdivision (1)(G); and

(b) the person responsible for the patient's health care decisions provides to the attending physician or another physician or health care professional providing direct care to the patient consent on behalf of the patient for the medical procedure within 24 hours of the request for consent;

(B) a start notice:

(i) if, at the time the written decision is provided as required by Subsection (b)(3)(D)(i), no medical procedure satisfies all of the conditions described by Subdivisions (1)(A) through (F); or

(ii) if:

(a) at the time the written decision is provided as required by Subsection (b)(3)(D)(i), a medical procedure satisfies all of the conditions described by Subdivision (1) except Subdivision (1)(G); and

(b) the person responsible for the patient's health care decisions does not provide to the attending physician or another physician or health care professional providing direct care to the patient consent on behalf of the patient for the medical procedure within 24 hours of the request for consent; and

(C) a start notice accompanied by a statement that one or more of the conditions described by Subdivisions (1)(A) through (G) are no longer satisfied if, after a delay notice is provided in accordance with Subdivision (2)(A) and before the medical procedure on which the delay notice is based is performed on the patient, one or more of those conditions are no longer satisfied.

(d-3) After the 25-day period described by Subsection (e) begins, the period may not be suspended or stopped for any reason. This subsection does not limit or affect a court's ability to order an extension of the period in accordance with Subsection (g).

Subsection (d-2) does not require a medical procedure to be performed on the patient after the expiration of the 25-day period.

(e) If the patient's advance directive or the person responsible for the patient's health care decisions is requesting life-sustaining treatment that the attending physician has decided and the ethics or medical committee has affirmed is medically inappropriate treatment, the patient shall be given available life-sustaining treatment pending transfer under Subsection (d). This subsection does not authorize withholding or withdrawing pain management medication, medical interventions necessary to provide comfort, or any other health care provided to alleviate a patient's pain. The patient is responsible for any costs incurred in transferring the patient to another health care facility. The attending physician, any other physician responsible for the care of the patient, and the health care facility are not obligated to provide life-sustaining treatment after the 25th calendar day after a start notice is provided in accordance with Subsection (d-2)(2)(B) or (C) to the person responsible for the patient's health care decisions or a medical procedure for which a delay notice was provided in accordance with Subsection (d-2)(2)(A) is performed, whichever occurs first, unless ordered to extend the 25-day period under Subsection (g), except that artificially administered nutrition and hydration must be provided unless, based on reasonable medical judgment, providing artificially administered nutrition and hydration would:

(1) hasten the patient's death;

(2) be medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems not outweighed by the benefit of providing the treatment;

(3) result in substantial, irremediable, and objectively measurable physical pain not outweighed by the benefit of providing the treatment;

(4) be medically ineffective in prolonging life; or

(5) be contrary to the patient's or surrogate's clearly documented desire not to receive artificially administered nutrition or hydration.

(e-1) If during a previous admission to a facility a patient's attending physician and the review process under Subsection (b) have determined that life-sustaining treatment is inappropriate, and the patient is readmitted to the same facility within six months from the date of the decision reached during the review process conducted upon

the previous admission, Subsections (b) through (e) need not be followed if the patient's attending physician and a consulting physician who is a member of the ethics or medical committee of the facility document on the patient's readmission that the patient's condition either has not improved or has deteriorated since the review process was conducted.

(f) Life-sustaining treatment under this section may not be entered in the patient's medical record as medically unnecessary treatment until the time period provided under Subsection (e) has expired.

(g) At the request of the person responsible for the patient's health care decisions, the appropriate district or county court shall extend the period provided under Subsection (e) only if the court finds, by a preponderance of the evidence, that there is a reasonable expectation that a physician or health care facility that will honor the patient's directive will be found if the time extension is granted.

(h) This section may not be construed to impose an obligation on a facility or a home and community support services agency licensed under Chapter 142 or similar organization that is beyond the scope of the services or resources of the facility or agency. This section does not apply to hospice services provided by a home and community support services agency licensed under Chapter 142.

(i) In this section:

(1) "Delay notice" means a written notice that the first day of the 25-day period provided under Subsection (e), after which life-sustaining treatment may be withheld or withdrawn unless a court has granted an extension under Subsection (g), will be delayed until the calendar day after a medical procedure required by Subsection (d-2)(1) is performed unless, before the medical procedure is performed, the person receives written notice of an earlier first day because one or more conditions described by that subdivision are no longer satisfied.

(2) "Medical procedure" means only a tracheostomy or a percutaneous endoscopic gastrostomy.

(3) "Start notice" means a written notice that the 25-day period provided under Subsection (e), after which life-sustaining treatment may be withheld or withdrawn unless a court has granted an extension under Subsection (g), will begin on the first calendar day after the date the notice is provided.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1228, Sec. 3, 4, eff. June 20, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0503, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 435 (H.B. 3074), Sec. 5, eff. September 1, 2015.
Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 2, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 3, eff. September 1, 2023.

Sec. 166.0465. ETHICS OR MEDICAL COMMITTEE DECISION RELATED TO PATIENT DISABILITY. (a) In this section, "disability" has the meaning assigned by the Americans with Disabilities Act of 1990 in 42 U.S.C. Section 12102.
(b) During the review process under Section 166.046(b), the ethics or medical committee may not consider a patient's disability that existed before the patient's current admission unless the disability is relevant in determining whether the medical or surgical intervention is medically appropriate.

Added by Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 4, eff. September 1, 2023.

Sec. 166.047. HONORING DIRECTIVE DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit an offense under Section 22.08, Penal Code, by withholding or withdrawing life-sustaining treatment from a qualified patient in accordance with this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.017 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.048. CRIMINAL PENALTY; PROSECUTION. (a) A person commits an offense if the person intentionally conceals, cancels,

defaces, obliterates, or damages another person's directive without that person's consent. An offense under this subsection is a Class A misdemeanor.

(b) A person is subject to prosecution for criminal homicide under Chapter 19, Penal Code, if the person, with the intent to cause life-sustaining treatment to be withheld or withdrawn from another person contrary to the other person's desires, falsifies or forges a directive or intentionally conceals or withholds personal knowledge of a revocation and thereby directly causes life-sustaining treatment to be withheld or withdrawn from the other person with the result that the other person's death is hastened.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.018 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.049. PREGNANT PATIENTS. A person may not withdraw or withhold life-sustaining treatment under this subchapter from a pregnant patient.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.019 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.050. MERCY KILLING NOT CONDONED. This subchapter does not condone, authorize, or approve mercy killing or permit an affirmative or deliberate act or omission to end life except to permit the natural process of dying as provided by this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.020 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.051. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. This subchapter does not impair or supersede any legal right or responsibility a person may have to effect the withholding or withdrawal of life-sustaining treatment in a lawful manner, provided that if an attending physician or health care facility is unwilling

to honor a patient's advance directive or a treatment decision to provide life-sustaining treatment, life-sustaining treatment is required to be provided the patient, but only until a reasonable opportunity has been afforded for transfer of the patient to another physician or health care facility willing to comply with the advance directive or treatment decision.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.021 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.052. STATEMENTS EXPLAINING PATIENT'S RIGHT TO TRANSFER. (a) In cases in which the attending physician refuses to honor an advance directive or health care or treatment decision requesting the provision of life-sustaining treatment for a patient who is determined to be incompetent or is otherwise mentally or physically incapable of communication, the statement required by Section 166.046(b)(2)(A) shall be in substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician Recommends Against Certain Life-Sustaining Treatment That You Wish To Continue

You have been given this information because the patient has requested through an advance directive or you have requested on behalf of the patient that life-sustaining treatment* be provided to the patient, which the attending physician believes is not medically appropriate. This information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166, Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for life-sustaining treatment for a patient who is determined to be incompetent or is otherwise mentally or physically incapable of communication because of the physician's judgment that the treatment would be medically inappropriate, the case will be reviewed by an ethics or medical committee. Life-

sustaining treatment will be provided through the review.

You will receive notification of this review at least seven calendar days before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than seven calendar days, if possible.

You are entitled to receive a written explanation of the decision reached during the review process.

If after this review process both the attending physician and the ethics or medical committee conclude that life-sustaining treatment is medically inappropriate and yet you continue to request such treatment, then the following procedure will occur:

1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to provide the requested treatment.

2. You are being given a list of health care providers, licensed physicians, health care facilities, and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Department of State Health Services. You may wish to contact providers, facilities, or referral groups on the list or others of your choice to get help in arranging a transfer.

3. The patient will continue to be given life-sustaining treatment until the patient can be transferred to a willing provider for up to 25 calendar days from the time you were given a written notice of the first day of the 25-day period or a medical procedure is performed that delayed the 25-day period and for which you received notice, whichever occurs first. The patient will continue to be given after the 25-day period treatment to enhance pain management and reduce suffering, including artificially administered nutrition and hydration, unless, based on reasonable medical judgment, providing artificially administered nutrition and hydration would hasten the patient's death, be medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems not outweighed by the benefit of the provision of the treatment, result in substantial irremediable physical pain not outweighed by the benefit of the provision of the treatment, be medically ineffective in prolonging life, or be contrary to the patient's or surrogate's clearly documented desires.

4. If a transfer can be arranged, the patient will be responsible for the costs of the transfer.

5. If a provider cannot be found willing to give the requested treatment within 25 calendar days, life-sustaining treatment may be withdrawn unless a court of law has granted an extension.

6. You may ask the appropriate district or county court to extend the 25-day period if the court finds that there is a reasonable expectation that you may find a physician or health care facility willing to provide life-sustaining treatment if the extension is granted. Patient medical records will be provided to the patient or surrogate in accordance with Section 241.154, Texas Health and Safety Code.

*"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificially administered nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(b) In cases in which the attending physician refuses to comply with an advance directive or a health care or treatment decision requesting the withholding or withdrawal of life-sustaining treatment for a patient who is determined to be incompetent or is otherwise mentally or physically incapable of communication, the statement required by Section 166.046(b)(2)(A) shall be in substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician Recommends Life-Sustaining Treatment That You Wish To Stop

You have been given this information because the patient has requested through an advance directive or you have requested on behalf of the patient that life-sustaining treatment* be withdrawn or withheld from the patient, and the attending physician disagrees with and refuses to comply with that request. The information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166, Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for withdrawal or withholding of life-sustaining treatment for any reason, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least seven calendar days before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than seven calendar days, if possible.

You are entitled to receive a written explanation of the decision reached during the review process.

If you or the attending physician do not agree with the decision reached during the review process, and the attending physician still refuses to comply with your request to withhold or withdraw life-sustaining treatment, then the following procedure will occur:

1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to withdraw or withhold the life-sustaining treatment.

2. You are being given a list of health care providers, licensed physicians, health care facilities, and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Department of State Health Services. You may wish to contact providers, facilities, or referral groups on the list or others of your choice to get help in arranging a transfer.

*"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificially administered nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(c) An attending physician or health care facility may, if it chooses, include any additional information concerning the physician's or facility's policy, perspective, experience, or review procedure.

Added by Acts 2003, 78th Leg., ch. 1228, Sec. 5, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0504, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 435 (H.B. 3074), Sec. 6, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 5, eff. September 1, 2023.

Sec. 166.053. REGISTRY TO ASSIST TRANSFERS. (a) The department shall maintain a registry listing the identity of and contact information for health care providers and referral groups, situated inside and outside this state, that have voluntarily notified the department they may consider accepting or may assist in locating a provider willing to accept transfer of a patient under Section 166.045 or 166.046.

(b) The listing of a provider or referral group in the registry described in this section does not obligate the provider or group to accept transfer of or provide services to any particular patient.

(c) The department shall post the current registry list on its website in a form appropriate for easy comprehension by patients and persons responsible for the health care decisions of patients. The list shall separately indicate those providers and groups that have indicated their interest in assisting the transfer of:

(1) those patients on whose behalf life-sustaining treatment is being sought;

(2) those patients on whose behalf the withholding or withdrawal of life-sustaining treatment is being sought; and

(3) patients described in both Subdivisions (1) and (2).

(d) The registry list described in this section shall include the following disclaimer:

"This registry lists providers and groups that have indicated to the Department of State Health Services their interest in assisting the transfer of patients in the circumstances described, and is provided for information purposes only. Neither the Department of State Health Services nor the State of Texas endorses or assumes any responsibility for any representation, claim, or act of the listed providers or groups."

Added by Acts 2003, 78th Leg., ch. 1228, Sec. 5, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0505, eff. April 2, 2015.

Sec. 166.054. REPORTING REQUIREMENTS REGARDING ETHICS OR MEDICAL COMMITTEE PROCESSES. (a) Not later than the 180th day after the date written notice is provided under Section 166.046(b)(1), a health care facility shall prepare and submit to the commission a report that contains the following information:

(1) the number of days that elapsed from the patient's admission to the facility to the date notice was provided under Section 166.046(b)(1);

(2) whether the ethics or medical committee met to review the case under Section 166.046 and, if the committee did meet, the number of days that elapsed from the date notice was provided under Section 166.046(b)(1) to the date the meeting was held;

(3) whether the patient was:

(A) transferred to a physician within the same facility who was willing to comply with the patient's advance directive or a health care or treatment decision made by or on behalf of the patient;

(B) transferred to a different health care facility; or

(C) discharged from the facility to a private residence or other setting that is not a health care facility;

(4) whether the patient died while receiving life-sustaining treatment at the facility;

(5) whether life-sustaining treatment was withheld or withdrawn from the patient at the facility after expiration of the time period described by Section 166.046(e) and, if so, the disposition of the patient after the withholding or withdrawal of life-sustaining treatment at the facility, as selected from the following categories:

(A) the patient died at the facility;

(B) the patient is currently a patient at the facility;

(C) the patient was transferred to a different health care facility; or

(D) the patient was discharged from the facility to a private residence or other setting that is not a health care

facility;

(6) the age group of the patient selected from the following categories:

(A) 17 years of age or younger;

(B) 18 years of age or older and younger than 66 years of age; or

(C) 66 years of age or older;

(7) the health insurance coverage status of the patient selected from the following categories:

(A) private health insurance coverage;

(B) public health plan coverage; or

(C) uninsured;

(8) the patient's sex;

(9) the patient's race;

(10) whether the facility was notified of and able to reasonably verify any public disclosure of the contact information for the facility's personnel, physicians or health care professionals who provide care at the facility, or members of the ethics or medical committee in connection with the patient's stay at the facility; and

(11) whether the facility was notified of and able to reasonably verify any public disclosure by facility personnel of the contact information for the patient's immediate family members or the person responsible for the patient's health care decisions in connection with the patient's stay at the facility.

(b) The commission shall ensure information provided in each report submitted by a health care facility under Subsection (a) is kept confidential and not disclosed in any manner, except as provided by this section.

(c) Not later than April 1 of each year, the commission shall prepare and publish on the commission's Internet website a report that contains:

(1) aggregate information compiled from the reports submitted to the commission under Subsection (a) during the preceding year on:

(A) the total number of written notices provided under Section 166.046(b)(1);

(B) the average number of days described by Subsection (a)(1);

(C) the total number of meetings held by ethics or medical committees to review cases under Section 166.046;

(D) the average number of days described by Subsection (a)(2);

(E) the total number of patients described by Subsections (a)(3)(A), (B), and (C);

(F) the total number of patients described by Subsection (a)(4);

(G) the total number of patients for whom life-sustaining treatment was withheld or withdrawn after expiration of the time period described by Section 166.046(e);

(H) the total number of cases for which the facility was notified of and able to reasonably verify the public disclosure of the contact information for the facility's personnel, physicians or health care professionals who provide care at the facility, or members of the ethics or medical committee in connection with the patient's stay at the facility; and

(I) the total number of cases for which the facility was notified of and able to reasonably verify the public disclosure by facility personnel of contact information for the patient's immediate family members or person responsible for the patient's health care decisions in connection with the patient's stay at the facility; and

(2) if the total number of reports submitted under Subsection (a) for the preceding year is 10 or more, aggregate information compiled from those reports on the total number of patients categorized by:

(A) sex;

(B) race;

(C) age group, based on the categories described by Subsection (a)(6);

(D) health insurance coverage status, based on the categories described by Subsection (a)(7); and

(E) for patients for whom life-sustaining treatment was withheld or withdrawn at the facility after expiration of the period described by Section 166.046(e), the total number of patients described by each of the following:

(i) Subsection (a)(5)(A);

(ii) Subsection (a)(5)(B);

(iii) Subsection (a)(5)(C); and

(iv) Subsection (a)(5)(D).

(d) If the commission receives fewer than 10 reports under

Subsection (a) for inclusion in an annual report required under Subsection (c), the commission shall include in the next annual report prepared after the commission receives 10 or more reports the aggregate information for all years for which the information was not included in a preceding annual report. The commission shall include in the next annual report a statement that identifies each year during which an underlying report was submitted to the commission under Subsection (a).

(e) The annual report required by Subsection (c) or (d) may not include any information that could be used alone or in combination with other reasonably available information to identify any individual, entity, or facility.

(f) The executive commissioner shall adopt rules to:

(1) establish a standard form for the reporting requirements of this section; and

(2) protect and aggregate any information the commission receives under this section.

(g) Information collected as required by this section or submitted to the commission under this section:

(1) is not admissible in a civil or criminal proceeding in which a physician, health care professional acting under the direction of a physician, or health care facility is a defendant;

(2) may not be used in relation to any disciplinary action by a licensing or regulatory agency with oversight over a physician, health care professional acting under the direction of a physician, or health care facility; and

(3) is not public information or subject to disclosure under Chapter 552, Government Code, except as permitted by Section 552.008, Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 6, eff. September 1, 2023.

SUBCHAPTER C. OUT-OF-HOSPITAL DO-NOT-RESUSCITATE ORDERS

Sec. 166.081. DEFINITIONS. In this subchapter:

(1) Repealed by Acts 2003, 78th Leg., ch. 1228, Sec. 8.

(2) "DNR identification device" means an identification device specified by department rule under Section 166.101 that is worn for the purpose of identifying a person who has executed or

issued an out-of-hospital DNR order or on whose behalf an out-of-hospital DNR order has been executed or issued under this subchapter.

(3) "Emergency medical services" has the meaning assigned by Section 773.003.

(4) "Emergency medical services personnel" has the meaning assigned by Section 773.003.

(5) "Health care professionals" means physicians, physician assistants, nurses, and emergency medical services personnel and, unless the context requires otherwise, includes hospital emergency personnel.

(6) "Out-of-hospital DNR order":

(A) means a legally binding out-of-hospital do-not-resuscitate order, in the form specified by department rule under Section 166.083, prepared and signed by the attending physician of a person, that documents the instructions of a person or the person's legally authorized representative and directs health care professionals acting in an out-of-hospital setting not to initiate or continue the following life-sustaining treatment:

(i) cardiopulmonary resuscitation;

(ii) advanced airway management;

(iii) artificial ventilation;

(iv) defibrillation;

(v) transcutaneous cardiac pacing; and

(vi) other life-sustaining treatment specified by department rule under Section 166.101(a); and

(B) does not include authorization to withhold medical interventions or therapies considered necessary to provide comfort care or to alleviate pain or to provide water or nutrition.

(7) "Out-of-hospital setting" means a location in which health care professionals are called for assistance, including long-term care facilities, in-patient hospice facilities, private homes, hospital outpatient or emergency departments, physician's offices, and vehicles during transport.

(8) "Proxy" means a person designated and authorized by a directive executed or issued in accordance with Subchapter B to make a treatment decision for another person in the event the other person becomes incompetent or otherwise mentally or physically incapable of communication.

(9) "Qualified relatives" means those persons authorized to execute or issue an out-of-hospital DNR order on behalf of a person

who is incompetent or otherwise mentally or physically incapable of communication under Section 166.088.

(10) "Statewide out-of-hospital DNR protocol" means a set of statewide standardized procedures adopted by the executive commissioner under Section 166.101(a) for withholding cardiopulmonary resuscitation and certain other life-sustaining treatment by health care professionals acting in out-of-hospital settings.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.001 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1228, Sec. 8, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0506, eff. April 2, 2015.

Sec. 166.082. OUT-OF-HOSPITAL DNR ORDER; DIRECTIVE TO PHYSICIANS. (a) A competent person may at any time execute a written out-of-hospital DNR order directing health care professionals acting in an out-of-hospital setting to withhold cardiopulmonary resuscitation and certain other life-sustaining treatment designated by department rule.

(b) Except as provided by this subsection, the declarant must sign the out-of-hospital DNR order in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The witnesses must sign the order. The attending physician of the declarant must sign the order and shall make the fact of the existence of the order and the reasons for execution of the order a part of the declarant's medical record. The declarant, in lieu of signing in the presence of witnesses, may sign the out-of-hospital DNR order and have the signature acknowledged before a notary public.

(c) If the person is incompetent but previously executed or issued a directive to physicians in accordance with Subchapter B, the physician may rely on the directive as the person's instructions to issue an out-of-hospital DNR order and shall place a copy of the directive in the person's medical record. The physician shall sign the order in lieu of the person signing under Subsection (b) and may use a digital or electronic signature authorized under Section

166.011.

(d) If the person is incompetent but previously executed or issued a directive to physicians in accordance with Subchapter B designating a proxy, the proxy may make any decisions required of the designating person as to an out-of-hospital DNR order and shall sign the order in lieu of the person signing under Subsection (b).

(e) If the person is now incompetent but previously executed or issued a medical power of attorney designating an agent, the agent may make any decisions required of the designating person as to an out-of-hospital DNR order and shall sign the order in lieu of the person signing under Subsection (b).

(f) The executive commissioner, on the recommendation of the department, shall by rule adopt procedures for the disposition and maintenance of records of an original out-of-hospital DNR order and any copies of the order.

(g) An out-of-hospital DNR order is effective on its execution.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.002 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 5, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0507, eff. April 2, 2015.

Sec. 166.083. FORM OF OUT-OF-HOSPITAL DNR ORDER. (a) A written out-of-hospital DNR order shall be in the standard form specified by department rule as recommended by the department.

(b) The standard form of an out-of-hospital DNR order specified by department rule must, at a minimum, contain the following:

(1) a distinctive single-page format that readily identifies the document as an out-of-hospital DNR order;

(2) a title that readily identifies the document as an out-of-hospital DNR order;

(3) the printed or typed name of the person;

(4) a statement that the physician signing the document is the attending physician of the person and that the physician is directing health care professionals acting in out-of-hospital

settings, including a hospital emergency department, not to initiate or continue certain life-sustaining treatment on behalf of the person, and a listing of those procedures not to be initiated or continued;

(5) a statement that the person understands that the person may revoke the out-of-hospital DNR order at any time by destroying the order and removing the DNR identification device, if any, or by communicating to health care professionals at the scene the person's desire to revoke the out-of-hospital DNR order;

(6) places for the printed names and signatures of the witnesses or the notary public's acknowledgment and for the printed name and signature of the attending physician of the person and the medical license number of the attending physician;

(7) a separate section for execution of the document by the legal guardian of the person, the person's proxy, an agent of the person having a medical power of attorney, or the attending physician attesting to the issuance of an out-of-hospital DNR order by nonwritten means of communication or acting in accordance with a previously executed or previously issued directive to physicians under Section 166.082(c) that includes the following:

(A) a statement that the legal guardian, the proxy, the agent, the person by nonwritten means of communication, or the physician directs that each listed life-sustaining treatment should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the witnesses and, as applicable, the legal guardian, proxy, agent, or physician;

(8) a separate section for execution of the document by at least one qualified relative of the person when the person does not have a legal guardian, proxy, or agent having a medical power of attorney and is incompetent or otherwise mentally or physically incapable of communication, including:

(A) a statement that the relative of the person is qualified to make a treatment decision to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment under Section 166.088 and, based on the known desires of the person or a determination of the best interest of the person, directs that each listed life-sustaining treatment should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the

witnesses and qualified relative of the person;

(9) a place for entry of the date of execution of the document;

(10) a statement that the document is in effect on the date of its execution and remains in effect until the death of the person or until the document is revoked;

(11) a statement that the document must accompany the person during transport;

(12) a statement regarding the proper disposition of the document or copies of the document, as the executive commissioner determines appropriate; and

(13) a statement at the bottom of the document, with places for the signature of each person executing the document, that the document has been properly completed.

(c) The executive commissioner may, by rule and as recommended by the department, modify the standard form of the out-of-hospital DNR order described by Subsection (b) in order to accomplish the purposes of this subchapter.

(d) A photocopy or other complete facsimile of the original written out-of-hospital DNR order executed under this subchapter may be used for any purpose for which the original written order may be used under this subchapter.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.003 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 6, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0508, eff. April 2, 2015.

Sec. 166.084. ISSUANCE OF OUT-OF-HOSPITAL DNR ORDER BY NONWRITTEN COMMUNICATION. (a) A competent person who is an adult may issue an out-of-hospital DNR order by nonwritten communication.

(b) A declarant must issue the nonwritten out-of-hospital DNR order in the presence of the attending physician and two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2).

(c) The attending physician and witnesses shall sign the out-of-hospital DNR order in the place of the document provided by Section 166.083(b)(7) and the attending physician shall sign the document in the place required by Section 166.083(b)(13). The physician shall make the fact of the existence of the out-of-hospital DNR order a part of the declarant's medical record and the names of the witnesses shall be entered in the medical record.

(d) An out-of-hospital DNR order issued in the manner provided by this section is valid and shall be honored by responding health care professionals as if executed in the manner provided by Section 166.082.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.004 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.085. EXECUTION OF OUT-OF-HOSPITAL DNR ORDER ON BEHALF OF A MINOR. (a) The following persons may execute an out-of-hospital DNR order on behalf of a minor:

(1) the minor's parents;

(2) the minor's legal guardian; or

(3) the minor's managing conservator.

(b) A person listed under Subsection (a) may not execute an out-of-hospital DNR order unless the minor has been diagnosed by a physician as suffering from a terminal or irreversible condition.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.005 by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1228, Sec. 6, eff. June 20, 2003.

Sec. 166.086. DESIRE OF PERSON SUPERSEDES OUT-OF-HOSPITAL DNR ORDER. The desire of a competent person, including a competent minor, supersedes the effect of an out-of-hospital DNR order executed or issued by or on behalf of the person when the desire is communicated to responding health care professionals as provided by this subchapter.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995.

Renumbered from Sec. 674.006 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.087. PROCEDURE WHEN DECLARANT IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) This section applies when a person 18 years of age or older has executed or issued an out-of-hospital DNR order and subsequently becomes incompetent or otherwise mentally or physically incapable of communication.

(b) If the adult person has designated a person to make a treatment decision as authorized by Section 166.032(c), the attending physician and the designated person shall comply with the out-of-hospital DNR order.

(c) If the adult person has not designated a person to make a treatment decision as authorized by Section 166.032(c), the attending physician shall comply with the out-of-hospital DNR order unless the physician believes that the order does not reflect the person's present desire.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.007 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.088. PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED OUT-OF-HOSPITAL DNR ORDER AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) If an adult person has not executed or issued an out-of-hospital DNR order and is incompetent or otherwise mentally or physically incapable of communication, the attending physician and the person's legal guardian, proxy, or agent having a medical power of attorney may execute an out-of-hospital DNR order on behalf of the person.

(b) If the person does not have a legal guardian, proxy, or agent under a medical power of attorney, the attending physician and at least one qualified relative from a category listed by Section 166.039(b), subject to the priority established under that subsection, may execute an out-of-hospital DNR order in the same manner as a treatment decision made under Section 166.039(b).

(c) A decision to execute an out-of-hospital DNR order made under Subsection (a) or (b) must be based on knowledge of what the

person would desire, if known.

(d) An out-of-hospital DNR order executed under Subsection (b) must be made in the presence of at least two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2).

(e) The fact that an adult person has not executed or issued an out-of-hospital DNR order does not create a presumption that the person does not want a treatment decision made to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment designated by department rule.

(f) If there is not a qualified relative available to act for the person under Subsection (b), an out-of-hospital DNR order must be concurred in by another physician who is not involved in the treatment of the patient or who is a representative of the ethics or medical committee of the health care facility in which the person is a patient.

(g) A person listed in Section 166.039(b) who wishes to challenge a decision made under this section must apply for temporary guardianship under Chapter 1251, Estates Code. The court may waive applicable fees in that proceeding.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.008 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0509, eff. April 2, 2015.

Sec. 166.089. COMPLIANCE WITH OUT-OF-HOSPITAL DNR ORDER. (a) When responding to a call for assistance, health care professionals shall honor an out-of-hospital DNR order in accordance with the statewide out-of-hospital DNR protocol and, where applicable, locally adopted out-of-hospital DNR protocols not in conflict with the statewide protocol if:

(1) the responding health care professionals discover an executed or issued out-of-hospital DNR order form on their arrival at the scene; and

(2) the responding health care professionals comply with this section.

(b) If the person is wearing a DNR identification device, the responding health care professionals must comply with Section 166.090.

(c) The responding health care professionals must establish the identity of the person as the person who executed or issued the out-of-hospital DNR order or for whom the out-of-hospital DNR order was executed or issued.

(d) The responding health care professionals must determine that the out-of-hospital DNR order form appears to be valid in that it includes:

(1) written responses in the places designated on the form for the names, signatures, and other information required of persons executing or issuing, or witnessing or acknowledging as applicable, the execution or issuance of, the order;

(2) a date in the place designated on the form for the date the order was executed or issued; and

(3) the signature or digital or electronic signature of the declarant or persons executing or issuing the order and the attending physician in the appropriate places designated on the form for indicating that the order form has been properly completed.

(e) If the conditions prescribed by Subsections (a) through (d) are not determined to apply by the responding health care professionals at the scene, the out-of-hospital DNR order may not be honored and life-sustaining procedures otherwise required by law or local emergency medical services protocols shall be initiated or continued. Health care professionals acting in out-of-hospital settings are not required to accept or interpret an out-of-hospital DNR order that does not meet the requirements of this subchapter.

(f) The out-of-hospital DNR order form or a copy of the form, when available, must accompany the person during transport.

(g) A record shall be made and maintained of the circumstances of each emergency medical services response in which an out-of-hospital DNR order or DNR identification device is encountered, in accordance with the statewide out-of-hospital DNR protocol and any applicable local out-of-hospital DNR protocol not in conflict with the statewide protocol.

(h) An out-of-hospital DNR order executed or issued and documented or evidenced in the manner prescribed by this subchapter is valid and shall be honored by responding health care professionals unless the person or persons found at the scene:

(1) identify themselves as the declarant or as the attending physician, legal guardian, qualified relative, or agent of the person having a medical power of attorney who executed or issued the out-of-hospital DNR order on behalf of the person; and

(2) request that cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule be initiated or continued.

(i) If the policies of a health care facility preclude compliance with the out-of-hospital DNR order of a person or an out-of-hospital DNR order issued by an attending physician on behalf of a person who is admitted to or a resident of the facility, or if the facility is unwilling to accept DNR identification devices as evidence of the existence of an out-of-hospital DNR order, that facility shall take all reasonable steps to notify the person or, if the person is incompetent, the person's guardian or the person or persons having authority to make health care treatment decisions on behalf of the person, of the facility's policy and shall take all reasonable steps to effect the transfer of the person to the person's home or to a facility where the provisions of this subchapter can be carried out.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.009 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 7, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0510, eff. April 2, 2015.

Sec. 166.090. DNR IDENTIFICATION DEVICE. (a) A person who has a valid out-of-hospital DNR order under this subchapter may wear a DNR identification device around the neck or on the wrist as prescribed by department rule adopted under Section 166.101.

(b) The presence of a DNR identification device on the body of a person is conclusive evidence that the person has executed or issued a valid out-of-hospital DNR order or has a valid out-of-hospital DNR order executed or issued on the person's behalf. Responding health care professionals shall honor the DNR

identification device as if a valid out-of-hospital DNR order form executed or issued by the person were found in the possession of the person.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.010 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0511, eff. April 2, 2015.

Sec. 166.091. DURATION OF OUT-OF-HOSPITAL DNR ORDER. An out-of-hospital DNR order is effective until it is revoked as prescribed by Section 166.092.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.011 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.092. REVOCATION OF OUT-OF-HOSPITAL DNR ORDER. (a) A declarant may revoke an out-of-hospital DNR order at any time without regard to the declarant's mental state or competency. An order may be revoked by:

(1) the declarant or someone in the declarant's presence and at the declarant's direction destroying the order form and removing the DNR identification device, if any;

(2) a person who identifies himself or herself as the legal guardian, as a qualified relative, or as the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order or another person in the person's presence and at the person's direction destroying the order form and removing the DNR identification device, if any;

(3) the declarant communicating the declarant's intent to revoke the order; or

(4) a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order orally stating the person's intent to revoke the order.

(b) An oral revocation under Subsection (a)(3) or (a)(4) takes

effect only when the declarant or a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order communicates the intent to revoke the order to the responding health care professionals or the attending physician at the scene. The responding health care professionals shall record the time, date, and place of the revocation in accordance with the statewide out-of-hospital DNR protocol and rules adopted by the executive commissioner and any applicable local out-of-hospital DNR protocol. The attending physician or the physician's designee shall record in the person's medical record the time, date, and place of the revocation and, if different, the time, date, and place that the physician received notice of the revocation. The attending physician or the physician's designee shall also enter the word "VOID" on each page of the copy of the order in the person's medical record.

(c) Except as otherwise provided by this subchapter, a person is not civilly or criminally liable for failure to act on a revocation made under this section unless the person has actual knowledge of the revocation.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16 1995. Renumbered from Sec. 674.012 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0512, eff. April 2, 2015.

Sec. 166.093. REEXECUTION OF OUT-OF-HOSPITAL DNR ORDER. A declarant may at any time reexecute or reissue an out-of-hospital DNR order in accordance with the procedures prescribed by Section 166.082, including reexecution or reissuance after the declarant is diagnosed as having a terminal or irreversible condition.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.013 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.094. LIMITATION ON LIABILITY FOR WITHHOLDING

CARDIOPULMONARY RESUSCITATION AND CERTAIN OTHER LIFE-SUSTAINING PROCEDURES. (a) A health care professional or health care facility or entity that in good faith causes cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule to be withheld from a person in accordance with this subchapter is not civilly liable for that action.

(b) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule from a person in accordance with this subchapter is not civilly liable for that action.

(c) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule from a person in accordance with this subchapter is not criminally liable or guilty of unprofessional conduct as a result of that action.

(d) A health care professional or health care facility or entity that in good faith causes or participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule from a person in accordance with this subchapter and rules adopted under this subchapter is not in violation of any other licensing or regulatory laws or rules of this state and is not subject to any disciplinary action or sanction by any licensing or regulatory agency of this state as a result of that action.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.016 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0513, eff. April 2, 2015.

Sec. 166.095. LIMITATION ON LIABILITY FOR FAILURE TO EFFECTUATE OUT-OF-HOSPITAL DNR ORDER. (a) A health care professional or health care facility or entity that has no actual knowledge of an out-of-hospital DNR order is not civilly or criminally liable for failing to act in accordance with the order.

(b) A health care professional or health care facility or entity is subject to review and disciplinary action by the appropriate licensing board for failing to effectuate an out-of-hospital DNR order. This subsection does not limit remedies available under other laws of this state.

(c) If an attending physician refuses to execute or comply with an out-of-hospital DNR order, the physician shall inform the person, the legal guardian or qualified relatives of the person, or the agent of the person having a medical power of attorney and, if the person or another authorized to act on behalf of the person so directs, shall make a reasonable effort to transfer the person to another physician who is willing to execute or comply with an out-of-hospital DNR order.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.017 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.096. HONORING OUT-OF-HOSPITAL DNR ORDER DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit an offense under Section 22.08, Penal Code, by withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule from a person in accordance with this subchapter.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.018 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0514, eff. April 2, 2015.

Sec. 166.097. CRIMINAL PENALTY; PROSECUTION. (a) A person commits an offense if the person intentionally conceals, cancels, defaces, obliterates, or damages another person's out-of-hospital DNR order or DNR identification device without that person's consent or the consent of the person or persons authorized to execute or issue an out-of-hospital DNR order on behalf of the person under this subchapter. An offense under this subsection is a Class A

misdemeanor.

(b) A person is subject to prosecution for criminal homicide under Chapter 19, Penal Code, if the person, with the intent to cause cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule to be withheld from another person contrary to the other person's desires, falsifies or forges an out-of-hospital DNR order or intentionally conceals or withholds personal knowledge of a revocation and thereby directly causes cardiopulmonary resuscitation and certain other life-sustaining treatment designated by department rule to be withheld from the other person with the result that the other person's death is hastened.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.019 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0515, eff. April 2, 2015.

Sec. 166.098. PREGNANT PERSONS. A person may not withhold cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule under this subchapter from a person known by the responding health care professionals to be pregnant.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.020 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0516, eff. April 2, 2015.

Sec. 166.099. MERCY KILLING NOT CONDONED. This subchapter does not condone, authorize, or approve mercy killing or permit an affirmative or deliberate act or omission to end life except to permit the natural process of dying as provided by this subchapter.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.021 and amended by Acts 1999, 76th Leg., ch.

450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.100. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. This subchapter does not impair or supersede any legal right or responsibility a person may have under a constitution, other statute, regulation, or court decision to effect the withholding of cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.022 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0517, eff. April 2, 2015.

Sec. 166.101. DUTIES OF DEPARTMENT AND EXECUTIVE COMMISSIONER. (a) The executive commissioner shall, on the recommendation of the department, adopt all reasonable and necessary rules to carry out the purposes of this subchapter, including rules:

(1) adopting a statewide out-of-hospital DNR order protocol that sets out standard procedures for the withholding of cardiopulmonary resuscitation and certain other life-sustaining treatment by health care professionals acting in out-of-hospital settings;

(2) designating life-sustaining treatment that may be included in an out-of-hospital DNR order, including all procedures listed in Sections 166.081(6)(A)(i) through (v); and

(3) governing recordkeeping in circumstances in which an out-of-hospital DNR order or DNR identification device is encountered by responding health care professionals.

(b) The rules adopted under Subsection (a) are not effective until approved by the Texas Medical Board.

(c) Local emergency medical services authorities may adopt local out-of-hospital DNR order protocols if the local protocols do not conflict with the statewide out-of-hospital DNR order protocol adopted by the executive commissioner.

(d) The executive commissioner by rule shall specify a

distinctive standard design for a necklace and a bracelet DNR identification device that signifies, when worn by a person, that the possessor has executed or issued a valid out-of-hospital DNR order under this subchapter or is a person for whom a valid out-of-hospital DNR order has been executed or issued.

(e) The department shall report to the executive commissioner from time to time regarding issues identified in emergency medical services responses in which an out-of-hospital DNR order or DNR identification device is encountered. The report may contain recommendations to the executive commissioner for necessary modifications to the form of the standard out-of-hospital DNR order or the designated life-sustaining procedures listed in the standard out-of-hospital DNR order, the statewide out-of-hospital DNR order protocol, or the DNR identification devices.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.023 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0517, eff. April 2, 2015.

Sec. 166.102. PHYSICIAN'S DNR ORDER MAY BE HONORED BY HEALTH CARE PERSONNEL OTHER THAN EMERGENCY MEDICAL SERVICES PERSONNEL. (a) Except as provided by Subsection (b), a licensed nurse or person providing health care services in an out-of-hospital setting may honor a physician's do-not-resuscitate order.

(b) When responding to a call for assistance, emergency medical services personnel:

(1) shall honor only a properly executed or issued out-of-hospital DNR order or prescribed DNR identification device in accordance with this subchapter; and

(2) have no duty to review, examine, interpret, or honor a person's other written directive, including a written directive in the form prescribed by Section 166.033.

Added by Acts 2003, 78th Leg., ch. 1228, Sec. 7, eff. June 20, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 710 (H.B. 577), Sec. 1, eff. June 17, 2011.

SUBCHAPTER D. MEDICAL POWER OF ATTORNEY

Sec. 166.151. DEFINITIONS. In this subchapter:

(1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.

(2) "Agent" means an adult to whom authority to make health care decisions is delegated under a medical power of attorney.

(3) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice and includes a physician.

(4) "Principal" means an adult who has executed a medical power of attorney.

(5) "Residential care provider" means an individual or facility licensed, certified, or otherwise authorized to operate, for profit or otherwise, a residential care home.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.001 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.152. SCOPE AND DURATION OF AUTHORITY. (a) Subject to this subchapter or any express limitation on the authority of the agent contained in the medical power of attorney, the agent may make any health care decision on the principal's behalf that the principal could make if the principal were competent.

(b) An agent may exercise authority only if the principal's attending physician certifies in writing and files the certification in the principal's medical record that, based on the attending physician's reasonable medical judgment, the principal is incompetent.

(c) Notwithstanding any other provisions of this subchapter, treatment may not be given to or withheld from the principal if the principal objects regardless of whether, at the time of the objection:

(1) a medical power of attorney is in effect; or

(2) the principal is competent.

(d) The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment or of any proposal to withdraw or withhold treatment before implementing an agent's advance directive.

(e) After consultation with the attending physician and other health care providers, the agent shall make a health care decision:

(1) according to the agent's knowledge of the principal's wishes, including the principal's religious and moral beliefs; or

(2) if the agent does not know the principal's wishes, according to the agent's assessment of the principal's best interests.

(f) Notwithstanding any other provision of this subchapter, an agent may not consent to:

(1) voluntary inpatient mental health services;

(2) convulsive treatment;

(3) psychosurgery;

(4) abortion; or

(5) neglect of the principal through the omission of care primarily intended to provide for the comfort of the principal.

(g) The power of attorney is effective indefinitely on execution as provided by this subchapter and delivery of the document to the agent, unless it is revoked as provided by this subchapter or the principal becomes competent. If the medical power of attorney includes an expiration date and on that date the principal is incompetent, the power of attorney continues to be effective until the principal becomes competent unless it is revoked as provided by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.002 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.153. PERSONS WHO MAY NOT EXERCISE AUTHORITY OF AGENT. A person may not exercise the authority of an agent while the person serves as:

(1) the principal's health care provider;

(2) an employee of the principal's health care provider

unless the person is a relative of the principal;

(3) the principal's residential care provider; or

(4) an employee of the principal's residential care provider unless the person is a relative of the principal.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.003 by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.154. EXECUTION. (a) Except as provided by Subsection (b), the medical power of attorney must be signed by the principal in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The witnesses must sign the document.

(b) The principal, in lieu of signing in the presence of the witnesses, may sign the medical power of attorney and have the signature acknowledged before a notary public.

(c) If the principal is physically unable to sign, another person may sign the medical power of attorney with the principal's name in the principal's presence and at the principal's express direction. The person may use a digital or electronic signature authorized under Section 166.011.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.004 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 8, eff. September 1, 2009.

Sec. 166.155. REVOCATION; EFFECT OF TERMINATION OF MARRIAGE. (a) A medical power of attorney is revoked by:

(1) oral or written notification at any time by the principal to the agent or a licensed or certified health or residential care provider or by any other act evidencing a specific intent to revoke the power, without regard to whether the principal is competent or the principal's mental state; or

(2) execution by the principal of a subsequent medical

power of attorney.

(a-1) An agent's authority under a medical power of attorney is revoked if the agent's marriage to the principal is dissolved, annulled, or declared void unless the medical power of attorney provides otherwise.

(b) A principal's licensed or certified health or residential care provider who is informed of or provided with a revocation of a medical power of attorney shall immediately record the revocation in the principal's medical record and give notice of the revocation to the agent and any known health and residential care providers currently responsible for the principal's care.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.005 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 995 (H.B. 995), Sec. 1, eff. January 1, 2018.

Acts 2017, 85th Leg., R.S., Ch. 995 (H.B. 995), Sec. 2, eff. January 1, 2018.

Sec. 166.156. APPOINTMENT OF GUARDIAN. (a) On motion filed in connection with a petition for appointment of a guardian or, if a guardian has been appointed, on petition of the guardian, a probate court shall determine whether to suspend or revoke the authority of the agent.

(b) The court shall consider the preferences of the principal as expressed in the medical power of attorney.

(c) During the pendency of the court's determination under Subsection (a), the guardian has the sole authority to make any health care decisions unless the court orders otherwise. If a guardian has not been appointed, the agent has the authority to make any health care decisions unless the court orders otherwise.

(d) A person, including any attending physician or health or residential care provider, who does not have actual knowledge of the appointment of a guardian or an order of the court granting authority to someone other than the agent to make health care decisions is not subject to criminal or civil liability and has not engaged in

unprofessional conduct for implementing an agent's health care decision.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.006 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.157. DISCLOSURE OF MEDICAL INFORMATION. Subject to any limitations in the medical power of attorney, an agent may, for the purpose of making a health care decision:

(1) request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records;

(2) execute a release or other document required to obtain the information; and

(3) consent to the disclosure of the information.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.007 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.158. DUTY OF HEALTH OR RESIDENTIAL CARE PROVIDER. (a) A principal's health or residential care provider and an employee of the provider who knows of the existence of the principal's medical power of attorney shall follow a directive of the principal's agent to the extent it is consistent with the desires of the principal, this subchapter, and the medical power of attorney.

(b) The attending physician does not have a duty to verify that the agent's directive is consistent with the principal's wishes or religious or moral beliefs.

(c) A principal's health or residential care provider who finds it impossible to follow a directive by the agent because of a conflict with this subchapter or the medical power of attorney shall inform the agent as soon as is reasonably possible. The agent may select another attending physician. The procedures established under Sections 166.045 and 166.046 apply if the agent's directive concerns providing, withholding, or withdrawing life-sustaining treatment.

(d) This subchapter may not be construed to require a health or residential care provider who is not a physician to act in a manner contrary to a physician's order.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.008 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.159. DISCRIMINATION RELATING TO EXECUTION OF MEDICAL POWER OF ATTORNEY. A health or residential care provider, health care service plan, insurer issuing disability insurance, self-insured employee benefit plan, or nonprofit hospital service plan may not:

(1) charge a person a different rate solely because the person has executed a medical power of attorney;

(2) require a person to execute a medical power of attorney before:

(A) admitting the person to a hospital, nursing home, or residential care home;

(B) insuring the person; or

(C) allowing the person to receive health or residential care; or

(3) refuse health or residential care to a person solely because the person has executed a medical power of attorney.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.009 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.160. LIMITATION ON LIABILITY. (a) An agent is not subject to criminal or civil liability for a health care decision if the decision is made in good faith under the terms of the medical power of attorney and the provisions of this subchapter.

(b) An attending physician, health or residential care provider, or a person acting as an agent for or under the physician's or provider's control is not subject to criminal or civil liability and has not engaged in unprofessional conduct for an act or omission if the act or omission:

(1) is done in good faith under the terms of the medical power of attorney, the directives of the agent, and the provisions of this subchapter; and

(2) does not constitute a failure to exercise reasonable care in the provision of health care services.

(c) The standard of care that the attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control shall exercise under Subsection (b) is that degree of care that an attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control, as applicable, of ordinary prudence and skill would have exercised under the same or similar circumstances in the same or similar community.

(d) An attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control has not engaged in unprofessional conduct for:

(1) failure to act as required by the directive of an agent or a medical power of attorney if the physician, provider, or person was not provided with a copy of the medical power of attorney or had no knowledge of a directive; or

(2) acting as required by an agent's directive if the medical power of attorney has expired or been revoked but the physician, provider, or person does not have knowledge of the expiration or revocation.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.010 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.161. LIABILITY FOR HEALTH CARE COSTS. Liability for the cost of health care provided as a result of the agent's decision is the same as if the health care were provided as a result of the principal's decision.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.011 by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.164. FORM OF MEDICAL POWER OF ATTORNEY. The medical power of attorney must be in substantially the following form:

MEDICAL POWER OF ATTORNEY DESIGNATION OF HEALTH CARE AGENT.

I, _____ (insert your name) appoint:

Name:_____

Address:_____

Phone_____

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS:_____

_____

DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved, annulled, or declared void unless this document provides otherwise.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

A. First Alternate Agent

Name:_____

Address:_____

Phone _____

B. Second Alternate Agent

Name:_____

Address:_____

Phone _____

The original of this document is kept at:

_____

_____

_____

The following individuals or institutions have signed copies:

Name:_____
Address:_____
_____
Name:_____
Address:_____
_____

DURATION.

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: _____

PRIOR DESIGNATIONS REVOKED.

I revoke any prior medical power of attorney.

DISCLOSURE STATEMENT.

THIS MEDICAL POWER OF ATTORNEY IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are unable to make the decisions for yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority is effective when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you

would have if you were able to make health care decisions for yourself.

It is important that you discuss this document with your physician or other health care provider before you sign the document to ensure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing facility, or residential care facility, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not allow a person to serve as both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions that you intend to have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Once you have signed this document, you have the right to make health care decisions for yourself as long as you are able to make those decisions, and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise in this document, your appointment of a spouse is revoked if your marriage is dissolved, annulled, or declared void.

This document may not be changed or modified. If you want to make changes in this document, you must execute a new medical power of attorney.

You may wish to designate an alternate agent in the event that

your agent is unwilling, unable, or ineligible to act as your agent. If you designate an alternate agent, the alternate agent has the same authority as the agent to make health care decisions for you.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS:

(1) YOU SIGN IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC; OR

(2) YOU SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.

THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:

(1) the person you have designated as your agent;

(2) a person related to you by blood or marriage;

(3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;

(4) your attending physician;

(5) an employee of your attending physician;

(6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or

(7) a person who, at the time this medical power of attorney is executed, has a claim against any part of your estate after your death.

By signing below, I acknowledge that I have read and understand the information contained in the above disclosure statement.

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY. YOU MAY SIGN IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC OR YOU MAY SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.)

SIGNATURE ACKNOWLEDGED BEFORE NOTARY

I sign my name to this medical power of attorney on _____ day of _____ (month, year) at

_____

(City and State)

_____

(Signature)

_____

(Print Name)

State of Texas

County of _____

This instrument was acknowledged before me on _____ (date) by

_____ (name of person acknowledging).

_____
NOTARY PUBLIC, State of Texas
Notary's printed name:

_____
My commission expires:

_____

OR

SIGNATURE IN PRESENCE OF TWO COMPETENT ADULT WITNESSES

I sign my name to this medical power of attorney on _____ day of _____ (month, year) at

_____
(City and State)

_____
(Signature)

_____
(Print Name)

STATEMENT OF FIRST WITNESS.

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

Signature:_____

Print Name:_____ Date:_____

Address:_____

SIGNATURE OF SECOND WITNESS.

Signature:_____

Print Name:_____ Date:_____

Address:_____

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.016 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept.

1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 134 (S.B. 651), Sec. 1, eff. January 1, 2014.
Acts 2017, 85th Leg., R.S., Ch. 995 (H.B. 995), Sec. 3, eff. January 1, 2018.

Sec. 166.165. CIVIL ACTION. (a) A person who is a near relative of the principal or a responsible adult who is directly interested in the principal, including a guardian, social worker, physician, or clergyman, may bring an action to request that the medical power of attorney be revoked because the principal, at the time the medical power of attorney was signed:

(1) was not competent; or

(2) was under duress, fraud, or undue influence.

(a-1) In a county in which there is no statutory probate court, an action under this section shall be brought in the district court. In a county in which there is a statutory probate court, the statutory probate court and the district court have concurrent jurisdiction over an action brought under this section.

(b) The action may be brought in the county of the principal's residence or the residence of the person bringing the action.

(c) During the pendency of the action, the authority of the agent to make health care decisions continues in effect unless the court orders otherwise.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.017 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 134 (S.B. 651), Sec. 2, eff. September 1, 2013.

Sec. 166.166. OTHER RIGHTS OR RESPONSIBILITIES NOT AFFECTED. This subchapter does not limit or impair any legal right or responsibility that any person, including a physician or health or residential care provider, may have to make or implement health care

decisions on behalf of a person, provided that if an attending physician or health care facility is unwilling to honor a patient's advance directive or a treatment decision to provide life-sustaining treatment, life-sustaining treatment is required to be provided the patient, but only until a reasonable opportunity has been afforded for transfer of the patient to another physician or health care facility willing to comply with the advance directive or treatment decision.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.018 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

SUBCHAPTER E. HEALTH CARE FACILITY DO-NOT-RESUSCITATE ORDERS

Sec. 166.201. DEFINITION. In this subchapter, "DNR order" means an order instructing a health care professional not to attempt cardiopulmonary resuscitation on a patient whose circulatory or respiratory function ceases.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.

Sec. 166.202. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies to a DNR order issued in a health care facility or hospital.

(b) This subchapter does not apply to an out-of-hospital DNR order as defined by Section 166.081.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.

Sec. 166.203. GENERAL PROCEDURES AND REQUIREMENTS FOR DO-NOT-RESUSCITATE ORDERS. (a) A DNR order issued for a patient is valid only if the order is dated and:

(1) is issued by a physician providing direct care to the patient in compliance with:

(A) the written and dated directions of a patient who

was competent at the time the patient wrote the directions;

(B) the oral directions of a competent patient delivered to or observed by two competent adult witnesses, at least one of whom must be a person not listed under Section 166.003(2)(E) or (F);

(C) the directions in an advance directive enforceable under Section 166.005 or executed in accordance with Section 166.032, 166.034, 166.035, 166.082, 166.084, or 166.085;

(D) the directions of a patient's:

(i) legal guardian;

(ii) agent under a medical power of attorney acting in accordance with Subchapter D; or

(iii) proxy as designated and authorized by a directive executed in accordance with Subchapter B to make a treatment decision for the patient if the patient becomes incompetent or otherwise mentally or physically incapable of communication; or

(E) a treatment decision made in accordance with Section 166.039;

(2) is issued by the patient's attending physician and:

(A) the order is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions; and

(B) in the reasonable medical judgment of the patient's attending physician:

(i) the patient's death is imminent, within minutes to hours, regardless of the provision of cardiopulmonary resuscitation; and

(ii) the DNR order is medically appropriate; or

(3) is issued by the patient's attending physician:

(A) for a patient who is incompetent or otherwise mentally or physically incapable of communication; and

(B) in compliance with a decision:

(i) agreed on by the attending physician and the person responsible for the patient's health care decisions; and

(ii) concurred in by another physician who is not involved in the direct treatment of the patient or who is a representative of an ethics or medical committee of the health care facility in which the person is a patient.

(b) The DNR order takes effect at the time the order is issued, provided the order is placed in the patient's medical record as soon

as practicable and may be issued and entered in a format acceptable under the policies of the health care facility or hospital.

(c) Unless notice is provided in accordance with Section 166.204(a), before placing in a patient's medical record a DNR order issued under Subsection (a)(2), a physician, physician assistant, nurse, or other person acting on behalf of a health care facility or hospital shall:

(1) inform the patient of the order's issuance; or

(2) if the patient is incompetent, make a reasonably diligent effort to contact or cause to be contacted and inform of the order's issuance:

(A) the patient's known agent under a medical power of attorney or legal guardian; or

(B) for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Section 166.039(b)(1), (2), or (3).

(d) To the extent a DNR order described by Subsection (a)(1) conflicts with a treatment decision or advance directive validly executed or issued under this chapter, the treatment decision made in compliance with this subchapter, advance directive validly executed or issued as described by this subchapter, or DNR order dated and validly executed or issued in compliance with this subchapter later in time controls.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 7, eff. September 1, 2023.

Sec. 166.204. NOTICE REQUIREMENTS FOR DO-NOT-RESUSCITATE ORDERS. (a) If an individual arrives at a health care facility or hospital that is treating a patient for whom a DNR order is issued under Section 166.203(a)(2) and the individual notifies a physician, physician assistant, or nurse providing direct care to the patient of the individual's arrival, the physician, physician assistant, or nurse who has actual knowledge of the order shall, unless notice has been provided in accordance with Section 166.203(c), disclose the order to the individual, provided the individual is:

(1) the patient's known agent under a medical power of attorney or legal guardian; or

(2) for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Section 166.039(b)(1), (2), or (3).

(a-1) For a patient who was incompetent at the time notice otherwise would have been provided to the patient under Section 166.203(c)(1) and if a physician providing direct care to the patient later determines that, based on the physician's reasonable medical judgment, the patient has become competent, a physician, physician assistant, or nurse providing direct care to the patient shall disclose the order to the patient, provided that the physician, physician assistant, or nurse has actual knowledge:

(1) of the order; and

(2) that a physician providing direct care to the patient has determined that the patient has become competent.

(b) Failure to comply with Subsection (a) or (a-1) or Section 166.203(c) does not affect the validity of a DNR order issued under this subchapter.

(c) Any person, including a health care facility or hospital, is not civilly or criminally liable or subject to disciplinary action from the appropriate licensing authority for any act or omission related to providing notice under Subsection (a) or (a-1) of this section or Section 166.203(c) if the person:

(1) makes a good faith effort to comply with Subsection (a) or (a-1) or Section 166.203(c) and contemporaneously records in the patient's medical record the person's effort to comply with those provisions; or

(2) makes a good faith determination that the circumstances that would require the person to perform an act under Subsection (a) or (a-1) or Section 166.203(c) are not met.

(d) A physician, physician assistant, or nurse may satisfy the notice requirement under Subsection (a) by notifying the patient's known agent under a medical power of attorney or legal guardian or, for a patient who does not have a known agent or guardian, one person in accordance with the priority established under Section 166.039(b). The physician, physician assistant, or nurse is not required to notify additional persons beyond the first person notified.

(e) On admission to a health care facility or hospital, the facility or hospital shall provide to the patient or person

authorized to make treatment decisions on behalf of the patient notice of the policies of the facility or hospital regarding the rights of the patient and person authorized to make treatment decisions on behalf of the patient under this subchapter.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 8, eff. September 1, 2023.

Sec. 166.205. REVOCATION OF DO-NOT-RESUSCITATE ORDER; LIMITATION OF LIABILITY. (a) A physician providing direct care to a patient for whom a DNR order is issued shall revoke the patient's DNR order if:

(1) an advance directive that serves as the basis of the DNR order is properly revoked in accordance with this chapter;

(2) the patient expresses to any person providing direct care to the patient a revocation of consent to or intent to revoke a DNR order issued under Section 166.203(a); or

(3) the DNR order was issued under Section 166.203(a)(1)(D) or (E) or Section 166.203(a)(3), and the person responsible for the patient's health care decisions expresses to any person providing direct care to the patient a revocation of consent to or intent to revoke the DNR order.

(b) A person providing direct care to a patient under the supervision of a physician shall notify the physician of the request to revoke a DNR order or of the revocation of an advance directive under Subsection (a).

(c) A patient's attending physician may at any time revoke a DNR order issued under:

(1) Section 166.203(a)(1)(A), (B), or (C), provided that:

(A) the order is for a patient who is incompetent or otherwise mentally or physically incapable of communication; and

(B) the decision to revoke the order is:

(i) agreed on by the attending physician and the person responsible for the patient's health care decisions; and

(ii) concurred in by another physician who is not involved in the direct treatment of the patient or who is a

representative of an ethics or medical committee of the health care facility in which the person is a patient;

(2) Section 166.203(a)(1)(E), provided that the order's issuance was based on a treatment decision made in accordance with Section 166.039(e);

(3) Section 166.203(a)(2); or

(4) Section 166.203(a)(3).

(c-1) A patient's attending physician shall revoke a DNR order issued for the patient under Section 166.203(a)(2) if, in the attending physician's reasonable medical judgment, the condition described by Section 166.203(a)(2)(B)(i) is no longer satisfied.

(d) Except as otherwise provided by this subchapter, a person is not civilly or criminally liable for failure to act on a revocation described by or made under this section unless the person has actual knowledge of the revocation.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 9, eff. September 1, 2023.

Sec. 166.206. PROCEDURE FOR FAILURE TO EXECUTE DO-NOT-RESUSCITATE ORDER OR PATIENT INSTRUCTIONS. (a) If a physician, health care facility, or hospital does not wish to execute or comply with a DNR order or the patient's instructions concerning the provision of cardiopulmonary resuscitation, the physician, facility, or hospital shall inform the patient, the legal guardian or qualified relatives of the patient, or the agent of the patient under a medical power of attorney of the benefits and burdens of cardiopulmonary resuscitation.

(b) If, after receiving notice under Subsection (a), the patient or another person authorized to act on behalf of the patient and the physician, health care facility, or hospital remain in disagreement, the physician, facility, or hospital shall make a reasonable effort to transfer the patient to another physician, facility, or hospital willing to execute or comply with a DNR order or the patient's instructions concerning the provision of cardiopulmonary resuscitation.

(c) The procedures required by this section may not be construed to control or supersede Section 166.203(a).

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 10, eff. September 1, 2023.

Sec. 166.207. LIMITATION ON LIABILITY FOR ISSUING DNR ORDER OR WITHHOLDING CARDIOPULMONARY RESUSCITATION. A physician, health care professional, health care facility, hospital, or entity that in good faith issues a DNR order under this subchapter or that, in accordance with this subchapter, causes cardiopulmonary resuscitation to be withheld or withdrawn from a patient in accordance with a DNR order issued under this subchapter is not civilly or criminally liable or subject to review or disciplinary action by the appropriate licensing authority for that action.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.

Sec. 166.208. LIMITATION ON LIABILITY FOR FAILURE TO EFFECTUATE DNR ORDER. A physician, health care professional, health care facility, hospital, or entity that has no actual knowledge of a DNR order is not civilly or criminally liable or subject to review or disciplinary action by the appropriate licensing authority for failing to act in accordance with the order.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.

Sec. 166.209. ENFORCEMENT. (a) Subject to Sections 166.205(d), 166.207, and 166.208 and Subsection (c), a physician, physician assistant, nurse, or other person commits an offense if, with the specific intent to violate this subchapter, the person intentionally:

(1) conceals, cancels, effectuates, or falsifies another

person's DNR order in violation of this subchapter; or

(2) conceals or withholds personal knowledge of another person's revocation of a DNR order in violation of this subchapter.

(a-1) An offense under Subsection (a) is a Class A misdemeanor. This section does not preclude prosecution for any other applicable offense.

(b) Subject to Sections 166.205(d), 166.207, and 166.208, a physician, health care professional, health care facility, hospital, or entity is subject to review and disciplinary action by the appropriate licensing authority for intentionally:

(1) failing to effectuate a DNR order in violation of this subchapter; or

(2) issuing a DNR order in violation of this subchapter.

(c) Subsection (a) does not apply to a person whose act or omission was based on a reasonable belief that the act or omission was in compliance with the wishes of the patient or the person responsible for the patient's health care decisions.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 11, eff. September 1, 2023.

CHAPTER 167. FEMALE GENITAL MUTILATION

Sec. 167.001. FEMALE GENITAL MUTILATION PROHIBITED. (a) A person commits an offense if the person:

(1) knowingly circumcises, excises, or infibulates any part of the labia majora or labia minora or clitoris of another person who is younger than 18 years of age;

(2) is a parent or legal guardian of another person who is younger than 18 years of age and knowingly consents to or permits an act described by Subdivision (1) to be performed on that person; or

(3) knowingly transports or facilitates the transportation of another person who is younger than 18 years of age within this state or from this state for the purpose of having an act described by Subdivision (1) performed on that person.

(b) An offense under this section is a state jail felony.

(c) It is a defense to prosecution under Subsection (a) that:

(1) the person performing the act is a physician or other licensed health care professional and the act is within the scope of the person's license; and

(2) the act is performed for medical purposes.

(d) It is not a defense to prosecution under this section that:

(1) the person on whom the circumcision, excision, or infibulation was performed or was to be performed, or another person authorized to consent to medical treatment of that person, including that person's parent or legal guardian, consented to the circumcision, excision, or infibulation;

(2) the circumcision, excision, or infibulation is required by a custom or practice of a particular group; or

(3) the circumcision, excision, or infibulation was performed or was to be performed as part of or in connection with a religious or other ritual.

Added by Acts 1999, 76th Leg., ch. 642, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 166.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(75), eff. Sept. 1, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 537 (S.B. 323), Sec. 1, eff. September 1, 2017.

CHAPTER 167A. PELVIC EXAMINATIONS

Sec. 167A.001. DEFINITIONS. In this chapter:

(1) "Health care practitioner" means a physician, physician assistant, or advanced practice registered nurse licensed to practice in this state.

(2) "Patient's legally authorized representative" means:

(A) a parent, managing conservator, or guardian of a patient, if the patient is a minor;

(B) a guardian of the patient, if the patient has been adjudicated incompetent to manage the patient's personal affairs; or

(C) an agent of the patient authorized under a durable power of attorney for health care.

(3) "Pelvic examination" means a physical examination by a health care practitioner of a patient's external and internal reproductive organs, genitalia, or rectum.

Added by Acts 2021, 87th Leg., R.S., Ch. 251 (H.B. 1434), Sec. 1, eff.

September 1, 2021.

Sec. 167A.002. LIMITATIONS ON CERTAIN PELVIC EXAMINATIONS. (a) A health care practitioner may not perform or delegate to another individual, including a student training to become a health care practitioner, the performance of a pelvic examination on an anesthetized or unconscious patient unless:

(1) the pelvic examination is within the standard scope of a procedure or diagnostic examination scheduled to be performed on the patient;

(2) the patient or the patient's legally authorized representative gives informed consent for the pelvic examination as provided by Subsection (b);

(3) the pelvic examination is necessary for diagnosis or treatment of the patient's medical condition; or

(4) the pelvic examination is for the purpose of collecting evidence.

(b) To obtain informed consent to perform a pelvic examination on an unconscious or anesthetized patient, a health care practitioner must:

(1) provide the patient or the patient's legally authorized representative with a written or electronic informed consent form that:

(A) may be included as a distinct or separate section of a general informed consent form;

(B) contains the following heading at the top of the form in at least 18-point boldface type: "CONSENT FOR EXAMINATION OF PELVIC REGION";

(C) specifies the nature and purpose of the pelvic examination;

(D) informs the patient or the patient's legally authorized representative that a medical student or resident may be present if the patient or the patient's legally authorized representative authorizes the student or resident to:

(i) perform the pelvic examination; or

(ii) observe or otherwise be present at the pelvic examination, either in person or through electronic means;

(E) allows the patient or the patient's legally authorized representative the opportunity to consent to or refuse to

consent to the pelvic examination; and

(F) allows a patient or a patient's legally authorized representative that consents to a pelvic examination under Paragraph (E) the opportunity to authorize or refuse to authorize:

(i) a medical student or resident to perform the pelvic examination; or

(ii) a medical student or resident to observe or otherwise be present at the pelvic examination, either in person or through electronic means;

(2) obtain the signature of the patient or the patient's legally authorized representative on the informed consent form; and

(3) sign the informed consent form.

Added by Acts 2021, 87th Leg., R.S., Ch. 251 (H.B. 1434), Sec. 1, eff. September 1, 2021.

Sec. 167A.003. DISCIPLINARY ACTION. The appropriate licensing authority may take disciplinary action against a health care practitioner who violates Section 167A.002, including imposing an administrative penalty, as if the practitioner violated an applicable licensing law.

Added by Acts 2021, 87th Leg., R.S., Ch. 251 (H.B. 1434), Sec. 1, eff. September 1, 2021.

CHAPTER 168. CARE OF STUDENTS WITH DIABETES

Sec. 168.001. DEFINITIONS. In this chapter:

(1) "Diabetes management and treatment plan" means the document required by Section 168.002.

(2) "Individualized health plan" means the document required by Section 168.003.

(3) "Principal" includes the principal's designee.

(4) "School" means a public elementary or secondary school. The term does not include an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code.

(5) "School employee" means a person employed by:

(A) a school;

(B) a local health department that assists a school under this chapter; or

(C) another entity with which a school has contracted to perform its duties under this chapter.

(6) "Unlicensed diabetes care assistant" means a school employee who has successfully completed the training required by Section 168.005.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.002. DIABETES MANAGEMENT AND TREATMENT PLAN. (a) A diabetes management and treatment plan must be developed and implemented for each student with diabetes who will seek care for the student's diabetes while at school or while participating in a school activity. The plan shall be developed by:

(1) the student's parent or guardian; and

(2) the physician responsible for the student's diabetes treatment.

(b) A diabetes management and treatment plan must:

(1) identify the health care services the student may receive at school;

(2) evaluate the student's ability to manage and level of understanding of the student's diabetes; and

(3) be signed by the student's parent or guardian and the physician responsible for the student's diabetes treatment.

(c) The parent or guardian of a student with diabetes who seeks care for the student's diabetes while the student is at school shall submit to the school a copy of the student's diabetes management and treatment plan. The plan must be submitted to and reviewed by the school:

(1) before or at the beginning of the school year;

(2) on enrollment of the student, if the student enrolls in the school after the beginning of the school year; or

(3) as soon as practicable following a diagnosis of diabetes for the student.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.003. INDIVIDUALIZED HEALTH PLAN. (a) An

individualized health plan is a coordinated plan of care designed to meet the unique health care needs of a student with diabetes in the school setting.

(b) An individualized health plan must be developed for each student with diabetes who will seek care for diabetes while at school or while participating in a school activity. The school principal and the school nurse, if a school nurse is assigned to the school, shall develop a student's individualized health plan in collaboration with the student's parent or guardian and, to the extent practicable, the physician responsible for the student's diabetes treatment and one or more of the student's teachers.

(c) A student's individualized health plan must incorporate components of the student's diabetes management and treatment plan, including the information required under Section 168.002(b). A school shall develop a student's individualized health plan on receiving the student's diabetes management and treatment plan.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.004. UNLICENSED DIABETES CARE ASSISTANT. (a) At each school in which a student with diabetes is enrolled, the school principal shall:

(1) seek school employees who are not health care professionals to serve as unlicensed diabetes care assistants and care for students with diabetes; and

(2) make efforts to ensure that the school has:

(A) at least one unlicensed diabetes care assistant if a full-time nurse is assigned to the school; and

(B) at least three unlicensed diabetes care assistants if a full-time nurse is not assigned to the school.

(b) An unlicensed diabetes care assistant shall serve under the supervision of the principal.

(c) A school employee may not be subject to any penalty or disciplinary action for refusing to serve as an unlicensed diabetes care assistant.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.005. TRAINING FOR UNLICENSED DIABETES CARE ASSISTANT. (a) The Texas Diabetes Council shall develop guidelines, with the assistance of the following entities, for the training of unlicensed diabetes care assistants:

(1) the department's School Health Program;

(2) the American Diabetes Association;

(3) the Juvenile Diabetes Research Foundation International;

(4) the American Association of Diabetes Educators;

(5) the Texas Nurses Association;

(6) the Texas School Nurse Organization; and

(7) the Texas Education Agency.

(b) If a school nurse is assigned to a campus, the school nurse shall coordinate the training of school employees acting as unlicensed diabetes care assistants.

(c) Training under this section must be provided by a health care professional with expertise in the care of persons with diabetes or by the school nurse. The training must be provided before the beginning of the school year or as soon as practicable following:

(1) the enrollment of a student with diabetes at a campus that previously had no students with diabetes; or

(2) a diagnosis of diabetes for a student at a campus that previously had no students with diabetes.

(d) The training must include instruction in:

(1) recognizing the symptoms of hypoglycemia and hyperglycemia;

(2) understanding the proper action to take if the blood glucose levels of a student with diabetes are outside the target ranges indicated by the student's diabetes management and treatment plan;

(3) understanding the details of a student's individualized health plan;

(4) performing finger-sticks to check blood glucose levels, checking urine ketone levels, and recording the results of those checks;

(5) properly administering glucagon and insulin and recording the results of the administration;

(6) recognizing complications that require seeking emergency assistance; and

(7) understanding the recommended schedules and food intake

for meals and snacks for a student with diabetes, the effect of physical activity on blood glucose levels, and the proper actions to be taken if a student's schedule is disrupted.

(e) The school nurse or principal shall maintain a copy of the training guidelines and any records associated with the training.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.006. REQUIRED INFORMATION FOR CERTAIN EMPLOYEES. A school district shall provide to each district employee who is responsible for providing transportation for a student with diabetes or supervising a student with diabetes during an off-campus activity a one-page information sheet that:

(1) identifies the student who has diabetes;

(2) identifies potential emergencies that may occur as a result of the student's diabetes and the appropriate responses to such emergencies; and

(3) provides the telephone number of a contact person in case of an emergency involving the student with diabetes.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.007. REQUIRED CARE OF STUDENTS WITH DIABETES. (a) If a school nurse is assigned to a campus and the nurse is available, the nurse shall perform the tasks necessary to assist a student with diabetes in accordance with the student's individualized health plan. If a school nurse is not assigned to the campus or a school nurse is not available, an unlicensed diabetes care assistant shall perform the tasks necessary to assist the student with diabetes in accordance with the student's individualized health plan and in compliance with any guidelines provided during training under Section 168.005. An unlicensed diabetes care assistant may perform the tasks provided by this subsection only if the parent or guardian of the student signs an agreement that:

(1) authorizes an unlicensed diabetes care assistant to assist the student; and

(2) states that the parent or guardian understands that an

unlicensed diabetes care assistant is not liable for civil damages as provided by Section 168.009.

(b) If a school nurse is not assigned to a campus:

(1) an unlicensed diabetes care assistant must have access to an individual with expertise in the care of persons with diabetes, such as a physician, a registered nurse, a certified diabetes educator, or a licensed dietitian; or

(2) the principal must have access to the physician responsible for the student's diabetes treatment.

(c) Each school shall adopt a procedure to ensure that a school nurse or at least one unlicensed diabetes care assistant is present and available to provide the required care to a student with diabetes during the regular school day.

(d) A school district may not restrict the assignment of a student with diabetes to a particular campus on the basis that the campus does not have the required unlicensed diabetes care assistants.

(e) An unlicensed diabetes care assistant who assists a student as provided by Subsection (a) in compliance with a student's individualized health plan:

(1) is not considered to be engaging in the practice of professional or vocational nursing under Chapter 301, Occupations Code, or other state law; and

(2) is exempt from any applicable state law or rule that restricts the activities that may be performed by a person who is not a health care professional.

(f) An unlicensed diabetes care assistant may exercise reasonable judgment in deciding whether to contact a health care provider in the event of a medical emergency involving a student with diabetes.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.008. INDEPENDENT MONITORING AND TREATMENT. In accordance with the student's individualized health plan, a school shall permit the student to attend to the management and care of the student's diabetes, which may include:

(1) performing blood glucose level checks;

(2) administering insulin through the insulin delivery system the student uses;

(3) treating hypoglycemia and hyperglycemia;

(4) possessing on the student's person at any time any supplies or equipment necessary to monitor and care for the student's diabetes; and

(5) otherwise attending to the management and care of the student's diabetes in the classroom, in any area of the school or school grounds, or at any school-related activity.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.009. IMMUNITY FROM DISCIPLINARY ACTION OR LIABILITY. (a) A school employee may not be subject to any disciplinary proceeding, as defined by Section 22.0512(b), Education Code, resulting from an action taken in compliance with this subchapter. The requirements of this subchapter are considered to involve the employee's judgment and discretion and are not considered ministerial acts for purposes of immunity from liability under Section 22.0511, Education Code. Nothing in the subchapter shall be considered to limit the immunity from liability afforded under Section 22.0511, Education Code.

(b) A school nurse is not responsible for and may not be subject to disciplinary action under Chapter 301, Occupations Code, for actions performed by an unlicensed diabetes care assistant.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.011. GRANT-WRITING COORDINATION PROGRAM. (a) The department shall employ one person as a grant writer to assist and coordinate with school districts located in the Texas-Mexico border region in obtaining grants and other funds for school-based health centers.

(b) A grant writer employed under this section may secure a grant or other funds on behalf of the state for a school-based health center.

(c) Funds obtained by the use of a grant writer employed under

this section may be used only to:

(1) acquire, construct, or improve facilities for a school-based health center;

(2) purchase or lease equipment or materials for a school-based health center; or

(3) pay the salary or employment benefits of a person who is employed to work exclusively in a school-based health center.

Added by Acts 2007, 80th Leg., R.S., Ch. 1111 (H.B. 3618), Sec. 1, eff. June 15, 2007.

CHAPTER 169. FIRST OFFENDER SOLICITATION OF PROSTITUTION PREVENTION PROGRAM

Sec. 169.001. FIRST OFFENDER SOLICITATION OF PROSTITUTION PREVENTION PROGRAM; PROCEDURES FOR CERTAIN DEFENDANTS. (a) In this chapter, "first offender solicitation of prostitution prevention program" means a program that has the following essential characteristics:

(1) the integration of services in the processing of cases in the judicial system;

(2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety, to reduce the demand for the commercial sex trade and trafficking of persons by educating offenders, and to protect the due process rights of program participants;

(3) early identification and prompt placement of eligible participants in the program;

(4) access to information, counseling, and services relating to sex addiction, sexually transmitted diseases, mental health, and substance abuse;

(5) a coordinated strategy to govern program responses to participant compliance;

(6) monitoring and evaluation of program goals and effectiveness;

(7) continuing interdisciplinary education to promote effective program planning, implementation, and operations; and

(8) development of partnerships with public agencies and community organizations.

(b) If a defendant successfully completes a first offender

solicitation of prostitution prevention program, regardless of whether the defendant was convicted of the offense for which the defendant entered the program or whether the court deferred further proceedings without entering an adjudication of guilt, after notice to the state and a hearing on whether the defendant is otherwise entitled to the petition, including whether the required time period has elapsed, and whether issuance of the order is in the best interest of justice, the court shall enter an order of nondisclosure of criminal history record information under Subchapter E-1, Chapter 411, Government Code, as if the defendant had received a discharge and dismissal under Article 42A.111, Code of Criminal Procedure, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the program if the defendant:

(1) has not been previously convicted of a felony offense; and

(2) is not convicted of any other felony offense before the second anniversary of the defendant's successful completion of the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1289 (H.B. 1994), Sec. 1, eff. June 17, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.65, eff. January 1, 2017.
Acts 2015, 84th Leg., R.S., Ch. 1279 (S.B. 1902), Sec. 29, eff. September 1, 2015.
Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 46, eff. September 1, 2021.

Sec. 169.002. AUTHORITY TO ESTABLISH PROGRAM; ELIGIBILITY. (a) The commissioners court of a county or governing body of a municipality may establish a first offender solicitation of prostitution prevention program for defendants charged with an offense under Section 43.021, Penal Code.

(b) A defendant is eligible to participate in a first offender solicitation of prostitution prevention program established under this chapter only if:

(1) the attorney representing the state consents to the

defendant's participation in the program; and

(2) the court in which the criminal case is pending finds that the defendant has not been previously convicted of:

(A) an offense under Section 20A.02, 43.02(b), as that law existed before September 1, 2021, 43.021, 43.03, 43.031, 43.032, 43.04, 43.041, or 43.05, Penal Code;

(B) an offense listed in Article 42A.054(a), Code of Criminal Procedure; or

(C) an offense punishable as a felony under Chapter 481.

(c) For purposes of Subsection (b), a defendant has been previously convicted of an offense listed in that subsection if:

(1) the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; or

(2) the defendant was convicted under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed in Subsection (b).

(d) A defendant is not eligible to participate in the first offender solicitation of prostitution prevention program if the defendant offered or agreed to hire a person to engage in sexual conduct and the person was younger than 18 years of age at the time of the offense.

(e) The court in which the criminal case is pending shall allow an eligible defendant to choose whether to participate in the first offender solicitation of prostitution prevention program or otherwise proceed through the criminal justice system.

(f) If a defendant who chooses to participate in the first offender solicitation of prostitution prevention program fails to attend any portion of the program, the court in which the defendant's criminal case is pending shall issue a warrant for the defendant's arrest and proceed on the criminal case as if the defendant had chosen not to participate in the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1289 (H.B. 1994), Sec. 1, eff. June 17, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.66, eff.

January 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 1273 (S.B. 825), Sec. 5, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 3.10, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 47, eff. September 1, 2021.

Acts 2025, 89th Leg., R.S., Ch. 250 (H.B. 1778), Sec. 2.08, eff. September 1, 2025.

Sec. 169.003. PROGRAM POWERS AND DUTIES. (a) A first offender solicitation of prostitution prevention program established under this chapter must:

(1) ensure that a person eligible for the program is provided legal counsel before volunteering to proceed through the program and while participating in the program;

(2) allow any participant to withdraw from the program at any time before a trial on the merits has been initiated;

(3) provide each participant with information, counseling, and services relating to sex addiction, sexually transmitted diseases, mental health, and substance abuse; and

(4) provide each participant with classroom instruction related to the prevention of the solicitation of prostitution.

(b) To provide each program participant with information, counseling, and services described by Subsection (a)(3), a program established under this chapter may employ a person or solicit a volunteer who is:

(1) a health care professional;

(2) a psychologist;

(3) a licensed social worker or counselor;

(4) a former prostitute;

(5) a family member of a person arrested for soliciting prostitution;

(6) a member of a neighborhood association or community that is adversely affected by the commercial sex trade or trafficking of persons; or

(7) an employee of a nongovernmental organization specializing in advocacy or laws related to sex trafficking or human trafficking or in providing services to victims of those offenses.

(c) A program established under this chapter shall establish and publish local procedures to promote maximum participation of eligible defendants in programs established in the county or municipality in which the defendants reside.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1289 (H.B. 1994), Sec. 1, eff. June 17, 2011.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 48, eff. September 1, 2021.

Sec. 169.004. OVERSIGHT. (a) The lieutenant governor and the speaker of the house of representatives may assign to appropriate legislative committees duties relating to the oversight of first offender solicitation of prostitution prevention programs established under this chapter.

(b) A legislative committee or the governor may request the state auditor to perform a management, operations, or financial or accounting audit of a first offender solicitation of prostitution prevention program established under this chapter.

(c) A first offender solicitation of prostitution prevention program established under this chapter shall:

(1) notify the criminal justice division of the governor's office before or on implementation of the program; and

(2) provide information regarding the performance of the program to the division on request.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1289 (H.B. 1994), Sec. 1, eff. June 17, 2011.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 49, eff. September 1, 2021.

Sec. 169.005. REIMBURSEMENT FEES. (a) A first offender solicitation of prostitution prevention program established under this chapter may collect from a participant in the program a nonrefundable reimbursement fee for the program in a reasonable amount not to exceed $1,000, from which the following must be paid:

(1) a counseling and services reimbursement fee in an

amount necessary to cover the costs of the counseling and services provided by the program; and

(2) a law enforcement training reimbursement fee, in an amount equal to five percent of the total amount paid under Subdivision (1), to be deposited to the credit of the treasury of the county or municipality that established the program to cover costs associated with the provision of training to law enforcement personnel on domestic violence, prostitution, and the trafficking of persons.

(b) Reimbursement fees collected under this section may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director administering the first offender solicitation of prostitution prevention program. The fees must be based on the participant's ability to pay.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1289 (H.B. 1994), Sec. 1, eff. June 17, 2011.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 2.51, eff. January 1, 2020.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 49, eff. September 1, 2021.

Sec. 169.006. SUSPENSION OR DISMISSAL OF COMMUNITY SERVICE REQUIREMENT. (a) To encourage participation in a first offender solicitation of prostitution prevention program established under this chapter, the judge or magistrate administering the program may suspend any requirement that, as a condition of community supervision, a participant in the program work a specified number of hours at a community service project.

(b) On a participant's successful completion of a first offender solicitation of prostitution prevention program, a judge or magistrate may excuse the participant from any condition of community supervision previously suspended under Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1289 (H.B. 1994), Sec. 1, eff. June 17, 2011.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 49, eff.

September 1, 2021.

CHAPTER 170. PROHIBITED ACTS REGARDING ABORTION

Sec. 170.001. DEFINITIONS. In this chapter:

(1) "Abortion" has the meaning assigned by Section 245.002.

(2) "Physician" means an individual licensed to practice medicine in this state.

(3) "Viable" means the stage of fetal development when, in the medical judgment of the attending physician based on the particular facts of the case, an unborn child possesses the capacity to live outside its mother's womb after its premature birth from any cause. The term does not include a fetus whose biparietal diameter is less than 60 millimeters.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 5, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.001, eff. Sept. 1, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 3, eff. September 1, 2017.

Sec. 170.002. PROHIBITED ACTS; EXEMPTION. (a) Except as provided by Subsection (b), a person may not intentionally or knowingly perform an abortion on a woman who is pregnant with a viable unborn child during the third trimester of the pregnancy.

(b) Subsection (a) does not prohibit a person from performing an abortion if at the time of the abortion the person is a physician and concludes in good faith according to the physician's best medical judgment that:

(1) the fetus is not a viable fetus and the pregnancy is not in the third trimester;

(2) the abortion is necessary to prevent the death or a substantial risk of serious impairment to the physical or mental health of the woman; or

(3) the fetus has a severe and irreversible abnormality, identified by reliable diagnostic procedures.

(c) A physician who performs an abortion that, according to the physician's best medical judgment at the time of the abortion, is to

abort a viable unborn child during the third trimester of the pregnancy shall certify in writing to the commission, on a form prescribed by the commission, the medical indications supporting the physician's judgment that the abortion was authorized by Subsection (b)(2) or (3). If the physician certifies the abortion was authorized by Subsection (b)(3), the physician shall certify in writing on the form the fetal abnormality identified by the physician. The certification must be made not later than the 30th day after the date the abortion was performed.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 5, eff. Sept. 1, 1999. Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 9 (H.B. 215), Sec. 1, eff. November 14, 2017.

CHAPTER 170A. PERFORMANCE OF ABORTION

Sec. 170A.001. DEFINITIONS. In this chapter:

(1) "Abortion" has the meaning assigned by Section 245.002.

(2) "Fertilization" means the point in time when a male human sperm penetrates the zona pellucida of a female human ovum.

(3) "Pregnant" means the female human reproductive condition of having a living unborn child within the female's body during the entire embryonic and fetal stages of the unborn child's development from fertilization until birth.

(4) "Reasonable medical judgment" means a medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical conditions involved.

(5) "Unborn child" means an individual living member of the homo sapiens species from fertilization until birth, including the entire embryonic and fetal stages of development.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.002. PROHIBITED ABORTION; EXCEPTIONS. (a) A person may not knowingly perform, induce, or attempt an abortion.

(b) It is an exception to the application of Subsection (a) that:

(1) the person performing, inducing, or attempting the

abortion is a licensed physician; and

(2) in the exercise of reasonable medical judgment, the pregnant female on whom the abortion is performed, induced, or attempted has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced.

(c) A physician may not take an action authorized under Subsection (b) if, at the time the abortion was performed, induced, or attempted, the person knew the risk of death or a substantial impairment of a major bodily function described by Subsection (b)(2) arose from a claim or diagnosis that the female would engage in conduct that might result in the female's death or in substantial impairment of a major bodily function.

(c-1) For purposes of Subsection (b)(2), if a pregnant woman has a life-threatening physical condition described by Subsection (b)(2), a physician may address a risk described by Subsection (b)(2) before the pregnant female suffers any effects of the risk. Subsection (b)(2) does not require that, before the physician may act:

(1) a risk described by Subsection (b)(2) be imminent;

(2) the pregnant female first suffer physical impairment; or

(3) the physical condition has caused damage to the pregnant female.

(c-2) For the purposes of Subsection (b)(2), "life-threatening" means capable of causing death or potentially fatal. A life-threatening physical condition is not necessarily one actively injuring the patient.

(d) Repealed by Acts 2025, 89th Leg., R.S., Ch. 758 (S.B. 31), Sec. 17(2), eff. June 20, 2025.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Amended by:

Acts 2025, 89th Leg., R.S., Ch. 758 (S.B. 31), Sec. 3, eff. June 20, 2025.

Acts 2025, 89th Leg., R.S., Ch. 758 (S.B. 31), Sec. 17(2), eff. June 20, 2025.

Sec. 170A.0021. TREATMENT AFFECTING UNBORN CHILD; EXCEPTION. (a) Notwithstanding any other law, a physician who treats a condition described by Subsection 170A.002(b)(2) shall do so in a manner that, in the exercise of reasonable medical judgment, provides the best opportunity for survival of an unborn child.

(b) It is an exception to the application of Subsection (a) that, in a physician's reasonable medical judgment, the manner of treatment required by that subsection would create a greater risk of:

(1) the pregnant female's death; or

(2) substantial impairment of a major bodily function of the pregnant female.

(c) This chapter does not require a physician to delay, alter, or withhold medical treatment provided to a pregnant female if doing so would create a greater risk of:

(1) the pregnant female's death; or

(2) substantial impairment of a major bodily function of the pregnant female.

(d) Nothing in Subsection (c) authorizes the performance of an abortion that is prohibited by law.

Added by Acts 2025, 89th Leg., R.S., Ch. 758 (S.B. 31), Sec. 4, eff. June 20, 2025.

Sec. 170A.0022. REASONABLE MEDICAL JUDGMENT. Reasonable medical judgment in providing medical treatment to a pregnant female includes removing:

(1) an ectopic pregnancy as defined by Section 245.002(4-a); and

(2) a dead, unborn child whose death was caused by spontaneous abortion.

Added by Acts 2025, 89th Leg., R.S., Ch. 758 (S.B. 31), Sec. 4, eff. June 20, 2025.

Sec. 170A.0023. ACCIDENTAL OR UNINTENTIONAL DEATH. (a) This section applies to any law that provides an exception to an otherwise prohibited abortion based on a condition described by Section 170A.002(b)(2).

(b) It is an exception to the application of each law described

by Subsection (a) that the death or injury of an unborn child resulted from treatment provided to a pregnant female based on a physician's reasonable medical judgment if the death of or injury to the unborn child was accidental or unintentional.

Added by Acts 2025, 89th Leg., R.S., Ch. 758 (S.B. 31), Sec. 4, eff. June 20, 2025.

Sec. 170A.003. CONSTRUCTION OF CHAPTER. This chapter may not be construed to authorize the imposition of criminal, civil, or administrative liability or penalties on a pregnant female on whom an abortion is performed, induced, or attempted.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.004. CRIMINAL OFFENSE. (a) A person who violates Section 170A.002 commits an offense.

(b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if an unborn child dies as a result of the offense.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.005. CIVIL PENALTY. A person who violates Section 170A.002 is subject to a civil penalty of not less than $100,000 for each violation. The attorney general shall file an action to recover a civil penalty assessed under this section and may recover attorney's fees and costs incurred in bringing the action.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.006. CIVIL REMEDIES UNAFFECTED. The fact that conduct is subject to a civil or criminal penalty under this chapter does not abolish or impair any remedy for the conduct that is

available in a civil suit.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.007. DISCIPLINARY ACTION. In addition to any other penalty that may be imposed under this chapter, the appropriate licensing authority shall revoke the license, permit, registration, certificate, or other authority of a physician or other health care professional who performs, induces, or attempts an abortion in violation of Section 170A.002.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

CHAPTER 171. ABORTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 171.001. SHORT TITLE. This chapter may be called the Woman's Right to Know Act.

Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Sec. 171.002. DEFINITIONS. In this chapter:

(1) "Abortion" has the meaning assigned by Section 245.002.

(2) "Abortion provider" means a facility where an abortion is performed, including the office of a physician and a facility licensed under Chapter 245.

(3) "Medical emergency" means a condition described by Section 170A.002(b)(2).

(4) "Sonogram" means the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor an unborn child.

Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 1, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 4, eff.

September 1, 2017.

Acts 2025, 89th Leg., R.S., Ch. 758 (S.B. 31), Sec. 5, eff. June 20, 2025.

Sec. 171.003. PHYSICIAN TO PERFORM. An abortion may be performed only by a physician licensed to practice medicine in this state.

Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Sec. 171.0031. REQUIREMENTS OF PHYSICIAN; OFFENSE. (a) A physician performing or inducing an abortion:

(1) must, on the date the abortion is performed or induced, have active admitting privileges at a hospital that:

(A) is located not further than 30 miles from the location at which the abortion is performed or induced; and

(B) provides obstetrical or gynecological health care services; and

(2) shall provide the pregnant woman with:

(A) a telephone number by which the pregnant woman may reach the physician, or other health care personnel employed by the physician or by the facility at which the abortion was performed or induced with access to the woman's relevant medical records, 24 hours a day to request assistance for any complications that arise from the performance or induction of the abortion or ask health-related questions regarding the abortion; and

(B) the name and telephone number of the nearest hospital to the home of the pregnant woman at which an emergency arising from the abortion would be treated.

(b) A physician who violates Subsection (a) commits an offense. An offense under this section is a Class A misdemeanor punishable by a fine only, not to exceed $4,000.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 2, eff. October 29, 2013.

Sec. 171.004. ABORTION OF FETUS AGE 16 WEEKS OR MORE. An abortion of a fetus age 16 weeks or more may be performed only at an

ambulatory surgical center or hospital licensed to perform the abortion.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Sec. 171.005. COMMISSION TO ENFORCE; EXCEPTION. The commission shall enforce this chapter except for Subchapter H, which shall be enforced exclusively through the private civil enforcement actions described by Section 171.208 and may not be enforced by the commission.

Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 6, eff. September 1, 2021.

Text of section as added by Acts 2017, 85th Leg., 1st C.S., Ch. 4 (H.B. 13), Sec. 1

For text of section as added by Acts 2017, 85th Leg., 1st C.S., Ch. 9 (H.B. 215), Sec. 2, see other Sec. 171.006.

Sec. 171.006. ABORTION COMPLICATION REPORTING REQUIREMENTS; CIVIL PENALTY. (a) In this section, "abortion complication" or "adverse event" means any harmful event or adverse outcome with respect to a patient related to an abortion that is performed or induced on the patient and that is diagnosed or treated by a health care practitioner or at a health care facility and includes:

(1) shock;
(2) uterine perforation;
(3) cervical laceration;
(4) hemorrhage;
(5) aspiration or allergic response;
(6) infection;
(7) sepsis;
(8) death of the patient;
(9) incomplete abortion;
(10) damage to the uterus;
(11) an infant born alive after the abortion;
(12) blood clots resulting in pulmonary embolism or deep

vein thrombosis;

(13) failure to actually terminate the pregnancy;

(14) pelvic inflammatory disease;

(15) endometritis;

(16) missed ectopic pregnancy;

(17) cardiac arrest;

(18) respiratory arrest;

(19) renal failure;

(20) metabolic disorder;

(21) embolism;

(22) coma;

(23) placenta previa in subsequent pregnancies;

(24) preterm delivery in subsequent pregnancies;

(25) fluid accumulation in the abdomen;

(26) hemolytic reaction resulting from the administration of ABO-incompatible blood or blood products;

(27) adverse reactions to anesthesia or other drugs; or

(28) any other adverse event as defined by the United States Food and Drug Administration's criteria provided by the MedWatch Reporting System.

(b) The reporting requirements of this section apply only to:

(1) a physician who:

(A) performs or induces at an abortion facility an abortion that results in an abortion complication diagnosed or treated by that physician; or

(B) diagnoses or treats an abortion complication that is the result of an abortion performed or induced by another physician; or

(2) a health care facility that is a hospital, abortion facility, freestanding emergency medical care facility, or health care facility that provides emergency medical care, as defined by Section 773.003.

(c) A physician described by Subsection (b)(1) shall electronically submit to the commission in the form and manner prescribed by commission rule a report on each abortion complication diagnosed or treated by that physician not later than the end of the third business day after the date on which the complication is diagnosed or treated. Each health care facility described by Subsection (b)(2) shall electronically submit to the commission in the form and manner prescribed by commission rule a report on each

abortion complication diagnosed or treated at the facility not later than the 30th day after the date on which the complication is diagnosed or treatment is provided for the complication.

(d) The commission shall develop a form for reporting an abortion complication under Subsection (c) and publish the form on the commission's Internet website. The executive commissioner by rule may adopt procedures to reduce duplication in reporting under this section.

(e) A report under this section may not identify by any means the physician performing an abortion, other than a physician described by Subsection (b)(1), or the patient on whom the abortion was performed.

(f) A report under this section must identify the name of the physician submitting the report or the name and type of health care facility submitting the report and must include, if known, for each abortion complication:

(1) the date of the abortion that caused or may have caused the complication;

(2) the type of abortion that caused or may have caused the complication;

(3) the gestational age of the fetus at the time the abortion was performed;

(4) the name and type of the facility in which the abortion was performed;

(5) the date the complication was diagnosed or treated;

(6) the name and type of any facility other than the reporting facility in which the complication was diagnosed or treated;

(7) a description of the complication;

(8) the patient's year of birth, race, marital status, and state and county of residence;

(9) the date of the first day of the patient's last menstrual period that occurred before the date of the abortion that caused or may have caused the complication;

(10) the number of previous live births of the patient; and

(11) the number of previous induced abortions of the patient.

(g) Except as provided by Section 245.023, all information and records held by the commission under this section are confidential and are not open records for the purposes of Chapter 552, Government

Code. That information may not be released or made public on subpoena or otherwise, except release may be made:

(1) for statistical purposes, but only if a person, patient, or health care facility is not identified;

(2) with the consent of each person, patient, and facility identified in the information released;

(3) to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter; or

(4) to appropriate state licensing boards to enforce state licensing laws.

(h) A report submitted under this section must include the most specific, accurate, and complete reporting for the highest level of specificity.

(i) The commission shall develop and publish on the commission's Internet website an annual report that aggregates on a statewide basis each abortion complication required to be reported under Subsection (f) for the previous calendar year. The annual report may not include any duplicative data.

(j) A physician described by Subsection (b)(1) or health care facility that violates this section is subject to a civil penalty of $500 for each violation. The attorney general, at the request of the commission or appropriate licensing agency, may file an action to recover a civil penalty assessed under this subsection and may recover attorney's fees and costs incurred in bringing the action. Each day of a continuing violation constitutes a separate ground for recovery.

(k) The third separate violation of this section constitutes cause for the revocation or suspension of a physician's or health care facility's license, permit, registration, certificate, or other authority or for other disciplinary action against the physician or facility by the appropriate licensing agency.

(l) The commission shall notify the Texas Medical Board of any violations of this section by a physician.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 4 (H.B. 13), Sec. 1, eff. November 14, 2017.

Amended by:

Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 2, eff. December 2, 2021.

Text of section as added by Acts 2017, 85th Leg., 1st C.S., Ch. 9 (H.B. 215), Sec. 2

For text of section as added by Acts 2017, 85th Leg., 1st C.S., Ch. 4 (H.B. 13), Sec. 1, see other Sec. 171.006.

Sec. 171.006. REPORTING REQUIREMENTS FOR ABORTIONS PERFORMED ON WOMEN YOUNGER THAN 18 YEARS OF AGE. (a) For each abortion performed on a woman who is younger than 18 years of age, the physician who performed the abortion shall document in the woman's medical record and report to the commission in the report required under Section 245.011:

(1) one of the following methods for obtaining authorization for the abortion:

(A) the woman's parent, managing conservator, or legal guardian provided the written consent required by Section 164.052(a)(19), Occupations Code;

(B) the woman obtained judicial authorization under Section 33.003 or 33.004, Family Code;

(C) the woman consented to the abortion if the woman has had the disabilities of minority removed and is authorized under law to have the abortion without the written consent required by Section 164.052(a)(19), Occupations Code, or without judicial authorization under Section 33.003 or 33.004, Family Code; or

(D) the physician concluded and documented in writing in the woman's medical record that on the basis of the physician's good faith clinical judgment:

(i) a condition existed that complicated the medical condition of the woman and necessitated the immediate abortion of the woman's pregnancy to avert the woman's death or to avoid a serious risk of substantial impairment of a major bodily function; and

(ii) there was insufficient time to obtain the consent of the woman's parent, managing conservator, or legal guardian;

(2) if the woman's parent, managing conservator, or legal guardian provided the written consent described by Subdivision (1)(A), whether the consent was given:

(A) in person at the location where the abortion was performed; or

(B) at a place other than the location where the abortion was performed; and

(3) if the woman obtained the judicial authorization described by Subdivision (1)(B):

(A) if applicable, the process the physician or physician's agent used to inform the woman of the availability of petitioning for judicial authorization as an alternative to the written consent required by Section 164.052(a)(19), Occupations Code;

(B) whether the court forms were provided to the woman by the physician or the physician's agent;

(C) whether the physician or the physician's agent made arrangements for the woman's court appearance; and

(D) if known, whether the woman became pregnant while in foster care or in the managing conservatorship of the Department of Family and Protective Services.

(b) Except as provided by Section 245.023, all information and records held by the commission under this section are confidential and are not open records for the purposes of Chapter 552, Government Code. That information may not be released or made public on subpoena or otherwise, except release may be made:

(1) for statistical purposes, but only if a person, patient, or health care facility is not identified;

(2) with the consent of each person, patient, and facility identified in the information released;

(3) to appropriate state agencies or county and district courts to enforce this chapter;

(4) to appropriate state licensing boards to enforce state licensing laws; or

(5) to licensed medical or health care personnel currently treating the patient.

(c) Any information released by the commission may not identify by any means the county in which a minor obtained judicial authorization for an abortion under Chapter 33, Family Code.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 9 (H.B. 215), Sec. 2, eff. November 14, 2017.

Sec. 171.008. REQUIRED DOCUMENTATION. (a) If an abortion is performed or induced on a pregnant woman because of a medical emergency, the physician who performs or induces the abortion shall execute a written document that certifies the abortion is necessary

due to a medical emergency and specifies the woman's medical condition requiring the abortion.

(b) A physician shall:

(1) place the document described by Subsection (a) in the pregnant woman's medical record; and

(2) maintain a copy of the document described by Subsection (a) in the physician's practice records.

(c) A physician who performs or induces an abortion on a pregnant woman shall:

(1) if the abortion is performed or induced to preserve the health of the pregnant woman, execute a written document that:

(A) specifies the medical condition the abortion is asserted to address; and

(B) provides the medical rationale for the physician's conclusion that the abortion is necessary to address the medical condition; or

(2) for an abortion other than an abortion described by Subdivision (1), specify in a written document that maternal health is not a purpose of the abortion.

(d) The physician shall maintain a copy of a document described by Subsection (c) in the physician's practice records.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 7, eff. September 1, 2021.

SUBCHAPTER B. INFORMED CONSENT

Sec. 171.011. INFORMED CONSENT REQUIRED. A person may not perform an abortion without the voluntary and informed consent of the woman on whom the abortion is to be performed.

Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Sec. 171.012. VOLUNTARY AND INFORMED CONSENT. (a) Consent to an abortion is voluntary and informed only if:

(1) the physician who is to perform or induce the abortion informs the pregnant woman on whom the abortion is to be performed or induced of:

(A) the physician's name;

(B) the particular medical risks associated with the

particular abortion procedure to be employed, including, when medically accurate:

(i) the risks of infection and hemorrhage;

(ii) the potential danger to a subsequent pregnancy and of infertility; and

(iii) the possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer;

(C) the probable gestational age of the unborn child at the time the abortion is to be performed or induced; and

(D) the medical risks associated with carrying the child to term;

(2) the physician who is to perform or induce the abortion or the physician's agent informs the pregnant woman that:

(A) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(B) the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion; and

(C) public and private agencies provide pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices, including emergency contraception for victims of rape or incest;

(3) the physician who is to perform or induce the abortion or the physician's agent:

(A) provides the pregnant woman with the printed materials described by Section 171.014; and

(B) informs the pregnant woman that those materials:

(i) have been provided by the commission;

(ii) are accessible on an Internet website sponsored by the commission;

(iii) describe the unborn child and list agencies that offer alternatives to abortion; and

(iv) include a list of agencies that offer sonogram services at no cost to the pregnant woman;

(4) before any sedative or anesthesia is administered to the pregnant woman and at least 24 hours before the abortion or at least two hours before the abortion if the pregnant woman waives this requirement by certifying that she currently lives 100 miles or more from the nearest abortion provider that is a facility licensed under

Chapter 245 or a facility that performs more than 50 abortions in any 12-month period:

(A) the physician who is to perform or induce the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers performs a sonogram on the pregnant woman on whom the abortion is to be performed or induced;

(B) the physician who is to perform or induce the abortion displays the sonogram images in a quality consistent with current medical practice in a manner that the pregnant woman may view them;

(C) the physician who is to perform or induce the abortion provides, in a manner understandable to a layperson, a verbal explanation of the results of the sonogram images, including a medical description of the dimensions of the embryo or fetus, the presence of cardiac activity, and the presence of external members and internal organs; and

(D) the physician who is to perform or induce the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers makes audible the heart auscultation for the pregnant woman to hear, if present, in a quality consistent with current medical practice and provides, in a manner understandable to a layperson, a simultaneous verbal explanation of the heart auscultation;

(5) before receiving a sonogram under Subdivision (4)(A) and before the abortion is performed or induced and before any sedative or anesthesia is administered, the pregnant woman completes and certifies with her signature an election form that states as follows:

"ABORTION AND SONOGRAM ELECTION

(1) THE INFORMATION AND PRINTED MATERIALS DESCRIBED BY SECTIONS 171.012(a)(1)-(3), TEXAS HEALTH AND SAFETY CODE, HAVE BEEN PROVIDED AND EXPLAINED TO ME.

(2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF AN ABORTION.

(3) TEXAS LAW REQUIRES THAT I RECEIVE A SONOGRAM PRIOR TO RECEIVING AN ABORTION.

(4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW THE SONOGRAM IMAGES.

(5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR THE

HEARTBEAT.

(6) I UNDERSTAND THAT I AM REQUIRED BY LAW TO HEAR AN EXPLANATION OF THE SONOGRAM IMAGES UNLESS I CERTIFY IN WRITING TO ONE OF THE FOLLOWING:

___ I AM PREGNANT AS A RESULT OF A SEXUAL ASSAULT, INCEST, OR OTHER VIOLATION OF THE TEXAS PENAL CODE THAT HAS BEEN REPORTED TO LAW ENFORCEMENT AUTHORITIES OR THAT HAS NOT BEEN REPORTED BECAUSE I REASONABLY BELIEVE THAT DOING SO WOULD PUT ME AT RISK OF RETALIATION RESULTING IN SERIOUS BODILY INJURY.

___ I AM A MINOR AND OBTAINING AN ABORTION IN ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER CHAPTER 33, TEXAS FAMILY CODE.

___ MY UNBORN CHILD HAS AN IRREVERSIBLE MEDICAL CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL FILE.

(7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL AND WITHOUT COERCION.

(8) FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245, TEXAS HEALTH AND SAFETY CODE, OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD ONLY:

I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245 OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD, I WAIVE THE REQUIREMENT TO WAIT 24 HOURS AFTER THE SONOGRAM IS PERFORMED BEFORE RECEIVING THE ABORTION PROCEDURE. MY PLACE OF RESIDENCE IS:_____.

_____ _____

SIGNATURE DATE";

(6) before the abortion is performed or induced, the physician who is to perform or induce the abortion receives a copy of the signed, written certification required by Subdivision (5); and

(7) the pregnant woman is provided the name of each person who provides or explains the information required under this subsection.

(a-1) During a visit made to a facility to fulfill the requirements of Subsection (a), the facility and any person at the facility may not accept any form of payment, deposit, or exchange or make any financial agreement for an abortion or abortion-related services other than for payment of a service required by Subsection (a). The amount charged for a service required by Subsection (a) may

not exceed the reimbursement rate established for the service by the executive commissioner for statewide medical reimbursement programs.

(b) The information required to be provided under Subsections (a)(1) and (2) may not be provided by audio or video recording and must be provided at least 24 hours before the abortion is to be performed:

(1) orally and in person in a private and confidential setting if the pregnant woman currently lives less than 100 miles from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility that performs more than 50 abortions in any 12-month period; or

(2) orally by telephone on a private call or in person in a private and confidential setting if the pregnant woman certifies that the woman currently lives 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility that performs more than 50 abortions in any 12-month period.

(c) When providing the information under Subsection (a)(3), the physician or the physician's agent must provide the pregnant woman with the address of the Internet website on which the printed materials described by Section 171.014 may be viewed as required by Section 171.014(e).

(d) The information provided to the woman under Subsection (a)(2)(B) must include, based on information available from the Office of the Attorney General and the United States Department of Health and Human Services Office of Child Support Enforcement for the three-year period preceding the publication of the information, information regarding the statistical likelihood of collecting child support.

(e) The department is not required to republish informational materials described by Subsection (a)(2)(B) because of a change in information described by Subsection (d) unless the statistical information in the materials changes by five percent or more.

(f) The physician who is to perform the abortion, or the physician's designee, shall in person hand to the pregnant woman a copy of the informational materials described by Section 171.014:

(1) on the day of the consultation required under Subsection (a)(4) for a pregnant woman who lives less than 100 miles from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility in which more than 50 abortions are performed in any 12-month period; or

(2) before any sedative or anesthesia is administered to the pregnant woman on the day of the abortion and at least two hours before the abortion if the woman lives 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility in which more than 50 abortions are performed in any 12-month period.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0518, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 502 (S.B. 24), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 8, eff. September 1, 2021.

Sec. 171.0121. MEDICAL RECORD. (a) Before the abortion begins, a copy of the signed, written certification received by the physician under Section 171.012(a)(6) must be placed in the pregnant woman's medical records.

(b) A copy of the signed, written certification required under Sections 171.012(a)(5) and (6) shall be retained by the facility where the abortion is performed until:

(1) the seventh anniversary of the date it is signed; or

(2) if the pregnant woman is a minor, the later of:

(A) the seventh anniversary of the date it is signed; or

(B) the woman's 21st birthday.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 3, eff. September 1, 2011.

Sec. 171.0122. VIEWING PRINTED MATERIALS AND SONOGRAM IMAGE; HEARING HEART AUSCULTATION OR VERBAL EXPLANATION. (a) A pregnant woman may choose not to view the printed materials provided under Section 171.012(a)(3) after she has been provided the materials.

(b) A pregnant woman may choose not to view the sonogram images

required to be provided to and reviewed with the pregnant woman under Section 171.012(a)(4).

(c) A pregnant woman may choose not to hear the heart auscultation required to be provided to and reviewed with the pregnant woman under Section 171.012(a)(4).

(d) A pregnant woman may choose not to receive the verbal explanation of the results of the sonogram images under Section 171.012(a)(4)(C) if:

(1) the woman's pregnancy is a result of a sexual assault, incest, or other violation of the Penal Code that has been reported to law enforcement authorities or that has not been reported because she has a reason that she declines to reveal because she reasonably believes that to do so would put her at risk of retaliation resulting in serious bodily injury;

(2) the woman is a minor and obtaining an abortion in accordance with judicial bypass procedures under Chapter 33, Family Code; or

(3) the fetus has an irreversible medical condition or abnormality, as previously identified by reliable diagnostic procedures and documented in the woman's medical file.

(e) The physician and the pregnant woman are not subject to a penalty under this chapter solely because the pregnant woman chooses not to view the printed materials or the sonogram images, hear the heart auscultation, or receive the verbal explanation, if waived as provided by this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 3, eff. September 1, 2011.

Sec. 171.0123. PATERNITY AND CHILD SUPPORT INFORMATION. If, after being provided with a sonogram and the information required under this subchapter, the pregnant woman chooses not to have an abortion, the physician or an agent of the physician shall provide the pregnant woman with a publication developed by the Title IV-D agency that provides information about paternity establishment and child support, including:

(1) the steps necessary for unmarried parents to establish legal paternity;

(2) the benefits of paternity establishment for children;

(3) the steps necessary to obtain a child support order;

(4) the benefits of establishing a legal parenting order; and

(5) financial and legal responsibilities of parenting.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 3, eff. September 1, 2011.

Sec. 171.0124. EXCEPTION FOR MEDICAL EMERGENCY. A physician may perform an abortion without obtaining informed consent under this subchapter in a medical emergency. A physician who performs an abortion in a medical emergency shall:

(1) include in the patient's medical records a statement signed by the physician certifying the nature of the medical emergency; and

(2) not later than the 30th day after the date the abortion is performed, certify to the department the specific medical condition that constituted the emergency.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 3, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0519, eff. April 2, 2015.

Sec. 171.013. DISTRIBUTION OF STATE MATERIALS. (a) The physician or the physician's agent shall furnish copies of the materials described by Section 171.014 to the pregnant woman at least 24 hours before the abortion is to be performed and shall direct the pregnant woman to the Internet website required to be published under Section 171.014(e). The physician or the physician's agent may furnish the materials to the pregnant woman by mail if the materials are mailed, restricted delivery to addressee, at least 72 hours before the abortion is to be performed.

(b) A physician or the physician's agent is not required to furnish copies of the materials if the woman provides the physician with a written statement that she chooses to view the materials on the Internet website sponsored by the department.

(c) The physician and the physician's agent may disassociate

themselves from the materials and may choose to comment on the materials or to refrain from commenting.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 4, eff. September 1, 2011.

Sec. 171.014. INFORMATIONAL MATERIALS. (a) The department shall publish informational materials that include:

(1) the information required to be provided under Sections 171.012(a)(1)(B) and (D) and (a)(2)(A), (B), and (C); and

(2) the materials required by Sections 171.015 and 171.016.

(b) The materials shall be published in:

(1) English and Spanish;

(2) an easily comprehensible form; and

(3) a typeface large enough to be clearly legible.

(c) The materials shall be available at no cost from the department on request. The department shall provide appropriate quantities of the materials to any person.

(d) The department shall annually review the materials to determine if changes to the contents of the materials are necessary. The executive commissioner shall adopt rules necessary for considering and making changes to the materials.

(e) The department shall develop and maintain an Internet website to display the information required to be published under this section. In developing and maintaining the website the department shall, to the extent reasonably practicable, safeguard the website against alterations by anyone other than the department and shall monitor the website each day to prevent and correct tampering. The department shall ensure that the website does not collect or maintain information regarding access to the website.

(f) In addition to any other organization or entity, the department shall use the American College of Obstetricians and Gynecologists as the resource in developing information required to be provided under Sections 171.012(a)(1)(B) and (D), Sections 171.012(a)(2)(A), (B), and (C), and Section 171.016, and in maintaining the department's Internet website.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0520, eff. April 2, 2015.

Sec. 171.015. INFORMATION RELATING TO PUBLIC AND PRIVATE AGENCIES. The informational materials must include:

(1) geographically indexed materials designed to inform the pregnant woman of public and private agencies and services that:

(A) are available to assist a woman through pregnancy, childbirth, and the child's dependency, including:

(i) a comprehensive list of adoption agencies;

(ii) a description of the services the adoption agencies offer;

(iii) a description of the manner, including telephone numbers, in which an adoption agency may be contacted; and

(iv) a comprehensive list of agencies and organizations that offer sonogram services at no cost to the pregnant woman;

(B) do not provide abortions or abortion-related services or make referrals to abortion providers; and

(C) are not affiliated with organizations that provide abortions or abortion-related services or make referrals to abortion providers; and

(2) a toll-free, 24-hour telephone number that may be called to obtain an oral list and description of agencies described by Subdivision (1) that are located near the caller and of the services the agencies offer.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 5, eff. September 1, 2011.

Sec. 171.016. INFORMATION RELATING TO CHARACTERISTICS OF UNBORN CHILD. (a) The informational materials must include materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be

pregnant to full term, including any relevant information on the possibility of the unborn child's survival.

(b) The materials must include color pictures representing the development of the child at two-week gestational increments. The pictures must contain the dimensions of the unborn child and must be realistic.

(c) The materials provided under this section must be objective and nonjudgmental and be designed to convey only accurate scientific information about the unborn child at the various gestational ages.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Sec. 171.017. PERIODS RUN CONCURRENTLY. If the woman is an unemancipated minor subject to Chapter 33, Family Code, the 24-hour periods established under Sections 171.012(b) and 171.013(a) may run concurrently with the period during which actual or constructive notice is provided under Section 33.002, Family Code.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Sec. 171.018. OFFENSE. A physician who intentionally performs an abortion on a woman in violation of this subchapter commits an offense. An offense under this section is a misdemeanor punishable by a fine not to exceed $10,000. In this section, "intentionally" has the meaning assigned by Section 6.03(a), Penal Code.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER C. ABORTION PROHIBITED AT OR AFTER 20 WEEKS POST-FERTILIZATION

Sec. 171.041. SHORT TITLE. This subchapter may be cited as the Preborn Pain Act.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.042. DEFINITIONS. In this subchapter:

(1) "Post-fertilization age" means the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum.

(2) "Severe fetal abnormality" has the meaning assigned by Section 285.202.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.043. DETERMINATION OF POST-FERTILIZATION AGE REQUIRED. Except as otherwise provided by Section 171.046, a physician may not perform or induce or attempt to perform or induce an abortion without, prior to the procedure:

(1) making a determination of the probable post-fertilization age of the unborn child; or

(2) possessing and relying on a determination of the probable post-fertilization age of the unborn child made by another physician.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.044. ABORTION OF UNBORN CHILD OF 20 OR MORE WEEKS POST-FERTILIZATION AGE PROHIBITED. Except as otherwise provided by Section 171.046, a person may not perform or induce or attempt to perform or induce an abortion on a woman if it has been determined, by the physician performing, inducing, or attempting to perform or induce the abortion or by another physician on whose determination that physician relies, that the probable post-fertilization age of the unborn child is 20 or more weeks.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.045. METHOD OF ABORTION. (a) This section applies only to an abortion authorized under Section 171.046(a)(1) or (2) in which:

(1) the probable post-fertilization age of the unborn child

is 20 or more weeks; or

(2) the probable post-fertilization age of the unborn child has not been determined but could reasonably be 20 or more weeks.

(b) Except as otherwise provided by Section 171.046(a)(3), a physician performing an abortion under Subsection (a) shall terminate the pregnancy in the manner that, in the physician's reasonable medical judgment, provides the best opportunity for the unborn child to survive.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.046. EXCEPTIONS. (a) The prohibitions and requirements under Sections 171.043, 171.044, and 171.045(b) do not apply to an abortion performed if, in the physician's reasonable medical judgment, the abortion is necessary due to a medical emergency and necessitates, as applicable:

(1) the immediate abortion of her pregnancy without the delay necessary to determine the probable post-fertilization age of the unborn child;

(2) the abortion of her pregnancy even though the post-fertilization age of the unborn child is 20 or more weeks; or

(3) the use of a method of abortion other than a method described by Section 171.045(b).

(b) A physician may not take an action authorized under Subsection (a) if the medical emergency arises from a claim or diagnosis that the woman will engage in conduct that may result in her death or in substantial and irreversible physical impairment of a major bodily function.

(c) The prohibitions and requirements under Sections 171.043, 171.044, and 171.045(b) do not apply to an abortion performed on an unborn child who has a severe fetal abnormality.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 758 (S.B. 31), Sec. 6, eff. June 20, 2025.

Sec. 171.047. PROTECTION OF PRIVACY IN COURT PROCEEDINGS. (a) Except as otherwise provided by this section, in a civil or criminal proceeding or action involving an act prohibited under this subchapter, the identity of the woman on whom an abortion has been performed or induced or attempted to be performed or induced is not subject to public disclosure if the woman does not give consent to disclosure.

(b) Unless the court makes a ruling under Subsection (c) to allow disclosure of the woman's identity, the court shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to protect the woman's identity from public disclosure.

(c) A court may order the disclosure of information that is confidential under this section if:

(1) a motion is filed with the court requesting release of the information and a hearing on that request;

(2) notice of the hearing is served on each interested party; and

(3) the court determines after the hearing and an in camera review that disclosure is essential to the administration of justice and there is no reasonable alternative to disclosure.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.048. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter shall be construed, as a matter of state law, to be enforceable up to but no further than the maximum possible extent consistent with federal constitutional requirements, even if that construction is not readily apparent, as such constructions are authorized only to the extent necessary to save the subchapter from judicial invalidation. Judicial reformation of statutory language is explicitly authorized only to the extent necessary to save the statutory provision from invalidity.

(b) If any court determines that a provision of this subchapter is unconstitutionally vague, the court shall interpret the provision, as a matter of state law, to avoid the vagueness problem and shall enforce the provision to the maximum possible extent. If a federal

court finds any provision of this subchapter or its application to any person, group of persons, or circumstances to be unconstitutionally vague and declines to impose the saving construction described by this subsection, the Supreme Court of Texas shall provide an authoritative construction of the objectionable statutory provisions that avoids the constitutional problems while enforcing the statute's restrictions to the maximum possible extent, and shall agree to answer any question certified from a federal appellate court regarding the statute.

(c) A state executive or administrative official may not decline to enforce this subchapter, or adopt a construction of this subchapter in a way that narrows its applicability, based on the official's own beliefs about what the state or federal constitution requires, unless the official is enjoined by a state or federal court from enforcing this subchapter.

(d) This subchapter may not be construed to authorize the prosecution of or a cause of action to be brought against a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of this subchapter.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

SUBCHAPTER D. ABORTION-INDUCING DRUGS

Sec. 171.061. DEFINITIONS. In this subchapter:

(1) "Abortion" has the meaning assigned by Section 245.002. This definition, as applied in this subchapter, may not be construed to apply to an act done with the intent to treat a maternal disease or illness for which a prescribed drug, medicine, or other substance is indicated.

(2) "Abortion-inducing drug" means a drug, a medicine, or any other substance, including a regimen of two or more drugs, medicines, or substances, prescribed, dispensed, or administered with the intent of terminating a clinically diagnosable pregnancy of a woman and with knowledge that the termination will, with reasonable likelihood, cause the death of the woman's unborn child. The term includes off-label use of drugs, medicines, or other substances known to have abortion-inducing properties that are prescribed, dispensed, or administered with the intent of causing an abortion, including the

Mifeprex regimen, misoprostol (Cytotec), and methotrexate. The term does not include a drug, medicine, or other substance that may be known to cause an abortion but is prescribed, dispensed, or administered for other medical reasons.

(2-a) "Adverse event" or "abortion complication" means any harmful event or adverse outcome with respect to a patient related to an abortion, including the abortion complications listed in Section 171.006, as added by Chapter 4 (H.B. 13), Acts of the 85th Legislature, 1st Called Session, 2017.

(3) Repealed by Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 7(1), eff. December 2, 2021.

(4) "Gestational age" means the amount of time that has elapsed since the first day of a woman's last menstrual period.

(5) "Medical abortion" means the administration or use of an abortion-inducing drug to induce an abortion, and may also be referred to as a "medication abortion," a "chemical abortion," a "drug-induced abortion," "RU-486," or the "Mifeprex regimen".

(6) Repealed by Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 7(1), eff. December 2, 2021.

(7) "Physician" means an individual who is licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine.

(8) "Pregnant" means the female reproductive condition of having an unborn child in a woman's uterus.

(8-a) "Provide" means, as used with regard to abortion-inducing drugs, any act of giving, selling, dispensing, administering, transferring possession, or otherwise providing or prescribing an abortion-inducing drug.

(9) "Unborn child" means an offspring of human beings from conception until birth.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 5, eff. September 1, 2017.

Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 3, eff. December 2, 2021.

Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 7(1), eff. December 2, 2021.

Sec. 171.062. ENFORCEMENT BY TEXAS MEDICAL BOARD. Notwithstanding Section 171.005, the Texas Medical Board shall enforce this subchapter.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.063. PROVISION OF ABORTION-INDUCING DRUG. (a) A person may not knowingly provide an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion in the pregnant woman or enabling another person to induce an abortion in the pregnant woman unless:

(1) the person who provides the abortion-inducing drug is a physician; and

(2) the provision of the abortion-inducing drug satisfies the protocol authorized by this subchapter.

(b) Repealed by Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 7(2), eff. December 2, 2021.

(b-1) A manufacturer, supplier, physician, or any other person may not provide to a patient any abortion-inducing drug by courier, delivery, or mail service.

(c) Before the physician provides an abortion-inducing drug, the physician must:

(1) examine the pregnant woman in person;

(2) independently verify that a pregnancy exists;

(3) document, in the woman's medical record, the gestational age and location of the pregnancy to determine whether an ectopic pregnancy exists as defined by Section 245.002(4-a);

(4) determine the pregnant woman's blood type, and for a woman who is Rh negative, offer to administer Rh immunoglobulin (RhoGAM) at the time the abortion-inducing drug is administered or used or the abortion is performed or induced to prevent Rh incompatibility, complications, or miscarriage in future pregnancies;

(5) document whether the pregnant woman received treatment for Rh negativity, as diagnosed by the most accurate standard of medical care; and

(6) ensure the physician does not provide an abortion-

inducing drug for a pregnant woman whose pregnancy is more than 49 days of gestational age.

(d) The physician who gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug shall provide the pregnant woman with:

(1) a copy of the final printed label of that abortion-inducing drug; and

(2) a telephone number by which the pregnant woman may reach the physician, or other health care personnel employed by the physician or by the facility at which the abortion was performed with access to the woman's relevant medical records, 24 hours a day to request assistance for any complications that arise from the administration or use of the drug or ask health-related questions regarding the administration or use of the drug.

(e) A physician who provides the abortion-inducing drug, or the physician's agent, must schedule a follow-up visit for the woman to occur not later than the 14th day after the earliest date on which the abortion-inducing drug is administered or used or the abortion is performed or induced. At the follow-up visit, the physician must:

(1) confirm that the woman's pregnancy is completely terminated; and

(2) assess any continued blood loss.

(f) The physician who gives, sells, dispenses, administers, provides, or prescribes the abortion-inducing drug, or the physician's agent, shall make a reasonable effort to ensure that the woman returns for the scheduled follow-up visit under Subsection (e). The physician or the physician's agent shall document a brief description of any effort made to comply with this subsection, including the date, time, and name of the person making the effort, in the woman's medical record.

(g) If a physician gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion as authorized by this section and the physician knows that the woman experiences a serious adverse event, as defined by the MedWatch Reporting System, during or after the administration or use of the drug, the physician shall report the event to the United States Food and Drug Administration through the MedWatch Reporting System not later than the third day after the date the physician learns that the event occurred.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.
Amended by:
Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 4, eff. December 2, 2021.
Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 5, eff. December 2, 2021.
Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 7(2), eff. December 2, 2021.
Acts 2025, 89th Leg., R.S., Ch. 758 (S.B. 31), Sec. 7, eff. June 20, 2025.

Sec. 171.0631. VOLUNTARY AND INFORMED CONSENT REQUIRED. A person may not provide an abortion-inducing drug to a pregnant woman without satisfying the applicable informed consent requirements of Subchapter B.

Added by Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 6, eff. December 2, 2021.

Sec. 171.0632. REPORTING REQUIREMENTS. A physician who provides an abortion-inducing drug must comply with the applicable physician reporting requirements under Section 245.011.

Added by Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 6, eff. December 2, 2021.

Sec. 171.064. ADMINISTRATIVE PENALTY. (a) The Texas Medical Board may take disciplinary action under Chapter 164, Occupations Code, or assess an administrative penalty under Subchapter A, Chapter 165, Occupations Code, against a person who violates Section 171.063.
(b) A penalty may not be assessed under this section against a pregnant woman who receives a medical abortion.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.065. CRIMINAL OFFENSE. (a) A person who intentionally, knowingly, or recklessly violates this subchapter commits an offense. An offense under this subsection is a state jail felony.

(b) A pregnant woman on whom a drug-induced abortion is attempted, induced, or performed in violation of this subchapter is not criminally liable for the violation.

(c) Conduct constituting an offense under this section may also be the basis for an administrative violation under Section 171.064.

Added by Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 6, eff. December, 2 2021.

Sec. 171.066. ENFORCEMENT OF SUBCHAPTER. A state executive or administrative official may not decline to enforce this subchapter, or adopt a construction of this subchapter in a way that narrows its applicability, based on the official's own beliefs on the requirements of the state or federal constitution, unless the official is enjoined by a state or federal court from enforcing this subchapter.

Added by Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 6, eff. December 2, 2021.

SUBCHAPTER E. EDUCATION AND TRAINING PROGRAMS ON TRAFFICKING OF PERSONS FOR CERTAIN FACILITY PERSONNEL

Sec. 171.081. APPLICABILITY. This subchapter applies to each person who:

(1) is employed by, volunteers at, or performs services under contract with:

(A) an abortion facility licensed under Chapter 245; or

(B) an ambulatory surgical center licensed under Chapter 243 that performs more than 50 abortions in any 12-month period; and

(2) has direct contact with patients of the facility.

Added by Acts 2015, 84th Leg., R.S., Ch. 999 (H.B. 416), Sec. 1, eff. June 19, 2015.

Sec. 171.082. EDUCATION AND TRAINING PROGRAMS ON TRAFFICKING OF PERSONS. (a) The executive commissioner of the Health and Human Services Commission by rule shall require a person described by Section 171.081 to complete within a reasonable time after beginning work at the facility a training program to identify and assist victims of human trafficking.

(b) A training program under this section must use the standardized curriculum created by the human trafficking prevention task force under Section 402.035(d)(6), Government Code.

(c) The department shall make available to each facility described by Sections 171.081(1)(A) and (B) the training program required under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 999 (H.B. 416), Sec. 1, eff. June 19, 2015.

SUBCHAPTER F. PARTIAL-BIRTH ABORTIONS

Sec. 171.101. DEFINITIONS. In this subchapter:

(1) "Partial-birth abortion" means an abortion in which the person performing the abortion:

(A) for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus, deliberately and intentionally vaginally delivers a living fetus until:

(i) for a head-first presentation, the entire fetal head is outside the body of the mother; or

(ii) for a breech presentation, any part of the fetal trunk past the navel is outside the body of the mother; and

(B) performs the overt act described in Paragraph (A), other than completion of delivery, that kills the partially delivered living fetus.

(2) "Physician" means an individual who is licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff. September 1, 2017.

Sec. 171.102. PARTIAL-BIRTH ABORTIONS PROHIBITED. (a) A

physician or other person may not knowingly perform a partial-birth abortion.

(b) Subsection (a) does not apply to a physician who performs a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff. September 1, 2017.

Sec. 171.103. CRIMINAL PENALTY. A person who violates Section 171.102 commits an offense. An offense under this section is a state jail felony.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff. September 1, 2017.

Sec. 171.104. CIVIL LIABILITY. (a) Except as provided by Subsection (b), the father of the fetus or a parent of the mother of the fetus, if the mother is younger than 18 years of age at the time of the partial-birth abortion, may bring a civil action to obtain appropriate relief, including:

(1) money damages for physical injury, mental anguish, and emotional distress; and

(2) exemplary damages equal to three times the cost of the partial-birth abortion.

(b) A person may not bring or maintain an action under this section if:

(1) the person consented to the partial-birth abortion; or

(2) the person's criminally injurious conduct resulted in the pregnancy.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff. September 1, 2017.

Sec. 171.105. HEARING. (a) A physician who is the subject of a criminal or civil action for a violation of Section 171.102 may

request a hearing before the Texas Medical Board on whether the physician's conduct was necessary to save the life of a mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy.

(b) The board's findings under Subsection (a) are admissible in any court proceeding against the physician arising from that conduct. On the physician's motion, the court shall delay the beginning of a criminal or civil trial for not more than 60 days for the hearing to be held under Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff. September 1, 2017.

Sec. 171.106. APPLICABILITY. A woman on whom a partial-birth abortion is performed or attempted in violation of this subchapter may not be prosecuted under this subchapter or for conspiracy to commit a violation of this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff. September 1, 2017.

SUBCHAPTER G. DISMEMBERMENT ABORTIONS

Sec. 171.151. DEFINITION. In this subchapter, "dismemberment abortion" means an abortion in which a person, with the purpose of causing the death of an unborn child, dismembers the living unborn child and extracts the unborn child one piece at a time from the uterus through the use of clamps, grasping forceps, tongs, scissors, or a similar instrument that, through the convergence of two rigid levers, slices, crushes, or grasps, or performs any combination of those actions on, a piece of the unborn child's body to cut or rip the piece from the body. The term does not include an abortion that uses suction to dismember the body of an unborn child by sucking pieces of the unborn child into a collection container. The term includes a dismemberment abortion that is used to cause the death of an unborn child and in which suction is subsequently used to extract pieces of the unborn child after the unborn child's death.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff.

September 1, 2017.

Sec. 171.152. DISMEMBERMENT ABORTIONS PROHIBITED. (a) A person may not intentionally perform a dismemberment abortion unless the dismemberment abortion is necessary in a medical emergency.

(b) A woman on whom a dismemberment abortion is performed, an employee or agent acting under the direction of a physician who performs a dismemberment abortion, or a person who fills a prescription or provides equipment used in a dismemberment abortion does not violate Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff. September 1, 2017.

Sec. 171.153. CRIMINAL PENALTY. (a) A person who violates Section 171.152 commits an offense.

(b) An offense under this section is a state jail felony.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff. September 1, 2017.

Sec. 171.154. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter shall be construed, as a matter of state law, to be enforceable to the maximum possible extent consistent with but not further than federal constitutional requirements, even if that construction is not readily apparent, as such constructions are authorized only to the extent necessary to save the subchapter from judicial invalidation. Judicial reformation of statutory language is explicitly authorized only to the extent necessary to save the statutory provision from invalidity.

(b) If any court determines that a provision of this subchapter is unconstitutionally vague, the court shall interpret the provision, as a matter of state law, to avoid the vagueness problem and shall enforce the provision to the maximum possible extent. If a federal court finds any provision of this subchapter or its application to any person, group of persons, or circumstances to be unconstitutionally vague and declines to impose the saving construction described by this subsection, the Supreme Court of Texas

shall provide an authoritative construction of the objectionable statutory provisions that avoids the constitutional problems while enforcing the statute's restrictions to the maximum possible extent and shall agree to answer any question certified from a federal appellate court regarding the statute.

(c) A state executive or administrative official may not decline to enforce this subchapter, or adopt a construction of this subchapter in a way that narrows its applicability, based on the official's own beliefs concerning the requirements of the state or federal constitution, unless the official is enjoined by a state or federal court from enforcing this subchapter.

(d) This subchapter may not be construed to:

(1) authorize the prosecution of or a cause of action to be brought against a woman on whom an abortion is performed or induced in violation of this subchapter; or

(2) create or recognize a right to abortion or a right to a particular method of abortion.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff. September 1, 2017.

SUBCHAPTER H. DETECTION OF FETAL HEARTBEAT

Sec. 171.201. DEFINITIONS. In this subchapter:

(1) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(2) "Gestational age" means the amount of time that has elapsed from the first day of a woman's last menstrual period.

(3) "Gestational sac" means the structure comprising the extraembryonic membranes that envelop the unborn child and that is typically visible by ultrasound after the fourth week of pregnancy.

(4) "Physician" means an individual licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine.

(5) "Pregnancy" means the human female reproductive condition that:

(A) begins with fertilization;

(B) occurs when the woman is carrying the developing human offspring; and

(C) is calculated from the first day of the woman's last menstrual period.

(6) "Standard medical practice" means the degree of skill, care, and diligence that an obstetrician of ordinary judgment, learning, and skill would employ in like circumstances.

(7) "Unborn child" means a human fetus or embryo in any stage of gestation from fertilization until birth.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.2011. APPLICABILITY. (a) This subchapter applies only to an abortion that is otherwise prohibited by law and that is not subject to an exception provided by law.

(b) The following activities do not constitute aiding or abetting under this subchapter:

(1) providing services by a physician or health care provider to a treating physician, or communication between a physician or health care provider and a treating physician, for the purposes of arriving at a reasonable medical judgment as required by an exception to an otherwise prohibited abortion;

(2) communicating between a physician or health care provider and a patient, or providing services by a physician or health care provider to a patient, for the purpose of arriving at reasonable medical judgment as required by an exception to an otherwise prohibited abortion;

(3) communicating between an attorney and a physician or health care provider related to an exception to an otherwise prohibited abortion;

(4) communicating between a treating physician and any other person or providing services to a treating physician or patient relating to performing, inducing, or attempting an abortion for which the treating physician has determined that, in reasonable medical judgment, an exception to an otherwise prohibited abortion is applicable; and

(5) providing products to a patient or treating physician relating to performing, inducing, or attempting an abortion for which the treating physician has determined that, in reasonable medical judgment, an exception to an otherwise prohibited abortion is

applicable.

Added by Acts 2025, 89th Leg., R.S., Ch. 758 (S.B. 31), Sec. 8, eff. June 20, 2025.

Sec. 171.202. LEGISLATIVE FINDINGS. The legislature finds, according to contemporary medical research, that:

(1) fetal heartbeat has become a key medical predictor that an unborn child will reach live birth;

(2) cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac;

(3) Texas has compelling interests from the outset of a woman's pregnancy in protecting the health of the woman and the life of the unborn child; and

(4) to make an informed choice about whether to continue her pregnancy, the pregnant woman has a compelling interest in knowing the likelihood of her unborn child surviving to full-term birth based on the presence of cardiac activity.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.203. DETERMINATION OF PRESENCE OF FETAL HEARTBEAT REQUIRED; RECORD. (a) For the purposes of determining the presence of a fetal heartbeat under this section, "standard medical practice" includes employing the appropriate means of detecting the heartbeat based on the estimated gestational age of the unborn child and the condition of the woman and her pregnancy.

(b) Except as provided by Section 171.205, a physician may not knowingly perform or induce an abortion on a pregnant woman unless the physician has determined, in accordance with this section, whether the woman's unborn child has a detectable fetal heartbeat.

(c) In making a determination under Subsection (b), the physician must use a test that is:

(1) consistent with the physician's good faith and reasonable understanding of standard medical practice; and

(2) appropriate for the estimated gestational age of the unborn child and the condition of the pregnant woman and her

pregnancy.

(d) A physician making a determination under Subsection (b) shall record in the pregnant woman's medical record:

(1) the estimated gestational age of the unborn child;

(2) the method used to estimate the gestational age; and

(3) the test used for detecting a fetal heartbeat, including the date, time, and results of the test.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.204. PROHIBITED ABORTION OF UNBORN CHILD WITH DETECTABLE FETAL HEARTBEAT; EFFECT. (a) Except as provided by Section 171.205, a physician may not knowingly perform or induce an abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child as required by Section 171.203 or failed to perform a test to detect a fetal heartbeat.

(b) A physician does not violate this section if the physician performed a test for a fetal heartbeat as required by Section 171.203 and did not detect a fetal heartbeat.

(c) This section does not affect:

(1) the provisions of this chapter that restrict or regulate an abortion by a particular method or during a particular stage of pregnancy; or

(2) any other provision of state law that regulates or prohibits abortion.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.205. EXCEPTION FOR MEDICAL EMERGENCY; RECORDS. (a) Sections 171.203 and 171.204 do not apply if a physician believes a medical emergency exists that prevents compliance with this subchapter.

(b) A physician who performs or induces an abortion under circumstances described by Subsection (a) shall make written notations in the pregnant woman's medical record of:

(1) the physician's belief that a medical emergency necessitated the abortion; and

(2) the medical condition of the pregnant woman that prevented compliance with this subchapter.

(c) A physician performing or inducing an abortion under this section shall maintain in the physician's practice records a copy of the notations made under Subsection (b).

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.206. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter does not create or recognize a right to abortion before a fetal heartbeat is detected.

(b) This subchapter may not be construed to:

(1) authorize the initiation of a cause of action against or the prosecution of a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of this subchapter;

(2) wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits abortion, including Chapter 6-1/2, Title 71, Revised Statutes; or

(3) restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.207. LIMITATIONS ON PUBLIC ENFORCEMENT. (a) Notwithstanding Section 171.005 or any other law, the requirements of this subchapter shall be enforced exclusively through the private civil actions described in Section 171.208. No enforcement of this subchapter, and no enforcement of Chapters 19 and 22, Penal Code, in response to violations of this subchapter, may be taken or threatened by this state, a political subdivision, a district or county attorney, or an executive or administrative officer or employee of this state or a political subdivision against any person, except as provided in Section 171.208.

(b) Subsection (a) may not be construed to:

(1) legalize the conduct prohibited by this subchapter or

by Chapter 6-1/2, Title 71, Revised Statutes;

(2) limit in any way or affect the availability of a remedy established by Section 171.208; or

(3) limit the enforceability of any other laws that regulate or prohibit abortion.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.208. CIVIL LIABILITY FOR VIOLATION OR AIDING OR ABETTING VIOLATION. (a) Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person who:

(1) performs or induces an abortion in violation of this subchapter;

(2) knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of this subchapter, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of this subchapter; or

(3) intends to engage in the conduct described by Subdivision (1) or (2).

(b) If a claimant prevails in an action brought under this section, the court shall award:

(1) injunctive relief sufficient to prevent the defendant from violating this subchapter or engaging in acts that aid or abet violations of this subchapter;

(2) statutory damages in an amount of not less than $10,000 for each abortion that the defendant performed or induced in violation of this subchapter, and for each abortion performed or induced in violation of this subchapter that the defendant aided or abetted; and

(3) costs and attorney's fees.

(c) Notwithstanding Subsection (b), a court may not award relief under this section in response to a violation of Subsection (a)(1) or (2) if the defendant demonstrates that the defendant previously paid the full amount of statutory damages under Subsection

(b)(2) in a previous action for that particular abortion performed or induced in violation of this subchapter, or for the particular conduct that aided or abetted an abortion performed or induced in violation of this subchapter.

(d) Notwithstanding Chapter 16, Civil Practice and Remedies Code, or any other law, a person may bring an action under this section not later than the fourth anniversary of the date the cause of action accrues.

(e) Notwithstanding any other law, the following are not a defense to an action brought under this section:

(1) ignorance or mistake of law;

(2) a defendant's belief that the requirements of this subchapter are unconstitutional or were unconstitutional;

(3) a defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates this subchapter;

(4) a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(5) non-mutual issue preclusion or non-mutual claim preclusion;

(6) the consent of the unborn child's mother to the abortion; or

(7) any claim that the enforcement of this subchapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by Section 171.209.

(f) It is an affirmative defense if:

(1) a person sued under Subsection (a)(2) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion had complied or would comply with this subchapter; or

(2) a person sued under Subsection (a)(3) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion will comply with this subchapter.

(f-1) The defendant has the burden of proving an affirmative defense under Subsection (f)(1) or (2) by a preponderance of the evidence.

(g) This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by Section 8, Article I, Texas Constitution.

(h) Notwithstanding any other law, this state, a state official, or a district or county attorney may not intervene in an action brought under this section. This subsection does not prohibit a person described by this subsection from filing an amicus curiae brief in the action.

(i) Notwithstanding any other law, a court may not award costs or attorney's fees under the Texas Rules of Civil Procedure to a defendant in an action brought under this section.

(j) Notwithstanding any other law, a civil action under this section may not be brought by a person who impregnated the abortion patient through an act of rape, sexual assault, incest, or any other act prohibited by Sections 22.011, 22.021, or 25.02, Penal Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.
Amended by:

Acts 2025, 89th Leg., 2nd C.S., Ch. 7 (H.B. 16), Sec. 12.07, eff. December 4, 2025.

Sec. 171.209. CIVIL LIABILITY: UNDUE BURDEN DEFENSE LIMITATIONS. (a) A defendant against whom an action is brought under Section 171.208 does not have standing to assert the rights of women seeking an abortion as a defense to liability under that section unless:

(1) the United States Supreme Court holds that the courts of this state must confer standing on that defendant to assert the third-party rights of women seeking an abortion in state court as a matter of federal constitutional law; or

(2) the defendant has standing to assert the rights of women seeking an abortion under the tests for third-party standing established by the United States Supreme Court.

(b) A defendant in an action brought under Section 171.208 may assert an affirmative defense to liability under this section if:

(1) the defendant has standing to assert the third-party rights of a woman or group of women seeking an abortion in accordance with Subsection (a); and

(2) the defendant demonstrates that the relief sought by the claimant will impose an undue burden on that woman or that group of women seeking an abortion.

(c) A court may not find an undue burden under Subsection (b) unless the defendant introduces evidence proving that:

(1) an award of relief will prevent a woman or a group of women from obtaining an abortion; or

(2) an award of relief will place a substantial obstacle in the path of a woman or a group of women who are seeking an abortion.

(d) A defendant may not establish an undue burden under this section by:

(1) merely demonstrating that an award of relief will prevent women from obtaining support or assistance, financial or otherwise, from others in their effort to obtain an abortion; or

(2) arguing or attempting to demonstrate that an award of relief against other defendants or other potential defendants will impose an undue burden on women seeking an abortion.

(e) The affirmative defense under Subsection (b) is not available if the United States Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973) or Planned Parenthood v. Casey, 505 U.S. 833 (1992), regardless of whether the conduct on which the cause of action is based under Section 171.208 occurred before the Supreme Court overruled either of those decisions.

(f) Nothing in this section shall in any way limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability under Section 171.208, and a court may not award relief under Section 171.208 if the conduct for which the defendant has been sued was an exercise of state or federal constitutional rights that personally belong to the defendant.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.210. CIVIL LIABILITY: VENUE. (a) Notwithstanding any other law, including Section 15.002, Civil Practice and Remedies Code, a civil action brought under Section 171.208 shall be brought

in:

(1) the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2) the county of residence for any one of the natural person defendants at the time the cause of action accrued;

(3) the county of the principal office in this state of any one of the defendants that is not a natural person; or

(4) the county of residence for the claimant if the claimant is a natural person residing in this state.

(b) If a civil action is brought under Section 171.208 in any one of the venues described by Subsection (a), the action may not be transferred to a different venue without the written consent of all parties.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.211. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL IMMUNITY PRESERVED. (a) This section prevails over any conflicting law, including:

(1) the Uniform Declaratory Judgments Act; and

(2) Chapter 37, Civil Practice and Remedies Code.

(b) This state has sovereign immunity, a political subdivision has governmental immunity, and each officer and employee of this state or a political subdivision has official immunity in any action, claim, or counterclaim or any type of legal or equitable action that challenges the validity of any provision or application of this chapter, on constitutional grounds or otherwise.

(c) A provision of state law may not be construed to waive or abrogate an immunity described by Subsection (b) unless it expressly waives immunity under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.212. SEVERABILITY. (a) Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent

is controlling, it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every application of the provisions in this chapter, are severable from each other.

(b) If any application of any provision in this chapter to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this chapter shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this chapter to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining applications and shall remain in force, and shall be treated as if the legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden.

(b-1) If any court declares or finds a provision of this chapter facially unconstitutional, when discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating the United States Constitution and Texas Constitution, those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted as if the legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate the United States Constitution and Texas Constitution.

(c) The legislature further declares that it would have enacted this chapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this chapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this chapter, were to be declared unconstitutional or to represent an undue burden.

(d) If any provision of this chapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be

severed and remain in force.

(e) No court may decline to enforce the severability requirements of Subsections (a), (b), (b-1), (c), and (d) on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision does not rewrite a statute, as the statute continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:

(1) is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the Texas Constitution or United States Constitution;

(2) is not a formal amendment of the language in a statute; and

(3) no more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

CHAPTER 171A. ABORTION-INDUCING DRUGS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 171A.001. DEFINITIONS. In this chapter:

(1) "Abortion" has the meaning assigned by Section 245.002.

(2) "Abortion-inducing drug" has the meaning assigned by Section 171.061.

(3) "Delivery network company," "delivery person," "digital network," "digitally prearranged delivery," "digitally prearranged ride," "driver," and "transportation network company" have the meanings assigned by Section 2402.001, Occupations Code.

(4) "Health care facility" has the meaning assigned by Section 108.002, except the term does not include a hospital.

(5) "Health care provider" means an individual who is licensed, certified, or otherwise authorized by this state to diagnose, prevent, alleviate, or cure a human illness or injury. The term does not include a physician.

(6) "Hospital" means:

(A) a hospital licensed under Chapter 241 or 577; or

(B) a hospital owned, maintained, or operated by this state.

(7) "Medical emergency" means a condition described by Section 170A.002(b)(2).

(8) "Physician" means an individual licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine.

(9) "Physician group" means an entity, including an entity described in the definition of "physician" under Section 74.001, Civil Practice and Remedies Code, that is formed by a physician or group of physicians to provide medical services.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 5 (H.B. 7), Sec. 2, eff. December 4, 2025.

Sec. 171A.002. APPLICABILITY AND CONSTRUCTION OF CHAPTER. (a) This chapter does not apply to and a civil action under this chapter may not be brought against:

(1) a hospital;

(2) a health care facility licensed, owned, maintained, or operated by this state;

(3) a health care provider, other than a provider against whom a qui tam action may be brought in accordance with Section 171A.101(d)(8);

(4) a physician, other than a physician against whom a qui tam action may be brought in accordance with Section 171A.101(d)(8);

(5) a physician group;

(6) an Internet service provider or the provider's affiliates or subsidiaries;

(7) an Internet search engine;

(8) a cloud service provider solely providing access or connection to or from an Internet website or other information or content on the Internet or on a facility, system, or network that is not under the provider's control, including transmission, downloading, intermediate storage, access software, or other services; or

(9) a person who manufactures, distributes, mails, transports, delivers, prescribes, provides, or possesses abortion-

inducing drugs in this state solely for one or more of the following purposes:

(A) treating a medical emergency;

(B) removing an ectopic pregnancy;

(C) removing a dead, unborn child whose death was caused by spontaneous abortion; or

(D) a purpose that does not include performing, inducing, attempting, or assisting an abortion, other than an abortion performed in response to a medical emergency.

(b) This chapter may not be construed to require the actual performance, inducement, or attempted performance of an abortion in order for a person to bring a civil action authorized by this chapter.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 5 (H.B. 7), Sec. 2, eff. December 4, 2025.

SUBCHAPTER B. PROTECTION FROM ABORTION-INDUCING DRUGS

Sec. 171A.051. PROHIBITIONS RELATED TO ABORTION-INDUCING DRUGS. (a) Except as provided by Subsection (b) or Section 171A.002, a person may not:

(1) manufacture or distribute an abortion-inducing drug in this state; or

(2) mail, transport, deliver, prescribe, or provide an abortion-inducing drug in any manner to or from any person or location in this state.

(b) Subsection (a) does not prohibit:

(1) speech or conduct protected by the First Amendment to the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment to the United States Constitution, or protected by Section 8, Article I, Texas Constitution;

(2) conduct a pregnant woman takes in the course of aborting or attempting to abort the woman's unborn child;

(3) the manufacture, distribution, mailing, transport, delivery, prescribing, provision, or possession of an abortion-inducing drug solely for one or more of the purposes described by Section 171A.002(a)(9); or

(4) conduct a person takes under the direction of a federal

agency, contractor, or employee to carry out a duty under federal law, if prohibiting that conduct would violate the doctrine of preemption or intergovernmental immunity.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 5 (H.B. 7), Sec. 2, eff. December 4, 2025.

Sec. 171A.052. EXCLUSIVE ENFORCEMENT; EFFECT OF OTHER LAW. (a) This subchapter may be enforced only through a qui tam action brought under Subchapter C.

(b) No other direct or indirect enforcement of this subchapter may be taken or threatened by this state, a political subdivision of this state, a district or county attorney, or any officer or employee of this state or a political subdivision of this state against any person, by any means whatsoever, except as provided in Subchapter C.

(c) This section does not preclude or limit the enforcement of any other law or regulation against conduct that is independently prohibited by the other law or regulation and that would remain prohibited by the other law or regulation in the absence of this subchapter.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 5 (H.B. 7), Sec. 2, eff. December 4, 2025.

SUBCHAPTER C. QUI TAM ENFORCEMENT OF PROHIBITIONS RELATING TO ABORTION-INDUCING DRUGS

Sec. 171A.101. QUI TAM ACTION AUTHORIZED. (a) A person, other than this state, a political subdivision of this state, or an officer or employee of this state or a political subdivision of this state, has standing to bring and may bring a qui tam action against a person who:

(1) violates Section 171A.051; or

(2) intends to violate Section 171A.051.

(b) An action brought under this section must be brought in the name of the qui tam relator, who is an assignee of this state's claim for relief. Notwithstanding any other law, the transfer of this state's claim to the qui tam relator is absolute, with the state retaining no interest in the subject matter of the claim.

(c) A qui tam relator may not bring an action under this

section if the action is preempted by 47 U.S.C. Section 230(c).

(d) A qui tam action may not be brought under this section:

(1) against a woman for using, obtaining, or seeking to obtain abortion-inducing drugs to abort or attempt to abort her unborn child;

(2) against a person acting under the direction of a federal agency, contractor, or employee who is carrying out a duty under federal law if the imposition of liability would violate the doctrine of preemption or intergovernmental immunity;

(3) by any person who:

(A) impregnated a woman through conduct constituting sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(B) committed an offense for which an affirmative finding of family violence was made under Article 42.013, Code of Criminal Procedure;

(C) provided an abortion-inducing drug to a pregnant woman for the purpose of performing, inducing, or attempting an abortion without the woman's consent or knowledge;

(D) has been convicted of an offense under Section 42.072, Penal Code; or

(E) acts in concert or participation with a person described by this subdivision;

(4) against a transportation network company or a driver for using a transportation network company's digital network to provide a digitally prearranged ride;

(5) against a delivery network company or a delivery person for using a delivery network company's digital network to provide a digitally prearranged delivery;

(6) against an air carrier conducting domestic or flag operations under 14 C.F.R. Part 121 or a foreign air carrier conducting scheduled operations under 14 C.F.R. Part 129;

(7) against a person to whom this chapter does not apply and against whom a civil action under this chapter may not be brought under Section 171A.002(a);

(8) against a health care provider or physician, unless the qui tam relator pleads and proves that the provider or physician engaged in conduct constituting a violation of Section 171A.051 while located outside this state; or

(9) against a pharmaceutical manufacturer, pharmaceutical

distributor, or common carrier, unless the qui tam relator pleads and proves that the defendant failed to adopt and implement a policy to not distribute, mail, transport, deliver, provide, or possess abortion-inducing drugs other than for one or more of the purposes described by Section 171A.002(a)(9).

(e) Notwithstanding any other law, including rules of civil procedure adopted under Chapter 26, Civil Practice and Remedies Code, an action brought under this section may not be litigated on behalf of a claimant class or a defendant class, and a court may not certify a class in the action.

(f) In an action brought under this chapter, a qui tam relator or a defendant against whom an action is brought under this section may not, without the consent of the person to whom the information belongs, publicly disclose or improperly obtain:

(1) any personally identifiable information of a pregnant woman who sought or obtained an abortion-inducing drug from a defendant against whom a qui tam action is brought under this section, including any written, electronic, audio, or visual document or media that identifies the pregnant woman;

(2) any information protected from public disclosure under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and regulations adopted under that Act; or

(3) any personal data of a pregnant woman who sought or obtained an abortion-inducing drug from a defendant against whom a qui tam action is brought under this section that is protected from public disclosure under federal or state law.

(g) Notwithstanding any other law, a court may not order in response to the filing of a petition by a qui tam relator the taking of a deposition under Rule 202, Texas Rules of Civil Procedure, of a woman who is the subject of a violation of Section 171A.051 unless the woman consents to the deposition.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 5 (H.B. 7), Sec. 2, eff. December 4, 2025.

Sec. 171A.102. DEFENSES. (a) It is an affirmative defense to an action brought under Section 171A.101 that the defendant:

(1) was unaware the defendant was engaged in the conduct prohibited by Section 171A.051; and

(2) took reasonable precautions to ensure the defendant would not violate Section 171A.051.

(b) It is an affirmative defense to an action brought under Section 171A.101 that:

(1) the imposition of civil liability on the defendant will violate the defendant's rights under federal law, including the United States Constitution;

(2) the defendant:

(A) has standing to assert the rights of a third party under the tests for third-party standing established by the United States Supreme Court; and

(B) demonstrates that the imposition of civil liability on the defendant will violate the third party's rights under federal law, including the United States Constitution;

(3) the imposition of civil liability on the defendant will violate the defendant's rights under the Texas Constitution; or

(4) the imposition of civil liability on the defendant will violate limits on extraterritorial jurisdiction imposed by the United States Constitution or the Texas Constitution.

(c) The defendant has the burden of proving an affirmative defense under this section by a preponderance of the evidence.

(d) The following are not defenses to an action brought under Section 171A.101:

(1) a defendant's ignorance or mistake of law, including a defendant's mistaken belief that the requirements or provisions of this chapter are unconstitutional or were unconstitutional;

(2) a defendant's reliance on a state or federal court decision that is not binding on the court in which the action has been brought;

(3) a defendant's reliance on a federal agency rule or action that has been repealed, superseded, or declared invalid or unconstitutional, even if the federal agency rule or action had not been repealed, superseded, or declared invalid or unconstitutional when the cause of action accrued;

(4) the laws of another state or jurisdiction, including an abortion shield law, unless the Texas Constitution or federal law compels the court to enforce that law;

(5) non-mutual issue preclusion or non-mutual claim preclusion;

(6) sovereign immunity, governmental immunity, or official

immunity, other than sovereign immunity, governmental immunity, or official immunity applicable to:

(A) a hospital owned, maintained, or operated by this state that facilitates the availability of or makes available abortion-inducing drugs solely for one or more of the purposes described by Section 171A.002(a)(9);

(B) a political subdivision of this state, including a hospital district, that facilitates the availability of or makes available abortion-inducing drugs solely for one or more of the purposes described by Section 171A.002(a)(9); or

(C) a physician or health care professional employed by a hospital owned or operated by this state or a political subdivision of this state, including a hospital district, acting within the scope of the physician's or professional's employment who prescribes, distributes, administers, or otherwise makes available abortion-inducing drugs solely for one or more of the purposes described by Section 171A.002(a)(9);

(7) a claim that the enforcement of this chapter or the imposition of civil liability against the defendant will violate the constitutional or federally protected rights of third parties, except as provided by Subsection (b); or

(8) consent to the abortion by the claimant or the unborn child's mother.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 5 (H.B. 7), Sec. 2, eff. December 4, 2025.

Sec. 171A.103. STATUTE OF LIMITATIONS. A person may bring an action under Section 171A.101 not later than the sixth anniversary of the date the cause of action accrues.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 5 (H.B. 7), Sec. 2, eff. December 4, 2025.

Sec. 171A.104. REMEDIES. (a) Notwithstanding any other law and except as provided by Subsection (b), if a qui tam relator prevails in an action brought under Section 171A.101, the court shall award to the relator:

(1) injunctive relief sufficient to prevent the defendant

from violating Section 171A.051;

(2) an amount of not less than $100,000 for each violation of Section 171A.051, to be allocated in accordance with Subsection (b); and

(3) costs and reasonable attorney's fees.

(b) In awarding the amount described by Subsection (a)(2), the court shall ensure that:

(1) the qui tam relator receives the entire amount awarded under Subsection (a)(2) for an action in which the relator is:

(A) a woman who was pregnant at the time the woman obtained or received an abortion-inducing drug that was manufactured, distributed, mailed, transported, delivered, prescribed, provided, or possessed in violation of Section 171A.051; or

(B) the father, sibling, or grandparent of the unborn child with which the woman described by Paragraph (A) was pregnant at the time the woman obtained or received the abortion-inducing drug; and

(2) for an action in which the qui tam relator is a person other than a person described by Subdivision (1):

(A) the relator receives $10,000 of the total amount awarded under Subsection (a)(2); and

(B) the remainder of the amount awarded under Subsection (a)(2) is held in trust by the relator for the benefit of a charitable organization designated by the relator, except that the relator may not designate a charitable organization under this paragraph from which the relator or any of the relator's family members receives a salary, stipend, or any type of remuneration or financial benefit.

(c) A court may not award relief under Subsection (a)(2) or (3) in response to a violation of Section 171A.051 if the defendant demonstrates that:

(1) a court previously ordered the defendant to pay an amount under Subsection (a)(2) in another action for that particular violation; and

(2) the court order described by Subdivision (1) has not been vacated, reversed, or overturned.

(d) A court may not award costs or attorney's fees under the Texas Rules of Civil Procedure or any other rule adopted by the supreme court under Section 22.004, Government Code, to a defendant against whom an action is brought under Section 171A.101.

(e) Subsection (d) does not preclude a court from:

(1) awarding sanctions under Chapter 10, Civil Practice and Remedies Code; or

(2) sanctioning a litigant or attorney for frivolous, malicious, or bad-faith conduct.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 5 (H.B. 7), Sec. 2, eff. December 4, 2025.

Sec. 171A.105. COORDINATED ENFORCEMENT PROHIBITED. (a) This state, a political subdivision of this state, or an officer or employee of this state or a political subdivision of this state may not:

(1) act in concert or participation with a qui tam relator bringing an action under Section 171A.101;

(2) establish or attempt to establish any type of agency or fiduciary relationship with a qui tam relator bringing an action under Section 171A.101;

(3) attempt to control or influence a person's decision to bring an action under Section 171A.101 or that person's conduct of the litigation; or

(4) intervene in an action brought under Section 171A.101.

(b) This section does not prohibit this state, a political subdivision of this state, or an officer or employee of this state or a political subdivision of this state from filing an amicus curiae brief in an action brought under Section 171A.101 if this state, the political subdivision, the officer, or the employee does not act in concert or participation with the qui tam relator.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 5 (H.B. 7), Sec. 2, eff. December 4, 2025.

Sec. 171A.106. JURISDICTION; APPLICABILITY OF STATE LAW. (a) Notwithstanding any other law, including Subchapter C, Chapter 17, Civil Practice and Remedies Code, the courts of this state have personal jurisdiction over a defendant sued under Section 171A.101 to the maximum extent permitted by the Fourteenth Amendment to the United States Constitution, and the defendant may be served outside this state.

(b) Notwithstanding any other law, the law of this state applies to an action brought under Section 171A.101 to the maximum extent permitted by the Texas Constitution and federal law, including the United States Constitution.

(c) Notwithstanding any other law, any contractual provision that requires or purports to require application of the laws of a different jurisdiction, or that requires or purports to require a qui tam action under Section 171A.101 to be litigated in a particular forum, is void based on this state's public policy and is not enforceable in any court.

(d) Notwithstanding any other law, Chapter 27, Civil Practice and Remedies Code, does not apply to an action brought under Section 171A.101.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 5 (H.B. 7), Sec. 2, eff. December 4, 2025.

Sec. 171A.107. APPEALS. The Fifteenth Court of Appeals has exclusive intermediate appellate jurisdiction over any appeal or original proceeding arising out of an action brought under Section 171A.101 in the courts of this state.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 5 (H.B. 7), Sec. 2, eff. December 4, 2025.

Sec. 171A.108. APPLICATION OF OTHER LAW. Notwithstanding any other law, a court may not apply the law of another state or jurisdiction to any qui tam action brought under Section 171A.101 unless the Texas Constitution or federal law compels the court to apply that law.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 5 (H.B. 7), Sec. 2, eff. December 4, 2025.

SUBCHAPTER D. PROTECTION FROM CERTAIN COUNTERACTIONS

Sec. 171A.151. EFFECT OF CLAWBACK PROVISIONS. (a) For purposes of this section, the term "clawback provision" refers to any law of another state or jurisdiction that authorizes the bringing of

a civil action against a person for:

(1) bringing or engaging in an action authorized by this chapter, including Subsection (f);

(2) bringing or engaging in an action that alleges a violation of Section 171A.051;

(3) attempting, intending, or threatening to bring or engage in an action described by Subdivision (1) or (2); or

(4) providing legal representation or any type of assistance to a person who brings or engages in an action described by Subdivision (1) or (2).

(b) Notwithstanding any other law and except as otherwise provided by federal law or the Texas Constitution, the laws of this state apply to:

(1) conduct described by Subsection (a);

(2) an action brought against a person for engaging in conduct described by Subsection (a);

(3) an action brought under a clawback provision against a resident of this state; and

(4) an action brought under Subsection (f).

(c) Notwithstanding any other law, in an action described by Subsection (a)(1) or (2), the court shall, on request, issue a temporary, preliminary, or permanent injunction that restrains each defendant in the action, each person in privity with the defendant, and each person with whom the defendant is in active concert or participation from:

(1) bringing an action under any clawback provision against a claimant or prosecutor, a person in privity with the claimant or prosecutor, or a person providing legal representation or any type of assistance to the claimant or prosecutor; and

(2) continuing to litigate an action under any clawback provision that has been brought against a claimant or prosecutor, a person in privity with the claimant or prosecutor, or a person providing legal representation or any type of assistance to the claimant or prosecutor.

(d) Notwithstanding any other law, the doctrines of res judicata and collateral estoppel preclude a defendant against whom a judgment is entered in an action described by Subsection (a)(1) or (2) and each person in privity with the defendant from litigating or relitigating any claim or issue under any clawback provision against a claimant, prosecutor, or person in privity with the claimant or

prosecutor that was raised or could have been raised as a claim, cross-claim, counterclaim, or affirmative defense under the federal or this state's rules of civil procedure.

(e) Notwithstanding any other law, a court of this state may not enforce an out-of-state judgment obtained in an action brought under a clawback provision unless federal law or the Texas Constitution requires the court to enforce the judgment.

(f) Notwithstanding any other law, if an action is brought or judgment is entered against a person under a clawback provision based wholly or partly on the person's decision to engage in conduct described by Subsection (a), that person is entitled to injunctive relief and damages from any person who brought the action or obtained the judgment or who sought to enforce the judgment. Notwithstanding any other law, the relief described by this subsection must include:

(1) compensatory damages, including money damages in an amount equal to the judgment damages and costs, expenses, and reasonable attorney's fees spent in defending the action;

(2) costs, expenses, and reasonable attorney's fees incurred in bringing an action under this subsection;

(3) additional amounts consisting of the greater of:

(A) twice the sum of the damages, costs, expenses, and fees described by Subdivisions (1) and (2); or

(B) $100,000; and

(4) injunctive relief that restrains each person who brought the action under the clawback provision, each person in privity with the person, and each person acting in concert or participation with the person from:

(A) bringing further actions under any clawback provision against the person against whom the action was brought, each person in privity with the person, or any person providing legal representation or any type of assistance to the person;

(B) continuing to litigate any actions brought under a clawback provision against the persons described by Paragraph (A); and

(C) enforcing or attempting to enforce any judgment obtained in any actions brought under a clawback provision against the persons described by Paragraph (A).

(g) It is not a defense to an action brought under Subsection (f) that:

(1) the claimant failed to seek recovery under Subsection

(f) in an action brought against the claimant under a clawback provision; or

(2) a court in a preceding action brought against the claimant declined to recognize or enforce Subsection (f) or held any provision of that subsection invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

(h) Notwithstanding any other law, Chapter 27, Civil Practice and Remedies Code, does not apply to an action brought under Subsection (f).

(i) The Fifteenth Court of Appeals has exclusive intermediate appellate jurisdiction over any appeal or original proceeding arising out of a civil action brought under Subsection (f) in the courts of this state.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 5 (H.B. 7), Sec. 2, eff. December 4, 2025.

CHAPTER 172. REMOVAL OF PLACENTA FROM HOSPITAL OR BIRTHING CENTER

Sec. 172.001. DEFINITIONS. In this chapter:

(1) "Birthing center" means a facility licensed under Chapter 244.

(2) "Hospital" means a facility licensed under Chapter 241 or a hospital maintained or operated by this state.

Added by Acts 2015, 84th Leg., R.S., Ch. 740 (H.B. 1670), Sec. 1, eff. June 17, 2015.

Sec. 172.002. REMOVAL OF PLACENTA FROM HOSPITAL OR BIRTHING CENTER. (a) Except for the portion of a delivered placenta that is necessary for an examination described by Subsection (d), a hospital or birthing center without a court order shall allow a woman who has given birth in the facility, or a spouse of the woman if the woman is incapacitated or deceased, to take possession of and remove from the facility the placenta if:

(1) the woman tests negative for infectious diseases as evidenced by the results of the diagnostic testing required by Section 81.090; and

(2) the person taking possession of the placenta signs a

form prescribed by the department acknowledging that:

(A) the person has received from the hospital or birthing center educational information prescribed by the department concerning the spread of blood-borne diseases from placentas, the danger of ingesting formalin, and the proper handling of placentas; and

(B) the placenta is for personal use.

(b) A person removing a placenta from a hospital or birthing center under this section may only retain the placenta for personal use and may not sell the placenta.

(c) A hospital or birthing center shall retain a signed form received under Subsection (a) with the woman's medical records.

(d) This section does not prohibit a pathological examination of the delivered placenta that is ordered by a physician or required by a policy of the hospital or birthing center.

(e) This section does not authorize a woman or the woman's spouse to interfere with a pathological examination of the delivered placenta that is ordered by a physician or required by a policy of the hospital or birthing center.

(f) A hospital or birthing center that allows a person to take possession of and remove from the facility a delivered placenta in compliance with this section is not required to dispose of the placenta as medical waste.

(g) A hospital or birthing center that acts in accordance with this section is not liable for the act in a civil action, a criminal prosecution, or an administrative proceeding.

Added by Acts 2015, 84th Leg., R.S., Ch. 740 (H.B. 1670), Sec. 1, eff. June 17, 2015.

Sec. 172.003. DEPARTMENT DUTIES. The department shall develop the form and the educational information required under Section 172.002 and post a copy of the form and information on the department's Internet website.

Added by Acts 2015, 84th Leg., R.S., Ch. 740 (H.B. 1670), Sec. 1, eff. June 17, 2015.

CHAPTER 173. DONATION OF HUMAN FETAL TISSUE

Sec. 173.001. DEFINITIONS. In this chapter:

(1) "Authorized facility" means:

(A) a hospital licensed under Chapter 241;

(B) a hospital maintained or operated by this state or an agency of this state;

(C) an ambulatory surgical center licensed under Chapter 243; or

(D) a birthing center licensed under Chapter 244.

(2) "Human fetal tissue" means any gestational human organ, cell, or tissue from an unborn child. The term does not include:

(A) supporting cells or tissue derived from a pregnancy or associated maternal tissue that is not part of the unborn child; or

(B) the umbilical cord or placenta, provided that the umbilical cord or placenta is not derived from an elective abortion.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 7, eff. September 1, 2017.

Sec. 173.002. APPLICABILITY. This chapter does not apply to:

(1) human fetal tissue obtained for diagnostic or pathological testing;

(2) human fetal tissue obtained for a criminal investigation;

(3) human fetal tissue or human tissue obtained during pregnancy or at delivery of a child, provided the tissue is obtained by an accredited public or private institution of higher education for use in research approved by an institutional review board or another appropriate board, committee, or body charged with oversight applicable to the research; or

(4) cell lines derived from human fetal tissue or human tissue existing on September 1, 2017, that are used by an accredited public or private institution of higher education in research approved by an institutional review board or another appropriate board, committee, or body charged with oversight applicable to the research.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 7, eff. September 1, 2017.

Sec. 173.003. ENFORCEMENT. (a) The department shall enforce this chapter.

(b) The attorney general, on request of the department or a local law enforcement agency, may assist in the investigation of a violation of this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 7, eff. September 1, 2017.

Sec. 173.004. PROHIBITED DONATION. A person may not donate human fetal tissue except as authorized by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 7, eff. September 1, 2017.

Sec. 173.005. DONATION BY AUTHORIZED FACILITY. (a) Only an authorized facility may donate human fetal tissue. An authorized facility may donate human fetal tissue only to an accredited public or private institution of higher education for use in research approved by an institutional review board or another appropriate board, committee, or body charged with oversight applicable to the research.

(b) An authorized facility may not donate human fetal tissue obtained from an elective abortion.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 7, eff. September 1, 2017.

Sec. 173.006. INFORMED CONSENT REQUIRED. An authorized facility may not donate human fetal tissue under this chapter unless the facility has obtained the written, voluntary, and informed consent of the woman from whose pregnancy the fetal tissue is obtained. The consent must be provided on a standard form prescribed by the department.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 7, eff. September 1, 2017.

Sec. 173.007. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) offers a woman monetary or other consideration to:

(A) have an abortion for the purpose of donating human fetal tissue; or

(B) consent to the donation of human fetal tissue; or

(2) knowingly or intentionally solicits or accepts tissue from a fetus gestated solely for research purposes.

(b) An offense under this section is a Class A misdemeanor punishable by a fine of not more than $10,000.

(c) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 7, eff. September 1, 2017.

Sec. 173.008. RECORD RETENTION. Unless another law requires a longer period of record retention, an authorized facility may not dispose of any medical record relating to a woman who consents to the donation of human fetal tissue before:

(1) the seventh anniversary of the date consent was obtained under Section 173.006; or

(2) if the woman was younger than 18 years of age on the date consent was obtained under Section 173.006, the later of:

(A) the woman's 23rd birthday; or

(B) the seventh anniversary of the date consent was obtained.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 7, eff. September 1, 2017.

Sec. 173.009. ANNUAL REPORT. An authorized facility that donates human fetal tissue under this chapter shall submit an annual report to the department that includes for each donation:

(1) the specific type of fetal tissue donated; and

(2) the accredited public or private institution of higher education that received the donation.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 7, eff. September 1, 2017.

CHAPTER 174. SECURITY OF GENETIC INFORMATION

Sec. 174.001. SHORT TITLE. This chapter may be cited as the Texas Genomic Act of 2025.

Added by Acts 2025, 89th Leg., R.S., Ch. 368 (H.B. 130), Sec. 1, eff. September 1, 2025.

Sec. 174.002. DEFINITIONS. In this chapter:

(1) "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company that exists to make a profit. The term includes a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations.

(2) "Domicile" means the country in which:

(A) a company or nonprofit organization is formed, incorporated, or registered and headquartered;

(B) a company's or nonprofit organization's affairs are primarily conducted; or

(C) the majority of the company's ownership shares are held.

(3) "Foreign adversary" has the meaning assigned by 15 C.F.R. Section 791.4(a).

(4) "Genome sequencer" means any device or platform used to conduct genome sequencing, resequencing, or isolation or other genome research.

(5) "Genome sequencing" means any method used to determine the identity and order of nucleotide bases in the human genome.

(6) "Human genome" means the set of DNA found in human cells.

(7) "Medical facility" means a facility licensed or registered by a state or federal agency to provide health care services that receives any state funding, including pass-through federal money provided to a state agency for grant awards.

(8) "Software" means computer programs and related

equipment used for genome sequencing or the operation, control, analysis, research, or other functions of genome sequencers.

Added by Acts 2025, 89th Leg., R.S., Ch. 368 (H.B. 130), Sec. 1, eff. September 1, 2025.

Sec. 174.003. APPLICABILITY. This chapter applies to a medical facility, research facility, company, or nonprofit organization that conducts research on or testing of genome sequencing or the human genome in this state.

Added by Acts 2025, 89th Leg., R.S., Ch. 368 (H.B. 130), Sec. 1, eff. September 1, 2025.

Sec. 174.004. PURPOSE AND LEGISLATIVE POLICY. (a) The purpose of this chapter is to ensure that a medical facility, research facility, company, or nonprofit organization subject to this chapter does not provide a foreign adversary access to the genetic information of residents of this state.

(b) The policy of this state is to:

(1) oppose the collection and analysis of genomic information by a foreign adversary or for use by a foreign adversary; and

(2) support sanctions the United States Department of Commerce or the United States Department of Defense imposes on a medical facility, research facility, company, or nonprofit organization engaged in the collection and analysis of genomic information for use by a foreign adversary.

Added by Acts 2025, 89th Leg., R.S., Ch. 368 (H.B. 130), Sec. 1, eff. September 1, 2025.

Sec. 174.005. PROHIBITED USE OF CERTAIN GENOME SEQUENCERS AND GENOME SEQUENCING TECHNOLOGIES. A medical facility, research facility, company, or nonprofit organization subject to this chapter may not use a genome sequencer or software produced by or on behalf of:

(1) a foreign adversary;

(2) a state-owned enterprise of a foreign adversary;

(3) a company or nonprofit organization domiciled within the borders of a country that is a foreign adversary; or

(4) an owned or controlled subsidiary or affiliate of a company or nonprofit organization domiciled within the borders of a country that is a foreign adversary.

Added by Acts 2025, 89th Leg., R.S., Ch. 368 (H.B. 130), Sec. 1, eff. September 1, 2025.

Sec. 174.006. PROHIBITED SALE OF GENOMIC INFORMATION IN BANKRUPTCY OR REORGANIZATION. A medical facility, research facility, company, or nonprofit organization subject to this chapter may not sell or otherwise transfer genomic sequencing data of residents of this state as part of a bankruptcy proceeding or pursuant to a plan of reorganization under Chapter 11 of the United States Bankruptcy Code (11 U.S.C. Section 1101 et seq.) to:

(1) a foreign adversary;

(2) a state-owned enterprise of a foreign adversary;

(3) a company or nonprofit organization domiciled within the borders of a country that is a foreign adversary; or

(4) an owned or controlled subsidiary or affiliate of a company or nonprofit organization domiciled within the borders of a country that is a foreign adversary.

Added by Acts 2025, 89th Leg., R.S., Ch. 368 (H.B. 130), Sec. 1, eff. September 1, 2025.

Sec. 174.007. REQUIREMENTS FOR GENOMIC INFORMATION STORAGE. (a) A medical facility, research facility, company, or nonprofit organization subject to this chapter may not store any genome sequencing data of a resident of this state at a location within the borders of a country that is a foreign adversary.

(b) A medical facility, research facility, company, or nonprofit organization subject to this chapter that stores genome sequencing data of residents of this state, including storage of genome sequencing data through a contract with a third-party data storage company, shall ensure the security of the genome sequencing data using reasonable encryption methods, restriction on access, and

other cybersecurity best practices.

(c) A medical facility, research facility, company, or nonprofit organization subject to this chapter shall ensure genome sequencing data of residents of this state, other than open data, is inaccessible to any person located within the borders of a country that is a foreign adversary.

(d) This section does not apply to the storage of genome sequencing data by a medical facility, research facility, company, or nonprofit organization subject to this chapter that is collected as part of a clinical trial or other biomedical research study subject to, or conducted in accordance with, 28 C.F.R. Part 202.

Added by Acts 2025, 89th Leg., R.S., Ch. 368 (H.B. 130), Sec. 1, eff. September 1, 2025.

Sec. 174.008. REQUIRED ANNUAL CERTIFICATION OF COMPLIANCE. (a) Not later than December 31 of each year, a medical facility, research facility, company, or nonprofit organization subject to this chapter shall certify to the attorney general that the facility, company, or organization is in compliance with this chapter.

(b) An attorney representing a medical facility, research facility, company, or nonprofit organization subject to this chapter shall submit the certification required under Subsection (a).

Added by Acts 2025, 89th Leg., R.S., Ch. 368 (H.B. 130), Sec. 1, eff. September 1, 2025.

Sec. 174.009. INVESTIGATIVE AUTHORITY OF ATTORNEY GENERAL. (a) The attorney general may investigate an allegation of a violation of this chapter.

(b) Any person may notify the attorney general of a violation or potential violation of this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 368 (H.B. 130), Sec. 1, eff. September 1, 2025.

Sec. 174.010. CIVIL PENALTY. (a) A medical facility, research facility, company, or nonprofit organization that violates this

chapter is liable to this state for a civil penalty of $10,000 for each violation.

(b) The attorney general may bring an action to recover the civil penalty imposed under this section.

(c) An action under this section may be brought in a district court in:

(1) Travis County; or

(2) a county in which any part of the violation occurs.

(d) The attorney general shall deposit a civil penalty collected under this section in the state treasury to the credit of the general revenue fund.

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

Added by Acts 2025, 89th Leg., R.S., Ch. 368 (H.B. 130), Sec. 1, eff. September 1, 2025.

Sec. 174.011. PRIVATE CAUSE OF ACTION. (a) A resident of this state who is a patient or research subject of a medical facility, research facility, company, or nonprofit organization subject to this chapter and who is harmed by the storage or use of the patient's or subject's genome sequencing data in violation of this chapter may bring an action against the facility, company, or organization that violated this chapter and is entitled to obtain:

(1) the greater of:

(A) actual damages; or

(B) statutory damages in an amount not to exceed $5,000 for each violation; and

(2) court costs and reasonable attorney's fees.

(b) An action under this section may be brought in the county in which the plaintiff resides.

(c) Sections 41.003 and 41.004, Civil Practice and Remedies Code, do not apply to an action brought under this section.

Added by Acts 2025, 89th Leg., R.S., Ch. 368 (H.B. 130), Sec. 1, eff. September 1, 2025.

SUBTITLE I. MEDICAL RECORDS
CHAPTER 181. MEDICAL RECORDS PRIVACY
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 181.001. DEFINITIONS. (a) Unless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(55), eff. April 2, 2015.

(2) "Covered entity" means any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site;

(B) comes into possession of protected health information;

(C) obtains or stores protected health information under this chapter; or

(D) is an employee, agent, or contractor of a person described by Paragraph (A), (B), or (C) insofar as the employee, agent, or contractor creates, receives, obtains, maintains, uses, or transmits protected health information.

(2-a) "Disclose" means to release, transfer, provide access to, or otherwise divulge information outside the entity holding the information.

(2-b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(55), eff. April 2, 2015.

(3) "Health Insurance Portability and Accountability Act and Privacy Standards" means the privacy requirements in existence on September 1, 2011, of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

(4) "Marketing" means:

(A) making a communication about a product or service that encourages a recipient of the communication to purchase or use the product or service, unless the communication is made:

(i) to describe a health-related product or service or the payment for a health-related product or service that is provided by, or included in a plan of benefits of, the covered entity making the communication, including communications about:

(a) the entities participating in a health care provider network or health plan network;

(b) replacement of, or enhancement to, a health plan; or

(c) health-related products or services available only to a health plan enrollee that add value to, but are not part of, a plan of benefits;

(ii) for treatment of the individual;

(iii) for case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual; or

(iv) by a covered entity to an individual that encourages a change to a prescription drug included in the covered entity's drug formulary or preferred drug list;

(B) an arrangement between a covered entity and any other entity under which the covered entity discloses protected health information to the other entity, in exchange for direct or indirect remuneration, for the other entity or its affiliate to make a communication about its own product or service that encourages recipients of the communication to purchase or use that product or service; and

(C) notwithstanding Paragraphs (A)(ii) and (iii), a product-specific written communication to a consumer that encourages a change in products.

(5) "Product" means a prescription drug or prescription medical device.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 924, Sec. 2.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 1, eff. September 1, 2012.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(55), eff. April 2, 2015.

Sec. 181.002. APPLICABILITY. (a) Except as provided by Section 181.205, this chapter does not affect the validity of another statute of this state that provides greater confidentiality for information made confidential by this chapter.

(b) To the extent that this chapter conflicts with another law, other than Section 58.0052, Family Code, with respect to protected health information collected by a governmental body or unit, this chapter controls.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 924, Sec. 3, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 653 (S.B. 1106), Sec. 5, eff. June 17, 2011.

Sec. 181.003. SOVEREIGN IMMUNITY. This chapter does not waive sovereign immunity to suit or liability.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.004. APPLICABILITY OF STATE AND FEDERAL LAW. (a) A covered entity, as that term is defined by 45 C.F.R. Section 160.103, shall comply with the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) Subject to Section 181.051, a covered entity, as that term is defined by Section 181.001, shall comply with this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 2, eff. September 1, 2012.

Sec. 181.005. DUTIES OF THE EXECUTIVE COMMISSIONER. (a) The executive commissioner shall administer this chapter and may adopt rules consistent with the Health Insurance Portability and Accountability Act and Privacy Standards to administer this chapter.

(b) The executive commissioner shall review amendments to the definitions in 45 C.F.R. Parts 160 and 164 that occur after September 1, 2011, and determine whether it is in the best interest of the state to adopt the amended federal regulations. If the executive commissioner determines that it is in the best interest of the state to adopt the amended federal regulations, the amended regulations shall apply as required by this chapter.

(c) In making a determination under this section, the executive commissioner must consider, in addition to other factors affecting the public interest, the beneficial and adverse effects the amendments would have on:

(1) the lives of individuals in this state and their expectations of privacy; and

(2) governmental entities, institutions of higher education, state-owned teaching hospitals, private businesses, and commerce in this state.

(d) The executive commissioner shall prepare a report of the executive commissioner's determination made under this section and shall file the report with the presiding officer of each house of the legislature before the 30th day after the date the determination is made. The report must include an explanation of the reasons for the determination.

Added by Acts 2003, 78th Leg., ch. 924, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 3, eff. September 1, 2012.

Sec. 181.006. PROTECTED HEALTH INFORMATION NOT PUBLIC. Notwithstanding Sections 181.004 and 181.051, for a covered entity that is a governmental unit, an individual's protected health information:

(1) includes any information that reflects that an individual received health care from the covered entity; and

(2) is not public information and is not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 419 (H.B. 2004), Sec. 5, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 4, eff. September 1, 2012.

SUBCHAPTER B. EXEMPTIONS

Sec. 181.051. PARTIAL EXEMPTION. Except for Subchapter D, this chapter does not apply to:

(1) a covered entity as defined by Section 602.001, Insurance Code;

(2) an entity established under Article 5.76-3, Insurance Code; or

(3) an employer.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1274, Sec. 20, eff. April 1, 2005.

Sec. 181.052. PROCESSING PAYMENT TRANSACTIONS BY FINANCIAL INSTITUTIONS. (a) In this section, "financial institution" has the meaning assigned by Section 1101, Right to Financial Privacy Act of 1978 (12 U.S.C. Section 3401), and its subsequent amendments.

(b) To the extent that a covered entity engages in activities of a financial institution, or authorizes, processes, clears, settles, bills, transfers, reconciles, or collects payments for a financial institution, this chapter and any rule adopted under this chapter does not apply to the covered entity with respect to those activities, including the following:

(1) using or disclosing information to authorize, process, clear, settle, bill, transfer, reconcile, or collect a payment for, or related to, health plan premiums or health care, if the payment is made by any means, including a credit, debit, or other payment card, an account, a check, or an electronic funds transfer; and

(2) requesting, using, or disclosing information with respect to a payment described by Subdivision (1):

(A) for transferring receivables;

(B) for auditing;

(C) in connection with a customer dispute or an inquiry from or to a customer;

(D) in a communication to a customer of the entity

regarding the customer's transactions, payment card, account, check, or electronic funds transfer;

(E) for reporting to consumer reporting agencies; or

(F) for complying with a civil or criminal subpoena or a federal or state law regulating the covered entity.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.053. NONPROFIT AGENCIES. The executive commissioner shall by rule exempt from this chapter a nonprofit agency that pays for health care services or prescription drugs for an indigent person only if the agency's primary business is not the provision of health care or reimbursement for health care services.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0521, eff. April 2, 2015.

Sec. 181.054. WORKERS' COMPENSATION. This chapter does not apply to:

(1) workers' compensation insurance or a function authorized by Title 5, Labor Code; or

(2) any person or entity in connection with providing, administering, supporting, or coordinating any of the benefits under a self-insured program for workers' compensation.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.055. EMPLOYEE BENEFIT PLAN. This chapter does not apply to:

(1) an employee benefit plan; or

(2) any covered entity or other person, insofar as the entity or person is acting in connection with an employee benefit plan.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.056. AMERICAN RED CROSS. This chapter does not prohibit the American Red Cross from accessing any information necessary to perform its duties to provide biomedical services, disaster relief, disaster communication, or emergency leave verification services for military personnel.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 924, Sec. 5, eff. Sept. 1, 2003.

Sec. 181.057. INFORMATION RELATING TO OFFENDERS WITH MENTAL IMPAIRMENTS. This chapter does not apply to an agency described by Section 614.017 with respect to the disclosure, receipt, transfer, or exchange of medical and health information and records relating to individuals in the custody of an agency or in community supervision.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.058. EDUCATIONAL RECORDS. In this chapter, protected health information does not include:

(1) education records covered by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) and its subsequent amendments; or

(2) records described by 20 U.S.C. Section 1232g(a)(4)(B)(iv) and its subsequent amendments.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.059. CRIME VICTIM COMPENSATION. This chapter does not apply to any person or entity in connection with providing, administering, supporting, or coordinating any of the benefits regarding compensation to victims of crime as provided by Chapter 56B, Code of Criminal Procedure.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 5, eff. September 1, 2012.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 469 (H.B. 4173), Sec. 2.53, eff. January 1, 2021.

Sec. 181.060. INFORMATION REGARDING COMMUNICABLE DISEASES IN CERTAIN FACILITIES. (a) In this section:

(1) "Communicable disease" has the meaning assigned by Section 81.003.

(2) "Facility" means:

(A) a nursing facility licensed under Chapter 242;

(B) a continuing care facility licensed under Chapter 246; and

(C) an assisted living facility licensed under Chapter 247.

(3) "Resident" means an individual, including a patient, who resides in a facility.

(b) In this chapter, protected health information does not include information that identifies:

(1) the name or location of a facility in which residents have been diagnosed with a communicable disease; or

(2) the number of residents who have been diagnosed with a communicable disease in a facility.

(c) Unless made confidential under other law, the information described by Subsection (b) is not confidential and is subject to disclosure under Chapter 552, Government Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 95 (S.B. 930), Sec. 2, eff. September 1, 2021.

SUBCHAPTER C. ACCESS TO AND USE OF PROTECTED HEALTH INFORMATION

Sec. 181.101. TRAINING REQUIRED. (a) Each covered entity shall provide training to employees of the covered entity regarding the state and federal law concerning protected health information as necessary and appropriate for the employees to carry out the employees' duties for the covered entity.

(b) An employee of a covered entity must complete training described by Subsection (a) not later than the 90th day after the date the employee is hired by the covered entity.

(c) If the duties of an employee of a covered entity are affected by a material change in state or federal law concerning protected health information, the employee shall receive training

described by Subsection (a) within a reasonable period, but not later than the first anniversary of the date the material change in law takes effect.

(d) A covered entity shall require an employee of the entity who receives training described by Subsection (a) to sign, electronically or in writing, a statement verifying the employee's completion of training. The covered entity shall maintain the signed statement until the sixth anniversary of the date the statement is signed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 6, eff. September 1, 2012.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1367 (S.B. 1609), Sec. 1, eff. June 14, 2013.

Sec. 181.102. CONSUMER ACCESS TO ELECTRONIC HEALTH RECORDS. (a) Except as provided by Subsection (b), if a health care provider is using an electronic health records system that is capable of fulfilling the request, the health care provider, not later than the 15th business day after the date the health care provider receives a written request from a person for the person's electronic health record, shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form.

(b) A health care provider is not required to provide access to a person's protected health information that is excepted from access, or to which access may be denied, under 45 C.F.R. Section 164.524.

(c) For purposes of Subsection (a), the executive commissioner, in consultation with the department, the Texas Medical Board, and the Texas Department of Insurance, by rule may recommend a standard electronic format for the release of requested health records. The standard electronic format recommended under this section must be consistent, if feasible, with federal law regarding the release of electronic health records.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 6, eff. September 1, 2012.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0522, eff.

April 2, 2015.

Sec. 181.103. CONSUMER INFORMATION WEBSITE. The attorney general shall maintain an Internet website that provides:

(1) information concerning a consumer's privacy rights regarding protected health information under federal and state law;

(2) a list of the state agencies, including the department, the Texas Medical Board, and the Texas Department of Insurance, that regulate covered entities in this state and the types of entities each agency regulates;

(3) detailed information regarding each agency's complaint enforcement process; and

(4) contact information, including the address of the agency's Internet website, for each agency listed under Subdivision (2) for reporting a violation of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 6, eff. September 1, 2012.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0523, eff. April 2, 2015.

Sec. 181.104. CONSUMER COMPLAINT REPORT BY ATTORNEY GENERAL. (a) The attorney general annually shall submit to the legislature a report describing:

(1) the number and types of complaints received by the attorney general and by the state agencies receiving consumer complaints under Section 181.103; and

(2) the enforcement action taken in response to each complaint reported under Subdivision (1).

(b) Each state agency that receives consumer complaints under Section 181.103 shall submit to the attorney general, in the form required by the attorney general, the information the attorney general requires to compile the report required by Subsection (a).

(c) The attorney general shall de-identify protected health information from the individual to whom the information pertains before including the information in the report required by Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 6, eff. September 1, 2012.

Sec. 181.105. REQUIRED INFORMATION REGARDING CONSUMER ACCESS TO HEALTH RECORDS AND COMPLAINTS. (a) Except as provided by Subsection (b), a covered entity shall prominently post on the entity's Internet website and at any entity facility detailed instructions for a consumer to:

(1) request the consumer's health care records from the entity;

(2) contact the disciplinary or licensing authority for the covered entity; and

(3) file a consumer complaint as described by Section 181.103.

(b) This section does not apply to a covered entity that conducts claims processing, data processing, data analysis, utilization review, or billing on behalf of another covered entity that provides health care services directly to consumers.

Added by Acts 2025, 89th Leg., R.S., Ch. 650 (H.B. 4224), Sec. 1, eff. September 1, 2025.

SUBCHAPTER D. PROHIBITED ACTS

Sec. 181.151. REIDENTIFIED INFORMATION. A person may not reidentify or attempt to reidentify an individual who is the subject of any protected health information without obtaining the individual's consent or authorization if required under this chapter or other state or federal law.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.152. MARKETING USES OF INFORMATION. (a) A covered entity must obtain clear and unambiguous permission in written or electronic form to use or disclose protected health information for any marketing communication, except if the communication is:

(1) in the form of a face-to-face communication made by a covered entity to an individual;

(2) in the form of a promotional gift of nominal value

provided by the covered entity;

(3) necessary for administration of a patient assistance program or other prescription drug savings or discount program; or

(4) made at the oral request of the individual.

(b) If a covered entity uses or discloses protected health information to send a written marketing communication through the mail, the communication must be sent in an envelope showing only the names and addresses of sender and recipient and must:

(1) state the name and toll-free number of the entity sending the marketing communication; and

(2) explain the recipient's right to have the recipient's name removed from the sender's mailing list.

(c) A person who receives a request under Subsection (b)(2) to remove a person's name from a mailing list shall remove the person's name not later than the 45th day after the date the person receives the request.

(d) A marketing communication made at the oral request of the individual under Subsection (a)(4) may be made only if clear and unambiguous oral permission for the use or disclosure of the protected health information is obtained. The marketing communication must be limited to the scope of the oral permission and any further marketing communication must comply with the requirements of this section.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 924, Sec. 6, eff. Jan. 1, 2004.

Sec. 181.153. SALE OF PROTECTED HEALTH INFORMATION PROHIBITED; EXCEPTIONS. (a) A covered entity may not disclose an individual's protected health information to any other person in exchange for direct or indirect remuneration, except that a covered entity may disclose an individual's protected health information:

(1) to another covered entity, as that term is defined by Section 181.001, or to a covered entity, as that term is defined by Section 602.001, Insurance Code, for the purpose of:

(A) treatment;

(B) payment;

(C) health care operations; or

(D) performing an insurance or health maintenance

organization function described by Section 602.053, Insurance Code; or

(2) as otherwise authorized or required by state or federal law.

(b) The direct or indirect remuneration a covered entity receives for making a disclosure of protected health information authorized by Subsection (a)(1)(D) may not exceed the covered entity's reasonable costs of preparing or transmitting the protected health information.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 7, eff. September 1, 2012.

Sec. 181.154. NOTICE AND AUTHORIZATION REQUIRED FOR ELECTRONIC DISCLOSURE OF PROTECTED HEALTH INFORMATION; EXCEPTIONS. (a) A covered entity shall provide notice to an individual for whom the covered entity creates or receives protected health information if the individual's protected health information is subject to electronic disclosure. A covered entity may provide general notice by:

(1) posting a written notice in the covered entity's place of business;

(2) posting a notice on the covered entity's Internet website; or

(3) posting a notice in any other place where individuals whose protected health information is subject to electronic disclosure are likely to see the notice.

(b) Except as provided by Subsection (c), a covered entity may not electronically disclose an individual's protected health information to any person without a separate authorization from the individual or the individual's legally authorized representative for each disclosure. An authorization for disclosure under this subsection may be made in written or electronic form or in oral form if it is documented in writing by the covered entity.

(c) The authorization for electronic disclosure of protected health information described by Subsection (b) is not required if the disclosure is made:

(1) to another covered entity, as that term is defined by Section 181.001, or to a covered entity, as that term is defined by

Section 602.001, Insurance Code, for the purpose of:

(A) treatment;

(B) payment;

(C) health care operations; or

(D) performing an insurance or health maintenance organization function described by Section 602.053, Insurance Code; or

(2) as otherwise authorized or required by state or federal law.

(d) The attorney general shall adopt a standard authorization form for use in complying with this section. The form must comply with the Health Insurance Portability and Accountability Act and Privacy Standards and this chapter.

(e) This section does not apply to a covered entity, as defined by Section 602.001, Insurance Code, if that entity is not a covered entity as defined by 45 C.F.R. Section 160.103.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 7, eff. September 1, 2012.

SUBCHAPTER E. ENFORCEMENT

Sec. 181.201. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The attorney general may institute an action for injunctive relief to restrain a violation of this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the attorney general may institute an action for civil penalties against a covered entity for a violation of this chapter. A civil penalty assessed under this section may not exceed:

(1) $5,000 for each violation that occurs in one year, regardless of how long the violation continues during that year, committed negligently;

(2) $25,000 for each violation that occurs in one year, regardless of how long the violation continues during that year, committed knowingly or intentionally; or

(3) $250,000 for each violation in which the covered entity knowingly or intentionally used protected health information for financial gain.

(b-1) The total amount of a penalty assessed against a covered entity under Subsection (b) in relation to a violation or violations

of Section 181.154 may not exceed $250,000 annually if the court finds that the disclosure was made only to another covered entity and only for a purpose described by Section 181.154(c) and the court finds that:

(1) the protected health information disclosed was encrypted or transmitted using encryption technology designed to protect against improper disclosure;

(2) the recipient of the protected health information did not use or release the protected health information; or

(3) at the time of the disclosure of the protected health information, the covered entity had developed, implemented, and maintained security policies, including the education and training of employees responsible for the security of protected health information.

(c) If the court in which an action under Subsection (b) is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed $1.5 million annually.

(d) In determining the amount of a penalty imposed under Subsection (b), the court shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the disclosure;

(2) the covered entity's compliance history;

(3) whether the violation poses a significant risk of financial, reputational, or other harm to an individual whose protected health information is involved in the violation;

(4) whether the covered entity was certified at the time of the violation as described by Section 182.108;

(5) the amount necessary to deter a future violation; and

(6) the covered entity's efforts to correct the violation.

(e) The attorney general may institute an action against a covered entity that is licensed by a licensing agency of this state for a civil penalty under this section only if the licensing agency refers the violation to the attorney general under Section 181.202(2).

(f) The office of the attorney general may retain a reasonable portion of a civil penalty recovered under this section, not to exceed amounts specified in the General Appropriations Act, for the enforcement of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 8, eff. September 1, 2012.

Sec. 181.202. DISCIPLINARY ACTION. In addition to the penalties prescribed by this chapter, a violation of this chapter by a covered entity that is licensed by an agency of this state is subject to investigation and disciplinary proceedings, including probation or suspension by the licensing agency. If there is evidence that the violations of this chapter are egregious and constitute a pattern or practice, the agency may:

(1) revoke the covered entity's license; or

(2) refer the covered entity's case to the attorney general for the institution of an action for civil penalties under Section 181.201(b).

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 9, eff. September 1, 2012.

Sec. 181.203. EXCLUSION FROM STATE PROGRAMS. In addition to the penalties prescribed by this chapter, a covered entity shall be excluded from participating in any state-funded health care program if a court finds the covered entity engaged in a pattern or practice of violating this chapter.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.205. MITIGATION. (a) In an action or proceeding to impose an administrative penalty or assess a civil penalty for actions related to the disclosure of individually identifiable health information, a covered entity may introduce, as mitigating evidence, evidence of the entity's good faith efforts to comply with:

(1) state law related to the privacy of individually identifiable health information; or

(2) the Health Insurance Portability and Accountability Act

and Privacy Standards.

(b) In determining the amount of a penalty imposed under other law in accordance with Section 181.202, a court or state agency shall consider the following factors:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the disclosure;

(2) the covered entity's compliance history;

(3) whether the violation poses a significant risk of financial, reputational, or other harm to an individual whose protected health information is involved in the violation;

(4) whether the covered entity was certified at the time of the violation as described by Section 182.108;

(5) the amount necessary to deter a future violation; and

(6) the covered entity's efforts to correct the violation.

(c) On receipt of evidence under Subsections (a) and (b), a court or state agency shall consider the evidence and mitigate imposition of an administrative penalty or assessment of a civil penalty accordingly.

Added by Acts 2003, 78th Leg., ch. 924, Sec. 7, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 10, eff. September 1, 2012.

Sec. 181.206. AUDITS OF COVERED ENTITIES. (a) The commission, in coordination with the attorney general and the Texas Department of Insurance:

(1) may request that the United States secretary of health and human services conduct an audit of a covered entity, as that term is defined by 45 C.F.R. Section 160.103, in this state to determine compliance with the Health Insurance Portability and Accountability Act and Privacy Standards; and

(2) shall periodically monitor and review the results of audits of covered entities in this state conducted by the United States secretary of health and human services.

(b) If the commission has evidence that a covered entity has committed violations of this chapter that are egregious and constitute a pattern or practice, the commission may:

(1) require the covered entity to submit to the commission

the results of a risk analysis conducted by the covered entity if required by 45 C.F.R. Section 164.308(a)(1)(ii)(A); or

(2) if the covered entity is licensed by a licensing agency of this state, request that the licensing agency conduct an audit of the covered entity's system to determine compliance with the provisions of this chapter.

(c) The commission annually shall submit to the appropriate standing committees of the senate and the house of representatives a report regarding the number of federal audits of covered entities in this state and the number of audits required under Subsection (b).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 11, eff. September 1, 2012.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 2, eff. September 1, 2015.

Sec. 181.207. FUNDING. (a) The commission and the Texas Department of Insurance shall apply for and actively pursue available federal funding for enforcement of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 11, eff. September 1, 2012.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 3, eff. September 1, 2015.

CHAPTER 182. ELECTRONIC EXCHANGE OF HEALTH INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 182.001. PURPOSE. This chapter establishes the Texas Health Services Authority as a public-private collaborative to implement the state-level health information technology functions identified by the Texas Health Information Technology Advisory Committee by serving as a catalyst for the development of a seamless electronic health information infrastructure to support the health care system in the state and to improve patient safety and quality of care.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff.

June 15, 2007.

Sec. 182.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the corporation.

(2) "Corporation" means the Texas Health Services Authority.

(2-a) "Covered entity" has the meaning assigned by Section 181.001.

(3) "De-identified protected health information" means protected health information that is not individually identifiable health information as that term is defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

(3-a) "Disclose" has the meaning assigned by Section 181.001.

(3-b) "Health Insurance Portability and Accountability Act and Privacy Standards" has the meaning assigned by Section 181.001.

(4) "Individually identifiable health information" means individually identifiable health information as that term is defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

(5) "Physician" means:

(A) an individual licensed to practice medicine in this state under the authority of Subtitle B, Title 3, Occupations Code;

(B) a professional entity organized in conformity with Title 7, Business Organizations Code, and permitted to practice medicine under Subtitle B, Title 3, Occupations Code;

(C) a partnership organized in conformity with Title 4, Business Organizations Code, composed entirely of individuals licensed to practice medicine under Subtitle B, Title 3, Occupations Code;

(D) an approved nonprofit health corporation certified under Chapter 162, Occupations Code;

(E) a medical school or medical and dental unit, as

defined or described by Section 61.003, 61.501, or 74.601, Education Code, that employs or contracts with physicians to teach or provide medical services or employs physicians and contracts with physicians in a practice plan; or

(F) an entity wholly owned by individuals licensed to practice medicine under Subtitle B, Title 3, Occupations Code.

(6) "Protected health information" means protected health information as that term is defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 12, eff. September 1, 2012.

Sec. 182.004. APPLICATION OF SUNSET ACT. The Texas Health Services Authority is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the corporation is abolished and this section, Section 182.001, and Subchapters B and C expire September 1, 2027.

Added by Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 1, eff. September 1, 2019.

SUBCHAPTER B. ADMINISTRATION

Sec. 182.051. TEXAS HEALTH SERVICES AUTHORITY; PURPOSE. (a) The corporation is established to:

(1) promote, implement, and facilitate the voluntary and secure electronic exchange of health information; and

(2) create incentives to promote, implement, and facilitate the voluntary and secure electronic exchange of health information.

(b) The corporation is a public nonprofit corporation and, except as otherwise provided in this chapter, has all the powers and duties incident to a nonprofit corporation under the Business Organizations Code.

(c) The corporation is subject to state law governing nonprofit corporations, except that:

(1) the corporation may not be placed in receivership; and

(2) the corporation is not required to make reports to the secretary of state under Section 22.357, Business Organizations Code.

(d) Except as otherwise provided by law, all expenses of the corporation shall be paid from income of the corporation.

(e) The corporation is subject to Chapter 551, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.053. COMPOSITION OF BOARD OF DIRECTORS. (a) The corporation is governed by a board of 12 directors appointed by the governor, with the advice and consent of the senate.

(b) The governor shall also appoint at least two ex officio, nonvoting members representing the health and human services agencies as state agency data resources.

(b-1) The governor shall appoint as a voting board member one individual who represents Texas local health information exchanges.

(c) The governor shall appoint as voting board members individuals who represent consumers, clinical laboratories, health benefit plans, hospitals, regional health information exchange initiatives, pharmacies, physicians, or rural health providers, or who possess expertise in any other area the governor finds necessary for the successful operation of the corporation.

(d) An individual may not serve on the board of the corporation if the individual serves on the board of any other governmental body in this state.

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

(f) An individual may not serve on the board of the corporation, in any capacity, if the individual has made a gift or grant, in cash or in kind, to the corporation.

(g) An individual may not serve on the board of the corporation, in any capacity, if the individual is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession or

entity that is engaged in the providing of health care, the review or analysis of health care, the payment for health care services or procedures, or the providing of information technology.

(h) In this section, "health and human services agencies" includes the:

(1) department;

(2) Department of Aging and Disability Services;

(3) Department of Assistive and Rehabilitative Services;

(4) Department of Family and Protective Services; and

(5) commission.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0524, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 7, eff. September 1, 2015.

Sec. 182.054. TERMS OF OFFICE. Appointed members of the board serve two-year terms and may continue to serve until a successor has been appointed by the governor.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.055. EXPENSES. Members of the board serve without compensation but are entitled to reimbursement for actual and necessary expenses in attending meetings of the board or performing other official duties authorized by the presiding officer.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.056. OFFICERS; CONFLICT OF INTEREST. (a) The governor shall designate a member of the board as presiding officer to serve in that capacity at the pleasure of the governor.

(b) Any board member or a member of a committee formed by the

board with direct interest in a matter, personally or through an employer, before the board shall abstain from deliberations and actions on the matter in which the conflict of interest arises and shall further abstain on any vote on the matter, and may not otherwise participate in a decision on the matter.

(c) Each board member shall file a conflict of interest statement and a statement of ownership interests with the board to ensure disclosure of all existing and potential personal interests related to board business.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.057. PROHIBITION ON CERTAIN CONTRACTS AND EMPLOYMENT. The board may not compensate, employ, or contract with any individual who serves as a member of the board or advisory council to any other governmental body, including any agency, council, or committee, in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.058. MEETINGS. (a) The board may meet as often as necessary, but shall meet at least twice a year.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the authority of the corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.059. CHIEF EXECUTIVE OFFICER; PERSONNEL. The board may hire a chief executive officer. Under the direction of the board, the chief executive officer shall perform the duties required by this chapter or designated by the board. The chief executive officer may hire additional staff to carry out the responsibilities of the corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.060. TECHNOLOGY POLICY. The board shall implement a policy requiring the corporation to use appropriate technological solutions to improve the corporation's ability to perform its functions. The policy must ensure that the public is able to interact with the corporation on the Internet.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.061. LIABILITIES OF AUTHORITY. Liabilities created by the corporation are not debts or obligations of the state, and the corporation may not secure any liability with funds or assets of the state except as otherwise provided by law.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.062. BOARD MEMBER IMMUNITY. (a) A board member may not be held civilly liable for an act performed, or omission made, in good faith in the performance of the member's powers and duties under this chapter.

(b) A cause of action does not arise against a member of the board for an act or omission described by Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 182.101. GENERAL POWERS AND DUTIES. (a) The corporation may:

(1) establish statewide health information exchange capabilities, including capabilities for electronic laboratory results, diagnostic studies, and medication history delivery, and, where applicable, promote definitions and standards for electronic

interactions statewide;

(2) seek funding to:

(A) implement, promote, and facilitate the voluntary exchange of secure electronic health information between and among individuals and entities that are providing or paying for health care services or procedures; and

(B) create incentives to implement, promote, and facilitate the voluntary exchange of secure electronic health information between and among individuals and entities that are providing or paying for health care services or procedures;

(3) establish statewide health information exchange capabilities for streamlining health care administrative functions including:

(A) communicating point of care services, including laboratory results, diagnostic imaging, and prescription histories;

(B) communicating patient identification and emergency room required information in conformity with state and federal privacy laws;

(C) real-time communication of enrollee status in relation to health plan coverage, including enrollee cost-sharing responsibilities; and

(D) current census and status of health plan contracted providers;

(4) support regional health information exchange initiatives by:

(A) identifying data and messaging standards for health information exchange;

(B) administering programs providing financial incentives, including grants and loans for the creation and support of regional health information networks, subject to available funds;

(C) providing technical expertise where appropriate;

(D) sharing intellectual property developed under Section 182.105;

(E) waiving the corporation's fees associated with intellectual property, data, expertise, and other services or materials provided to regional health information exchanges operated on a nonprofit basis; and

(F) applying operational and technical standards developed by the corporation to existing health information exchanges only on a voluntary basis, except for standards related to ensuring

effective privacy and security of individually identifiable health information;

(5) identify standards for streamlining health care administrative functions across payors and providers, including electronic patient registration, communication of enrollment in health plans, and information at the point of care regarding services covered by health plans; and

(6) support the secure, electronic exchange of health information through other strategies identified by the board.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2, eff. September 1, 2019.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.003, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 8, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2(3), eff. September 1, 2019.

Sec. 182.102. PROHIBITED ACTS. (a) The corporation has no authority and shall not engage in any of the following:

(1) the collection and analysis of clinical data;

(2) the comparison of physicians to other physicians, including comparisons to peer group physicians, physician groups, and physician teams, and to national specialty society adopted quality measurements;

(3) the creation of a tool to measure physician performance compared to:

(A) peer group physicians on state and specialty levels; or

(B) objective standards;

(4) the providing of access to aggregated, de-identified protected health information to local health information exchanges and other users of quality care studies, disease management and population health assessments;

(5) providing to public health programs trended,

aggregated, de-identified protected health information to help assess the health status of populations and the providing of regular reports of trends and important incidence of events to public health avenues for intervention, education, and prevention programs; or

(6) the creation of evidence-based standards for the practice of medicine.

(b) The corporation has no authority and shall not disseminate information, in any manner, to the public that compares, rates, tiers, classifies, measures, or ranks a physician's performance, efficiency, or quality of practice.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2, eff. September 1, 2019.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 9, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2(4), eff. September 1, 2019.

Sec. 182.103. PRIVACY OF INFORMATION. (a) Protected health information and individually identifiable health information collected, assembled, or maintained by the corporation is confidential and is not subject to disclosure under Chapter 552, Government Code.

(b) The corporation shall comply with all state and federal laws and rules relating to the transmission of health information, including Chapter 181, and rules adopted under that chapter, and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and rules adopted under that Act.

(c) The corporation shall develop privacy, security, operational, and technical standards to assist health information networks in the state to ensure effective statewide privacy, data security, efficiency, and interoperability across networks. The network's standards shall be guided by reference to the standards of the Certification Commission for Healthcare Information Technology or the Health Information Technology Standards Panel, or other federally approved certification standards, that exist on May 1, 2007, as to

the process of implementation, acquisition, upgrade, or installation of electronic health information technology.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2, eff. September 1, 2019.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0525, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 10, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2(5), eff. September 1, 2019.

Sec. 182.104. SECURITY COMPLIANCE. (a) The corporation shall:

(1) establish appropriate security standards to protect both the transmission and the receipt of individually identifiable health information or health care data;

(2) establish appropriate security standards to protect access to any individually identifiable health information or health care data collected, assembled, or maintained by the corporation;

(3) establish the highest levels of security and protection for access to and control of individually identifiable health information, including mental health care data and data relating to specific disease status, that is governed by more stringent state or federal privacy laws; and

(4) establish policies and procedures for the corporation for taking disciplinary actions against a board member, employee, or other person with access to individually identifiable health care information that violates state or federal privacy laws related to health care information or data maintained by the corporation.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2, eff. September 1, 2019.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 11, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2(6), eff. September 1, 2019.

Sec. 182.105. INTELLECTUAL PROPERTY. (a) The corporation shall take commercially reasonable measures to protect its intellectual property, including obtaining patents, trademarks, and copyrights where appropriate.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2, eff. September 1, 2019.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 12, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2(7), eff. September 1, 2019.

Sec. 182.106. ANNUAL REPORT. (a) The corporation shall submit an annual report to the governor, the lieutenant governor, the speaker of the house of representatives, and the appropriate oversight committee in the senate and the house of representatives. The annual report must include financial information and a progress update on the corporation's efforts to carry out its mission.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2, eff. September 1, 2019.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 13, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2(8), eff. September 1, 2019.

Sec. 182.107. FUNDING. (a) The corporation may be funded through the General Appropriations Act and may request, accept, and use gifts and grants as necessary to implement its functions.

(b) The corporation may assess transaction, convenience, or subscription fees to cover costs associated with implementing its functions. All fees must be voluntary but receipt of services provided by the corporation may be conditioned on payment of fees.

(c) The corporation may participate in other revenue-generating activities that are consistent with the corporation's purposes.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2, eff. September 1, 2019.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 14, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2(9), eff. September 1, 2019.

Sec. 182.108. STANDARDS FOR ELECTRONIC SHARING OF PROTECTED HEALTH INFORMATION; COVERED ENTITY CERTIFICATION. (a) The corporation shall develop and submit to the commission for ratification privacy and security standards for the electronic sharing of protected health information.

(b) The commission shall review and the executive commissioner by rule shall adopt acceptable standards submitted for ratification under Subsection (a).

(c) Standards adopted under Subsection (b) must be designed to:

(1) comply with the Health Insurance Portability and Accountability Act and Privacy Standards and Chapter 181;

(2) comply with any other state and federal law relating to the security and confidentiality of information electronically maintained or disclosed by a covered entity;

(3) ensure the secure maintenance and disclosure of personally identifiable health information;

(4) include strategies and procedures for disclosing personally identifiable health information; and

(5) support a level of system interoperability with existing health record databases in this state that is consistent with emerging standards.

(d) The corporation shall establish a process by which a

covered entity may apply for certification by the corporation of a covered entity's past compliance with standards adopted under Subsection (b).

(e) The corporation shall publish the standards adopted under Subsection (b) on the corporation's Internet website.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2, eff. September 1, 2019.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 13, eff. September 1, 2012.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0526, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 15(a), eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2(10), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 3, eff. September 1, 2019.

SUBCHAPTER D. HEALTH INFORMATION EXCHANGES

Sec. 182.151. DEFINITION. In this subchapter, "health information exchange" means an organization that:

(1) assists in the transmission or receipt of health-related information among organizations transmitting or receiving the information according to nationally recognized standards and under an express written agreement with the organizations;

(2) as a primary business function, compiles or organizes health-related information designed to be securely transmitted by the organization among physicians, other health care providers, or entities within a region, state, community, or hospital system; or

(3) assists in the transmission or receipt of electronic health-related information among physicians, other health care providers, or entities within:

(A) a hospital system;

(B) a physician organization;

(C) a health care collaborative, as defined by Section 848.001, Insurance Code;

(D) an accountable care organization participating in

the Pioneer Model under the initiative by the Innovation Center of the Centers for Medicare and Medicaid Services; or

(E) an accountable care organization participating in the Medicare Shared Savings Program under 42 U.S.C. Section 1395jjj.

Added by Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 11, eff. September 1, 2015.

Sec. 182.152. AUTHORITY OF HEALTH INFORMATION EXCHANGE. (a) Notwithstanding Sections 81.046, 82.009, 161.0073, and 161.008, a health information exchange may access and transmit health-related information under Sections 81.044(a), 82.008(a), 161.007(d), 161.00705(a), 161.00706(b), and 161.008(i) if the access or transmittal is:

(1) made for the purpose of assisting in the reporting of health-related information to the appropriate agency;

(2) requested and authorized by the appropriate health care provider, practitioner, physician, facility, clinical laboratory, or other person who is required to report health-related information;

(3) made in accordance with the applicable consent requirements for the immunization registry under Subchapter A, Chapter 161, if the information being accessed or transmitted relates to the immunization registry; and

(4) made in accordance with the requirements of this subchapter and all other state and federal law.

(b) A health information exchange may only use and disclose the information that it accesses or transmits under Subsection (a) in compliance with this subchapter and all applicable state and federal law, and may not exchange, sell, trade, or otherwise make any prohibited use or disclosure of the information.

Added by Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 11, eff. September 1, 2015.

Sec. 182.153. COMPLIANCE WITH LAW; SECURITY. A health information exchange that collects, transmits, disseminates, accesses, or reports health-related information under this subchapter shall comply with all applicable state and federal law, including secure electronic data submission requirements.

Added by Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 11, eff. September 1, 2015.

Sec. 182.154. CRIMINAL PENALTY. (a) A person who collects, transmits, disseminates, accesses, or reports information under this subchapter on behalf of or as a health information exchange commits an offense if the person, with the intent to violate this subchapter, allows health-related information in the possession of a health information exchange to be used or disclosed in a manner that violates this subchapter.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 11, eff. September 1, 2015.

Sec. 182.155. IMMUNITIES AND DEFENSES CONTINUED. Collecting, transmitting, disseminating, accessing, or reporting information through a health information exchange does not alone deprive a physician or health care provider of an otherwise applicable immunity or defense.

Added by Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 11, eff. September 1, 2015.

CHAPTER 183. ELECTRONIC HEALTH RECORDS

Sec. 183.001. DEFINITIONS. In this chapter:

(1) "Biological sex" means the biological trait that determines whether a sexually reproducing organism produces male or female gametes.

(2) "Covered entity" has the meaning assigned by Section 181.001. The term includes a health care practitioner. The term does not include:

(A) a home and community support services agency licensed under Chapter 142;

(B) a nursing facility licensed under Chapter 242;

(C) a continuing care facility regulated under Chapter 246;

(D) an assisted living facility licensed under Chapter

247;

(E) an intermediate care facility licensed under Chapter 252;

(F) a day activity and health services facility licensed under Chapter 103, Human Resources Code; or

(G) a provider under the Texas home living (TxHmL) or home and community-based services (HCS) waiver program.

(3) "Female" means an individual whose reproductive system is developed to produce ova.

(4) "Health care practitioner" means an individual who is licensed, certified, or otherwise authorized to provide health care services in this state.

(5) "Male" means an individual whose reproductive system is developed to produce sperm.

(6) "Sexual development disorder" means a congenital condition associated with atypical development of internal or external genital structures. The term includes a chromosomal, gonadal, or anatomic abnormality.

Added by Acts 2025, 89th Leg., R.S., Ch. 1002 (S.B. 1188), Sec. 1, eff. September 1, 2025.

Sec. 183.002. REQUIREMENTS FOR ELECTRONIC HEALTH RECORD STORAGE. (a) A covered entity shall ensure that electronic health records under the control of the entity that contain patient information are physically maintained in the United States or a territory of the United States. This subsection applies to:

(1) electronic health records that are stored by a third-party or subcontracted computing facility or an entity that provides cloud computing services; and

(2) electronic health records that are stored using a technology through which patient information may be electronically retrieved, accessed, or transmitted.

(b) A covered entity shall ensure that the electronic health record information of this state's residents, other than open data, is accessible only to individuals who require the information to perform duties within the scope of the individual's employment related to treatment, payment, or health care operations.

(c) Each covered entity shall implement reasonable and

appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of electronic health record information.

Added by Acts 2025, 89th Leg., R.S., Ch. 1002 (S.B. 1188), Sec. 1, eff. September 1, 2025.

Sec. 183.003. REQUIRED MEDICAL HISTORY INFORMATION IN ELECTRONIC HEALTH RECORD. A covered entity shall ensure each electronic health record maintained for an individual includes the option for a health care practitioner to collect and record communications between two or more covered entities related to the individual's metabolic health and diet in the treatment of a chronic disease or illness.

Added by Acts 2025, 89th Leg., R.S., Ch. 1002 (S.B. 1188), Sec. 1, eff. September 1, 2025.

Sec. 183.004. INFORMATION RESTRICTIONS IN ELECTRONIC HEALTH RECORD. A covered entity may not collect, store, or share any information regarding an individual's credit score or voter registration status in the individual's electronic health record.

Added by Acts 2025, 89th Leg., R.S., Ch. 1002 (S.B. 1188), Sec. 1, eff. September 1, 2025.

Sec. 183.005. ARTIFICIAL INTELLIGENCE IN ELECTRONIC HEALTH RECORD. (a) A health care practitioner may use artificial intelligence for diagnostic purposes, including the use of artificial intelligence for recommendations on a diagnosis or course of treatment based on a patient's medical record, if:

(1) the practitioner is acting within the scope of the practitioner's license, certification, or other authorization to provide health care services in this state, regardless of the use of artificial intelligence;

(2) the particular use of artificial intelligence is not otherwise restricted or prohibited by state or federal law; and

(3) the practitioner reviews all records created with

artificial intelligence in a manner that is consistent with medical records standards developed by the Texas Medical Board.

(b) A health care practitioner who uses artificial intelligence for diagnostic purposes as described by Subsection (a) must disclose the practitioner's use of that technology to the practitioner's patients.

Added by Acts 2025, 89th Leg., R.S., Ch. 1002 (S.B. 1188), Sec. 1, eff. September 1, 2025.

Sec. 183.006. ACCESS TO ELECTRONIC HEALTH RECORD OF MINOR. (a) In this section, "minor" means an individual 17 years of age or younger who has not had the disabilities of minority removed for general purposes.

(b) A covered entity shall ensure each electronic health record system the entity uses to store electronic health records of minors allows a minor's parent or, if applicable, the minor's managing conservator or guardian to obtain complete and unrestricted access to the minor's electronic health record immediately, unless access to all or part of the record is restricted under state or federal law or by a court order.

Added by Acts 2025, 89th Leg., R.S., Ch. 1002 (S.B. 1188), Sec. 1, eff. September 1, 2025.

Sec. 183.007. ELECTRONIC HEALTH RECORD REQUIREMENTS REGARDING BIOLOGICAL SEX. (a) Notwithstanding any other law, the commission, the Texas Medical Board, and the Texas Department of Insurance shall jointly ensure that:

(1) each electronic health record prepared or maintained by a covered entity in this state includes a separate space for the entity to document:

(A) an individual's biological sex as either male or female based on the individual's observed biological sex recorded by a health care practitioner at birth; and

(B) information on any sexual development disorder of the individual, whether identified at birth or later in the individual's life; and

(2) any algorithm or decision assistance tool included in

an electronic health record to assist a health care practitioner in making medical treatment decisions includes an individual's biological sex as recorded in the space described by Subdivision (1)(A).

(b) This section does not prohibit an electronic health record from including spaces for recording other information related to an individual's biological sex or gender identity.

Added by Acts 2025, 89th Leg., R.S., Ch. 1002 (S.B. 1188), Sec. 1, eff. September 1, 2025.

Sec. 183.008. AMENDING CERTAIN BIOLOGICAL SEX INFORMATION IN ELECTRONIC HEALTH RECORDS. (a) A covered entity may amend on an electronic health record an individual's biological sex as recorded in the space described by Section 183.007(a)(1)(A) only if:

(1) the amendment is to correct a clerical error; or

(2) the individual is diagnosed with a sexual development disorder and the amendment changes the individual's listed biological sex to the opposite biological sex.

(b) If an individual's biological sex is amended under Subsection (a)(2), the covered entity shall include in the individual's electronic health record information on the individual's sexual development disorder in the space described by Section 183.007(a)(1)(B).

Added by Acts 2025, 89th Leg., R.S., Ch. 1002 (S.B. 1188), Sec. 1, eff. September 1, 2025.

Sec. 183.009. INVESTIGATION BY COMMISSION OR REGULATORY AGENCY. The commission or the appropriate regulatory agency shall conduct an investigation of any credible allegation of a violation of this chapter by a covered entity. The commission or agency shall ensure the investigation is conducted in compliance with all applicable state and federal laws, including the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191).

Added by Acts 2025, 89th Leg., R.S., Ch. 1002 (S.B. 1188), Sec. 1, eff. September 1, 2025.

Sec. 183.010. DISCIPLINARY ACTION BY REGULATORY AGENCY. The appropriate regulatory agency may take disciplinary action against a covered entity that violates this chapter three or more times in the same manner as if the covered entity violated an applicable licensing or regulatory law. The disciplinary action may include license, registration, or certification suspension or revocation for a period the agency determines appropriate.

Added by Acts 2025, 89th Leg., R.S., Ch. 1002 (S.B. 1188), Sec. 1, eff. September 1, 2025.

Sec. 183.011. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The attorney general may institute an action for injunctive relief to restrain a violation of this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the attorney general may institute an action for civil penalties against a covered entity for a violation of this chapter. A civil penalty assessed under this section may not exceed:

(1) $5,000 for each violation that is committed negligently and that occurs in a single year, regardless of how long the violation continues during that year;

(2) $25,000 for each violation that is committed knowingly or intentionally and that occurs in a single year, regardless of how long the violation continues during that year; or

(3) $250,000 for each violation in which the covered entity knowingly or intentionally used protected health information for financial gain.

Added by Acts 2025, 89th Leg., R.S., Ch. 1002 (S.B. 1188), Sec. 1, eff. September 1, 2025.

Sec. 183.012. MEMORANDUM OF UNDERSTANDING; RULES. The executive commissioner, the Texas Medical Board, the Texas Department of Licensing and Regulation, the Texas Department of Insurance, and each regulatory agency subject to this chapter shall enter into a memorandum of understanding and, as necessary, adopt rules to implement this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 1002 (S.B. 1188), Sec. 1,

eff. September 1, 2025.

SUBTITLE J. PAYMENT FOR HEALTH CARE SERVICES AND SUPPLIES

CHAPTER 185. HEALTH CARE BILLING

Sec. 185.001. DEFINITIONS. In this chapter:

(1) "Debt collection" has the meaning assigned by Section 392.001, Finance Code.

(2) "Health care provider" means a facility licensed, certified, or otherwise authorized to provide health care services or supplies in this state in the ordinary course of business, including a hospital, except the term does not include a federally-qualified health center, as defined by 42 U.S.C. Section 1396d(l)(2)(B).

(3) "Health care service" means a service a health care provider provides to an individual to diagnose, prevent, treat, alleviate, cure, or heal a human health condition, illness, injury, or disease.

Added by Acts 2023, 88th Leg., R.S., Ch. 271 (S.B. 490), Sec. 1, eff. September 1, 2023.

Sec. 185.002. ITEMIZED BILL REQUIRED. (a) A health care provider that requests payment from a patient after providing a health care service or related supply to the patient shall submit with the request a written, itemized bill of the alleged amount due for each service and supply provided to the patient during the patient's visit to the provider. The provider must submit the itemized bill not later than the 30th day after the provider receives a final payment on the provided service or supply from a third party.

(b) The itemized bill must include:

(1) a plain language description of each distinct health care service or supply the health care provider provided to the patient;

(2) if the provider sought or is seeking reimbursement from a third party, any billing code submitted to the third party and the amounts billed to and paid by that third party; and

(3) the amount the provider alleges is due from the patient for each service and supply provided to the patient.

(c) A health care provider may issue the itemized bill:

(1) electronically, including through a patient portal on the provider's Internet website, subject to Subsection (c-1);

(2) through a hard copy delivered by mail or a common carrier; or

(3) through a hard copy the patient or the patient's designee obtains at the provider's place of business.

(c-1) A health care provider that issues an itemized bill to a patient electronically through a patient portal under Subsection (c) shall:

(1) determine whether the patient has an active patient profile on the portal, if feasible; and

(2) mail, e-mail, or provide a physical copy of the itemized bill to the patient, according to the patient's chosen method of issuance, if the health care provider:

(A) determines the patient does not have an active patient portal; or

(B) is unable to determine whether the patient has an active patient portal.

(d) A patient is entitled to obtain from the health care provider an itemized bill:

(1) subject to Subdivision (3), on request after the itemized bill is initially issued under Subsection (a);

(2) through the patient's chosen method of issuance in accordance with Subsection (c); and

(3) until the date the provider is no longer required to retain an itemized bill under applicable record retention laws or provider policies and procedures regarding retention of patient billing information.

(e) A health care provider may not pursue debt collection against a patient for a provided health care service or supply unless the provider has complied with this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 271 (S.B. 490), Sec. 1, eff. September 1, 2023.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 717 (H.B. 216), Sec. 1, eff. September 1, 2025.

Sec. 185.003. DISCIPLINARY ACTION BY LICENSING AUTHORITY. (a)

The appropriate licensing authority shall take disciplinary action against a health care provider that violates this chapter as if the provider violated an applicable licensing law.

(b) Subsection (a) does not apply to a health care provider that in good faith mails a hard copy of an itemized bill to a patient if:

(1) the mailed copy is returned as undeliverable or lost; or

(2) the address on file for the patient was not current at the time the itemized bill was mailed.

Added by Acts 2023, 88th Leg., R.S., Ch. 271 (S.B. 490), Sec. 1, eff. September 1, 2023.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 717 (H.B. 216), Sec. 2, eff. September 1, 2025.

TITLE 3. VITAL STATISTICS

CHAPTER 191. ADMINISTRATION OF VITAL STATISTICS RECORDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 191.001. DEFINITIONS. In this title:

(1) "Department" means the Department of State Health Services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Vital statistics unit" means the vital statistics unit established in the Department of State Health Services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0527, eff. April 2, 2015.

Sec. 191.0011. REFERENCE IN OTHER LAW. A reference in other law to the bureau of vital statistics of the department or of the former Texas Department of Health means the vital statistics unit established in the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0528,

eff. April 2, 2015.

Sec. 191.002. POWERS AND DUTIES OF DEPARTMENT. (a) The department shall administer the registration of vital statistics.

(b) The department shall:

(1) establish a vital statistics unit in the department with suitable offices that are properly equipped for the preservation of its official records;

(2) establish a statewide system of vital statistics;

(3) provide instructions and prescribe forms for collecting, recording, transcribing, compiling, and preserving vital statistics;

(4) require the enforcement of this title and rules adopted under this title;

(5) prepare, print, and supply to local registrars forms for registering, recording, and preserving returns or otherwise carrying out the purposes of this title; and

(6) propose legislation necessary for the purposes of this title.

(c) The department may use birth records and provide those records on request to other state agencies for programs notifying mothers of young children about children's health needs.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0529, eff. April 2, 2015.

Sec. 191.003. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND DEPARTMENT. (a) The executive commissioner shall adopt necessary rules for collecting, recording, transcribing, compiling, and preserving vital statistics.

(a-1) The department shall:

(1) supervise the vital statistics unit; and

(2) appoint the director of the vital statistics unit.

(b) In an emergency, the executive commissioner may suspend any part of this title that hinders the uniform and efficient registration of vital events and may substitute emergency rules

designed to expedite that registration under disaster conditions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0530, eff. April 2, 2015.

Sec. 191.0031. CERTIFIED COPIES BY MAIL. The state registrar or a local registrar may not issue a certified copy of a record under this chapter to a person who has applied for the record by mail unless the person has provided notarized proof of identity in accordance with rules adopted by the executive commissioner of the Health and Human Services Commission. The rules may require the issuer of the certified copy to verify the notarization using the records of the secretary of state under Section 406.012, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 5.01, eff. September 1, 2015.

Sec. 191.004. STATE REGISTRAR. (a) The director of the vital statistics unit is the state registrar of vital statistics. The director must be a competent vital statistician.
(b) The state registrar shall prepare and issue detailed instructions necessary for the uniform observance of this title and the maintenance of a perfect system of registration.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0531, eff. April 2, 2015.

Sec. 191.0045. FEES. (a) The department may collect fees for providing services to the public and performing other activities in connection with maintenance of the vital statistics system, including:
(1) performing searches of birth, death, fetal death, marriage, divorce, annulment, and other records;

(2) preparing and issuing copies and certified copies of birth, death, fetal death, marriage, divorce, annulment, and other records; and

(3) filing a record, amendment, or affidavit under this title.

(b) The executive commissioner by rule may prescribe a schedule of fees for vital statistics services. The aggregate of the amounts of the fees may not exceed the cost of administering the vital statistics system.

(c) The department shall refund to an applicant any fee received for services that the department cannot perform. If the money has been deposited to the credit of the vital statistics account in the general revenue fund, the comptroller shall issue a warrant against the fund for refund of the payment on presentation of a claim signed by the state registrar.

(d) A local registrar or county clerk who issues a certified copy of a birth or death certificate shall collect the same fees as collected by the department, including the additional fee required under Subsection (e), except as provided by Subsections (g) and (h).

(e) In addition to fees charged by the department under Subsection (b), the department shall collect an additional $2 fee for each of the following:

(1) issuing a certified copy of a certificate of birth;

(2) issuing a wallet-sized certification of birth; and

(3) conducting a search for a certificate of birth.

(f) Repealed by Acts 2005, 79th Leg., Ch. 263, Sec. 5(1), eff. May 30, 2005.

(g) A local registrar or county clerk that on March 31, 1995, was collecting a fee for the issuance of a certified copy of a birth certificate that exceeded the fee collected by the department for the same type of certificate may continue to do so but shall not raise this fee until the fee collected by the department exceeds the fee collected by the local registrar or county clerk. A local registrar or county clerk to which this subsection applies shall collect the additional fee as required under Subsection (e).

(h) In addition to other fees collected under this section, a local registrar or county clerk may collect a fee not to exceed $1 for:

(1) preserving vital statistics records maintained by the registrar or county clerk, including birth, death, fetal death,

marriage, divorce, and annulment records;

(2) training registrar or county clerk employees regarding vital statistics records; and

(3) ensuring the safety and security of vital statistics records.

(i) A fee under this section shall be collected by the registrar or county clerk on the issuance of a vital statistics record, including a record issued through a Remote Birth Access site.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 52, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 651, Sec. 2, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 9.62, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 305, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 975, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 263 (H.B. 2962), Sec. 5(1), eff. May 30, 2005.

Acts 2005, 79th Leg., Ch. 400 (S.B. 1524), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1022 (H.B. 2717), Sec. 3, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0532, eff. April 2, 2015.

Sec. 191.0046. FEE EXEMPTIONS. (a) On the request of a child's parent or guardian, the state registrar shall issue without fee a certificate necessary for admission to school or to secure employment. The certificate shall be limited to a statement of the child's date of birth.

(b) The state registrar shall issue without fee a certified copy of a record not otherwise prohibited by law to a veteran or to the veteran's widow, orphan, or other dependent if the copy is for use in settling a claim against the government.

(c) On court order, the state registrar may issue without fee a certified copy of a birth record in cases related to child labor or the public schools.

(d) The state registrar on request shall issue without a fee a copy of a birth or death record that is not certified to a child fatality review team or the child fatality review team committee

established under Subchapter F, Chapter 264, Family Code.

(e) It is the intent of the legislature to not impose a cost for obtaining certified records for the purpose of obtaining an election identification certificate issued pursuant to Chapter 521A, Transportation Code. Notwithstanding any other law, the state registrar, a local registrar, or a county clerk shall not charge a fee to an applicant that is associated with searching for or providing a record, including a certified copy of a birth record, if the applicant states that the applicant is requesting the record for the purpose of obtaining an election identification certificate under Section 521A.001, Transportation Code.

(f) Notwithstanding Subsection (e), a local registrar or a county clerk who issues a birth record that is required for the purpose of obtaining an election identification certificate issued pursuant to Chapter 521A, Transportation Code, and is otherwise entitled by law to retain all or a portion of a fee for that birth record, is entitled to payment of the amount from the department.

(g) The state registrar, a local registrar, or a county clerk, on request of a county or a child welfare board appointed by the commissioners court of a county under Section 264.005, Family Code, shall issue without a fee a certified copy of a birth record to the county or board if the request is related to a suit affecting the parent-child relationship filed by a governmental entity under Subtitle E, Title 5, Family Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept.1, 1989. Renumbered from Sec. 191.054 and amended by Acts 1991, 72nd Leg., ch. 14, Sec. 52, eff. Sept. 1, 1991.

Amended by:

Acts 2005, 79th Leg., Ch. 11 (S.B. 239), Sec. 1, eff. May 3, 2005.

Acts 2015, 84th Leg., R.S., Ch. 130 (S.B. 983), Sec. 1, eff. May 27, 2015.

Acts 2025, 89th Leg., R.S., Ch. 1104 (H.B. 4466), Sec. 1, eff. September 1, 2025.

Sec. 191.0047. BIRTH INFORMATION FOR DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES. (a) The department shall implement an efficient and effective method to verify birth information or provide

a certified copy of a birth record necessary to provide services for the benefit of a minor being served by the Department of Family and Protective Services.

(b) The department shall enter into a memorandum of understanding with the Department of Family and Protective Services to implement this section. Subject to Subsection (c), the terms of the memorandum of understanding must include methods for reimbursing the department in an amount that is not more than the actual costs the department incurs in verifying the birth information or providing the birth record to the Department of Family and Protective Services.

(c) The department may not collect a fee or other amount for verification of birth information or provision of a certified copy of the birth record under Subsection (a) for a child in the managing conservatorship of the Department of Family and Protective Services if parental rights to the child have been terminated and the child is eligible for adoption.

Added by Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 23, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 758 (S.B. 703), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0533, eff. April 2, 2015.

Sec. 191.0048. VOLUNTARY CONTRIBUTION TO TEXAS HOME VISITING PROGRAM. (a) A person requesting a copy or certified copy of a birth, marriage, or divorce record may make a voluntary contribution of $5 to promote healthy early childhood by supporting the Texas Home Visiting Program administered by the Office of Early Childhood Coordination of the Health and Human Services Commission.

(b) On each paper or electronic application form for a copy or certified copy of a birth, marriage, or divorce record, the department shall include a printed box for the applicant to check indicating that the applicant wishes to make a voluntary contribution of $5 to promote healthy early childhood by supporting the Texas Home Visiting Program administered by the Office of Early Childhood Coordination of the Health and Human Services Commission.

(c) Notwithstanding Section 191.0045, a local registrar or

county clerk may collect the additional voluntary contribution under this section.

(d) Notwithstanding Section 191.005, the local registrar or county clerk who collects the voluntary contribution under this section shall send the voluntary contribution to the comptroller, who shall deposit the voluntary contribution in the Texas Home Visiting Program trust fund under Section 523.0306, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 820 (S.B. 1836), Sec. 3, eff. June 14, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0534, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.42, eff. April 1, 2025.

Sec. 191.0049. BIRTH RECORD ISSUED TO FOSTER CHILD OR YOUTH OR HOMELESS CHILD OR YOUTH. On request of a child or youth described by this section, the state registrar, a local registrar, or a county clerk shall issue, without fee or parental consent, a certified copy of the child's or youth's birth record to:

(1) a homeless child or youth as defined by 42 U.S.C. Section 11434a;

(2) a child in the managing conservatorship of the Department of Family and Protective Services; and

(3) a young adult who:

(A) is at least 18 years of age, but younger than 21 years of age; and

(B) resides in a foster care placement, the cost of which is paid by the Department of Family and Protective Services.

Added by Acts 2019, 86th Leg., R.S., Ch. 1024 (H.B. 123), Sec. 2, eff. September 1, 2019.

Sec. 191.00491. BIRTH RECORD ISSUED TO VICTIMS AND CHILDREN OF VICTIMS OF DATING OR FAMILY VIOLENCE. On request of an individual described by this section, the state registrar, a local registrar, or a county clerk shall issue, without payment of a fee, a certified copy of the individual's birth record to:

(1) a victim of dating violence as defined by Section 71.0021, Family Code;

(2) a victim of family violence as defined by Section 51.002, Human Resources Code; or

(3) a child of a victim described by Subdivision (1) or (2).

Added by Acts 2021, 87th Leg., R.S., Ch. 374 (S.B. 798), Sec. 1, eff. September 1, 2021.

Sec. 191.005. VITAL STATISTICS ACCOUNT. (a) The vital statistics account is an account in the general revenue fund in the state treasury.

(b) The legislature shall make appropriations to the department from the vital statistics account to be used to defray expenses incurred in the administration and enforcement of the system of vital statistics.

(c) All fees collected by the department under this chapter shall be deposited to the credit of the vital statistics account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 53, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0535, eff. April 2, 2015.

Sec. 191.006. RECORDS OF PERSONS IN HOSPITALS AND INSTITUTIONS. (a) This section applies to each public or private hospital, almshouse, or other institution to which persons are committed by process of law or voluntarily enter for treatment of disease or for confinement.

(b) When a person is admitted to the institution, the superintendent, manager, or other person in charge of the institution shall record, in the manner directed by the state registrar, the admitted person's personal and statistical data required by certificate forms under this title. If the person is admitted for the treatment of disease, the physician in charge shall specify for the record the nature of the disease and where, in the physician's opinion, the disease was contracted.

(c) The personal information required under Subsection (b) shall be obtained:

(1) from the person admitted to the institution, if practicable; or

(2) from the person's relatives or friends or from other persons acquainted with the facts, in as complete a manner as possible, if the information cannot be obtained from the person admitted to the institution.

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

Sec. 191.007. REGULATION BY CERTAIN MUNICIPALITIES. The governing body of a Type A general-law municipality may:

(1) regulate the registration of marriages; and

(2) direct the return and maintenance of bills of mortality.

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

Sec. 191.008. SORTING COLLECTED DATA. (a) The department shall compile the information relating to births, deaths, and fetal deaths collected under this chapter and organize the results, to the extent possible, according to the following geographic areas:

(1) the Texas-Mexico border region;

(2) each public health region;

(3) rural areas;

(4) urban areas;

(5) each county; and

(6) the state.

(b) The department may release the information relating to births, deaths, and fetal deaths in accordance with the way it is compiled under this section.

Added by Acts 2005, 79th Leg., Ch. 1034 (H.B. 1126), Sec. 3, eff. September 1, 2005.

Sec. 191.009. USE OF DIACRITICAL MARKS. (a) In this section, "diacritical mark" means a mark used in Latin script to change the

sound of the letter to which it is added or used to distinguish the meaning of the word in which the letter appears. The term includes accents, tildes, graves, umlauts, and cedillas.

(b) The state registrar shall ensure that a vital statistics record issued under this title properly records any diacritical mark used in a person's name.

Added by Acts 2017, 85th Leg., R.S., Ch. 1041 (H.B. 1823), Sec. 1, eff. September 1, 2017.

Sec. 191.010. DEATH INFORMATION FOR DEPARTMENT OF PUBLIC SAFETY. (a) The department shall implement an efficient and effective method to verify death information to assist the Department of Public Safety with maintaining records of holders of driver's licenses and personal identification certificates in this state.

(b) The department shall enter into a memorandum of understanding with the Department of Public Safety to implement this section. The memorandum of understanding must include a mechanism for the department to provide to the Department of Public Safety death information that includes unique identifiers, including social security numbers, necessary to accurately match death records with driver's license and personal identification certificate records.

Added by Acts 2017, 85th Leg., R.S., Ch. 737 (S.B. 1205), Sec. 1, eff. June 12, 2017.
Redesignated from Health and Safety Code, Section 191.009 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(36), eff. September 1, 2019.

Sec. 191.011. DEATH INFORMATION PROVIDED TO SECRETARY OF STATE. (a) The department shall implement an efficient and effective method to provide death information to the secretary of state to assist in maintaining the statewide computerized voter registration list under Section 18.061, Election Code.

(b) The method implemented under Subsection (a) must provide at least the following information on each deceased person for whom a death certificate is filed with a local registrar in this state:

(1) the county of residence of the deceased;

(2) the date of birth of the deceased; and

(3) the full name of the deceased.

(c) The department shall enter into a memorandum of understanding with the secretary of state to implement this section. The memorandum of understanding must include a mechanism for the department to provide the secretary of state with death information that includes unique identifiers necessary to accurately match death records with names included on the voter registration list.

Added by Acts 2023, 88th Leg., R.S., Ch. 1074 (S.B. 545), Sec. 1, eff. September 1, 2023.

Sec. 191.012. DEATH INFORMATION PROVIDED TO CERTAIN HOSPITALS. (a) In this section:

(1) "Hospital" means a hospital licensed under Chapter 241.

(2) "Trauma facility" has the meaning assigned by Section 773.003.

(b) The department shall implement an efficient and effective procedure to provide death information to a hospital designated as a Level I trauma facility to assist with the hospital's participation in the Medicaid managed care program operated under Chapter 540, Government Code.

(c) The procedure implemented under Subsection (b) at a minimum must provide the following information for each deceased person for whom a death certificate is filed with a local registrar in this state:

(1) the county of residence of the deceased;

(2) the date of birth of the deceased; and

(3) the full name of the deceased.

(d) Subject to available resources, the department may use the procedure implemented under Subsection (b) to provide death information to a hospital that is not designated as a Level I trauma facility.

Added by Acts 2025, 89th Leg., R.S., Ch. 833 (S.B. 1467), Sec. 1, eff. September 1, 2025.

SUBCHAPTER B. RECORDS OF BIRTHS, DEATHS, AND FETAL DEATHS

Sec. 191.021. REGISTRATION DISTRICTS. (a) The state is divided into registration districts for the purposes of registering

births, deaths, and fetal deaths. The registration districts are:

(1) each justice of the peace precinct; and

(2) each municipality with a population of 2,500 or more.

(b) To facilitate registration, the department may combine or divide registration districts.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0536, eff. April 2, 2015.

Sec. 191.022. LOCAL REGISTRARS. (a) The justice of the peace is the local registrar of births and deaths in a justice of the peace precinct. However, the duty of registering births and deaths may be transferred to the county clerk if the justice of the peace and the county clerk agree in writing and the agreement is ratified by the commissioners court.

(b) The municipal clerk or secretary is the local registrar of births and deaths in a municipality with a population of 2,500 or more.

(c) Each local registrar shall appoint a deputy registrar so that a registrar will be available at all times for the registration of births and deaths.

(d) The local registrar shall sign each report made to the department.

(e) If a local registrar fails or refuses to register each birth and death in the district or neglects duties under this title, the county judge or the mayor, as appropriate, shall appoint a new local registrar and shall send the name and mailing address of the appointee to the state registrar.

(f) A local registrar who collects a fee for a certified copy of a birth certificate shall deduct 20 cents of that fee to apply to the registrar's administrative costs and remit $1.80 of that fee to the comptroller.

(g) Each local registrar shall annually submit a self-assessment report to the state registrar. The department shall prescribe the information that must be included in the report to allow a thorough desk audit of a local registrar.

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

by Acts 1995, 74th Leg., ch. 305, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 263 (H.B. 2962), Sec. 1, eff. May 30, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0537, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 5.02, eff. September 1, 2015.

Sec. 191.023. CONSOLIDATION OF COUNTY AND MUNICIPAL MAINTENANCE OF BIRTH AND DEATH RECORDS. (a) The duties imposed by law relating to the maintenance of birth and death records of a municipality with a population of 2,500 or more may be transferred to the county in which the municipality is located, as provided by this section.

(b) If the commissioners court adopts a resolution to transfer the duties and the governing body of the municipality subsequently adopts a concurring resolution, the county and municipality shall agree on a timetable for the transfer and shall execute the transfer in an orderly fashion.

(c) Before a commissioners court may adopt a resolution under Subsection (b), the official to whom the duties would be transferred must attest in writing that the official has sufficient resources and finances to assume those duties.

(d) If the governing body of a municipality does not adopt a concurring resolution before the 91st day after the date on which a county adopts a resolution under Subsection (b), a petition by the qualified voters of the municipality may serve as the equivalent of a concurring resolution under Subsection (b). The petition must succinctly describe the intention to consolidate county and municipal maintenance of birth and death records and must be signed by a number of qualified voters equal to at least 20 percent of the number of qualified voters voting in the most recent mayoral election.

(e) A consolidation under this section affects only the county and the municipality to which the resolutions apply. This section does not affect the apportionment of registration districts under Section 191.021.

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

Sec. 191.024. REPORTS OF INFORMATION. (a) On the state registrar's demand, a person, including a local registrar, physician, midwife, or funeral director, who has information relating to a birth, death, or fetal death shall supply the information to the state registrar in person, by mail, or through the local registrar. The person shall supply the information on a form provided by the department or on the original certificate.

(b) An organization or individual who has a record of births or deaths that may be useful to establish the genealogy of a resident of this state may file the record or a duly authenticated transcript of the record with the state registrar.

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

Acts 2011, 82nd Leg., R.S., Ch. 302 (H.B. 2061), Sec. 1, eff. June 17, 2011.

Sec. 191.025. RECORD BOOKS AND CERTIFICATES. (a) Forms for the registration of births, deaths, and fetal deaths must be approved by the department.

(b) A municipality shall supply its local registrar, and each county shall supply the county clerk, with permanent record books for recording the births, deaths, and fetal deaths occurring in their respective jurisdictions. The record books must be in forms approved by the state registrar.

(c) A local registrar shall supply forms of certificates to persons who need them. The executive commissioner shall establish and promulgate rules for strict accountability of birth certificates to prevent birth certificate fraud.

(d) Information required on a certificate must be written legibly in durable blue or black ink or may be filed and registered by photographic, electronic, or other means as prescribed by the state registrar.

(e) A certificate must contain each item of information required on the certificate or a satisfactory reason for omitting the item.

(f) The department shall require that the form for the registration of deaths must include the question, "Was the decedent a peace officer or an honorably retired peace officer in this state?".

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.14, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 17, Sec. 1, eff. April 25, 1997; Acts 2001, 77th Leg., ch. 476, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 744 (H.B. 2769), Sec. 2, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0538, eff. April 2, 2015.

Sec. 191.026. LOCAL RECORDS. (a) The local registrar shall secure a complete record of each birth, death, and fetal death that occurs in the local registrar's jurisdiction.

(b) The local registrar shall consecutively number birth and death certificates in separate series, beginning with the number "1" for the first birth and the first death in each calendar year. The local registrar shall sign each certificate to attest to the date the certificate is filed in the local registrar's office.

(c) The local registrar shall copy in the record book required under Section 191.025 each certificate that the local registrar registers, unless the local registrar keeps duplicates under Subsection (d) or makes photographic duplications as authorized by Chapter 201, Local Government Code, or the provisions of Chapter 204, Local Government Code, derived from former Chapter 181, Local Government Code. Except as provided by Subsection (e), the copies shall be permanently preserved in the local registrar's office as the local record, in the manner directed by the state registrar.

(d) The local registrar may permanently bind duplicate reports of births and deaths, if the duplicates are required by local ordinance, and index them in the manner that the state registrar indexes records under Section 191.032.

(e) The local registrar may, after the first anniversary of the date of registration of a birth, death, or fetal death, destroy the permanent record of the birth, death, or fetal death maintained by the local registrar if:

(1) the local registrar has access to electronic records of births, deaths, and fetal deaths maintained by the vital statistics unit; and

(2) before destroying the records, the local registrar

certifies to the state registrar that each record maintained by the local office that is to be destroyed has been verified against the records contained in the unit's database and that each record is included in the database or otherwise accounted for.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 74th Leg., ch. 17, Sec. 2, eff. April 25, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0539, eff. April 2, 2015.

Sec. 191.027. REVIEW OF CERTIFICATE BY LOCAL REGISTRAR. (a) The local registrar shall carefully examine each birth or death certificate when presented for registration to determine if it is completed as required by this title and by the state registrar's instructions.

(b) If a death certificate is incomplete or unsatisfactory, the local registrar shall call attention to the defects in the return.

(c) If a birth certificate is incomplete, the local registrar shall immediately notify the informant and require the informant to supply the missing information if it can be obtained.

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

Sec. 191.028. AMENDMENT OF CERTIFICATE. (a) A record of a birth, death, or fetal death accepted by a local registrar for registration may not be changed except as provided by Subsection (b).

(b) An amending certificate may be filed to complete or correct a record that is incomplete or proved by satisfactory evidence to be inaccurate. The amendment must be in a form prescribed by the department. The amendment shall be attached to and become a part of the legal record of the birth, death, or fetal death if the amendment is accepted for filing, except as provided by Section 192.011(b).

(c) Not later than the 30th business day after the date the department receives an amending certificate, the department shall notify the individual of whether the amendment has been accepted for filing.

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

by Acts 1991, 72nd Leg., ch. 14, Sec. 54, eff. Sept. 1, 1991.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 758 (S.B. 703), Sec. 2, eff. September 1, 2009.

Sec. 191.029. CERTIFICATES OR REPORT SENT TO STATE REGISTRAR. On the 10th day of each month, the local registrar shall send to the state registrar:

(1) the original certificates that the local registrar registered during the preceding month; or

(2) a report of no births or deaths on a card provided for that purpose if no births or deaths occurred during the preceding month.

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

Sec. 191.031. REVIEW OF CERTIFICATES BY STATE REGISTRAR. (a) The state registrar shall carefully examine the certificates received monthly from the local registrars.

(b) The state registrar shall require additional information to make the record complete and satisfactory if necessary.

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

Sec. 191.032. STATE RECORDS. (a) The state registrar shall arrange, bind, and permanently preserve birth, death, and fetal death certificates in a systematic manner.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 260, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0540, eff. April 2, 2015.

Sec. 191.033. ADDENDA. (a) The state registrar may attach to

the original record an addendum that sets out any information received by the state registrar that may contradict the information in a birth, death, or fetal death record required to be maintained in the vital statistics unit.

(b) If the state registrar attaches an addendum to an original record, the state registrar shall instruct the local registration official in whose jurisdiction the birth, death, or fetal death occurred to attach an identical addendum to any duplicate of the record in the official's custody.

(c) In this section, "local registration official" means a county clerk or a person authorized by this title to maintain a duplicate system of records for each birth, death, or fetal death that occurs in the person's jurisdiction.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0541, eff. April 2, 2015.

Sec. 191.034. NOTATION OF DEATH ON BIRTH CERTIFICATE. (a) On receipt of the death certificate of a person whose birth is registered in this state, the state registrar shall conspicuously note the person's date of death on the person's birth certificate.

(b) The state registrar shall notify the county clerk of the county in which the person was born and the local registrar of the registration district in which the person was born of the person's death. On receipt of the notification of death, the county clerk or local registrar shall conspicuously note the person's date of death on the person's birth certificate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 260, Sec. 2, eff. Sept. 1, 1991.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1067 (H.B. 3253), Sec. 1, eff. June 14, 2013.

Sec. 191.036. SPANISH SURNAME INFORMATION. (a) The purpose of this section is to:

(1) enable this state to participate in a study being

conducted by a group of southwestern states to obtain information about the birth rates and mortality patterns of persons with Spanish surnames; and

(2) implement recommendations made by the National Center for Health Statistics for improved methods of maintaining vital statistics.

(b) In the next official revision of the prescribed forms for birth and fetal death certificates, the department shall include the following questions and instructions:

(1) Is the father of Spanish origin?

(2) If yes, specify Mexican, Cuban, Puerto Rican, etc.

(3) Is the mother of Spanish origin?

(4) If yes, specify Mexican, Cuban, Puerto Rican, etc.

(c) In the next official revision of the prescribed forms for death certificates, the department shall include the following questions and instructions:

(1) Was the decedent of Spanish origin?

(2) If yes, specify Mexican, Cuban, Puerto Rican, etc.

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

SUBCHAPTER C. COPIES OF RECORDS

Sec. 191.051. CERTIFIED COPIES. (a) Subject to department rules controlling the accessibility of vital records, the state registrar shall supply to a properly qualified applicant, on request, a certified copy of a record, or part of a record, of a birth, death, or fetal death registered under this title.

(b) A certified copy issued under this subsection may be issued only in the form approved by the department.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0542, eff. April 2, 2015.

Sec. 191.052. CERTIFIED COPY AS EVIDENCE. A copy of a birth, death, or fetal death record registered under this title that is certified by the state registrar is prima facie evidence of the facts stated in the record.

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

Sec. 191.056. COPIES COLLECTED BY NATIONAL AGENCY. (a) The national agency in charge of the collection of vital statistics may obtain, without expense to the state, transcripts of vital records without payment of the fees prescribed by this chapter.

(b) The department may contract with the national agency to have copies of vital records that are filed with the vital statistics unit transcribed for that agency.

(c) The state registrar may act as special agent for the national agency to accept the use of the franking privilege and forms furnished by the national agency.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0543, eff. April 2, 2015.

Sec. 191.057. RECORDS WITH ADDENDA. (a) In this section:

(1) "Copy" means a reproduction of a record made by any means.

(2) "Local registration official" means a county clerk or a person authorized by this title to maintain a duplicate system of records for each birth, death, or fetal death that occurs in the person's jurisdiction.

(b) If the vital statistics unit or any local registration official receives an application for a certified copy of a birth, death, or fetal death record to which an addendum has been attached under Section 191.033, the application shall be sent immediately to the state registrar. After examining the application, the original record, and the addendum, the state registrar may refuse to issue a certified copy of the record or part of the record to the applicant.

(c) If the state registrar refuses to issue the certified copy:

(1) the state registrar shall notify the applicant of the refusal and the reason for the refusal not later than the 10th day after the date on which the state registrar receives the application; and

(2) the department shall give the applicant an opportunity

for a hearing.

(d) After the hearing, the state registrar shall notify the local officials who have duplicates of the questioned record of the department's final decision. The department may order the officials to issue or refuse to issue certified copies of the record.

(e) A duty imposed on or a power granted to the state registrar under this section may be performed or exercised by a designee of the state registrar.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0544, eff. April 2, 2015.

SUBCHAPTER D. ACCESS TO RECORDS

Sec. 191.071. CRIMINAL BACKGROUND CHECK REQUIRED. (a) A person may not access vital records maintained by the department under this chapter and may not access the department's vital records electronic registration system unless the department, or another person acting on behalf of the department, has conducted a fingerprint-based criminal background check, using state and federal databases, on the person in accordance with department policy and the person's record is satisfactory as determined under department policy.

(b) The department may adopt a policy waiving the requirement of a fingerprint-based background check for a person who previously submitted to a fingerprint-based background check as a condition of licensure by a state agency.

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 5.03, eff. September 1, 2015.

CHAPTER 192. BIRTH RECORDS

SUBCHAPTER A. GENERAL REGISTRATION PROVISIONS

Sec. 192.001. REGISTRATION REQUIRED. The birth of each child born in this state shall be registered.

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

Sec. 192.002. FORM OF BIRTH CERTIFICATE. (a) The department shall prescribe the form and contents of the birth certificate.

(b) The section of the birth certificate entitled "For Medical and Health Use Only" is not part of the legal birth certificate. Information held by the department under that section of the certificate is confidential. That information may not be released or made public on subpoena or otherwise, except that release may be made for statistical purposes only so that no person, patient, or facility is identified, or to medical personnel of a health care entity, as that term is defined in Subtitle B, Title 3, Occupations Code, or to a faculty member at a medical school, as that term is defined in Section 61.501, Education Code, for statistical or medical research, or to appropriate state or federal agencies for statistical research. The executive commissioner may adopt rules to implement this subsection.

(c) The form must include a space for recording the social security numbers of the mother and father and the signatures of the biological mother and biological father. These social security numbers and signatures are not a part of the legal birth certificate, shall be made available to the agency administering the state's plan under Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.), and may not be used or disseminated for any purpose other than the establishment and the enforcement of child support orders.

(d) The social security numbers of the mother and father recorded on the form shall be made available to the United States Social Security Administration.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., 1st C.S., ch. 25, Sec. 7; Acts 1991, 72nd Leg., ch. 14, Sec. 56, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 556, Sec. 69, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.785, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1067 (H.B. 3253), Sec. 2, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0545, eff. April 2, 2015.

Sec. 192.0021. HEIRLOOM BIRTH CERTIFICATE. (a) The department shall promote and sell copies of an heirloom birth certificate. The department shall solicit donated designs for the certificate from Texas artists and select the best donated designs for the form of the certificate. An heirloom birth certificate must contain the same information as, and have the same effect of, a certified copy of another birth record. The executive commissioner by rule shall prescribe a fee for the issuance of an heirloom birth certificate in an amount that does not exceed $50. The heirloom birth certificate must be printed on high-quality paper with the appearance of parchment not smaller than 11 inches by 14 inches.

(b) The department shall deposit 50 percent of the proceeds from the sale of heirloom birth certificates to the credit of the childhood immunization account and the other 50 percent to the credit of the undedicated portion of the general revenue fund. The childhood immunization account is an account in the general revenue fund. Money in the account may be used only by the department for:

(1) making grants to fund childhood immunizations and related education programs; and

(2) administering this section.

(c) The department may sell an heirloom birth certificate only for an individual born in this state.

Added by Acts 1993, 73rd Leg., ch. 941, Sec. 1, eff. Aug. 30, 1993. Amended by:

Acts 2005, 79th Leg., Ch. 1265 (H.B. 2101), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0546, eff. April 2, 2015.

Sec. 192.0022. CERTIFICATE OF BIRTH RESULTING IN STILLBIRTH. (a) In this section:

(1) "Stillbirth" means an unintended, intrauterine fetal death occurring in this state after a gestational age of not less than 20 completed weeks.

(2) "Certificate of birth resulting in stillbirth" means a birth certificate issued to record the birth of a stillborn child.

(b) The person who is required to file a fetal death certificate under Section 193.002 shall advise the parent or parents

of a stillborn child:

(1) that a parent may, but is not required to, request the preparation of a certificate of birth resulting in stillbirth;

(2) that a parent may obtain a certificate of birth resulting in stillbirth by contacting the vital statistics unit to request the certificate and paying the required fee; and

(3) regarding the way or ways in which a parent may contact the vital statistics unit to request the certificate.

(c) A parent may provide a name for a stillborn child on the request for a certificate of birth resulting in stillbirth. If the requesting parent does not wish to provide a name, the vital statistics unit shall fill in the certificate with the name "baby boy" or "baby girl" and the last name of the parent. The name of the stillborn child provided on or later added by amendment to the certificate of birth resulting in stillbirth shall be the same name as placed on the original or amended fetal death certificate.

(d) A certificate of birth resulting in stillbirth must include the state file number of the corresponding fetal death certificate.

(e) The department shall prescribe the form and content of a certificate of birth resulting in stillbirth and shall specify the information necessary to prepare the certificate.

(f) The department may not use a certificate of birth resulting in stillbirth to calculate live birth statistics.

(g) On issuance of a certificate of birth resulting in stillbirth to a parent who has requested the certificate as provided by this section, the vital statistics unit shall file an exact copy of the certificate with the local registrar of the registration district in which the stillbirth occurred. The local registrar shall file the certificate of birth resulting in stillbirth with the fetal death certificate.

(h) A parent may request the vital statistics unit to issue a certificate of birth resulting in stillbirth without regard to the date on which the fetal death certificate was issued.

(i) The executive commissioner may adopt rules necessary to administer this section.

Added by Acts 2005, 79th Leg., Ch. 276 (S.B. 271), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0547, eff.

April 2, 2015.

Sec. 192.003. BIRTH CERTIFICATE FILED OR BIRTH REPORTED. (a) The physician, midwife, or person acting as a midwife in attendance at a birth shall file the birth certificate with the local registrar of the registration district in which the birth occurs.

(b) If a birth occurs in a hospital or birthing center, the hospital administrator, the birthing center administrator, or a designee of the appropriate administrator may file the birth certificate in lieu of a person listed by Subsection (a).

(c) If there is no physician, midwife, or person acting as a midwife in attendance at a birth and if the birth does not occur in a hospital or birthing center, the following in the order listed shall report the birth to the local registrar:

(1) the father or mother of the child; or

(2) the owner or householder of the premises where the birth occurs.

(d) Except as provided by Subsection (e), a person required to file a birth certificate or report a birth shall file the certificate or make the report not later than the fifth day after the date of the birth.

(e) Based on a parent's religious beliefs, a parent may request that a person required to file a birth certificate or report a birth delay filing the certificate or making the report until the parent contacts the person with the child's name. If a parent does not name the child before the fifth day after the date of the birth due to the parent's religious beliefs, the parent must contact the person required to file the birth certificate or report the birth with the name of the child as soon as the child is named. A person required to file the birth certificate or report the birth who delays filing the certificate or making the report in accordance with the parent's request shall file the certificate or make the report not later than the 15th day after the date of the child's birth.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 30, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 519, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(21), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 124, eff. Sept. 1, 1995; Acts 1999, 76th

Leg., ch. 556, Sec. 81, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 68 (H.B. 1604), Sec. 1, eff. May 17, 2005.

Sec. 192.0031. INFORMATION OF BIRTH TO SCHOOL-AGE MOTHER. (a) Notwithstanding Subchapter C, Chapter 552, Government Code, the department shall notify the commissioner of education of each birth to a school-age mother. The commissioner may notify the school district in which a school-age mother resides of each birth to a school-age mother.

(b) The department may not notify the commissioner of a birth to a school-age mother if:

(1) the child died at birth; or

(2) the child was placed for adoption.

(c) A notification under this section must include the name and address of the mother, the father, if the father is of school age and is named on the birth certificate, and the person born. Reports under this section shall be sent at least quarterly.

Added by Acts 1993, 73rd Leg., ch. 907, Sec. 6, eff. June 19, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(101), eff. Sept. 1, 1995.

Sec. 192.004. INFORMATION OBTAINED BY LOCAL REGISTRAR. (a) The local registrar shall obtain the information necessary to prepare the birth certificate from the person reporting a birth or from another person with the required knowledge if:

(1) the birth is reported under Section 192.003(c); or

(2) a person who files a certificate under Section 192.003(a) or 192.003(b) cannot by diligent inquiry obtain an item of information required for the certificate.

(b) A person from whom a local registrar requests necessary information shall answer correctly to the best of the person's knowledge. On request of the local registrar, a person who makes a statement under this section shall verify the statement by signing it.

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

by Acts 1993, 73rd Leg., ch. 30, Sec. 2, eff. Sept. 1, 1993.

Sec. 192.005. RECORD OF PATERNITY. (a) The items on a birth certificate relating to the child's father shall be completed only if:

(1) the child's mother was married to the father:

(A) at the time of the child's conception;

(B) at the time of the child's birth; or

(C) after the child's birth;

(2) paternity is established by order of a court of competent jurisdiction; or

(3) a valid acknowledgment of paternity executed by the father has been filed with the vital statistics unit as provided by Subchapter D, Chapter 160, Family Code.

(b) Repealed by Acts 2003, 78th Leg., ch. 610, Sec. 23, eff. Sept. 1, 2003.

(c) A person may apply to the state registrar for the removal of any indication of the absence of paternity of a child who has no presumed father from the person's birth record.

(d) If the items relating to the child's father are not completed on a birth certificate filed with the state registrar, the state registrar shall notify the attorney general.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., 1st C.S., ch. 25, Sec. 8; Acts 1993, 73rd Leg., ch. 519, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 7.42, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 610, Sec. 21, 23, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0548, eff. April 2, 2015.

Sec. 192.0051. REPORT OF DETERMINATION OF PATERNITY. (a) A report of each determination of paternity in this state shall be filed with the state registrar.

(b) On a determination of paternity, the petitioner shall provide the clerk of the court in which the decree was granted with the information necessary to prepare the report. The clerk shall:

(1) report the determination on a form or in a manner provided by the department; and

(2) complete the report immediately after the decree becomes final.

(c) On completion of the report, the clerk of the court shall forward to the state registrar the report for each decree that became final in that court.

Added by Acts 1993, 73rd Leg., ch. 519, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 70, eff. Sept. 1, 1999.

Sec. 192.006. SUPPLEMENTARY BIRTH CERTIFICATES. (a) A supplementary birth certificate may be filed if the person who is the subject of the certificate:

(1) becomes the child of the person's father by the subsequent marriage of the person's parents;

(2) has the person's parentage determined by a court of competent jurisdiction; or

(3) is adopted under the laws of any state.

(b) An application for a supplementary birth certificate may be filed by:

(1) an adult whose status is changed; or

(2) a legal representative of the person whose status is changed.

(c) The state registrar shall require proof of the change in status that the executive commissioner by rule may prescribe.

(d) Supplementary birth certificates and applications for supplementary birth certificates shall be prepared and filed in accordance with department rules.

(e) In accordance with department rules, a supplementary birth certificate may be filed for a person whose parentage has been determined by an acknowledgment of paternity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 57, 58, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 556, Sec. 71, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0549, eff. April 2, 2015.

Sec. 192.007. SUPPLEMENTARY CERTIFICATES FOR CHILD WHO DIES BEFORE ADOPTION. (a) If a child in the process of being adopted in this state dies before the adoption is completed, the persons who attempted to adopt the child may request the state registrar to file supplementary birth and death certificates for the child.

(b) Persons making a request under this section must include with the request:

(1) sufficient information to prove that they attempted to adopt the child and that the child died before the adoption was completed;

(2) a copy of an irrevocable affidavit of relinquishment of parental rights relating to the child;

(3) a copy of the affidavit of the status of the child, if applicable; and

(4) any other information required by the department.

(c) On receipt of the information required by Subsection (b), the state registrar shall complete birth and death certificates as if the child had been adopted by court decree and then died.

(d) In the absence of evidence to the contrary, compliance with this section and the completion of the birth certificate constitute adoption by estoppel.

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

Sec. 192.008. BIRTH RECORDS OF ADOPTED PERSON. (a) The supplementary birth certificate of an adopted child must be in the names of the adoptive parents, one of whom must be a female, named as the mother, and the other of whom must be a male, named as the father. This subsection does not prohibit a single individual, male or female, from adopting a child. Copies of the child's birth certificates or birth records may not disclose that the child is adopted.

(b) After a supplementary birth certificate of an adopted child is filed, information disclosed from the record must be from the supplementary certificate.

(c) The executive commissioner shall adopt rules and procedures to ensure that birth records and indexes under the control of the

department or local registrars and accessible to the public do not contain information or cross-references through which the confidentiality of adoption placements may be directly or indirectly violated. The rules and procedures may not interfere with the registries established under Subchapter E, Chapter 162, Family Code, or with a court order under this section.

(d) Except as provided by Subsections (e) and (f), only the court that granted the adoption may order access to an original birth certificate and the filed documents on which a supplementary certificate is based.

(e) A person applying for access to an original birth certificate and the filed documents on which the supplementary certificate is based is entitled to know the identity and location of the court that granted the adoption. If that information is not on file, the state registrar shall give the person an affidavit stating that the information is not on file with the state registrar. Any court of competent jurisdiction to which the person presents the affidavit may order the access.

(f) An adult adoptee who is applying for access to the person's original birth certificate and who knows the identity of each parent named on the original birth certificate is entitled to a noncertified copy of the original birth certificate without obtaining a court order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.43, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 561, Sec. 29, eff. Sept. 1, 1997. Amended by:

Acts 2005, 79th Leg., Ch. 480 (H.B. 240), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0550, eff. April 2, 2015.

Sec. 192.009. CERTIFICATE OF ADOPTION, ANNULMENT OF ADOPTION, OR REVOCATION OF ADOPTION. (a) A certificate of each adoption, annulment of adoption, and revocation of adoption decreed in this state shall be filed with the state registrar.

(b) When a petition for adoption, annulment of adoption, or revocation of adoption is granted, the petitioner shall supply the

clerk of the court the information necessary to prepare the certificate. The clerk shall:

(1) prepare the certificate on a form furnished by the department that provides the information prescribed by the department; and

(2) complete the certificate immediately after the decree becomes final.

(c) Not later than the 10th day of each month, the clerk shall forward to the state registrar the certificates that the clerk completed for decrees that became final in the preceding calendar month.

(d) If the department determines that a certificate filed with the state registrar under this section requires correction, the department shall mail the certificate directly to an attorney of record with respect to the petition of adoption, annulment of adoption, or revocation of adoption. The attorney shall return the corrected certificate to the department. If there is no attorney of record, the department shall mail the certificate to the clerk of the court for correction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1128, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0551, eff. April 2, 2015.

Sec. 192.010. CHANGE OF NAME. (a) Subject to department rules, an adult whose name is changed by court order, or the legal representative of any person whose name is changed by court order, may request that the state registrar attach an amendment showing the change to the person's original birth record.

(b) The state registrar shall require proof of the change of name that the executive commissioner by rule may prescribe.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 59, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0552, eff. April 2, 2015.

Sec. 192.011. AMENDING BIRTH CERTIFICATE. (a) This section applies to an amending birth certificate that is filed under Section 191.028 and that completes or corrects information relating to the person's sex, color, or race.

(b) On the request of the person or the person's legal representative, the state registrar, local registrar, or other person who issues birth certificates shall issue a birth certificate that incorporates the completed or corrected information instead of issuing a copy of the original or supplementary certificate with an amending certificate attached.

(c) The department shall prescribe the form for certificates issued under this section.

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

Sec. 192.012. RECORD OF ACKNOWLEDGMENT OF PATERNITY. (a) If the mother of a child is not married to the father of the child, a person listed in Section 192.003 who is responsible for filing the birth certificate shall:

(1) provide an opportunity for the child's mother and putative father to sign an acknowledgment of paternity as provided by Subchapter D, Chapter 160, Family Code; and

(2) provide oral and written information to the child's mother and putative father about:

(A) establishing paternity, including an explanation of the rights and responsibilities that result from acknowledging paternity; and

(B) the availability of child support services.

(b) The local registrar shall transmit the acknowledgment of paternity to the state registrar.

(c) The state registrar shall record the information contained in the acknowledgment of paternity and transmit the information to the Title IV-D agency.

(d) The Title IV-D agency may use the information contained in the acknowledgment of paternity for any purpose directly connected with providing child support services under Chapter 231, Family Code.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 72, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0553, eff.

April 2, 2015.

SUBCHAPTER B. DELAYED REGISTRATION

Sec. 192.021. DELAY LESS THAN ONE YEAR. (a) A birth that occurred more than five days but less than one year before the date of an application for registration may be recorded on a birth certificate and submitted for filing to the local registrar of the registration district in which the birth occurred.

(b) The local registrar may require evidence to substantiate the facts of the birth and may require a statement explaining the delay in filing the birth certificate. The local registrar may accept the certificate for filing if the evidence required by the local registrar is submitted.

(c) Registration under this section is subject to department rules.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0554, eff. April 2, 2015.

Sec. 192.022. DELAY OF ONE YEAR OR MORE: APPLICATION FILED WITH STATE REGISTRAR. Subject to department rules, an application to file a delayed birth certificate for a birth in this state not registered before the one-year anniversary of the date of birth shall be made to the state registrar.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0555, eff. April 2, 2015.

Sec. 192.023. DELAY OF MORE THAN ONE BUT LESS THAN FOUR YEARS. (a) A birth that occurred at least one year but less than four years before the date of the application for registration shall be recorded on a birth certificate in the form prescribed by the state registrar and submitted to the state registrar for filing.

(b) The state registrar may require evidence to substantiate

the facts of the birth and may require a statement explaining the delay in filing the birth certificate. The state registrar may accept the certificate for filing if the evidence required by the state registrar is submitted.

(c) A birth certificate filed under this section shall be marked "Delayed" and must show on its face the date of registration.

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

Sec. 192.024. DELAY OF FOUR YEARS OR MORE. (a) A birth that occurred four or more years before the date of the application for registration shall be recorded on a form entitled "Delayed Certificate of Birth." The department shall prescribe and furnish the form.

(b) The form shall provide for:

(1) the name and sex of the person whose birth is to be registered;

(2) the place and date of the person's birth;

(3) the names of the person's parents;

(4) the place of birth of each parent;

(5) the date of registration; and

(6) any other information required by the state registrar.

(c) The information on the form must be subscribed and sworn to, before an official authorized to administer oaths, by:

(1) the person whose birth is to be registered; or

(2) the person's parent, legal guardian, or legal representative if the person is incompetent to swear to the information.

(d) The state registrar shall add to a certificate submitted under this section:

(1) a description of each document submitted in support of the delayed registration, including the title of the document or the type of document;

(2) the name and address of the affiant if the document is an affidavit of personal knowledge; and

(3) if the document is a record, or certified copy of a record, of a business entry:

(A) the name and address of the custodian of the record;

(B) the date of the original entry; and

(C) the date of the certified copy.

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

Sec. 192.025. SUPPORTING DOCUMENTS. (a) The state registrar shall accept an application under Section 192.024 if the applicant's statement of date and place of birth and parentage is established to the state registrar's satisfaction by the evidence required by this section.

(b) The certification of the state registrar shall be added to a certificate accepted for filing under this section.

(c) If the birth occurred at least four years but less than 15 years before the date of the application:

(1) the statement of date and place of birth must be supported by at least two documents, only one of which may be an affidavit of personal knowledge; and

(2) the statement of parentage must be supported by at least one document, which may be a document qualifying for submission under Subdivision (1).

(d) If the birth occurred 15 or more years before the date of the application:

(1) the statement of date and place of birth must be supported by at least three documents, only one of which may be an affidavit of personal knowledge; and

(2) the statement of parentage must be supported by at least one document, which may be a document qualifying for submission under Subdivision (1).

(e) A document accepted as evidence under this section, other than an affidavit of personal knowledge, must be at least five years old. A copy or abstract of the document may be accepted if certified as true and correct by the custodian of the document.

(f) The state registrar may not reject an application under this subchapter based solely on the inclusion of supporting evidence that contains inconsistent or contradictory information if, based on the contents of the application as a whole, the state registrar determines by a preponderance of the evidence the applicant's identity and place of birth. In making a determination under this subsection, the state registrar shall consider and give weight to:

(1) any supporting evidence that raises a legitimate question as to the applicant's actual place of birth;

(2) the inclusion of a valid driver's license or personal identification certificate; and

(3) the inclusion of a verified affidavit by a person with personal knowledge of the applicant's identity.

(g) Notwithstanding any other law, if a delayed birth certificate of a person who was born before January 1, 1971, is otherwise acceptable for registration and the identity of one parent of the person is established by information not contradictory to information available to the state registrar, the state registrar shall register the certificate with only the established parent's name entered on the certificate.

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

Acts 2025, 89th Leg., R.S., Ch. 764 (S.B. 227), Sec. 2, eff. September 1, 2025.

Sec. 192.026. REJECTION OR RETURN OF APPLICATION. (a) The state registrar may not register a delayed birth certificate if:

(1) the applicant does not submit the documentary evidence required by Section 192.025; or

(2) the state registrar finds reason to question the validity or adequacy of the certificate or the documentary evidence.

(b) On the state registrar's refusal to register a certificate under Subsection (a), the state registrar shall:

(1) furnish the applicant a statement of the reasons for the refusal; and

(2) advise the applicant of the right to appeal to the statutory probate court or district court in the county in which the birth occurred, or in the statutory probate court or district court in the county in which the person resides, as provided by Section 192.027.

(c) If an application to file a delayed birth certificate is not actively pursued, the state registrar shall:

(1) return the application, supporting evidence, and any related instruments to the applicant; or

(2) make another disposition of those documents that the

state registrar considers appropriate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1093 (H.B. 2794), Sec. 1, eff. September 1, 2015.

Sec. 192.027. REGISTRATION BY JUDICIAL ORDER. (a) If a delayed birth certificate is not accepted for registration by the state registrar, the person may file a petition in the statutory probate court or district court in the county in which the birth occurred, or in the statutory probate court or district court in the county in which the person resides, for an order establishing a record of the person's date of birth, place of birth, and parentage.

(b) The petition must include:

(1) the petitioner's:

(A) full name;

(B) place of residence;

(C) date of birth;

(D) city or town, if applicable, and county of birth;

(E) race or ethnicity; and

(F) gender;

(2) the full name and county of birth of the petitioner's father;

(3) the full name, including any maiden name, and county of birth of the petitioner's mother;

(4) whether the petitioner has been the subject of a final felony conviction;

(5) whether the petitioner is subject to the registration requirements of Chapter 62, Code of Criminal Procedure; and

(6) a legible and complete set of the petitioner's fingerprints on a fingerprint card format acceptable to the Department of Public Safety and the Federal Bureau of Investigation.

(c) The petition must be accompanied by:

(1) a statement of the state registrar issued under Section 192.026(b)(1); and

(2) the documentary evidence submitted to the state registrar in support of the application.

(d) If, after a hearing, the court finds from the evidence

submitted to the registrar and any other relevant evidence presented by the person that the person was born in this state, the court shall:

(1) make findings as to the person's date and place of birth and parentage;

(2) make other findings required by the case; and

(3) enter an order on a form prescribed and furnished by the department to establish a record of birth.

(e) An order under this section must include:

(1) the birth data to be registered;

(2) a description of the evidence presented; and

(3) the date of the court's action.

(f) Not later than the seventh day after the date on which the order is entered, the clerk of the court shall forward the order to the state registrar. The state registrar shall register the order, which is the record of birth.

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

Acts 2015, 84th Leg., R.S., Ch. 1093 (H.B. 2794), Sec. 2, eff. September 1, 2015.

Sec. 192.028. APPOINTMENT OF ATTORNEY AD LITEM. A judge of a statutory probate court or district court may appoint an attorney ad litem in a proceeding under Section 192.027 to represent the interests of the person seeking the delayed birth certificate.

Added by Acts 2015, 84th Leg., R.S., Ch. 1093 (H.B. 2794), Sec. 3, eff. September 1, 2015.

Sec. 192.029. REFUSAL TO SIGN AFFIDAVIT OF PERSONAL KNOWLEDGE. (a) A parent of a person who is seeking a delayed birth certificate under this subchapter shall sign an affidavit of personal knowledge acknowledging that the individual is the parent of the person seeking the delayed birth certificate if:

(1) the person seeking a delayed birth certificate, a managing conservator or guardian of the person, or, if the person is a minor, another person with custody of the minor has requested the person's parent to sign the affidavit of personal knowledge; and

(2) the parent's affidavit of personal knowledge is necessary for the issuance of the birth certificate because the person seeking the delayed birth certificate is unable to provide sufficient alternative documentary evidence as required by Section 192.025.

(b) A parent shall sign an affidavit as described by Subsection (a) not later than the 30th day after the date a request is made as described by Subsection (a)(1).

(c) A person who is a parent of a person seeking a delayed birth certificate and who fails to sign an affidavit of personal knowledge as required by this section:

(1) commits an offense punishable as a Class B misdemeanor if the request under Subsection (a)(1) is made on or after the fourth anniversary of the date of birth but before the 15th anniversary of the date of birth; or

(2) commits an offense punishable as a Class A misdemeanor if the request under Subsection (a)(1) is made on or after the 15th anniversary of the date of birth.

Added by Acts 2015, 84th Leg., R.S., Ch. 1093 (H.B. 2794), Sec. 3, eff. September 1, 2015.

CHAPTER 193. DEATH RECORDS

Sec. 193.001. FORM OF CERTIFICATE. (a) The department shall prescribe the form and contents of death certificates and fetal death certificates.

(a-1) In prescribing each form under Subsection (a), the department shall ensure that the form instructs the person required to file the death certificate or fetal death certificate to:

(1) enter the date in the standard order of "month, day, year"; and

(2) spell out the name of the month when entering the date.

(b) The social security number shall be recorded on the death certificate and on any other records related to the death.

(c) The department shall require death certificates and fetal death certificates to include the name of the place and the specific number of the plot, crypt, lawn crypt, or niche in which a decedent's remains will be interred or, if the remains will not be interred, the place and manner of other disposition.

(c-1) The department shall require death certificates to include the county where the decedent died and the decedent's county of last legal residence.

(d) The department and each local registrar shall make the information provided under Subsection (c) available to the public and may collect a fee in an amount prescribed under Section 191.0045 for providing that service.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 502, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 556, Sec. 73, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 557 (H.B. 2940), Sec. 1, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0556, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1074 (S.B. 545), Sec. 2, eff. September 1, 2023.

Sec. 193.002. PERSON REQUIRED TO FILE. The person in charge of interment or in charge of removal of a body from a registration district for disposition shall:

(1) obtain and file the death certificate or fetal death certificate;

(2) enter on the certificate the information relating to disposition of the body;

(3) sign the certificate; and

(4) file the certificate electronically as specified by the state registrar.

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

Acts 2007, 80th Leg., R.S., Ch. 302 (H.B. 1739), Sec. 1, eff. September 1, 2007.

Sec. 193.0025. EXPEDITED DEATH CERTIFICATES FOR RELIGIOUS PURPOSES IN CERTAIN COUNTIES.

Text of subsection effective until April 1, 2027

(a) This section applies only to a county:

(1) with an office of medical examiner established in accordance with Section 1, Article 49.25, Code of Criminal Procedure; and

(2) for which the commissioners court of the county by resolution elects for this section to apply.

Text of subsection effective on April 1, 2027

(a) This section applies only to a county:

(1) with an office of medical examiner established in accordance with Article 49A.101, Code of Criminal Procedure; and

(2) for which the commissioners court of the county by resolution elects for this section to apply.

Text of subsection effective until April 1, 2027

(b) This section does not apply to a county that entered into an agreement with another county to create a medical examiners district under Section 1-a, Article 49.25, Code of Criminal Procedure, unless:

(1) the office of medical examiner is located in the county and the county has adopted a resolution described by Subsection (a)(2); or

(2) notwithstanding Subsection (a), the county elects for this section to apply in the agreement creating the district.

Text of subsection effective on April 1, 2027

(b) This section does not apply to a county that entered into an agreement with another county to create a medical examiners district under Article 49A.102, Code of Criminal Procedure, unless:

(1) the office of medical examiner is located in the county and the county has adopted a resolution described by Subsection (a)(2); or

(2) notwithstanding Subsection (a), the county elects for this section to apply in the agreement creating the district.

(c) An individual may submit to the person required to file a death certificate under Section 193.002 a written request for the person to expedite the completion of a decedent's death certificate if the requestor demonstrates that:

(1) the expedited completion is necessary for religious purposes;

(2) the decedent's remains will be interred, entombed, buried, cremated, or otherwise laid to rest in a foreign country; and

(3) the requestor is authorized to obtain a copy of the death certificate.

(d) A person who receives a request under Subsection (c) shall issue a copy of the decedent's death certificate to the requestor not later than 48 hours after the time the person receives the request unless an inquest will be conducted for the decedent.

(e) For purposes of completing an expedited death certificate under this section, a medical examiner may:

(1) perform a medical examination; and

(2) complete the medical certification, provided:

(A) the medical examiner has access to the decedent's medical history relevant to the death;

(B) the decedent's death is due to natural causes; and

(C) the medical examiner serves as medical examiner of the county in which the death occurred.

(f) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 233 (H.B. 1011), Sec. 1, eff. September 1, 2021.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 202 (H.B. 1610), Sec. 2.11, eff. April 1, 2027.

Sec. 193.003. TIME AND PLACE FOR FILING DEATH CERTIFICATE. (a) Not later than the 10th day after the date of a death that occurs in this state, a death certificate shall be filed with the local registrar of the registration district in which:

(1) the death occurs; or

(2) the body is found, if the place of death is not known.

(b) Subject to department rules, a certificate of a fetal death that occurs in this state shall be filed with the local registrar of the registration district in which:

(1) the fetal death occurs; or

(2) the body is found, if the place of fetal death is not known.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0557, eff.

April 2, 2015.

Sec. 193.004. PERSONAL AND MEDICAL INFORMATION. (a) The person required to file a death certificate shall obtain the required personal information from a competent person with knowledge of the facts.

(b) The person required to file a fetal death certificate shall obtain the required personal information from the person best qualified to furnish the information.

(c) A person required to obtain information under this section shall obtain the information over the signature of the person who furnishes the information.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1425, Sec. 1, eff. Sept. 1, 1997.

Sec. 193.0041. DISCIPLINARY ACTION PROHIBITED. A state agency that licenses a person required to file a death certificate under this chapter may not take disciplinary action against the person for failure to timely file the certificate if the person supplies written documentation that the person has made a good faith effort to file the certificate within the time required by Section 193.003(a) and the failure to timely file the certificate results from circumstances beyond the person's control.

Added by Acts 2007, 80th Leg., R.S., Ch. 636 (H.B. 755), Sec. 1, eff. September 1, 2007.

Sec. 193.005. PERSONAL INFORMATION. (a) A person required to file a death certificate or fetal death certificate shall obtain the required medical certification from the decedent's attending physician, or a physician assistant or advanced practice registered nurse of the decedent, if the death occurred under the care of the person in connection with the treatment of the condition or disease process that contributed to the death.

(a-1) Repealed by Acts 2021, 87th Leg., R.S., Ch. 733 (H.B. 4048), Sec. 2, eff. June 15, 2021.

(b) The attending physician, physician assistant, or advanced

practice registered nurse shall complete the medical certification not later than five days after receiving the death certificate.

(c) An associate physician, the chief medical officer of the institution where the death occurred, or the physician who performed an autopsy on the decedent may complete the medical certification if:

(1) the attending physician, the physician assistant, and the advanced practice registered nurse described by Subsection (a) are unavailable;

(2) the attending physician, the physician assistant, or the advanced practice registered nurse described by Subsection (a) approves; and

(3) the person completing the medical certification has access to the medical history of the case and the death is due to natural causes.

Text of subsection effective until April 1, 2027

(d) If a death or fetal death occurs without medical attendance or is otherwise subject to Chapter 49, Code of Criminal Procedure, the person required to file the death or fetal death certificate shall notify the appropriate authority of the death.

Text of subsection effective on April 1, 2027

(d) If a death or fetal death occurs without medical attendance or is otherwise subject to Chapter 49A, Code of Criminal Procedure, the person required to file the death or fetal death certificate shall notify the appropriate authority of the death.

Text of subsection effective until April 1, 2027

(e) A person conducting an inquest required by Chapter 49, Code of Criminal Procedure, shall:

(1) complete the medical certification not later than five days after receiving the death or fetal death certificate; and

(2) state on the medical certification the disease that caused the death or, if the death was from external causes, the means of death and whether the death was probably accidental, suicidal, or homicidal, and any other information required by the state registrar to properly classify the death.

Text of subsection effective on April 1, 2027

(e) A person conducting an inquest required by Chapter 49A, Code of Criminal Procedure, shall:

(1) complete the medical certification not later than five days after receiving the death or fetal death certificate; and

(2) state on the medical certification the disease that caused the death or, if the death was from external causes, the means of death and whether the death was probably accidental, suicidal, or homicidal, and any other information required by the state registrar to properly classify the death.

(e-1) The medical certification on a death certificate must include either the term "Fentanyl Poisoning" or the term "Fentanyl Toxicity" if:

(1) a toxicology examination reveals a controlled substance listed in Penalty Group 1-B present in the body of the decedent in an amount or concentration that is considered to be lethal by generally accepted scientific standards; and

(2) the results of an autopsy performed on the decedent are consistent with an opioid overdose as the cause of death.

(f) If the identity of the decedent is unknown, the person conducting the inquest shall obtain and forward to the Department of Public Safety:

(1) the decedent's fingerprints;

(2) information concerning the decedent's hair color, eye color, height, weight, deformities, and tattoo marks; and

(3) other facts required for assistance in identifying the decedent.

(g) If the medical certification cannot be completed in a timely manner, the person required to complete the medical certification shall give the funeral director or the person acting as funeral director notice of the reason for the delay. Final disposition of the body may not be made unless specifically authorized by the person responsible for completing the medical certification.

(h) The person completing the medical certification shall submit the information and attest to its validity using an electronic process approved by the state registrar.

(i) On receipt of autopsy results or other information that would change the information in the medical certification on the death certificate, the appropriate certifier shall immediately report the change in a manner prescribed by the department to amend the death certificate.

(j) The death certificate of a decedent who was an inmate of the Texas Department of Criminal Justice at the time of death and who was lawfully executed shall classify the manner of death as death

caused by judicially ordered execution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1425, Sec. 2, eff. Sept. 1, 1997. Amended by:

Acts 2005, 79th Leg., Ch. 285 (H.B. 93), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 302 (H.B. 1739), Sec. 2, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 412 (S.B. 919), Sec. 1, eff. June 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 1, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 733 (H.B. 4048), Sec. 1, eff. June 15, 2021.

Acts 2021, 87th Leg., R.S., Ch. 733 (H.B. 4048), Sec. 2, eff. June 15, 2021.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 1, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 202 (H.B. 1610), Sec. 2.12, eff. April 1, 2027.

Sec. 193.006. INFORMATION RELATING TO VETERANS. (a) This section applies to the death certificate of a person who:

(1) served in a war, campaign, or expedition of the United States, the Confederate States of America, or the Republic of Texas;

(2) was the wife or widow of a person who served in a war, campaign, or expedition of the United States, the Confederate States of America, or the Republic of Texas; or

(3) at the time of death was in the service of the United States.

(b) The funeral director or the person in charge of the disposition of the body shall supply on the reverse side of the death certificate:

(1) the organization in which service was rendered;

(2) the serial number on the discharge papers or the adjusted service certificate; and

(3) the name and mailing address of the decedent's next of kin or next friend.

(c) When the death certificate is filed locally, the local registrar shall immediately notify the nearest congressionally chartered veteran organizations.

(d) When the death certificate of a person to which this section applies is filed with the vital statistics unit, the department shall submit to the Texas Veterans Commission deidentified information on the person's:

(1) manner of death, only if the death was by suicide or homicide;

(2) age;

(3) race;

(4) sex; and

(5) occupation.

(e) Not later than December 1 of each year, the Texas Veterans Commission shall prepare and submit to the governor, lieutenant governor, speaker of the house of representatives, and standing committees of the legislature with primary jurisdiction over veterans affairs and publish on the commission's Internet website a written report that contains:

(1) aggregated data based on the information the commission receives under Subsection (d) for the preceding year;

(2) an evaluation of that data; and

(3) any recommendations for legislative or other action.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 260, Sec. 3, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0558, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 363 (H.B. 39), Sec. 1, eff. September 1, 2025.

Sec. 193.007. DELAYED REGISTRATION OF DEATH. (a) A death that occurred more than 10 days but less than one year before the date of an application for registration of death may be recorded on a death certificate and submitted for filing with the local registrar of the registration district in which the death occurred.

(b) To file a record of a death that occurred in this state but was not registered within one year of the date of death, a person

shall submit a record of the death to the county probate court in the county in which the death occurred.

(c) The department shall furnish a form for filing records under this section. Records submitted under this section must be on the form furnished by the department. The state registrar may accept a certificate that is verified as provided by this section.

(d) The certificate must be supported by the affidavit of:

(1) the physician last in attendance on the decedent or the funeral director who buried the body; or

(2) if the affidavit of the physician or funeral director cannot be obtained:

(A) any person who was acquainted with the facts surrounding the death when the death occurred; and

(B) another person who was acquainted with the facts surrounding the death but who is not related to the decedent by consanguinity or affinity, as determined under Chapter 573, Government Code.

(e) For each application under this section, the court shall collect a $1 fee. The court retains 50 cents of the fee and the remaining 50 cents is allocated to the clerk of the court for recording the certificate.

(f) Not later than the seventh day after the date on which a certificate is accepted and ordered filed by a court under this section, the clerk of the court shall forward to the vital statistics unit:

(1) the certificate; and

(2) an order from the court that the state registrar accept the certificate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 29, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1425, Sec. 3, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0559, eff. April 2, 2015.

Sec. 193.008. BURIAL-TRANSIT PERMIT. (a) A burial-transit permit issued under the law and rules of a place outside of this

state in which a death or fetal death occurred authorizes the transportation of the body in this state. A cemetery or crematory shall accept the permit as authorization for burial, cremation, or other disposal of the body in this state.

(b) The department shall prescribe the form and contents of the burial-transit permit.

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

Sec. 193.009. BURIAL RECORDS. (a) The person in charge of premises on which interments are made shall keep a record of the bodies interred or otherwise disposed of on the premises.

(b) The records must include for each decedent:

(1) the decedent's name;

(2) the place of death;

(3) the date of interment or disposal;

(4) the name and address of the funeral director; and

(5) any other information required by the state registrar.

(c) The records are open to official inspection at all times.

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

Sec. 193.010. CERTIFICATE OF DEATH BY CATASTROPHE. (a) In this section, "catastrophe" means the occurrence of a substantial force that causes widespread or severe damage, injury, or loss of life or property and from which it is not reasonable to assume that a person could survive, including:

(1) flood, earthquake, tornado, or other natural disaster;

(2) explosion, fire, or destruction of a building;

(3) the crash of a motor vehicle, train, or airplane involving more than one person; or

(4) the overtaking of more than one person by fire, water, earth, or other substance.

(b) A local registrar shall issue and file a certificate of death by catastrophe for a person if:

(1) an affidavit is submitted to the registrar stating that:

(A) the person was last reasonably believed to be at the scene of a catastrophe;

(B) at least 10 days have passed since the day of the catastrophe;

(C) a diligent search has been made by a governmental authority and the authority has concluded the search for the person;

(D) the catastrophe was not intentionally caused by the person; and

(E) the affiant:

(i) does not know whether the person is alive or dead;

(ii) has not received any information about the person's status since the catastrophe and, barring the person's death, would have received information about the person's status;

(iii) is not aware of any custody or guardianship issues involving the person, if the person is a minor or a person for whom a guardian has been appointed; and

(iv) is not aware of any reasonable motive for the person to disappear or for another person to abduct the person; and

(2) a written statement signed by an agent of the governmental authority that conducts a search under Subdivision (1)(C) is submitted to the registrar stating that the governmental authority conducted and concluded a search for the person.

(c) The department may issue a certificate of death by catastrophe for a minor or a person for whom a guardian has been appointed who is the subject of a custody or guardianship dispute only if all parties to the dispute submit an affidavit under Subsection (b).

(d) An insurer shall accept as proof of death of an insured a certificate of death by catastrophe issued under this section.

Added by Acts 2003, 78th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 2003.

Sec. 193.011. MEMORANDUM OF UNDERSTANDING ON SUICIDE DATA. (a) In this section, "authorized entity" means a medical examiner, a local registrar, a local health authority, a local mental health authority, a community mental health center, a mental health center that acts as a collection agent for the suicide data reported by community mental health centers, or any other political subdivision of this state.

(b) An authorized entity may enter into a memorandum of

understanding with another authorized entity to share suicide data that does not name a deceased individual. The shared data may include:

(1) the deceased individual's date of birth, race or national origin, gender, and zip code of residence;

(2) any school or college the deceased individual was attending at the time of death;

(3) the suicide method used by the deceased individual;

(4) the deceased individual's status as a veteran or member of the armed services; and

(5) the date of the deceased individual's death.

(c) The suicide data an authorized entity receives or provides under Subsection (b) is not confidential.

(d) An authorized entity that receives suicide data under a memorandum of understanding authorized by this section may periodically release suicide data that does not name a deceased individual to an agency or organization with recognized expertise in suicide prevention. The agency or organization may use suicide data received by the agency or organization under this subsection only for suicide prevention purposes.

(e) An authorized entity or an employee or agent of an authorized entity is not civilly or criminally liable for receiving or providing suicide data that does not name a deceased individual and that may be shared under a memorandum of understanding authorized by this section.

(f) This section does not prohibit the sharing of data as authorized by other law.

Added by Acts 2009, 81st Leg., R.S., Ch. 100 (H.B. 1067), Sec. 2, eff. May 23, 2009.

Sec. 193.012. NOTICE OF CERTAIN DEATH CERTIFICATE AMENDMENTS. For a death certificate that is not a pending death certificate, a person who submits to the department a request for an amendment to modify the medical certification information on the certificate shall provide in the manner prescribed by the department written notice of the modification to a decedent's next of kin.

Added by Acts 2021, 87th Leg., R.S., Ch. 12 (H.B. 723), Sec. 2, eff. September 1, 2021.

CHAPTER 194. MARRIAGE AND DIVORCE RECORDS

Sec. 194.001. REPORT OF MARRIAGE. (a) The county clerk shall file with the vital statistics unit a copy of each completed marriage license application and a copy of any affidavit of an absent applicant submitted with an application. The clerk shall file the copies not later than the 90th day after the date of the application. The clerk may not collect a fee for filing the copies.

(b) The county clerk shall file with the vital statistics unit a copy of each declaration of informal marriage executed under Section 2.402, Family Code. The clerk shall file the copy not later than the 90th day after the date on which the declaration is executed.

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

Acts 2013, 83rd Leg., R.S., Ch. 650 (H.B. 869), Sec. 5, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0560, eff. April 2, 2015.

Sec. 194.0011. MARRIAGE LICENSE APPLICATIONS. (a) The executive commissioner by rule shall prescribe the format and content of the department form used for the marriage license application. The form must:

(1) require identification of the county in which the application is submitted; and

(2) allow, but may not require, the name of the county clerk to appear on the application.

(b) The vital statistics unit shall print and distribute the department forms to each county clerk throughout the state.

(c) The department form shall replace locally adopted forms.

(d) A county clerk may reproduce the department form locally.

Added by Acts 1991, 72nd Leg., ch. 96, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0561, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 695 (H.B. 555), Sec. 2, eff. June

12, 2017.

Sec. 194.002. REPORT OF DIVORCE OR ANNULMENT. (a) The department shall prescribe a form for reporting divorces and annulments of marriage. The form must require the following information:

(1) each party's:

(A) full name;

(B) usual residence;

(C) age;

(D) place of birth;

(E) color or race; and

(F) number of children;

(2) the date and place of the parties' marriage;

(3) the date the divorce or annulment of marriage was granted; and

(4) the court and the style and docket number of the case in which the divorce or annulment of marriage was granted.

(b) The vital statistics unit shall furnish sufficient copies of the form to each district clerk.

(c) When an attorney presents a final judgment for a divorce or annulment of marriage to a court for a final decree, the attorney shall:

(1) enter on the form the information required under Subsection (a); and

(2) submit the report to the district clerk with the final judgment.

(d) Not later than the ninth day of each month, each district clerk shall file with the vital statistics unit a completed report for each divorce or annulment of marriage granted in the district court during the preceding calendar month. If a report does not include the information required by Subsection (a)(3) or (4), the clerk must complete that information on the report before the clerk files the report with the unit.

(e) Repealed by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 5.01(e), eff. January 1, 2022.

(f) If the department determines that a report filed with the department under this section requires correction, the department shall mail the report form directly to an attorney of record with

respect to the divorce or annulment of marriage. The attorney shall return the corrected report form to the department. If there is no attorney of record, the department shall mail the report form to the district clerk for correction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1128, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 186 (H.B. 723), Sec. 1, eff. May 27, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0562, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 5.01(e), eff. January 1, 2022.

Sec. 194.003. STATE INDEX. (a) The vital statistics unit shall maintain a statewide alphabetical index, under the names of both parties, of each marriage license application or declaration of informal marriage. The statewide index does not replace the indexes required in each county.

(b) The vital statistics unit shall maintain a statewide alphabetical index, under the names of both parties, of each report of divorce or annulment of marriage.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0563, eff. April 2, 2015.

Sec. 194.004. RELEASE OF INFORMATION. (a) Except as otherwise provided by this section, the vital statistics unit shall furnish on request any information it has on record relating to any marriage, divorce, or annulment of marriage.

(b) The vital statistics unit may not issue:

(1) a certificate or a certified copy of information relating to a marriage; or

(2) a certified copy of a report of divorce or annulment of marriage.

(c) If a party to a declaration of informal marriage has

checked the box described by Section 2.402(b)(5), Family Code, on the declaration, the vital statistics unit may not furnish any personally identifying information on record relating to the marriage, other than the names of the parties to the marriage, to anyone other than a party to the marriage or the party's legal representative.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 61, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0564, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 381 (H.B. 1193), Sec. 3, eff. September 1, 2025.

Sec. 194.005. HEIRLOOM WEDDING ANNIVERSARY CERTIFICATE. (a) The department shall promote the sale of an heirloom wedding anniversary certificate. The department shall solicit donated designs for the certificate from Texas artists and select the best donated designs for the form of the certificate.

(b) The department shall collect a $50 fee for the issuance of an heirloom wedding anniversary certificate.

(c) The executive commissioner shall adopt rules designating certain milestone wedding anniversary dates and shall design and promote heirloom wedding anniversary certificates celebrating those anniversary dates.

(d) The department shall create an heirloom wedding anniversary certificate ordering system that includes printed order forms available through the department and an online ordering system.

(e) An heirloom wedding anniversary certificate produced by the department under this section must be printed on parchment paper and be not smaller than 11 inches by 14 inches in size.

(f) An heirloom wedding anniversary certificate produced by the department under this section is not a marriage license under this chapter or Chapter 2, Family Code, and does not establish and may not be used to establish a marriage relationship.

(g) The department shall deposit proceeds it receives from the issuance of heirloom wedding anniversary certificates to the credit of the childhood immunization account. The childhood immunization account is an account in the general revenue fund. Money in the

account may be used only by the department for:

(1) making grants to fund childhood immunizations and related education programs; and

(2) administering this section.

Added by Acts 2005, 79th Leg., Ch. 1264 (H.B. 2100), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0565, eff. April 2, 2015.

CHAPTER 195. ENFORCEMENT OF VITAL STATISTICS REPORTING

Sec. 195.001. ENFORCEMENT OF TITLE; REPORTS BY LOCAL REGISTRAR. (a) The local registrar in each local registration district shall enforce this title under the supervision and direction of the state registrar.

(b) A local registrar shall report immediately to the state registrar a violation of this title of which the local registrar has knowledge by observation, by complaint of another person, or by other means.

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

Sec. 195.002. SUPERVISION AND INVESTIGATION BY STATE REGISTRAR. (a) The state registrar shall execute this title throughout the state. To ensure uniform compliance with this title, the state registrar has supervisory power over local registrars, deputy registrars, and subregistrars.

(b) The state registrar or the state registrar's representative may investigate cases of irregularity or violations of law. On request, any other registrar shall aid in the investigation.

(c) If the state registrar considers it necessary, the state registrar shall report a violation of this title to the appropriate district or county attorney for prosecution. The report must include a statement of the facts and circumstances. The district or county attorney shall immediately initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation.

(d) On the request of the state registrar, the attorney general

shall assist in enforcing this title.

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

Sec. 195.003. FALSE RECORDS. (a) A person commits an offense if the person intentionally or knowingly makes a false statement or directs another person to make a false statement in:

(1) a certificate, record, or report required under this title;

(2) an application for an amendment of a certificate, record, or report required under this title;

(3) an application for a delayed birth certificate or delayed death certificate; or

(4) an application for a certified copy of a vital record.

(b) A person commits an offense if the person intentionally or knowingly supplies false information, or intentionally or knowingly creates a false record, or directs another person to supply false information or create a false record, for use in the preparation of a certificate, record, report, or amendment under this title.

(c) A person commits an offense if the person, without lawful authority and with intent to deceive, makes, counterfeits, alters, amends, or mutilates or directs another person to make, counterfeit, alter, amend, or mutilate:

(1) a certificate, record, or report required under this title; or

(2) a certified copy of a certificate, record, or report required under this title.

(d) A person commits an offense if the person, for purposes of deception, intentionally or knowingly obtains, possesses, uses, sells, or furnishes, or attempts or directs another person to attempt to obtain, possess, use, sell, or furnish a certificate, record, or report required under this title, or a certified copy of a certificate, record, or report required under this title, if the document:

(1) is made, counterfeited, altered, amended, or mutilated without lawful authority and with intent to deceive;

(2) is false in whole or in part; or

(3) relates to the birth of another individual.

(e) A person commits an offense if the person intentionally or

knowingly fraudulently identifies himself or herself to obtain or return registration forms, certificates, or any other forms required under this title.

(f) An offense under this section is a felony of the third degree.

(g) In this section, "person" means an individual, corporation, or association.

(h) If a person is convicted of an offense under this section, the court shall order as a condition of probation that the person cannot obtain a certificate, record, or report to which this section applies or practice midwifery, and the Texas Department of Criminal Justice shall require as a condition of parole that the person cannot obtain a certificate, record, or report to which this section applies or practice midwifery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.15, eff. Sept. 1, 1991.

Sec. 195.004. FAILURE TO PERFORM DUTY. (a) A person commits an offense if the person refuses or fails to furnish correctly any information in the person's possession affecting a certificate or record required under this title.

(b) A person commits an offense if the person fails, neglects, or refuses to fill out a birth or death certificate and to file the certificate with the local registrar or deliver it on request to the person with the duty to file it, as required by this title.

(c) A local registrar, deputy registrar, or subregistrar commits an offense if that person fails, neglects, or refuses to perform a duty under this title or under instructions and directions of the state registrar given under this title.

(d) Except as provided by Subsection (d-1), an offense under this section is a Class C misdemeanor.

(d-1) An offense under this section for failure to perform a duty required by Section 192.003 is a Class A misdemeanor.

(e) In this section, "person" means an individual, corporation, or association.

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

Acts 2011, 82nd Leg., R.S., Ch. 222 (H.B. 253), Sec. 3, eff. September 1, 2011.

Sec. 195.005. DISCLOSURE OF CONFIDENTIAL INFORMATION. (a) A person commits an offense if the person knowingly violates Section 192.002(b), knowingly induces or causes another to violate that section, or knowingly fails to comply with a rule adopted under that section.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 62, eff. Sept. 1, 1991.

TITLE 4. HEALTH FACILITIES
SUBTITLE A. FINANCING, CONSTRUCTING, REGULATING, AND INSPECTING HEALTH FACILITIES
CHAPTER 221. HEALTH FACILITIES DEVELOPMENT ACT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 221.001. SHORT TITLE. This chapter may be cited as the Health Facilities Development Act.

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

Sec. 221.002. PURPOSE; CONSTRUCTION. (a) The purpose of this chapter is to enable a municipality, county, or hospital district to create a corporation with the power to provide, expand, and improve health facilities that the corporation determines are needed to improve the adequacy, cost, and accessibility of health care, research, and education in the state.

(b) The legislature intends that a corporation created under this chapter be a public corporation, constituted authority, and instrumentality authorized to issue bonds on behalf of its sponsoring entity for the purposes of Section 103, Internal Revenue Code of 1986 (26 U.S.C. Section 103). This chapter and the rules and rulings issued under this chapter shall be construed according to this intent.

(c) This chapter shall be liberally construed to conform to the intent of the legislature expressed by this section.

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

Sec. 221.003. DEFINITIONS. In this chapter:

(1) "Board of directors" means the board of directors of a development corporation.

(2) "Bonds" includes notes, interim certificates, or other evidences of indebtedness of a development corporation issued under this chapter.

(3) "Cash management" means borrowing by a development corporation on behalf of a user to allow the user to manage the user's need for cash.

(4) "Cost," as applied to a health facility, includes:

(A) the cost of acquisition of land, a right-of-way, an option to purchase land, an easement, a leasehold estate in land, or another interest in land;

(B) the cost of acquisition, construction, repair, renovation, remodeling, or improvement of a structure used as, or in connection with, the health facility;

(C) the cost of site preparation, including demolition or removal of a structure as necessary or incident to providing the health facility;

(D) the cost of architectural, engineering, legal, or other related services;

(E) preparation cost of plans, specifications, studies, surveys, cost and revenue estimates, and other expenses necessary or incident to planning, providing, or determining the feasibility of the health facility;

(F) the cost of machinery, equipment, furnishings, and facilities necessary or incident to placing the health facility in operation;

(G) finance charges, interest, and marketing and start-up costs, before and during construction and for not more than two years after the date that construction is completed;

(H) costs incurred in connection with financing the health facility, including:

(i) amounts paid under Sections 221.061(c) and (d);

(ii) financing, legal, accounting, financial advisory, and appraisal fees, expenses, and disbursements;

(iii) the cost of a title insurance policy;

(iv) the cost of printing, engraving, and reproduction services; and

(v) the cost of a trustee's or paying agent's initial or acceptance fee;

(I) a cost of the development corporation incurred in connection with providing the health facility, including reasonable amounts to reimburse the development corporation for time spent by its agents or employees relating to providing the health facility and its financing; and

(J) the cost of financing, establishing, and funding a reserve fund for a self-insurance or risk management program, including the cost of preparation of a study, survey, or estimate of cost, revenue, risk, or liability or other cost or expense necessary or incident to planning, providing, or determining the feasibility and continuing program and operating costs of a self-insurance or risk management program.

(5) "Development corporation" means a health facilities development corporation created under this chapter.

(6) "Director" means a member of the board of directors.

(7) "District" means a hospital district created under state law.

(8) "Health facility" means property or an interest in property for which the board of directors finds that financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping is required, necessary, or convenient for health care, research, or education, including:

(A) land, a building, equipment, machinery, furniture, a facility, or an improvement;

(B) a structure suitable for use as a:

(i) hospital, clinic, or health facility;

(ii) nursing home;

(iii) extended-care, outpatient, or rehabilitation facility;

(iv) pharmacy;

(v) medical or dental laboratory;

(vi) physicians' office building;

(vii) laundry, administrative, computer, communication, fire-fighting or fire-prevention, food service and preparation, storage, utility, or x-ray facility;

(viii) parking facility or area;

(ix) building related to a health care or health-care-related facility or system;

(x) multiunit housing facility for medical staff, nurses, interns, and other employees of a health care or health-care-related facility or system, for patients of a health care facility, or for relatives of those persons; or

(xi) medical or dental research or training facility or other facility used in the education or training of health care personnel;

(C) property or material used in landscaping, equipping, or furnishing a health care or health-care-related facility or similar items necessary or convenient for the operation of such a facility;

(D) an adult foster care facility, life care facility, retirement home, retirement village, home for the aging, or other facility that undertakes to furnish shelter, food, medical attention, nursing services, medical services, social activities, or other personal services or attention to an individual for more than one year; and

(E) any other structure, facility, or equipment related to or essential to the operation of a health care or health-care-related facility.

(9) "Resolution" means an action, including an order or ordinance, of a sponsoring entity's governing body.

(10) "Sponsoring entity" means a municipality, county, or district.

(11) "User" means a person who, as owner, lessee, or manager or through other authority, will occupy, operate, manage, or employ a health facility after the facility is financed, acquired, or constructed.

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

Sec. 221.004. ADOPTION OF ALTERNATE PROCEDURE. If a court holds that a procedure under this chapter violates the federal or state constitution, a development corporation by resolution may provide an alternate procedure that conforms to the constitution.

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

Sec. 221.005. EFFECT OF CHAPTER ON OTHER LAW. (a) This chapter does not limit the police powers provided by law to the state, a municipality, or other political subdivision of the state or an official or agency of the state, a municipality, or other political subdivision of the state over property of a corporation.

(b) This chapter does not exempt a corporation or user from compliance with Chapter 104 or 225.

(c) A sponsoring entity or development corporation may use other law not in conflict with this chapter to the extent convenient or necessary to carry out a power or authority expressly or impliedly granted by this chapter.

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

SUBCHAPTER B. CREATION AND OPERATION OF DEVELOPMENT CORPORATION

Sec. 221.011. AUTHORITY TO CREATE. (a) A sponsoring entity may create one or more nonmember, nonstock development corporations for the sole public purpose of acquiring, constructing, providing, improving, financing, and refinancing a health facility to assist the maintenance of public health.

(b) The sponsoring entity may use the development corporation to:

(1) provide a health facility to promote and develop health care, research, and education for the public purpose of promoting the health and welfare of state citizens; and

(2) issue bonds on the sponsoring entity's behalf to finance the cost of the health facility.

(c) The sponsoring entity may not lend its credit or grant public money or other thing of value in aid of a development corporation.

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

Sec. 221.012. PROCEDURE. (a) If the governing body of a sponsoring entity determines that it is in the public interest and to the benefit of the sponsoring entity's residents and the citizens of this state that a development corporation be created to promote and

develop new, expanded, or improved health facilities to assist the maintenance of the public health and welfare, the governing body, by resolution stating that determination, may authorize and approve creation of a development corporation, and shall approve proposed articles of incorporation for the development corporation.

(b) No fewer than three residents of the sponsoring entity who are each at least 18 years of age may act as incorporators of the development corporation by signing and verifying the articles of incorporation and delivering the original and two copies of the articles of incorporation to the secretary of state.

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

Sec. 221.013. ARTICLES OF INCORPORATION. (a) The articles of incorporation of a development corporation must include:

(1) the corporation's name;

(2) a statement that the corporation is a nonprofit public corporation;

(3) the duration of the corporation, which may be perpetual;

(4) a statement that the purpose of the corporation is to acquire, construct, provide, improve, finance, and refinance a health facility to assist the maintenance of the public health;

(5) a statement that the corporation has no members and is a nonstock corporation;

(6) the street address of the corporation's initial registered office and the name of its initial registered agent at that address;

(7) the number of directors on the initial board of directors and those directors' names and addresses;

(8) each incorporator's name and street address;

(9) the sponsoring entity's name and address; and

(10) a statement that the sponsoring entity by resolution has specifically authorized the corporation to act on its behalf to further the public purpose set forth in the articles of incorporation, and has approved the articles of incorporation.

(b) The corporate powers enumerated in this chapter are not required to be included in the articles of incorporation.

(c) The articles of incorporation may include provisions for

the regulation of the internal affairs of the development corporation, including a provision required or permitted by this chapter to be in the bylaws.

(d) Except as provided by Subsection (e), if a bylaw conflicts with the articles of incorporation, the articles of incorporation control.

(e) Unless the articles of incorporation provide that a change in the number of directors may be made only by amendment to those articles, the change may be made by amendment to the bylaws.

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

Sec. 221.014. CERTIFICATE OF INCORPORATION. (a) The incorporators shall deliver to the secretary of state the original and two copies of the articles of incorporation and a certified copy of the resolution by the sponsoring entity's governing body approving the articles of incorporation.

(b) If the secretary of state finds that the articles of incorporation comply with this chapter and have been approved by the sponsoring entity's governing body, the secretary of state, on payment of all fees required by this chapter, shall:

(1) write "filed" on the original and each copy of the articles of incorporation and the month, day, and year of the filing;

(2) file the original in the office of the secretary of state; and

(3) issue two certificates of incorporation with a copy of the articles of incorporation attached to each.

(c) The secretary of state shall deliver a certificate of incorporation, with a copy of the articles of incorporation attached, to the incorporators or their representative and to the sponsoring entity's governing body.

(d) The development corporation's existence begins on issuance of the certificate of incorporation. The certificate of incorporation is conclusive evidence that all conditions precedent required to be performed by the incorporators and by the sponsoring entity have been performed and that the corporation has been incorporated under this chapter.

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

Sec. 221.015. ORGANIZATIONAL MEETING. (a) After issuance of the certificate of incorporation and at the call of a majority of the incorporators, the board of directors named in the articles of incorporation shall hold an organizational meeting in this state to adopt bylaws and elect officers and for any other purposes.

(b) Not later than the sixth day before the date of the meeting, the incorporators shall mail notice, postage prepaid, to each director of the time and place of the meeting.

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

Sec. 221.016. AMENDMENT OF ARTICLES OF INCORPORATION. (a) Articles of incorporation may be amended to contain any provision that is lawful under this chapter if the sponsoring entity's governing body by appropriate resolution determines that the amendment is advisable and authorizes or directs that an amendment be made.

(b) The development corporation's president or vice-president and secretary or assistant secretary, or the presiding officer and the secretary or clerk of the sponsoring entity's governing body, shall execute articles of amendment on behalf of the development corporation. An officer signing the articles of amendment shall verify those articles.

(c) The articles of amendment must include:

(1) the name of the development corporation;

(2) if the amendment alters a provision of the original or amended articles of incorporation, an identification by reference or description of the altered provision and a statement of its text as amended;

(3) if the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each added provision;

(4) the name and current address of the sponsoring entity;

(5) a statement that the amendment was authorized by the governing body of the sponsoring entity; and

(6) the date of the meeting at which the governing body adopted or approved the amendment.

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

Sec. 221.017. CERTIFICATE OF AMENDMENT. (a) The original and two copies of the articles of amendment and a certified copy of the resolution of the sponsoring entity's governing body authorizing the articles shall be delivered to the secretary of state.

(b) If the secretary of state finds that the articles of amendment comply with this chapter and are authorized by the sponsoring entity's governing body, the secretary of state, on payment of all fees required by this chapter, shall:

(1) write "filed" on the original and each copy of the articles of amendment and the month, day, and year of the filing;

(2) file the original in the office of the secretary of state; and

(3) issue two certificates of amendment with a copy of the articles of amendment attached to each.

(c) The secretary of state shall deliver to the development corporation or its representative and to the sponsoring entity's governing body a certificate of amendment with a copy of the articles of amendment attached.

(d) The amendment to the articles of incorporation takes effect on issuance of the certificate of amendment.

(e) An amendment does not affect an existing cause of action in favor of or against the development corporation, a pending suit to which the corporation is a party, or an existing right of any person. Change of the corporate name by amendment does not abate a suit brought by or against the corporation under its former name.

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

Sec. 221.018. RESTATED ARTICLES OF INCORPORATION. (a) A development corporation may authorize, execute, and file restated articles of incorporation by following the procedure to amend articles of incorporation, including obtaining authorization from the sponsoring entity's governing body.

(b) The restated articles of incorporation must restate the entire text of the articles of incorporation as amended or supplemented by all previous certificates of amendment. The restated articles of incorporation may also contain further amendments to the articles of incorporation.

(c) Unless the restated articles of incorporation include

amendments that were not previously in the articles of incorporation and previous certificates of amendment, the introductory paragraph of the restated articles of amendment must contain a statement that the instrument accurately copies the articles of incorporation and all amendments that are in effect on the date of the filing without further changes, except that the number of directors then constituting the board of directors and those directors' names and addresses may be inserted in place of the similar information concerning the initial board of directors, and the incorporators' names and addresses may be omitted.

(d) If the restated articles of incorporation contain further amendments not included in the articles of incorporation and previous certificates of amendment, the instrument containing the restated articles of incorporation must:

(1) include for each further amendment a statement that the amendment has been made in conformity with this chapter;

(2) include the statements required by this chapter to be contained in articles of amendment, except that the full text of the amendment need not be included except in the restated articles of incorporation as amended;

(3) contain a statement that the instrument accurately copies the articles of incorporation and all previous amendments in effect on the date of the filing, as further amended by the restated articles of incorporation, and that the instrument does not contain any other change, except that the number of directors then constituting the board of directors and those directors' names and addresses may be inserted in place of the similar information concerning the initial board of directors, and the incorporators' names and addresses may be omitted; and

(4) restate the entire text of the articles of incorporation as amended and supplemented by all previous certificates of amendment and as further amended by the restated articles of incorporation.

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

Sec. 221.019. RESTATED CERTIFICATE OF INCORPORATION. (a) The original and two copies of the restated articles of incorporation and a certified copy of the resolution of the sponsoring entity's

governing body authorizing the articles shall be delivered to the secretary of state.

(b) If the secretary of state finds that the restated articles of incorporation comply with this chapter and have been authorized by the sponsoring entity's governing body, the secretary of state, on payment of all fees required by this chapter, shall:

(1) write "filed" on the original and each copy of the restated articles of incorporation and the month, day, and year of the filing;

(2) file the original in the office of the secretary of state; and

(3) issue two restated certificates of incorporation with a copy of the restated articles of incorporation attached to each.

(c) The secretary of state shall deliver a restated certificate of incorporation, with a copy of the restated articles of incorporation attached, to the development corporation or its representative and to the sponsoring entity's governing body.

(d) On issuance by the secretary of state of the restated certificate of incorporation, the original articles of incorporation and all amendments are superseded and the restated articles of incorporation become the development corporation's articles of incorporation.

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

Sec. 221.020. REGISTERED OFFICE AND AGENT. (a) A development corporation shall continuously maintain a registered office and registered agent in this state.

(b) The registered office may be, but need not be, the same as the development corporation's principal office. The registered agent may be:

(1) an individual resident of this state whose business office is the same as the registered office; or

(2) a domestic or foreign profit or nonprofit corporation that is authorized to transact business or conduct affairs in this state and that has a principal or business office that is the same as the registered office.

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

Sec. 221.021. CHANGE OF REGISTERED OFFICE OR AGENT. (a) A development corporation may change its registered office, registered agent, or both, by filing the original and a copy of a statement in the office of the secretary of state. The president or vice-president of the corporation shall execute and verify the statement.

(b) The statement must include:

(1) the development corporation's name;

(2) the post office address of the corporation's current registered office;

(3) if the registered office is to be changed, the post office address of the corporation's new registered office;

(4) the name of the corporation's registered agent;

(5) if the registered agent is to be changed, the name of the successor registered agent;

(6) a statement that, after the change, the post office address of the registered office will be the same as the post office address of the business office of the registered agent; and

(7) a statement that the change was authorized by the board of directors or by a corporate officer authorized by the board of directors to make the change.

(c) If the secretary of state finds that the statement complies with this chapter, the secretary of state, when all fees have been paid as required by this chapter, shall:

(1) write "filed" on the original and each copy of the statement and the month, day, and year of the filing;

(2) file the original statement in the office of the secretary of state; and

(3) return the copy of the statement to the corporation or its representative.

(d) The change made by the statement takes effect on the filing of the statement.

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

Sec. 221.022. RESIGNATION OF REGISTERED AGENT. (a) A registered agent of a development corporation may resign by:

(1) mailing or delivering written notice to the corporation; and

(2) filing the original and two copies of the notice in the

office of the secretary of state not later than the 10th day after the date the notice is mailed or delivered to the corporation.

(b) The notice must include the development corporation's last known address, a statement that written notice was given to the corporation, and the date the written notice was given to the corporation.

(c) If the secretary of state finds that the notice complies with this chapter, the secretary of state, on payment of all fees required by this chapter, shall:

(1) write "filed" on the original notice and both copies and the month, day, and year of the filing;

(2) file the original notice in the office of the secretary of state;

(3) return one copy of the notice to the resigning registered agent; and

(4) deliver one copy of the notice to the development corporation at the address shown in the notice.

(d) The resignation takes effect on the 31st day after the date the notice is received by the secretary of state.

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

Sec. 221.023. AGENTS FOR SERVICE. (a) The president, each vice-president, and the registered agent of a development corporation are the corporation's agents on whom may be served a process, notice, or demand required or permitted by law to be served on the corporation.

(b) If a development corporation fails to appoint or maintain a registered agent in this state, or if the registered agent cannot with reasonable diligence be found at the registered office, the secretary of state is an agent of the corporation on whom a process, notice, or demand may be served.

(c) The secretary of state may be served by delivering two copies of the process, notice, or demand to the secretary of state, the deputy secretary of state, or a clerk in charge of the corporation department of the secretary of state's office. The secretary of state shall immediately forward one copy of the process, notice, or demand by registered mail to the development corporation at its registered office.

(d) Service on the secretary of state is returnable not earlier than the 30th day after the date of the service.

(e) The secretary of state shall keep a record of each process, notice, and demand served, including the time of the service and the action of the secretary of state in reference to the process, notice, or demand.

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

Acts 2005, 79th Leg., Ch. 41 (H.B. 297), Sec. 2, eff. September 1, 2005.

Sec. 221.024. BOARD. (a) A development corporation's affairs are governed by a board of directors composed of at least three individuals appointed by the sponsoring entity's governing body. Directors may be divided into classes.

(b) A director serves for a term of not more than six years. The terms of directors of different classes may be of different lengths.

(c) A director holds office for the term to which the director is appointed and until a successor is appointed and has qualified.

(d) The sponsoring entity's governing body may remove a director for cause or at any time without cause.

(e) A director serves without compensation but is entitled to reimbursement for actual expenses incurred in the performance of duties under this chapter.

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

Sec. 221.025. OFFICERS. (a) The officers of a development corporation are:

(1) the president, vice-president, and secretary; and

(2) other officers, including a treasurer, and assistant officers considered necessary.

(b) An officer is elected or appointed at the time, in the manner, and for the term provided by the articles of incorporation or bylaws, except that an officer's term may not exceed three years. If the articles of incorporation or bylaws do not contain those requirements, the board of directors shall elect or appoint each

officer annually.

(c) A person may simultaneously hold more than one office, except that the same person may not simultaneously hold the offices of president and secretary.

(d) An officer may be removed by the persons authorized to elect or appoint that officer if those persons believe the best interests of the corporation will be served by the removal.

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

Sec. 221.026. INDEMNIFICATION. (a) Except as provided by Subsection (c), a development corporation may indemnify a director or officer or a former director or officer for expenses and costs, including attorney's fees, actually or necessarily incurred by the person in connection with a claim asserted against the person, by action in court or other forum, because of the person's being or having been a director or officer.

(b) If a development corporation has not fully indemnified a director or officer under Subsection (a), the court in a proceeding in which a claim is asserted against the director or officer, or a court having jurisdiction over an action brought by the director or officer on a claim for indemnity, may assess indemnity against the corporation or its receiver or trustee. The assessment must equal:

(1) the amount that the director or officer paid to satisfy the judgment or compromise the claim, not including any amount paid the corporation; and

(2) to the extent the court considers reasonable and equitable, the expenses and costs, including attorney's fees, actually and necessarily incurred by the director or officer in connection with the claim.

(c) A development corporation may not provide indemnity in a matter if the director or officer is guilty of negligence or misconduct in relation to the matter. A court may not assess indemnity unless it finds that the director or officer was not guilty of negligence or misconduct in relation to the matter in which indemnity is sought.

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

Sec. 221.027. BYLAWS. (a) The board of directors shall adopt a development corporation's initial bylaws and may amend or repeal the bylaws or adopt new bylaws. The bylaws and each amendment and repeal of the bylaws must be approved by the sponsoring entity's governing body by resolution.

(b) The bylaws may contain any provision for the regulation and management of the development corporation's affairs consistent with law and the articles of incorporation.

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

Sec. 221.028. COMMITTEES. (a) If permitted by the articles of incorporation or bylaws, the board of directors, by resolution adopted by a majority of directors in office, may designate one or more committees consisting of two or more directors to exercise the board's authority in the management of the development corporation to the extent provided by the resolution, articles of incorporation, or bylaws. The designation of a committee or delegation of authority to a committee does not relieve the board of directors or an individual director of a responsibility imposed by law.

(b) Other committees not exercising the authority of the board of directors in the management of the development corporation may be designated. Those committees may be, but need not be, limited to directors, and shall be designated and appointed by:

(1) the board of directors by resolution of a majority of directors adopted at a meeting at which a quorum is present; or

(2) the president, if authorized by the articles of incorporation, bylaws, or a resolution of a majority of the board of directors adopted at a meeting at which a quorum is present.

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

Sec. 221.029. MEETINGS; ACTION WITHOUT MEETING. (a) A regular board of directors meeting may be called and held, with or without notice, as provided by the bylaws. A special board of directors meeting may be held on notice as provided by the bylaws. A regular or special meeting may be held at any location in the state.

(b) Notice or waiver of notice of a regular or special board of directors meeting need not specify the business to be transacted or

the meeting's purpose, unless required by the bylaws.

(c) A director's attendance at a meeting waives notice to the director of the meeting, unless the attendance is for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(d) A quorum is the lesser of:

(1) a majority of the number of directors established by the bylaws, or if the bylaws do not establish a number of directors, a majority of the number of directors stated in the articles of incorporation; or

(2) the number of directors, which number may not be smaller than three, established as a quorum by the articles of incorporation or bylaws.

(e) The act of a majority of the directors present at a meeting at which a quorum is present is an act of the board of directors, unless the act of a larger number is required by the articles of incorporation or bylaws. The articles of incorporation control if, with respect to an action to be taken by the board of directors, the articles of incorporation require the vote or concurrence of a greater proportion of directors than required by this chapter with respect to the action.

(f) An action required or permitted to be taken at a board of directors meeting may be taken without a meeting if a consent is signed by all directors. An action permitted to be taken at a committee meeting may be taken without a meeting if a consent is signed by all members of the committee. A consent under this subsection must be in writing and must set forth the action to be taken. The consent has the effect of a unanimous vote and may be stated as a unanimous vote in articles or other documents filed with the secretary of state under this chapter.

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

Sec. 221.030. CORPORATION'S GENERAL POWERS. (a) Subject to Section 221.035, a development corporation has the rights and powers necessary or convenient to accomplish the corporation's purposes, including the power to:

(1) acquire, by purchase, devise, gift, lease, or a combination of those methods, construct, or improve, or cause a user

to acquire, construct, or improve, one or more health facilities located in the state and located:

(A) wholly or partly within the limits of the sponsoring entity; or

(B) outside the limits of the sponsoring entity, with the consent of each other sponsoring entity in which the health facility is or is to be located;

(2) lease as lessor all or part of a health facility for the rental amount and on the terms and conditions that the corporation considers advisable;

(3) sell for installment payments or other method of payment, option or contract for sale, and convey all or part of a health facility for the price and on the terms and conditions that the corporation considers advisable;

(4) make a contract, incur a liability, borrow money at a rate of interest the corporation determines, and secure bonds or obligations by mortgage or pledge of all or part of the corporation's property, franchises, and income;

(5) make a secured or unsecured loan to provide temporary or permanent financing or refinancing of all or part of the cost of a health facility, including refunding of an outstanding obligation, mortgage, or advance issued, made, or given by a person for the cost of a health facility;

(6) charge and collect interest on a loan for the loan payments and on the terms that the board of directors considers advisable;

(7) lend money for its corporate purposes, invest and reinvest corporate funds, and take and hold property as security for the payment of the money loaned or invested;

(8) purchase, receive, lease, or acquire in another manner, own, hold, improve, or use property or an interest in property, or deal in any other manner in or with that property, regardless of location, as the purposes of the corporation require or, if the property is donated, subject to the terms of the donation;

(9) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or part of the corporation's property and assets;

(10) appoint agents of the corporation for the period the corporation determines, and determine their duties;

(11) sue, be sued, complain, and defend in its corporate

name; and

(12) have a corporate seal, which the corporation may alter as it considers necessary, and use the seal by having it or a facsimile of it impressed on, affixed to, or reproduced on an instrument required or authorized to be executed by the corporation's proper officers.

(b) A development corporation may not incur a financial obligation under this chapter unless it is payable solely from:

(1) bond proceeds;

(2) revenue derived from the lease or sale of a health facility or from a loan made by a corporation to finance or refinance a health facility in whole or part;

(3) revenue derived from operating a health facility; or

(4) other revenue provided by a user of a health facility.

(c) A sponsoring entity may not delegate to a development corporation the power of taxation or eminent domain, police power, or an equivalent sovereign power of the state or the sponsoring entity.

(d) This section does not authorize a corporate director or officer to exercise a power enumerated by this section in a manner inconsistent with the development corporation's articles of incorporation or bylaws or beyond the scope of the corporation's purposes.

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

Sec. 221.031. CONVEYANCE OF LAND. (a) A development corporation may convey land by deed if the conveyance is authorized by an appropriate resolution of the board of directors. The deed may be with or without the corporation's seal and must be signed by the corporation's president, vice-president, or attorney.

(b) If the deed is acknowledged by the signing officer or attorney to be the act of the development corporation, or if the deed is proved in the manner prescribed for other conveyances of land, it may be recorded in the same manner and with the same effect as other deeds.

(c) A deed that is signed by the development corporation's president or vice-president and recorded is prima facie evidence that the board of directors adopted the appropriate resolution.

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

Sec. 221.032. PERFECTION OF SECURITY INTEREST. A security interest granted by a corporation may be perfected in the manner and with the effect provided by Chapter 9, Business & Commerce Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.32, eff. July 1, 2001.

Sec. 221.033. TAXATION. (a) A health facility, including a leasehold estate in a health facility, that is owned by a development corporation and that, except for the purposes and nonprofit nature of the corporation, would be taxable to the corporation under Title 1, Tax Code, shall be assessed to the user of the health facility to the same extent and subject to the same exemptions from taxation as if the user owned the health facility. If there is more than one user of the health facility, the health facility shall be assessed to the users in proportion to the value of the rights of each user to occupy, operate, manage, or employ the health facility.

(b) The user of a health facility is considered the owner of the health facility for purposes of the application of:

(1) sales and use taxes in construction, sale, lease, or rental of the health facility; and

(2) other taxes levied or imposed by the state or a political subdivision of the state.

(c) A development corporation is engaged exclusively in performance of charitable functions and is exempt from taxation by the state, a municipality, or other political subdivision of the state. Bonds issued by a corporation under this chapter, a transfer of the bonds, interest on the bonds, and a profit from the sale or exchange of the bonds are exempt from taxation by the state, a municipality, or other political subdivision of the state.

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

Sec. 221.034. NET EARNINGS. A development corporation is a nonprofit corporation, and no part of its net earnings remaining after payment of its bonds and expenses of accomplishing its public purpose may benefit a person other than the sponsoring entity.

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

Sec. 221.035. ALTERATION OF DEVELOPMENT CORPORATION OR ACTIVITIES. The sponsoring entity, in its sole discretion, may alter the development corporation's structure, organization, programs, or activities, subject only to limitations provided by law relating to the impairment of contracts entered into by the corporation.

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

Sec. 221.036. EXAMINATION OF BOOKS AND RECORDS. A representative of the sponsoring entity may examine all books and records of the development corporation at any time.

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

Sec. 221.037. WAIVER OF NOTICE. If a notice is required to be given to a director by this chapter, the articles of incorporation, or bylaws, a waiver of the notice signed by the person entitled to the notice, before or after the time that would have been stated in the notice, is equivalent to giving the notice.

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

SUBCHAPTER C. BONDS

Sec. 221.061. AUTHORITY TO ISSUE; USE OF PROCEEDS. (a) A development corporation may issue bonds to pay all or part of the cost of a health facility or for cash management.

(b) Before preparation and issuance of definitive bonds, the development corporation may issue interim receipts or temporary bonds, with or without coupons, that may be exchanged for definitive bonds after the definitive bonds are executed and available for delivery. The term of the interim receipts or temporary bonds may not exceed three years.

(c) Bond proceeds may be used only for payment of all or part of the cost of a health facility for which the bonds have been issued, for making a loan in the amount of all or part of the cost of

that health facility, or for deposit to a reserve fund for the bonds. The proceeds shall be disbursed in the manner and under the restrictions determined by the development corporation.

(d) From the bond proceeds, the development corporation shall be paid an amount equal to:

(1) the corporation's expenses and costs in issuing, selling, and delivering the bonds, including financing, legal, financial advisory, and printing expenses; and

(2) the compensation paid to employees of the corporation for the time the employees spend on activities relating to issuing, selling, and delivering the bonds.

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

Sec. 221.062. INFORMATION FILED WITH SPONSORING ENTITY. (a) Not later than the 15th day before the date on which bonds are issued, the proceeds of which are to be used to pay all or part of the cost of a health facility, the development corporation shall file with the sponsoring entity's governing body a full and complete description of the health facility, including:

(1) an explanation of the projected costs and of the necessity for the proposed health facility; and

(2) the name of the proposed user of the health facility.

(b) If the bond proceeds are to be used for cash management, the user shall file with the sponsoring entity's governing body a forecast of the user's need for cash based on the user's most recent revenue estimate. The forecast must contain a detailed report of estimated revenues and expenditures for each month for a period of not more than one year.

(c) After issuing the bonds and before using all of the bond proceeds, the development corporation may amend the filing required by this section and use the proceeds as provided by the amended filing if the sponsoring entity's governing body determines that the use according to the amended filing furthers the purposes of this chapter.

(d) Information filed under this section is public information open to public inspection.

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

Sec. 221.063. TERMS. (a) Bonds issued under this chapter must be dated and bear interest at a fixed or variable rate determined by the development corporation. The bonds must mature at the time determined by the corporation, but may not mature later than 40 years after their date of issuance. Bonds issued for cash management may not mature later than 24 months after their date of issuance.

(b) The bonds may be made redeemable before maturity at the price and on the terms determined by the development corporation.

(c) The bonds, including any interest coupons initially attached, must be in the form and denomination, payable at the place, and executed or authenticated in the manner that the development corporation determines.

(d) The bonds may be issued in coupon or registered form or be payable to a specific person, as the development corporation determines. The corporation may provide for the registration of coupon bonds as to principal only, for the conversion of coupon bonds into fully registered bonds without coupons, and for reconversion into coupon bonds of fully registered bonds without coupons. The duty of conversion or reconversion may be imposed on a trustee in a trust agreement.

(e) The signature or facsimile of the signature of an officer that appears on the bonds or coupons remains valid and sufficient for all purposes regardless of whether the person ceases to be an officer before delivery of and payment for the bonds.

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

Sec. 221.064. SALE. (a) A development corporation shall sell at a public or private sale the bonds at the price it determines.

(b) The net effective interest rate on the bonds, computed according to Chapter 1204, Government Code, may not exceed the maximum annual interest rate established for business loans of $250,000 or more in this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.249, eff. Sept. 1, 2001.

Sec. 221.065. REFUNDING BONDS. (a) A development corporation may issue bonds to refund any of its valid outstanding bonds,

including any bonds issued for unspecified projects and including any redemption premium on the bonds and interest accrued to the date of redemption, on a finding by the board of directors of the development corporation that there is a public benefit and a public purpose for the refunding.

(b) The provisions of this chapter generally applicable to bonds apply to the issuance, maturity, terms, and holder's rights in the refunding bonds, and to the development corporation's rights, duties, and obligations in relation to the refunding bonds.

(c) The development corporation may issue the refunding bonds in exchange or substitution for outstanding bonds or may sell the refunding bonds and use the proceeds to pay or redeem outstanding bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 829, Sec. 2, eff. June 19, 1993.

Sec. 221.066. SOURCE OF PAYMENT; BONDS NOT GENERAL OBLIGATION. (a) The principal of, interest on, and any redemption penalty on bonds issued under this chapter are payable solely from, and may be secured by a pledge of all or part of, one or more of the following:

(1) the bond proceeds;

(2) revenue derived from the lease or sale of a health facility or from a loan made by a development corporation to finance or refinance all or part of a health facility;

(3) revenue derived from the operation of a health facility; or

(4) other revenue provided by a user of a health facility.

(b) The bonds are not an obligation or a pledge of the faith and credit of the state, a sponsoring entity, or other political subdivision or agency of the state.

(c) Each bond must contain on its face a statement that:

(1) neither the state nor a political subdivision or agency of the state, including the sponsoring entity, is obligated to pay the bonds or interest on the bonds; and

(2) neither the faith and credit nor the taxing power of the state, the sponsoring entity, or other political subdivision or agency of the state is pledged to the payment of the principal of or interest or any redemption premium on the bonds.

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

Sec. 221.067. EXEMPT SECURITIES. (a) Bonds issued under this chapter and any interest coupons are exempt securities under The Securities Act (Title 12, Government Code).

(b) If the bonds are secured by an agreement by a user to pay to the development corporation amounts sufficient to pay the principal of and interest and any redemption premium on the bonds, the agreement, for the purposes of The Securities Act (Title 12, Government Code), is a separate security issued to purchasers of the bonds by the user, and not by the corporation. The agreement is exempt from that Act only if:

(1) that Act exempts the agreement; or

(2) the bonds or the payments to be made under the agreement are guaranteed by any person and the guarantee is an exempt security under that Act.

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

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.28, eff. January 1, 2022.

Sec. 221.068. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Unless made ineligible under other law, rules, or rulings, bonds are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company;

(6) a fiduciary, trustee, or guardian; and

(7) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of the state.

(b) The bonds may secure the deposit of public funds of the state or a municipality, county, school district, or other political corporation or subdivision of the state. The bonds are lawful and sufficient security for those deposits at their face value if accompanied by all appurtenant unmatured coupons, if any.

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

SUBCHAPTER D. DISSOLUTION OF CORPORATION

Sec. 221.081. DISSOLUTION AUTHORIZED. After a development corporation's bonds and other obligations are paid and discharged, or adequate provision is made for their payment and discharge, the sponsoring entity's governing body by written resolution shall authorize and direct the dissolution of the corporation.

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

Sec. 221.082. ARTICLES OF DISSOLUTION. (a) Articles of dissolution on behalf of the corporation shall be executed by:

(1) the president or vice-president and the secretary or assistant secretary; or

(2) the presiding officer of the sponsoring entity's governing body and the secretary or clerk of that body.

(b) An officer signing the articles of dissolution shall verify them.

(c) The articles of dissolution must include:

(1) the name of the development corporation;

(2) the name and address of the sponsoring entity;

(3) a statement that the dissolution was authorized by the governing body of the sponsoring entity;

(4) the date of the meeting at which the dissolution was authorized;

(5) a statement that all of the corporation's bonds and obligations have been paid and discharged or that adequate provision has been made for their payment and discharge; and

(6) a statement that no suit is pending in a court against the corporation or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against the corporation in each pending suit.

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

Sec. 221.083. CERTIFICATE OF DISSOLUTION. (a) The original and two copies of the articles of dissolution shall be delivered to

the secretary of state.

(b) If the secretary of state finds that the articles of dissolution comply with this chapter and have been authorized by the sponsoring entity's governing body, the secretary of state, on payment of all fees required by this chapter, shall:

(1) write "filed" on the original and each copy of the articles of dissolution and the month, day, and year of the filing;

(2) file the original in the office of the secretary of state; and

(3) issue two certificates of dissolution with a copy of the articles of dissolution attached to each.

(c) The secretary of state shall deliver a certificate of dissolution with a copy of the articles of dissolution attached to the representative of the dissolved development corporation and to the sponsoring entity's governing body.

(d) The existence of the development corporation ceases on issuance of the certificates of dissolution, except for the purpose of suits, other proceedings, and appropriate corporate action by the directors and officers of the corporation as provided by this chapter.

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

Sec. 221.084. EXTENSION OF DURATION. If a corporation is dissolved by expiration of its duration, the corporation may amend its articles of incorporation to extend its duration within three years after the date of dissolution.

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

Sec. 221.085. VESTING PROPERTY IN SPONSORING ENTITY. The title to all funds and other property owned by a development corporation when it dissolves automatically vests in the sponsoring entity without further conveyance, transfer, or other act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.086. RIGHTS, CLAIMS, AND LIABILITIES BEFORE

DISSOLUTION. The dissolution of a development corporation by issuance of a certificate of dissolution or expiration of its duration does not impair a remedy available to or against the corporation or a director or officer of the corporation for a right or claim existing or a liability incurred before the dissolution, if action or other proceeding on the remedy is begun within three years after the date of the dissolution. The action may be prosecuted or defended by the corporation in its corporate name. The directors and officers may take corporate or other action as appropriate to protect the remedy, right, or claim.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. ADMINISTRATION BY SECRETARY OF STATE

Sec. 221.101. ADMINISTRATION OF CHAPTER. The secretary of state may act as reasonably necessary to efficiently administer this chapter and to perform the duties imposed by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.102. FEES. (a) The secretary of state shall charge and collect fees for:

(1) filing articles of incorporation and issuing two certificates of incorporation;

(2) filing articles of amendment and issuing two certificates of amendment;

(3) filing a statement of change of address of registered office or change of registered agent, or both;

(4) filing restated articles of incorporation and issuing two restated articles of incorporation; and

(5) filing articles of dissolution.

(b) The fees are in the amounts charged by the secretary of state for the respective filings and issuances under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.103. NOTICE AND APPEAL OF DISAPPROVAL. (a) If the secretary of state fails to approve a document required by this chapter to be approved by the secretary of state, the secretary of state, not later than the 10th day after the date the document is delivered to the secretary of state, shall give written notice of the disapproval to the person who delivered the document. The notice must state the reasons for the disapproval.

(b) The person may appeal the disapproval to a district court of Travis County by filing with the clerk of the court a petition including a copy of the disapproved document and a copy of the disapproval notice.

(c) The court shall try the matter de novo, and either sustain the secretary of state's action or direct the secretary of state to take action the court considers proper.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.104. DOCUMENTS AS PRIMA FACIE EVIDENCE. The following documents shall be received by a court, public office, or official body as prima facie evidence of the facts, or the existence or nonexistence of the facts, stated in the document:

(1) a certificate issued by the secretary of state under this chapter;

(2) a copy, certified by the secretary of state, of a document filed in the office of the secretary of state under this chapter; and

(3) a certificate of the secretary of state under the state seal as to the existence or nonexistence of a fact relating to a development corporation that would not appear from a document or certificate under Subdivision (1) or (2).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 300, Sec. 33, eff. Aug. 30, 1993.

CHAPTER 222. HEALTH CARE FACILITY SURVEY, CONSTRUCTION, INSPECTION, AND REGULATION

SUBCHAPTER A. SURVEY AND CONSTRUCTION OF HOSPITALS

Sec. 222.001. SHORT TITLE. This subchapter may be cited as the Texas Hospital Survey and Construction Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.002. DEFINITIONS. In this subchapter:

(2) "Commissioner" means the commissioner of state health services.

(3) "Department" means the Department of State Health Services.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Hospital" includes a public health center, a general hospital, or a tuberculosis, mental, chronic disease, or other type of hospital, and related facilities such as a laboratory, outpatient department, nurses' home and training facility, or central service facility operated in connection with a hospital.

(5) "Public health center" means a publicly owned facility for providing public health services and includes related facilities such as a laboratory, clinic, or administrative office operated in connection with a facility for providing public health services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.003. EXCEPTION. This subchapter does not apply to a hospital furnishing primarily domiciliary care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.005. SURVEY, PLANNING, AND CONSTRUCTION OF HOSPITALS. (a) The department is the only agency of the state authorized to make an inventory of existing hospitals, survey the need for

construction of hospitals, and develop a program of hospital construction as provided by the federal Hospital Survey and Construction Act (42 U.S.C. Section 291 et seq.).

(b) The executive commissioner may adopt rules to meet the requirements of the federal Hospital Survey and Construction Act relating to survey, planning, and construction of hospitals and public health centers. The executive commissioner shall adopt other rules the executive commissioner considers necessary.

(c) The commissioner may establish methods of administration and shall:

(1) require reports and make inspections and investigations as the commissioner considers necessary; and

(2) take other action that the commissioner considers necessary to carry out the federal Hospital Survey and Construction Act and the regulations adopted under that Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.006. FUNDING. (a) The department shall accept, on behalf of the state, a payment of federal funds or a gift or grant made to assist in meeting the cost of carrying out the purpose of this subchapter, and may spend the payment, gift, or grant for that purpose.

(b) The department shall deposit the payment, gift, or grant in the state treasury to the credit of the hospital construction fund.

(c) The department shall deposit to the credit of the hospital construction fund money received from the federal government for a construction project approved by the surgeon general of the United States Public Health Service. The department shall use the money only for payments to applicants for work performed and purchases made in carrying out approved projects.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.007. AGREEMENTS FOR USE OF FACILITIES AND SERVICES OF OTHER ENTITIES. To the extent the department considers desirable to carry out the purposes of this subchapter, the department may enter into an agreement for the use of a facility or service of another public or private department, agency, or institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.008. EXPERTS AND CONSULTANTS. The department may contract for services of experts or consultants, or organizations of experts or consultants, on a part-time or fee-for-service basis. The contracts may not involve the performance of administrative duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.009. REPORT. (a) The department annually shall report to the executive commissioner on activities and expenditures under this subchapter.

(b) The department shall include in the report recommendations for additional legislation that the department considers appropriate to furnish adequate hospital, clinic, and similar facilities to the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

SUBCHAPTER B. LIMITATION ON INSPECTION AND OTHER REGULATION OF HEALTH CARE FACILITIES

Sec. 222.022. DEFINITIONS. In this subchapter:

(1) "Executive commissioner" means the executive

commissioner of the Health and Human Services Commission.

(2) "Health care facility" means a public or private hospital, skilled nursing facility, intermediate care facility, ambulatory surgical center, family planning clinic that performs ambulatory surgical procedures, rural or urban health initiative clinic, end stage renal disease facility, and inpatient rehabilitation facility. The term does not include the office of physicians or practitioners of the healing arts practicing individually or in groups or a chemical dependency treatment facility licensed by the Department of State Health Services under Chapter 464.

(3) "Inspection" includes a survey, inspection, investigation, or other procedure necessary for a state agency to carry out an obligation imposed by federal and state laws, rules, and regulations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Sec. 9, eff. September 1, 2025.

Sec. 222.023. LIMITATION ON INSPECTIONS. (a) A state agency may make or require only those inspections necessary to carry out obligations imposed on the agency by federal and state laws, rules, and regulations.

(b) Instead of making an on-site inspection, a state agency shall accept an on-site inspection by another state agency charged with making an inspection if the inspection substantially complies with the accepting agency's inspection requirements.

(c) A state agency shall coordinate its inspections within the agency and with inspections required of other agencies to ensure compliance with this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.024. CERTIFICATION OR ACCREDITATION INSTEAD OF INSPECTION. (a) Except as provided by Subsection (c), a hospital licensed by the Department of State Health Services is not subject to additional annual licensing inspections before the department issues the hospital a license while the hospital maintains:

(1) certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.); or

(2) accreditation from The Joint Commission, the American Osteopathic Association, or other national accreditation organization for the offered services.

(b) If the Department of State Health Services licenses a hospital exempt from an annual licensing inspection under Subsection (a), the department shall issue a renewal license to the hospital if the hospital annually:

(1) submits a complete application required by the department;

(2) remits any applicable fees;

(3) submits a copy of documentation from the certification or accreditation body showing that the hospital is certified or accredited; and

(4) submits a copy of the most recent fire safety inspection report from the fire marshal in whose jurisdiction the hospital is located.

(c) The Department of State Health Services may conduct an inspection of a hospital exempt from an annual licensing inspection under Subsection (a) before issuing a renewal license to the hospital if the certification or accreditation body has not conducted an on-site inspection of the hospital in the preceding three years and the department determines that an inspection of the hospital by the certification or accreditation body is not scheduled within 60 days.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 584, Sec. 16, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 223, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.026. COMPLAINT INVESTIGATIONS AND ENFORCEMENT

AUTHORITY. (a) Section 222.024 does not affect the authority of the Department of State Health Services to implement and enforce the provisions of Chapter 241 (Texas Hospital Licensing Law) to:

(1) reinspect a hospital if a hospital applies for the reissuance of its license after a final ruling upholding the suspension or revocation of a hospital's license, the assessment of administrative or civil penalties, or the issuance of an injunction against the hospital for violations of provisions of the licensing law, rules adopted under the licensing law, special license conditions, or orders of the commissioner of state health services; or

(2) investigate a complaint against a hospital and, if appropriate, enforce the provisions of the licensing law on a finding by the Department of State Health Services that reasonable cause exists to believe that the hospital has violated provisions of the licensing law, rules adopted under the licensing law, special license conditions, or orders of the commissioner of state health services; provided, however, that the Department of State Health Services shall coordinate with the federal Centers for Medicare and Medicaid Services and its agents responsible for the inspection of hospitals to determine compliance with the conditions of participation under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.), so as to avoid duplicate investigations.

(b) The executive commissioner shall by rule establish a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 64, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 17, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.027. PHYSICIAN ON SURVEY TEAM. The Department of State Health Services shall ensure that a licensed physician involved in direct patient care as defined by the Texas Medical Board is included on a survey team sent under Title XVIII of the Social

Security Act (42 U.S.C. Section 1395 et seq.) when surveying the quality of services provided by physicians in hospitals.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 63, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

SUBCHAPTER C. SURVEYS OF INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY

Sec. 222.041. DEFINITIONS. In this subchapter:

(1) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "ICF-IID" means the medical assistance program serving individuals with an intellectual or developmental disability who receive care in intermediate care facilities.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 65, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.080, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.042. LICENSING OF BEDS AND FACILITIES. The department may not license or approve as meeting licensing standards new ICF-IID beds or the expansion of an existing ICF-IID facility unless the new beds or the expansion was included in the plan approved by the Health and Human Services Commission in accordance with Section 533.062.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 65, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 747, Sec. 26, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff.

April 2, 2015.

Sec. 222.044. FOLLOW-UP SURVEYS. (a) The department shall conduct follow-up surveys of ICF-IID facilities to:

(1) evaluate and monitor the findings of the certification or licensing survey teams; and

(2) ensure consistency in deficiencies cited and in punitive actions recommended throughout the state.

(b) A provider shall correct any additional deficiency cited by the department. The department may not impose an additional punitive action for the deficiency unless the provider fails to correct the deficiency within the period during which the provider is required to correct the deficiency.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 65, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.082, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.046. SURVEYS OF ICF-IID FACILITIES. (a) The department shall ensure that each survey team sent to survey an ICF-IID facility includes a qualified intellectual disabilities professional, as that term is defined by federal law.

(b) The department shall require that each survey team sent to survey an ICF-IID facility conduct a final interview with the provider to ensure that the survey team informs the provider of the survey findings and that the survey team has requested the necessary information from the provider. The survey team shall allow the provider to record the interview. The provider shall immediately give the survey team a copy of any recording.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 65, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

CHAPTER 223. HOSPITAL PROJECT FINANCING ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 223.001. SHORT TITLE. This chapter may be cited as the Hospital Project Financing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.002. DEFINITIONS. In this chapter:

(1) "Authority" means a public health authority, including a hospital authority created under Chapter 262 or 264.

(2) "Bond" includes a note.

(3) "Issuer" means an authority, municipality, county, or hospital district.

(4) "Hospital project" means existing or future real, personal, or mixed property, or an interest in that property, other than a nursing home licensed or required to be licensed under the authority of this state, the financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping of which is found by the governing body of an issuer to be necessary for medical care, research, training, or teaching in this state. A hospital project may include one or more of the following properties if found by the governing body of an issuer to be necessary or convenient for the project:

(A) land, a building, equipment, machinery, furniture, a facility, or an improvement;

(B) a structure suitable for use as:

(i) a hospital, clinic, health facility, extended care facility, outpatient facility, rehabilitation or recreation facility, pharmacy, medical laboratory, dental laboratory, physicians' office building, or laundry or administrative facility or building related to a health facility or system;

(ii) a multiunit housing facility for medical staff, nurses, interns, other employees of a health facility or system, patients of a health facility, or relatives of patients admitted for treatment or care in a health facility;

(iii) a support facility related to a hospital project such as an office building, parking lot or building, or maintenance, safety, or utility facility, and related equipment; or

(iv) a medical or dental research facility, medical or dental training facility, or another facility used in the education or training of health care personnel;

(C) property or material used in the landscaping, equipping, or furnishing of a hospital project and other similar items necessary or convenient for the operation of a hospital project; and

(D) any other structure, facility, or equipment related or essential to the operation of a health facility or system.

(5) "Nonprofit organization" means:

(A) a nonprofit corporation established under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); or

(B) an association, foundation, trust, cooperative, or similar person no part of the net earnings of which is distributable to any private shareholder or individual and that incurs a contractual obligation with an issuer with respect to a hospital project under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.003. HOSPITAL PROJECT COSTS. (a) Hospital project costs include costs related to:

(1) the acquisition of land, a right-of-way, an option to purchase land, an easement, or another interest in land related to a hospital project;

(2) the acquisition, construction, repair, renovation, remodeling, or improvement of a structure to be used as or with a hospital project;

(3) site preparation, including demolishing or removing a structure the removal of which is necessary or incident to providing a hospital project;

(4) expenses necessary or incident to planning, providing, or determining the feasibility and practicability of a hospital project, including architectural, engineering, legal, and related services, plans and specifications, studios, surveys, and cost and revenue estimates;

(5) machinery, equipment, furniture, and facilities necessary or incident to the equipping of a hospital project for

operation;

(6) financing charges and interest accruing before and during construction, and after completion of construction for not more than two years;

(7) the start-up of a hospital project during construction and after completion of construction for not more than two years;

(8) hospital project financing, including:

(A) legal, accounting, and appraisal fees, expenses, and disbursements;

(B) printing, engraving, and reproduction services; and

(C) an initial or acceptance fee of a trustee or paying agent;

(9) the provision of the hospital project by the issuer, including:

(A) costs incurred directly or indirectly by the issuer;

(B) reimbursement of reasonable sums to the issuer for time spent by its employees in providing the hospital project and its financing; and

(C) the appraisal obtained under Section 223.011(d)(2); and

(10) the authorization, preparation, sale, issuance, and delivery of bonds under this chapter, including:

(A) related fees, charges, and expenses;

(B) expenses and costs described by Section 223.029(b); and

(C) expenses incurred in carrying out a trust agreement relating to hospital project bonds.

(b) The listing of items of cost in Subsection (a) is not inclusive of all hospital costs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. FINANCING HOSPITAL PROJECTS

Sec. 223.011. PROVIDING HOSPITAL PROJECTS. (a) An issuer acting for itself or through a nonprofit organization may provide one or more hospital projects by acquisition, construction, or improvement. An acquisition may occur by purchase, devise, gift,

lease, or a combination of those methods.

(b) A hospital project must be located in this state and within or partially within the issuer's boundaries, except that a hospital project of a municipality may be located:

(1) outside the municipality's limits if it is within the municipality's extraterritorial jurisdiction; or

(2) in another municipality if the governing body of the other municipality consents to the former municipality's provision of the project.

(c) An issuer may only acquire a hospital project from a nonprofit organization that has been in existence and has operated the hospital project for at least three years before the date of acquisition by the issuer.

(d) An issuer must affirmatively find that the cost of an acquired hospital project is not more than:

(1) the actual audited cost of the hospital project to the date of acquisition; or

(2) the fair market value of the hospital project at the date of acquisition as determined by an appraisal obtained by the issuer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.012. TITLE TO PROJECTS. (a) An issuer may vest title to a hospital project provided under this chapter in a nonprofit organization.

(b) If the issuer vests the title in a nonprofit organization, it may retain a mortgage interest in the hospital project. The mortgage interest expires when all bonds of the issuer sold to provide the hospital project are paid or provision has been made for their final payment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.013. CONTRACTS RELATING TO HOSPITAL PROJECT. (a) An issuer may execute a contract, including a lease, with a nonprofit organization with respect to a hospital project. A contract may authorize the nonprofit organization to use, operate, or acquire the hospital project on the terms, including payment provisions, the

issuer's governing body determines to be advisable.

(b) A contract may include the sale of a hospital project to a nonprofit organization, including a nonprofit organization using the hospital project. The terms of the sale may include installment payments. The sale must be fully consummated when all bonds of the issuer issued to provide the hospital project are paid or provision is made for their final payment if, during the time the bonds or interest on the bonds remains unpaid, there is no failure to make any payments owing under any lease or contract at the time and in the manner as the payments come due.

(c) A contract under this chapter may be for the term agreed to by the parties and may provide that the contract continues until the bonds specified in the contract, or refunding or substitution bonds issued in place of those bonds, are fully paid or provision is made for their final payment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.014. AUTHORITY OF ISSUER. An issuer has full and complete authority relating to its bonds, a lease agreement in which the issuer is a lessor, or a sale or other contract, subject only to this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.015. OBLIGATIONS LIMITED. (a) The issuer may not incur a financial obligation under this chapter that cannot be paid from the proceeds of hospital project bonds, revenues derived from operating a hospital project, or other revenues that may be provided by a nonprofit organization in accordance with this chapter.

(b) The legislature or an issuer may not make an appropriation to pay any part of a cost of a hospital project or any operating cost of a hospital project.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.016. EMINENT DOMAIN. (a) Under this chapter, an issuer may not acquire by eminent domain a hospital project, or any

part of a hospital project, to be sold or leased under this chapter.

(b) Land previously acquired by eminent domain by an issuer may be sold or leased under this chapter if the governing body of the issuer determines that:

(1) the use of the land will not interfere with the purpose for which the land was originally acquired or that the land is no longer needed for that purpose;

(2) at least seven years have elapsed since the date the land was acquired by eminent domain; and

(3) the land was not acquired for park purposes or, if the land was acquired for park purposes, the sale or lease of parkland has been approved at an election held under Section 1502.055, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.250, eff. Sept. 1, 2001.

SUBCHAPTER C. HOSPITAL PROJECT BONDS

Sec. 223.021. ISSUANCE OF HOSPITAL PROJECT BONDS. (a) An issuer may provide for the issuance of negotiable revenue bonds or other evidences of indebtedness for paying hospital project costs. The bonds may be issued subject only to the requirements of this chapter.

(b) As the governing body of the issuer determines to be in the best interest of the issuer, one or more series of bonds may be issued for each hospital project, or more than one hospital project may be combined in one or more series of bonds, but each hospital project may be considered separately with respect to Subsections (c), (d), and (e), and Sections 223.022-223.024.

(c) Before issuing bonds, the governing body of an issuer must adopt a resolution:

(1) declaring its intention to issue bonds; and

(2) stating the maximum amount of bonds proposed to be issued, the purpose for which the bonds are to be issued, and the tentative date, time, and place at which the governing body proposes to authorize the issuance of the bonds.

(d) Unless the governing body of the issuer orders an election on the issuance of the bonds, a substantial copy of the resolution shall be published three times in a newspaper of general circulation

in the territorial limits of the issuer. The first publication must be made not earlier than the 45th day before the tentative date stated in the resolution. The third publication must be made not later than the 11th day before the tentative date.

(e) Before authorizing the issuance of any bonds or ordering an election on any matters authorized by this chapter, the issuer must deposit with the chief administrative officer of the issuer a complete description of any proposed hospital project, including a detailed listing and explanation of projected costs, the reasons for the hospital project, and the name of each owner of the nonprofit organization for whom the hospital project is to be constructed. The required description is public information.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.022. ELECTION ON BONDS. (a) The governing body of an issuer shall order and hold an election on the question of the issuance of hospital project bonds if at least five percent or 20,000 of the voters qualified to vote in an election held by the issuer, whichever is less, file a written protest against the issuance of the bonds before the close of business on the business day before the tentative date in the resolution for the authorization of the bonds.

(b) The issuer's governing body may order an election on its own motion without the filing of a protest.

(c) In addition to the contents required by the Election Code, the election order must specify the location of and the presiding judge and alternate judge for each polling place.

(d) Notice of a bond election shall be published three times in a newspaper of general circulation in the territorial limits of the issuer. The first notice must be published not earlier than the 45th day before the date set for the election, and the third notice must be published not later than the 11th day before the date set for the election.

(e) The election shall be conducted in accordance with the general laws pertaining to bond elections in municipalities, except as modified by this chapter.

(f) The ballot shall provide for voting for or against the proposition: "The issuance of revenue bonds or notes or other evidences of indebtedness for the hospital project or hospital

projects."

(g) The governing body shall declare whether a majority of the voters voting in the election approve the proposition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.023. ELECTION RESULTS. (a) If the proposition is approved by a majority of the voters voting in the election, the issuer may authorize the bonds.

(b) If the proposition is not approved, an election on the issuing of revenue bonds for the hospital project that was the subject of the election may not be ordered within six months after that election, and bonds may not be issued for the hospital project until a majority of the voters voting in an election held for that purpose approve the issuance of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.024. PROTEST NOT FILED. If a protest requiring an election is not filed under Section 223.022(a) and an election is not called under Section 223.022(b), the issuer may issue the bonds under the resolution without an election for two years after the tentative date specified in the resolution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.025. LIMITATIONS ON BONDS. (a) Bonds issued in accordance with this chapter are not general obligations or a pledge of the faith and credit of this state, the issuer, or another political subdivision of this state. The bonds are payable solely from revenues of the hospital project for which they are issued or from other revenues provided by a nonprofit organization. Money of this state or a political subdivision of this state from any source, including tax revenue, but excluding revenue of the hospital project being financed with the bonds, may not be used to pay the principal of, any redemption premium for, or interest on revenue bonds or refunding bonds issued under this chapter.

(b) Each revenue bond must state on its face that:

(1) this state, the issuer, or any political subdivision of this state is not obligated to pay the principal of, any redemption premium for, or interest on the bonds except from the revenues pledged for that purpose; and

(2) the faith, credit, or the taxing power of this state, the issuer, or any political subdivision of this state is not pledged to the payment of the principal of, any redemption premium for, or interest on the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.026. FORM AND TERM OF BONDS. (a) The issuer shall determine the form of the bonds, the date of the bond issue, the price and interest rate of the bonds, and the maturity for the bonds, which may not be more than 40 years after its date.

(b) The issuer may:

(1) make the bonds redeemable before maturity and determine the prices and conditions for early redemption;

(2) determine:

(A) the interest coupons to be attached to the bonds;

(B) the denominations of the bonds; and

(C) the places of payment of the bonds' principal, any redemption premium, and interest;

(3) issue the bonds in coupon or in registered form, or both;

(4) make the bonds payable to a specific person;

(5) provide for the registration of coupon bonds as to principal or as to principal and interest; and

(6) provide for the conversion of coupon bonds into registered bonds without coupons and for the reconversion into coupon bonds of any registered bonds without coupons.

(c) If the duty of conversion or reconversion of a bond is imposed on a trustee in a trust agreement, the substituted bonds need not be reapproved by the attorney general, and the bonds remain incontestable.

(d) The issuer may provide for execution of the bonds and any coupons using a facsimile signature under Chapter 618, Government Code. If the signature or a facsimile signature of a person who has been an officer appears on a bond or coupon, the signature or

facsimile signature is valid and sufficient for all purposes, regardless of whether the person is an officer when the bonds are delivered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.251, eff. Sept. 1, 2001.

Sec. 223.027. DEDICATED REPAYMENT REVENUE. The principal of, any redemption premium for, and interest on hospital project bonds are payable from and secured, as specified by the resolution of the governing body or in any trust agreement or other instrument securing the bonds, by a pledge of all or part of the revenues of the issuer to be derived from:

(1) the ownership, operation, lease, use, mortgage, or sale of the hospital project for which the bonds have been issued; or

(2) other revenues provided by a nonprofit organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.028. SECURITY FOR BONDS. (a) Bonds issued under this chapter may be secured by a trust agreement between the issuer and a trust company or bank having the powers of a trust company in this state.

(b) A trust agreement may pledge or assign lease income, contract payments, fees, or other charges to be received from a nonprofit organization. The governing body of the issuer may secure the bonds additionally by a mortgage, a deed of trust lien, or other security interest on a designated hospital project vesting in the trustee the power to sell the hospital project for the payment of the indebtedness, the power to operate the hospital project, and any other power for the further security of the bonds.

(c) The trust agreement may:

(1) evidence a pledge of all or any part of the revenue of the issuer from the ownership, operation, lease, use, mortgage, or sale of a hospital project for the payment of principal of, any redemption premium for, and interest on the bonds when due and payable;

(2) provide for the creation and maintenance of reserves;

(3) set forth the rights and remedies of the bondholders

and of the trustee;

(4) restrict the individual right of action by bondholders as is customary in trust agreements securing bonds and debentures of corporations;

(5) contain provisions the issuer considers reasonable and proper for the security of the bondholders; and

(6) provide for the issuance of bonds to replace lost, stolen, or mutilated bonds.

(d) A trust agreement or resolution providing for the issuance of bonds may provide for protecting and enforcing the rights and remedies of the bondholders as reasonable and proper, including covenants setting forth the duties of the issuer and the nonprofit organization in relation to:

(1) the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the hospital project in connection with which the bonds are issued; and

(2) the custody, safeguarding, and application of all money.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.029. USE OF PROCEEDS. (a) The proceeds of the bonds may be:

(1) used only for the payment of hospital project costs for which the bonds are issued; and

(2) disbursed in the manner and subject to the restrictions provided in the resolution authorizing the issuance or in the trust agreement securing the bonds.

(b) The issuer shall be paid, from the proceeds of its bonds, money in the amount equal to:

(1) the issuer's actual expenditures for financing, legal, printing, and other expenses incurred in issuing, selling, and delivering the bonds; and

(2) the compensation paid to the issuer's employees for the time the employees spent on activities related to the issuance, sale, and delivery of the bonds.

(c) If the amount of proceeds exceeds the cost of the hospital project for which the bonds are issued, the excess shall be deposited to the credit of the sinking fund for the bonds.

(d) The governing body of the issuer may provide for a bond reserve fund in the resolution authorizing the bonds or an instrument securing the bonds and may set aside amounts from the proceeds for payments into the reserve fund.

(e) Proceeds from the sale of bonds may be invested in:

(1) direct, indirect, or guaranteed obligations of the United States that mature in a manner specified by the resolution authorizing the bonds or another instrument securing the bonds; or

(2) certificates of deposit of a bank or trust company if the deposits are secured by obligations described by Subdivision (1).

(f) The issuer's governing body may designate a trust company or a bank with trust powers to act as depository for proceeds of bonds or revenues from a lease or other contract. The bank or trust company shall furnish indemnifying bonds or pledge securities as required by the issuer to secure the deposits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.030. TEMPORARY OBLIGATIONS. (a) Before the issuance of definitive bonds, the issuer may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when those bonds are executed and are available for delivery.

(b) The term of an interim receipt or temporary bond may not be more than two years.

(c) The issuer shall submit the interim receipts or temporary bonds to the attorney general in accordance with Section 223.031.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.031. EXAMINATION OF BONDS. (a) After issuance of the bonds is authorized and before delivery of the bonds to their purchasers, the bonds and the proceedings authorizing their issuance and securing the bonds shall be presented to the attorney general for examination.

(b) If the bonds state that they are secured by a pledge of all or part of the revenues of the issuer to be derived from a lease or other contract, the contract shall also be submitted to the attorney general.

(c) If the attorney general finds that the bonds have been

authorized in accordance with state law and any contract securing the bonds has been made in accordance with state law, the attorney general shall approve the bonds and contract.

(d) The comptroller shall register the bonds when they are approved. After approval and registration, the bonds and contract submitted with the bonds are valid and binding obligations according to their terms and are incontestable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.032. REFUNDING BONDS. (a) An issuer by resolution may authorize the issuance of revenue bonds to refund:

(1) outstanding bonds or other evidences of indebtedness that have been issued to provide a hospital project; or

(2) outstanding obligations, mortgages, or advances issued, made, or given by a nonprofit organization for the cost of a hospital project.

(b) The amounts refunded may include the principal of and any redemption premium for the bonds or other evidences of indebtedness, and any interest accruing to the date of redemption.

(c) The bonds or other evidences of indebtedness to be refunded need not have been issued under this chapter and need not have been originally issued by the issuer of the refunding bonds.

(d) This subchapter governs the issuance of refunding bonds, the maturities and other details of the bonds, the rights of the bondholders, and rights, duties, and obligations of the refunding bond issuer.

(e) The issuer may issue the refunding bonds in exchange or substitution for outstanding bonds or other evidences of indebtedness or may sell the refunding bonds and use the proceeds for paying or redeeming outstanding bonds or other evidences of indebtedness.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.033. ENFORCEMENT OF AGREEMENTS. (a) An agreement made under this chapter may provide, in the event of default in the payment of the principal of, interest on, or any redemption premium for bonds subject to the agreement or in the performance of an agreement contained in the proceedings, mortgage, or instruments

relating to the bonds, for enforcement of the payment or performance by:

(1) mandamus; or

(2) the appointment of a receiver in equity with power to charge and collect rates, rents, or contract payments and to apply the revenues from the hospital project in accordance with the resolution, mortgage, or instruments.

(b) A mortgage to secure hospital project bonds may provide for foreclosure and the sale of the property secured by the mortgage on default in the mortgage payment or the violation of an agreement contained in the mortgage. The foreclosure and sale may occur under proceedings in equity or in any other manner permitted by law. The mortgage may provide that a trustee under the mortgage or the holder of any of the bonds secured by the mortgage may be the purchaser at a foreclosure sale if the trustee or bondholder is the highest bidder.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.034. MEMBERSHIP OF GOVERNING BODY NOT SUBJECT TO CHANGE. The resolution authorizing the issuance of hospital project bonds, the trust agreement securing the bonds, or any other agreement relating to the bonds may not prescribe the method of selecting or the term of office of any member of the issuer's governing body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.035. BONDS TAX EXEMPT. The bonds issued under this chapter, their transfer, and interest from the bonds, including profit made from their sale, are exempt from taxation by this state and a municipality or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.036. BONDS AS SECURITIES. (a) Bonds issued under this chapter and any interest coupons are investment securities under Chapter 8, Business & Commerce Code, and are exempt securities under The Securities Act (Title 12, Government Code).

(b) A lease agreement, sales agreement, or other contract under

this chapter is not a security under The Securities Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.29, eff. January 1, 2022.

Sec. 223.037. BONDS AS INVESTMENTS. (a) Unless the bonds issued under this chapter are ineligible for investments in accordance with the criteria established in other statutes, rulings, or regulations of this state or the United States, the bonds are legal and authorized investments for:

(1) a bank;
(2) a savings bank;
(3) a trust company;
(4) a savings and loan association;
(5) an insurance company;
(6) a fiduciary;
(7) a trustee or guardian; and
(8) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of this state.

(b) The bonds may secure the deposits of public funds of this state or a municipality, county, school district, or other political corporation or subdivision of this state. The bonds are lawful and sufficient security for those deposits at their face value if accompanied by all appurtenant unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.038. COST OF CERTAIN REQUIRED ALTERATIONS. The relocation, raising, lowering, rerouting, changing of grade, or altering of construction of a highway, railroad, electric transmission line, telegraph or telephone property or facility, or pipeline made necessary by the actions of an issuer shall be accomplished at the sole expense of the issuer or nonprofit organization, which shall pay the cost of the required activity as necessary to provide comparable replacement, minus the net salvage value of any replaced facility. The issuer shall pay that amount

from the proceeds of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 224. POLICY ON VACCINE PREVENTABLE DISEASES

Sec. 224.001. DEFINITIONS. In this chapter:

(1) "Covered individual" means:

(A) an employee of the health care facility;

(B) an individual providing direct patient care under a contract with a health care facility; or

(C) an individual to whom a health care facility has granted privileges to provide direct patient care.

(2) "Health care facility" means:

(A) a facility licensed under Subtitle B, including a hospital as defined by Section 241.003; or

(B) a hospital maintained or operated by this state.

(3) "Regulatory authority" means a state agency that regulates a health care facility under this code.

(4) "Vaccine preventable diseases" means the diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 8.02, eff. September 28, 2011.

Sec. 224.002. VACCINE PREVENTABLE DISEASES POLICY REQUIRED. (a) Each health care facility shall develop and implement a policy to protect its patients from vaccine preventable diseases.

(b) The policy must:

(1) require covered individuals to receive vaccines for the vaccine preventable diseases specified by the facility based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(2) specify the vaccines a covered individual is required to receive based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(3) include procedures for verifying whether a covered individual has complied with the policy;

(4) include procedures for a covered individual to be exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention;

(5) for a covered individual who is exempt from the required vaccines, include procedures the individual must follow to protect facility patients from exposure to disease, such as the use of protective medical equipment, such as gloves and masks, based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(6) prohibit discrimination or retaliatory action against a covered individual who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention, except that required use of protective medical equipment, such as gloves and masks, may not be considered retaliatory action for purposes of this subdivision;

(7) require the health care facility to maintain a written or electronic record of each covered individual's compliance with or exemption from the policy; and

(8) include disciplinary actions the health care facility is authorized to take against a covered individual who fails to comply with the policy.

(c) The policy may include procedures for a covered individual to be exempt from the required vaccines based on reasons of conscience, including a religious belief.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 8.02, eff. September 28, 2011.

Sec. 224.003. DISASTER EXEMPTION. (a) In this section, "public health disaster" has the meaning assigned by Section 81.003.

(b) During a public health disaster, a health care facility may prohibit a covered individual who is exempt from the vaccines required in the policy developed by the facility under Section 224.002 from having contact with facility patients.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 8.02, eff. September 28, 2011.

Sec. 224.004. DISCIPLINARY ACTION. A health care facility that violates this chapter is subject to an administrative or civil penalty in the same manner, and subject to the same procedures, as if the facility had violated a provision of this code that specifically governs the facility.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 8.02, eff. September 28, 2011.

Sec. 224.005. RULES. The appropriate rulemaking authority for each regulatory authority shall adopt rules necessary to implement this chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 8.02, eff. September 28, 2011.

CHAPTER 225. HEALTH PLANNING AND CAPITAL EXPENDITURE REVIEW

Sec. 225.001. DEFINITIONS. In this chapter:

(1) "Capital expenditure" means an expenditure that is not an operation or a maintenance expense under generally accepted accounting principles.

(2) "Health care facility" means a public or private hospital, skilled nursing facility, intermediate care facility, ambulatory surgical facility, family planning clinic that performs ambulatory surgical procedures, rural or urban health initiative clinic, kidney disease treatment facility, inpatient rehabilitation facility, and any other facility designated a health care facility by federal law. The term does not include the office of physicians or practitioners of the healing arts practicing individually or in groups.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 225.002. FEDERAL LAW. A reference in this chapter to federal law is a reference to any pertinent federal authority, including:

(1) the National Health Planning and Resources Development Act of 1974 (Pub. L. No. 93-641), as amended by the Health Planning

and Resources Development Amendments of 1979 (Pub. L. No. 96-79);

(2) Pub. L. Nos. 79-725, 88-164, 89-749, and 92-603; and

(3) the federal rules and regulations adopted under a law specified by Subdivision (1) or (2).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 225.003. GOVERNOR'S DUTIES RELATING TO HEALTH PLANNING. (a) The governor, as chief executive and planning officer of this state, may perform the duties and functions assigned to the governor by federal law.

(b) The governor may transfer personnel, equipment, records, obligations, appropriations, functions, and duties of the governor's office to another agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 225.004. CAPITAL EXPENDITURE REVIEW PROGRAM. (a) The governor by executive order may establish a program to comply with federal law to review capital expenditures made by or on behalf of a health care facility if the governor finds that the program is necessary to prevent the loss of federal funds.

(b) The governor may authorize the program to negotiate an agreement on behalf of the state with the Secretary of Health and Human Services to administer a state capital expenditure review program under Section 1122 of the Social Security Act (42 U.S.C. Section 1320a-1), the federal rules and regulations adopted under that Act, or other pertinent federal authority.

(c) If necessary, the governor may use any available funds to implement the program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 225.005. EXECUTIVE ORDER. (a) An order issued under Section 225.004(a) must contain the governor's findings, including a brief description of the reason for the findings.

(b) An unrescinded order issued under Section 225.004(a) that has not expired on its own terms expires on September 1 after the

next regular legislative session that begins after the date on which the order is issued.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBTITLE B. LICENSING OF HEALTH FACILITIES
CHAPTER 241. HOSPITALS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 241.001. SHORT TITLE. This chapter may be cited as the Texas Hospital Licensing Law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.002. PURPOSE. The purpose of this chapter is to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of certain standards in the construction, maintenance, and operation of hospitals.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.003. DEFINITIONS. In this chapter:

(1) "Advanced practice nurse" means a registered nurse recognized as an advanced practice nurse by the Texas Board of Nursing.

(2) "Commission" means the Health and Human Services Commission.

(2-a) "Commissioner" means the commissioner of state health services.

(3) "Comprehensive medical rehabilitation hospital" means a general hospital that specializes in providing comprehensive medical rehabilitation services, including surgery and related ancillary services.

(4) "Department" means the Department of State Health Services.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "General hospital" means an establishment that:

(A) offers services, facilities, and beds for use for

more than 24 hours for two or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy; and

(B) regularly maintains, at a minimum, clinical laboratory services, diagnostic X-ray services, treatment facilities including surgery or obstetrical care or both, and other definitive medical or surgical treatment of similar extent.

(6) "Governmental unit" means a political subdivision of the state, including a hospital district, county, or municipality, and any department, division, board, or other agency of a political subdivision.

(7) "Hospital" includes a general hospital and a special hospital.

(8) "Medical staff" means a physician or group of physicians and a podiatrist or a group of podiatrists who by action of the governing body of a hospital are privileged to work in and use the facilities of a hospital for or in connection with the observation, care, diagnosis, or treatment of an individual who is, or may be, suffering from a mental or physical disease or disorder or a physical deformity or injury.

(9) "Pediatric and adolescent hospital" means a general hospital that specializes in providing services to children and adolescents, including surgery and related ancillary services.

(10) "Person" means an individual, firm, partnership, corporation, association, or joint stock company, and includes a receiver, trustee, assignee, or other similar representative of those entities.

(11) "Physician" means a physician licensed by the Texas Medical Board.

(12) "Physician assistant" means a physician assistant licensed by the Texas Physician Assistant Board.

(13) "Podiatrist" means a podiatrist licensed by the Texas Department of Licensing and Regulation.

(14) Repealed by Acts 2005, 79th Leg., Ch. 1286, Sec. 2, eff. September 1, 2005.

(15) "Special hospital" means an establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals who are regularly admitted, treated, and discharged and who require services more intensive than room, board, personal services, and general

nursing care;

(B) has clinical laboratory facilities, diagnostic X-ray facilities, treatment facilities, or other definitive medical treatment;

(C) has a medical staff in regular attendance; and

(D) maintains records of the clinical work performed for each patient.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 965, Sec. 79, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 43, Sec. 1, eff. May 7, 1997; Acts 1997, 75th Leg., ch. 623, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 428, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1286 (H.B. 2471), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 67, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0567, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.007, eff. September 1, 2019.

Sec. 241.004. EXEMPTIONS. This chapter does not apply to a facility:

(1) licensed under Chapter 242 or 577;

(2) maintained or operated by the federal government or an agency of the federal government; or

(3) maintained or operated by this state or an agency of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 76, Sec. 16, eff. Sept. 1, 1991.

Sec. 241.005. EMPLOYMENT OF PERSONNEL. The department may employ stenographers, inspectors, and other necessary assistants in carrying out the provisions of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.006. COORDINATION OF SIGNAGE REQUIREMENTS IMPOSED BY STATE AGENCIES. (a) The department is authorized to review current and proposed state rules, including department rules and rules of other state agencies, that mandate that a hospital place or post a notice, poster, or sign in a conspicuous place or in an area of high public traffic, concerning the rights of patients or others or the responsibilities of the hospital, which is directed at patients, patients' families, or others. The purpose of this review shall be to coordinate the placement, format, and language contained in the required notices in order to:

(1) eliminate the duplication of information;

(2) reduce the potential for confusion to patients, patients' families, and others; and

(3) reduce the administrative burden of compliance on hospitals.

(b) Notwithstanding any other law, this section applies to all notices, posters, or signs described in Subsection (a).

Added by Acts 1995, 74th Leg., ch. 965, Sec. 3, eff. June 16, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0568, eff. April 2, 2015.

Sec. 241.007. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING SONOGRAM BEFORE ABORTION. A hospital shall comply with Subchapter B, Chapter 171.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 6, eff. September 1, 2011.

Sec. 241.008. INDUCED DELIVERIES OR CESAREAN SECTIONS BEFORE 39TH WEEK. A hospital that provides obstetrical services shall collaborate with physicians providing services at the hospital to develop quality initiatives to reduce the number of elective or nonmedically indicated induced deliveries or cesarean sections performed at the hospital on a woman before the 39th week of gestation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 299 (H.B. 1983), Sec. 2, eff. September 1, 2011.
Redesignated from Health and Safety Code, Section 241.007 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(25), eff. September 1, 2013.

Sec. 241.009. PHOTO IDENTIFICATION BADGE REQUIRED. (a) In this section, "health care provider" means a person who provides health care services at a hospital as a physician, as an employee of the hospital, under a contract with the hospital, or in the course of a training or educational program at the hospital.

(b) A hospital licensed under this chapter shall adopt a policy requiring a health care provider providing direct patient care at the hospital to wear a photo identification badge during all patient encounters, unless precluded by adopted isolation or sterilization protocols. The badge must be of sufficient size and worn in a manner to be visible and must clearly state:

(1) at minimum the provider's first or last name;

(2) the department of the hospital with which the provider is associated;

(3) the type of license held by the provider, if the provider holds a license under Title 3, Occupations Code; and

(4) if applicable, the provider's status as a student, intern, trainee, or resident.

(c) For purposes of Subsection (b)(3), the identification badge of a health care provider licensed under Title 3, Occupations Code, must clearly state:

(1) "physician," if the provider holds a license under Subtitle B of that title;

(2) "chiropractor," "podiatrist," "midwife," "physician assistant," "acupuncturist," or "surgical assistant," as applicable, if the provider holds a license under Subtitle C of that title;

(3) "dentist" or "dental hygienist," as applicable, if the provider holds a license under Subtitle D of that title;

(4) "licensed vocational nurse," "registered nurse," "nurse practitioner," "nurse midwife," "nurse anesthetist," or "clinical nurse specialist," as applicable, if the provider holds a license under Subtitle E of that title;

(5) "optometrist," or "therapeutic optometrist," as

applicable, if the provider holds a license under Subtitle F of that title;

(6) "speech-language pathologist" or "audiologist," as applicable, if the provider holds a license under Subtitle G of that title;

(7) "physical therapist," "occupational therapist," or "massage therapist," as applicable, if the provider holds a license under Subtitle H of that title;

(8) "medical radiologic technologist," "medical physicist," "perfusionist," "respiratory care practitioner," "orthotist," or "prosthetist," as applicable, if the provider holds a license or certificate, as appropriate, under Subtitle K of that title; and

(9) "dietitian," if the provider holds a license under Subtitle M of that title.

Added by Acts 2013, 83rd Leg., R.S., Ch. 108 (S.B. 945), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0569, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 60 (S.B. 1753), Sec. 1, eff. September 1, 2015.

Sec. 241.010. DISPOSITION OF FETAL REMAINS. (a) A hospital shall release the remains of an unintended, intrauterine fetal death on the request of a parent of the unborn child, in a manner appropriate under law and the hospital's policy for disposition of a human body.

(b) Notwithstanding Subsection (a), if the remains of an unintended, intrauterine fetal death weigh less than 350 grams, a hospital shall release the remains on the request of a parent of the unborn child, in a manner that is appropriate under law and consistent with hospital policy.

Added by Acts 2015, 84th Leg., R.S., Ch. 342 (H.B. 635), Sec. 1, eff. September 1, 2015.

Sec. 241.011. HUMAN TRAFFICKING SIGNS REQUIRED. (a) An emergency department of a hospital shall display a sign, at least 11

inches by 17 inches in size, written in at least a 16-point font and in the form prescribed by the attorney general, that includes:

(1) the following statements:

(A) "All health care practitioners and first responders are required to receive human trafficking prevention training."; and

(B) "A hospital employee may not be disciplined, retaliated against, or otherwise discriminated against for reporting in good faith a suspected act of human trafficking.";

(2) information on recognizing and reporting human trafficking and a list of human trafficking indicators;

(3) a phone number the attorney general designates for reporting a suspected act of human trafficking; and

(4) contact information for reporting suspicious activity to the Department of Public Safety.

(b) The sign described by Subsection (a) must be posted:

(1) in a location easily visible to all hospital employees; and

(2) separately in English, Spanish, and any other primary language spoken by 10 percent or more of the hospital's employees.

Added by Acts 2017, 85th Leg., R.S., Ch. 858 (H.B. 2552), Sec. 11, eff. September 1, 2017.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 375 (H.B. 742), Sec. 2, eff. September 1, 2025.

Sec. 241.0115. DISCRIMINATION AND RETALIATION PROHIBITED. A hospital may not discipline, retaliate against, or otherwise discriminate against a hospital employee who in good faith reports a suspected act of human trafficking to the hospital, a law enforcement agency, the National Human Trafficking Resource Center, the attorney general, or any other appropriate authority.

Added by Acts 2025, 89th Leg., R.S., Ch. 375 (H.B. 742), Sec. 3, eff. September 1, 2025.

Sec. 241.012. IN-PERSON HOSPITAL VISITATION DURING PERIOD OF DISASTER. (a) In this section:

(1) "Hospital" means a hospital licensed under this

chapter.

(2) "Qualifying official disaster order" means an order, proclamation, or other instrument issued by the governor, another official of this state, or the governing body or an official of a political subdivision of this state declaring a disaster that has infectious disease as the basis for the declared disaster.

(3) "Qualifying period of disaster" means the period of time the area in which a hospital is located is declared to be a disaster area by a qualifying official disaster order.

(4) "Religious counselor" means an individual acting substantially in a pastoral or religious capacity to provide spiritual counsel to other individuals.

(b) A hospital may not during a qualifying period of disaster prohibit in-person visitation with a patient receiving care or treatment at the hospital unless federal law or a federal agency requires the hospital to prohibit in-person visitation during that period.

(c) Notwithstanding Subsection (b), a hospital may during a qualifying period of disaster:

(1) restrict the number of visitors a patient receiving care or treatment at the hospital may receive to not fewer than one;

(2) require a visitor to the hospital to:

(A) complete a health screening before entering the hospital; and

(B) wear personal protective equipment at all times while visiting a patient at the hospital; and

(3) deny entry to or remove from the hospital's premises a visitor who fails or refuses to:

(A) submit to or meet the requirements of a health screening administered by the hospital; or

(B) wear personal protective equipment that meets the hospital's infection control and safety requirements in the manner prescribed by the hospital.

(d) A health screening administered by a hospital under this section must be conducted in a manner that, at a minimum, complies with:

(1) hospital policy; and

(2) if applicable, guidance or directives issued by the commission, the Centers for Medicare and Medicaid Services, or another agency with regulatory authority over the hospital.

(e) Notwithstanding any other law, neither a hospital nor a physician providing health care services on the hospital's premises is subject to civil or criminal liability or an administrative penalty if a visitor contracts an infectious disease while on the hospital's premises during a qualifying period of disaster or, in connection with a visit to the hospital, spreads an infectious disease to any other individual, except where intentional misconduct or gross negligence by the hospital or the physician is shown. A physician who in good faith takes, or fails to take, an action under this section is not subject to civil or criminal liability or disciplinary action for the physician's action or failure to act under this section.

(f) This section may not be construed as requiring a hospital to:

(1) provide a specific type of personal protective equipment to a visitor to the hospital; or

(2) allow in-person visitation with a patient receiving care or treatment at the hospital if an attending physician determines that in-person visitation with that patient may lead to the transmission of an infectious agent that poses a serious community health risk.

(g) A determination made by an attending physician under Subsection (f)(2) is valid for not more than five days after the date the determination is made unless renewed by an attending physician.

(h) If a visitor to a hospital is denied in-person visitation with a patient receiving care or treatment at a hospital because of a determination made by an attending physician under Subsection (f)(2), the hospital shall:

(1) provide each day a written or oral update of the patient's condition to the visitor if the visitor:

(A) is authorized by the patient to receive relevant health information regarding the patient;

(B) has authority to receive the patient's health information under an advance directive or medical power of attorney; or

(C) is otherwise the patient's surrogate decision-maker regarding the patient's health care needs under hospital policy and other applicable law; and

(2) notify the person who receives the daily update required under Subdivision (1) of the estimated date and time at

which the patient will be discharged from the hospital.

(i) Notwithstanding any other provision of this section, a hospital may not prohibit in-person visitation by a religious counselor with a patient who is receiving care or treatment at the hospital and who is seriously ill or dying for a reason other than the religious counselor's failure to comply with a requirement described by Subsection (c)(2).

(j) In the event of a conflict between this section and any provision of a qualifying official disaster order, this section prevails.

(k) This section does not create a cause of action against a hospital or physician.

Added by Acts 2021, 87th Leg., R.S., Ch. 688 (H.B. 2211), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. HOSPITAL LICENSES

Sec. 241.021. LICENSE REQUIRED. A person or governmental unit, acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain a hospital in this state without a license issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.022. LICENSE APPLICATION. (a) An application for a license must be made to the department on a form provided by the department.

(b) The application must contain:

(1) the name and social security number of the sole proprietor, if the applicant is a sole proprietor;

(2) the name and social security number of each general partner who is an individual, if the applicant is a partnership;

(3) the name and social security number of any individual who has an ownership interest of more than 25 percent in the corporation, if the applicant is a corporation; and

(4) any other information that the department may reasonably require.

(c) The department shall require that each hospital show evidence that:

(1) at least one physician is on the medical staff of the hospital, including evidence that the physician is currently licensed;

(2) the governing body of the hospital has adopted and implemented a patient transfer policy in accordance with Section 241.027; and

(3) if the governing body has chosen to implement patient transfer agreements, it has implemented the agreements in accordance with Section 241.028.

(d) The application must be accompanied by:

(1) a copy of the hospital's current patient transfer policy;

(2) a nonrefundable license fee;

(3) copies of the hospital's patient transfer agreements, unless the filing of copies has been waived by the department in accordance with the rules adopted under this chapter; and

(4) a copy of the most recent annual fire safety inspection report from the fire marshal in whose jurisdiction the hospital is located.

(e) The department may require that the application be approved by the local health authority or other local official for compliance with municipal ordinances on building construction, fire prevention, and sanitation. A hospital located outside the limits of a municipality shall comply with corresponding state laws.

(f) The department shall post on the department's Internet website a list of all of the individuals named in applications as required by Subsections (b)(1)-(3). The department may not post on its Internet website a social security number of an individual required to be named in an application under Subsections (b)(1)-(3).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 82, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 1161 (H.B. 3357), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0570, eff. April 2, 2015.

Sec. 241.023. ISSUANCE OF LICENSE. (a) On receiving a license application and the license fee, the department shall issue a license if it finds that the applicant and the hospital comply with this chapter and the rules or standards adopted under this chapter.

(b) A license may be renewed every two years after payment of the required fee and submission of an application for license renewal that contains the information required by Section 241.022(b).

(c) Except as provided by Subsection (c-1), the department may issue a license only for the premises of a hospital and person or governmental unit named in the application.

(c-1) The department may issue:

(1) one license for multiple hospitals if:

(A) all buildings in which inpatients receive hospital services and inpatient services of each of the hospitals to be included in the license are subject to the control and direction of the same governing body;

(B) all buildings in which inpatients receive hospital services are within a 30-mile radius of the main address of the applicant;

(C) there is integration of the organized medical staff of each of the hospitals to be included in the license;

(D) there is a single chief executive officer for all of the hospitals who reports directly to the governing body and through whom all administrative authority flows and who exercises control and surveillance over all administrative activities of the hospital;

(E) there is a single chief medical officer for all of the hospitals who reports directly to the governing body and who is responsible for all medical staff activities of the hospital;

(F) each building of a hospital to be included in the license that is geographically separate from other buildings of the same hospital contains at least one nursing unit for inpatients, unless providing only diagnostic or laboratory services, or a combination of diagnostic or laboratory services, in the building for hospital inpatients; and

(G) each hospital that is to be included in the license complies with the emergency services standards:

(i) for a general hospital, if the hospital provides surgery or obstetrical care or both; or

(ii) for a special hospital, if the hospital does

not provide surgery or obstetrical care; and

(2) one license for a hospital and a mobile stroke unit of the hospital if the mobile stroke unit is accredited by a health care accreditation organization approved by the Centers for Medicare and Medicaid Services.

(c-2) The department may recommend a waiver of the requirement of Subsection (c-1)(1)(G) for a hospital if another hospital that is to be included in the license:

(1) complies with the emergency services standards for a general hospital; and

(2) is in close geographic proximity to the hospital.

(c-3) The executive commissioner shall adopt rules to implement the waiver provision of Subsection (c-2). The rules must provide for a determination by the department that the waiver will facilitate the creation or operation of the hospital seeking the waiver and that the waiver is in the best interest of the individuals served or to be served by the hospital.

(d) Subject to Subsection (e), a license issued under this section for a hospital includes each outpatient facility that is not separately licensed, that is located apart from the hospital, and for which the hospital has submitted to the department:

(1) a copy of a fire safety survey that is dated not earlier than one year before the submission date indicating approval by:

(A) the local fire authority in whose jurisdiction the outpatient facility is located; or

(B) the nearest fire authority, if the outpatient facility is located outside of the jurisdiction of a local fire authority; and

(2) if the hospital is accredited by The Joint Commission or the American Osteopathic Association, a copy of documentation from the accrediting body showing that the outpatient facility is included within the hospital's accreditation.

(e) Subsection (d) applies only if the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services, or Office of Inspector General adopts final or interim final rules requiring state licensure of outpatient facilities as a condition of the determination of provider-based status for Medicare reimbursement purposes.

(f) A license may not be transferred or assigned without the

written approval of the department.

(g) A license shall be posted in a conspicuous place on the licensed premises.

(h) Subsection (g) does not apply to a license issued to a mobile stroke unit of a hospital under Subsection (c-1)(2).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 2.01, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 1161 (H.B. 3357), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1286 (H.B. 2471), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0571, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 668 (H.B. 4743), Sec. 1, eff. September 1, 2025.

Sec. 241.025. LICENSE FEES. (a) The department shall charge each hospital a license fee for an initial license or a license renewal.

(b) The executive commissioner by rule shall adopt the fees authorized by Subsection (a) in amounts as prescribed by Section 12.0111 and according to a schedule under which the number of beds in the hospital determines the amount of the fee. A minimum license fee may be established.

(c) A fee adopted under this chapter must be based on the estimated cost to and level of effort expended by the department to conduct the activity for which the fee is imposed.

(d) All license fees collected shall be deposited in the state treasury to the credit of the department to administer and enforce this chapter.

(e) Notwithstanding Subsection (d), to the extent that money received from the fees collected under this chapter exceeds the costs to the department to conduct the activity for which the fee is imposed, the department may use the money to administer Chapter 324 and similar laws that require the department to provide information related to hospital care to the public. The executive commissioner may not consider the costs of administering Chapter 324 or similar

laws in adopting a fee imposed under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 584, Sec. 3, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1411, Sec. 2.02, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 4, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0572, eff. April 2, 2015.

Sec. 241.026. RULES AND MINIMUM STANDARDS. (a) The executive commissioner shall adopt rules and the department shall enforce the rules to further the purposes of this chapter. The rules at a minimum shall address:

(1) minimum requirements for staffing by physicians and nurses;

(2) hospital services relating to patient care;

(3) fire prevention, safety, and sanitation requirements in hospitals;

(4) patient care and a patient bill of rights;

(5) compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; and

(6) compliance with nursing peer review under Subchapter I, Chapter 301, and Chapter 303, Occupations Code, and the rules of the Texas Board of Nursing relating to peer review.

(b) In adopting rules, the executive commissioner shall consider the conditions of participation for certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) and the standards of The Joint Commission and will attempt to achieve consistency with those conditions and standards.

(c) The department by order may waive or modify the requirement of a particular provision of this chapter or minimum standard adopted by department rule under this section to a particular general or special hospital if the department determines that the waiver or modification will facilitate the creation or operation of the hospital and that the waiver or modification is in the best interests of the individuals served or to be served by the hospital.

(d) The executive commissioner shall adopt rules establishing

procedures and criteria for the issuance of the waiver or modification order. The criteria must include at a minimum a statement of the appropriateness of the waiver or modification against the best interests of the individuals served by the hospital.

(e) If the department orders a waiver or modification of a provision or standard, the licensing record of the hospital granted the waiver or modification shall contain documentation to support the action. Department rules shall specify the type and specificity of the supporting documentation that must be included.

(f) A comprehensive medical rehabilitation hospital or a pediatric and adolescent hospital shall have an emergency treatment room but is not required to have an emergency department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 350, Sec. 1, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 4, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 43, Sec. 2, eff. May 7, 1997; Acts 1997, 75th Leg., ch. 617, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 623, Sec. 3, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.786, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 68, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0573, eff. April 2, 2015.

Sec. 241.0262. CIRCULATING DUTIES FOR SURGICAL SERVICES. Circulating duties in the operating room must be performed by qualified registered nurses. In accordance with approved medical staff policies and procedures, licensed vocational nurses and surgical technologists may assist in circulatory duties under the direct supervision of a qualified registered nurse circulator.

Added by Acts 2005, 79th Leg., Ch. 966 (H.B. 1718), Sec. 2, eff. September 1, 2005.

Sec. 241.0263. RECOMMENDATIONS RELATING TO MISSING INFANTS. (a) The department shall recommend hospital security procedures to:

(1) reduce the likelihood of infant patient abduction; and

(2) aid in the identification of missing infants.

(b) In making recommendations, the department shall consider hospital size and location and the number of births at a hospital.

(c) The procedures recommended by the department under Subsection (a)(1) may include:

(1) controlling access to newborn nurseries;

(2) expanding observation of newborn nurseries through the use of video cameras; and

(3) requiring identification for hospital staff and visitors as a condition of entrance to newborn nurseries.

(d) The procedures recommended by the department under Subsection (a)(2) may include:

(1) footprinting, photographing, or writing descriptions of infant patients at birth; and

(2) obtaining umbilical cord blood samples for infant patients born at the hospital and storing the samples for genetic testing purposes.

(e) Each hospital licensed under this chapter shall consider implementing the procedures recommended under this section.

Added by Acts 1997, 75th Leg., ch. 314, Sec. 1, eff. Sept. 1, 1997.

Sec. 241.0265. STANDARDS FOR CARE FOR MENTAL HEALTH AND CHEMICAL DEPENDENCY. (a) The care and treatment of a patient receiving mental health services in a facility licensed by the department under this chapter or Chapter 577 are governed by the applicable department standards adopted under this chapter or Chapter 577.

(b) The care and treatment of a patient receiving chemical dependency treatment in a facility licensed by the department under this chapter are governed by the same standards that govern the care and treatment of a patient receiving treatment in a treatment facility licensed under Chapter 464, to the same extent as if the standards were rules adopted under this chapter.

(c) The department shall enforce the standards provided by Subsections (a) and (b). A violation of a standard is subject to the same consequence as a violation of a rule adopted under this chapter or Chapter 577. The department is not required to enforce a standard if the enforcement violates a federal law, rule, or regulation.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 3.02, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0574, eff. April 2, 2015.

Sec. 241.027. PATIENT TRANSFERS. (a) The executive commissioner shall adopt rules to govern the transfer of patients between hospitals that do not have a transfer agreement and governing services not included in transfer agreements.

(b) The rules must provide that patient transfers between hospitals be accomplished through hospital policies that result in medically appropriate transfers from physician to physician and from hospital to hospital by providing:

(1) for notification to the receiving hospital before the patient is transferred and confirmation by the receiving hospital that the patient meets the receiving hospital's admissions criteria relating to appropriate bed, physician, and other services necessary to treat the patient;

(2) for the use of medically appropriate life support measures that a reasonable and prudent physician exercising ordinary care in the same or a similar locality would use to stabilize the patient before the transfer and to sustain the patient during the transfer;

(3) for the provision of appropriate personnel and equipment that a reasonable and prudent physician exercising ordinary care in the same or a similar locality would use for the transfer;

(4) for the transfer of all necessary records for continuing the care for the patient; and

(5) that the transfer of a patient not be predicated on arbitrary, capricious, or unreasonable discrimination because of race, religion, national origin, age, sex, physical condition, or economic status.

(c) The rules must require that if a patient at a hospital has an emergency medical condition which has not been stabilized, the hospital may not transfer the patient unless:

(1) the patient or a legally responsible person acting on the patient's behalf, after being informed of the hospital's obligations under this section and of the risk of transfer, in

writing requests transfer to another medical facility;

(2) a licensed physician has signed a certification, which includes a summary of the risks and benefits, that, based on the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the patient and, in the case of labor, to the unborn child from effecting the transfer; or

(3) if a licensed physician is not physically present in the emergency department at the time a patient is transferred, a qualified medical person has signed a certification described in Subdivision (2) after a licensed physician, in consultation with the person, has made the determination described in such clause and subsequently countersigns the certificate.

(d) The rules also shall provide that a public hospital or hospital district shall accept the transfer of its eligible residents if the public hospital or hospital district has appropriate facilities, services, and staff available for providing care to the patient.

(e) The rules must require that a hospital take all reasonable steps to secure the informed refusal of a patient or of a person acting on the patient's behalf to a transfer or to related examination and treatment.

(f) The rules must recognize any contractual, statutory, or regulatory obligations that may exist between a patient and a designated or mandated provider as those obligations apply to the transfer of emergency or nonemergency patients.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 83, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 5, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0575, eff. April 2, 2015.

Sec. 241.028. TRANSFER AGREEMENTS. (a) If hospitals execute a transfer agreement that is consistent with the requirements of this section, all patient transfers between the hospitals are governed by the agreement.

(b) The hospitals shall submit the agreement to the department for review for compliance with the requirements of this section. The department shall complete the review of the agreement within 30 days after the date the agreement is submitted by the hospitals.

(c) At a minimum, a transfer agreement must provide that:

(1) transfers be accomplished in a medically appropriate manner and comply with Sections 241.027(b)(2) through (5) and Section 241.027(c);

(2) the transfer or receipt of patients in need of emergency care not be based on the individual's inability to pay for the services rendered by the transferring or receiving hospital;

(3) multiple transfer agreements be entered into by a hospital based on the type or level of medical services available at other hospitals;

(4) the hospitals recognize the right of an individual to request transfer to the care of a physician and hospital of the individual's choice;

(5) the hospitals recognize and comply with the requirements of Chapter 61 (Indigent Health Care and Treatment Act) relating to the transfer of patients to mandated providers; and

(6) consideration be given to availability of appropriate facilities, services, and staff for providing care to the patient.

(d) If a hospital transfers a patient in violation of Subsection (c)(1), (2), (4), (5), or (6), relating to required provisions for a transfer agreement, the violation is a violation of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 84, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 6, eff. Sept. 1, 1993.

Sec. 241.029. POLICIES AND PROCEDURES RELATING TO WORKPLACE SAFETY. (a) The governing body of a hospital shall adopt policies and procedures related to the work environment for nurses to:

(1) improve workplace safety and reduce the risk of injury, occupational illness, and violence; and

(2) increase the use of ergonomic principles and ergonomically designed devices to reduce injury and fatigue.

(b) The policies and procedures adopted under Subsection (a),

at a minimum, must include:

(1) evaluating new products and technology that incorporate ergonomic principles;

(2) educating nurses in the application of ergonomic practices;

(3) conducting workplace audits to identify areas of risk of injury, occupational illness, or violence and recommending ways to reduce those risks;

(4) controlling access to those areas identified as having a high risk of violence; and

(5) promptly reporting crimes committed against nurses to appropriate law enforcement agencies.

Added by Acts 2003, 78th Leg., ch. 876, Sec. 13, eff. June 20, 2003.

SUBCHAPTER C. ENFORCEMENT

Sec. 241.051. INSPECTIONS. (a) The department may make any inspection, survey, or investigation that it considers necessary. A representative of the department may enter the premises of a hospital at any reasonable time to make an inspection, a survey, or an investigation to assure compliance with or prevent a violation of this chapter, the rules adopted under this chapter, an order or special order of the commissioner, a special license provision, a court order granting injunctive relief, or other enforcement procedures. The department shall maintain the confidentiality of hospital records as applicable under state or federal law.

(b) The department or a representative of the department is entitled to access to all books, records, or other documents maintained by or on behalf of the hospital to the extent necessary to enforce this chapter, the rules adopted under this chapter, an order or special order of the commissioner, a special license provision, a court order granting injunctive relief, or other enforcement procedures.

(c) By applying for or holding a hospital license, the hospital consents to entry and inspection of the hospital by the department or a representative of the department in accordance with this chapter and the rules adopted under this chapter.

(d) Except as provided by Subsection (e), all information and materials in the possession of or obtained or compiled by the

commission in connection with a complaint and investigation concerning a hospital are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the commission or its employees or agents involved in the enforcement action except that this information may be disclosed to:

(1) persons involved with the commission in the enforcement action against the hospital;

(2) the hospital that is the subject of the enforcement action, or the hospital's authorized representative;

(3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate hospital services;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying and hospital-identifying information has been deleted.

(e) The following information is subject to disclosure in accordance with Chapter 552, Government Code, only to the extent that all personally identifiable information of a patient or health care provider is omitted from the information:

(1) a notice of the hospital's alleged violation, which must include the provisions of law the hospital is alleged to have violated, and a general statement of the nature of the alleged violation;

(2) the number of investigations the commission has conducted of the hospital;

(3) the pleadings in any administrative proceeding to impose a penalty against the hospital for the alleged violation;

(4) the outcome of each investigation the commission conducted of the hospital, including:

(A) the issuance of a reprimand;

(B) the denial or revocation of a license;

(C) the adoption of a corrective action plan; or

(D) the imposition of an administrative penalty and the penalty amount; and

(5) a final decision, investigative report, or order issued by the commission to address the alleged violation.

(f) Not later than the 90th day after the date the commission issues a final decision, investigative report, or order to address a

hospital's alleged violation, the commission shall post on the commission's Internet website:

(1) the notice of alleged violation described by Subsection (e)(1);

(2) the name of the hospital;

(3) the geographic location of the hospital;

(4) the date the commission issued the final decision, investigative report, or order; and

(5) the outcome of the commission's investigation of the hospital that includes the information described by Subsection (e)(4).

(g) The commission may not remove information posted on the commission's Internet website under Subsection (f) before the second anniversary of the date the information is posted on the Internet website.

(h) Nothing in this section precludes a hospital from releasing medical records in the hospital's possession:

(1) on the request of the patient who is the subject of the record; or

(2) to the patient, the parent or guardian of a patient who is a minor or incapacitated, or the personal representative of a patient who is deceased.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 584, Sec. 8, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1444, Sec. 15, eff. Aug. 30, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0576, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 42 (H.B. 49), Sec. 1, eff. September 1, 2023.

Sec. 241.052. COMPLIANCE WITH RULES AND STANDARDS. (a) A hospital that is in operation when an applicable rule or minimum standard is adopted under this chapter must be given a reasonable period within which to comply with the rule or standard.

(b) The period for compliance may not exceed six months, except that the department may extend the period beyond six months if the hospital sufficiently shows the department that it requires

additional time to complete compliance with the rule or standard.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.053. DENIAL OF APPLICATION, SUSPENSION, REVOCATION, PROBATION, OR REISSUANCE OF LICENSE. (a) The department, after providing notice and an opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a hospital's license if the department finds that the hospital:

(1) failed to comply with:

(A) a provision of this chapter;

(B) a rule adopted under this chapter;

(C) a special license condition;

(D) an order or emergency order by the commissioner; or

(E) another enforcement procedure permitted under this chapter;

(2) has a history of noncompliance with the rules adopted under this chapter relating to patient health, safety, and rights which reflects more than nominal noncompliance; or

(3) has aided, abetted, or permitted the commission of an illegal act.

(b) A hospital whose license is suspended or revoked may apply to the department for the reissuance of a license. The department may reissue the license if the department determines that the hospital has corrected the conditions that led to the suspension or revocation of the hospital's license, the initiation of enforcement action against the hospital, the assessment of administrative penalties, or the issuance of a court order enjoining the hospital from violations or assessing civil penalties against the hospital. A hospital whose license is suspended or revoked may not admit new patients until the license is reissued.

(c) A hospital must apply for reissuance in the form and manner required in the rules adopted under this chapter.

(d) Administrative hearings required under this section shall be conducted under the department's formal hearing rules and the contested case provisions of Chapter 2001, Government Code.

(e) Judicial review of a final decision by the department is by trial de novo in the same manner as a case appealed from the justice court to the county court. The substantial evidence rule does not

apply.

(f) If the department finds that a hospital is in repeated noncompliance under Subsection (a) but that the noncompliance does not endanger public health and safety, the department may schedule the hospital for probation rather than suspending or revoking the hospital's license. The department shall provide notice to the hospital of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the hospital will remain under probation. During the probation period, the hospital must correct the items that were in noncompliance and report the corrections to the department for approval.

(g) The department may suspend or revoke the license of a hospital that does not correct items that were in noncompliance or that does not comply with the applicable requirements within the applicable probation period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 584, Sec. 9, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 705, Sec. 3.01, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(51), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 802, Sec. 1, 2, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0577, eff. April 2, 2015.

Sec. 241.0531. COMMISSIONER'S EMERGENCY ORDERS. (a) Following notice to the hospital and opportunity for hearing, the commissioner or a person designated by the commissioner may issue an emergency order, either mandatory or prohibitory in nature, in relation to the operation of a hospital licensed under this chapter if the commissioner or the commissioner's designee determines that the hospital is violating or threatening to violate this chapter, a rule adopted pursuant to this chapter, a special license provision, injunctive relief issued pursuant to Section 241.054, an order of the commissioner or the commissioner's designee, or another enforcement procedure permitted under this chapter and the provision, rule, license provision, injunctive relief, order, or enforcement procedure

relates to the health or safety of the hospital's patients.

(b) The department shall send written notice of the hearing and shall include within the notice the time and place of the hearing. The hearing must be held within 10 days after the date of the hospital's receipt of the notice.

(c) The hearing shall not be governed by the contested case provisions of Chapter 2001, Government Code, but shall instead be held in accordance with the department's informal hearing rules.

(d) The order shall be effective on delivery to the hospital or at a later date specified in the order.

Added by Acts 1993, 73rd Leg., ch. 584, Sec. 10, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(51), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0578, eff. April 2, 2015.

Sec. 241.054. VIOLATIONS; INJUNCTIONS. (a) The department shall:

(1) notify a hospital of a finding by the department that the hospital is violating or has violated this chapter or a rule or standard adopted under this chapter; and

(2) provide the hospital an opportunity to correct the violation.

(b) After the notice and opportunity to comply, the commissioner may request the attorney general or the appropriate district or county attorney to institute and conduct a suit for a violation of this chapter or a rule adopted under this chapter.

(c) The department may petition a district court for a temporary restraining order to restrain a continuing violation if the department finds that the violation creates an immediate threat to the health and safety of the patients of a hospital.

(d) On his own initiative, the attorney general, a district attorney, or a county attorney may maintain an action in the name of the state for a violation of this chapter or a rule adopted under this chapter.

(e) The district court shall assess the civil penalty authorized by Section 241.055, grant injunctive relief, or both, as

warranted by the facts. The injunctive relief may include any prohibitory or mandatory injunction warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

(f) The department and the party bringing the suit may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

(g) Venue may be maintained in Travis County or in the county in which the violation occurred.

(h) Not later than the seventh day before the date on which the attorney general intends to bring suit on his own initiative, the attorney general shall provide to the department notice of the suit. The attorney general is not required to provide notice of a suit if the attorney general determines that waiting to bring suit until the notice is provided will create an immediate threat to the health and safety of a patient. This section does not create a requirement that the attorney general obtain the permission of a referral from the department before filing suit.

(i) The injunctive relief and civil penalty authorized by this section and Section 241.055 are in addition to any other civil, administrative, or criminal penalty provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 3.02, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0579, eff. April 2, 2015.

Sec. 241.055. CIVIL PENALTY. (a) A hospital shall timely adopt, implement, and enforce a patient transfer policy in accordance with Section 241.027. A hospital may implement patient transfer agreements in accordance with Section 241.028.

(b) A hospital that violates Subsection (a), another provision of this chapter, or a rule adopted or enforced under this chapter is liable for a civil penalty of not more than $1,000 for each day of violation and for each act of violation. A hospital that violates this chapter or a rule or order adopted under this chapter relating to the provision of mental health, chemical dependency, or

rehabilitation services is liable for a civil penalty of not more than $25,000 for each day of violation and for each act of violation.

(c) In determining the amount of the penalty, the district court shall consider:

(1) the hospital's previous violations;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) whether the health and safety of the public was threatened by the violation;

(4) the demonstrated good faith of the hospital; and

(5) the amount necessary to deter future violations.

(d) A penalty collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 86, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 11, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 705, Sec. 3.03, eff. Sept. 1, 1993.

Sec. 241.0555. ADDITIONAL REQUIREMENTS: POTENTIALLY PREVENTABLE ADVERSE EVENTS. (a) If the department finds that a hospital has committed a violation that resulted in a potentially preventable adverse event reportable under Chapter 98, the department shall require the hospital to develop and implement a plan for approval by the department to address the deficiencies that may have contributed to the preventable adverse event.

(b) The department may require the plan under this section to include:

(1) staff training and education;

(2) supervision requirements for certain staff;

(3) increased staffing requirements;

(4) increased reporting to the department; and

(5) a review and amendment of hospital policies relating to patient safety.

(c) The department shall carefully and frequently monitor the hospital's adherence to the plan under this section and enforce

compliance.

Added by Acts 2015, 84th Leg., R.S., Ch. 183 (S.B. 373), Sec. 2, eff. September 1, 2015.

Sec. 241.056. SUIT BY PERSON HARMED. (a) A person who is harmed by a violation under Section 241.028 or 241.055 may petition a district court for appropriate injunctive relief.

(b) Venue for a suit brought under this section is in the county in which the person resides or, if the person is not a resident of this state, in Travis County.

(c) The person may also pursue remedies for civil damages under common law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 87, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 12, eff. Sept. 1, 1993.

Sec. 241.057. CRIMINAL PENALTY. (a) A person commits an offense if the person establishes, conducts, manages, or operates a hospital without a license.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $100 for the first offense and not more than $200 for each subsequent offense.

(c) Each day of a continuing violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.058. MINOR VIOLATIONS. (a) This chapter does not require the commissioner or a designee of the commissioner to report a minor violation for prosecution or the institution of any other enforcement proceeding authorized under this chapter, if the commissioner or designee determines that prosecution or enforcement is not in the best interests of the persons served or to be served by the hospital.

(b) For the purpose of this section, a "minor violation" means a violation of this chapter, the rules adopted under this chapter, a

special license provision, an order or emergency order issued by the commissioner or the commissioner's designee, or another enforcement procedure permitted under this chapter by a hospital that does not constitute a threat to the health, safety, and rights of the hospital's patients or other persons.

Added by Acts 1993, 73rd Leg., ch. 584, Sec. 13, eff. Sept. 1,1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0580, eff. April 2, 2015.

Sec. 241.0585. RECOVERY OF COSTS. If the attorney general brings an action to enforce an administrative penalty assessed under Section 241.058 and the court orders the payment of the penalty, the attorney general may recover reasonable expenses incurred in the investigation, initiation, or prosecution of the enforcement suit, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.041, eff. Sept. 1, 1993.

Sec. 241.059. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a hospital that violates this chapter, a rule adopted pursuant to this chapter, a special license provision, an order or emergency order issued by the commissioner or the commissioner's designee, or another enforcement procedure permitted under this chapter. The department shall assess an administrative penalty against a hospital that violates Section 166.004.

(b) In determining the amount of the penalty, the department shall consider:

(1) the hospital's previous violations;

(2) the seriousness of the violation;

(3) any threat to the health, safety, or rights of the hospital's patients;

(4) the demonstrated good faith of the hospital; and

(5) such other matters as justice may require.

(c) The penalty may not exceed $1,000 for each violation,

except that the penalty for a violation of Section 166.004 shall be $500. Each day of a continuing violation, other than a violation of Section 166.004, may be considered a separate violation.

(d) When it is determined that a violation has occurred, the department shall give written notice of the violation to the person, delivered by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the department, the department by order shall impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the department shall refer the matter to the State Office of Administrative Hearings and an administrative law judge of that office shall hold the hearing. The department shall give notice of the hearing to the person. The administrative law judge conducting the hearing shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for a decision about the occurrence of the violation and the amount of the penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the department's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the department's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for

judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(l) When the department receives a copy of an affidavit under Subsection (k)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the department:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person within 30 days after the judgment of the court becomes final. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 584, Sec. 14, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(51), (53), (55), (60), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 450, Sec. 2.03, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0581, eff. April 2, 2015.

Sec. 241.060. ADMINISTRATIVE PENALTY FOR MENTAL HEALTH, CHEMICAL DEPENDENCY, OR REHABILITATION SERVICES. (a) The department may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter relating to the provision of mental health, chemical dependency, or rehabilitation services.

(b) The penalty for a violation may be in an amount not to exceed $25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) enforcement costs relating to the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the department determines that a violation has occurred, the department shall give written notice of the violation to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the department, the department by order shall impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the department shall refer the matter to the State Office of Administrative Hearings and an administrative law judge of that office shall hold the hearing. The department shall give notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may find that a violation has occurred and

impose a penalty or may find that no violation occurred.

(i) The notice of the department's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the department's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(l) The department on receipt of a copy of an affidavit under Subsection (k)(2) may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to

pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the department's order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.04, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995. Renumbered from Health & Safety Code Sec. 241.058 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(22), eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0582, eff. April 2, 2015.

SUBCHAPTER E. STAFF, RECORDS, AND PLAN REVIEWS

Sec. 241.101. HOSPITAL AUTHORITY CONCERNING MEDICAL STAFF. (a) Except as otherwise provided by this section and Section 241.102, this chapter does not change the authority of the governing body of a hospital, as it considers necessary or advisable, to:

(1) make rules, standards, or qualifications for medical staff membership; or

(2) grant or refuse to grant membership on the medical staff.

(b) This chapter does not prevent the governing body of a hospital from adopting reasonable rules and requirements in compliance with this chapter relating to:

(1) qualifications for any category of medical staff appointments;

(2) termination of appointments; or

(3) the delineation or curtailment of clinical privileges of those who are appointed to the medical staff.

(c) The process for considering applications for medical staff membership and privileges or the renewal, modification, or revocation of medical staff membership and privileges must afford each physician, podiatrist, and dentist procedural due process that meets the requirements of 42 U.S.C. Section 11101 et seq., as amended.

(d) If a hospital's credentials committee has failed to take action on a completed application as required by Subsection (k), or a physician, podiatrist, or dentist is subject to a professional review action that may adversely affect his medical staff membership or privileges, and the physician, podiatrist, or dentist believes that mediation of the dispute is desirable, the physician, podiatrist, or dentist may require the hospital to participate in mediation as provided in Chapter 154, Civil Practice and Remedies Code. The mediation shall be conducted by a person meeting the qualifications required by Section 154.052, Civil Practice and Remedies Code, and within a reasonable period of time.

(e) Subsection (d) does not authorize a cause of action by a physician, podiatrist, or dentist against the hospital other than an action to require a hospital to participate in mediation.

(f) An applicant for medical staff membership or privileges may not be denied membership or privileges on any ground that is

otherwise prohibited by law.

(g) A hospital's bylaw requirements for staff privileges may require a physician, podiatrist, or dentist to document the person's current clinical competency and professional training and experience in the medical procedures for which privileges are requested.

(h) In granting or refusing medical staff membership or privileges, a hospital may not differentiate on the basis of the academic medical degree held by a physician.

(i) Graduate medical education may be used as a standard or qualification for medical staff membership or privileges for a physician, provided that equal recognition is given to training programs accredited by the Accreditation Council for Graduate Medical Education and by the American Osteopathic Association.

(j) Board certification may be used as a standard or qualification for medical staff membership or privileges for a physician, provided that equal recognition is given to certification programs approved by the American Board of Medical Specialties and the Bureau of Osteopathic Specialists.

(k) A hospital's credentials committee shall act expeditiously and without unnecessary delay when a licensed physician, podiatrist, or dentist submits a completed application for medical staff membership or privileges. The hospital's credentials committee shall take action on the completed application not later than the 90th day after the date on which the application is received. The governing body of the hospital shall take final action on the application for medical staff membership or privileges not later than the 60th day after the date on which the recommendation of the credentials committee is received. The hospital must notify the applicant in writing of the hospital's final action, including a reason for denial or restriction of privileges, not later than the 20th day after the date on which final action is taken.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 77, Sec. 1, eff. May 11, 1995; Acts 1999, 76th Leg., ch. 159, Sec. 1, eff. May 21, 1999; Acts 2001, 77th Leg., ch. 1175, Sec. 1, eff. June 15, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0583, eff. April 2, 2015.

Sec. 241.1015. PHYSICIAN COMMUNICATION AND CONTRACTS. (a) A hospital, whether by contract, by granting or withholding staff privileges, or otherwise, may not restrict a physician's ability to communicate with a patient with respect to:

(1) the patient's coverage under a health care plan;

(2) any subject related to the medical care or health care services to be provided to the patient, including treatment options that are not provided under a health care plan;

(3) the availability or desirability of a health care plan or insurance or similar coverage, other than the patient's health care plan; or

(4) the fact that the physician's staff privileges or contract with a hospital or health care plan have terminated or that the physician will otherwise no longer be providing medical care or health care services at the hospital or under the health care plan.

(b) A hospital, by contract or otherwise, may not refuse or fail to grant or renew staff privileges, or condition staff privileges, based in whole or in part on the fact that the physician or a partner, associate, or employee of the physician is providing medical or health care services at a different hospital or hospital system.

(c) A hospital may not contract to limit a physician's participation or staff privileges or the participation or staff privileges of a partner, associate, or employee of the physician at a different hospital or hospital system.

(d) This section does not prevent a hospital from entering into contracts with physicians to ensure physician availability and coverage at the hospital or to comply with regulatory requirements or quality of care standards established by the governing body of the hospital.

(e) This section does not prevent the governing body of a hospital from:

(1) limiting the number of physicians granted medical staff membership or privileges at the hospital based on a medical staff development plan that is unrelated to a physician's professional or business relationships or associations including those with another physician or group of physicians or to a physician or a partner, associate, or employee of a physician having medical staff membership or privileges at another hospital or hospital system; or

(2) limiting the ability of hospital medical directors to

contract with or hold medical staff memberships or clinical privileges at different hospitals or hospital systems provided that such limitations do not extend to the medical directors' professional or business relationships or associations including those with another physician, group of physicians, or other health care providers, other than hospitals or hospital systems.

(f) A contract provision that violates this section is void.

(g) In this section, "health care plan" has the meaning assigned by Section 843.002, Insurance Code, and "hospital medical directors" means physicians who have been employed by or are under contract with a hospital to manage a clinical department or departments of the hospital.

Added by Acts 1997, 75th Leg., ch. 735, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.526, eff. Sept. 1, 2003.

Sec. 241.102. AUTHORIZATIONS AND RESTRICTIONS IN RELATION TO PHYSICIANS AND PODIATRISTS. (a) This chapter does not authorize a physician or podiatrist to perform medical or podiatric acts that are beyond the scope of the respective license held.

(b) This chapter does not prevent the governing body of a hospital from providing that:

(1) a podiatric patient be coadmitted to the hospital by a podiatrist and a physician;

(2) a physician be responsible for the care of any medical problem or condition of a podiatric patient that may exist at the time of admission or that may arise during hospitalization and that is beyond the scope of the podiatrist's license; or

(3) a physician determine the risk and effect of a proposed podiatric surgical procedure on the total health status of the patient.

(c) An applicant for medical staff membership may not be denied membership solely on the ground that the applicant is a podiatrist rather than a physician.

(d) This chapter does not automatically entitle a physician or a podiatrist to membership or privileges on a medical staff.

(e) The governing body of a hospital may not require a member of the medical staff to involuntarily:

(1) coadmit patients with a podiatrist;

(2) be responsible for the care of any medical problem or condition of a podiatric patient; or

(3) determine the risk and effect of any proposed podiatric procedure on the total health status of the patient.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.103. PRESERVATION OF RECORDS. (a) A hospital may authorize the disposal of any medical record on or after the 10th anniversary of the date on which the patient who is the subject of the record was last treated in the hospital.

(b) If a patient was younger than 18 years of age when the patient was last treated, the hospital may authorize the disposal of medical records relating to the patient on or after the date of the patient's 20th birthday or on or after the 10th anniversary of the date on which the patient was last treated, whichever date is later.

(c) The hospital may not destroy medical records that relate to any matter that is involved in litigation if the hospital knows the litigation has not been finally resolved.

(d) A hospital shall provide written notice to a patient, or a patient's legally authorized representative as that term is defined by Section 241.151, that the hospital, unless the exception in Subsection (c) applies, may authorize the disposal of medical records relating to the patient on or after the periods specified in this section. The notice shall be provided to the patient or the patient's legally authorized representative not later than the date on which the patient who is or will be the subject of a medical record is treated, except in an emergency treatment situation. In an emergency treatment situation, the notice shall be provided to the patient or the patient's legally authorized representative as soon as is reasonably practicable following the emergency treatment situation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 466 (H.B. 118), Sec. 1, eff. September 1, 2011.

Sec. 241.1031. PRESERVATION OF RECORD FROM FORENSIC MEDICAL EXAMINATION. (a) A hospital may not destroy a medical record from the forensic medical examination of a sexual assault victim conducted under Subchapter G, Chapter 56A, Code of Criminal Procedure, until the 20th anniversary of the date the record was created.

(b) A hospital may maintain a medical record described by Subsection (a) in the same form in which the hospital maintains other medical records.

Added by Acts 2019, 86th Leg., R.S., Ch. 357 (H.B. 531), Sec. 1, eff. September 1, 2019.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.003, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 206 (S.B. 1401), Sec. 18, eff. September 1, 2023.

Sec. 241.104. HOSPITAL PLAN REVIEWS. (a) The executive commissioner by rule shall adopt fees for hospital plan reviews according to a schedule based on the estimated construction costs.

(b) The fee schedule may not exceed the following:

	Cost of Construction	Fee
(1)	$ 100,000 or less	$ 500
(2)	$ 100,001 - $ 600,000	$1,500
(3)	$ 600,001 - $ 2,000,000	$3,000
(4)	$ 2,000,001 - $ 5,000,000	$4,500
(5)	$ 5,000,001 - $10,000,000	$6,000
(6)	$ 10,000,001 and over	$7,500

(c) The department shall charge a fee for field surveys of construction plans reviewed under this section. The executive commissioner by rule shall adopt a fee schedule for the surveys that provides a minimum fee of $500 and a maximum fee of $1,000 for each survey conducted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 584, Sec. 15, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1411, Sec. 2.03, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0584, eff. April 2, 2015.

Sec. 241.105. HOSPITAL PRIVILEGES FOR ADVANCED PRACTICE NURSES AND PHYSICIAN ASSISTANTS. (a) The governing body of a hospital is authorized to establish policies concerning the granting of clinical privileges to advanced practice nurses and physician assistants, including policies relating to the application process, reasonable qualifications for privileges, and the process for renewal, modification, or revocation of privileges.

(b) If the governing body of a hospital has adopted a policy of granting clinical privileges to advanced practice nurses or physician assistants, an individual advanced practice nurse or physician assistant who qualifies for privileges under that policy shall be entitled to certain procedural rights to provide fairness of process, as determined by the governing body of the hospital, when an application for privileges is submitted to the hospital. At a minimum, any policy adopted shall specify a reasonable period for the processing and consideration of the application and shall provide for written notification to the applicant of any final action on the application by the hospital, including any reason for denial or restriction of the privileges requested.

(c) If an advanced practice nurse or physician assistant has been granted clinical privileges by a hospital, the hospital may not modify or revoke those privileges without providing certain procedural rights to provide fairness of process, as determined by the governing body of the hospital, to the advanced practice nurse or physician assistant. At a minimum, the hospital shall provide the advanced practice nurse or physician assistant written reasons for the modification or revocation of privileges and a mechanism for appeal to the appropriate committee or body within the hospital, as determined by the governing body of the hospital.

(d) If a hospital extends clinical privileges to an advanced practice nurse or physician assistant conditioned on the advanced practice nurse or physician assistant having a sponsoring or collaborating relationship with a physician and that relationship ceases to exist, the advanced practice nurse or physician assistant and the physician shall provide written notification to the hospital that the relationship no longer exists. Once the hospital receives such notice from an advanced practice nurse or physician assistant and the physician, the hospital shall be deemed to have met its

obligations under this section by notifying the advanced practice nurse or physician assistant in writing that the advanced practice nurse's or physician assistant's clinical privileges no longer exist at that hospital.

(e) Nothing in this section shall be construed as modifying Subtitle B, Title 3, Occupations Code, Chapter 204 or 301, Occupations Code, or any other law relating to the scope of practice of physicians, advanced practice nurses, or physician assistants.

(f) This section does not apply to an employer-employee relationship between an advanced practice nurse or physician assistant and a hospital.

Added by Acts 1999, 76th Leg., ch. 428, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.787, eff. Sept. 1, 2001.

SUBCHAPTER F. MEDICAL REHABILITATION SERVICES

Sec. 241.121. DEFINITION. In this subchapter, "comprehensive medical rehabilitation" means the provision of rehabilitation services that are designed to improve or minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share the responsibility to achieve team treatment goals for the person.

Added by Acts 1993, 73rd Leg., ch. 707, Sec. 1, eff. Sept. 1, 1993.

Sec. 241.122. LICENSE REQUIRED. Unless a person has a license issued under this chapter, a person other than an individual may not provide inpatient comprehensive medical rehabilitation to a patient who requires medical services that are provided under the supervision of a physician and that are more intensive than nursing facility care and minor treatment.

Added by Acts 1993, 73rd Leg., ch. 707, Sec. 1, eff. Sept. 1, 1993.

Sec. 241.123. REHABILITATION SERVICES STANDARDS. (a) The

executive commissioner by rule shall adopt standards for the provision of rehabilitation services by a hospital to ensure the health and safety of a patient receiving the services.

(b) The standards at a minimum shall require a hospital that provides comprehensive medical rehabilitation:

(1) to have a director of comprehensive medical rehabilitation who is:

(A) a licensed physician;

(B) either board certified or eligible for board certification in a medical specialty related to rehabilitation; and

(C) qualified by training and experience to serve as medical director;

(2) to have medical supervision by a licensed physician for 24 hours each day; and

(3) to provide appropriate therapy to each patient by an interdisciplinary team consisting of licensed physicians, rehabilitation nurses, and therapists as are appropriate for the patient's needs.

(c) An interdisciplinary team for comprehensive medical rehabilitation shall be directed by a licensed physician. An interdisciplinary team for comprehensive medical rehabilitation shall have available to it, at the hospital at which the services are provided or by contract, members of the following professions as necessary to meet the treatment needs of the patient:

(1) physical therapy;

(2) occupational therapy;

(3) speech-language pathology;

(4) therapeutic recreation;

(5) social services and case management;

(6) dietetics;

(7) psychology;

(8) respiratory therapy;

(9) rehabilitative nursing;

(10) certified orthotics; and

(11) certified prosthetics.

(d) A hospital shall prepare for each patient receiving inpatient rehabilitation services a written treatment plan designed for that patient's needs for treatment and care. The executive commissioner by rule shall specify a time after admission of a patient for inpatient rehabilitation services by which a hospital

must evaluate the patient for the patient's initial treatment plan and by which a hospital must provide copies of the plan after evaluation.

(e) A hospital shall prepare for each patient receiving inpatient rehabilitation services a written continuing care plan that addresses the patient's needs for care after discharge, including recommendations for treatment and care and information about the availability of resources for treatment or care. The executive commissioner by rule shall specify the time before discharge by which the hospital must provide a copy of the continuing care plan. Department rules may allow a facility to provide the continuing care plan by a specified time after discharge if providing the plan before discharge is impracticable.

(f) A hospital shall provide a copy of a treatment or continuing care plan prepared under this section to the following persons in the person's primary language, if practicable:

(1) the patient;

(2) a person designated by the patient; and

(3) as specified by department rule, family members or other persons with responsibility for or demonstrated participation in the patient's care or treatment.

(g) Rules adopted by the executive commissioner under this subchapter may not conflict with a federal rule, regulation, or standard.

Added by Acts 1993, 73rd Leg., ch. 707, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0585, eff. April 2, 2015.

SUBCHAPTER G. DISCLOSURE OF HEALTH CARE INFORMATION

Sec. 241.151. DEFINITIONS. In this subchapter:

(1) "Directory information" means information disclosing the presence of a person who is receiving inpatient, outpatient, or emergency services from a licensed hospital, the nature of the person's injury, the person's municipality of residence, sex, and age, and the general health status of the person as described in terms of "critical," "poor," "fair," "good," "excellent," or similar terms.

(2) "Health care information" means information, including payment information, recorded in any form or medium that identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient.

(3) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(4) "Institutional review board" means a board, committee, or other group formally designated by an institution or authorized under federal or state law to review or approve the initiation of or conduct periodic review of research programs to ensure the protection of the rights and welfare of human research subjects.

(5) "Legally authorized representative" means:

(A) a parent or legal guardian if the patient is a minor;

(B) a legal guardian if the patient has been adjudicated incapacitated to manage the patient's personal affairs;

(C) an agent of the patient authorized under a medical power of attorney;

(D) an attorney ad litem appointed for the patient;

(E) a person authorized to consent to medical treatment on behalf of the patient under Chapter 313;

(F) a guardian ad litem appointed for the patient;

(G) a personal representative or heir of the patient, as defined by Chapter 22, Estates Code, if the patient is deceased;

(H) an attorney retained by the patient or by the patient's legally authorized representative; or

(I) a person exercising a power granted to the person in the person's capacity as an attorney-in-fact or agent of the patient by a statutory durable power of attorney that is signed by the patient as principal.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 498, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 1138 (H.B. 2765), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1003 (H.B. 4029), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0586, eff. April 2, 2015.

Sec. 241.152. WRITTEN AUTHORIZATION FOR DISCLOSURE OF HEALTH CARE INFORMATION. (a) Except as authorized by Section 241.153, a hospital or an agent or employee of a hospital may not disclose health care information about a patient to any person other than the patient or the patient's legally authorized representative without the written authorization of the patient or the patient's legally authorized representative.

(b) A disclosure authorization to a hospital is valid only if it:

(1) is in writing;

(2) is dated and signed by the patient or the patient's legally authorized representative;

(3) identifies the information to be disclosed;

(4) identifies the person or entity to whom the information is to be disclosed; and

(5) is not contained in the same document that contains the consent to medical treatment obtained from the patient.

(c) A disclosure authorization is valid until the 180th day after the date it is signed unless it provides otherwise or unless it is revoked.

(d) Except as provided by Subsection (e), a patient or the patient's legally authorized representative may revoke a disclosure authorization to a hospital at any time. A revocation is valid only if it is in writing, dated with a date that is later than the date on the original authorization, and signed by the patient or the patient's legally authorized representative.

(e) A patient or the patient's legally authorized representative may not revoke a disclosure that is required for purposes of making payment to the hospital for health care provided to the patient.

(f) A patient may not maintain an action against a hospital for a disclosure made by the hospital in good-faith reliance on an authorization if the hospital's medical record department did not have notice that the authorization was revoked.

(g) Repealed by Acts 1997, 75th Leg., ch. 498, Sec. 5, eff. Sept. 1, 1997.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 498, Sec. 2, 5, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 271, Sec. 1, eff. Sept. 1, 1999.

Sec. 241.153. DISCLOSURE WITHOUT WRITTEN AUTHORIZATION. A patient's health care information may be disclosed without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the hospital not to make the disclosure or the directory information is otherwise protected by state or federal law;

(2) to a health care provider who is rendering health care to the patient when the request for the disclosure is made;

(3) to a transporting emergency medical services provider for the purpose of:

(A) treatment or payment, as those terms are defined by the regulations adopted under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); or

(B) the following health care operations described by the regulations adopted under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191):

(i) quality assessment and improvement activities;

(ii) specified insurance functions;

(iii) conducting or arranging for medical reviews; or

(iv) competency assurance activities;

(4) to a member of the clergy specifically designated by the patient;

(5) to a procurement organization as defined in Section 692A.002 for the purpose of making inquiries relating to donations according to the protocol referred to in Section 692A.015;

(6) to a prospective health care provider for the purpose of securing the services of that health care provider as part of the patient's continuum of care, as determined by the patient's attending physician;

(7) to a person authorized to consent to medical treatment under Chapter 313 or to a person in a circumstance exempted from Chapter 313 to facilitate the adequate provision of treatment;

(8) to an employee or agent of the hospital who requires health care information for health care education, quality assurance,

or peer review or for assisting the hospital in the delivery of health care or in complying with statutory, licensing, accreditation, or certification requirements and if the hospital takes appropriate action to ensure that the employee or agent:

(A) will not use or disclose the health care information for any other purpose; and

(B) will take appropriate steps to protect the health care information;

(9) to a federal, state, or local government agency or authority to the extent authorized or required by law;

(10) to a hospital that is the successor in interest to the hospital maintaining the health care information;

(11) to the American Red Cross for the specific purpose of fulfilling the duties specified under its charter granted as an instrumentality of the United States government;

(12) to a regional poison control center, as the term is used in Chapter 777, to the extent necessary to enable the center to provide information and education to health professionals involved in the management of poison and overdose victims, including information regarding appropriate therapeutic use of medications, their compatibility and stability, and adverse drug reactions and interactions;

(13) to a health care utilization review agent who requires the health care information for utilization review of health care under Chapter 4201, Insurance Code;

(14) for use in a research project authorized by an institutional review board under federal law;

(15) to health care personnel of a penal or other custodial institution in which the patient is detained if the disclosure is for the sole purpose of providing health care to the patient;

(16) to facilitate reimbursement to a hospital, other health care provider, or the patient for medical services or supplies;

(17) to a health maintenance organization for purposes of maintaining a statistical reporting system as required by a rule adopted by a state agency or regulations adopted under the federal Health Maintenance Organization Act of 1973, as amended (42 U.S.C. Section 300e et seq.);

(18) to satisfy a request for medical records of a deceased or incompetent person pursuant to Section 74.051(e), Civil Practice

and Remedies Code;

(19) to comply with a court order except as provided by Subdivision (20); or

(20) related to a judicial proceeding in which the patient is a party and the disclosure is requested under a subpoena issued under:

(A) the Texas Rules of Civil Procedure or Code of Criminal Procedure; or

(B) Chapter 121, Civil Practice and Remedies Code.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 498, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 847, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 136 (H.B. 739), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 337 (S.B. 1113), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 2, eff. September 1, 2009.

Sec. 241.1531. EXCHANGE OF INMATE'S HEALTH CARE INFORMATION. Notwithstanding any other law of this state, the health care information of a patient who is a defendant or inmate confined in a facility operated by or under contract with the Texas Department of Criminal Justice may be exchanged between health care personnel of the department and health care personnel of The University of Texas Medical Branch at Galveston or the Texas Tech University Health Sciences Center. The authorization of the defendant or inmate is not required for the exchange of information.

Added by Acts 2005, 79th Leg., Ch. 1270 (H.B. 2195), Sec. 1, eff. June 18, 2005.

Sec. 241.154. REQUEST. (a) On receipt of a written authorization from a patient or legally authorized representative to examine or copy all or part of the patient's recorded health care information, except payment information, or for disclosures under Section 241.153 not requiring written authorization, a hospital or

its agent, as promptly as required under the circumstances but not later than the 15th day after the date the request and payment authorized under Subsection (b) are received, shall:

(1) make the information available for examination during regular business hours and provide a copy to the requestor, if requested; or

(2) inform the authorized requestor if the information does not exist or cannot be found.

(b) Except as provided by Subsection (d), the hospital or its agent may charge a reasonable fee for providing the health care information except payment information and is not required to permit the examination, copying, or release of the information requested until the fee is paid unless there is a medical emergency. The fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed $30; and

(A) a charge for each page of:

(i) $1 for the 11th through the 60th page of the provided copies;

(ii) 50 cents for the 61st through the 400th page of the provided copies; and

(iii) 25 cents for any remaining pages of the provided copies; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies;

(2) if the requested records are stored on microform, a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed $45; and

(A) $1 per page thereafter; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies; or

(3) if the requested records are provided on a digital or other electronic medium and the requesting party requests delivery in a digital or electronic medium, including electronic mail:

(A) a retrieval or processing fee, which may not exceed $75; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

(c) In addition, the hospital or its agent may charge a

reasonable fee for:

(1) execution of an affidavit or certification of a document, not to exceed the charge authorized by Section 22.004, Civil Practice and Remedies Code; and

(2) written responses to a written set of questions, not to exceed $10 for a set.

(d) A hospital may not charge a fee for:

(1) providing health care information under Subsection (b) to the extent the fee is prohibited under Subchapter M, Chapter 161;

(2) a patient to examine the patient's own health care information;

(3) providing an itemized statement of billed services to a patient or third-party payor, except as provided under Section 311.002(f); or

(4) health care information relating to treatment or hospitalization for which workers' compensation benefits are being sought, except to the extent permitted under Chapter 408, Labor Code.

(e) Effective September 1, 1996, and annually thereafter, the fee for providing health care information as specified in this section shall be adjusted accordingly based on the most recent changes to the consumer price index as published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers' families and single workers living alone.

(f) A request from a patient or legally authorized representative for payment information is subject to Section 311.002.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 498, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 610, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1003 (H.B. 4029), Sec. 2, eff. September 1, 2009.

Sec. 241.155. SAFEGUARDS FOR SECURITY OF HEALTH CARE INFORMATION. A hospital shall adopt and implement reasonable safeguards for the security of all health care information it maintains.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 1, eff. Sept. 1, 1995.

Sec. 241.156. PATIENT REMEDIES. (a) A patient aggrieved by a violation of this subchapter relating to the unauthorized release of confidential health care information may bring an action for:

(1) appropriate injunctive relief; and

(2) damages resulting from the release.

(b) An action under Subsection (a) shall be brought in:

(1) the district court of the county in which the patient resides or in the case of a deceased patient the district court of the county in which the patient's legally authorized representative resides; or

(2) if the patient or the patient's legally authorized representative in the case of a deceased patient is not a resident of this state, the district court of Travis County.

(c) A petition for injunctive relief under Subsection (a)(1) takes precedence over all civil matters on the court docket except those matters to which equal precedence on the docket is granted by law.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER H. HOSPITAL LEVEL OF CARE DESIGNATIONS FOR NEONATAL AND MATERNAL CARE

Sec. 241.182. LEVEL OF CARE DESIGNATIONS. (a) The executive commissioner, in accordance with the rules adopted under Section 241.183, shall assign level of care designations to each hospital based on the neonatal and maternal services provided at the hospital.

(b) A hospital may receive different level designations for neonatal and maternal care, respectively.

Added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, eff. September 1, 2013.

Sec. 241.183. RULES. (a) The executive commissioner, in consultation with the department, shall adopt rules:

(1) establishing the levels of care for neonatal and maternal care to be assigned to hospitals;

(2) prescribing criteria for designating levels of neonatal and maternal care, respectively, including specifying the minimum requirements to qualify for each level designation;

(3) establishing a process for the assignment of levels of care to a hospital for neonatal and maternal care, respectively;

(4) establishing a process for amending the level of care designation requirements, including a process for assisting facilities in implementing any changes made necessary by the amendments;

(5) dividing the state into neonatal and maternal care regions;

(6) facilitating transfer agreements through regional coordination;

(7) requiring payment, other than quality or outcome-based funding, to be based on services provided by the facility, regardless of the hospital's level of care designation;

(8) prohibiting the denial of a neonatal or maternal level of care designation to a hospital that meets the minimum requirements for that level of care designation;

(9) establishing a process through which a hospital may obtain a limited follow-up survey by an independent third party to appeal the level of care designation assigned to the hospital;

(10) permitting a hospital to satisfy any requirement for a Level I or II level of care designation that relates to an obstetrics or gynecological physician by:

(A) granting maternal care privileges to a family physician with obstetrics training or experience; and

(B) developing and implementing a plan for responding to obstetrical emergencies that require services or procedures outside the scope of privileges granted to the family physician described by Paragraph (A);

(11) clarifying that, regardless of a hospital's level of care designation, a health care provider at a designated facility or hospital may provide the full range of health care services:

(A) that the provider is authorized to provide under state law; and

(B) for which the hospital has granted privileges to the provider; and

(12) requiring the department to provide to each hospital that receives a level of care designation a written explanation of

the basis for the designation, including, as applicable, specific reasons that prevented the hospital from receiving a higher level of care designation.

(b) The criteria for levels one through three of neonatal and maternal care adopted under Subsection (a)(2) may not include requirements related to the number of patients treated at a hospital.

(c) The commission shall study patient transfers that are not medically necessary but would be cost-effective. Based on the study under this subsection, if the executive commissioner determines that the transfers are feasible and desirable, the executive commissioner may adopt rules addressing those transfers.

(d) Each level of care designation must require a hospital to regularly submit outcome and other data to the department as required or requested.

(e) The criteria a hospital must achieve to receive each level of care designation must be posted on the department's Internet website.

Added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0587, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 600 (S.B. 749), Sec. 1, eff. June 10, 2019.

Sec. 241.1835. USE OF TELEMEDICINE MEDICAL SERVICES. (a) In this section, "telemedicine medical service" has the meaning assigned by Section 111.001, Occupations Code.

(b) The rules adopted under Section 241.183 must allow the use of telemedicine medical services by a physician providing on-call services to satisfy certain requirements identified by the executive commissioner in the rules for a Level I, II, or III level of care designation.

(c) In identifying a requirement for a level of care designation that may be satisfied through the use of telemedicine medical services under Subsection (b), the executive commissioner, in consultation with the department, physicians of appropriate specialties, statewide medical, nursing, and hospital associations,

and other appropriate interested persons, must ensure that the provision of a service or procedure through the use of telemedicine medical services is in accordance with the standard of care applicable to the provision of the same service or procedure in an in-person setting.

(d) Telemedicine medical services must be administered under this section by a physician licensed to practice medicine under Subtitle B, Title 3, Occupations Code.

(e) This section does not waive other requirements for a level of care designation.

Added by Acts 2019, 86th Leg., R.S., Ch. 600 (S.B. 749), Sec. 2, eff. June 10, 2019.

Sec. 241.1836. APPEAL PROCESS. (a) The rules adopted under Section 241.183 establishing level of care designations for hospitals must allow a hospital to appeal a level of care designation to a three-person panel that includes:

(1) a representative of the department;

(2) a representative of the commission; and

(3) an independent person who:

(A) has expertise in the specialty area for which the hospital is seeking a level of care designation;

(B) is not an employee of or affiliated with either the department or the commission; and

(C) does not have a conflict of interest with the hospital, department, or commission.

(b) The independent person on the panel described by Subsection (a) must rotate after each appeal from a list of five to seven similarly qualified persons. The department shall solicit persons to be included on the list. A person must apply to the department on a form prescribed by the department and be approved by the commissioner to be included on the list.

Added by Acts 2019, 86th Leg., R.S., Ch. 600 (S.B. 749), Sec. 2, eff. June 10, 2019.

Sec. 241.1837. PATIENT SAFETY PRACTICES REGARDING PLACENTA ACCRETA SPECTRUM DISORDER. (a) In this section:

(1) "Placenta accreta spectrum disorder" includes placenta accreta, placenta increta, and placenta percreta.

(2) "Telemedicine medical service" has the meaning assigned by Section 111.001, Occupations Code.

(b) The executive commissioner, in consultation with the department, the Perinatal Advisory Council established under Section 241.187, and other interested persons described by Subsection (c), shall by rule develop patient safety practices for the evaluation, diagnosis, treatment, and management of placenta accreta spectrum disorder.

(c) In adopting the patient safety practices under Subsection (b), the executive commissioner must consult with:

(1) physicians and other health professionals who practice in the evaluation, diagnosis, treatment, and management of placenta accreta spectrum disorder;

(2) health researchers with expertise in placenta accreta spectrum disorder;

(3) representatives of patient advocacy organizations; and

(4) other interested persons.

(d) The patient safety practices developed under Subsection (b) must, at a minimum, require a hospital assigned a maternal level of care designation under Section 241.182 to:

(1) screen patients for placenta accreta spectrum disorder, if appropriate;

(2) manage patients with placenta accreta spectrum disorder, including referring and transporting patients to a higher level of care when clinically indicated;

(3) foster telemedicine medical services, referral, and transport relationships with other hospitals assigned a maternal level of care designation under Section 241.182 for the treatment and management of placenta accreta spectrum disorder;

(4) address inpatient postpartum care for patients diagnosed with placenta accreta spectrum disorder; and

(5) develop a written hospital preparedness and management plan for patients with placenta accreta spectrum disorder who are undiagnosed until delivery, including educating hospital and medical staff who may be involved in the treatment and management of placenta accreta spectrum disorder.

(e) In addition to implementing the patient safety practices required by Subsection (d), a hospital assigned a level IV maternal

designation shall have available a multidisciplinary team of health professionals who participate in continuing staff and team-based education and training to care for patients with placenta accreta spectrum disorder.

(f) The team of health professionals described by Subsection (e) may include anesthesiologists, obstetricians/gynecologists, urologists, surgical specialists, interventional radiologists, and other health professionals who are timely available on urgent request to assist in attending to a patient with placenta accreta spectrum disorder.

(g) The Perinatal Advisory Council, using data collected by the department from available sources related to placenta accreta spectrum disorder, shall recommend rules on patient safety practices for the evaluation, diagnosis, treatment, management, and reporting of placenta accreta spectrum disorder. The rules adopted under this subsection from the council's recommendations must be included in the patient safety practices a hospital assigned a maternal level of care designation under Section 241.182 is required to adopt under Subsection (d).

(h) Notwithstanding any other law, this section, including the use of or failure to use any patient safety practices, information, or materials developed or disseminated under this section, does not create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides a basis for a cause of action, and may not be referred to or used as evidence in a health care liability claim under Chapter 74, Civil Practice and Remedies Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 648 (H.B. 1164), Sec. 1, eff. September 1, 2021.

Sec. 241.184. CONFIDENTIALITY; PRIVILEGE. (a) All information and materials submitted by a hospital to the department under Section 241.183(d) are confidential and:

(1) are not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person; and

(2) may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

(b) The confidentiality protections under Subsection (a) apply without regard to whether the information or materials are submitted by a hospital or an entity that has an ownership or management interest in a hospital.

(c) A state employee or officer may not be examined in a civil, criminal, or special proceeding, or any other proceeding, regarding the existence or contents of information or materials submitted to the department under Section 241.183(d).

(d) The submission of information or materials under Section 241.183(d) is not a waiver of a privilege or protection granted under law.

(e) The provisions of this section regarding the confidentiality of information or materials submitted by a hospital in compliance with Section 241.183(d) do not restrict access, to the extent authorized by law, by the patient or the patient's legally authorized representative to records of the patient's medical diagnosis or treatment or to other primary health records.

(f) A department summary or disclosure, including an assignment of a level of care designation, may not contain information identifying a patient, employee, contractor, volunteer, consultant, health care practitioner, student, or trainee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, eff. September 1, 2013.

Sec. 241.185. ASSIGNMENT OF LEVEL OF CARE DESIGNATION. (a) The executive commissioner, in consultation with the department, shall assign the appropriate level of care designation to each hospital that meets the minimum standards for that level of care. The executive commissioner shall evaluate separately the neonatal and maternal services provided at the hospital and assign the respective level of care designations accordingly.

(b) Every three years, the executive commissioner and the department shall review the level of care designations assigned to each hospital and, as necessary, assign a hospital a different level of care designation or remove the hospital's level of care designation.

(c) A hospital may request a change of designation at any time. On request under this subsection, the executive commissioner and the

department shall review the hospital's request and, as necessary, change the hospital's level of care designation.

Added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, eff. September 1, 2013.

Sec. 241.186. HOSPITAL NOT DESIGNATED. A hospital that does not meet the minimum requirements for any level of care designation for neonatal or maternal services:

(1) may not receive a level of care designation for those services; and

(2) is not eligible to receive reimbursement through the Medicaid program for neonatal or maternal services, as applicable, except emergency services required to be provided or reimbursed under state or federal law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, eff. September 1, 2013.

Sec. 241.1865. WAIVER FROM LEVEL OF CARE DESIGNATION REQUIREMENTS; CONDITIONAL DESIGNATION. (a) The department shall develop and implement a process through which a hospital may request and enter into an agreement with the department to:

(1) receive or maintain a level of care designation for which the hospital does not meet all requirements conditioned on the hospital, in accordance with a plan approved by the department and outlined under the agreement, satisfying all requirements for the level of care designation within a time specified under the agreement, which may not exceed the first anniversary of the effective date of the agreement; or

(2) waive one specific requirement for a level of care designation in accordance with Subsection (c).

(b) The process developed and implemented under this section must:

(1) subject to Subdivision (2), allow a hospital to submit a written request under Subsection (a) at any time;

(2) require a hospital to:

(A) before submitting the request, provide notice of the hospital's intention to seek a waiver under this section to the

hospital's medical staff who practice in a specialty service area affected by the waiver;

(B) provide the notice required by Paragraph (A) in accordance with the hospital's process for communicating information to medical staff; and

(C) document the provision of the notice required by Paragraph (A); and

(3) allow the department to make a determination on the request at any time.

(c) The department may enter into an agreement with a hospital to waive a requirement under Subsection (a)(2) only if the department determines the waiver is justified after considering:

(1) the expected impact on:

(A) the accessibility of care in the geographical area served by the hospital if the waiver is not granted; and

(B) quality of care and patient safety; or

(2) whether health care services related to the requirement can be provided through telemedicine medical services under Section 241.1835.

(d) A waiver agreement entered into under Subsection (a):

(1) must expire not later than at the end of each designation cycle but may be renewed on expiration by the department under the same or different terms; and

(2) may specify any conditions for ongoing reporting and monitoring during the agreement.

(e) A hospital that enters into a waiver agreement under Subsection (a) is required to satisfy all other requirements for a level of care designation that are not waived in the agreement.

(f) The department shall post on the department's Internet website and periodically update:

(1) a list of hospitals that enter into an agreement with the department under this section; and

(2) an aggregated list of the requirements conditionally met or waived in agreements entered into under this section.

(g) A hospital that enters into an agreement with the department under this section shall post on the hospital's Internet website the nature and general terms of the agreement.

Added by Acts 2019, 86th Leg., R.S., Ch. 600 (S.B. 749), Sec. 2, eff. June 10, 2019.

Sec. 241.187. PERINATAL ADVISORY COUNCIL. (a) In this section, "advisory council" means the Perinatal Advisory Council established under this section.

(b) The advisory council consists of 19 members appointed by the executive commissioner as follows:

(1) four physicians licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in neonatology:

(A) at least two of whom practice in a Level III or IV neonatal intensive care unit; and

(B) at least one of whom practices in a neonatal intensive care unit of a hospital located in a rural area;

(2) one physician licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in general pediatrics;

(3) two physicians licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in obstetrics-gynecology;

(4) two physicians licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in maternal fetal medicine;

(5) two physicians licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in family practice who provide obstetrical care in a rural community, at least one of whom must provide such care at a hospital that has 50 or fewer patient beds and that is:

(A) located in a county with a population of 60,000 or less; or

(B) designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital;

(6) one registered nurse licensed under Subtitle E, Title 3, Occupations Code, with expertise in maternal health care delivery;

(7) one registered nurse licensed under Subtitle E, Title 3, Occupations Code, with expertise in perinatal health care delivery;

(8) one representative from a children's hospital;

(9) one representative from a hospital with a Level II neonatal intensive care unit;

(10) two representatives from a rural hospital, at least one of whom must be an administrative representative from a hospital that has 50 or fewer patient beds and that is:

(A) located in a county with a population of 60,000 or less; or

(B) designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital;

(11) one representative from a general hospital; and

(12) one ex officio representative from the office of the medical director of the Health and Human Services Commission.

(c) To the extent possible, the executive commissioner shall appoint members to the advisory council who previously served on the Neonatal Intensive Care Unit Council established under Chapter 818 (H.B. 2636), Acts of the 82nd Legislature, Regular Session, 2011.

(d) Members of the advisory council described by Subsections (b)(1)-(11) serve staggered three-year terms, with the terms of six of those members expiring September 1 of each year. A member may be reappointed to the advisory council.

(e) A member of the advisory council serves without compensation but is entitled to reimbursement for actual and necessary travel expenses related to the performance of advisory council duties.

(f) The department, with recommendations from the advisory council, shall develop a process for the designation and updates of levels of neonatal and maternal care at hospitals in accordance with this subchapter.

(g) The advisory council shall:

(1) develop and recommend criteria for designating levels of neonatal and maternal care, respectively, including specifying the minimum requirements to qualify for each level designation;

(2) develop and recommend a process for the assignment of levels of care to a hospital for neonatal and maternal care, respectively;

(3) make recommendations for the division of the state into neonatal and maternal care regions;

(4) examine utilization trends relating to neonatal and maternal care; and

(5) make recommendations related to improving neonatal and maternal outcomes.

(h) In developing the criteria for the levels of neonatal and maternal care, the advisory council shall consider:

(1) any recommendations or publications of the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists, including "Guidelines for Perinatal Care";

(2) any guidelines developed by the Society of Maternal-Fetal Medicine;

(3) the geographic and varied needs of citizens of this state; and

(4) the patient safety practices adopted under Section 241.1837.

(i) In developing the criteria for designating levels one through three of neonatal and maternal care, the advisory council may not consider the number of patients treated at a hospital.

(j) The advisory council shall submit a report detailing the advisory council's determinations and recommendations to the department and the executive commissioner not later than September 1, 2016.

(k) The advisory council shall continue to update its recommendations based on any relevant scientific or medical developments.

Text of subsection as amended by Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 4.07

(l) The advisory council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the advisory council is abolished and this section expires September 1, 2027.

Text of subsection as amended by Acts 2019, 86th Leg., R.S., Ch. 600 (S.B. 749), Sec. 3

(l) The advisory council is subject to Chapter 325, Government Code (Texas Sunset Act). The advisory council shall be reviewed during the period in which the Department of State Health Services is reviewed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 583 (H.B. 3433), Sec. 1, eff. June 16, 2015.

Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 4.07, eff.

June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 600 (S.B. 749), Sec. 3, eff. June 10, 2019.

Acts 2021, 87th Leg., R.S., Ch. 648 (H.B. 1164), Sec. 2, eff. September 1, 2021.

SUBCHAPTER I. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES ASSOCIATED WITH LICENSED HOSPITALS

Sec. 241.201. APPLICABILITY. This subchapter applies only to a freestanding emergency medical care facility, as that term is defined by Section 254.001, that is exempt from the licensing requirements of Chapter 254 under Section 254.052(7) or (8).

Added by Acts 2013, 83rd Leg., R.S., Ch. 917 (H.B. 1376), Sec. 1, eff. September 1, 2013.
Redesignated from Health and Safety Code, Section 241.181 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(32), eff. September 1, 2015.

Sec. 241.202. ADVERTISING. A facility described by Section 241.201:

(1) may not advertise or hold itself out as a medical office, facility, or provider other than an emergency room if the facility charges for its services the usual and customary rate charged for the same service by a hospital emergency room in the same region of the state or located in a region of the state with comparable rates for emergency health care services; and

(2) must comply with the regulations in Section 254.157.

Added by Acts 2013, 83rd Leg., R.S., Ch. 917 (H.B. 1376), Sec. 1, eff. September 1, 2013.
Redesignated by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(32), eff. September 1, 2015.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.002(12), eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 2, eff. September 1, 2019.

Sec. 241.204. ADMINISTRATIVE PENALTY. The department may assess an administrative penalty under Section 241.059 against a hospital that violates this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 917 (H.B. 1376), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0589, eff. April 2, 2015.
Redesignated from Health and Safety Code, Section 241.184 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(32), eff. September 1, 2015.

Sec. 241.205. DISCLOSURE STATEMENT REQUIRED. A facility described by Section 241.201 shall comply with Section 254.156.

Added by Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 3, eff. September 1, 2019.

SUBCHAPTER I-1. PRICES AND FEES CHARGED BY FREESTANDING EMERGENCY MEDICAL CARE FACILITIES ASSOCIATED WITH CERTAIN HOSPITALS

Sec. 241.221. APPLICABILITY. (a) This subchapter applies only to a freestanding emergency medical care facility, as that term is defined by Section 254.001, that is:

(1) exempt from the licensing requirements of Chapter 254 under Section 254.052(5), (7), or (8); and

(2) associated with a hospital licensed under this chapter that does not meet the conditions of participation for certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.).

(b) This subchapter does not apply to a freestanding emergency medical care facility associated with a hospital licensed under this chapter that:

(1) has been operating as a hospital for less than one year;

(2) has submitted an application to a federally recognized accreditation program for certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.); and

(3) has not failed an accreditation for certification.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 1, eff. September 1, 2021.

Sec. 241.222. CERTAIN FEES PROHIBITED. (a) A facility described by Section 241.221 that provides a health care service, including testing or vaccination, to an individual accessing the service from the individual's vehicle may not charge the individual or a third-party payor a facility or observation fee.

(b) This section may not be construed as expanding the type of health care services a facility described by Section 241.221 is authorized to provide.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 1, eff. September 1, 2021.

Sec. 241.223. DISCLOSURE OF CERTAIN PRICES AND FEES DURING DECLARED DISASTER; CONSTRUCTION. (a) A facility described by Section 241.221 that provides testing or vaccination for an infectious disease for which a state of disaster has been declared under Chapter 418, Government Code, shall disclose to each patient the prices the facility charges for the test or vaccine and any facility fees, supply costs, and other costs associated with the test or vaccine in accordance with the disclosure requirements described by Section 254.156, as added by Chapter 1093 (H.B. 2041), Acts of the 86th Legislature, Regular Session, 2019.

(b) This section may not be construed as expanding the type of health care services a facility described by Section 241.221 is authorized to provide.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 1, eff. September 1, 2021.

Sec. 241.224. PROHIBITED PRICING PRACTICES DURING DECLARED STATE OF DISASTER. (a) In this section, "unconscionable price" means a price that is more than 200 percent of the average price for the same or a substantially similar product or service provided to other individuals by health care facilities located in the same county or nearest county to the county in which the facility

described by Section 241.221 is located, as applicable, according to data collected by the department under Chapter 108.

(b) During a state of disaster declared by the governor under Chapter 418, Government Code, a facility described by Section 241.221 may not:

(1) charge an individual an unconscionable price for a product or service provided at the facility; or

(2) knowingly or intentionally charge a third-party payor, including a health benefit plan insurer, a price higher than the price charged to an individual for the same product or service based on the payor's liability for payment or partial payment of the product or service.

(c) Subsection (b)(2) does not prohibit a facility described by Section 241.221 from:

(1) offering an uninsured individual a cash discount for a particular product or service; or

(2) accepting directly from an individual full payment for a health care product or service in lieu of submitting a claim to the individual's health benefit plan.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 1, eff. September 1, 2021.

Sec. 241.225. ENFORCEMENT. Notwithstanding any conflicting provision in this subchapter and except for good cause shown, the commission shall impose the following penalty on a person licensed under this chapter who violates Section 241.224 or a rule adopted under that section:

(1) for the first violation, an administrative penalty in an amount equal to $10,000;

(2) for the second violation:

(A) an administrative penalty in an amount equal to $50,000; and

(B) a suspension of the person's license for 30 days; and

(3) for the third violation, a permanent revocation of the person's license.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 1, eff. September 1, 2021.

SUBCHAPTER J. NOTICE OF FACILITY FEES IN CERTAIN FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

Sec. 241.251. APPLICABILITY. This subchapter applies only to a freestanding emergency medical care facility, as that term is defined by Section 254.001, that is exempt from the licensing requirements of Chapter 254 under Section 254.052(8).

Added by Acts 2015, 84th Leg., R.S., Ch. 185 (S.B. 425), Sec. 1, eff. September 1, 2015.

Sec. 241.252. NOTICE OF FEES. (a) In this section, "provider network" has the meaning assigned by Section 1456.001, Insurance Code.

(b) A facility described by Section 241.251 shall post notice that:

(1) states:

(A) the facility is a freestanding emergency medical care facility;

(B) the facility charges rates comparable to a hospital emergency room and may charge a facility fee;

(C) a facility or a physician providing medical care at the facility may not be a participating provider in the patient's health benefit plan provider network; and

(D) a physician providing medical care at the facility may bill separately from the facility for the medical care provided to a patient; and

(2) either:

(A) lists the health benefit plans in which the facility is a participating provider in the health benefit plan's provider network; or

(B) states the facility is not a participating provider in any health benefit plan provider network.

(c) The notice required by this section must be posted prominently and conspicuously:

(1) at the primary entrance to the facility;

(2) in each patient treatment room;

(3) at each location within the facility at which a person

pays for health care services; and

(4) on the facility's Internet website.

(d) The notice required by Subsections (c)(1), (2), and (3) must be in legible print on a sign with dimensions of at least 8.5 inches by 11 inches.

(e) Notwithstanding Subsection (c), a facility that is a participating provider in one or more health benefit plan provider networks complies with Subsection (b)(2) if the facility:

(1) provides notice on the facility's Internet website listing the health benefit plans in which the facility is a participating provider in the health benefit plan's provider network; and

(2) provides to a patient written confirmation of whether the facility is a participating provider in the patient's health benefit plan's provider network.

Added by Acts 2015, 84th Leg., R.S., Ch. 185 (S.B. 425), Sec. 1, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 175 (H.B. 3276), Sec. 1, eff. September 1, 2017.

SUBCHAPTER K. LIMITED SERVICES RURAL HOSPITAL

Sec. 241.301. DEFINITION. In this subchapter, "limited services rural hospital" means a general or special hospital that is or was licensed under this chapter and that:

(1) is:

(A) located in a rural area, as defined by:

(i) commission rule; or

(ii) 42 U.S.C. Section 1395ww(d)(2)(D); or

(B) designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital; and

(2) otherwise meets the requirements to be designated as a limited services rural hospital or a similarly designated hospital under federal law for purposes of a payment program described by Section 241.302(a)(1).

Added by Acts 2019, 86th Leg., R.S., Ch. 560 (S.B. 1621), Sec. 1, eff. September 1, 2019.

Sec. 241.302. LICENSE REQUIRED. (a) A person may not establish, conduct, or maintain a limited services rural hospital unless:

(1) the United States Congress passes a bill creating a payment program specifically for limited services rural hospitals or similarly designated hospitals that becomes law; and

(2) the commission issues a license to the person to establish, conduct, or maintain a limited services rural hospital under this subchapter.

(b) If the United States Congress enacts a bill described by Subsection (a)(1) that becomes law, the executive commissioner shall adopt rules:

(1) establishing minimum standards for the facilities; and

(2) implementing this section.

(c) The standards adopted under Subsection (b) must be at least as stringent as the standards established in the law described by Subsection (a) for eligibility to qualify for a payment program established by the law.

(d) An applicant for a license under this section must:

(1) submit an application for the license to the commission in a form and manner prescribed by the commission; and

(2) pay any required fee.

(e) The commission shall issue a license to act as a limited services rural hospital under this subchapter if the applicant complies with the rules and standards adopted under this section.

(f) The commission by order may waive or modify the requirement of a particular provision of this chapter or a standard adopted under this section if the commission determines that the waiver or modification will facilitate the creation or operation of the facility and that the waiver or modification is in the best interests of the individuals served or to be served by the facility. Sections 241.026(d) and (e) apply to a waiver or modification under this section for a limited services rural hospital in the same manner as the subsections apply to a waiver or modification for a hospital.

(g) A provision of this chapter related to the enforcement authority of the commission applies to a limited services rural hospital.

Added by Acts 2019, 86th Leg., R.S., Ch. 560 (S.B. 1621), Sec. 1, eff. September 1, 2019.

Sec. 241.303. LICENSING FEE. (a) The executive commissioner by rule shall establish and the commission shall collect a fee for issuing and renewing a license under this subchapter that is in an amount reasonable and necessary to cover the costs of administering and enforcing this subchapter.

(b) All fees collected under this section shall be deposited in the state treasury to the credit of the commission to administer and enforce this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 560 (S.B. 1621), Sec. 1, eff. September 1, 2019.

SUBCHAPTER L. LIMITATION ON CIVIL LIABILITY OF CHILDREN'S ISOLATION UNITS

Sec. 241.351. DEFINITION. In this subchapter, "children's isolation unit" means an isolation unit in a hospital licensed under this chapter that is designed to provide health care services to children with highly contagious infectious diseases.

Added by Acts 2021, 87th Leg., R.S., Ch. 676 (H.B. 1914), Sec. 1, eff. September 1, 2021.

Sec. 241.352. LIMITATION ON CIVIL LIABILITY OF CHILDREN'S ISOLATION UNIT. A children's isolation unit that has instituted isolation protocols is not liable for any claim, damage, or loss arising from the provision of health care services to children with highly contagious diseases, unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence or wilful misconduct.

Added by Acts 2021, 87th Leg., R.S., Ch. 676 (H.B. 1914), Sec. 1, eff. September 1, 2021.

SUBCHAPTER M. HOSPITAL AT HOME PROGRAM

Sec. 241.401. DEFINITIONS. In this subchapter:

(1) "Acute hospital care at home waiver program" means:

(A) the program established by the Centers for Medicare and Medicaid Services under 42 U.S.C. Section 1320b-5 that waives the requirements of 42 C.F.R. Sections 482.23(b) and (b)(1); and

(B) a successor program to the program described by Paragraph (A) that is established by the United States Congress or the Centers for Medicare and Medicaid Services.

(2) "Hospital at home program" means a program operated by a hospital to provide in a home setting health care services that are considered to be acute hospital care for purposes of the acute hospital care at home waiver program.

Added by Acts 2023, 88th Leg., R.S., Ch. 232 (H.B. 1890), Sec. 1, eff. May 27, 2023.

Sec. 241.402. APPROVAL REQUIRED. A hospital may not operate a hospital at home program unless the hospital is approved to operate the program by:

(1) the Centers for Medicare and Medicaid Services; and

(2) the commission under this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 232 (H.B. 1890), Sec. 1, eff. May 27, 2023.

Sec. 241.403. MINIMUM STANDARDS. (a) The executive commissioner shall adopt rules establishing minimum standards for the operation of a hospital at home program by a hospital.

(b) The standards established under Subsection (a) must be at least as stringent as the standards established by the Centers for Medicare and Medicaid Services under the acute hospital care at home waiver program.

Added by Acts 2023, 88th Leg., R.S., Ch. 232 (H.B. 1890), Sec. 1, eff. May 27, 2023.

Sec. 241.404. APPLICATION; APPROVAL. (a) An applicant for approval to operate a hospital at home program under this subchapter

must:

(1) submit an application to the commission in the form and manner prescribed by the commission; and

(2) pay a fee in the amount set by the commission under Section 241.405.

(b) The commission shall approve an application submitted by an applicant under Subsection (a) of this section if the applicant meets the standards established under Section 241.403 and satisfies the requirements of this section.

(c) The commission may request that an applicant provide additional information necessary to determine whether the applicant meets the standards established under Section 241.403 after the applicant has submitted an application.

Added by Acts 2023, 88th Leg., R.S., Ch. 232 (H.B. 1890), Sec. 1, eff. May 27, 2023.

Sec. 241.405. FEE. (a) The commission may establish a fee to be assessed for the consideration of an application submitted under this subchapter.

(b) The commission must set the fee in an amount that is reasonable and necessary to cover the costs of administering this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 232 (H.B. 1890), Sec. 1, eff. May 27, 2023.

Sec. 241.406. WAIVER OF REQUIREMENTS. (a) The commission by order may waive or modify a requirement of a particular provision of this subchapter or a standard established under this subchapter if the commission determines that the waiver or modification:

(1) will facilitate a hospital's creation or operation of a hospital at home program; and

(2) is in the best interests of the individuals who are or will be served by the hospital's hospital at home program.

(b) Sections 241.026(d) and (e) apply to a waiver or modification under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 232 (H.B. 1890), Sec. 1, eff.

May 27, 2023.

CHAPTER 242. CONVALESCENT AND NURSING FACILITIES AND RELATED INSTITUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 242.001. SCOPE, PURPOSE, AND IMPLEMENTATION. (a) It is the goal of this chapter to ensure that institutions in this state deliver the highest possible quality of care. This chapter, and the rules and standards adopted under this chapter, establish minimum acceptable levels of care. A violation of a minimum acceptable level of care established under this chapter or a rule or standard adopted under this chapter is forbidden by law. Each institution licensed under this chapter shall, at a minimum, provide quality care in accordance with this chapter and the rules and standards. Components of quality of care addressed by these rules and standards include:

(1) quality of life;

(2) access to care;

(3) continuity of care;

(4) comprehensiveness of care;

(5) coordination of services;

(6) humaneness of treatment;

(7) conservatism in intervention;

(8) safety of the environment;

(9) professionalism of caregivers; and

(10) participation in useful studies.

(b) The rules and standards adopted under this chapter may be more stringent than the standards imposed by federal law for certification for participation in the state Medicaid program. The rules and standards may not be less stringent than the Medicaid certification standards imposed under the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub.L. No. 100-203.

(c) The rules and standards adopted under this chapter apply to each licensed institution. The rules and standards are intended for use in state surveys of the facilities and any investigation and enforcement action and are designed to be useful to consumers and providers in assessing the quality of care provided in an institution.

(d) The legislature finds that the construction, maintenance, and operation of institutions shall be regulated in a manner that

protects the residents of the institutions by:

(1) providing the highest possible quality of care;

(2) strictly monitoring all factors relating to the health, safety, welfare, and dignity of each resident;

(3) imposing prompt and effective remedies for noncompliance with licensing standards; and

(4) providing the public with information concerning the operation of institutions in this state.

(e) It is the legislature's intent that this chapter accomplish the goals listed in Subsection (d).

(f) This chapter shall be construed broadly to accomplish the purposes set forth in this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the commissioner of aging and disability services.

(3) "Controlling person" means a person who controls an institution or other person as described by Section 242.0021.

(4) "Department" means the Department of Aging and Disability Services.

(5) "Elderly person" means an individual who is 65 years of age or older.

(5-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "Facility" means an institution.

(7) "Governmental unit" means the state or a political subdivision of the state, including a county or municipality.

(8) "Home" means an institution.

(9) "Hospital" has the meaning assigned by Chapter 241 (Texas Hospital Licensing Law).

(10) "Institution" means an establishment that:

(A) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment; and

(B) provides minor treatment under the direction and supervision of a physician licensed by the Texas Medical Board, or other services that meet some need beyond the basic provision of food, shelter, and laundry.

(11) "Person" means an individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity and includes a legal successor of those entities.

(12) "Resident" means an individual, including a patient, who resides in an institution.

(13) "Retaliate" means an adverse action by the commission in response to a good faith action by a nursing facility responding to a commission decision negatively affecting the nursing facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 30, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 747, Sec. 23, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), 8.084, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 693, Sec. 2, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1159, Sec. 1.02, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 404 (S.B. 870), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 1, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0591, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 195 (S.B. 2269), Sec. 2, eff. September 1, 2025.

Sec. 242.0021. CONTROLLING PERSON. (a) A person is a controlling person if the person has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an institution or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company, landlord, or other business entity that operates or contracts with others for the operation of an

institution;

(2) any person who is a controlling person of a management company or other business entity that operates an institution or that contracts with another person for the operation of an institution; and

(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an institution, is in a position of actual control or authority with respect to the institution, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(b-1) Notwithstanding any other provision of this section, for purposes of this chapter, a controlling person of an institution or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

(c) A controlling person described by Subsection (b)(3) does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of an institution.

(d) The executive commissioner may adopt rules that define the ownership interests and other relationships that qualify a person as a controlling person.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.03, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0592, eff. April 2, 2015.

Sec. 242.003. EXEMPTIONS. Except as otherwise provided, this chapter does not apply to:

(1) a hotel or other similar place that furnishes only food, lodging, or both, to its guests;

(2) a hospital;

(3) an establishment conducted by or for the adherents of a well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing, without the use of any drug or material remedy, if the establishment complies with safety, sanitary, and quarantine laws and rules;

(4) an establishment that furnishes, in addition to food, shelter, and laundry, only baths and massages;

(5) an institution operated by a person licensed by the Texas Board of Chiropractic Examiners;

(6) a facility that:

(A) primarily engages in training, habilitation, rehabilitation, or education of clients or residents;

(B) is operated under the jurisdiction of a state or federal agency, including the commission, department, Department of Assistive and Rehabilitative Services, Department of State Health Services, Texas Department of Criminal Justice, and United States Department of Veterans Affairs; and

(C) is certified through inspection or evaluation as meeting the standards established by the state or federal agency;

(7) a foster care type residential facility that serves fewer than five persons and operates under rules adopted by the executive commissioner; and

(8) a facility licensed under Chapter 252 or exempt from licensure under Section 252.003.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 88, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 693, Sec. 3, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.093, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0593, eff. April 2, 2015.

Sec. 242.005. PERFORMANCE REPORTS. (a) The department shall prepare annually a full report of the operation and administration of the department's responsibilities under this chapter, including

recommendations and suggestions considered advisable.

(b) The Legislative Budget Board and the state auditor shall jointly prescribe the form and content of reports required under this section, provided, however, that the state auditor's participation under this section is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c), Government Code.

(c) The department shall submit the required report to the governor and the legislature not later than March 1 of each year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.04, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 785, Sec. 68, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 2.01, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 990 (H.B. 1781), Sec. 7, eff. June 17, 2011.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.26, eff. September 1, 2019.

Sec. 242.006. DIRECTORY OF LICENSED INSTITUTIONS. (a) The department shall prepare and publish annually a directory of all licensed institutions.

(b) The directory must contain:

(1) the name and address of the institution;

(2) the name of the proprietor or sponsoring organization; and

(3) other pertinent data that the department considers useful and beneficial to those persons interested in institutions operated in accordance with this chapter.

(c) The department shall make copies of the directory available to the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.007. CONSULTATION AND COOPERATION. (a) Whenever possible, the department shall use the services of and consult with state and local agencies in carrying out its responsibility under

this chapter.

(b) The department may cooperate with local public health officials of a county or municipality in carrying out this chapter and may delegate to those officials the power to make inspections and recommendations to the department in accordance with this chapter.

(c) The department may coordinate its personnel and facilities with a local agency of a municipality or county and may provide advice to the municipality or county if the municipality or county decides to supplement the state program with additional rules required to meet local conditions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.085, eff. Sept. 1, 1995.

Sec. 242.008. EMPLOYMENT OF PERSONNEL. The department may employ the personnel necessary to administer this chapter properly.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.009. FEDERAL FUNDS. The department may accept and use any funds allocated by the federal government to the department for administrative expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.010. CHANGE OF ADMINISTRATORS. An institution that hires a new administrator or person designated as chief manager shall:

(1) notify the department in writing not later than the 30th day after the date on which the change becomes effective; and

(2) pay a $20 administrative fee to the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.011. LANGUAGE REQUIREMENTS PROHIBITED. An institution may not prohibit a resident or employee from communicating in the person's native language with another resident or employee for the

purpose of acquiring or providing medical treatment, nursing care, or institutional services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.013. PAPERWORK REDUCTION RULES. (a) The executive commissioner shall adopt rules to reduce the amount of paperwork an institution must complete and retain.

(a-1) The department shall attempt to reduce the amount of paperwork to the minimum amount required by state and federal law unless the reduction would jeopardize resident safety.

(b) The department and providers shall work together to review rules and propose changes in paperwork requirements so that additional time is available for direct resident care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.086, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0594, eff. April 2, 2015.

Sec. 242.014. PROHIBITION OF REMUNERATION. (a) An institution may not receive monetary or other remuneration from a person or agency that furnishes services or materials to the institution or its occupants for a fee.

(b) The department may revoke the license of an institution that violates Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.015. LICENSED ADMINISTRATOR. (a) Each institution must have a licensed nursing facility administrator.

(b) The administrator shall:

(1) manage the institution;

(2) be responsible for:

(A) delivery of quality care to all residents; and

(B) implementation of the policies and procedures of the institution; and

(3) work at least 40 hours per week on administrative duties.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.05, eff. Sept. 1, 1997.

Sec. 242.016. FEES AND PENALTIES. Except as expressly provided by this chapter, a fee or penalty collected by or on behalf of the department under this chapter must be deposited to the credit of the general revenue fund and may be appropriated only to the department to administer and enforce this chapter. Investigation and attorney's fees may not be assessed or collected by or on behalf of the department or other state agency unless the department or other state agency assesses and collects a penalty described under this chapter.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.05, eff. Sept. 1, 1997.

Sec. 242.017. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTIONS. (a) The following are not admissible as evidence in a civil action:

(1) any finding by the department that an institution has violated this chapter or a rule adopted under this chapter; or

(2) the fact of the assessment of a penalty against an institution under this chapter or the payment of the penalty by an institution.

(b) This section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.

(c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if:

(1) the evidence relates to a material violation of this chapter or a rule adopted under this chapter or assessment of a monetary penalty with respect to:

(A) the particular incident and the particular individual whose personal injury is the basis of the claim being brought in the civil action; or

(B) a finding by the department that directly involves

substantially similar conduct that occurred at the institution within a period of one year before the particular incident that is the basis of the claim being brought in the civil action; and

(2) the evidence of a material violation has been affirmed by the entry of a final adjudicated and unappealable order of the department after formal appeal; and

(3) the record is otherwise admissible under the Texas Rules of Evidence.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 16.02, eff. Sept. 1, 2003.

Sec. 242.018. COMPLIANCE WITH CHAPTER 260A. (a) An institution shall comply with Chapter 260A and the rules adopted under that chapter.

(b) A person, including an owner or employee of an institution, shall comply with Chapter 260A and the rules adopted under that chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(e), eff. September 28, 2011.

Sec. 242.019. GUARDIANSHIP ORDERS. An institution shall make a reasonable effort to request a copy of any court order appointing a guardian of a resident or a resident's estate from the resident's nearest relative or the person responsible for the resident's support. An institution that receives a copy of a court order appointing a guardian of a resident or a resident's estate shall maintain a copy of the court order in the resident's medical records.

Added by Acts 2015, 84th Leg., R.S., Ch. 724 (H.B. 1337), Sec. 1, eff. September 1, 2015.

Sec. 242.020. CIVIL LIABILITY RELATED TO MISAPPROPRIATION OF RESIDENT'S FUNDS. (a) In this section:

(1) "Misappropriate" means the taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any real or personal property or

anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority.

(2) "Responsible payor" means a person who:

(A) has legal access to the resident's income or resources available to pay for nursing facility care; and

(B) has signed an admission agreement or other contract with the facility in which the person agrees to provide payment for the resident's facility care from the resident's income or resources.

(b) A nursing facility may file an action against a resident's responsible payor for an amount owed by the resident to the facility if:

(1) before admission of the resident, the facility obtains financial information from the resident or responsible payor demonstrating the amount of financial resources that the resident has available to pay for nursing facility care; and

(2) after the resident begins to reside at the facility, the responsible payor misappropriates the resident's resources to a degree that the resident is unable to afford to pay for the resident's care.

(c) A nursing facility may file an action for injunctive relief against a resident's responsible payor who engages in conduct described by Subsection (b). The court may grant any appropriate injunctive relief to prevent or abate the conduct, including a temporary restraining order, temporary injunction, or permanent injunction.

(d) Subject to Subsection (e), the prevailing party in an action filed under this section may recover attorney's fees.

(e) In an action filed under this section, a nursing facility may not recover a total amount, including damages and attorney's fees, that exceeds the amount the responsible payor has misappropriated from the resident.

Added by Acts 2021, 87th Leg., R.S., Ch. 2 (S.B. 270), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 242.031. LICENSE REQUIRED. A person or governmental unit, acting severally or jointly with any other person or governmental

unit, may not establish, conduct, or maintain an institution in this state without a license issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.032. LICENSE OR RENEWAL APPLICATION. (a) An application for a license or renewal of a license is made to the department on a form provided by the department and must be accompanied by the license fee.

(b) The application must contain information that the department requires.

(b-1) The application must:

(1) include the name of each person with a direct or indirect ownership interest of five percent or more in:

(A) the nursing facility, including a subsidiary or parent company of the facility; and

(B) the real property on which the nursing facility is located, including any owner, common owner, tenant, or sublessee; and

(2) describe the exact ownership interest of each of those persons in relation to the facility or property.

(c) The applicant or license holder must furnish evidence to affirmatively establish the applicant's or license holder's ability to comply with:

(1) minimum standards of medical care, nursing care, and financial condition; and

(2) any other applicable state or federal standard.

(d) The department shall consider the background and qualifications of:

(1) the applicant or license holder;

(2) a partner, officer, director, or managing employee of the applicant or license holder;

(3) a person who owns or who controls the owner of the physical plant of a facility in which the institution operates or is to operate; and

(4) a controlling person with respect to the institution for which a license or license renewal is requested.

(e) In making the evaluation required by Subsection (d), the department shall require the applicant or license holder to file a sworn affidavit of a satisfactory compliance history and any other

information required by the department to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant or license holder and any other person described by Subsection (d) operated an institution at any time before the date on which the application is made. The executive commissioner by rule shall determine what constitutes a satisfactory compliance history. The department may consider and evaluate the compliance history of the applicant and any other person described by Subsection (d) for any period during which the applicant or other person operated an institution in this state or in another state or jurisdiction. The department may also require the applicant or license holder to file information relating to the history of the financial condition of the applicant or license holder and any other person described by Subsection (d) with respect to an institution operated in another state or jurisdiction at any time before the date on which the application is made.

(f) Information obtained under this section regarding an applicant's or license holder's financial condition is confidential and may not be disclosed to the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.06, eff. Sept. 1, 1997. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 10, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 2.02, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 17, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0595, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 1135 (S.B. 457), Sec. 4, eff. September 1, 2025.

Sec. 242.033. ISSUANCE AND RENEWAL OF LICENSE. (a) After receiving an application for a license, the department shall issue the license if, after inspection and investigation, it finds that the applicant or license holder, and any other person described by Section 242.032(d), meet the requirements established under each

provision of this chapter and any rule or standard adopted under this chapter.

(b) The department may issue a license only for:

(1) the premises and persons or governmental unit named in the application; and

(2) the maximum number of beds specified in the application.

(c) A license may not be transferred or assigned.

(d) Except as provided by Subsection (f), a license is renewable every three years after:

(1) an inspection, unless an inspection is not required as provided by Section 242.047;

(2) payment of the license fee; and

(3) department approval of the report filed every three years by the licensee.

(e) The report required for license renewal under Subsection (d)(3) must comply with department rules that specify the date of submission of the report, the information it must contain, and its form.

(f) The initial license issued to a license holder who has not previously held a license under this subchapter is a probationary license. A probationary license is valid for only one year. At the end of the one-year period, a license under Subsection (a) shall be issued but only after:

(1) the department finds that the license holder and any other person described by Section 242.032(d) continue to meet the requirements established under each provision of this chapter and any rule or standard adopted under this chapter;

(2) an inspection, unless an inspection is not required as provided by Section 242.047;

(3) payment of the license fee; and

(4) department approval of the report required for license renewal that complies with rules adopted under Subsection (e).

(g) The executive commissioner by rule shall adopt a system under which an appropriate number of licenses issued by the department under this chapter expire on staggered dates occurring in each three-year period. If the expiration date of a license changes as a result of this subsection, the department shall prorate the licensing fee relating to that license as appropriate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 815, Sec. 1(a), eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1159, Sec. 1.07, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 512, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(a), eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0596, eff. April 2, 2015.

Sec. 242.0333. NOTIFICATION OF CHANGE TO OWNERSHIP INTEREST APPLICATION INFORMATION. A license holder shall notify the commission, in the form and manner the commission requires, of any change to the ownership interest application information provided under Section 242.032(b-1).

Added by Acts 2025, 89th Leg., R.S., Ch. 1135 (S.B. 457), Sec. 5, eff. September 1, 2025.

Sec. 242.0335. EXPEDITED ISSUANCE OF CHANGE OF OWNERSHIP LICENSE TO CERTAIN CURRENT LICENSE HOLDERS. (a) The department shall maintain, and keep current, a list of license holders that operate an institution in this state and that have excellent operating records according to the information available to the department. The executive commissioner by rule shall establish specific criteria for the department to designate a license holder as eligible for the list.

(b) The department shall establish a procedure under which a listed license holder may be granted expedited approval in obtaining a change of ownership license to operate another existing institution in this state. The procedure may involve allowing a listed license holder to submit an affidavit demonstrating that the license holder continues to meet the criteria for being listed and continues to meet the requirements described by Subsection (c).

(c) An applicant for a change of ownership license must meet all applicable requirements that an applicant for renewal of a license must meet under this subchapter, including under Section 242.032(d), and under rules adopted under this subchapter. Any

requirement relating to inspections or to an accreditation review applies only to institutions operated by the license holder at the time the application is made for the change of ownership license.

(d) Subsection (c) applies only to a license holder designated as eligible for and placed on the list maintained under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2001, 77th Leg., ch. 1284, Sec. 7.05, eff. June 15, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0597, eff. April 2, 2015.

Sec. 242.0336. TEMPORARY CHANGE OF OWNERSHIP LICENSE. (a) For purposes of this section, a temporary change of ownership license is a temporary 90-day license issued to an applicant who proposes to become the new operator of an institution existing on the date the application is filed.

(b) After receiving an application for a temporary change of ownership license, the department shall issue a temporary license to the applicant if, after investigation, the department finds that the applicant and any other person described by Section 242.032(d) meet:

(1) the requirements established under Section 242.032(c); and

(2) the department's standards for background and qualifications under Sections 242.032(d) and (e).

(b-1) Except as provided by Subsection (b-2), the department may not issue a temporary change of ownership license before the 31st day after the date the department has received both:

(1) the application for the license; and

(2) notification, in writing, of the intent of the institution's existing license holder to transfer operation of the institution to the applicant beginning on a date specified by the applicant.

(b-2) Notwithstanding Section 242.0335, the executive commissioner shall establish criteria under which the department may waive the 30-day requirement or the notification requirement of Subsection (b-1). The criteria may include the occurrence of

forcible entry and detainer, death, or divorce or other events that affect the ownership of the institution by the existing license holder.

(b-3) After receipt of an application or written notification described by Subsection (b-1), the department may place a hold on payments to the existing license holder in an amount not to exceed the average of the monthly vendor payments paid to the facility, as determined by the department. The department shall release funds to the previous license holder not later than the 120th day after the date on which the final reporting requirements are met and any resulting informal reviews or formal appeals are resolved. The department may reduce the amount of funds released to the previous license holder by the amount owed to the department or the commission under the previous license holder's Medicaid contract or license.

(b-4) The executive commissioner shall adopt rules for the department that define a change of ownership. In adopting the rules, the executive commissioner shall consider:

(1) the proportion of ownership interest that is being transferred to another person;

(2) the addition or removal of a stockholder, partner, owner, or other controlling person;

(3) the reorganization of the license holder into a different type of business entity; and

(4) the death or incapacity of a stockholder, partner, or owner.

(b-5) The executive commissioner may adopt rules for the department that require a license holder to notify the department of any change, including a change that is not a change of ownership, as that term is defined by rules adopted under Subsection (b-4). Nothing in this section prevents the department from acting under Section 242.061 or any other provision of this chapter.

(c) The department shall issue or deny a temporary change of ownership license not later than the 31st day after the date of receipt of the completed application. The effective date of a temporary change of ownership license issued under this section is the date requested in the application unless:

(1) the department does not receive the application and written notification described by Subsection (b-1) at least 30 days before that date; and

(2) no waiver under Subsection (b-2) applies.

(c-1) If the department does not receive the application and written notification required by Subsection (b-1) at least 30 days before the effective date requested in the application and Subsection (b-2) does not apply, the effective date of the temporary change of ownership license is the 31st day after the date the department receives both the application and the notification.

(d) Except as provided in Subsection (d-1), after the department issues a temporary change of ownership license to the applicant, the department shall conduct an inspection or survey of the nursing facility under Section 242.043 as soon as reasonably possible. During the period between the issuance of the temporary license and the inspection or survey of the nursing facility or desk review under Subsection (d-1), the department may not place a hold on vendor payments to the temporary license holder.

(d-1) The executive commissioner shall establish criteria under which the department may substitute a desk review of the facility's compliance with applicable requirements for the on-site inspection or survey under Subsection (d).

(e) After conducting an inspection or survey under Subsection (d) or a desk review under Subsection (d-1), the department shall issue a license under Section 242.033 to the temporary change of ownership license holder if the nursing facility passes the desk review, inspection, or survey and the applicant meets the requirements of Section 242.033. If the nursing facility fails to pass the desk review, inspection, or survey or the applicant fails to meet the requirements of Section 242.033, the department may:

(1) place a hold on vendor payments to the temporary change of ownership license holder; and

(2) take any other action authorized under this chapter.

(f) If the applicant meets the requirements of Section 242.033 and the nursing facility passes a desk review, initial inspection, or subsequent inspection before the temporary change of ownership license expires, the license issued under Section 242.033 is considered effective on the date the department determines under Subsection (c) or (c-1).

(g) A temporary change of ownership license issued under Subsection (b) expires on the 90th day after the effective date established under Subsection (c) or (c-1).

Added by Acts 2001, 77th Leg., ch. 14, Sec. 1, eff. Sept. 1, 2001.

Renumbered from Health & Safety Code Sec. 242.0335 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(91), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. 344), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0598, eff. April 2, 2015.

Sec. 242.034. LICENSE FEES. (a) The executive commissioner may establish by rule license fees for institutions licensed by the department under this chapter. The license fee may not exceed $375 plus:

(1) $15 for each unit of capacity or bed space for which a license is sought; and

(2) a background examination fee imposed under Subsection (d).

(b) The license fee for a probationary license issued under Section 242.033(f) may not exceed $125 plus:

(1) $5 for each unit of capacity or bed space for which the license is sought; and

(2) a background examination fee imposed under Subsection (d).

(c) An additional license fee may be charged as provided by Section 242.097.

(d) The executive commissioner by rule may establish a background examination fee in an amount necessary to defray the department's expenses in administering its duties under Sections 242.032(d) and (e).

(e) The applicable license fee must be paid with each application for a probationary license, an initial license, a renewal license, or a change of ownership license.

(f) The state is not required to pay the license fee.

(g) An approved increase in bed space is subject to an additional fee.

(h) The license fees established under this chapter are an allowable cost for reimbursement under the medical assistance program administered by the commission under Chapter 32, Human Resources Code. Any fee increases shall be reflected in reimbursement rates prospectively.

(i) An applicant for license renewal who submits an application later than the 45th day before the expiration date of a current license is subject to a late fee in accordance with department rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 815, Sec. 1(b), eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1159, Sec. 1.08, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 512, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 11, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1063 (H.B. 3196), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0599, eff. April 2, 2015.

Sec. 242.035. LICENSING CATEGORIES. (a) The department shall determine the rank of licensing categories.

(b) Unless prohibited by another state or federal requirement, the department shall allow a licensed institution to operate a portion of the institution under the standards of a lower licensing category. The executive commissioner shall establish procedures and standards to accommodate an institution's operation under the lower category.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0600, eff. April 2, 2015.

Sec. 242.036. GRADING. (a) The executive commissioner may adopt and publish and the department may enforce minimum standards relating to the grading of an institution in order to recognize those institutions that provide more than the minimum level of services and personnel as established by the executive commissioner.

(b) An institution that has a superior grade shall prominently display the grade for public view.

(c) As an incentive to attain the superior grade, an institution may advertise its grade, except that it may not advertise

a superior grade that has been canceled.

(d) The department may not award a superior grade to an institution that, during the year preceding the grading inspection, violated state or federal law, rules, or regulations relating to:

(1) the health, safety, or welfare of its residents;

(2) resident funds;

(3) the confidentiality of a resident's records;

(4) the financial practices of the institution; or

(5) the control of medication in the institution.

(e) The department shall cancel an institution's superior grade if the institution:

(1) does not meet the criteria established for a superior grade; or

(2) violates a state or federal law, rule, or regulation described by Subsection (d).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0601, eff. April 2, 2015.

Sec. 242.037. RULES; MINIMUM STANDARDS. (a) The executive commissioner shall make and the department shall enforce rules and minimum standards to implement this chapter, including rules and minimum standards relating to quality of life, quality of care, and residents' rights.

(b) The rules and standards adopted under this chapter may be more stringent than the standards imposed by federal law for certification for participation in the state Medicaid program.

(c) The rules and standards adopted by the executive commissioner may not be less stringent than the Medicaid certification standards and regulations imposed under the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub.L. No. 100-203.

(d) To implement Sections 242.032(d) and (e), the executive commissioner by rule shall adopt minimum standards for the background and qualifications of any person described by Section 242.032(d). The department may not issue or renew a license if a person described by Section 242.032 does not meet the minimum standards adopted under this section.

(e) In addition to standards or rules required by other provisions of this chapter, the executive commissioner shall adopt and publish and the department shall enforce minimum standards relating to:

(1) the construction of an institution, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;

(2) the regulation of the number and qualification of all personnel, including management and nursing personnel, responsible for any part of the care given to the residents;

(3) requirements for in-service education of all employees who have any contact with the residents;

(4) training on the care of persons with Alzheimer's disease and related disorders for employees who work with those persons;

(5) sanitary and related conditions in an institution and its surroundings, including water supply, sewage disposal, food handling, and general hygiene in order to ensure the residents' health, safety, and comfort;

(6) the nutritional needs of each resident according to good nutritional practice or the recommendations of the physician attending the resident;

(7) equipment essential to the residents' health and welfare;

(8) the use and administration of medication in conformity with applicable law and rules;

(9) care and treatment of residents and any other matter related to resident health, safety, and welfare;

(10) licensure of institutions; and

(11) implementation of this chapter.

(f) The executive commissioner shall adopt and publish and the department shall enforce minimum standards requiring appropriate training in geriatric care for each individual who provides services to geriatric residents in an institution and who holds a license or certificate issued by an agency of this state that authorizes the person to provide the services. The minimum standards may require that each licensed or certified individual complete an appropriate program of continuing education or in-service training, as determined by department rule, on a schedule determined by department rule.

(g) To administer the surveys for provider certification provided for by federal law and regulation, the department must identify each area of care that is subject to both state licensing requirements and federal certification requirements. For each area of care that is subject to the same standard under both federal certification and state licensing requirements, an institution that is in compliance with the federal certification standard is considered to be in compliance with the same state licensing requirement.

(h) Section 161.0051 applies to institutions serving residents who are elderly persons, and any rules and standards adopted under that section are considered to be rules and standards adopted under this chapter.

(i) The minimum standards adopted under this section must require that each institution, as part of an existing training program, provide each registered nurse, licensed vocational nurse, nurse aide, and nursing assistant who provides nursing services in the institution at least one hour of training each year in caring for people with dementia.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 583, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 1049, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 31.01(54), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1159, Sec. 1.09, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 259, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1031, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1239, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0602, eff. April 2, 2015.

Sec. 242.0371. NOTICE OF CERTAIN EMPLOYMENT POLICIES. (a) An institution licensed under this chapter shall prepare a written statement describing the institution's policy for:

(1) the drug testing of employees who have direct contact with residents; and

(2) the conducting of criminal history record checks of employees and applicants for employment in accordance with Chapter

250.

(b) The institution shall provide the statement to:

(1) each person applying for services from the institution or the person's next of kin or guardian; and

(2) any person requesting the information.

Added by Acts 1999, 76th Leg., ch. 1020, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1025, Sec. 1, eff. Sept. 1, 2001.

Sec. 242.0373. RESTRAINT AND SECLUSION. A person providing services to a resident of an institution shall comply with Chapter 322 and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 2, eff. September 1, 2005.

Sec. 242.038. REASONABLE TIME TO COMPLY. The executive commissioner by rule shall give an institution that is in operation when a rule or standard is adopted under this chapter a reasonable time to comply with the rule or standard.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0603, eff. April 2, 2015.

Sec. 242.0385. EARLY COMPLIANCE REVIEW. (a) The executive commissioner by rule shall adopt a procedure under which a person proposing to construct or modify an institution may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the executive commissioner shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with the department's architectural requirements and inform the person in writing of the

results of the review. If the plans comply with the department's architectural requirements, the department may not subsequently change the architectural requirements applicable to the project unless:

(1) the change is required by federal law; or

(2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee for conducting a review under this section.

(d) A fee collected under this section shall be deposited in the general revenue fund.

(e) The review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced.

Added by Acts 2001, 77th Leg., ch. 339, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0604, eff. April 2, 2015.

Sec. 242.039. FIRE SAFETY REQUIREMENTS. (a) The executive commissioner shall adopt rules necessary to specify the edition of the Life Safety Code of the National Fire Protection Association that will be used to establish the life safety requirements for an institution licensed under this chapter.

(b) The executive commissioner shall adopt the edition of the Life Safety Code of the National Fire Protection Association for fire safety as designated by federal law and regulations for an institution or portion of an institution that is constructed after September 1, 1993, and for an institution or portion of an institution that was operating or approved for construction on or before September 1, 1993.

(c) The executive commissioner may not require more stringent fire safety standards than those required by federal law and regulation. The rules adopted under this section may not prevent an institution licensed under this chapter from voluntarily conforming to fire safety standards that are compatible with, equal to, or more stringent than those adopted by the executive commissioner.

(d) Licensed health care facilities in existence at the time of

the effective date of this subsection may have their existing use or occupancy continued if such facilities comply with fire safety standards and ordinances in existence at the time of the effective date of this subsection.

(e) Notwithstanding any other provision of this section, a municipality shall have the authority to enact additional and higher fire safety standards applicable to new construction beginning on or after the effective date of this subsection.

(g) The executive commissioner shall adopt rules to implement an expedited inspection process that allows an applicant for a license or for a renewal of a license to obtain a life safety code and physical plant inspection not later than the 15th day after the date the request is made. The department may charge a fee to recover the cost of the expedited inspection. The rules must permit the department to charge different fee amounts based on the size and type of institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 583, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 2, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0605, eff. April 2, 2015.

Sec. 242.0395. REGISTRATION WITH TEXAS INFORMATION AND REFERRAL NETWORK. (a) An institution licensed under this chapter shall register with the Texas Information and Referral Network under Section 526.0004, Government Code, to assist the state in identifying persons needing assistance if an area is evacuated because of a disaster or other emergency.

(b) The institution is not required to identify individual residents who may require assistance in an evacuation or to register individual residents with the Texas Information and Referral Network for evacuation assistance.

(c) The institution shall notify each resident and the resident's next of kin or guardian regarding how to register for evacuation assistance with the Texas Information and Referral Network.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 1.17, eff. September 1, 2009.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.43, eff. April 1, 2025.

Sec. 242.040. CERTIFICATION OF INSTITUTIONS THAT CARE FOR PERSONS WITH ALZHEIMER'S DISEASE AND RELATED DISORDERS. (a) The department shall establish a system for certifying institutions that meet standards adopted by the executive commissioner concerning the specialized care and treatment of persons with Alzheimer's disease and related disorders.

(b) An institution is not required to be certified under this section in order to provide care and treatment of persons with Alzheimer's disease and related disorders.

(c) The executive commissioner by rule may adopt standards for the specialized care and treatment of persons with Alzheimer's disease and related disorders and provide procedures for institutions applying for certification under this section. The rules must provide for a three-year certification period.

(d) The executive commissioner by rule may establish and the department may collect fees for the certification in an amount necessary to administer this section.

(e) An institution may not advertise or otherwise communicate that the institution is certified by the department to provide specialized care for persons with Alzheimer's disease or related disorders unless the institution is certified under this section.

(f) The executive commissioner by rule shall adopt a system under which an appropriate number of certifications issued by the department expire on staggered dates occurring in each three-year period. If the expiration date of a certification changes as a result of this subsection, the department shall prorate the certification fee relating to that certification as appropriate.

(g) The executive commissioner by rule shall adopt a definition of "Alzheimer's disease and related disorders," and may adopt by reference a definition published in a generally accepted clinical resource for medical professionals. The executive commissioner shall modify the definition as necessary to conform to changes in medical practice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1063 (H.B. 3196), Sec. 2, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0606, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1256 (H.B. 2588), Sec. 1, eff. June 20, 2015.

Sec. 242.0405. NOTICE OF ALZHEIMER'S DISEASE AND RELATED DISORDERS CERTIFICATION. (a) A nursing facility advertising, marketing, or otherwise promoting that the facility provides memory care services shall prepare a written notice disclosing whether the facility is certified or is not certified under Section 242.040 to provide specialized care and treatment for facility residents with Alzheimer's disease and related disorders.

(b) The nursing facility shall provide the notice described by Subsection (a) to:

(1) each facility resident; and

(2) each person applying for services from the facility or the person's next of kin or guardian.

(c) A nursing facility that provides the notice required under Subsection (a) is not required to include the information described by Section 242.202(d)(2) in a disclosure statement provided under that section.

Added by Acts 2021, 87th Leg., R.S., Ch. 514 (S.B. 383), Sec. 1, eff. September 1, 2021.

Sec. 242.041. FALSE COMMUNICATION CONCERNING CERTIFICATION; CRIMINAL PENALTY. (a) An institution commits an offense if the institution violates Section 242.040(e).

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.042. POSTING. (a) Each institution shall prominently and conspicuously post for display in a public area of the

institution that is readily available to residents, employees, and visitors:

(1) the license issued under this chapter;

(2) a sign prescribed by the department that specifies complaint procedures established under this chapter or rules adopted under this chapter and that specifies how complaints may be registered with the department;

(3) a notice in a form prescribed by the department stating that licensing inspection reports and other related reports which show deficiencies cited by the department are available at the institution for public inspection and providing the department's toll-free telephone number that may be used to obtain information concerning the institution;

(4) a concise summary of the most recent inspection report relating to the institution;

(5) notice that the department can provide summary reports relating to the quality of care, recent investigations, litigation, and other aspects of the operation of the institution;

(6) notice that the Texas Board of Nursing Facility Administrators, if applicable, can provide information about the nursing facility administrator;

(7) any notice or written statement required to be posted under Section 242.072(c);

(8) notice that informational materials relating to the compliance history of the institution are available for inspection at a location in the institution specified by the sign;

(9) notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by Sections 260A.014 and 260A.015; and

(10) a sign required to be posted under Section 260A.006(a).

(b) The notice required by Subsection (a)(8) must also be posted at each door providing ingress to and egress from the institution.

(c) The informational materials required to be maintained for public inspection by an institution under Subsection (a)(8) must be maintained in a well-lighted accessible location and must include:

(1) any information required to be included under Section 242.504; and

(2) a statement of the institution's record of compliance with this chapter and the rules and standards adopted under this chapter that is updated not less frequently than bi-monthly and that reflects the record of compliance during the period beginning one year before the date the statement is last updated, in the form required by the department.

(d) The notice required by Subsection (a)(9) must be posted in English and a second language as required by department rule.

(e) The department shall post detailed compliance information regarding each institution licensed by the department, including the information an institution is required to make accessible by Subsection (c), on the department's website. The department shall update the website once a month to provide the most current compliance information regarding each institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.10, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 324, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 192, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 102 (H.B. 1081), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(f), eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0607, eff. April 2, 2015.

Sec. 242.043. INSPECTIONS. (a) The commission or the commission's representative may make any inspection, including an unannounced inspection or follow-up inspection, survey, or investigation that it considers necessary and may enter the premises of an institution at reasonable times to make an inspection, survey, or investigation in accordance with department rules.

(b) The department is entitled to access to books, records, and other documents maintained by or on behalf of an institution to the extent necessary to enforce this chapter and the rules adopted under this chapter.

(c) A license holder or an applicant for a license is considered to have consented to entry and inspection of the

institution by a representative of the department in accordance with this chapter.

(d) The department shall establish procedures to preserve all relevant evidence of conditions found during an inspection, survey, or investigation that the department reasonably believes threaten the health and safety of a resident, including photography and photocopying of relevant documents, such as a license holder's notes, a physician's orders, and pharmacy records, for use in any legal proceeding.

(e) When photographing a resident, the department:

(1) shall respect the privacy of the resident to the greatest extent possible; and

(2) may not make public the identity of the resident.

(f) An institution, an officer or employee of an institution, and a resident's attending physician are not civilly liable for surrendering confidential or private material under this section, including physician's orders, pharmacy records, notes and memoranda of a state office, and resident files.

(g) The department shall establish in clear and concise language a form to summarize each inspection report and complaint investigation report.

(h) The executive commissioner shall establish proper procedures to ensure that copies of all forms and reports under this section are made available to consumers, service recipients, and the relatives of service recipients as the executive commissioner considers proper.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0608, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 803 (H.B. 1423), Sec. 1, eff. September 1, 2021.

Sec. 242.044. UNANNOUNCED INSPECTIONS. (a) The commission shall annually conduct at least one unannounced inspection of each institution.

(b) For at least one unannounced annual inspection of an institution, the commission shall invite at least one person as a

citizen advocate from:

(1) the AARP;

(2) the Texas Senior Citizen Association;

(3) the department's Certified Long-term Care Ombudsman; or

(4) another statewide organization for the elderly.

(c) In order to ensure continuous compliance, the department shall randomly select a sufficient percentage of institutions for unannounced inspections to be conducted between 5 p.m. and 8 a.m. Those inspections must be cursory to avoid to the greatest extent feasible any disruption of the residents.

(d) The department may require additional inspections.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 815, Sec. 1(c), eff. Sept. 1, 1993. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 1, eff. September 1, 2008.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0609, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 803 (H.B. 1423), Sec. 2, eff. September 1, 2021.

Sec. 242.0441. FOLLOW-UP INSPECTIONS. (a) The commission or the commission's representative may conduct a follow-up inspection of an institution after conducting an inspection, survey, or investigation of the institution under Section 242.043 or 242.044 to:

(1) evaluate and monitor the findings of the initial inspection, survey, or investigation; and

(2) ensure the commission is citing and punishing institutional deficiencies consistently across the state.

(b) If an institution corrects a deficiency cited during a follow-up inspection within the time specified by executive commissioner rule, the commission may not impose additional punitive actions for the deficiency.

Added by Acts 2021, 87th Leg., R.S., Ch. 803 (H.B. 1423), Sec. 3, eff. September 1, 2021.

Sec. 242.0442. COMMISSION EVALUATION OF REGULATORY CAPACITY.

(a) Not later than January 31 of each year, the commission shall evaluate the commission's capacity to regulate institutions under this chapter and formulate a strategy to effectively perform licensing duties, enforcement activities, and complaint investigations for that year.

(b) The commission shall continue to regularly evaluate the commission's capacity to regulate institutions under this chapter and implement corrective measures as necessary.

(c) The commission shall monitor the commission's staffing of employees who perform inspections, surveys, or investigations of institutions under this chapter and fill any vacant positions as soon as possible.

(d) Not later than January 1 of each year, the commission shall evaluate the commission's compliance during the previous year with Sections 242.043, 242.044, and 242.0441.

Added by Acts 2021, 87th Leg., R.S., Ch. 803 (H.B. 1423), Sec. 3, eff. September 1, 2021.

Sec. 242.0445. REPORTING OF VIOLATIONS. (a) The department or the department's representative conducting an inspection, survey, or investigation under Section 242.043 or 242.044 shall:

(1) list each violation of a law or rule on a form designed by the department for inspections; and

(2) identify the specific law or rule the facility violated.

(a-1) If the commission or the commission's representative conducting an inspection, survey, or investigation under Section 242.043 or 242.044 identifies a violation that constitutes immediate jeopardy to the health or safety of a resident:

(1) the commission shall immediately notify the facility's management of the violation; and

(2) a commission representative shall remain in or be accessible to the facility until the commission has received the facility's plan of removal related to the violation.

(b) At the conclusion of an inspection, survey, or investigation under Section 242.043 or 242.044, the department or the department's representative conducting the inspection, survey, or investigation shall discuss the violations with the facility's

management in an exit conference. The department or the department's representative shall leave a written list of the violations with the facility at the time of the exit conference. If the department or the department's representative discovers any additional violations during the review of field notes or preparation of the official final list, the department or the department's representative shall give the facility an additional exit conference regarding the additional violations. An additional exit conference must be held in person and may not be held by telephone, e-mail, or facsimile transmission.

(b-1) Not later than the fifth working day after the date the facility receives the final statement of violations under this section, the facility shall provide a copy of the statement to a representative of the facility's family council.

(c) The facility shall submit a plan to correct the violations to the regional director not later than the 10th working day after the date the facility receives the final official statement of violations.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 2, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 2, eff. September 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. 344), Sec. 3, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 637 (S.B. 1519), Sec. 3, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 805 (H.B. 2205), Sec. 2, eff. June 10, 2019.

Sec. 242.045. DISCLOSURE OF UNANNOUNCED INSPECTIONS; CRIMINAL PENALTY. (a) Except as expressly provided by this chapter, a person commits an offense if the person intentionally, knowingly, or recklessly discloses to an unauthorized person the date, time, or any other fact about an unannounced inspection of an institution before the inspection occurs.

(b) In this section, "unauthorized person" does not include:

(1) the department;

(2) the office of the attorney general;

(3) a statewide organization for the elderly, including the

AARP and the Texas Senior Citizen Association;

(4) an ombudsman or representative of the department;

(5) a representative of an agency or organization when a Medicare or Medicaid survey is made concurrently with a licensing inspection; or

(6) any other person or entity authorized by law to make an inspection or to accompany an inspector.

(c) An offense under this section is a third degree felony.

(d) A person convicted under this section is not eligible for state employment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.11, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0610, eff. April 2, 2015.

Sec. 242.046. OPEN HEARING. (a) The department shall hold an open hearing in a licensed institution if the department has taken a punitive action against the institution in the preceding 12 months or if the department receives a complaint from an ombudsman, advocate, resident, or relative of a resident relating to a serious or potentially serious problem in the institution and the department has reasonable cause to believe the complaint is valid. The department is not required to hold more than one open meeting in a particular institution in each year.

(b) The department shall give notice of the time, place, and date of the hearing to:

(1) the institution;

(2) the designated closest living relative or legal guardian of each resident; and

(3) appropriate state or federal agencies that work with the institution.

(c) The department may exclude an institution's administrators and personnel from the hearing.

(d) The department shall notify the institution of any complaints received at the hearing and, without identifying the source of the complaints, provide a summary of them to the institution.

(e) The department shall determine and implement a mechanism to notify confidentially a complainant of the results of the investigation of the complaint.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 89, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0611, eff. April 2, 2015.

Sec. 242.047. ACCREDITATION REVIEW TO SATISFY INSPECTION OR CERTIFICATION REQUIREMENTS. (a) The department shall accept an annual accreditation review from The Joint Commission for a nursing facility instead of an inspection for renewal of a license under Section 242.033 and in satisfaction of the requirements for certification for participation in the medical assistance program under Chapter 32, Human Resources Code, and the federal Medicare program, but only if:

(1) the nursing facility is accredited by The Joint Commission under The Joint Commission's long-term care standards;

(2) The Joint Commission maintains an annual inspection or review program for each nursing facility that the department determines meets the applicable minimum standards;

(3) The Joint Commission conducts an annual on-site inspection or review of the facility;

(4) the nursing facility submits to the department a copy of its annual accreditation review from The Joint Commission in addition to the application, fee, and any report required for renewal of a license or for certification, as applicable; and

(5) the department has:

(A) determined whether a waiver or authorization from a federal agency is necessary under federal law, including for federal funding purposes, before the department accepts an annual accreditation review from The Joint Commission:

(i) instead of an inspection for license renewal purposes;

(ii) as satisfying the requirements for certification for participation in the medical assistance program; or

(iii) as satisfying the requirements for

certification for participation in the federal Medicare program; and

(B) obtained any necessary federal waivers or authorizations.

(b) The department shall coordinate its licensing and certification activities with The Joint Commission.

(c) The department and The Joint Commission shall sign a memorandum of agreement to implement this section. The memorandum must provide that if all parties to the memorandum do not agree in the development, interpretation, and implementation of the memorandum, any area of dispute is to be resolved by the executive commissioner.

(d) Except as specifically provided by this section, this section does not limit the department in performing any duties and inspections authorized by this chapter or under any contract relating to the medical assistance program under Chapter 32, Human Resources Code, and Titles XVIII and XIX of the Social Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.), including authority to take appropriate action relating to an institution, such as closing the institution.

(e) This section does not require a nursing facility to obtain accreditation from The Joint Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.57(a), eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0612, eff. April 2, 2015.

Sec. 242.048. LICENSING SURVEYS. The department shall provide a team to conduct surveys to validate findings of licensing surveys. The purpose of validation surveys is to assure that survey teams throughout the state survey in a fair and consistent manner. A facility subjected to a validation survey must correct deficiencies cited by the validation team but is not subject to punitive action for those deficiencies.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 90, eff. Sept. 1, 1991.

Sec. 242.049. QUALITY IMPROVEMENT. (a) The department may

evaluate data for quality of care in nursing facilities.

(b) The department may gather data on a form or forms to be provided by the department to improve the quality of care in nursing facilities and may provide information to nursing facilities which will allow them to improve and maintain the quality of care which they provide. Data referred to in this section can include information compiled from documents otherwise available under Chapter 552, Government Code, including but not limited to individual survey reports and investigation reports.

(c) All licensed nursing facilities in the state may be required to submit information designated by the department as necessary to improve the quality of care in nursing facilities.

(d) The collection, compilation, and analysis of the information and any reports produced from these sources shall be done in a manner that protects the privacy of any individual about whom information is given and is explicitly confidential. The department shall protect and maintain the confidentiality of the information. The information received by the department, any information compiled as a result of review of internal agency documents, and any reports, compilations, and analyses produced from these sources shall not be available for public inspection or disclosure, nor are these sources public records within the meaning of Chapter 552, Government Code. The information and any compilations, reports, or analyses produced from the information shall not be subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided in this section and shall not be admissible in any civil, administrative, or criminal proceeding. This privilege shall be recognized by Rules 501 and 502 of the Texas Rules of Evidence.

(e) The information and reports, compilations, and analyses developed by the department for quality improvement shall be used only for the evaluation and improvement of quality care in nursing facilities. No department proceeding or record shall be subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity, and shall not be admissible in any civil, administrative, or criminal proceeding. This privilege shall be recognized by Rules 501 and 502 of the Texas Rules of Evidence.

(f) Notwithstanding Subsection (d), the department shall transmit reports, compilations, and analyses of the information provided by a nursing facility to that nursing facility, and such disclosure shall not be violative of this section nor shall it

constitute a waiver of confidentiality.

(g) A member, agent, or employee of the department may not disclose or be required to disclose a communication made to the department or a record or proceeding of the department required to be submitted under this section except to the nursing facility in question or its agents or employees.

(h) Nothing in this section is intended to abridge the department's enforcement responsibilities under this chapter or under any other law.

(i) Any information, reports, and other documents produced which are subject to any means of legal compulsion or which are considered to be public information under Chapter 260A and the rules adopted under that chapter shall continue to be subject to legal compulsion and be treated as public information under Chapter 260A, even though such information, reports, and other documents may be used in the collection, compilation, and analysis described in Subsections (b) and (d).

Added by Acts 1993, 73rd Leg., ch. 815, Sec. 2, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 10.0011, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0613, eff. April 2, 2015.

Sec. 242.051. NOTIFICATION OF AWARD OF EXEMPLARY DAMAGES. (a) If exemplary damages are awarded under Chapter 41, Civil Practice and Remedies Code, against an institution or an officer, employee, or agent of an institution, the court shall notify the department.

(b) If the department receives notice under Subsection (a), the department shall maintain the information contained in the notice in the records of the department relating to the history of the institution.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 2.01, eff. June 15, 2001.

Sec. 242.052. DRUG TESTING OF EMPLOYEES. (a) An institution

may establish a drug testing policy for employees of the institution. An institution that establishes a drug testing policy under this subsection may adopt the model drug testing policy adopted by the executive commissioner or may use another drug testing policy.

(b) The executive commissioner by rule shall adopt a model drug testing policy for use by institutions. The model drug testing policy must be designed to ensure the safety of residents through appropriate drug testing and to protect the rights of employees. The model drug testing policy must:

(1) require at least one scheduled drug test each year for each employee of an institution that has direct contact with a resident in the institution; and

(2) authorize random, unannounced drug testing for employees described by Subdivision (1).

Added by Acts 2001, 77th Leg., ch. 1025, Sec. 2, eff. Sept. 1, 2001. Renumbered from Health & Safety Code Sec. 242.050 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(92), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0614, eff. April 2, 2015.

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 242.061. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) In this section:

(1) "Abuse" has the meaning assigned by Section 260A.001.

(2) "Immediate threat to health and safety" means a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(3) "Neglect" has the meaning assigned by Section 260A.001.

(a-1) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant, the license holder, or any other person described by Section 242.032(d) has:

(1) violated this chapter or a rule, standard, or order adopted or license issued under this chapter in either a repeated or

substantial manner;

(2) committed any act described by Sections 242.066(a)(2)-(6); or

(3) failed to comply with Section 242.074.

(a-2) Except as provided by Subsection (a-3) or (e-1), the executive commissioner shall revoke a license under Subsection (a-1) if the department finds that:

(1) the license holder has committed three violations described by Subsection (a-1), within a 24-month period, that constitute an immediate threat to health and safety related to the abuse or neglect of a resident; and

(2) each of the violations described by Subdivision (1) is reported in connection with a separate survey, inspection, or investigation visit that occurred on separate entrance and exit dates.

(a-3) The executive commissioner may not revoke a license under Subsection (a-2) due to a violation described by Subsection (a-2)(1), if:

(1) the violation and the determination of immediate threat to health and safety are not included on the written list of violations left with the facility at the time of the initial exit conference under Section 242.0445(b) for a survey, inspection, or investigation;

(2) the violation is not included on the final statement of violations described by Section 242.0445; or

(3) the violation has been reviewed under the informal dispute resolution process established by Section 526.0202, Government Code, and a determination was made that:

(A) the violation should be removed from the license holder's record; or

(B) the violation is reduced in severity so that the violation is no longer cited as an immediate threat to health and safety related to the abuse or neglect of a resident.

(b) The status of a person as an applicant for a license or a license holder is preserved until final disposition of the contested matter, except as the court having jurisdiction of a judicial review of the matter may order in the public interest for the welfare and safety of the residents.

(c) The department may deny, suspend, or revoke the license of an institution if any person described by Section 242.032(d) has been

excluded from holding a license under Section 242.0615.

(c-1) In the case of revocation of a license under Subsection (a-2), to ensure the health and safety of residents of the institution, the department may:

(1) request the appointment of a trustee to operate the institution under Subchapter D;

(2) assist with obtaining a new operator for the institution; or

(3) assist with the relocation of residents to another institution.

(d) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving the denial, suspension, or revocation of a license under this section or the conduct with respect to which the denial, suspension, or revocation of the license is sought.

(e) The executive commissioner may stay a license revocation required by Subsection (a-2) if the executive commissioner determines that the stay would not jeopardize the health and safety of the residents of the facility or place the residents at risk of abuse or neglect. The executive commissioner by rule shall establish criteria under which a license revocation may be stayed under this subsection. The executive commissioner shall follow negotiated rulemaking procedures prescribed by Chapter 2008, Government Code, for the adoption of rules establishing the criteria. The criteria established must permit the executive commissioner to stay a license revocation of a nursing facility for which the department has deployed a rapid response team under Section 255.004, if the facility has cooperated with the rapid response team and demonstrated improvement in quality of care, as determined by the rapid response team.

(e-1) The executive commissioner may stay a license revocation required by Subsection (a-2) for a veterans home, as defined by Section 164.002, Natural Resources Code, if the Veterans' Land Board contracts with a different entity to operate the veterans home than the entity that operated the home during the period in which the violations described by Subsection (a-2) occurred.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.12, eff. Sept. 1, 1997;

Acts 1999, 76th Leg., ch. 452, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1094, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1142 (S.B. 304), Sec. 1(b), eff. June 19, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1142 (S.B. 304), Sec. 1(b), eff. September 1, 2016.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.44, eff. April 1, 2025.

Sec. 242.0615. EXCLUSION. (a) The department, after providing notice and opportunity for a hearing, may exclude a person from eligibility for a license under this chapter if the person or any person described by Section 242.032(d) has substantially failed to comply with this chapter and the rules adopted under this chapter. The authority granted by this subsection is in addition to the authority to deny issuance of a license under Section 242.061(a-1).

(b) Exclusion of a person under this section must extend for a period of at least two years and may extend throughout the person's lifetime or existence.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.13, eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 2.03, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 18, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1142 (S.B. 304), Sec. 2, eff. June 19, 2015.

Sec. 242.062. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) The department shall suspend an institution's license or order an immediate closing of part of the institution if:

(1) the department finds the institution is operating in violation of the standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of a resident.

(b) The executive commissioner by rule shall provide for the placement of residents during the institution's suspension or closing to ensure their health and safety.

(c) An order suspending a license or closing a part of an institution under this section is immediately effective on the date on which the license holder receives written notice or a later date specified in the order.

(d) An order suspending a license or ordering an immediate closing of a part of an institution is valid for 10 days after the effective date of the order.

(e) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving an emergency suspension or closing order under this section or the conduct with respect to which the emergency suspension or closing order is sought.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1094, Sec. 2, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0615, eff. April 2, 2015.

Sec. 242.063. INJUNCTION. (a) The department may petition a district court for:

(1) a temporary restraining order to restrain a person from a violation or threatened violation of the standards imposed under this chapter or any other law affecting residents if the department reasonably believes that the violation or threatened violation creates an immediate threat to the health and safety of a resident; and

(2) an injunction to restrain a person from a violation or threatened violation of the standards imposed under this chapter or by any other law affecting residents if the department reasonably believes that the violation or threatened violation creates a threat to the health and safety of a resident.

(b) A district court, on petition of the department, may by injunction:

(1) prohibit a person from violating the standards or

licensing requirements prescribed by this chapter;

(2) restrain or prevent the establishment, conduct, management, or operation of an institution without a license issued under this chapter; or

(3) grant the injunctive relief warranted by the facts on a finding by the court that a person is violating or threatening to violate the standards or licensing requirements prescribed by this chapter.

(c) The attorney general, on request by the department, shall institute and conduct in the name of the state a suit authorized by this section or Subchapter D.

(d) A suit for a temporary restraining order or other injunctive relief must be brought in the county in which the alleged violation occurs.

(e) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.58(b).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.14, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.58(a), (b), eff. Sept. 1, 2003.

Sec. 242.064. LICENSE REQUIREMENT; CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 242.031.

(b) An offense under this section is punishable by a fine of not more than $1,000 for the first offense and not more than $500 for each subsequent offense.

(c) Each day of a continuing violation after conviction is a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.065. CIVIL PENALTY. (a) A person who violates or causes a violation of this chapter or a rule adopted under this chapter is liable for a civil penalty of not less than $1,000 or more than $20,000 for each act of violation if the department determines the violation threatens the health and safety of a resident.

(b) In determining the amount of a penalty to be awarded under this section, the trier of fact shall consider:

(1) the seriousness of the violation;

(2) the history of violations committed by the person or

the person's affiliate, employee, or controlling person;

(3) the amount necessary to deter future violations;

(4) the efforts made to correct the violation;

(5) any misrepresentation made to the department or to another person regarding:

(A) the quality of services rendered or to be rendered to residents;

(B) the compliance history of the institution or any institutions owned or controlled by an owner or controlling person of the institution; or

(C) the identity of an owner or controlling person of the institution;

(6) the culpability of the individual who committed the violation; and

(7) any other matter that should, as a matter of justice or equity, be considered.

(c) Each day of a continuing violation constitutes a separate ground for recovery.

(d) Any party to a suit under this section may request a jury.

(e) If a person who is liable under this section fails to pay any amount the person is obligated to pay under this section, the state may seek satisfaction from any owner, other controlling person, or affiliate of the person found liable. The owner, other controlling person, or affiliate may be found liable in the same suit or in another suit on a showing by the state that the amount to be paid has not been paid or otherwise legally discharged. The executive commissioner by rule may establish a method for satisfying an obligation imposed under this section from an insurance policy, letter of credit, or other contingency fund.

(f) On request by the department, the attorney general may institute an action in a district court to collect a civil penalty under this section.

(g) A payment made to satisfy an obligation under this section is not an allowable cost for reimbursement under the state Medicaid program.

(h) A civil penalty awarded under this section constitutes a fine, penalty, or forfeiture payable to and for the benefit of a government unit and is not compensation for actual pecuniary loss.

(i) In this section, "affiliate" means:

(1) with respect to a partnership other than a limited

partnership, each partner of the partnership;

(2) with respect to a corporation:

(A) an officer;

(B) a director;

(C) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and

(D) a controlling individual;

(3) with respect to an individual:

(A) each partnership and each partner in the partnership in which the individual or any other affiliate of the individual is a partner; and

(B) each corporation or other business entity in which the individual or another affiliate of the individual is:

(i) an officer;

(ii) a director;

(iii) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and

(iv) a controlling individual;

(4) with respect to a limited partnership:

(A) a general partner; and

(B) a limited partner who is a controlling individual;

(5) with respect to a limited liability company:

(A) an owner who is a manager as described by the Texas Limited Liability Company Law, as described by Section 1.008(e), Business Organizations Code; and

(B) each owner who is a controlling individual; and

(6) with respect to any other business entity, a controlling individual.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.15, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 13, Sec. 1, eff. May 3, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.59, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0616, eff. April 2, 2015.

Sec. 242.066. ADMINISTRATIVE PENALTY. (a) The commission may assess an administrative penalty against a person who:

(1) violates this chapter or a rule, standard, or order adopted or license issued under this chapter;

(2) makes a false statement, that the person knows or should know is false, of a material fact:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by the commission;

(3) refuses to allow a representative of the commission to inspect:

(A) a book, record, or file required to be maintained by an institution; or

(B) any portion of the premises of an institution;

(4) wilfully interferes with the work of a representative of the commission or the enforcement of this chapter;

(5) wilfully interferes with a representative of the commission preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter;

(6) fails to pay a penalty assessed by the commission under this chapter not later than the 10th day after the date the assessment of the penalty becomes final; or

(7) fails to notify the commission of a change of ownership before the effective date of the change of ownership.

(b) Except as provided by Subsection (f) and Section 242.0665(c), the penalty may not exceed $10,000 a day for each violation.

(c) Each day of a continuing violation constitutes a separate violation.

(d) The executive commissioner shall establish gradations of penalties in accordance with the relative seriousness of the violation.

(e) In determining the amount of a penalty, the commission shall consider any matter that justice may require, including:

(1) the gradations of penalties established under Subsection (d);

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;

(3) the history of previous violations;

(4) deterrence of future violations; and

(5) efforts to correct the violation.

(f) The penalty for a violation of Section 242.072(c) or a right of a resident adopted under Subchapter L may not exceed $1,000 a day for each violation. This subsection does not apply to conduct that violates both Subchapter K or a standard adopted under Subchapter K and a right of a resident adopted under Subchapter L.

(g) The persons against whom an administrative penalty may be assessed under Subsection (a) include:

(1) an applicant for a license under this chapter;

(2) a license holder;

(3) a partner, officer, director, or managing employee of a license holder or applicant; and

(4) a person who controls an institution.

(h) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

(i) The commission shall develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate institution to deter future violations. The system:

(1) must be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes; and

(2) may be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.16, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 93, Sec. 2, eff. May 17, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 12, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0617, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 3, eff. September 1, 2017.

Sec. 242.0661. ADMINISTRATIVE PENALTY FOR CONFISCATION OR MISAPPROPRIATION OF FEDERAL PAYMENTS. (a) In this section:

(1) "Eligible federal payment" means a payment made to an individual by the federal government that is not designated by law as income or a resource for purposes of an individual's Medicaid eligibility.

(2) "Medicaid" means the medical assistance program established under Chapter 32, Human Resources Code.

(3) "Misappropriate" means the taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any real or personal property or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority.

(b) A facility may not confiscate or misappropriate an eligible federal payment made to a resident who is a recipient of Medicaid. Notwithstanding Section 242.066(b), a facility that violates this section is subject to an administrative penalty in the amount equal to $25,000 for each violation. Each day the facility fails to return confiscated or misappropriated money to the resident constitutes a separate violation.

Added by Acts 2023, 88th Leg., R.S., Ch. 400 (H.B. 1290), Sec. 1, eff. September 1, 2023.

Sec. 242.0663. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty under this subchapter against an institution that violates Section 166.004.

(b) Notwithstanding Sections 242.066(b) and (c), a penalty assessed in accordance with this section shall be $500 and a separate penalty may not be assessed for a separate day of a continuing violation.

(c) Section 242.0665 does not apply to a penalty assessed in

accordance with this section.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 2.04, eff. Sept. 1, 1999.

Sec. 242.0665. RIGHT TO CORRECT. (a) The commission may not collect an administrative penalty against an institution under this subchapter if, not later than the 45th day after the date the institution receives notice under Section 242.067(c), the institution corrects the violation.

(b) Subsection (a) does not apply:

(1) to a violation that the commission determines:

(A) represents a pattern of violation that results in actual harm;

(B) is widespread in scope and results in actual harm;

(C) is widespread in scope, constitutes a potential for actual harm, and relates to:

(i) residents' rights;

(ii) treatment of residents;

(iii) resident behavior and institution practices;

(iv) quality of care;

(v) medication errors;

(vi) standard menus and nutritional adequacy;

(vii) physician visits;

(viii) infection control;

(ix) life safety from fire; or

(x) emergency preparedness and response;

(D) constitutes an immediate threat to the health or safety of a resident; or

(E) substantially limits the institution's capacity to provide care;

(2) to a violation described by Sections 242.066(a)(2)-(7);

(3) to a violation of Section 260A.014 or 260A.015;

(4) to a violation of a right of a resident adopted under Subchapter L; or

(5) to a second or subsequent violation of Section 326.002 that occurs before the second anniversary of the date of the first violation.

(c) An institution that corrects a violation under Subsection

(a) must maintain the correction. If the institution fails to maintain the correction until at least the first anniversary of the date the correction was made, the commission may assess an administrative penalty under this subchapter for the subsequent violation. A penalty assessed under this subsection shall be equal to three times the amount of the penalty assessed but not collected under Subsection (a). The commission is not required to provide the institution an opportunity to correct the subsequent violation under this section.

(d) In this section:

(1) "Actual harm" means a negative outcome that compromises a resident's physical, mental, or emotional well-being.

(2) "Immediate threat to the health or safety of a resident" means a situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a resident.

(3) "Pattern of violation" means repeated, but not pervasive, failures of an institution to comply with this chapter or a rule, standard, or order adopted under this chapter that:

(A) result in a violation; and

(B) are found throughout the services provided by the institution or that affect or involve the same residents or institution employees.

(4) "Widespread in scope" means a violation of this chapter or a rule, standard, or order adopted under this chapter that:

(A) is pervasive throughout the services provided by the institution; or

(B) represents a systemic failure by the institution that affects or has the potential to affect a large portion of or all of the residents of the institution.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.17, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 93, Sec. 3, eff. May 17, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 13, eff. September 1, 2007.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(g), eff. September 28, 2011.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 4, eff. September 1, 2017.

Sec. 242.067. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. (a) The department may issue a preliminary report stating the facts on which it concludes that a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter has occurred if it has:

(1) examined the possible violation and facts surrounding the possible violation; and

(2) concluded that a violation has occurred.

(b) The report may recommend a penalty under Section 242.069 and the amount of the penalty.

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the charges;

(2) a statement of the amount of penalty recommended;

(3) a statement of whether the violation is subject to correction under Section 242.0665 and, if the violation is subject to correction under that section, a statement of:

(A) the date on which the institution must file with the department a plan of correction to be approved by the department; and

(B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and

(4) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Not later than the 20th day after the date on which the notice under Subsection (c) is sent, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty;

(2) make a written request for a hearing; or

(3) if the violation is subject to correction under Section 242.0665, submit a plan of correction to the department for approval.

(e) If the violation is subject to correction under Section 242.0665, and the person reports to the department that the violation has been corrected, the department shall inspect the correction or take any other step necessary to confirm that the violation has been

corrected and shall notify the person that:

(1) the correction is satisfactory and that a penalty is not assessed; or

(2) the correction is not satisfactory and that a penalty is recommended.

(f) Not later than the 20th day after the date on which a notice under Subsection (e)(2) is sent, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(g) If the person charged with the violation consents to the administrative penalty recommended by the department, does not timely respond to a notice sent under Subsection (c) or (e), or fails to correct the violation to the department's satisfaction, the department shall assess the recommended administrative penalty.

(h) If the department assesses the recommended penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.087, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1159, Sec. 1.18, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0618, eff. April 2, 2015.

Sec. 242.068. HEARINGS ON ADMINISTRATIVE PENALTIES. (a) An administrative law judge of the State Office of Administrative Hearings shall order a hearing and the department shall give notice of the hearing if a person charged under Section 242.067(c) requests a hearing.

(b) The hearing shall be held before an administrative law judge.

(c) The administrative law judge shall make findings of fact and conclusions of law regarding the occurrence of a violation of this chapter or a rule or order adopted or license issued under this chapter.

(d) Based on the findings of fact and conclusions of law, the administrative law judge by order shall find:

(1) a violation has occurred and assess an administrative penalty; or

(2) a violation has not occurred.

(e) Proceedings under this section are subject to Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 8.088, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1159, Sec. 1.18, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0619, eff. April 2, 2015.

Sec. 242.069. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) The department shall give notice of the decision taken under Section 242.068(d) to the person charged. If the department finds that a violation has occurred and has assessed an administrative penalty, the department shall give written notice to the person charged of:

(1) the findings;

(2) the amount of the penalty;

(3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;

(4) whether payment of the penalty or other action under Section 242.071 is required; and

(5) the person's right to judicial review of the order.

(b) Not later than the 30th day after the date on which the department's order is final, the person charged with the penalty shall:

(1) pay the full amount of the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the failure to correct the violation to the department's satisfaction, or all of the above.

(c) Notwithstanding Subsection (b), the department may permit the person to pay the penalty in installments or may require the person to use the amount of the penalty under the department's supervision in accordance with Section 242.071.

(d) If the person does not pay the penalty within the 30-day

period:

(1) the penalty is subject to interest; and

(2) the department may refer the matter to the attorney general for collection of the penalty and interest.

(e) If a penalty is reduced or not assessed, the department shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(f) Accrued interest on amounts remitted by the department under Subsection (e)(1) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid under Subsection (b) and ending on the date the penalty is remitted.

(g) Interest under Subsection (d) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the notice of the department's order is received by the person and ending on the date the penalty is paid.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.089, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1049, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1159, Sec. 1.18, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0620, eff. April 2, 2015.

Sec. 242.0695. USE OF ADMINISTRATIVE PENALTY. Money from an administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code.

Added by Acts 2005, 79th Leg., Ch. 786 (S.B. 52), Sec. 2, eff. September 1, 2005.

Sec. 242.070. APPLICATION OF OTHER LAW. (a) The commission may not assess more than one monetary penalty under this chapter and Chapter 32, Human Resources Code, for a violation arising out of the same act or failure to act, except as provided by Section 242.0665(c). The commission may assess the greater of a monetary penalty under this chapter or a monetary penalty under Chapter 32, Human Resources Code, for the same act or failure to act.

(b) The commission may not impose an administrative penalty under this chapter and Chapter 32, Human Resources Code, against a nursing facility for a violation arising out of the same act or failure to act that is the subject of:

(1) a penalty imposed by the Centers for Medicare and Medicaid Services under 42 C.F.R. Section 488.408 against the facility; or

(2) a penalty the facility appeals under 42 C.F.R. Part 498 before the facility exhausts all rights of appeal if:

(A) the federal requirement is the same or substantially similar to a requirement in this chapter or Chapter 32, Human Resources Code; and

(B) Subdivision (1) does not apply.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 4, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.18, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.60(a), eff. Sept. 1, 2003.

Amended by:

Acts 2025, 89th Leg., R.S., Ch. 195 (S.B. 2269), Sec. 3, eff. September 1, 2025.

Sec. 242.071. AMELIORATION OF VIOLATION. (a) In lieu of demanding payment of an administrative penalty assessed under Section 242.066, the department may, in accordance with this section, allow the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the institution affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of an

institution resident.

(c) The department may not offer amelioration to a person if:

(1) the person has been charged with a violation which is subject to correction under Section 242.0665; or

(2) the department determines that the charged violation constitutes immediate jeopardy to the health and safety of an institution resident.

(d) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 242.068.

(e) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 242.068 if the department approves the plan.

(f) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the institution that will improve services to or quality of care of residents of the institution;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the institution;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a timeline for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(g) A plan for amelioration may include proposed changes to:

(1) improve staff recruitment and retention;

(2) offer or improve dental services for residents; and

(3) improve the overall quality of life for residents.

(h) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(i) The department shall approve or deny an amelioration plan

not later than the 45th day after the date the department receives the plan. On approval of a person's plan, a pending request for a hearing submitted by the person under Section 242.067(d) shall be denied.

(j) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

(k) In this section, "immediate jeopardy to health and safety" means a situation in which immediate corrective action is necessary because the institution's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the institution.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.19, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 619, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1284, Sec. 8.01, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.002, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0621, eff. April 2, 2015.

Sec. 242.072. OTHER REMEDIES. (a) If the department finds that an institution has committed an act for which a civil penalty may be imposed under Section 242.065, the department may, as appropriate under the circumstances, order the institution to immediately suspend admissions.

(b) A suspension of admissions ordered under Subsection (a) is effective on the date a representative of the institution receives notice of the order and of the manner in which the order may be appealed. The department must provide an opportunity for a hearing with respect to an appeal of the order not later than the 14th day after the date the suspension becomes effective.

(c) During the period that an institution is ordered to suspend admissions, the institution shall post a notice of the suspension on all doors providing ingress to and egress from the institution. The notice shall be posted in the form required by the department.

(d) A person commits an offense if the person knowingly:

(1) violates Subsection (c); or

(2) removes a notice posted under Subsection (c) before the facility is allowed to admit residents.

(e) An offense under Subsection (d) is a Class C misdemeanor.

(f) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving an order suspending admissions under this section or the conduct with respect to which the order suspending admissions is sought.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.19, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1094, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0622, eff. April 2, 2015.

Sec. 242.073. LEGAL ACTION BY THE ATTORNEY GENERAL. (a) The department and the attorney general shall work in close cooperation throughout any legal proceedings requested by the department.

(b) The commissioner must approve any settlement agreement to a suit brought under this chapter or any other law relating to the health and safety of residents in institutions.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.19, eff. Sept. 1, 1997.

Sec. 242.074. NOTIFICATION OF CHANGE IN FINANCIAL CONDITION. (a) An institution shall notify the department of a significant change in the institution's financial position, cash flow, or results of operation that could adversely affect the institution's delivery of essential services, including nursing services, dietary services, and utilities, to residents of the institution.

(b) The department may verify the financial condition of an institution in order to identify any risk to the institution's ability to deliver essential services.

(c) A person that knowingly files false information under this section may be prosecuted under the Penal Code.

(d) The executive commissioner shall adopt rules to implement

this section. The rules shall include the conditions that constitute a significant change in an institution's financial condition that are required to be reported under Subsection (a).

(e) The information obtained by the department under this section is confidential and is not subject to disclosure under Chapter 552, Government Code. The department may release the information to:

(1) the institution; or

(2) a person other than the institution if the institution consents in writing to the disclosure.

(f) A person who knowingly discloses information in violation of Subsection (e) commits an offense. An offense under this subsection is a Class A misdemeanor.

(g) The provisions in Subsection (e) relating to the confidentiality of records do not apply to:

(1) an institution whose license has been revoked or suspended; or

(2) the use of information in an administrative proceeding initiated by the department or in a judicial proceeding.

Added by Acts 1999, 76th Leg., ch. 452, Sec. 2.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0623, eff. April 2, 2015.

Sec. 242.075. PROHIBITED RETALIATION. The commission may not retaliate against a nursing facility in response to the facility in good faith appealing a commission decision or filing another action to counter a commission action against the facility.

Added by Acts 2025, 89th Leg., R.S., Ch. 195 (S.B. 2269), Sec. 4, eff. September 1, 2025.

SUBCHAPTER D. TRUSTEES FOR NURSING OR CONVALESCENT HOMES

Sec. 242.091. FINDINGS AND PURPOSE. (a) The legislature finds that the closing of a nursing or convalescent home for violations of laws and rules may:

(1) in certain circumstances, have an adverse effect on both the home's residents and their families; and

(2) in some cases, result in a lack of readily available funds to meet the basic needs of the residents for food, shelter, medication, and personal services.

(b) The purpose of this subchapter is to provide for:

(1) the appointment of a trustee to assume the operations of the home in a manner that emphasizes resident care and reduces resident trauma; and

(2) a fund to assist a court-appointed trustee in meeting the basic needs of the residents.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.092. DEFINITION. In this subchapter, "home" means a nursing or convalescent home.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.093. APPOINTMENT BY AGREEMENT. (a) A person holding a controlling interest in a home may, at any time, request the department to assume the operation of the home through the appointment of a trustee under this subchapter.

(b) After receiving the request, the department may enter into an agreement providing for the appointment of a trustee to take charge of the home under conditions considered appropriate by both parties if the department considers the appointment desirable.

(c) An agreement under this section must:

(1) specify all terms and conditions of the trustee's appointment and authority; and

(2) preserve all rights of the residents as granted by law.

(d) The agreement terminates at the time specified by the parties or when either party notifies the other in writing that the party wishes to terminate the appointment agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.094. INVOLUNTARY APPOINTMENT. (a) The department may request the attorney general to bring an action in the name and on behalf of the state for the appointment of a trustee to operate a

home if:

(1) the home is operating without a license;

(2) the department has suspended or revoked the home's license;

(3) license suspension or revocation procedures against the home are pending and the department determines that an imminent threat to the health and safety of the residents exists;

(4) the department determines that an emergency exists that presents an immediate threat to the health and safety of the residents; or

(5) the home is closing and arrangements for relocation of the residents to other licensed institutions have not been made before closure.

(b) A trustee appointed under Subsection (a)(5) may only ensure an orderly and safe relocation of the home's residents as quickly as possible.

(c) After a hearing, a court shall appoint a trustee to take charge of a home if the court finds that involuntary appointment of a trustee is necessary.

(d) If possible, the court shall appoint as trustee an individual whose background includes institutional medical administration.

Text of subsection (e) as added by Acts 1993, 73rd Leg., ch. 815, Sec. 3

(e) Venue for actions brought under this section shall be in Travis County.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1 , Sec. 3.1639(59), eff. April 2, 2015.

(f) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve the legal issues of a dispute involving the:

(1) appointment of a trustee under this section; or

(2) conduct with respect to which the appointment of trustee is sought.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 583, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 815, Sec. 3, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1094, Sec. 4, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(59), eff. April 2, 2015.

Sec. 242.0945. QUALIFICATIONS OF TRUSTEES. (a) A court may appoint a person to serve as a trustee under this subchapter only if the proposed trustee can demonstrate to the court that the proposed trustee will be:

(1) present at the home as required to perform the duties of a trustee; and

(2) available on call to appropriate staff at the home, the department, and the court as necessary during the time the trustee is not present at the home.

(b) A trustee shall report to the court in the event that the trustee is unable to satisfy the requirements of Subsection (a)(1) or (2).

(c) On the motion of any party or on the court's own motion, the court may replace a trustee who is unable to satisfy the requirements of Subsection (a)(1) or (2).

(d) A trustee's charges must separately identify personal hours worked for which compensation is claimed. A trustee's claim for personal compensation may include only compensation for activities related to the trusteeship and performed in or on behalf of the home.

Added by Acts 1999, 76th Leg., ch. 439, Sec. 1, eff. Sept. 1, 1999.

Sec. 242.0946. NEPOTISM PROHIBITION. A person serving as a trustee under this subchapter may not employ or otherwise appoint an individual to work with the trustee in the home who is related to the trustee within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code.

Added by Acts 1999, 76th Leg., ch. 439, Sec. 1, eff. Sept. 1, 1999.

Sec. 242.095. FEE; RELEASE OF FUNDS. (a) A trustee appointed under this subchapter is entitled to a reasonable fee as determined by the court. In determining the trustee's personal compensation for nursing facility administrator activities, the court shall consider

reasonable a rate that is equal to 150 percent of the maximum allowable rate for an owner-administrator under the state's Medicaid reimbursement rules. The court shall determine the reasonableness of the trustee's personal compensation for other duties. On the motion of any party, the court shall review the reasonableness of the trustee's fees. The court shall reduce the amount if the court determines that the fees are not reasonable.

(b) The trustee may petition the court to order the release to the trustee of any payment owed the trustee for care and services provided to the residents if the payment has been withheld, including a payment withheld by the commission at the recommendation of the department.

(c) Withheld payments may include payments withheld by a governmental agency or other entity during the appointment of the trustee, such as payments:

(1) for Medicaid, Medicare, or insurance;

(2) by another third party; or

(3) for medical expenses borne by the resident.

(d) If the department appoints a trustee under this subchapter for a veterans home as defined by Section 164.002, Natural Resources Code, the Veterans' Land Board is responsible for the trustee's fee under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 439, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 166, Sec. 1, eff. May 27, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0624, eff. April 2, 2015.

Sec. 242.096. NURSING AND CONVALESCENT HOME TRUST FUND AND EMERGENCY ASSISTANCE FUNDS. (a) The nursing and convalescent home trust fund is with the comptroller and shall be made available to the department for expenditures without legislative appropriation to make emergency assistance funds available to a home.

(b) A trustee of a home may use the emergency assistance funds only to alleviate an immediate threat to the health or safety of the residents. The use may include payments for:

(1) food;

(2) medication;
(3) sanitation services;
(4) minor repairs;
(5) supplies necessary for personal hygiene; or
(6) services necessary for the personal care, health, and safety of the residents.

(c) A court may order the department to disburse emergency assistance funds to a home if the court finds that:
(1) the home has inadequate funds accessible to the trustee for the operation of the home;
(2) there exists an emergency that presents an immediate threat to the health and safety of the residents; and
(3) it is in the best interests of the health and safety of the residents that funds are immediately available.

(d) The department shall disburse money from the nursing and convalescent home trust fund as ordered by the court in accordance with department rules.

(e) Any unencumbered amount in the nursing and convalescent home trust fund in excess of $10,000,000 at the end of each fiscal year shall be transferred to the credit of the general revenue fund and may be appropriated only to the department for its use in administering and enforcing this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.20, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 10.04, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1019, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0625, eff. April 2, 2015.

Sec. 242.0965. ASSISTED LIVING FACILITY TRUST FUND AND EMERGENCY ASSISTANCE FUNDS. (a) The assisted living facility trust fund is a trust fund with the comptroller and shall be made available to the department for expenditures without legislative appropriation to make emergency assistance funds available to an assisted living facility.

(b) A trustee of an assisted living facility may use the emergency assistance funds only to alleviate an immediate threat to

the health or safety of the residents. The use may include payments for:

(1) food;

(2) medication;

(3) sanitation services;

(4) minor repairs;

(5) supplies necessary for personal hygiene; or

(6) services necessary for the personal care, health, and safety of the residents.

(c) A court may order the department to disburse emergency assistance funds to an assisted living facility if the court finds that:

(1) the assisted living facility has inadequate funds accessible to the trustee for the operation of the assisted living facility;

(2) an emergency exists that presents an immediate threat to the health and safety of the residents; and

(3) it is in the best interests of the health and safety of the residents that funds are immediately available.

(d) The department shall disburse money from the assisted living facility trust fund as ordered by the court in accordance with department rules.

(e) Any unencumbered amount in the assisted living facility trust fund in excess of $500,000 at the end of each fiscal year shall be transferred to the credit of the general revenue fund.

Added by Acts 2001, 77th Leg., ch. 723, Sec. 1, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 1248, Sec. 15, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0626, eff. April 2, 2015.

Sec. 242.097. ADDITIONAL LICENSE FEE--NURSING AND CONVALESCENT HOMES. (a) In addition to the license fee provided by Section 242.034, the executive commissioner by rule shall adopt an annual fee to be collected by the department if the amount of the nursing and convalescent home trust fund is less than $10,000,000. The fee shall be deposited to the credit of the nursing and convalescent home trust fund created by this subchapter.

(b) The department may charge and collect a fee under this section more than once each year only if necessary to ensure that the amount in the nursing and convalescent home trust fund is sufficient to make the disbursements required under Section 242.096. If the department makes a second or subsequent assessment under this subsection in any year, the department shall notify the governor and the members of the Legislative Budget Board.

(c) The executive commissioner shall set the fee for each nursing and convalescent home at $1 for each licensed unit of capacity or bed space in that home or in an amount necessary to provide not more than $10,000,000 in the fund. The total fees assessed in a year may not exceed $20 for each licensed unit of capacity or bed space in a home.

(d) This section does not apply to a veterans home as defined by Section 164.002, Natural Resources Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.21, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1019, Sec. 2, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 723, Sec. 2, eff. June 13, 2001; Acts 2001, 77th Leg., ch; 1248, Sec. 16, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 166, Sec. 2, eff. May 27, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0627, eff. April 2, 2015.

Sec. 242.0975. ADDITIONAL LICENSE FEE--ASSISTED LIVING FACILITIES. (a) In addition to the license fee provided by Section 247.024, the executive commissioner by rule shall adopt an annual fee to be collected by the department if the amount of the assisted living facility trust fund is less than $500,000. The fee shall be deposited to the credit of the assisted living facility trust fund created by this subchapter.

(b) The department may charge and collect a fee under this section more than once each year only if necessary to ensure that the amount in the assisted living facility trust fund is sufficient to make the disbursements required under Section 242.0965. If the department makes a second or subsequent assessment under this subsection in any year, the department shall notify the governor and

the Legislative Budget Board.

(c) The executive commissioner shall set the fee on the basis of the number of beds in assisted living facilities required to pay the fee and in an amount necessary to provide not more than $500,000 in the assisted living facility trust fund.

Added by Acts 2001, 77th Leg., ch. 723, Sec. 1, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 1248, Sec. 15, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10.003, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0628, eff. April 2, 2015.

Sec. 242.098. REIMBURSEMENT. (a) A home that receives emergency assistance funds under this subchapter shall reimburse the department for the amounts received, including interest.

(b) Interest on unreimbursed amounts begins to accrue on the date on which the funds were disbursed to the home. The rate of interest is the rate determined under Section 304.003, Finance Code, to be applicable to judgments rendered during the month in which the money was disbursed to the home.

(c) The owner of the home when the trustee was appointed is responsible for the reimbursement.

(d) The amount that remains unreimbursed on the expiration of one year after the date on which the funds were received is delinquent and the department may determine that the home is ineligible for a Medicaid provider contract.

(e) The department shall deposit the reimbursement and interest received under this section to the credit of the nursing and convalescent home trust fund.

(f) The attorney general shall institute an action to collect the funds due under this section at the request of the department. Venue for an action brought under this section is in Travis County.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1396, Sec. 35, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.64, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0629, eff. April 2, 2015.

Sec. 242.099. APPLICABILITY OF OTHER LAW. Subtitle D, Title 10, Government Code does not apply to any payments made by a trustee under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19(13), eff. Sept. 1, 1997.

Sec. 242.100. NOTIFICATION OF CLOSING. (a) A home that is closing temporarily or permanently, or voluntarily or involuntarily, shall notify the residents of the closing and make reasonable efforts to notify in writing each resident's nearest relative or the person responsible for the resident's support within a reasonable time before the closing.

(b) If the closing of a home is ordered by the department or is in any other way involuntary, the home shall make the notification, orally or in writing, immediately on receiving notice of the closing.

(c) If the closing of a home is voluntary, the home shall make the notification not later than one week after the date on which the decision to close is made.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.101. CRIMINAL PENALTY. (a) A home commits an offense if the home fails or refuses to comply with Section 242.100.

(b) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.102. INELIGIBILITY FOR LICENSE. (a) A license holder or controlling person who operates a home for which a trustee is appointed under this subchapter and with respect to which emergency assistance funds, other than funds used to pay the expenses of the trustee, are used under this subchapter is subject to exclusion from eligibility for:

(1) issuance of an original license for a home for which the person has not previously held a license; or

(2) renewal of the license for the home for which the trustee is appointed.

(b) Exclusion under this section is governed by Section 242.0615.

Added by Acts 1999, 76th Leg., ch. 439, Sec. 3, eff. Sept. 1, 1999.

SUBCHAPTER F. MEDICAL, NURSING, AND DENTAL SERVICES OTHER THAN ADMINISTRATION OF MEDICATION

Sec. 242.151. PHYSICIAN SERVICES. (a) An institution shall have at least one medical director who is licensed as a physician in this state.

(b) The attending physician is responsible for a resident's assessment and comprehensive plan of care and shall review, revise, and sign orders relating to any medication or treatment in the plan of care. The responsibilities imposed on the attending physician by this subsection may be performed by an advanced practice nurse or a physician assistant pursuant to protocols jointly developed with the attending physician.

(c) Each resident has the right to choose a personal attending physician.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.152. PHYSICIAN SERVICES FOR RESIDENTS YOUNGER THAN 18 YEARS OF AGE. (a) An institution shall use appropriate pediatric consultative services for a resident younger than 18 years of age, in accordance with the resident's assessment and comprehensive plan of care.

(b) A pediatrician or other physician with training or expertise in the clinical care of children with complex medical needs shall participate in all aspects of the resident's medical care.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.153. DIRECTOR OF NURSING SERVICES. An institution

shall have a director of nursing services who shall be a registered nurse. The director of nursing services is responsible for:

(1) coordinating each resident's comprehensive plan of care; and

(2) ensuring that only personnel with an appropriate license or permit administer medication.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.154. NURSING SERVICES. (a) An institution shall provide the nursing care required to allow each resident to achieve and maintain the highest possible degree of function and independence medically possible.

(b) The institution shall maintain sufficient staff to provide nursing and related services:

(1) in accordance with each resident's plan of care; and

(2) to obtain and maintain the physical, mental, and psychosocial functions of each resident at the highest practicable level, as determined by the resident's assessment and plan of care.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.155. PEDIATRIC NURSING SERVICES. An institution shall ensure that:

(1) nursing services for a resident younger than 18 years of age are provided by a staff member who has been instructed and has demonstrated competence in the care of children; and

(2) consultative pediatric nursing services are available to the staff if the institution has a resident younger than 18 years of age.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.156. REQUIRED MEDICAL EXAMINATION. (a) Except as required by federal law, the department shall require that each

resident be given at least one medical examination each year.

(b) The executive commissioner shall specify the details of the examination.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0630, eff. April 2, 2015.

Sec. 242.157. DENTAL EXAMINATION. (a) The department shall require that each resident of an institution or the resident's custodian be asked at least once each year if the resident desires a dental examination and possible treatment at the resident's own expense.

(b) Each institution shall be encouraged to use all reasonable efforts to arrange for a dental examination for each resident who desires one.

(c) The institution is not liable for any costs relating to a dental examination under this section.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.158. IDENTIFICATION OF CERTAIN NURSING FACILITY RESIDENTS REQUIRING MENTAL HEALTH OR INTELLECTUAL DISABILITY SERVICES. (a) Each resident of a nursing facility who is considering making a transition to a community-based care setting shall be identified to determine the presence of a mental illness or intellectual disability, regardless of whether the resident is receiving treatment or services for a mental illness or intellectual disability.

(b) In identifying residents having a mental illness or intellectual disability, the department shall use an identification process that is at least as effective as the mental health and intellectual disability identification process established by federal law. The results of the identification process may not be used to prevent a resident from remaining in the nursing facility unless the nursing facility is unable to provide adequate care for the resident.

(c) The department shall compile information regarding each resident identified as having a mental illness or intellectual disability before the resident makes a transition from the nursing facility to a community-based care setting. The department shall provide to the Department of State Health Services information regarding each resident identified as having a mental illness.

(d) The department and the Department of State Health Services shall use the information compiled and provided under Subsection (c) solely for the purposes of:

(1) determining the need for and funding levels of mental health and intellectual disability services for residents making a transition from a nursing facility to a community-based care setting;

(2) providing mental health or intellectual disability services to an identified resident after the resident makes that transition; and

(3) referring an identified resident to a local mental health or local intellectual and developmental disability authority or private provider for additional mental health or intellectual disability services.

(e) This section does not authorize the department to decide for a resident of a nursing facility that the resident will make a transition from the nursing facility to a community-based care setting.

Added by Acts 2001, 77th Leg., ch. 423, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0631, eff. April 2, 2015.

Sec. 242.159. AUTOMATED EXTERNAL DEFIBRILLATORS. (a) An institution shall have available for use at the institution an automated external defibrillator, as defined by Section 779.001, and shall comply with the training, use, and notification requirements of Chapter 779.

(b) An institution that does not have funds available for purposes of Subsection (a) may solicit gifts, grants, or donations to purchase or maintain an automated external defibrillator for use at the institution.

(c) The use of an automated external defibrillator must be

consistent with a resident's advance directive executed or issued under Subchapter C, Chapter 166.

(d) Notwithstanding Section 74.151(b), Civil Practice and Remedies Code, Section 74.151(a), Civil Practice and Remedies Code, applies to administration of emergency care using an automated external defibrillator by an employee or volunteer at an institution.

(e) An institution shall employ at least one person who is trained in the proper use of an automated external defibrillator.

Added by Acts 2009, 81st Leg., R.S., Ch. 257 (H.B. 392), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(b), eff. September 28, 2011.

SUBCHAPTER G. RESPITE CARE

Sec. 242.181. DEFINITIONS. In this subchapter:

(1) "Person with a disability" means a person whose physical or mental functioning is impaired to the extent that the person needs medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(2) "Plan of care" means a written description of the medical care or the supervision and nonmedical care needed by a person during respite care.

(3) "Respite care" means the provision by an institution to a person, for not more than two weeks for each stay in the institution, of:

(A) room and board; and

(B) care at the level ordinarily provided for permanent residents.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0632, eff. April 2, 2015.

Sec. 242.182. RESPITE CARE. (a) An institution licensed under this chapter may provide respite care for an elderly person or a

person with a disability according to a plan of care.

(b) The executive commissioner may adopt rules for the regulation of respite care provided by an institution licensed under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0633, eff. April 2, 2015.

Sec. 242.183. PLAN OF CARE. (a) The institution and the person arranging the care must agree on the plan of care and the plan must be filed at the institution before the institution admits the person for the care.

(b) The plan of care must be signed by:

(1) a licensed physician if the person for whom the care is arranged needs medical care or treatment; or

(2) the person arranging for the respite care if medical care or treatment is not needed.

(c) The institution may keep an agreed plan of care for a person for not longer than six months from the date on which it is received. During that period, the institution may admit the person as frequently as is needed and as accommodations are available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.184. NOTIFICATION. An institution that offers respite care shall notify the department in writing that it offers respite care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.185. INSPECTIONS. The department, at the time of an ordinary licensing inspection or at other times determined necessary by the department, shall inspect an institution's records of respite care services, physical accommodations available for respite care, and the plan of care records to ensure that the respite care services comply with the licensing standards of this chapter and with any

rules the executive commissioner may adopt to regulate respite care services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0634, eff. April 2, 2015.

Sec. 242.186. SUSPENSION. (a) The department may require an institution to cease providing respite care if the department determines that the respite care does not meet the standards required by this chapter and that the institution cannot comply with those standards in the respite care it provides.

(b) The department may suspend the license of an institution that continues to provide respite care after receiving a written order from the department to cease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER H. CARE FOR RESIDENTS WITH ALZHEIMER'S DISEASE AND RELATED DISORDERS

Sec. 242.201. SCOPE OF SUBCHAPTER. This subchapter applies only to an institution that advertises, markets, or otherwise promotes that the institution provides services to residents with Alzheimer's disease and related disorders.

Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.

Sec. 242.202. DISCLOSURE REQUIRED. (a) An institution covered by this subchapter shall provide a disclosure statement disclosing the nature of its care or treatment of residents with Alzheimer's disease and related disorders to:

(1) an individual seeking placement as a resident with Alzheimer's disease or a related disorder;

(2) an individual attempting to place another individual as a resident with Alzheimer's disease or a related disorder; or

(3) a person seeking information about the institution's care or treatment of residents with Alzheimer's disease and related

disorders.

(b) The disclosure statement must be displayed with the institution's license as it is posted under Section 242.042.

(c) The institution must file the disclosure statement with the department as part of the report filed under Section 242.033(d). The department shall verify contents of the disclosure statement as part of the license renewal process.

(d) The disclosure statement must contain the following categories of information:

(1) the institution's philosophy of care;

(2) whether the institution is certified under Section 242.040 for the provision of specialized care and treatment of residents with Alzheimer's disease and related disorders;

(3) the preadmission, admission, and discharge process;

(4) resident assessment, care planning, and implementation of the care plan;

(5) staffing patterns, such as resident-to-staff ratios, and staff training;

(6) the physical environment of the institution;

(7) resident activities;

(8) program costs;

(9) systems for evaluation of the institution's programs for residents;

(10) family involvement in resident care; and

(11) the toll-free telephone number maintained by the department for acceptance of complaints against the institution.

(e) The institution must update the disclosure statement as needed to reflect changes in the operation of the institution.

Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1256 (H.B. 2588), Sec. 2, eff. June 20, 2015.

Sec. 242.203. VIOLATION. (a) An institution that violates this subchapter is subject to an administrative penalty under Subchapter C.

(b) The department may not revoke or suspend the license of an institution for a violation of this subchapter.

Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.

Sec. 242.204. RULES. The executive commissioner shall adopt rules governing:

(1) the content of the disclosure statement required by this subchapter, consistent with the information categories required by Section 242.202(d); and

(2) the amount of an administrative penalty to be assessed for a violation of this subchapter.

Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0635, eff. April 2, 2015.

SUBCHAPTER H-1. AUTOMATED MEDICAID PATIENT CARE AND REIMBURSEMENT SYSTEM

Sec. 242.221. AUTOMATED SYSTEM FOR MEDICAID PATIENT CARE AND REIMBURSEMENT. (a) The department shall acquire and develop an automated system for providing reimbursements to nursing facilities under the state Medicaid program, subject to the availability of funds appropriated for that purpose.

(b) The department shall select an automated system that will allow the addition of other components of the state Medicaid program, including components administered by other state agencies.

(c) The department and the commission shall work together to apply for all available federal funds to help pay for the automated system.

(d) To the extent possible, the department shall assist nursing facilities to make systems compatible with the automated system selected by the department.

(e) The department shall charge a fee to nursing facilities that do not receive their Medicaid reimbursements electronically. The executive commissioner by rule shall set the fee in an amount necessary to cover the costs of manually processing and sending the reimbursements.

Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995.
Renumbered from Health and Safety Code Sec. 242.201 by Acts 1997,

75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0636, eff. April 2, 2015.

Sec. 242.222. DATA USED BY SYSTEM. The automated patient care and reimbursement system must use a form designed by the United States Health Care Financing Administration for nursing facility use.

Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995. Renumbered from Health and Safety Code Sec. 242.202 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

Sec. 242.223. FREQUENCY OF DATA SUBMISSION. Nursing facilities must complete and electronically submit the designated form to the department at least quarterly for reimbursement.

Added by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

Sec. 242.224. ELECTRONIC CLAIMS FOR REIMBURSEMENT. The automated reimbursement system must be able to link the department electronically with nursing facilities making claims for reimbursement. When the system is operational, each nursing facility shall make claims electronically.

Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995. Renumbered from Health and Safety Code Sec. 242.203 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

Sec. 242.225. DATE OF REIMBURSEMENT. The department shall pay Medicaid nursing facility reimbursement claims that are made electronically not later than the 30th day after the date the claim is made.

Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995. Renumbered from Health and Safety Code Sec. 242.204 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

Sec. 242.226. RULES. The executive commissioner shall adopt rules and make policy changes as necessary to improve the efficiency of the reimbursement process and to maximize the automated reimbursement system's capabilities.

Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995. Renumbered from Health and Safety Code Sec. 242.205 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0637, eff. April 2, 2015.

SUBCHAPTER H-2. ARBITRATION OF CERTAIN DISPUTES

Sec. 242.251. SCOPE OF SUBCHAPTER. This subchapter applies to any dispute between an institution licensed under this chapter and the department relating to:

(1) renewal of a license under Section 242.033;

(2) suspension or revocation of a license under Section 242.061;

(3) assessment of a civil penalty under Section 242.065;

(4) assessment of a monetary penalty under Section 242.066; or

(5) assessment of a penalty as described by Section 32.021(n), Human Resources Code.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0638, eff. April 2, 2015.

Sec. 242.252. ELECTION OF ARBITRATION. (a) Except as provided by Subsection (d), an affected institution may elect binding arbitration of any dispute to which this subchapter applies. Arbitration under this subchapter is an alternative to a contested case hearing or to a judicial proceeding relating to the assessment of a civil penalty.

(b) An affected institution may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and sending notice of the election to the department and the office of the attorney general. The election must be filed not later than the 10th day after the date on which the answer is due or the date on which the answer is filed, whichever is sooner. If a civil penalty is requested after the initial filing of a Section 242.094 lawsuit through the filing of an amended or supplemental pleading, an affected institution must elect arbitration not later than the 10th day after the date on which the amended or supplemental pleading is served on the affected institution or its counsel.

(c) The department may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and by notifying the institution of the election not later than the date that the institution may elect arbitration under Subsection (b).

(d) Arbitration may not be used to resolve a dispute related to an affected institution that has had an award levied against it in the previous five years.

(e) If arbitration is not permitted under this subchapter or the election of arbitration is not timely filed:

(1) the court will dismiss the arbitration election and retain jurisdiction of the lawsuit; and

(2) the State Office of Administrative Hearings shall dismiss the arbitration and has no jurisdiction over the lawsuit.

(f) An election to engage in arbitration under this subchapter is irrevocable and binding on the institution and the department.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.253. ARBITRATION PROCEDURES. (a) The arbitration shall be conducted by an arbitrator.

(b) The arbitration and the appointment of the arbitrator shall be conducted in accordance with rules adopted by the chief administrative law judge of the State Office of Administrative Hearings. Before adopting rules under this subsection, the chief administrative law judge shall consult with the department and shall consider appropriate rules developed by any nationally recognized association that performs arbitration services.

(c) The party that elects arbitration shall pay the cost of the arbitration. The total fees and expenses paid for an arbitrator for a day may not exceed $500.

(d) The State Office of Administrative Hearings may designate a nationally recognized association that performs arbitration services to conduct arbitrations under this subchapter and may, after consultation with the department, contract with that association for the arbitrations.

(e) On request by the department, the attorney general may represent the department in the arbitration.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.254. ARBITRATOR; QUALIFICATIONS. Each arbitrator must be on an approved list of a nationally recognized association that performs arbitration services or be otherwise qualified as provided in the rules adopted under Section 242.253(b).

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.255. ARBITRATOR; SELECTION. The arbitrator shall be appointed in accordance with the rules adopted under Section 242.253(b).

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.256. DUTIES OF ARBITRATOR. The arbitrator shall:

(1) protect the interests of the department and the institution;

(2) ensure that all relevant evidence has been disclosed to the arbitrator, department, and institution; and

(3) render an order consistent with this chapter and the rules adopted under this chapter.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.257. SCHEDULING OF ARBITRATION. (a) The arbitrator conducting the arbitration shall schedule arbitration to be held not later than the 90th day after the date the arbitrator is selected and shall notify the department and the institution of the scheduled date.

(b) The arbitrator may grant a continuance of the arbitration at the request of the department or institution. The arbitrator may not unreasonably deny a request for a continuance.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.258. EXCHANGE AND FILING OF INFORMATION. Not later than the seventh day before the first day of arbitration, the department and the institution shall exchange and file with the arbitrator:

(1) all documentary evidence not previously exchanged and filed that is relevant to the dispute; and

(2) information relating to a proposed resolution of the dispute.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.259. ATTENDANCE REQUIRED. (a) The arbitrator may proceed in the absence of any party or representative of a party who, after notice of the proceeding, fails to be present or to obtain a postponement.

(b) An arbitrator may not make an order solely on the default of a party and shall require the party who is present to submit evidence, as required by the arbitrator, before making an award.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.260. TESTIMONY; RECORD. (a) The arbitrator may require witnesses to testify under oath and shall require testimony under oath if requested by the department or the institution.

(b) The department shall make an electronic recording of the proceeding.

(c) An official stenographic record of the proceeding is not required, but the department or the institution may make a stenographic record. The party that makes the stenographic record shall pay the expense of having the record made.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.261. EVIDENCE. (a) The department or the institution may offer evidence as they desire and shall produce additional evidence as the arbitrator considers necessary to understand and resolve the dispute.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Strict conformity to rules applicable to judicial proceedings is not required.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.262. CLOSING STATEMENTS; BRIEFS. The department and the institution may present closing statements as they desire, but the record may not remain open for written briefs unless requested by the arbitrator.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.263. EX PARTE CONTACTS PROHIBITED. (a) Except as provided by Subsection (b), the department and the institution may not communicate with an arbitrator other than at an oral hearing unless the parties and the arbitrator agree otherwise.

(b) Any oral or written communication, other than a communication authorized under Subsection (a), from the parties to an arbitrator shall be directed to the association that is conducting the arbitration or, if there is no association conducting the arbitration, to the State Office of Administrative Hearings, for transmittal to the arbitrator.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.264. ORDER. (a) The arbitrator may enter any order that may be entered by the department, executive commissioner, commissioner, or court under this chapter in relation to a dispute described by Section 242.251.

(b) The arbitrator shall enter the order not later than the 60th day after the last day of the arbitration.

(c) The arbitrator shall base the order on the facts established at arbitration, including stipulations of the parties, and on the law as properly applied to those facts.

(d) The order must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a statement of the arbitrator's decision on the contested issues and the department's and institution's stipulations on uncontested issues.

(e) The arbitrator shall file a copy of the order with the department and shall notify the department and the institution in writing of the decision.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0639, eff. April 2, 2015.

Sec. 242.265. EFFECT OF ORDER. An order of an arbitrator under this subchapter is final and binding on all parties. Except as provided by Section 242.267, there is no right to appeal.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.266. CLERICAL ERROR. For the purpose of correcting a clerical error, an arbitrator retains jurisdiction of the award for 20 days after the date of the award.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.267. COURT VACATING ORDER. (a) On a finding described by Subsection (b), a court shall:

(1) on application of an institution, vacate an arbitrator's order with respect to an arbitration conducted at the election of the department; or

(2) on application of the department, vacate an arbitrator's order with respect to an arbitration conducted at the election of an institution.

(b) A court shall vacate an arbitrator's order under Subsection (a) only on a finding that:

(1) the order was procured by corruption, fraud, or

misrepresentation;

(2) the decision of the arbitrator was arbitrary or capricious and against the weight of the evidence; or

(3) the order exceeded the jurisdiction of the arbitrator under Section 242.264(a).

(c) If the order is vacated, the dispute shall be remanded to the department for another arbitration proceeding.

(d) A suit to vacate an arbitrator's order must be filed not later than the 30th day after:

(1) the date of the award; or

(2) the date the institution or department knew or should have known of a basis for suit under this section, but in no event later than the first anniversary of the date of the order.

(e) Venue for a suit to vacate an arbitrator's order is in the county in which the arbitration was conducted.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.268. NO ARBITRATION IN CASE OF EMERGENCY ORDER OR CLOSING ORDER. This subchapter does not apply to an order issued under Section 242.062 or 242.072, and neither the department nor the institution may elect to arbitrate a dispute if the subject matter of the dispute is part of the basis for:

(1) revocation, denial, or suspension of an institution's license;

(2) issuance of a closing order under Section 242.062; or

(3) suspension of admissions under Section 242.072.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.269. ENFORCEMENT OF CERTAIN ARBITRATION ORDERS. (a) This section applies only to a suit for the assessment of a civil penalty under Section 242.065 in which binding arbitration has been elected under this subchapter as an alternative to the judicial proceeding.

(b) On application of a party to the suit, the district court in which the underlying suit has been filed shall enter a judgment in accordance with the arbitrator's order unless, within the time limit prescribed by Section 242.267(d)(1), a motion is made to the court to vacate the arbitrator's order in accordance with Section 242.267.

(c) A judgment filed under Subsection (b) is enforceable in the same manner as any other judgment of the court. The court may award costs for an application made under Subsection (b) and for any proceedings held after the application is made.

(d) Subsection (b) does not affect the right of a party, in accordance with Section 242.267 and within the time limit prescribed by Section 242.267(d)(2), if applicable, to make a motion to the court or initiate a proceeding in court as provided by law to vacate the arbitrator's order or to vacate a judgment of the court entered in accordance with the arbitrator's order.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Subchapter I, consisting of Secs. 242.301 to 242.322, was added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01.

For another Subchapter I, consisting of Secs. 242.301 to 242.327, added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01, see Sec. 242.301 et seq. post.

Text of subchapter effective until federal determination of failure to comply with federal regulations

SUBCHAPTER I. NURSING FACILITY ADMINISTRATION

Sec. 242.301. DEFINITIONS. In this subchapter:

(1) "Nursing facility" means an institution or facility that is licensed as a nursing home, nursing facility, or skilled nursing facility by the department under this chapter.

(2) "Nursing facility administrator" or "administrator" means a person who engages in the practice of nursing facility administration, without regard to whether the person has an ownership interest in the facility or whether the functions and duties are shared with any other person.

(3) "Practice of nursing facility administration" means the

performance of the acts of administering, managing, supervising, or being in general administrative charge of a nursing facility.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.302. POWERS AND DUTIES OF DEPARTMENT AND EXECUTIVE COMMISSIONER. (a) The executive commissioner may adopt rules consistent with this subchapter. The executive commissioner shall adopt and publish a code of ethics for nursing facility administrators.

(b) The department shall:

(1) spend funds necessary for the proper administration of the department's assigned duties under this subchapter; and

(2) periodically assess the continuing education needs of license holders to determine whether specific course content should be required.

(c) The department is the licensing agency for the healing arts, as provided by 42 U.S.C. Section 1396g.

(d) The executive commissioner shall establish:

(1) the qualifications of applicants for licenses and the renewal of licenses issued under this subchapter;

(2) reasonable and necessary fees for the administration and implementation of this subchapter; and

(3) a minimum number of hours of continuing education required to renew a license issued under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0640, eff. April 2, 2015.

Sec. 242.303. NURSING FACILITY ADMINISTRATORS ADVISORY COMMITTEE. (a) The Nursing Facility Administrators Advisory Committee is appointed by the governor.

(b) Members of the committee serve for staggered terms of six years, with the terms of three members expiring on February 1 of each odd-numbered year.

(c) The committee shall consist of:

(1) three licensed nursing facility administrators, at least one of whom shall represent a not-for-profit nursing facility;

(2) one physician with experience in geriatrics who is not employed by a nursing facility;

(3) one registered nurse with experience in geriatrics who is not employed by a nursing facility;

(4) one social worker with experience in geriatrics who is not employed by a nursing facility; and

(5) three public members with experience working with the chronically ill and infirm as provided by 42 U.S.C. Section 1396g.

(d) The committee shall advise the department on the licensing of nursing facility administrators, including the content of applications for licensure and of the examination administered to license applicants under Section 242.306. The committee shall review and recommend rules and minimum standards of conduct for the practice of nursing facility administration. The committee shall review all complaints against administrators and make recommendations to the department regarding disciplinary actions. Failure of the committee to review complaints and make recommendations in a timely manner shall not prevent the department from taking disciplinary action.

(e) Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, or national origin of the person appointed.

(f) A member of the committee receives no compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing the member's duties under this section.

(g) The department shall pay the expenses of the committee and shall supply necessary personnel and supplies.

(h) A vacancy in a position on the committee shall be filled in the same manner in which the position was originally filled and shall be filled by a person who meets the qualifications of the vacated position.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0641, eff. April 2, 2015.

Sec. 242.304. FEES; FUNDS. (a) The executive commissioner, in consultation with the department, by rule shall set reasonable and necessary fees in amounts necessary to cover the cost of administering this subchapter. The executive commissioner by rule may set different licensing fees for different categories of licenses.

(b) The department shall receive and account for funds received under this subchapter. The funds shall be deposited in the state treasury to the credit of the general revenue fund.

(c) The department may receive and disburse funds received from any federal source for the furtherance of the department's functions under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0642, eff. April 2, 2015.

Sec. 242.305. PRACTICING WITHOUT A LICENSE. A person may not act as a nursing facility administrator or represent to others that the person is a nursing facility administrator unless the person is licensed under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.306. LICENSE APPLICATION; QUALIFICATIONS. (a) An applicant for a nursing facility administrator's license must submit a sworn application that is accompanied by the application fee.

(b) The department shall prescribe the form of the application and the executive commissioner may by rule establish dates by which applications and fees must be received.

(c) An applicant for a nursing facility administrator's license must take a licensing examination under this subchapter. To qualify for the licensing examination, the applicant must have satisfactorily completed a course of instruction and training prescribed by the executive commissioner that is conducted by or in cooperation with an accredited postsecondary educational institution and that is designed

and administered to provide sufficient knowledge of:

(1) the needs served by nursing facilities;

(2) the laws governing the operation of nursing facilities and the protection of the interests of facility residents; and

(3) the elements of nursing facility administration.

(d) An applicant who has not completed the course of instruction and training described by Subsection (c) must present evidence satisfactory to the department of having completed sufficient education, training, and experience in the fields described by Subsection (c) to enable the applicant to engage in the practice of nursing facility administration.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0643, eff. April 2, 2015.

Sec. 242.3061. APPLICABILITY OF OTHER LAW. Chapter 53, Occupations Code, does not apply to the issuance or renewal of a license under this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1136 (S.B. 681), Sec. 1, eff. September 1, 2023.

Sec. 242.307. EXAMINATION. (a) The licensing examination shall be prepared or approved by the department and shall be administered by the department to qualified applicants at least twice each calendar year. The department shall have the written portion of the examination, if any, validated by a testing professional.

(b) Not later than the 30th day after the date on which a licensing examination is administered under this subchapter, the department shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national or state testing service, the department shall notify examinees of the results of the examination not later than two weeks after the date the department receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the department shall notify

the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the licensing examination, the department shall furnish the person with an analysis of the person's performance on the examination.

(d) The executive commissioner may establish by rule additional educational requirements to be met by an applicant who fails the examination three times.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0644, eff. April 2, 2015.

Sec. 242.308. LICENSES; TEMPORARY LICENSE; INACTIVE STATUS. (a) A person who meets the requirements for licensing under this subchapter is entitled to receive a license. A nursing facility administrator's license is not transferable.

(b) A person licensed under this subchapter must notify the department of the license holder's correct mailing address.

(c) A license is valid for two years. The executive commissioner by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that each license holder shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(d) The executive commissioner by rule may provide for the issuance of a temporary license. Rules adopted under this section shall include a time limit for a licensee to practice under a temporary license.

(e) The executive commissioner by rule may provide for a license holder to be placed on inactive status.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0645, eff.

April 2, 2015.

Sec. 242.309. PROVISIONAL LICENSE. (a) The department shall issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as a nursing facility administrator for at least two years in another jurisdiction, including a foreign country, that has licensing requirements that are substantially equivalent to the requirements of this subchapter;

(2) has passed a national or other examination recognized by the department relating to the practice of nursing facility administration; and

(3) is sponsored by a person licensed by the department under this subchapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The department may waive the requirement of Subsection (a)(3) for an applicant if the department determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the department approves or denies the provisional license holder's application for a license. The department shall issue a license under this subchapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 242.306; or

(2) the provisional license holder passes the part of the examination under Section 242.307 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of nursing facility administration in this state and:

(A) the department verifies that the provisional license holder meets the academic and experience requirements for a license under this subchapter; and

(B) the provisional license holder satisfies all other license requirements under this subchapter.

(d) The department must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The department may extend the 180-day period if the results of an examination have not been received by the department before the end of that period.

(e) The executive commissioner by rule may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.20, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0646, eff. April 2, 2015.

Sec. 242.310. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 31st day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.21, eff.

Sept. 1, 1999.

Sec. 242.311. MANDATORY CONTINUING EDUCATION. (a) The executive commissioner by rule shall establish a minimum number of hours of continuing education required to renew a license under this subchapter. The department may assess the continuing education needs of license holders and may require license holders to attend continuing education courses specified by department rule.

(b) The executive commissioner shall identify the key factors for the competent performance by a license holder of the license holder's professional duties. The department shall adopt a procedure to assess a license holder's participation in continuing education programs.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0647, eff. April 2, 2015.

Sec. 242.312. COMPLAINT RECEIPT, INVESTIGATION, AND DISPOSITION. (a) The department shall keep an information file concerning each complaint filed with the department regarding a person licensed under this subchapter. The department's information file shall be kept current and shall contain a record for each complaint of:

(1) all persons contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed; and

(4) other relevant information.

(b) If a written complaint is filed with the department that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The executive commissioner by rule shall adopt a form to

standardize information concerning complaints made to the department. The executive commissioner by rule shall prescribe information to be provided to a person when the person files a complaint with the department.

(d) The department shall provide reasonable assistance to a person who wishes to file a complaint with the department.

(e) The executive commissioner shall adopt rules concerning the investigation of complaints filed with the department. The rules adopted under this subsection shall:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the executive commissioner be advised at least quarterly of complaints that have been dismissed and require that a letter be sent to each person who has filed a complaint that is dismissed explaining the action taken on the complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that may require the use of a private investigator and the procedures to be followed by the department in obtaining the services of a private investigator.

(f) The department shall dispose of all complaints in a timely manner. The executive commissioner by rule shall establish a schedule for initiating a complaint investigation that is under the control of the department not later than the 30th day after the date the complaint is received by the department. The schedule shall be kept in the information file for the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(g) The commissioner shall notify the executive commissioner at least quarterly of complaints that have extended beyond the time prescribed by the executive commissioner for resolving complaints so that the department may take any necessary corrective actions on the processing of complaints.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0648, eff. April 2, 2015.

Sec. 242.313. SANCTIONS. (a) The department may revoke, suspend, or refuse to renew a nursing facility administrator's license, assess an administrative penalty, issue a written reprimand, require participation in continuing education, or place an administrator on probation, after due notice and the opportunity for a hearing, on proof of any of the following grounds:

(1) the license holder has wilfully or repeatedly violated a provision of this subchapter or a rule adopted under this subchapter;

(2) the license holder has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the residents of a facility of which the license holder is an administrator;

(3) the license holder obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;

(4) the license holder's use of alcohol or drugs creates a hazard to the residents of a facility;

(5) a judgment of a court of competent jurisdiction finds that the license holder is mentally incapacitated;

(6) the license holder has been convicted in a court of competent jurisdiction of a misdemeanor or felony involving moral turpitude;

(7) the license holder has been convicted in a court of competent jurisdiction of an offense listed in Section 250.006; or

(8) the license holder has been negligent or incompetent in the license holder's duties as a nursing facility administrator.

(b) If a license sanction is probated, the department may require the license holder to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) A license holder is entitled to a hearing in accordance with rules adopted by the executive commissioner before a sanction is imposed under this section.

(d) The executive commissioner by rule shall adopt a broad schedule of sanctions for violations under this subchapter. The department shall use the schedule for any sanction imposed in accordance with the rules.

(e) The executive commissioner shall by rule establish criteria to determine whether deficiencies from a facility's survey warrant action against an administrator. The criteria shall include a determination of whether the survey indicates substandard quality of care related to an act or failure to act by the administrator, and whether a deficiency is related to an act or failure to act by the administrator. If a deficiency on which a disciplinary action against an administrator is initiated or completed is not substantiated, the disciplinary action shall be reversed.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 2, eff. June 19, 2009.

Sec. 242.314. WRITTEN REPRIMAND AND CONTINUING EDUCATION AS SANCTIONS. In addition to the other disciplinary actions authorized under this subchapter, the department may issue a written reprimand to a license holder who violates this subchapter or may require that a license holder who violates this subchapter participate in continuing education programs. The department shall specify the continuing education programs that may be attended and the number of hours that must be completed by a license holder to fulfill the requirements of this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.315. ADMINISTRATIVE PENALTY AS SANCTION. (a) The department may impose an administrative penalty against a person licensed or regulated under this subchapter who violates this

subchapter or a rule adopted under this subchapter.

(b) The penalty for a violation may be in an amount not to exceed $1,000. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violations; and

(6) any other matter that justice may require.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0649, eff. April 2, 2015.

Sec. 242.316. NOTICE AND HEARING. (a) If the department determines that a violation has occurred, the department shall give written notice of the determination to the person alleged to have committed the violation. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and the penalty recommended by the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) If the person accepts the determination and the penalty recommended by the department, or if the person fails to timely

respond to the notice, the department shall impose the recommended penalty.

(d) If the person requests a hearing, the department shall give notice of the hearing to the person. The hearing shall be held in accordance with the rules on contested case hearings adopted by the executive commissioner.

(e) The notice of the hearing decision given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the decision.

(f) Within 30 days after the date the department's decision is final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Within the 30-day period, a person who acts under Subsection (f)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's decision is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department by certified mail.

(h) If the department receives a copy of an affidavit under Subsection (g)(2), the department may file with the court, within

five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(i) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(j) Judicial review of the decision of the department:

(1) is instituted by filing a petition as provided by Section 2001.176, Government Code; and

(2) is under the substantial evidence rule.

(k) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(l) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(m) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(n) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 3, eff. June 19, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0650, eff. April 2, 2015.

Sec. 242.317. INFORMAL PROCEEDINGS. (a) The executive commissioner by rule shall adopt procedures governing:
(1) informal disposition of a contested case under Section 2001.056, Government Code; and
(2) informal proceedings held in compliance with Section 2001.054, Government Code.
(b) Rules adopted under this section must provide the complainant and the license holder an opportunity to be heard.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0651, eff. April 2, 2015.

Sec. 242.318. MONITORING OF LICENSE HOLDER. The executive commissioner by rule shall develop a system for monitoring a license holder's compliance with the requirements of this subchapter. Rules adopted under this section shall include procedures for monitoring a license holder who is required by the department to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0652, eff. April 2, 2015.

Sec. 242.319. CIVIL PENALTY. A person who violates this subchapter is liable to the state for a civil penalty of $1,000 for

each day of violation. At the request of the department, the attorney general shall bring an action to recover a civil penalty established by this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.320. ASSISTANCE OF ATTORNEY GENERAL. The attorney general shall provide legal assistance as necessary in enforcing the provisions of this subchapter. This requirement does not relieve a local prosecuting officer of any of the prosecuting officer's duties under the law.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.321. OFFENSE. (a) A person commits an offense if the person knowingly or intentionally violates Section 242.305.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.322. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT. (a) A person may not suspend, terminate, or otherwise discipline or discriminate against a licensed nursing facility administrator who refuses to engage in an act or omission relating to the administrator's job duties or responsibilities that would constitute a violation of this subchapter or of a rule adopted under this subchapter, if the administrator notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes a violation of this subchapter or of a rule adopted under this subchapter.

(b) An act by a person under Subsection (a) does not constitute a violation of this section if:

(1) the act or omission the administrator refused to commit was not conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter; or

(2) the act or omission the administrator refused to commit was conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter, and the person rescinds any disciplinary or discriminatory action taken against the administrator, compensates the administrator for lost wages, and restores any lost benefits to the administrator.

(c) A violation of this section is an unlawful employment practice, and a civil action may be brought by a licensed nursing facility administrator against a person for the violation. The relief available in a civil action shall be the same as the relief available to complainants in a civil action for violations of Chapter 21, Labor Code. In no event may any action be brought pursuant to this section more than two years after the date of the administrator's refusal to engage in an act or omission that would constitute a violation of this subchapter or of a rule adopted under this subchapter.

(d) In this section, "person" includes an individual, organization, corporation, agency, facility, or other entity.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Subchapter I, consisting of Secs. 242.301 to 242.327, was added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

For another Subchapter I, consisting of Secs. 242.301 to 242.322, added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, see Sec. 242.301 et seq. post.

Text of subchapter effective upon federal determination of failure to comply with federal regulations

SUBCHAPTER I. NURSING FACILITY ADMINISTRATION

Sec. 242.301. DEFINITIONS. In this subchapter:

(1) "Board" means the Texas Board of Nursing Facility Administrators.

(2) "Nursing facility" means an institution or facility that is licensed as a nursing home, nursing facility, or skilled nursing facility by the department under this chapter.

(3) "Nursing facility administrator" or "administrator" means a person who engages in the practice of nursing facility

administration, without regard to whether the person has an ownership interest in the facility or whether the functions and duties are shared with any other person.

(4) "Practice of nursing facility administration" means the performance of the acts of administering, managing, supervising, or being in general administrative charge of a nursing facility.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.302. TEXAS BOARD OF NURSING FACILITY ADMINISTRATORS. (a) The Texas Board of Nursing Facility Administrators is within the department.

(b) The board is composed of nine members appointed by the governor as follows:

(1) three licensed nursing facility administrators, at least one of whom shall represent a not-for-profit nursing facility;

(2) one physician with experience in geriatrics who is not employed by a nursing facility;

(3) one registered nurse with experience in geriatrics who is not employed by a nursing facility;

(4) one social worker with experience in geriatrics who is not employed by a nursing facility; and

(5) three public members with experience working with the chronically ill and infirm as provided by 42 U.S.C. Section 1396g.

(c) Members of the board serve staggered six-year terms, with the terms of three members expiring on February 1 of each odd-numbered year. A person appointed to fill a vacancy on the board shall serve for the unexpired portion of the term for which the person is appointed.

(d) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, or national origin of the person appointed.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.303. MEMBERSHIP REQUIREMENTS. (a) A member of the board who is an administrator must:

(1) be a resident of this state and a citizen of the United States;

(2) be licensed under this subchapter and currently serving as a nursing facility administrator or have direct supervisory responsibility on a daily basis over an administrator who works in a nursing facility; and

(3) hold a degree from an accredited four-year college or university.

(b) An administrator who does not have a degree as required by Subsection (a)(3) may be qualified to serve as a member of the board if the administrator has two years of practical experience as an administrator for every year less than four that the administrator has completed at a four-year college or university.

(c) A member or employee of the board may not:

(1) be an officer, employee, or paid consultant of a trade association in the nursing facility industry; or

(2) be related within the second degree by affinity or within the third degree by consanguinity to an officer, employee, or paid consultant of a trade association in the nursing facility industry.

(d) A member of the board who represents the general public may not have a financial interest, other than as a consumer, in a nursing facility as an officer, director, partner, owner, employee, attorney, or paid consultant or be related within the second degree by affinity or within the third degree by consanguinity to a person who has a financial interest, other than as a consumer, in a nursing facility as an officer, director, partner, owner, employee, attorney, or paid consultant.

(e) A person who is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board may not serve on the board.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.304. GROUNDS FOR REMOVAL. It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Section 242.303 for appointment to the board;

(2) does not maintain during service on the board the

qualifications required by Section 242.303 for appointment to the board;

(3) violates a prohibition established by Section 242.303;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.305. BOARD OFFICERS; MEETINGS; QUORUM; EXPENSES. (a) The board shall elect from its members a presiding officer and assistant presiding officer who serve according to rules adopted by the board.

(b) The board shall hold at least two regular meetings each year as provided by rules adopted by the board.

(c) A majority of the members constitutes a quorum.

(d) Each member of the board is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.306. APPLICATION OF OPEN MEETINGS AND ADMINISTRATIVE PROCEDURE ACT. The board is subject to Chapters 551 and 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.307. POWERS AND DUTIES OF THE BOARD. (a) The board may adopt rules consistent with this subchapter.

(b) The board shall:

(1) adopt and publish a code of ethics for nursing facility administrators;

(2) establish the qualifications of applicants for licenses and the renewal of licenses issued under this subchapter;

(3) spend funds necessary for the proper administration of the department's assigned duties under this subchapter;

(4) establish reasonable and necessary fees for the administration and implementation of this subchapter; and

(5) establish a minimum number of hours of continuing education required to renew a license issued under this subchapter and periodically assess the continuing education needs of license holders to determine whether specific course content should be required.

(c) The board is the licensing authority for the healing arts, as provided by 42 U.S.C. Section 1396g, and shall meet the requirements of a state licensing agency for nursing facility practitioners, as provided by 42 C.F.R. Part 431, Subpart N.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.308. ADMINISTRATIVE FUNCTIONS. The department shall serve as the administrator of the licensing activities under this subchapter and shall provide staff as necessary for the licensing and regulation of nursing facility administrators under this subchapter. If necessary to the administration of this subchapter, the department may secure and provide for compensation for services that the department considers necessary and may employ and compensate within available appropriations professional consultants, technical assistants, and employees on a full-time or part-time basis.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.309. FEES; FUNDS. (a) The board by rule shall set reasonable and necessary fees in amounts necessary to cover the cost of administering this subchapter. The board by rule may set different licensing fees for different categories of licenses.

(b) The department shall receive and account for funds received under this subchapter. The funds shall be deposited in the state treasury to the credit of the general revenue fund.

(c) The department may receive and disburse funds received from any federal source for the furtherance of the department's functions under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.310. PRACTICING WITHOUT A LICENSE. A person may not act as a nursing facility administrator or represent to others that the person is a nursing facility administrator unless the person is licensed under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.311. LICENSE APPLICATION; QUALIFICATIONS. (a) An applicant for a nursing facility administrator's license must submit a sworn application that is accompanied by the application fee.

(b) The board shall prescribe the form of the application and may by rule establish dates by which applications and fees must be received.

(c) An applicant for a nursing facility administrator's license must take a licensing examination under this subchapter. To qualify for the licensing examination, the applicant must have satisfactorily completed a course of instruction and training prescribed by the board that is conducted by or in cooperation with an accredited postsecondary educational institution and that is designed and administered to provide sufficient knowledge of:

(1) the needs served by nursing facilities;

(2) the laws governing the operation of nursing facilities and the protection of the interests of facility residents; and

(3) the elements of nursing facility administration.

(d) An applicant who has not completed the course of instruction and training described by Subsection (c) must present evidence satisfactory to the board of having completed sufficient education, training, and experience in the fields described by Subsection (c) to enable the applicant to engage in the practice of nursing facility administration.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.3115. APPLICABILITY OF OTHER LAW. Chapter 53, Occupations Code, does not apply to the issuance or renewal of a license under this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1136 (S.B. 681), Sec. 2, eff. September 1, 2023.

Sec. 242.312. EXAMINATION. (a) The licensing examination shall be prepared or approved by the board and shall be administered by the board to qualified applicants at least twice each calendar year. The board shall have the written portion of the examination, if any, validated by a testing professional.

(b) Not later than the 30th day after the date on which a licensing examination is administered under this subchapter, the board shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national or state testing service, the board shall notify examinees of the results of the examination not later than two weeks after the date the board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the licensing examination, the board shall furnish the person with an analysis of the person's performance on the examination.

(d) The board may establish by rule additional educational requirements to be met by an applicant who fails the examination three times.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.313. LICENSES; TEMPORARY LICENSE; INACTIVE STATUS. (a) A person who meets the requirements for licensing under this subchapter is entitled to receive a license. A nursing facility administrator's license is not transferable.

(b) A person licensed under this subchapter must notify the board of the license holder's correct mailing address.

(c) A license is valid for two years. The board by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that each license holder

shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(d) The board by rule may provide for the issuance of a temporary license. Rules adopted under this section shall include a time limit for a licensee to practice under a temporary license.

(e) The board by rule may provide for a license holder to be placed on inactive status.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.314. PROVISIONAL LICENSE. (a) The board shall issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as a nursing facility administrator for at least two years in another jurisdiction, including a foreign country, that has licensing requirements that are substantially equivalent to the requirements of this subchapter;

(2) has passed a national or other examination recognized by the board relating to the practice of nursing facility administration; and

(3) is sponsored by a person licensed by the board under this subchapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The board may waive the requirement of Subsection (a)(3) for an applicant if the board determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this subchapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 242.311; or

(2) the provisional license holder passes the part of the examination under Section 242.312 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of nursing facility administration in this state and:

(A) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this subchapter; and

(B) the provisional license holder satisfies any other license requirements under this subchapter.

(d) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(e) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.22, eff. Sept. 1, 1999.

Sec. 242.315. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1-1/2 times the normally required fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the board a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 31st day before the date a person's license is scheduled to expire, the board shall send written notice of the impending expiration to the person at the person's last known address according to the records of the board.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.23, eff. Sept. 1, 1999.

Sec. 242.316. MANDATORY CONTINUING EDUCATION. (a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this subchapter. The board may assess the continuing education needs of license holders and may require license holders to attend continuing education courses specified by the board.

(b) The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties. The board shall adopt a procedure to assess a license holder's participation in continuing education programs.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.317. COMPLAINT RECEIPT, INVESTIGATION, AND DISPOSITION. (a) The board shall keep an information file about each complaint filed with the board regarding a person licensed under this subchapter. The board's information file shall be kept current and contain a record for each complaint of:

(1) all persons contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed; and

(4) other relevant information.

(b) If a written complaint is filed with the board that the board has authority to resolve, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by

rule shall prescribe information to be provided to a person when the person files a complaint with the board.

(d) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

(e) The board shall adopt rules concerning the investigation of complaints filed with the board. The rules adopted under this subsection shall:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the board be advised at least quarterly of complaints that have been dismissed and require that a letter be sent to each person who has filed a complaint that is dismissed explaining the action taken on the complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that may require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(f) The board shall dispose of all complaints in a timely manner. The board by rule shall establish a schedule for initiating a complaint investigation that is under the control of the board not later than the 30th day after the date the complaint is received by the board. The schedule shall be kept in the information file for the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(g) The department shall notify the board at least quarterly of complaints that have extended beyond the time prescribed by the board for resolving complaints so that the department may take any necessary corrective actions on the processing of complaints.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.318. SANCTIONS. (a) The board may revoke, suspend, or refuse to renew a nursing facility administrator's license, assess

an administrative penalty, issue a written reprimand, require participation in continuing education, or place an administrator on probation, after due notice and the opportunity for a hearing, on proof of any of the following grounds:

(1) the license holder has wilfully or repeatedly violated a provision of this subchapter or a rule adopted under this subchapter;

(2) the license holder has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the residents of a facility of which the license holder is an administrator;

(3) the license holder obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;

(4) the license holder's use of alcohol or drugs creates a hazard to the residents of a facility;

(5) a judgment of a court of competent jurisdiction finds that the license holder is mentally incapacitated;

(6) the license holder has been convicted in a court of competent jurisdiction of a misdemeanor or felony involving moral turpitude;

(7) the license holder has been convicted in a court of competent jurisdiction of an offense listed in Section 250.006; or

(8) the license holder has been negligent or incompetent in the license holder's duties as a nursing facility administrator.

(b) If a license sanction is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) A license holder is entitled to a hearing in accordance with rules promulgated by the board before a sanction is imposed under this section.

(d) The board by rule shall adopt a broad schedule of sanctions for violations under this subchapter. The board shall use the schedule for any sanction imposed in accordance with the rules.

(e) The department shall by rule establish criteria to

determine whether deficiencies from a facility's survey warrant action against an administrator. The criteria shall include a determination of whether the survey indicates substandard quality of care and whether a deficiency is related to an act or failure to act by the administrator. If a deficiency on which a disciplinary action against an administrator is initiated or completed is not substantiated, the disciplinary action shall be reversed.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 4, eff. June 19, 2009.

Sec. 242.319. WRITTEN REPRIMAND AND CONTINUING EDUCATION AS SANCTIONS. In addition to the other disciplinary actions authorized under this subchapter, the board may issue a written reprimand to a license holder who violates this subchapter or require that a license holder who violates this subchapter participate in continuing education programs. The board shall specify the continuing education programs that may be attended and the number of hours that must be completed by a license holder to fulfill the requirements of this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.320. ADMINISTRATIVE PENALTY AS SANCTION. (a) The department may impose an administrative penalty against a person licensed or regulated under this subchapter who violates this subchapter or a rule adopted by the board under this subchapter.

(b) The penalty for a violation may be in an amount not to exceed $1,000. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;
(4) the amount necessary to deter future violations;
(5) efforts to correct the violations; and
(6) any other matter that justice may require.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.321. NOTICE AND HEARING. (a) If the department determines that a violation has occurred, the department shall give written notice of the determination to the person alleged to have committed the violation. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and the penalty recommended by the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) If the person accepts the determination and the penalty recommended by the department, or if the person fails to timely respond to the notice, the department shall impose the recommended penalty.

(d) If the person requests a hearing, the department shall set a hearing and give notice of the hearing to the person. The hearing shall be held in accordance with the rules on contested case hearings adopted by the executive commissioner.

(e) The notice of the hearing decision given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the decision.

(f) Within 30 days after the date the department's decision is final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;
(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the

amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Within the 30-day period, a person who acts under Subsection (f)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's decision is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(h) If the department receives a copy of an affidavit under Subsection (g)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(i) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(j) Judicial review of the decision of the department:

(1) is instituted by filing a petition as provided by Section 2001.176, Government Code; and

(2) is under the substantial evidence rule.

(k) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(l) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(m) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(n) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 5, eff. June 19, 2009.

Sec. 242.322. INFORMAL PROCEEDINGS. (a) The department by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must provide the complainant and the license holder an opportunity to be heard.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.323. MONITORING OF LICENSE HOLDER. The board by rule shall develop a system for monitoring a license holder's compliance with the requirements of this subchapter. Rules adopted under this section shall include procedures for monitoring a license holder who is required by the board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.324. CIVIL PENALTY. A person who violates this subchapter is liable to the state for a civil penalty of $1,000 for each day of violation. At the request of the department, the attorney general shall bring an action to recover a civil penalty established by this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.325. ASSISTANCE OF ATTORNEY GENERAL. The attorney general shall provide legal assistance as necessary in enforcing the provisions of this subchapter. This requirement does not relieve a local prosecuting officer of any of the prosecuting officer's duties under the law.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.326. OFFENSE. (a) A person commits an offense if the person knowingly or intentionally violates Section 242.310.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.327. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT. (a) A person may not suspend, terminate, or otherwise discipline or discriminate against a licensed nursing facility administrator who refuses to engage in an act or omission relating to the administrator's job duties or responsibilities that would

constitute a violation of this subchapter or of a rule adopted under this subchapter, if the administrator notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes a violation of this subchapter or of a rule adopted under this subchapter.

(b) An act by a person under Subsection (a) does not constitute a violation of this section if:

(1) the act or omission the administrator refused to commit was not conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter; or

(2) the act or omission the administrator refused to commit was conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter, and the person rescinds any disciplinary or discriminatory action taken against the administrator, compensates the administrator for lost wages, and restores any lost benefits to the administrator.

(c) A violation of this section is an unlawful employment practice, and a civil action may be brought by a licensed nursing facility administrator against a person for the violation. The relief available in a civil action shall be the same as the relief available to complainants in a civil action for violations of Chapter 21, Labor Code. In no event may any action be brought pursuant to this section more than two years after the date of the administrator's refusal to engage in an act or omission that would constitute a violation of this subchapter or of a rule adopted under this subchapter.

(d) In this section, "person" includes an individual, organization, corporation, agency, facility, or other entity.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

SUBCHAPTER K. QUALITY OF CARE

Sec. 242.401. QUALITY OF LIFE. (a) An institution shall care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life and dignity. An institution that admits a resident who is younger than 18 years of age must provide care to meet the resident's unique medical and developmental needs.

(b) A resident of an institution has the right to reside and

receive services in the institution with reasonable accommodation of individual needs, except to the extent the health or safety of the resident or other residents would be endangered.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.402. QUALITY OF CARE. An institution shall provide to each resident the necessary care or service needed to enable the resident to attain and maintain the highest practicable level of physical, emotional, and social well-being, in accordance with:

(1) each resident's individual assessment and comprehensive plan of care; and

(2) the rules and standards relating to quality of care adopted under this chapter.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.403. STANDARDS FOR QUALITY OF LIFE AND QUALITY OF CARE. (a) The executive commissioner shall adopt standards to implement Sections 242.401 and 242.402. Those standards must, at a minimum, address:

(1) admission of residents;

(2) care of residents younger than 18 years of age;

(3) an initial assessment and comprehensive plan of care for residents;

(4) transfer or discharge of residents;

(5) clinical records;

(6) infection control at the institution;

(7) rehabilitative services;

(8) food services;

(9) nutrition services provided by a director of food services who is licensed by the Texas Department of Licensing and Regulation under Chapter 701, Occupations Code, or, if not so licensed, who is in scheduled consultation with a person who is so licensed as frequently and for such time as the executive commissioner shall determine necessary to assure each resident a diet that meets the daily nutritional and special dietary needs of each

resident;

(10) social services and activities;

(11) prevention of pressure sores;

(12) bladder and bowel retraining programs for residents;

(13) prevention of complications from nasogastric or gastrotomy tube feedings;

(14) relocation of residents within an institution;

(15) postmortem procedures; and

(16) appropriate use of chemical and physical restraints.

(b) The executive commissioner may require an institution to submit information to the department, including Minimum Data Set Resident Assessments, necessary to ensure the quality of care in institutions. Information submitted to the department that identifies a resident of an institution is confidential and not subject to disclosure under Chapter 552, Government Code.

(c) The executive commissioner may adopt standards in addition to those required by Subsection (a) to implement Sections 242.401 and 242.402.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 667 (S.B. 48), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0653, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 9.002, eff. September 1, 2017.

Sec. 242.404. POLICIES, PROCEDURES, AND PRACTICES FOR QUALITY OF CARE AND QUALITY OF LIFE. (a) Each institution shall comply with the standards adopted under this subchapter and shall develop written operating policies to implement those standards.

(b) The policies and procedures must be available to each physician, staff member, resident, and resident's next of kin or guardian and to the public.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

SUBCHAPTER L. RIGHTS OF RESIDENTS

Sec. 242.501. RESIDENT'S RIGHTS. (a) The executive commissioner by rule shall adopt a statement of the rights of a resident. The statement must be consistent with Chapter 102, Human Resources Code, but shall reflect the unique circumstances of a resident at an institution. At a minimum, the statement of the rights of a resident must address the resident's constitutional, civil, and legal rights and the resident's right:

(1) to be free from abuse and exploitation;

(2) to safe, decent, and clean conditions;

(3) to be treated with courtesy, consideration, and respect;

(4) to not be subjected to discrimination based on age, race, religion, sex, nationality, or disability and to practice the resident's own religious beliefs;

(5) to place in the resident's room an electronic monitoring device that is owned and operated by the resident or provided by the resident's guardian or legal representative;

(6) to privacy, including privacy during visits and telephone calls;

(7) to complain about the institution and to organize or participate in any program that presents residents' concerns to the administrator of the institution;

(8) to have information about the resident in the possession of the institution maintained as confidential;

(9) to retain the services of a physician the resident chooses, at the resident's own expense or through a health care plan, and to have a physician explain to the resident, in language that the resident understands, the resident's complete medical condition, the recommended treatment, and the expected results of the treatment, including reasonably expected effects, side effects, and risks associated with psychoactive medications;

(10) to participate in developing a plan of care, to refuse treatment, and to refuse to participate in experimental research;

(11) to a written statement or admission agreement describing the services provided by the institution and the related charges;

(12) to manage the resident's own finances or to delegate that responsibility to another person;

(13) to access money and property that the resident has

deposited with the institution and to an accounting of the resident's money and property that are deposited with the institution and of all financial transactions made with or on behalf of the resident;

(14) to keep and use personal property, secure from theft or loss;

(15) to not be relocated within the institution, except in accordance with standards adopted under Section 242.403;

(16) to receive visitors;

(17) to receive unopened mail and to receive assistance in reading or writing correspondence;

(18) to participate in activities inside and outside the institution;

(19) to wear the resident's own clothes;

(20) to discharge himself or herself from the institution unless the resident is an adjudicated mental incompetent;

(21) to not be discharged from the institution except as provided in the standards adopted under Section 242.403;

(22) to be free from any physical or chemical restraints imposed for the purposes of discipline or convenience, and not required to treat the resident's medical symptoms; and

(23) to receive information about prescribed psychoactive medication from the person prescribing the medication or that person's designee, to have any psychoactive medications prescribed and administered in a responsible manner, as mandated by Section 242.505, and to refuse to consent to the prescription of psychoactive medications.

(b) A right of a resident may be restricted only to the extent necessary to protect:

(1) a right of another resident, particularly a right of the other resident relating to privacy and confidentiality; or

(2) the resident or another person from danger or harm.

(c) The executive commissioner may adopt rights of residents in addition to those required by Subsection (a) and may consider additional rights applicable to residents in other jurisdictions.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 919, Sec. 1, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 1224, Sec. 2, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.004, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0654, eff. April 2, 2015.

Sec. 242.502. RIGHTS CUMULATIVE. The rights established under this subchapter are cumulative of the rights established under any other law.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.503. DUTIES OF INSTITUTION. (a) An institution shall develop and implement policies to protect resident rights.

(b) An institution and the staff of an institution may not violate a right adopted under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.504. INFORMATION ABOUT RESIDENT'S RIGHTS AND VIOLATIONS. (a) An institution shall inform each resident and the resident's next of kin or guardian of the rights adopted under this subchapter and shall explain the rights to the resident and the resident's next of kin or guardian. The institution shall provide a written statement of:

(1) all of the resident's rights; and

(2) any additional rules adopted by the institution involving resident rights and responsibilities.

(b) The institution shall provide a copy of the written statement to:

(1) each resident;

(2) the next of kin or guardian of each resident; and

(3) each member of the staff of the institution.

(c) The institution shall maintain a copy of the statement, signed by the resident or the resident's next of kin or guardian, in the institution's records.

(d) The institution shall post the written statement in the manner required by Section 242.042.

(e) An institution that has been cited by the department for a violation of any right adopted under this subchapter shall include a notice of the citation in the informational materials required by Section 242.042(a)(8). The notice of citation must continue to be included in the informational materials until any regulatory action or proceeding with respect to the violation is complete and the department has determined that the institution is in full compliance with the applicable requirement.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.505. PRESCRIPTION OF PSYCHOACTIVE MEDICATION. (a) In this section:

(1) "Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a resident to prevent:

(A) imminent probable death or substantial bodily harm to the resident; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the resident overtly or continually makes or commits.

(2) "Psychoactive medication" means a medication that is prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. The term includes the following categories when used as described by this subdivision:

(A) antipsychotics or neuroleptics;

(B) antidepressants;

(C) agents for control of mania or depression;

(D) antianxiety agents;

(E) sedatives, hypnotics, or other sleep-promoting drugs; and

(F) psychomotor stimulants.

(b) A person may not administer a psychoactive medication to a resident who does not consent to the prescription unless:

(1) the resident is having a medication-related emergency;

or

(2) the person authorized by law to consent on behalf of the resident has consented to the prescription.

(c) Subject to Subsection (c-1), consent to the prescription of psychoactive medication given by a resident or by a person authorized by law to consent on behalf of the resident is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;

(2) the person prescribing the medication, that person's designee, or the facility's medical director provided the following information, in a standard format approved by the department, to the resident and, if applicable, to the person authorized by law to consent on behalf of the resident:

(A) the specific condition to be treated;

(B) the beneficial effects on that condition expected from the medication;

(C) the probable clinically significant side effects and risks associated with the medication; and

(D) the proposed course of the medication;

(3) the resident and, if appropriate, the person authorized by law to consent on behalf of the resident are informed in writing that consent may be revoked; and

(4) the consent is evidenced in the resident's clinical record by:

(A) a signed form prescribed by the facility or by a statement of the person prescribing the medication or that person's designee that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained; and

(B) the original or a copy of the written consent required by Subsection (c-1), if applicable.

(c-1) In addition to the requirements of Subsection (c), consent to the prescription of an antipsychotic or neuroleptic medication is valid only if the consent to the prescription of that medication is given in writing, on a form prescribed by the commission, by a resident or by a person authorized by law to consent on behalf of the resident.

(c-2) Written consent provided by a resident or the resident's legally authorized representative on the form described by Subsection (c-1) satisfies the consent requirements of Subsection (c).

(c-3) There is a rebuttable presumption that the written consent provided by a resident or the resident's legally authorized representative on the form described by Subsection (c-1) satisfies the disclosure requirements established by the Texas Medical Disclosure Panel in Sections 74.104 and 74.105, Civil Practice and Remedies Code.

(d) A resident's refusal to consent to receive psychoactive medication shall be documented in the resident's clinical record.

(e) If a person prescribes psychoactive medication to a resident without the resident's consent because the resident is having a medication-related emergency:

(1) the person shall document in the resident's clinical record in specific medical or behavioral terms the necessity of the order; and

(2) treatment of the resident with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the resident's personal liberty.

(f) A physician or a person designated by the physician is not liable for civil damages or an administrative penalty and is not subject to disciplinary action for a breach of confidentiality of medical information for a disclosure of the information provided under Subsection (c)(2) made by the resident or the person authorized by law to consent on behalf of the resident that occurs while the information is in the possession or control of the resident or the person authorized by law to consent on behalf of the resident.

Added by Acts 2001, 77th Leg., ch. 919, Sec. 2, eff. June 14, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1095 (H.B. 2050), Sec. 1, eff. September 1, 2019.

SUBCHAPTER M. COMPLAINT INSPECTIONS

Sec. 242.551. COMPLAINT REQUESTING INSPECTION. (a) A person may request an inspection of an institution in accordance with this chapter by making a complaint notifying the department of an alleged violation of law and requesting an inspection.

(b) The department shall encourage a person who makes an oral complaint under Subsection (a) to submit a written, signed complaint.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.552. DISCLOSURE OF SUBSTANCE OF COMPLAINT. The department may not provide information to the institution relating to the substance of a complaint made under this subchapter before an on-site inspection is begun in accordance with this subchapter.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.553. CONFIDENTIALITY. The name of the person making the complaint is confidential and may not be released to the institution or any other person, unless the person making the complaint specifically requests that the person's name be released.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.554. PRELIMINARY REVIEW OF COMPLAINT; INSPECTION. (a) On receipt of a complaint under this subchapter, the department shall make a preliminary review of the complaint.

(b) Within a reasonable time after receipt of the complaint, the department shall make an on-site inspection or otherwise respond to the complaint unless the department determines that:

(1) the person making the complaint made the complaint to harass the institution;

(2) the complaint is without any reasonable basis; or

(3) sufficient information in the possession of the department indicates that corrective action has been taken.

(c) The department shall promptly notify the person making the complaint of the department's proposed course of action under Subsection (b) and the reasons for that action.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

SUBCHAPTER N. ADMINISTRATION OF MEDICATION

Sec. 242.601. MEDICATION ADMINISTRATION. (a) An institution must establish medication administration procedures.

(b) The medication administration procedures must comply with this subchapter and the rules adopted under Section 242.608.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.61, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0655, eff. April 2, 2015.

Sec. 242.602. PHARMACIST SERVICES. (a) An institution shall:

(1) employ a licensed pharmacist responsible for operating the institution's pharmacy; or

(2) contract, in writing, with a licensed pharmacist to advise the institution on ordering, storage, administration, and disposal of medications and biologicals and related recordkeeping.

(b) The institution shall allow residents to choose their pharmacy provider from any pharmacy that is qualified to perform the services.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.603. STORAGE AND DISPOSAL OF MEDICATIONS. (a) An institution shall store medications under appropriate conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security.

(b) The institution shall properly dispose of:

(1) any medication that is discontinued or outdated, except as provided by Subsection (c); and

(2) any medication in a container with a worn or illegible label or missing a label.

(c) A discontinued medication that has not been destroyed must be reinstated if reordered.

(d) An institution shall release the medications of a resident who is transferred directly to another institution or who is

discharged to home to the new institution or to the resident or resident's next of kin or guardian, as appropriate. The institution may release a medication to a resident only on the written or verbal authorization of the attending physician.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.62, eff. Sept. 1, 2003.

Sec. 242.604. REPORTS OF MEDICATION ERRORS AND ADVERSE REACTIONS. An institution's nursing staff must report medication errors and adverse reactions to the resident's physician in a timely manner, as warranted by an assessment of the resident's condition, and record the errors and reactions in the resident's clinical record.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.605. MEDICATION REFERENCE SOURCES. An institution shall maintain updated medication reference texts or sources. If the institution has a resident younger than 18 years of age, these texts or sources must include information on pediatric medications, dosages, sites, routes, techniques of administration of medications, desired effects, and possible side effects.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.606. PERMITS TO ADMINISTER MEDICATION. A person may not administer medication to a resident unless the person:

(1) holds a license under state law that authorizes the person to administer medication; or

(2) holds a permit issued under Section 242.610 and acts under the authority of a person who holds a license under state law that authorizes the person to administer medication.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Redesignated from V.T.C.A, Health and Safety Code Sec. 242.151 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.607. EXEMPTIONS FOR NURSING STUDENTS AND MEDICATION AIDE TRAINEES. (a) Sections 242.606 and 242.614 do not apply to:

(1) a graduate nurse holding a temporary permit issued by the Texas Board of Nursing;

(2) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;

(3) a graduate vocational nurse holding a temporary permit issued by the Texas Board of Nursing;

(4) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(5) a trainee in a medication aide training program approved by the department under this subchapter who is administering medications as part of the trainee's clinical experience.

(b) The administration of medications by persons exempted under Subdivisions (1) through (4) of Subsection (a) is governed by the terms of the memorandum of understanding executed by the department and the Texas Board of Nursing.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 1, eff. June 19, 1990. Redesignated from Health and Safety Code Sec. 242.1511 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 553, Sec. 2.011, eff. Feb. 1, 2004. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 69, eff. September 1, 2007.

Sec. 242.608. RULES FOR ADMINISTRATION OF MEDICATION. The executive commissioner by rule shall establish:

(1) minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to

administer medication to a resident;

(2) curricula to train persons to administer medication to a resident;

(3) minimum standards for the approval of programs to train persons to administer medication to a resident and for rescinding approval; and

(4) the acts and practices that are allowed or prohibited to a permit holder.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.152 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0656, eff. April 2, 2015.

Sec. 242.609. TRAINING PROGRAMS TO ADMINISTER MEDICATION. (a) An application for the approval of a training program must be made to the department on a form and under rules prescribed by the executive commissioner.

(b) The department shall approve a training program that meets the minimum standards adopted under Section 242.608. The department may review the approval annually.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.153 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0657, eff. April 2, 2015.

Sec. 242.610. ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION. (a) To be issued or to have renewed a permit to administer medication, a person shall apply to the department on a form prescribed and under rules adopted by the executive commissioner.

(b) The department shall prepare and conduct, at the site of

the training program, an examination for the issuance of a permit. The results of the examination shall be reported in accordance with Section 242.6101.

(c) The executive commissioner shall require a permit holder to satisfactorily complete a continuing education course approved by the department for renewal of the permit.

(d) Subject to Subsections (h)-(m), the department shall issue a permit or renew a permit to an applicant who:

(1) meets the minimum requirements adopted under Section 242.608;

(2) successfully completes the examination or the continuing education requirements; and

(3) pays a nonrefundable application fee determined by the executive commissioner by rule.

(e) Except as provided by Subsection (g), a permit is valid for one year and is not transferable.

(f) The department may issue a permit to an employee of a state or federal agency listed in Section 242.003(a)(6)(B).

(g) The executive commissioner by rule may adopt a system under which permits expire on various dates during the year. For the year in which the permit expiration date is changed, the department shall prorate permit fees on a monthly basis so that each permit holder pays only that portion of the permit fee that is allocable to the number of months during which the permit is valid. On renewal of the permit on the new expiration date, the total permit renewal fee is payable.

(h) A person who is otherwise eligible to renew a permit may renew an unexpired permit by paying the required renewal fee to the department before the expiration date of the permit. A person whose permit has expired may not engage in activities that require a permit until the permit has been renewed.

(i) A person whose permit has been expired for 90 days or less may renew the permit by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(j) A person whose permit has been expired for more than 90 days but less than one year may renew the permit by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(k) A person whose permit has been expired for one year or more may not renew the permit. The person may obtain a new permit by

complying with the requirements and procedures, including the examination requirements, for obtaining an original permit.

(l) A person who was issued a permit in this state, moved to another state, currently holds a valid permit or license issued by the other state, and has been in practice in that state for the two years preceding the date of application may obtain a new permit without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the permit.

(m) Not later than the 30th day before the date a person's permit is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 93, eff. Sept. 1, 1991. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.154 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 453, Sec. 1, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1169, Sec. 15, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0658, eff. April 2, 2015.

Sec. 242.6101. RESULTS OF EXAMINATION FOR ISSUANCE OF PERMIT. (a) Not later than the 30th day after the date a person takes an examination for the issuance of a permit under this subchapter, the department shall notify the person of the results of the examination.

(b) If the examination is graded or reviewed by a testing service:

(1) the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails an examination for the issuance of a permit administered under this subchapter, the department shall furnish the person with an analysis of the person's performance on the examination.

Added by Acts 2003, 78th Leg., ch. 1169, Sec. 16, eff. Sept. 1, 2003.

Sec. 242.611. FEES FOR ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION. The executive commissioner by rule shall set the fees in amounts reasonable and necessary to recover the amount projected by the department as required to administer its functions. Except as otherwise provided by Section 242.610, the fees may not exceed:

(1) $25 for a combined permit application and examination fee; and

(2) $15 for a renewal permit application fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.155 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1169, Sec. 17, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0659, eff. April 2, 2015.

Sec. 242.6111. APPLICABILITY OF OTHER LAW. Chapter 53, Occupations Code, does not apply to the issuance or renewal of a permit to administer medication under this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1136 (S.B. 681), Sec. 3, eff. September 1, 2023.

Sec. 242.612. VIOLATION OF PERMITS TO ADMINISTER MEDICATION. (a) The department shall revoke, suspend, or refuse to renew a permit or shall reprimand a permit holder for a violation of this subchapter or a rule adopted under this subchapter. In addition, the department may suspend a permit in an emergency or rescind training program approval.

(b) Except as provided by Section 242.613, the procedure by which the department takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by the department's rules for a formal hearing and by Chapter 2001, Government Code.

(c) The department may place on probation a person whose permit is suspended. If a permit suspension is probated, the department may require the person:

(1) to report regularly to the department on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the department; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.156 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1169, Sec. 18, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0660, eff. April 2, 2015.

Sec. 242.613. EMERGENCY SUSPENSION OF PERMITS TO ADMINISTER MEDICATION. (a) The department shall issue an order to suspend a permit issued under this subchapter if the department has reasonable cause to believe that the conduct of the permit holder creates an imminent danger to the public health or safety.

(b) An emergency suspension is effective immediately without a hearing on notice to the permit holder.

(c) If requested in writing by a permit holder whose permit is suspended, an administrative law judge of the State Office of Administrative Hearings shall conduct a hearing to continue, modify, or rescind the emergency suspension.

(d) The hearing must be held not earlier than the 10th day or later than the 30th day after the date on which the hearing request is received.

(e) The hearing and an appeal from a disciplinary action related to the hearing are governed by the department's rules for a formal hearing and Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.157 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0661, eff. April 2, 2015.

Sec. 242.614. ADMINISTRATION OF MEDICATION; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly administers medication to a resident and the person:

(1) does not hold a license under state law that authorizes the person to administer medication; or

(2) does not hold a permit issued by the department under this subchapter.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from V.T.C.A, Health and Safety Code Sec. 242.158 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

SUBCHAPTER R. ELECTRONIC MONITORING OF RESIDENT'S ROOM

Sec. 242.841. DEFINITIONS. In this subchapter:

(1) "Authorized electronic monitoring" means the placement of an electronic monitoring device in the room of a resident of an institution and making tapes or recordings with the device after making a request to the institution to allow electronic monitoring.

(2) "Electronic monitoring device":

(A) includes:

(i) video surveillance cameras installed in the room of a resident; and

(ii) audio devices installed in the room of a resident designed to acquire communications or other sounds occurring

in the room; and

(B) does not include an interception device that is specifically used for the nonconsensual interception of wire or electronic communications.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 3.12, eff. January 1, 2019.

Sec. 242.842. CRIMINAL AND CIVIL LIABILITY. (a) It is a defense to prosecution under Section 16.02, Penal Code, or any other statute of this state under which it is an offense to intercept a communication or disclose or use an intercepted communication, that the communication was intercepted by an electronic monitoring device placed in the room of a resident of an institution.

(b) This subchapter does not affect whether a person may be held to be civilly liable under other law in connection with placing an electronic monitoring device in the room of a resident of an institution or in connection with using or disclosing a tape or recording made by the device except:

(1) as specifically provided by this subchapter; or

(2) to the extent that liability is affected by:

(A) a consent or waiver signed under this subchapter; or

(B) the fact that authorized electronic monitoring is required to be conducted with notice to persons who enter a resident's room.

(c) A communication or other sound acquired by an audio electronic monitoring device installed under the provisions of this subchapter concerning authorized electronic monitoring is not considered to be:

(1) an oral communication as defined by Article 18A.001, Code of Criminal Procedure; or

(2) a communication as defined by Section 123.001, Civil Practice and Remedies Code.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 3.13, eff.

January 1, 2019.

Sec. 242.843. COVERT USE OF ELECTRONIC MONITORING DEVICE; LIABILITY OF DEPARTMENT OR INSTITUTION. (a) For purposes of this subchapter, the placement and use of an electronic monitoring device in the room of a resident is considered to be covert if:

(1) the placement and use of the device is not open and obvious; and

(2) the institution and the department are not informed about the device by the resident, by a person who placed the device in the room, or by a person who is using the device.

(b) The department and the institution may not be held to be civilly liable in connection with the covert placement or use of an electronic monitoring device in the room of a resident.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.844. REQUIRED FORM ON ADMISSION. The executive commissioner by rule shall prescribe a form that must be completed and signed on a resident's admission to an institution by or on behalf of the resident. The form must state:

(1) that a person who places an electronic monitoring device in the room of a resident or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another;

(2) that a person who covertly places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device in the room of a resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device;

(3) that a resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring under Subchapter R, Chapter 242, Health and Safety Code, and that if the institution refuses to permit the electronic monitoring or fails to make reasonable physical accommodations for the authorized electronic monitoring that the person should contact the Department of Aging and Disability Services;

(4) the basic procedures that must be followed to request

authorized electronic monitoring;

(5) the manner in which this chapter affects the legal requirement to report abuse or neglect when electronic monitoring is being conducted; and

(6) any other information regarding covert or authorized electronic monitoring that the executive commissioner considers advisable to include on the form.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0662, eff. April 2, 2015.

Sec. 242.845. AUTHORIZED ELECTRONIC MONITORING: WHO MAY REQUEST. (a) If a resident has capacity to request electronic monitoring and has not been judicially declared to lack the required capacity, only the resident may request authorized electronic monitoring under this subchapter, notwithstanding the terms of any durable power of attorney or similar instrument.

(b) If a resident has been judicially declared to lack the capacity required for taking an action such as requesting electronic monitoring, only the guardian of the resident may request electronic monitoring under this subchapter.

(c) If a resident does not have capacity to request electronic monitoring but has not been judicially declared to lack the required capacity, only the legal representative of the resident may request electronic monitoring under this subchapter. The executive commissioner by rule shall prescribe:

(1) guidelines that will assist institutions, family members of residents, advocates for residents, and other interested persons to determine when a resident lacks the required capacity; and

(2) who may be considered to be a resident's legal representative for purposes of this subchapter, including:

(A) persons who may be considered the legal representative under the terms of an instrument executed by the resident when the resident had capacity; and

(B) persons who may become the legal representative for the limited purpose of this subchapter under a procedure prescribed by the executive commissioner.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0663, eff. April 2, 2015.

Sec. 242.846. AUTHORIZED ELECTRONIC MONITORING: FORM OF REQUEST; CONSENT OF OTHER RESIDENTS IN ROOM. (a) A resident or the guardian or legal representative of a resident who wishes to conduct authorized electronic monitoring must make the request to the institution on a form prescribed by the department.

(b) The form prescribed by the department must require the resident or the resident's guardian or legal representative to:

(1) release the institution from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device;

(2) choose, when the electronic monitoring device is a video surveillance camera, whether the camera will always be unobstructed or whether the camera should be obstructed in specified circumstances to protect the dignity of the resident; and

(3) obtain the consent of other residents in the room, using a form prescribed for this purpose by the department, if the resident resides in a multiperson room.

(c) Consent under Subsection (b)(3) may be given only:

(1) by the other resident or residents in the room;

(2) by the guardian of a person described by Subdivision (1), if the person has been judicially declared to lack the required capacity; or

(3) by the legal representative who under Section 242.845(c) may request electronic monitoring on behalf of a person described by Subdivision (1), if the person does not have capacity to sign the form but has not been judicially declared to lack the required capacity.

(d) The form prescribed by the department under Subsection (b)(3) must condition the consent of another resident in the room on the other resident also releasing the institution from any civil liability for a violation of the person's privacy rights in connection with the use of the electronic monitoring device.

(e) Another resident in the room may:

(1) when the proposed electronic monitoring device is a

video surveillance camera, condition consent on the camera being pointed away from the consenting resident; and

(2) condition consent on the use of an audio electronic monitoring device being limited or prohibited.

(f) If authorized electronic monitoring is being conducted in the room of a resident and another resident is moved into the room who has not yet consented to the electronic monitoring, authorized electronic monitoring must cease until the new resident has consented in accordance with this section.

(g) The department may include other information that the department considers to be appropriate on either of the forms that the department is required to prescribe under this section.

(h) The executive commissioner may adopt rules prescribing the place or places that a form signed under this section must be maintained and the period for which it must be maintained.

(i) Authorized electronic monitoring:

(1) may not commence until all request and consent forms required by this section have been completed and returned to the institution; and

(2) must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0664, eff. April 2, 2015.

Sec. 242.847. AUTHORIZED ELECTRONIC MONITORING: GENERAL PROVISIONS. (a) An institution shall permit a resident or the resident's guardian or legal representative to monitor the room of the resident through the use of electronic monitoring devices.

(b) The institution shall require a resident who conducts authorized electronic monitoring or the resident's guardian or legal representative to post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(c) Authorized electronic monitoring conducted under this subchapter is not compulsory and may be conducted only at the request

of the resident or the resident's guardian or legal representative.

(d) An institution may not refuse to admit an individual to residency in the institution and may not remove a resident from the institution because of a request to conduct authorized electronic monitoring. An institution may not remove a resident from the institution because covert electronic monitoring is being conducted by or on behalf of a resident.

(e) An institution shall make reasonable physical accommodation for authorized electronic monitoring, including:

(1) providing a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(2) providing access to power sources for the video surveillance camera or other electronic monitoring device.

(f) The resident or the resident's guardian or legal representative must pay for all costs associated with conducting electronic monitoring, other than the costs of electricity. The resident or the resident's guardian or legal representative is responsible for:

(1) all costs associated with installation of equipment; and

(2) maintaining the equipment.

(g) An institution may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. The executive commissioner may adopt rules regarding the safe placement of an electronic monitoring device.

(h) If authorized electronic monitoring is conducted, the institution may require the resident or the resident's guardian or legal representative to conduct the electronic monitoring in plain view.

(i) An institution may but is not required to place a resident in a different room to accommodate a request to conduct authorized electronic monitoring.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0665, eff. April 2, 2015.

Sec. 242.848. REPORTING ABUSE AND NEGLECT. (a) For purposes of the duty to report abuse or neglect under Section 260A.002 and the criminal penalty for the failure to report abuse or neglect under Section 260A.012, a person who is conducting electronic monitoring on behalf of a resident under this subchapter is considered to have viewed or listened to a tape or recording made by the electronic monitoring device on or before the 14th day after the date the tape or recording is made.

(b) If a resident who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring under this subchapter gives a tape or recording made by the electronic monitoring device to a person and directs the person to view or listen to the tape or recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the tape or recording is considered to have viewed or listened to the tape or recording on or before the seventh day after the date the person receives the tape or recording for purposes of the duty to report abuse or neglect under Section 260A.002 and of the criminal penalty for the failure to report abuse or neglect under Section 260A.012.

(c) A person is required to report abuse based on the person's viewing of or listening to a tape or recording only if the incident of abuse is acquired on the tape or recording. A person is required to report neglect based on the person's viewing of or listening to a tape or recording only if it is clear from viewing or listening to the tape or recording that neglect has occurred.

(d) If abuse or neglect of the resident is reported to the institution and the institution requests a copy of any relevant tape or recording made by an electronic monitoring device, the person who possesses the tape or recording shall provide the institution with a copy at the institution's expense.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(h), eff. September 28, 2011.

Sec. 242.849. USE OF TAPE OR RECORDING BY AGENCY OR COURT. (a) Subject to applicable rules of evidence and procedure and the

requirements of this section, a tape or recording created through the use of covert or authorized electronic monitoring described by this subchapter may be admitted into evidence in a civil or criminal court action or administrative proceeding.

(b) A court or administrative agency may not admit into evidence a tape or recording created through the use of covert or authorized electronic monitoring or take or authorize action based on the tape or recording unless:

(1) if the tape or recording is a video tape or recording, the tape or recording shows the time and date that the events acquired on the tape or recording occurred;

(2) the contents of the tape or recording have not been edited or artificially enhanced; and

(3) if the contents of the tape or recording have been transferred from the original format to another technological format, the transfer was done by a qualified professional and the contents of the tape or recording were not altered.

(c) A person who sends more than one tape or recording to the department shall identify for the department each tape or recording on which the person believes that an incident of abuse or evidence of neglect may be found. The executive commissioner may adopt rules encouraging persons who send a tape or recording to the department to identify the place on the tape or recording that an incident of abuse or evidence of neglect may be found.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0666, eff. April 2, 2015.

Sec. 242.850. NOTICE AT ENTRANCE TO INSTITUTION. Each institution shall post a notice at the entrance to the institution stating that the rooms of some residents may be being monitored electronically by or on behalf of the residents and that the monitoring is not necessarily open and obvious. The executive commissioner by rule shall prescribe the format and the precise content of the notice.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0667, eff. April 2, 2015.

Sec. 242.851. ENFORCEMENT. (a) The department may impose appropriate sanctions under this chapter on an administrator of an institution who knowingly:

(1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;

(2) refuses to admit an individual to residency or allows the removal of a resident from the institution because of a request to conduct authorized electronic monitoring;

(3) allows the removal of a resident from the institution because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates another provision of this subchapter.

(b) The department may assess an administrative penalty under Section 242.066 against an institution that:

(1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;

(2) refuses to admit an individual to residency or allows the removal of a resident from the institution because of a request to conduct authorized electronic monitoring;

(3) allows the removal of a resident from the institution because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates another provision of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.852. CRIMINAL OFFENSE. (a) A person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident's room in accordance with this subchapter or a tape or recording made by the device commits an offense. An offense under this section is a Class B misdemeanor.

(b) It is a defense to prosecution under Subsection (a) that the person took the action with the effective consent of the resident on whose behalf the electronic monitoring device was installed or the

resident's guardian or legal representative.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

SUBCHAPTER S. FAMILY COUNCIL

Sec. 242.901. DEFINITION. In this subchapter, "family council" means a group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

Added by Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 3, eff. September 1, 2008.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0668, eff. April 2, 2015.

Sec. 242.902. FAMILY COUNCIL. A family council may:

(1) make recommendations to the institution proposing policy and operational decisions affecting resident care and quality of life; and

(2) promote educational programs and projects that will promote the health and happiness of residents.

Added by Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 3, eff. September 1, 2008.

Sec. 242.903. DUTIES OF INSTITUTION. (a) An institution shall consider the views and recommendations of the family council and make a reasonable effort to resolve the council's grievances.

(b) An institution may not:

(1) prohibit the formation of a family council;

(2) terminate an existing family council;

(3) deny a family council the opportunity to accept help from an outside person;

(4) limit the rights of a resident, family member, or family council member to meet with an outside person, including:

(A) an employee of the institution during nonworking hours if the employee agrees; and

(B) a member of a nonprofit or government organization;

(5) prevent or interfere with the family council receiving outside correspondence addressed to the council;

(6) open family council mail; or

(7) wilfully interfere with the formation, maintenance, or operation of a family council, including interfering by:

(A) discriminating or retaliating against a family council participant; and

(B) wilfully scheduling events in conflict with previously scheduled family council meetings if the institution has other scheduling options.

(c) On admission of a resident, an institution shall inform the resident's family members in writing of:

(1) the family members' right to form a family council; or

(2) if a family council already exists, the council's:

(A) meeting time, date, and location; and

(B) contact person.

(d) An institution shall:

(1) include notice of a family council in a mailing that occurs at least semiannually;

(2) permit a representative of a family council to discuss concerns with an individual conducting an inspection or survey of the facility;

(3) provide a family council with adequate space on a prominent bulletin board to post notices and other information;

(4) provide a designated staff person to act as liaison for a family council; and

(5) respond in writing to a written request by a family council within five working days.

Added by Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 3, eff. September 1, 2008.

Sec. 242.904. MEETINGS. (a) On written request, an institution shall allow a family council to meet in a common meeting room of the institution at least once a month during hours mutually agreed upon by the family council and the institution.

(b) Institution employees or visitors may attend a family council meeting only at the council's invitation.

Added by Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 3, eff.

September 1, 2008.

Sec. 242.905. VISITING. A family council member may authorize in writing another member to visit and observe a resident represented by the authorizing member unless the resident objects.

Added by Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 3, eff. September 1, 2008.

Sec. 242.906. ADMINISTRATION; RULES. (a) The department shall administer this subchapter.

(b) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 3, eff. September 1, 2008.

SUBCHAPTER T. SERVICES PROVIDED BY CERTAIN VOCATIONAL NURSING STUDENTS

Sec. 242.951. DEFINITION. In this subchapter, "disaster" has the meaning assigned by Section 418.004, Government Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 619 (S.B. 1856), Sec. 1, eff. September 1, 2021.

Sec. 242.952. APPLICABILITY. This subchapter applies only to a student who is:

(1) enrolled in an accredited school or program that is preparing the student for licensure as a licensed vocational nurse; and

(2) participating in a clinical program at a facility licensed under this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 619 (S.B. 1856), Sec. 1, eff. September 1, 2021.

Sec. 242.953. SERVICES PROVIDED BY CERTAIN VOCATIONAL NURSING STUDENTS. (a) Notwithstanding any other law, services that are provided by a student to whom this subchapter applies in a facility licensed under this chapter and authorized by a contract or other arrangement with the facility are allowed at all times in this state, including during a declared state of disaster.

(b) A facility licensed under this chapter may:

(1) require a student to comply with the facility's policies regarding health screenings or the use of personal protective equipment; and

(2) condition the student's provision of services on compliance with the facility's policies described by Subdivision (1).

Added by Acts 2021, 87th Leg., R.S., Ch. 619 (S.B. 1856), Sec. 1, eff. September 1, 2021.

CHAPTER 243. AMBULATORY SURGICAL CENTERS

SUBCHAPTER A. GENERAL PROVISIONS; LICENSING AND PENALTIES

Sec. 243.001. SHORT TITLE. This chapter may be cited as the Texas Ambulatory Surgical Center Licensing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.002. DEFINITIONS. In this chapter:

(1) "Ambulatory surgical center" means a facility that operates primarily to provide surgical services to patients who do not require overnight hospital care.

(2) "Commissioner" means the commissioner of state health services.

(3) "Department" means the Department of State Health Services.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Person" means an individual, firm, partnership, corporation, or association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0669, eff.

April 2, 2015.

Sec. 243.003. LICENSE REQUIRED. (a) Except as provided by Section 243.004, a person may not establish or operate an ambulatory surgical center in this state without a license issued under this chapter.

(b) Each ambulatory surgical center must have a separate license.

(c) A license is not transferable or assignable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.004. EXEMPTIONS FROM LICENSING REQUIREMENT. The following facilities need not be licensed under this chapter:

(1) an office or clinic of a licensed physician, dentist, or podiatrist;

(2) a licensed nursing home; or

(3) a licensed hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.005. LICENSE APPLICATION AND ISSUANCE. (a) An applicant for an ambulatory surgical center license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the executive commissioner by rule.

(c) The application must contain evidence that there is at least one physician, dentist, or podiatrist on the staff of the center who is licensed by the appropriate state licensing board.

(d) The department shall issue a license if, after inspection and investigation, it finds that the applicant and the center meet the requirements of this chapter and the standards adopted under this chapter.

(e) The license fee must be paid every two years on renewal of the license.

(f) The department shall issue a renewal license to a center certified under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) when the center:

(1) remits any license fee; and

(2) submits the inspection results or the inspection results report from the certification body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0670, eff. April 2, 2015.

Sec. 243.006. INSPECTIONS. (a) The department may inspect an ambulatory surgical center at reasonable times as necessary to assure compliance with this chapter.

(b) An ambulatory surgical center licensed by the department and certified under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) is subject to an on-site licensing inspection under this chapter once every three years while the center maintains the certification.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1546, Sec. 1, eff. Sept. 1, 1999.

Sec. 243.007. FEE AMOUNTS. The executive commissioner by rule shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter and as prescribed by Section 12.0111.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0671, eff. April 2, 2015.

Sec. 243.008. DEPOSIT OF FEES. All fees collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0672, eff.

April 2, 2015.

Sec. 243.009. ADOPTION OF RULES. The executive commissioner shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an ambulatory surgical center.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0673, eff. April 2, 2015.

Sec. 243.010. MINIMUM STANDARDS. (a) The rules must contain minimum standards applicable to an ambulatory surgical center and for:

(1) the construction and design, including plumbing, heating, lighting, ventilation, and other design standards necessary to ensure the health and safety of patients;

(2) the qualifications of the professional staff and other personnel;

(3) the equipment essential to the health and welfare of the patients;

(4) the sanitary and hygienic conditions within the center and its surroundings; and

(5) a quality assurance program for patient care.

(b) Standards set under this section may not exceed the minimum standards for certification of ambulatory surgical centers under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.).

(c) This section does not authorize the executive commissioner to:

(1) establish the qualifications of a licensed practitioner; or

(2) permit a person to provide health care services who is not authorized to provide those services under another state law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0674, eff.

April 2, 2015.

Sec. 243.011. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license for a violation of this chapter or a rule adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) If the department finds that an ambulatory surgical center is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not endanger public health and safety, the department may schedule the center for probation rather than suspending or revoking the center's license. The department shall provide notice to the center of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the center will remain under probation. During the probation period, the center must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of an ambulatory surgical center that does not correct items that were in noncompliance or that does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 802, Sec. 3, 4, eff. June 20, 2003.

Sec. 243.0115. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder. On written request of the license holder to the department for a hearing, the department shall refer the matter to the State Office of Administrative Hearings. An

administrative law judge of the office shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received by the department to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1546, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0675, eff. April 2, 2015.

Sec. 243.012. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the patients of an ambulatory surgical center.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

(1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;

(2) restrain or prevent the establishment or operation of an ambulatory surgical center without a license issued under this chapter; or

(3) grant any other injunctive relief warranted by the facts.

(c) The attorney general shall institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the ambulatory surgical center is located or in Travis County.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.013. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 243.003(a).

(b) An offense under this section is a Class C misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.014. CIVIL PENALTY. (a) A person who violates this chapter or who fails to comply with a rule adopted under this chapter is liable for a civil penalty of not less than $100 or more than $500 for each violation if the department determines the violation threatens the health and safety of a patient.

(b) Each day of a continuing violation constitutes a separate ground for recovery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.015. IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. A penalty collected under this section or Section 243.016 shall be deposited in the state treasury in the general revenue fund.

(b) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

(c) The amount of the penalty may not exceed $1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed $5,000.

(d) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

(e) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(f) The notice under Subsection (e) must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(g) Within 20 days after the date the person receives the notice under Subsection (e), the person in writing may:

(1) accept the determination and recommended penalty of the department; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(h) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the department by order shall impose the recommended penalty.

(i) If the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date, and the department shall give written notice of the time and place of the hearing to the person. An administrative law judge of that office shall conduct the hearing.

(j) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(k) Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(l) The notice of the department's order under Subsection (k) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 3.01, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0676, eff.

April 2, 2015.

Sec. 243.016. PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an order of the department under Section 243.015(k) that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the department's order contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department by certified mail.

(c) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(d) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected. The attorney general may sue to collect the penalty.

(e) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(f) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(g) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final. The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(h) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 3.01, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0677, eff. April 2, 2015.

Sec. 243.017. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING SONOGRAM BEFORE ABORTION. An ambulatory surgical center shall comply with Subchapter B, Chapter 171.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 7, eff. September 1, 2011.

CHAPTER 244. BIRTHING CENTERS

Sec. 244.001. SHORT TITLE. This chapter may be cited as the Texas Birthing Center Licensing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.002. DEFINITIONS. In this chapter:

(1) "Birthing center" means a place, facility, or institution at which a woman is scheduled to give birth following a normal, uncomplicated pregnancy, but does not include a hospital or the residence of the woman giving birth.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(60), eff. April 2, 2015.

(3) "Department" means the Department of State Health Services.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Person" means an individual, firm, partnership, corporation, or association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0678, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(60), eff. April 2, 2015.

Sec. 244.003. LICENSE REQUIRED. (a) Except as provided by Section 244.004, a person may not establish or operate a birthing center in this state without an appropriate license issued under this chapter.

(b) Each birthing center must have a separate license.

(c) A license is not transferable or assignable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.004. EXEMPTIONS FROM LICENSING REQUIREMENT. The following facilities need not be licensed under this chapter:

(1) a licensed hospital;

(2) a licensed nursing home; or

(3) a licensed ambulatory surgical center.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.005. LICENSE APPLICATION AND ISSUANCE. (a) An applicant for a birthing center license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the executive commissioner by rule.

(c) The application must contain evidence that the composition of the center's staff meets the standards adopted under this chapter for the level of license for which the application is submitted.

(d) The department shall issue the appropriate license if, after inspection and investigation, it finds that the applicant and the center meet the requirements of this chapter and the standards adopted under this chapter.

(e) The license fee shall be paid every two years on renewal of the license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0679, eff. April 2, 2015.

Sec. 244.006. INSPECTIONS. (a) The department may inspect a birthing center at reasonable times as necessary to assure compliance with this chapter.

(b) If a birthing center's failure to comply with this chapter creates a serious threat to the health and safety of the public, the department may appoint a monitor for the center to ensure compliance with this chapter. The birthing center shall be liable for the cost of the monitor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1265, Sec. 1, eff. Sept. 1, 1999.

Sec. 244.007. FEES. The executive commissioner by rule shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter and as prescribed by Section 12.0111.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0680, eff. April 2, 2015.

Sec. 244.009. ADOPTION OF RULES. (a) The executive commissioner shall adopt rules necessary to implement this chapter.

(b) The executive commissioner shall adopt rules that establish different levels of licenses to operate a birthing center and that provide requirements for the issuance, renewal, denial, suspension, and revocation of each level of license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0681, eff. April 2, 2015.

Sec. 244.010. MINIMUM STANDARDS. (a) For each level of license of a birthing center, the rules must contain minimum standards for:

(1) the qualifications for professional and nonprofessional personnel;

(2) the supervision of professional and nonprofessional personnel;

(3) the provision and coordination of treatment and services;

(4) the organizational structure, including the lines of authority and the delegation of responsibility;

(5) the keeping of clinical records; and

(6) any other aspect of the operation of a birthing center that the executive commissioner considers necessary to protect the public.

(b) This section does not authorize the executive commissioner to:

(1) establish the qualifications of a licensed practitioner; or

(2) permit a person to provide health care services who is not authorized to provide those services under another state law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0682, eff. April 2, 2015.

Sec. 244.0105. COMPLAINTS. A person may file a complaint with the department against a birthing center licensed under this chapter. A person who files a false complaint may be prosecuted under the Penal Code.

Added by Acts 1999, 76th Leg., ch. 1265, Sec. 3, eff. Sept. 1, 1999.

Sec. 244.011. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license for:

(1) a violation of this chapter or a rule adopted under this chapter; or

(2) a history of continuing noncompliance with this chapter or the rules adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) If the department finds that a birthing center is in repeated noncompliance under Subsection (a) but that the noncompliance does not endanger public health and safety, the department may schedule the center for probation rather than suspending or revoking the center's license. The department shall provide notice to the center of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the center will remain under probation. During the probation period, the center must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of a birthing center that does not correct items that were in noncompliance or that does not comply with the applicable

requirements within the applicable probation period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1265, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 802, Sec. 5, 6, eff. June 20, 2003.

Sec. 244.0115. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. On written request of the license holder, the department shall conduct a hearing not earlier than the seventh day or later than the 10th day after the date the notice of the emergency suspension is sent to the license holder to determine if the emergency suspension is to take effect, to be modified, or to be rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1265, Sec. 3, eff. Sept. 1, 1999.

Sec. 244.012. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the patients of a birthing center.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

(1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;

(2) restrain or prevent the establishment or operation of a birthing center without a license issued under this chapter; or

(3) grant any other injunctive relief warranted by the facts.

(c) The attorney general shall institute and conduct a suit

authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the birthing center is located or in Travis County.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.013. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 244.003(a).

(b) An offense under this section is a Class C misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.014. CIVIL PENALTY. (a) A person who violates this chapter or who fails to comply with a rule adopted under this chapter is liable for a civil penalty of not less than $100 or more than $500 for each violation if the department determines the violation threatens the health and safety of a patient.

(b) Each day of a continuing violation constitutes a separate ground for recovery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.015. IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. A penalty collected under this section or Section 244.016 shall be deposited in the state treasury in the general revenue fund.

(b) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

(c) The amount of the penalty may not exceed $1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed $5,000.

(d) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

(e) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(f) The notice under Subsection (e) must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(g) Within 20 days after the date the person receives the notice under Subsection (e), the person in writing may:

(1) accept the determination and recommended penalty of the department; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(h) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the department by order shall approve the determination and impose the recommended penalty.

(i) If the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date. The department shall give written notice of the time and place of the hearing to the person. An administrative law judge of that office shall conduct the hearing.

(j) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(k) Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(l) The notice of the department's order under Subsection (k) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0683, eff. April 2, 2015.

Sec. 244.016. PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an order of the department under Section 244.015(k) that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the department's order contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department by certified mail.

(c) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court, within five days after the date the copy is received, a contest to the

affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(d) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected. The attorney general may sue to collect the penalty.

(e) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(f) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(g) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final. The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(h) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 4.01, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0684, eff. April 2, 2015.

CHAPTER 245. ABORTION FACILITIES

Sec. 245.001. SHORT TITLE. This chapter may be cited as the

Texas Abortion Facility Reporting and Licensing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 245.002. DEFINITIONS. In this chapter:

(1) "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to:

(A) save the life or preserve the health of an unborn child;

(B) remove a dead, unborn child whose death was caused by spontaneous abortion; or

(C) remove an ectopic pregnancy.

(2) "Abortion facility" means a place where abortions are performed.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(62), eff. April 2, 2015.

(4) "Department" means the Department of State Health Services.

(4-a) "Ectopic pregnancy" means the implantation of a fertilized egg or embryo:

(A) outside of the uterus; or

(B) in an abnormal location in the uterus, or in a scarred portion of the uterus, causing the pregnancy to be non-viable.

(4-b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Patient" means a female on whom an abortion is performed, but does not include a fetus.

(6) "Person" means an individual, firm, partnership, corporation, or association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0685, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(62),

eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 8, eff. September 1, 2017.

Acts 2025, 89th Leg., R.S., Ch. 758 (S.B. 31), Sec. 9, eff. June 20, 2025.

Sec. 245.003. LICENSE REQUIRED. (a) Except as provided by Section 245.004, a person may not establish or operate an abortion facility in this state without an appropriate license issued under this chapter.

(b) Each abortion facility must have a separate license.

(c) A license is not transferable or assignable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Text of section as amended by Acts 2003, 78th Leg., Ch. 198, Sec. 2.63 (a).

Sec. 245.004. EXEMPTIONS FROM LICENSING REQUIREMENT. (a) The following facilities need not be licensed under this chapter:

(1) a hospital licensed under Chapter 241 (Texas Hospital Licensing Law); or

(2) the office of a physician licensed under Subtitle B, Title 3, Occupations Code, unless the office is used for the purpose of performing more than 50 abortions in any 12-month period.

(b) In computing the number of abortions performed in the office of a physician under Subsection (a)(2), an abortion performed in accordance with Section 245.016 is not included.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 22.01, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.788, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.63(a), eff. Sept. 1, 2003.

Text of section as amended by Acts 2003, 78th Leg., Ch. 999, Sec. 2

Sec. 245.004. EXEMPTIONS FROM LICENSING REQUIREMENT. (a) The following facilities need not be licensed under this chapter:

(1) a hospital licensed under Chapter 241 (Texas Hospital

Licensing Law);

(2) the office of a physician licensed under Subtitle B, Title 3, Occupations Code, unless the office is used substantially for the purpose of performing abortions; or

(3) an ambulatory surgical center licensed under Chapter 243.

(b) For purposes of this section, a facility is used substantially for the purpose of performing abortions if the facility:

(1) is a provider for performing:

(A) at least 10 abortion procedures during any month; or

(B) at least 100 abortion procedures in a year;

(2) operates less than 20 days in a month and the facility, in any month, is a provider for performing a number of abortion procedures that would be equivalent to at least 10 procedures in a month if the facility were operating at least 20 days in a month;

(3) holds itself out to the public as an abortion provider by advertising by any public means, including advertising placed in a newspaper, telephone directory, magazine, or electronic medium, that the facility performs abortions; or

(4) applies for an abortion facility license.

(c) For purposes of this section, an abortion facility is operating if the facility is open for any period of time during a day and has on site at the facility or on call a physician available to perform abortions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 22.01, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.788, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 999, Sec. 2, eff. Sept. 1, 2003.

Sec. 245.005. LICENSE APPLICATION AND ISSUANCE. (a) An applicant for an abortion facility license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the executive commissioner by rule.

(c) The application must contain evidence that there are one or more physicians on the staff of the facility who are licensed by the

Texas Medical Board.

(d) The department shall issue a license if, after inspection and investigation, it finds that the applicant and the abortion facility meet the requirements of this chapter and the standards adopted under this chapter.

(e) As a condition for renewal of a license, the licensee must submit to the department the annual license renewal fee and an annual report.

(f) Information regarding the licensing status of an abortion facility is an open record for the purposes of Chapter 552, Government Code, and shall be made available by the department on request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 856, Sec. 2, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0686, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 9, eff. September 1, 2017.

Sec. 245.006. INSPECTIONS. (a) The department shall inspect an abortion facility at random, unannounced, and reasonable times as necessary to ensure compliance with this chapter, Subchapter B, Chapter 171, and Chapter 33, Family Code.

(b) The department shall inspect an abortion facility before renewing the facility's license under Section 245.005(e).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1120, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 8, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 12, eff. January 1, 2016.

Sec. 245.007. FEES. The executive commissioner by rule shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter and Chapter 171.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 999, Sec. 3, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0687, eff. April 2, 2015.

Sec. 245.009. ADOPTION OF RULES. The executive commissioner shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an abortion facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0688, eff. April 2, 2015.

Sec. 245.010. MINIMUM STANDARDS. (a) The rules must contain minimum standards to protect the health and safety of a patient of an abortion facility and must contain provisions requiring compliance with the requirements of Subchapter B, Chapter 171. On and after September 1, 2014, the minimum standards for an abortion facility must be equivalent to the minimum standards adopted under Section 243.010 for ambulatory surgical centers.

(b) Only a physician as defined by Subtitle B, Title 3, Occupations Code, may perform an abortion.

(c) Repealed by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 8, eff. September 1, 2014.

(d) This section does not authorize the executive commissioner to:

(1) establish the qualifications of a licensed practitioner; or

(2) permit a person to provide health care services who is not authorized to provide those services under other laws of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 23, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.789, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 999, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 4, eff. October 29, 2013.

Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 8, eff. September 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0689, eff. April 2, 2015.

Sec. 245.0105. UNIQUE IDENTIFYING NUMBER; DISCLOSURE IN ADVERTISEMENT. (a) The department shall assign to each abortion facility a unique license number that may not change during the period the facility is operating in this state.

(b) An abortion facility shall include the unique license number assigned to the facility by the department in any abortion advertisement directly relating to the provision of abortion services at the facility.

(c) In this section, "abortion advertisement" means:

(1) any communication that advertises the availability of abortion services at an abortion facility and that is disseminated through a public medium, including an advertisement in a newspaper or other publication or an advertisement on television, radio, or any other electronic medium; or

(2) any commercial use of the name of the facility as a provider of abortion services, including the use of the name in a directory, listing, or pamphlet.

Added by Acts 1997, 75th Leg., ch. 1120, Sec. 2, eff. Sept. 1, 1997.

Sec. 245.011. PHYSICIAN REPORTING REQUIREMENTS; CRIMINAL PENALTY. (a) A physician who performs an abortion at an abortion facility must complete and submit a monthly report to the department on each abortion performed by the physician at the abortion facility. The report must be submitted on a form provided by the department.

(b) The report may not identify by any means the patient.

(c) The report must include:

(1) whether the abortion facility at which the abortion is performed is licensed under this chapter;

(2) the patient's year of birth, race, marital status, and

state and county of residence;

(3) the type of abortion procedure;

(4) the date the abortion was performed;

(5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;

(6) the probable post-fertilization age of the unborn child based on the best medical judgment of the attending physician at the time of the procedure;

(7) the date, if known, of the patient's last menstrual cycle;

(8) the number of previous live births of the patient;

(9) the number of previous induced abortions of the patient;

(10) whether the abortion was performed or induced because of a medical emergency and any medical condition of the pregnant woman that required the abortion; and

(11) the information required under Sections 171.008(a) and (c).

(d) Except as provided by Section 245.023, all information and records held by the department under this chapter are confidential and are not open records for the purposes of Chapter 552, Government Code. That information may not be released or made public on subpoena or otherwise, except that release may be made:

(1) for statistical purposes, but only if a person, patient, physician performing an abortion, or abortion facility is not identified;

(2) with the consent of each person, patient, physician, and abortion facility identified in the information released;

(3) to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter; or

(4) to appropriate state licensing boards to enforce state licensing laws.

(e) A person commits an offense if the person violates Subsection (b), (c), or (d). An offense under this subsection is a Class A misdemeanor.

(f) Not later than the 15th day of each month, a physician shall submit to the department the report required by this section for each abortion performed by the physician at an abortion facility in the preceding calendar month.

(g) The department shall establish and maintain a secure

electronic reporting system for the submission of the reports required by this section. The department shall adopt procedures to enforce this section and to ensure that only physicians who perform one or more abortions during the preceding calendar month are required to file the reports under this section for that month.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 23, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1120, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 19.02, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 5, eff. October 29, 2013.

Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 10, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 11, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 9, eff. September 1, 2021.

Sec. 245.0115. NOTIFICATION. Not later than the seventh day after the date the report required by Section 245.011 is due, the commissioner of state health services shall notify the Texas Medical Board of a violation of that section.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 12, eff. September 1, 2017.

Sec. 245.0116. DEPARTMENT REPORT. (a) The department shall publish on its Internet website a monthly report containing aggregate data of the information in the reports submitted under Section 245.011.

(b) The department's monthly report may not identify by any means an abortion facility, a physician performing the abortion, or a patient.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 12, eff. September 1, 2017.

Sec. 245.012. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license for a violation of this chapter or a rule adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) The department may immediately suspend or revoke a license when the health and safety of persons are threatened. If the department issues an order of immediate suspension or revocation, the department shall immediately give the chief executive officer of the abortion facility adequate notice of the action and the procedure governing appeal of the action. A person whose license is suspended or revoked under this subsection is entitled to a hearing not later than the 14th day after the effective date of the suspension or revocation.

(d) If the department finds that an abortion facility is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not in any way involve the health and safety of the public or an individual, the department may schedule the facility for probation rather than suspending or revoking the facility's license. The department shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the facility will remain under probation. During the probation period, the facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(e) The department may suspend or revoke the license of an abortion facility that does not correct items that were in noncompliance or that does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 23, Sec. 3, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 802, Sec. 7, 8, eff. June 20, 2003.

Sec. 245.013. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the patients of an abortion facility.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

(1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;

(2) restrain or prevent the establishment or operation of an abortion facility without a license issued under this chapter; or

(3) grant any other injunctive relief warranted by the facts.

(c) The attorney general may institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the abortion facility is located or in Travis County.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 245.014. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 245.003(a).

(b) An offense under this section is a Class A misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 22.02, eff. Sept. 1, 1999.

Sec. 245.015. CIVIL PENALTY. (a) A person who knowingly violates this chapter or who knowingly fails to comply with a rule adopted under this chapter is liable for a civil penalty of not less than $100 or more than $500 for each violation if the department determines the violation threatens the health and safety of a

patient.

(b) Each day of a continuing violation constitutes a separate ground for recovery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 245.016. ABORTION IN UNLICENSED ABORTION FACILITY TO PREVENT DEATH OR SERIOUS IMPAIRMENT. It is an exception to the application of Section 245.014 that the abortion was performed in an unlicensed abortion facility due to a medical emergency described by Section 170A.002(b)(2). In this section, the term "unlicensed abortion facility" does not include an individual or entity to which funds appropriated by the legislature in the general appropriations act are prohibited from being distributed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 22.03, eff. Sept. 1, 1999. Amended by:

Acts 2025, 89th Leg., R.S., Ch. 758 (S.B. 31), Sec. 10, eff. June 20, 2025.

Sec. 245.017. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

(b) The penalty may not exceed $1,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(c) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.

Sec. 245.018. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice shall include:

(1) a brief summary of the alleged violation;

(2) a statement of the amount of the proposed penalty, based on the factors listed in Section 245.017(c); and

(3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date the notice is received, the person notified may accept the determination of the department made under this section, including the recommended penalty, or make a written request for a hearing on that determination.

(c) If the person notified of the violation accepts the determination of the department, the department shall order the person to pay the recommended penalty.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0690, eff. April 2, 2015.

Sec. 245.019. HEARING; ORDER. (a) If the person requests a hearing, the department shall transfer the case to the State Office of Administrative Hearings and an administrative law judge of that office shall hold the hearing.

(a-1) The department shall give written notice of the hearing to the person.

(b) The administrative law judge shall make findings of fact and conclusions of law and shall promptly issue to the department a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty, if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the administrative law judge, the department

by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0691, eff. April 2, 2015.

Sec. 245.020. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. (a) The department shall give notice of the department's order under Section 245.019(c) to the person alleged to have committed the violation. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty assessed; and

(3) a statement of the right of the person to judicial review of the department's order.

(b) Not later than the 30th day after the date the decision is final as provided by Chapter 2001, Government Code, the person shall:

(1) pay the penalty in full;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(e) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(f) Judicial review of the order of the department:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order

the release of the bond after the person pays the amount.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0692, eff. April 2, 2015.

Sec. 245.021. PENALTY DEPOSITED TO STATE TREASURY. A civil or administrative penalty collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.

Sec. 245.022. RECOVERY OF COSTS. (a) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, the person's license is denied, suspended, or revoked or if administrative penalties are assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date a department order requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

(b) If the attorney general brings an action against a person under Section 245.013 or 245.015 or an action to enforce an administrative penalty assessed under Section 245.017 and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(c) For purposes of this section, "reasonable expenses and costs" include expenses incurred by the department and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, attorney's fees, witness fees, and deposition expenses.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0693, eff.

April 2, 2015.

Sec. 245.023. PUBLIC INFORMATION; TOLL-FREE TELEPHONE NUMBER. (a) The department on request shall make the following information available to the public:

(1) the status of the license of any abortion facility;

(2) the date of the last inspection of the facility, any violation discovered during that inspection that would pose a health risk to a patient at the facility, any challenge raised by the facility to the allegation that there was a violation, and any corrective action that is acceptable to the department and that is being undertaken by the facility with respect to the violation; and

(3) an administrative or civil penalty imposed against the facility or a physician who provides services at the facility, professional discipline imposed against a physician who provides services at the facility, and any criminal conviction of the facility or a physician who provides services at the facility that is relevant to services provided at the facility.

(b) Subsection (a) does not require the department to provide information that is not in the possession of the department. The Texas Medical Board shall provide to the department information in the possession of the board that the department is required to provide under Subsection (a).

(c) The department shall maintain a toll-free telephone number that a person may call to obtain the information described by Subsection (a).

(d) An abortion facility shall provide to a woman, at the time the woman initially consults the facility, a written statement indicating the number of the toll-free telephone line maintained under Subsection (c). The written statement must be available in English and Spanish and be in substantially the following form:

"(toll-free telephone number)

You have a right to access certain information concerning this abortion facility by using the toll-free telephone number listed above. If you make a call to the number, your identity will remain anonymous. The toll-free telephone line can provide you with the following information:

(1) Whether this abortion facility is licensed by the Texas Department of State Health Services.

(2) The date of the last inspection of this facility by the Texas Department of State Health Services and any violations of law or rules discovered during that inspection that may pose a health risk to you.

(3) Any relevant fine, penalty, or judgment rendered against this facility or a doctor who provides services at this facility."

(e) This section does not authorize the release of the name, address, or phone number of any employee or patient of an abortion facility or of a physician who provides services at an abortion facility.

Added by Acts 1997, 75th Leg., ch. 1120, Sec. 4, eff. Sept. 1, 1997. Renumbered from Sec. 245.017 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(65), eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0694, eff. April 2, 2015.

Sec. 245.024. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING SONOGRAM BEFORE ABORTION. An abortion facility shall comply with Subchapter B, Chapter 171.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 9, eff. September 1, 2011.

Sec. 245.025. HUMAN TRAFFICKING SIGNS REQUIRED. (a) An abortion facility shall display separate signs, in English, Spanish, and any additional language as required by Subsection (b), side by side in accordance with this section in each restroom and patient consulting room. The signs must include the following information:

(1) no person, including an individual's parents, may force any individual to have an abortion;

(2) it is illegal for a person to force an individual to engage in sexual acts;

(3) a woman who needs help may call or text a state or national organization that assists victims of human trafficking and forced abortions; and

(4) the toll-free number of an organization described by

Subdivision (3).

(a-1) In addition to the information required under Subsection (a), the sign must include the contact information for reporting suspicious activity to the Department of Public Safety.

(b) Signs required under this section must be in English and Spanish. If an abortion facility is located in a political subdivision required to provide election materials in a language other than English or Spanish under Section 272.011, Election Code, the facility shall display a separate sign in that language.

(c) Signs required under this section must be at least 8-1/2 by 11 inches in size and displayed in a conspicuous manner clearly visible to the public and employees of an abortion facility. The notice must cover at least four-fifths of the sign.

(d) The executive commissioner shall adopt rules as necessary to implement and enforce this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 858 (H.B. 2552), Sec. 12, eff. September 1, 2017.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 280 (H.B. 3721), Sec. 5, eff. September 1, 2021.

CHAPTER 246. CONTINUING CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 246.001. SHORT TITLE. This chapter may be cited as the Texas Continuing Care Facility Disclosure and Rehabilitation Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.002. DEFINITIONS. In this chapter:

(1) "Assisted living facility" has the meaning assigned by Section 247.002.

(1-a) "Board" means the Texas Department of Insurance.

(2) "Commissioner" means the commissioner of the State Board of Insurance.

(3) Redesignated by Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 1, eff. June 19, 2015.

(4) "Continuing care contract" means an agreement that requires the payment of an entrance fee by or on behalf of a resident

in exchange for the furnishing of continuing care by a provider and that is effective for:

(A) the life of the resident; or

(B) more than one year.

(5) "Entrance fee" means an initial or deferred transfer of money or other property valued at an amount exceeding three months' payments for residency in a living unit and related services at a facility made, or promised to be made, as full or partial consideration for acceptance by a provider of a specified individual entitled to receive continuing care under a continuing care contract. The term does not include a deposit made under a reservation agreement or amounts paid for an optional modification to a living unit under an agreement separate from a continuing care contract.

(6) "Facility" means an establishment that provides continuing care to an individual. The term includes an individual's residence.

(7) "Living unit" means a room, apartment, cottage, or other area that is in a facility and that is set aside for the exclusive use or control of one or more specified individuals. The term does not include a room, apartment, cottage, or other area that is in a nursing facility or assisted living facility.

(8) "Long-term nursing care" means nursing care provided for a period longer than 365 consecutive days.

(8-a) "Nursing facility" has the meaning assigned by Section 242.301.

(9) "Person" means an individual, corporation, association, or partnership, and includes a fraternal or benevolent order or society.

(10) "Provider" means a person who undertakes to provide continuing care under a continuing care contract to a resident.

(11) "Reservation agreement" means an agreement that requires the payment of a deposit to reserve a living unit for a prospective resident.

(12) "Resident" means an individual entitled to receive continuing care under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 95, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 561, Sec. 31, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th

Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.
Redesignated and amended from Health and Safety Code, Section 246.002(3) by Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 1, eff. June 19, 2015.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 2, eff. June 19, 2015.

Acts 2025, 89th Leg., R.S., Ch. 836 (S.B. 1522), Sec. 1, eff. January 1, 2026.

Sec. 246.0025. DEFINITION OF CONTINUING CARE. (a) In this chapter, "continuing care" means to provide the following care under a continuing care contract to an individual who is not related by consanguinity or affinity, as determined under Chapter 573, Government Code, to the person providing the care:

(1) the furnishing of a living unit and related services; and

(2) an agreement to provide priority, guaranteed, or discounted access to progressive levels of health care services to an individual as necessary, regardless of whether the services are provided at the same facility in which the living unit is located or whether the services are provided through a contract with a third party, including the provision of health care services:

(A) in an assisted living facility or nursing facility; and

(B) by a home and community support services agency, as defined by Section 142.001.

(b) The term "continuing care" includes the furnishing of services under a continuing care contract with an agreement to provide priority, guaranteed, or discounted access to progressive levels of health care services to an individual as necessary, to enable the individual to remain in the individual's residence.

Redesignated and amended from Health and Safety Code, Section 246.002(3) by Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 1, eff. June 19, 2015.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 836 (S.B. 1522), Sec. 2, eff. January 1, 2026.

Sec. 246.003. BOARD POWERS AND DUTIES. (a) The board shall regulate providers as provided by this chapter.

(b) The board may adopt rules and take other action as necessary to administer and enforce this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.004. RIGHTS OF RESIDENTS. (a) A resident receiving care in a portion of a facility licensed to provide nursing home care or assisted living services is entitled to all statutory rights provided to a resident of a nursing home or an assisted living facility, as applicable.

(b) A continuing care contract or reservation agreement may not prohibit residents from assembling.

(c) A facility shall provide to a resident, prospective resident, or designated agent of a resident or prospective resident, on request, an electronic or hard copy of the most recent revised disclosure statement filed by the provider under Section 246.054.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 836 (S.B. 1522), Sec. 3, eff. January 1, 2026.

Sec. 246.005. LICENSING FOR CERTAIN TAX PURPOSES. A facility regulated under this chapter is licensed for purposes of Section 151.314, Tax Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.006. QUALITY OF CARE. The commissioner may not regulate or in any manner inquire into the quality of care provided in a facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.007. REDUCTION OF FEES. The commissioner shall reduce the annual filing fees under this chapter if the cumulative amount of the fees exceeds the actual cost of regulation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. CERTIFICATE OF AUTHORITY

Sec. 246.021. CERTIFICATE OF AUTHORITY REQUIRED. Unless a provider holds a certificate of authority issued under this subchapter, the provider may not:

(1) acquire a facility;

(2) enter into a continuing care contract; or

(3) enter into a reservation agreement unless the agreement provides for the full refund, for any reason, of a deposit paid in connection with the agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 2, eff. Sept. 1, 1993.

Sec. 246.0215. APPLICABILITY. This chapter does not apply to an admission or residence agreement offered by a residential community that charges an entrance fee if:

(1) residents of the residential community pay for available assisted living services and nursing home care on a fee-for-service basis;

(2) fees for available assisted living services and nursing home care are the same for a prospective resident as a current resident of the living unit; and

(3) the admission or residence agreement includes the following statement or a substantially equivalent statement in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous:

"A continuing care contract provides priority, guaranteed, or discounted access to progressive levels of health care services. _____ (Name of community or facility) is not a licensed continuing care facility and does not hold a certificate of authority from the Texas Department of Insurance. This agreement is not a continuing care contract and is exempt from the requirements of Chapter 246, Health and Safety Code."

Added by Acts 2025, 89th Leg., R.S., Ch. 836 (S.B. 1522), Sec. 4, eff. January 1, 2026.

Sec. 246.022. APPLICATION FOR AND ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) The commissioner shall adopt rules stating the information an applicant for a certificate of authority must submit.

(b) On receiving an application for a certificate of authority, the commissioner shall conduct a hearing on the application.

(c) Except as provided by Subsection (c-1), the commissioner shall grant an application for a certificate of authority if the commissioner finds that:

(1) the applicant or the facility is financially sound;

(2) the competence, experience, and integrity of the applicant, its board of directors, its officers, or its management make it in the public interest to issue the certificate; and

(3) the applicant is capable of complying with this chapter.

(c-1) The commissioner may reject an application for a certificate of authority under Subsection (c) if the applicant does not own the real property on which the facility is located or proposed to be located.

(d) The commissioner shall issue an order approving or disapproving an application not later than the 180th day after the date on which the application is filed.

(e) The commissioner may limit issuance of certificates of authority to incorporated entities only.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 836 (S.B. 1522), Sec. 5, eff. January 1, 2026.

Sec. 246.023. MANDATORY ISSUANCE OF CERTIFICATE OF AUTHORITY TO CERTAIN FACILITIES. (a) The commissioner shall issue a certificate of authority for a facility that:

(1) was occupied by at least one resident on September 1, 1987;

(2) was under construction on September 1, 1987; or

(3) incurred substantial financial obligations before September 1, 1987, related to the development of the facility.

(b) A certificate of authority issued under this section may be suspended or revoked as any other certificate.

(c) This section prevails over Section 246.022.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.024. TRANSFER OF CERTIFICATE OF AUTHORITY. A certificate of authority may not be transferred without the prior approval of the commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 96, eff. Sept. 1, 1991.

Sec. 246.025. SUSPENSION OR REVOCATION OF CERTIFICATE OF AUTHORITY. The commissioner may suspend or revoke a provider's certificate of authority if the provider:

(1) draws on its entrance fee escrow in an amount greater than provided for by Section 246.073;

(2) draws on its loan reserve fund escrow in an amount greater than provided for by Section 246.078; or

(3) intentionally violates this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 97, eff. Sept. 1, 1991.

Sec. 246.026. MANAGEMENT BY OTHERS. A holder of a certificate of authority may not contract for management of the facility unless the commissioner is notified of the contract.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.027. CERTIFICATE OF AUTHORITY FEES. (a) Except as provided by Subsection (b), a facility that files an application for a certificate of authority must pay to the commissioner a fee of $10,000.

(b) A facility that files an application for a certificate of authority issued under Section 246.023 must pay to the commissioner:

(1) a fee of $500; and

(2) a fee of $2 for each living unit in the facility, excluding a unit devoted to that portion of the facility that is a licensed nursing home.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. CONTINUING CARE CONTRACTS AND DISCLOSURE STATEMENTS

Sec. 246.041. PRECONTRACTUAL RECORDING REQUIREMENTS. (a) A provider shall file with the board a current disclosure statement that meets the requirements of this subchapter and shall file copies of the agreements establishing the escrows under Subchapter D or a verified statement explaining that an escrow is not required before the provider:

(1) contracts to provide continuing care to a resident in this state;

(2) extends the term of an existing continuing care contract with a resident in this state that requires or allows an entrance fee from any person, regardless of whether the extended contract requires an entrance fee; or

(3) including a person acting on the provider's behalf, solicits for an individual who is a resident of this state a continuing care contract in this state.

(b) A contract is solicited in this state if, during the 12-month period preceding the date on which a continuing care contract for a facility is signed or accepted by either party, information concerning the facility or the availability of a continuing care contract for the facility is given:

(1) by personal, telephone, mail, or other communication directed to and received by a person at a location in this state; or

(2) in a paid advertisement published or broadcast from within this state, other than in a publication in which more than two-thirds of the circulation is outside this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 3, eff. June 19, 2015.

Sec. 246.042. DELIVERY OF DISCLOSURE STATEMENT. (a) A provider who has not been issued a certificate of authority under Subchapter B must deliver a disclosure statement to any person from whom the provider accepts a deposit in connection with a reservation agreement before the provider accepts the deposit.

(b) A provider who has been issued a certificate of authority under Subchapter B must deliver a disclosure statement to a person with whom a continuing care contract is to be made before the earlier of:

(1) the execution of the continuing care contract; or

(2) the transfer of any entrance fee or nonrefundable deposit to the provider by or on behalf of the person.

(c) The most recently filed disclosure statement is the only statement that:

(1) is current for purposes of this chapter; and

(2) may be delivered under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 3, eff. Sept. 1, 1993.

Sec. 246.043. COVER PAGE OF DISCLOSURE STATEMENT. The cover page of a disclosure statement must state:

(1) the date of the statement in a prominent location and in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous;

(2) that if the provider has not been issued a certificate of authority under Subchapter B, this chapter requires the delivery of a disclosure statement to a prospective resident before the payment of any deposit to reserve a living unit;

(3) that this chapter requires the delivery of a disclosure statement to a contracting party before the execution of a continuing care contract or the payment of an entrance fee or nonrefundable deposit; and

(4) that the disclosure statement has not been approved by a governmental agency or representative to ensure the accuracy of its information.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., ch. 14, Sec. 98, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 4, eff. Sept. 1, 1993.

Sec. 246.044. CONTENTS OF DISCLOSURE STATEMENT: PROVIDER. (a) The disclosure statement must include the name and business address of the provider and a statement of whether the provider is a partnership, corporation, or other type of legal entity. If the provider is not an individual, the statement must include:

(1) the name and business address of each officer, director, trustee, and managing or general partner; and

(2) the name and business address of each person who has at least a 10 percent interest in the provider and a description of the person's interest in or occupation with the provider.

(b) The provider may include in the disclosure statement any other material information concerning the facility or the provider.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.045. CONTENTS OF DISCLOSURE STATEMENT: THIRD PARTY MANAGEMENT. If a person, other than an individual directly employed by the provider, is to be the day-to-day manager of a facility, the disclosure statement must include:

(1) a description of the person's business experience, if any, in the operation or management of a similar facility;

(2) the name and address of any professional service, firm, association, trust, partnership, or corporation that:

(A) has in the person, or in which the person has, at least a 10 percent interest; and

(B) proposes to provide goods, leases, or services to the facility or to the residents of the facility, of an aggregate value of at least $500 in a year;

(3) a description of any goods, leases, or services under Subdivision (2), and a statement of their probable or anticipated cost to the facility, provider, or residents, or a statement that their cost cannot be estimated; and

(4) a description of any matter in which the person:

(A) has been convicted of a felony, pleaded nolo contendere to a felony charge, or has been held liable or enjoined in

a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(B) is subject to an injunction or restrictive order of a court of record; or

(C) has had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency if the order or action arose out of or was related to a business activity in a health care field, including an action affecting a license to operate a foster care facility, a nursing home, a retirement home, a home for the aged, or a facility subject to this chapter or a similar statute in another state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.046. CONTENTS OF DISCLOSURE STATEMENT: AFFILIATION WITH NONPROFIT ORGANIZATION. The disclosure statement must state whether the provider is affiliated with a religious, charitable, or other nonprofit organization, and if so, the statement must:

(1) describe the extent of the affiliation;

(2) explain the extent to which the organization is responsible for the financial and contractual obligations of the provider; and

(3) cite any provision of the Internal Revenue Code of 1986 under which the provider or affiliate claims to be exempt from the payment of income tax.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.047. CONTENTS OF DISCLOSURE STATEMENT: PHYSICAL PROPERTY. (a) The disclosure statement must provide the location and a description of the proposed or existing physical property of the facility.

(b) If the physical property of the facility is proposed, the disclosure statement must state:

(1) the estimated completion date;

(2) whether construction has begun; and

(3) any contingencies under which construction may be deferred.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.048. CONTENTS OF DISCLOSURE STATEMENT: CONTRACTS AND FEES. The disclosure statement must describe:

(1) the services provided under a continuing care contract, including:

(A) the extent to which medical care is furnished; and

(B) those services that are included for specified basic fees for continuing care and those services that are made available at extra charge;

(2) all fees required of residents, including the entrance fee and any periodic charges;

(3) the conditions under which a continuing care contract may be canceled by the provider or the resident;

(4) any conditions under which all or part of the entrance fee is refundable on cancellation of the contract by the provider or the resident, or by the death of the resident before or during the occupancy of a living unit or otherwise before or during the term of the contract; and

(5) the manner by which the provider may adjust periodic charges or other recurring fees and any limitations on those adjustments.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 4, eff. June 19, 2015.

Sec. 246.049. CONTENTS OF DISCLOSURE STATEMENT: CHANGE OF CIRCUMSTANCES. The disclosure statement for a continuing care contract to provide continuing care in a living unit of a facility must state:

(1) the policy of the facility regarding changes in the number of people residing in a living unit because of marriage or other relationships;

(2) the policy of the facility relating to the admission of a spouse to the facility and the consequences if the spouse does not meet the requirements for admission;

(3) the conditions under which a living unit occupied by a resident may be made available by the facility to a different resident other than on the death of the previous resident; and

(4) the health and financial conditions required for acceptance as a resident and for continuation as a resident, including the effect of any change in the health or financial condition of an individual between the date of the continuing care contract and the date on which the individual initially occupies a living unit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 5, eff. June 19, 2015.

Sec. 246.050. CONTENTS OF DISCLOSURE STATEMENT: FINANCIAL INFORMATION. (a) The disclosure statement must:

(1) describe any provisions made or to be made to provide reserve funding or security to enable the provider to fully perform its obligations under a continuing care contract, including:

(A) the establishment of escrow accounts, trusts, or reserve funds and the manner in which those funds will be invested; and

(B) the name and experience of any individual in the direct employment of the provider who will make the investment decisions; and

(2) provide financial statements of the provider, including:

(A) a balance sheet as of the end of the most recent fiscal year; and

(B) income statements and a statement of cash flow for each of the three most recent fiscal years that the provider has been in existence.

(b) Financial statements required by Subsection (a)(2) must be prepared in accordance with generally accepted accounting principles and must be audited by an independent certified public accountant, who shall state in the audit report whether the financial statements were prepared in accordance with those principles.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., ch. 14, Sec. 99, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 6, eff. June 19, 2015.

Sec. 246.051. CONTENTS OF DISCLOSURE STATEMENT: ANNUAL INCOME STATEMENTS. The disclosure statement must contain estimated annual income statements for the facility for at least five fiscal years, including:

(1) anticipated earning on any cash reserves;

(2) estimates of net receipts from entrance fees, other than entrance fees included in the statement of anticipated source and application of funds required under Section 246.052, minus estimated entrance fee refunds, including a description of the actuarial basis and method of computation for the projection of entrance fee receipts;

(3) an estimate of gifts or bequests to be relied on to meet operating expenses;

(4) a projection of estimated income from fees and charges, excluding entrance fees, that:

(A) states individual rates anticipated to be charged; and

(B) includes a description of the assumptions used for computing the estimated occupancy rate of the facility and the effect on the income of the facility of any government subsidies for health care services to be provided under the continuing care contract;

(5) a projection of the facility's operating expenses, including:

(A) a description of the assumptions used in computing the expenses; and

(B) a separate allowance for the replacement of equipment and furnishings and anticipated major structural repairs or additions; and

(6) an estimate of annual payments of principal and interest required by a mortgage loan or other long-term financing arrangement relating to the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 100, eff. Sept. 1, 1991.

Sec. 246.052. CONTENTS OF DISCLOSURE STATEMENT: ANTICIPATED SOURCE AND APPLICATION OF FUNDS. If a facility has not begun operation, the disclosure statement must include a statement of the anticipated source and application of the funds to be used in the purchase or construction of the facility, including:

(1) an estimate of the cost of purchasing or constructing and of equipping the facility, including financing expenses, legal expenses, land costs, occupancy development costs, and similar costs that the provider expects to incur or to become obligated to pay before operations begin;

(2) a description of any mortgage loan or other long-term financing arrangement for the facility, including the anticipated terms and costs of the financing;

(3) an estimate of the total entrance fees to be received from, or on behalf of, residents before the operation of the facility begins; and

(4) an estimate of any funds anticipated to be necessary to cover initial losses and to provide reserve funds to assure full performance of the obligations of the provider under a continuing care contract.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.053. STANDARD CONTRACT FORM. (a) A copy of the standard contract form used by a provider must be attached as an exhibit to each disclosure statement.

(b) The standard contract form must specify the refund provisions of Sections 246.056 and 246.057.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 101, eff. Sept. 1, 1991.

Sec. 246.054. ANNUAL DISCLOSURE STATEMENT REVISION. (a) A provider shall file a revised disclosure statement with the board not later than the 120th day after the date on which the provider's fiscal year ends.

(b) The revised disclosure statement must revise, as of the end

of the provider's fiscal year, the information required by this subchapter.

(c) The revised disclosure statement must describe any material differences between:

(1) the estimated income statements filed under Section 246.052 as a part of the disclosure statement filed after the start of the provider's most recently completed fiscal year; and

(2) the actual result of operations during that fiscal year with the revised estimated income statements filed as a part of the revised disclosure statement.

(d) A provider may revise its disclosure statement and may file the revised disclosure statement at any other time if, in the provider's opinion, revision is necessary to prevent a disclosure statement from containing a material misstatement of fact or omitting a material fact required to be included in the disclosure statement.

(e) The commissioner shall review the disclosure statement for completeness but is not required to review the disclosure statement for accuracy.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.055. ADVERTISEMENT IN CONFLICT WITH DISCLOSURES. (a) A provider may not engage in any type of advertisement for a continuing care contract or facility if the advertisement contains a statement or representation in conflict with the disclosures required under this subchapter.

(b) A person may not use the title "continuing care facility" or "continuing care retirement community" in advertising materials unless the person holds a certificate of authority issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 836 (S.B. 1522), Sec. 6, eff. January 1, 2026.

Sec. 246.056. RESCISSION OF CONTRACT; REQUIRED LANGUAGE. (a) A person who executes a continuing care contract with a provider may rescind the contract at any time before the later of midnight of the

seventh day, or a later day if specified in the contract:

(1) after the date on which the continuing care contract is executed; or

(2) after the date on which the person receives a disclosure statement that meets the requirements of this subchapter.

(b) A resident who executes a continuing care contract to provide continuing care in a living unit of a facility may not be required to move into the facility before the expiration of the period during which the contract may be rescinded.

(c) If a continuing care contract is rescinded under this section, the entrance fee shall be refunded not later than the 30th day after the date of rescission.

(d) Each continuing care contract must include the following statement or a substantially equivalent statement in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous:

"You may cancel this contract at any time prior to midnight of the seventh day, or a later day if specified in the contract, after the date on which you sign this contract or you receive the facility's disclosure statement, whichever occurs later. If you elect to cancel the contract, you must do so by written notice and you will be entitled to receive a refund of the entrance fee."

(e) Each continuing contract also must include the following statement in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous:

"This document, if executed, constitutes a legal and binding contract between you and _____. You may wish to consult a legal or financial advisor before signing, although it is not required that you do so to make this contract binding."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 102, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 5, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 7, eff. June 19, 2015.

Acts 2025, 89th Leg., R.S., Ch. 836 (S.B. 1522), Sec. 7, eff. January 1, 2026.

Sec. 246.057. CANCELLATION OF CONTRACT: DEATH OR INCAPACITY BEFORE OCCUPANCY. (a) A continuing care contract to provide continuing care in a living unit in a facility is canceled if the resident:

(1) dies before occupying a living unit in the facility; or

(2) is precluded under the terms of the contract from occupying a living unit in the facility because of illness, injury, or incapacity.

(b) If a continuing care contract is canceled under this section, the resident or the resident's legal representative is entitled to a refund of all money or property transferred to the provider, minus:

(1) any nonstandard costs specifically incurred by the provider or facility at the request of the resident that are described in the contract or in an addendum to the contract signed by the resident;

(2) a reasonable service charge, if set out in the contract, that may not exceed the greater of $1,000 or two percent of the entrance fee; and

(3) any money transferred to the provider for optional modifications to the resident's or prospective resident's living unit under an agreement that is separate from the continuing care contract.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 6, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 8, eff. June 19, 2015.

Acts 2025, 89th Leg., R.S., Ch. 836 (S.B. 1522), Sec. 8, eff. January 1, 2026.

Sec. 246.058. DISCLOSURE STATEMENT FEES. A facility that files a disclosure statement under Section 246.041 or 246.054 shall pay to the commissioner:

(1) a filing fee of $500; and

(2) a fee of not more than $2 for each living unit in the facility, excluding a unit devoted to that portion of the facility

that is a licensed nursing home.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 103, eff. Sept. 1, 1991.

SUBCHAPTER D. ENTRANCE FEE AND RESERVE FUND ESCROW ACCOUNTS

Sec. 246.071. ENTRANCE FEE ESCROW ACCOUNT; ESCROW AGENT. (a) If a provider accepts the payment of a deposit made under a reservation agreement or any portion of an entrance fee before the date the prospective resident may occupy a living unit, the provider must establish an entrance fee escrow account with a bank or trust company, as escrow agent, that is located in this state.

(b) The provider shall deposit with the escrow agent any deposit or any portion of an entrance fee received by the provider not later than 72 hours after the provider receives the deposit or fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 7, eff. Sept. 1, 1993.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 836 (S.B. 1522), Sec. 9, eff. January 1, 2026.

Sec. 246.072. RETURN OF DEPOSITS; RELEASE OR RETURN OF ENTRANCE FEE. (a) On a written request from or on behalf of the provider or a prospective resident, the escrow agent shall return the amount on deposit to the person who paid the deposit if the reservation agreement is terminated before the prospective resident occupies the living unit.

(b) Unless the escrow agent receives a written request from or on behalf of a provider or a resident for the return of an entrance fee under Subsection (a), the agent shall, at the provider's discretion, release the fee to the provider or place the fee in a loan reserve fund escrow.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 104, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 8, eff. Sept. 1, 1993.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 836 (S.B. 1522), Sec. 10, eff. January 1, 2026.

Sec. 246.073. RELEASE TO PROVIDER FOR NEW FACILITY OR EXPANSION. (a) This section applies only to:

(1) a newly constructed facility; or

(2) an expansion of an existing facility in which the number of existing living units is increased by 50 percent or more.

(a-1) Except as provided by Subsection (b), an escrow agent shall release an entrance fee to the provider if:

(1) a minimum of 50 percent of the number of living units in the facility have been reserved for residents, as evidenced by:

(A) uncanceled executed continuing care contracts or reservation agreements with those residents; and

(B) the receipt by the agent of entrance fee deposits of at least 10 percent of the entrance fee designated for each reserved living unit;

(2) the total amount of aggregate entrance fees received or receivable by the provider under binding continuing care contracts or reservation agreements, the anticipated proceeds of any first mortgage loan or other long-term financing commitment described under Subdivision (3), and funds from other sources in the actual possession of the provider are equal to or more than the total amount of:

(A) 90 percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility;

(B) 90 percent of the funds estimated, in the statement of anticipated source and application of funds included in the disclosure statement, to be necessary to cover initial losses of the facility; and

(C) 90 percent of the amount of any loan reserve fund escrow required to be maintained by the provider under Section 246.077; and

(3) a commitment has been received by the provider for any permanent mortgage loan or other long-term financing described in the statement of anticipated source and application of funds included in the current disclosure statement and any conditions of the commitment before disbursement of funds have been substantially satisfied, other than completion of the construction or closing on the purchase of the

facility, and if construction of the facility has not been completed:

(A) all necessary government permits or approvals have been obtained;

(B) the provider and the general contractor responsible for construction of the facility have entered into a maximum price contract;

(C) a recognized surety authorized to do business in this state has executed in favor of the provider a bond covering faithful performance of the construction contract by the general contractor and the payment of all obligations under the contract;

(D) the provider has entered a loan agreement for an interim construction loan in an amount that, when combined with the amount of entrance fees in escrow plus the amount of funds from other sources in the actual possession of the provider, equals or exceeds the estimated cost of constructing, equipping, and furnishing the facility;

(E) the lender has disbursed not less than 10 percent of the amount of the construction loan for physical construction or completed site preparation work; and

(F) the provider has placed orders at firm prices for not less than 50 percent of the value of items necessary for equipping and furnishing the facility in accordance with the description in the disclosure statement, including any installation charges;

(G) an occupancy permit covering the living unit has been issued by the local government that has authority to issue the permit; and

(H) the living unit is available for occupancy by the new resident.

(b) Before the date on which the loan reserve fund escrow required under Section 246.077 is first established, the aggregate amount of entrance fees that may be released to the provider under this section may not exceed an amount equal to the aggregate amount of entrance fees received or receivable by the provider under binding continuing care contracts minus the amount of entrance fees received or receivable that are required to be maintained initially in the loan reserve fund escrow.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 105, eff. Sept. 1, 1991; Acts

1993, 73rd Leg., ch. 953, Sec. 9, eff. Sept. 1, 1993.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 836 (S.B. 1522), Sec. 11, eff. January 1, 2026.
Acts 2025, 89th Leg., R.S., Ch. 836 (S.B. 1522), Sec. 12, eff. January 1, 2026.

Sec. 246.0735. PHASE-IN FACILITIES. The commissioner may create requirements for escrow release different from those under Section 246.073 for facilities that obtain a certificate of authority issued under this subchapter before the commencement of facility construction. A facility that meets the commissioner's requirements under this section is not required to satisfy Section 246.073.

Added by Acts 2007, 80th Leg., R.S., Ch. 1228 (H.B. 2392), Sec. 1, eff. June 15, 2007.

Sec. 246.0736. CONTINUING RELEASE OF ESCROW. (a) After the initial release of an entrance fee by an escrow agent for a specific facility subject to Section 246.073, and before construction of the facility is completed, the commissioner shall authorize an escrow agent to continue to release escrowed entrance fees for that facility to the provider without further proof of satisfying the requirements of Section 246.073 if:

(1) the provider provides a monthly report to the department on marketing activities for living units of the facility; and

(2) the provider immediately informs the department of any problems, issues, or irregularities encountered in its marketing activities for the facility.

(b) If the provider fails to meet the requirements of Subsection (a), the commissioner may require the provider to satisfy the requirements of Section 246.073 before the commissioner authorizes the escrow agent to continue releasing escrowed entrance fees to the provider.

(c) The commissioner shall adopt rules to implement this section.

(d) After construction on a facility described by Section

246.073(a) is completed, all necessary occupancy permits for the facility have been issued by the local government that has authority to issue permits, and all living units in the facility are available for occupancy, the release of escrowed entrance fees for the facility is governed by Section 246.072.

Added by Acts 2007, 80th Leg., R.S., Ch. 1228 (H.B. 2392), Sec. 1, eff. June 15, 2007.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 836 (S.B. 1522), Sec. 13, eff. January 1, 2026.

Sec. 246.0737. CARE IN RESIDENCE. The commissioner by rule shall establish requirements for escrow release different from those under Section 246.073 for money received as an entrance fee in connection with a continuing care contract in circumstances in which a living unit is not furnished to the resident.

Added by Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 9, eff. June 19, 2015.

Sec. 246.074. RETURN OF ENTRANCE FEE. The escrow agent shall return an entrance fee to the person who paid it if the fee is not released to the provider or placed in the loan reserve fund escrow required under Section 246.077:

(1) not later than 36 months after the date on which any portion of the entrance fee is received by the provider;

(2) within the time period specified by the provider in the disclosure statement delivered with the continuing care contract under which the fee was paid, if the specified time period is longer than the time period under Subdivision (1); or

(3) if any of the following events occur, as soon as practicable after the date the event occurs:

(A) the prospective resident dies before occupying a unit;

(B) construction on a facility not yet in operation is stopped indefinitely before the facility is completed; or

(C) a continuing care contract is rescinded under Section 246.056.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 106, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 10, eff. Sept. 1, 1993.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 836 (S.B. 1522), Sec. 14, eff. January 1, 2026.

Sec. 246.075. ESCROW OF CERTAIN FEES NOT REQUIRED. This subchapter does not require the escrow of a waitlist fee or a similar fee of $1,000 or less, or of any nonrefundable portion of a deposit or entrance fee that:

(1) does not exceed an amount equal to two percent of the entrance fee; and

(2) is clearly designated as nonrefundable in the continuing care contract or reservation agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 11, eff. Sept. 1, 1993.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 836 (S.B. 1522), Sec. 15, eff. January 1, 2026.

Sec. 246.076. INTEREST ACCRUED ON ENTRANCE FEE FUNDS. Unless otherwise provided in a continuing care contract, interest that accrues on funds held in an entrance fee escrow account is the property of the provider.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 12, eff. Sept. 1, 1993.

Sec. 246.077. RESERVE FUND ESCROW. (a) When a facility is first occupied by a resident, the provider shall establish and maintain in an escrow account with a bank or trust company, as escrow agent, that is located in this state a reserve fund equal to the total of all principal and interest payments due during the next 12 months on any first mortgage loan or other long-term financing arrangement for the facility. The requirements of this section may be met in whole or in part by other reserve funds held for the

purpose of meeting loan obligations if the total amount equals or exceeds the amount required by this subsection.

(b) At the option of the facility, the loan reserve fund escrow amount may exclude the portion of principal and interest payments applicable to that portion of the facility that is a licensed nursing facility or licensed assisted living facility.

(c) The provider shall maintain the loan reserve fund escrow in an account that is fully covered by federal deposit insurance and is separate from the provider's business account or in other accounts or investments approved by the commissioner. The funds in the reserve fund escrow account may be invested, with earnings payable to the provider.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 107, eff. Sept. 1, 1991. Amended by:

Acts 2025, 89th Leg., R.S., Ch. 836 (S.B. 1522), Sec. 16, eff. January 1, 2026.

Sec. 246.078. RELEASE OF RESERVE FUND ESCROW. (a) The escrow agent may release an amount equal to not more than one-twelfth of the loan reserve fund required by Section 246.077 if the provider requests the release in writing.

(b) The escrow agent must give written notice to the board not later than the 11th day before the date of the release.

(c) The escrow agent may not release funds from the loan reserve fund escrow under this section more than once during a calendar year. A provider at any time may apply to the commissioner for the withdrawal of all or part of the loan reserve escrow funds. The provider may withdraw the funds on the approval of the withdrawal by the commissioner. The application must be made and the approval given as provided by rule.

(d) The provider must repay to the loan reserve fund escrow account the amount released to the provider under Subsection (a) or (c) not later than 18 months after the date the amount is released. The commissioner may place the provider or facility under supervision under Section 246.091 or take any other appropriate action as provided by law if the provider does not repay the loan reserve fund escrow account within the required period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 108, eff. Sept. 1, 1991.

Sec. 246.079. TRANSITION. (a) A provider who operates a facility that existed on September 1, 1987, must comply with the filing requirements imposed under Section 246.041 and the escrow requirements imposed under Sections 246.077 and 246.078 not later than September 1, 1990.

(b) The commissioner may extend the time for compliance under this section for a reasonable period if the commissioner determines that the provider is unable to comply with this section after making a good faith effort to comply.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 109, eff. Sept. 1, 1991.

Sec. 246.080. APPLICABILITY. Sections 246.071 through 246.076 do not apply to a facility that on September 1, 1987, was completed and occupied by at least one person.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 110, eff. Sept. 1, 1991.

SUBCHAPTER E. SUPERVISION, REHABILITATION, AND LIQUIDATION

Sec. 246.091. SUPERVISION BY COMMISSIONER. (a) The commissioner may place a provider or facility under supervision if:

(1) the provider draws on the provider's entrance fee escrow in an amount greater than permitted by Section 246.073;

(2) the provider draws on the provider's loan reserve fund escrow in an amount greater than permitted or more frequently than permitted by Section 246.078;

(3) the commissioner determines, after a complaint and investigation, that the provider is financially unsound or is unable to meet the income or available cash projections previously filed by the provider and that the ability of the provider to fully perform its obligations under continuing care contracts is endangered; or

(4) the provider is bankrupt, insolvent, or has filed for protection from creditors under a federal or state reorganization, bankruptcy, or insolvency law.

(b) The commissioner appoints the supervisor.

(c) The commissioner may provide that the provider may not, during the supervision period and without the prior approval of the commissioner or the supervisor:

(1) dispose of, convey, or encumber its assets;

(2) withdraw its bank accounts;

(3) lend its funds;

(4) invest its funds;

(5) transfer its property;

(6) incur a debt, obligation, or liability; or

(7) merge or consolidate with another facility.

(d) The commissioner shall terminate the supervision and restore to a provider the authority to manage the affairs of the facility if the commissioner determines that the facility is capable of meeting its financial obligations.

(e) The facility or provider shall pay the costs of a supervisor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 111, eff. Sept. 1, 1991.

Sec. 246.092. APPLICATION FOR COURT ORDER FOR REHABILITATION OR LIQUIDATION. (a) The commissioner shall request the attorney general to apply to a district court of this state, or to the federal bankruptcy court that has exercised jurisdiction over a provider or facility, for an order directing the appointment of a trustee to rehabilitate or liquidate the facility if the commissioner elects not to place the facility under supervision and:

(1) the provider draws from the provider's loan reserve fund escrow an amount greater than permitted by Section 246.078;

(2) the provider does not repay the loan reserve fund escrow as required by Section 246.078;

(3) the board determines, after a complaint and investigation, that the provider is financially unsound or is unable to meet the income or available cash projections previously filed by the provider and that the ability of the provider to fully perform its obligations under continuing care contracts is endangered; or

(4) the provider is bankrupt, insolvent, or has filed for protection from creditors under a federal or state reorganization,

bankruptcy, or insolvency law.

(b) In connection with an application for an order to rehabilitate or liquidate a facility, the court shall consider the manner in which the welfare of persons who have previously contracted with the provider for continuing care at the facility may be best served, and may order that the proceeds of a lien imposed under Section 246.111 may be used in full or partial payment of entrance fees to other facilities on behalf of the residents of the facility being liquidated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 112, eff. Sept. 1, 1991.

Sec. 246.093. ORDER TO REHABILITATE. An order to rehabilitate a facility must direct the trustee to:

(1) take possession of the provider's property in order to conduct the business, including employing any managers or agents the trustee considers necessary; and

(2) take action as directed by the court to eliminate the causes and conditions that made rehabilitation necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.094. ORDER TO LIQUIDATE. (a) If the trustee determines that further efforts to rehabilitate the provider would be impractical or useless, the trustee may apply to the court that ordered the rehabilitation for an order of liquidation.

(b) A court that has jurisdiction may issue an order to liquidate a facility on application of the board, regardless of whether an order to rehabilitate the facility exists. If the court issues an order to liquidate, the court shall appoint a trustee to collect and liquidate all of the provider's assets located in this state.

(c) A person may not contract for continuing care at a facility after an order to liquidate that facility has been entered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.095. BOND. A court may refuse to make or may vacate an order to rehabilitate under this subchapter if the provider posts a bond that is:

(1) in an amount determined by the court to be equal to the reserve funding needed to fulfill the provider's obligations under its continuing care contracts at the facility;

(2) issued by a recognized surety authorized to do business in this state; and

(3) executed in favor of the state on behalf of all persons entitled to refunds of entrance fees from the provider or other damages if the provider is unable to fulfill its continuing care contracts at the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.096. TERMINATION OF REHABILITATION. (a) A court may terminate a rehabilitation and order return of a facility and its assets and affairs to the management of the provider if the court, on petition of the trustee or the provider or on its own motion, finds that:

(1) the objectives of the order to rehabilitate the facility have been accomplished; and

(2) the facility can be returned to the provider's management without further jeopardy to the residents, creditors, or owners of the facility or the public.

(b) A court may enter an order under this section after:

(1) a full report and accounting of the conduct of the facility's affairs during the rehabilitation; and

(2) a report on the facility's financial condition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.097. PAYMENT OF TRUSTEE. The reasonable costs, expenses, and fees of the trustee are payable from the assets of the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER F. ENFORCEMENT

Sec. 246.111. LIEN. (a) To secure the obligations of the provider under any continuing care contract, a lien attaches on the date a resident first occupies a facility or receives services under a continuing care contract. The lien covers the real and personal property of the provider located at the facility. The provider shall prepare a written notice sworn to by an officer of the provider for each county where the provider has a facility. The notice must contain the name of the provider, the legal description of each facility of the provider, and a statement that the facility is subject to this chapter and the lien provided by this section. The provider shall file for record the notice in the real property records of each county where the provider has a facility on or before the later of January 1, 1994, or the date of the execution of the first continuing care contract relating to the facility.

(b) The commissioner may remove a lien under this section if requested by a provider to obtain secondary financing or refinancing of a facility if:

(1) the facility is financially sound; and

(2) removal of the lien does not adversely affect the residents.

(c) A lien under this section is subordinate to any liens on the property of the facility if the proceeds of the loan secured by the liens were used in whole or in part to:

(1) construct, acquire, replace, or improve the facility; or

(2) refinance an earlier loan used to construct, acquire, replace, or improve the facility.

(d) A lien under this section is effective for 10 years.

(e) A lien under this section may be foreclosed on application of the board if the facility is liquidated or the provider is insolvent or bankrupt. The proceeds from a foreclosed lien shall be used for full or partial satisfaction of the provider's obligations under continuing care contracts in effect on the date of the foreclosure.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 13, 15, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 10, eff.

June 19, 2015.

Sec. 246.112. INVESTIGATIONS. The commissioner may conduct an examination or investigation as necessary to:

(1) determine whether a person has violated or is about to violate this chapter;

(2) aid in the enforcement of this chapter;

(3) determine the financial solvency of a facility; or

(4) verify a statement contained in a disclosure statement filed or delivered under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.113. PRODUCTION OF EVIDENCE. (a) In an investigation or proceeding under this chapter, the board may:

(1) require or allow a person to file a written statement regarding any of the facts and circumstances concerning the matter to be investigated;

(2) administer oaths and affirmations;

(3) subpoena witnesses;

(4) compel attendance;

(5) take evidence; and

(6) require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records considered relevant to the inquiry.

(b) The board may bring suit in district court to enforce a subpoena if the person to whom a subpoena is directed fails to comply.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.114. ACTUARIAL REVIEW. (a) This section applies only to a facility whose contracts offer future guarantees of long-term nursing care that develop current actuarial liabilities.

(b) A facility subject to this section shall file with the commissioner actuarial reviews at least once every five years.

(c) Repealed by Acts 2025, 89th Leg., R.S., Ch. 836 (S.B. 1522), Sec. 18, eff. January 1, 2026.

(d) The commissioner may require an actuarial review of a facility more often than once every five years if:

(1) the facility leases from a third party any portion of the grounds on which the facility is located or buildings in which the facility operates; or

(2) in the opinion of the commissioner, the facility exhibits conditions of financial instability warranting an earlier review.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 113, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 14, eff. Sept. 1, 1993.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 836 (S.B. 1522), Sec. 17, eff. January 1, 2026.

Acts 2025, 89th Leg., R.S., Ch. 836 (S.B. 1522), Sec. 18, eff. January 1, 2026.

Sec. 246.115. CEASE AND DESIST ORDERS; INJUNCTIONS. (a) The board may request that the attorney general bring an action to prohibit a person from engaging in an act or practice and to order compliance with this chapter if the board determines, after a complaint or by other means, that the act or practice violates this chapter or an order made under this chapter.

(b) The action may be brought in the district court of a county in which:

(1) the defendant resides;

(2) the defendant has done business;

(3) the principal place of business of the defendant is located; or

(4) the transaction occurred.

(c) The court may grant an injunction or restraining order on a proper showing. If the court grants an injunction or restraining order, the court shall issue it without bond.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.116. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally violates this chapter.

(b) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.117. CIVIL LIABILITY. (a) A provider who makes a continuing care contract without complying with the disclosure statement requirement under Subchapter C, or who makes a continuing care contract with a person who has relied on a disclosure statement that omits a material fact required to be stated in the statement or necessary to make the statement accurate, is liable to the person with whom the continuing care contract is made for:

(1) actual damages;

(2) repayment of all fees paid to the provider minus the reasonable value of care and lodging provided to the person by or on whose behalf the continuing care contract was made before the violation, misstatement, or omission was discovered or reasonably should have been discovered;

(3) interest at the legal rate for judgments;

(4) court costs; and

(5) reasonable attorney's fees.

(b) A provider is liable under this section regardless of whether the provider had actual knowledge of the misstatement or omission.

(c) A person may not file or maintain an action under this section if the person, before filing the action, received a written offer of a refund of all amounts paid to the provider, facility, or person violating this chapter and reasonable interest from the date of payment, minus the reasonable value of care and lodging provided before the receipt of the offer and:

(1) the offer states the provisions of this section; and

(2) the recipient of the offer fails to accept the offer within 30 days after the date the offer is received.

(d) A person must bring suit under this section not later than three years after:

(1) the date on which the continuing care contract was entered into; or

(2) the violation, misstatement, or omission is discovered or reasonably should have been discovered.

(e) Except as expressly provided by this chapter, civil

liability does not arise in favor of a private party by implication from or as a result of the violation of this chapter or a rule or order adopted under this chapter.

(f) This chapter does not limit a liability that would exist under any other statute or common law if this chapter were not in effect.

(g) The provisions of this chapter are not exclusive and the remedies provided by this chapter are in addition to any other remedies provided by any other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 247. ASSISTED LIVING FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 247.001. SHORT TITLE. This chapter may be cited as the Assisted Living Facility Licensing Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.0011. SCOPE, PURPOSE, AND IMPLEMENTATION. (a) The purpose of this chapter is to ensure that assisted living facilities in this state deliver the highest possible quality of care. This chapter and the rules adopted under this chapter establish minimum acceptable levels of care, and a violation of a minimum acceptable level of care established under this chapter is a violation of law. For purposes of this chapter, components of quality of care include:

(1) resident independence and self-determination;

(2) humane treatment;

(3) conservative intervention;

(4) access to care;

(5) continuity of care;

(6) coordination of services;

(7) safe surroundings;

(8) professionalism of service providers;

(9) participation in useful studies; and

(10) quality of life.

(b) The executive commissioner shall protect residents of

assisted living facilities by:

(1) adopting rules relating to quality of care and quality of life; and

(2) adopting rules relating to the assessment of the condition and service needs of each resident.

(b-1) The department shall protect residents of assisted living facilities by:

(1) promoting policies that maximize the dignity, autonomy, privacy, and independence of each resident;

(2) regulating the construction, maintenance, and operation of assisted living facilities;

(3) strictly monitoring factors relating to the health, safety, welfare, and dignity of each resident;

(4) imposing prompt and effective remedies for violations of this chapter and rules and standards adopted under this chapter;

(5) promoting a residential environment that allows residents to maintain the highest possible degree of independence and self-determination; and

(6) providing the public with helpful and understandable information relating to the operation of assisted living facilities in this state.

(c) Assisted living services are driven by a service philosophy that emphasizes personal dignity, autonomy, independence, and privacy. Assisted living services should enhance a person's ability to age in place in a residential setting while receiving increasing or decreasing levels of service as the person's needs change.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0695, eff. April 2, 2015.

Sec. 247.002. DEFINITIONS. In this chapter:

(1) "Assisted living facility" means an establishment that:

(A) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment;

(B) provides:

(i) personal care services; or

(ii) administration of medication by a person licensed or otherwise authorized in this state to administer the medication;

(C) may provide assistance with or supervision of the administration of medication;

(D) may provide skilled nursing services for the following limited purposes:

(i) coordination of resident care with outside home and community support services agencies and other health care professionals;

(ii) provision or delegation of personal care services and medication administration as described by this subdivision;

(iii) assessment of residents to determine the care required; and

(iv) for periods of time as established by department rule, delivery of temporary skilled nursing treatment for a minor illness, injury, or emergency; and

(E) may provide health maintenance activities as defined by rule by the Texas Board of Nursing.

(2) "Commission" means the Health and Human Services Commission.

(2-a) "Commissioner" means the commissioner of aging and disability services.

(3) "Controlling person" means a person who controls an assisted living facility or other person as described by Section 247.005.

(4) "Department" means the Department of Aging and Disability Services.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Personal care services" means:

(A) assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or

(B) general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in an assisted living facility or who needs assistance to manage the person's personal life, regardless of whether a guardian has been appointed for the person.

(6) "Qualified religious society" means a church,

synagogue, or other organization or association that is organized primarily for religious purposes and that:

(A) has been in existence in this state for at least 35 years; and

(B) does not distribute any of its income to its members, officers, or governing body other than as reasonable compensation for services or reimbursement of expenses.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 608, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 8.092, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1248, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1106 (H.B. 216), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.08(a), eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0696, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0697, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 298 (H.B. 3329), Sec. 1, eff. September 1, 2019.

Sec. 247.003. APPLICATION OF OTHER LAW. (a) Except as provided by Subsections (b) and (c), Chapter 242 does not apply to an assisted living facility licensed under this chapter.

(b) Subchapter D, Chapter 242, applies to an assisted living facility, and the department shall administer and enforce that subchapter for an assisted living facility in the same manner it is administered and enforced for a nursing home.

(c) Except as provided by this subsection, Subchapter R, Chapter 242, applies to an assisted living facility, and the department shall administer that subchapter for an assisted living facility in the same manner it is administered and enforced for a nursing home, but shall enforce that subchapter in accordance with the sanctions authorized by this chapter. Sections 242.851 and

242.852 do not apply to an assisted living facility or to conduct within an assisted living facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 160, Sec. 1, eff. May 27, 2003.

Sec. 247.004. EXEMPTIONS. This chapter does not apply to:

(1) a boarding home facility as defined by Section 260.001;

(2) an establishment conducted by or for the adherents of the Church of Christ, Scientist, for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing without the use of any drug or material remedy if the establishment complies with local safety, sanitary, and quarantine ordinances and regulations;

(3) a facility conducted by or for the adherents of a qualified religious society classified as a tax-exempt organization under an Internal Revenue Service group exemption ruling for the purpose of providing personal care services without charge solely for the society's professed members or ministers in retirement, if the facility complies with local safety, sanitation, and quarantine ordinances and regulations; or

(4) a facility that provides personal care services only to persons enrolled in a program that:

(A) is funded in whole or in part by the department and that is monitored by the department or its designated local intellectual and developmental disability authority in accordance with department rules; or

(B) is funded in whole or in part by the Department of State Health Services and that is monitored by that department, or by its designated local mental health authority in accordance with department rules.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 608, Sec. 1, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1106 (H.B. 216), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(5), eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.08(b), eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0698, eff. April 2, 2015.

Sec. 247.005. CONTROLLING PERSON. (a) A person is a controlling person if the person, acting alone or with others, has the ability to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an assisted living facility or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company, landlord, or other business entity that operates or contracts with others for the operation of an assisted living facility;

(2) a person who is a controlling person of a management company or other business entity that operates an assisted living facility or that contracts with another person for the operation of an assisted living facility; and

(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an assisted living facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(b-1) Notwithstanding any other provision of this section, for purposes of this chapter, a controlling person of an assisted living facility or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

(c) A controlling person described by Subsection (b)(3) does not include an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.

(d) The executive commissioner may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 3, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0699, eff. April 2, 2015.

Sec. 247.007. COMPLIANCE WITH CHAPTER 260A. (a) An assisted living facility shall comply with Chapter 260A and the rules adopted under that chapter.

(b) A person, including an owner or employee of an assisted living facility, shall comply with Chapter 260A and the rules adopted under that chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(i), eff. September 28, 2011.

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 247.021. LICENSE REQUIRED. (a) A person may not establish or operate an assisted living facility without a license issued under this chapter.

(b) A person establishing or operating a facility that is not required to be licensed under this chapter may not use the term "assisted living" in referring to the facility or the services provided at the facility.

(c) A person establishing or operating a facility that is not required to be licensed but who elects to obtain a license under this chapter may use the term "assisted living" in referring to the facility or the services provided at the facility.

(d) The executive commissioner by rule shall establish procedures to issue a six-month provisional license to existing facilities with residents. The department may issue a provisional license if:

(1) the facility is in compliance with resident care standards;

(2) the facility voluntarily discloses that the facility needs additional time to comply with life safety code and physical plant standards;

(3) the disclosure is made in writing by certified mail to the department;

(4) an investigation of the violation was not initiated and the violation was not independently detected by the department; and

(5) the disclosure is made promptly after knowledge of the information disclosed is obtained by the facility.

(d-1) A provisional license expires the earlier of:

(1) the 180th day after the effective date of the provisional license or the end of any extension period granted by the department, in the department's sole discretion; or

(2) the date a license is issued to the provisional license holder under Subsection (d-3).

(d-2) The department shall conduct a life safety code inspection of the facility as soon as reasonably possible after the department issues a provisional license.

(d-3) After conducting a life safety code inspection, the department shall issue a license under Section 247.023 to the provisional license holder if the facility passes the inspection and the applicant meets all requirements for a license. A license issued under this subsection has the same effective date as the provisional license.

(e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 917, Sec. 9, eff. September 1, 2009.

(f) Repealed by Acts 2009, 81st Leg., R.S., Ch. 917, Sec. 9, eff. September 1, 2009.

(g) The department shall, upon submission of a written request by the applicant, automatically issue a six-month provisional license without conducting a life safety code inspection before issuance of the provisional license to a newly constructed facility if:

(1) the license applicant has submitted building plans to the department for an early compliance review in accordance with Section 247.0261;

(2) all local approvals, including a certificate of occupancy where required, have been obtained;

(3) a complete license application form is submitted within 30 days of receipt of all local approvals;

(4) the license fee has been paid;

(5) the department determines that the license applicant or a person who owns the license applicant and controls the operations of the license applicant constructed another facility in this state that complies with the department's life safety code standards; and

(6) the facility is in compliance with resident care standards based on an on-site health inspection.

(h) The department may automatically issue a provisional license in the case of a corporate change of ownership of a facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 1088, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 9, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 382 (H.B. 3729), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0700, eff. April 2, 2015.

Sec. 247.0211. EXPEDITED INSPECTION. (a) The executive commissioner shall adopt rules to implement an expedited inspection process that allows an applicant for an assisted living facility license or for a renewal of a license to obtain:

(1) a life safety code and physical plant inspection not later than the 15th day after the date the request is made; or

(2) an on-site health inspection not later than the 21st day after the date the request is made.

(b) The department may charge a fee to recover the cost of the expedited inspection.

Added by Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 5, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0701, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 362 (H.B. 823), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 362 (H.B. 823), Sec. 2, eff. September 1, 2019.

Sec. 247.022. LICENSE APPLICATION. (a) An applicant for an assisted living facility license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the executive commissioner by rule.

(b-1) If the department conducts more than two life safety code inspections at the applicant's facility, the department may collect a fee in addition to the fee under Subsection (b) for the application for the license.

(c) The department may provide technical assistance to an applicant by making brief inspections of the assisted living facility proposed to be licensed and making recommendations concerning actions necessary to meet standards for assisted living facilities.

(d) An assisted living facility license applicant in good standing may request an initial license that does not require an on-site health inspection. The department may not require the applicant to admit a resident to the facility before the department issues the license. The department shall require the license applicant to submit for approval policies and procedures, verification of employee background checks, and employee credentials.

(e) The department shall conduct a survey of a facility issued an initial license under Subsection (d) not later than the 90th day after the date on which the department issues the license to the facility. Until the department conducts the survey, the facility shall disclose to all residents and prospective residents that the department has not yet conducted the survey required by this subsection.

(f) For purposes of this section, a license applicant is in "good standing" if:

(1) the license applicant, or the controlling person of the license applicant if the license applicant is a newly formed business entity, has operated or been the controlling person of an assisted living facility in this state for six consecutive years; and

(2) each assisted living facility operated by the license

applicant, or operated or controlled by a controlling person of the license applicant if the license applicant is a newly formed business entity:

(A) has not had a violation that resulted in actual harm to a resident or that posed an immediate threat of harm causing, or likely to cause, serious injury, impairment, or death of a resident; and

(B) in the six years preceding the date on which the license applicant submits the application, has not had a sanction imposed by the department against the facility, including:

(i) the imposition of a civil or administrative penalty or an injunction;

(ii) the denial, suspension, or revocation of a license; or

(iii) an emergency closure.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 6, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0702, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 100 (H.B. 1769), Sec. 1, eff. September 1, 2015.

Sec. 247.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The commission shall issue a license if, after inspection and investigation, it finds that the applicant, the assisted living facility, and all controlling persons with respect to the applicant or facility meet the requirements of this chapter and the standards adopted under this chapter. The license expires on the third anniversary of the date of its issuance. The executive commissioner by rule shall adopt a system under which licenses expire on staggered dates during each three-year period. The commission shall prorate the license fee as appropriate if the expiration date of a license changes as a result of this subsection.

(b) To renew a license, the license holder must submit to the

commission the license renewal fee.

(c) The commission may require participation in a continuing education program as a condition of renewal of a license. The executive commissioner shall adopt rules to implement this subsection.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 14, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0703, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 5, eff. September 1, 2017.

Sec. 247.0231. COMPLIANCE RECORD IN OTHER STATES. The department may require an applicant or license holder to provide the department with information relating to compliance by the applicant, the license holder, or a controlling person with respect to the applicant or license holder with regulatory requirements in another state in which the applicant, license holder, or controlling person operates or operated an assisted living facility.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.024. FEES; DISPOSITION OF REVENUE. (a) The executive commissioner by rule shall set license fees imposed by this chapter:

(1) on the basis of the number of beds in assisted living facilities required to pay the fee; and

(2) in amounts reasonable and necessary to defray the cost of administering this chapter, but not to exceed $2,250.

(b) The executive commissioner shall establish by rule a base fee schedule and a per bed fee schedule.

(c) All fees or penalties collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

(d) Investigation fees or attorney's fees may not be assessed against or collected from an assisted living facility by or on behalf of the commission or another state agency unless the commission or other state agency assesses and collects a penalty authorized by this chapter from the facility.

(e) An applicant who submits a license renewal later than the 45th day before the expiration date of a current license is subject to a late fee in accordance with commission rules.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 416, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 15, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0704, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 6, eff. September 1, 2017.

Sec. 247.025. ADOPTION OF RULES. (a) The executive commissioner shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an assisted living facility.

(b) The executive commissioner shall adopt rules distinguishing and providing guidelines on the scope of services that an assisted living facility may provide under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0705, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 298 (H.B. 3329), Sec. 2, eff. September 1, 2019.

Sec. 247.0251. CONSTRUCTION IN 100-YEAR FLOODPLAIN IN CERTAIN

COUNTIES PROHIBITED. (a) In this section, "100-year floodplain" means an area that is subject to inundation by a 100-year flood, which is a flood that has a one percent or greater chance of occurring in any given year, as determined from maps or other data from the Federal Emergency Management Agency, or, if not mapped by the Federal Emergency Management Agency, from the United States Department of Agriculture soil maps.

(b) In a county with a population of 3.3 million or more, the executive commissioner by rule shall prohibit the construction of a new assisted living facility licensed under this chapter within a 100-year floodplain.

(c) The prohibition on new construction under this section does not apply to expansions or renovations of existing assisted living facilities.

Added by Acts 2021, 87th Leg., R.S., Ch. 668 (H.B. 1681), Sec. 1, eff. September 1, 2021.

Sec. 247.0255. RESTRAINT AND SECLUSION. A person providing services to a resident of an assisted living facility shall comply with Chapter 322 and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 3, eff. September 1, 2005.

Sec. 247.026. STANDARDS. (a) The executive commissioner by rule shall prescribe minimum standards to protect the health and safety of an assisted living facility resident.

(b) The standards must:

(1) clearly differentiate an assisted living facility from an institution required to be licensed under Chapter 242;

(2) ensure quality care and protection of the residents' health and safety without excessive cost;

(3) ensure that the daily nutritional and special dietary needs of each resident are met; and

(4) require an assisted living facility to:

(A) use its license number or a state-issued facility identification number in all advertisements, solicitations, and promotional materials; and

(B) provide each prospective resident or prospective resident's representative, as appropriate, with a consumer disclosure statement in a standard form adopted by the department.

(c) The executive commissioner shall require an assisted living facility that provides brain injury rehabilitation services to include in the facility's consumer disclosure statement a specific statement that licensure as an assisted living facility does not indicate state review, approval, or endorsement of the facility's rehabilitation services.

(c-1) The executive commissioner shall require each assisted living facility to include in the facility's consumer disclosure statement whether the facility holds a license classified under Section 247.029 for the provision of personal care services to residents with Alzheimer's disease or related disorders.

(d) The executive commissioner may prescribe different levels of minimum standards for assisted living facilities according to the number of residents, the type of residents, the level of personal care provided, the nutritional needs of residents, and other distinctions the executive commissioner considers relevant. If the executive commissioner does not prescribe minimum standards for facilities serving non-geriatric residents, the executive commissioner must develop procedures for consideration and approval of alternate methods of compliance by such facilities with the department's standards.

(e) Local health and safety standards adopted by the municipality in which an assisted living facility is located do not apply to the facility unless the standards specifically state that they apply to assisted living facilities.

(f) The executive commissioner by rule shall prescribe minimum standards requiring appropriate training in geriatric care for each individual who provides services to geriatric residents as an employee of an assisted living facility and who holds a license or certificate issued by an agency of this state that authorizes the person to provide the services. The minimum standards may require that each licensed or certified individual complete an appropriate program of continuing education or in-service training, as determined by department rule, on a schedule determined by department rule.

(g) Any individual otherwise qualified, who has been employed by a licensed assisted living facility for at least 90 days, shall be eligible to be certified as a medication aide following completion of

the required course of study and successful completion of any required examination.

(h) An individual may not serve as the manager of an assisted living facility that has 17 beds or more unless the individual:

(1) has an associate's degree in nursing, health care management, or a related field from a public or private institution of higher education;

(2) has a bachelor's degree from a public or private institution of higher education; or

(3) has at least one year of experience working in management or in the health care industry.

(i) The executive commissioner by rule shall require each manager of an assisted living facility that has 17 beds or more to complete at least one educational course on the management of assisted living facilities not later than the first anniversary of the date the manager begins employment in that capacity.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 542, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 583, Sec. 2, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 31.01(57), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 416, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 734, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0706, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1256 (H.B. 2588), Sec. 3, eff. June 20, 2015.

Sec. 247.0261. EARLY COMPLIANCE REVIEW. (a) The executive commissioner by rule shall adopt a procedure under which a person proposing to construct or modify an assisted living facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the executive commissioner shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with the department's architectural requirements and inform the person of the results of the review. If the plans comply with the department's architectural requirements, the department may not subsequently change the architectural requirements applicable to the project unless:

(1) the change is required by federal law; or

(2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee for conducting a review under this section.

(d) A fee collected under this section shall be deposited in the general revenue fund to the credit of the assisted living account.

(e) The review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the Texas Department of Licensing and Regulation.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0707, eff. April 2, 2015.

Sec. 247.0262. REPORT ON LIFE SAFETY CODE SURVEYS. (a) The department shall annually report the number of life safety code surveys for an initial assisted living facility license with respect to which the department first visits the facility to conduct the survey more than 60 days after the date the applicant notifies the department that the applicant is ready for the initial survey.

(b) The department may report other data related to the timeliness of life safety code surveys or the processing time of license applications.

(c) The department may include the information described by Subsections (a) and (b) in any required annual regulatory report.

Added by Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 7, eff. September 1, 2009.

Sec. 247.0263. LIFE SAFETY CODE TECHNICAL MEMORANDUM. (a) At least twice each year, the commission shall issue a technical memorandum providing guidance on the interpretation of minimum life safety code standards prescribed under this chapter and by commission rule. Any new requirement that relates to an existing standard must first appear in a technical memorandum.

(b) The commission shall solicit comments from interested parties and experts to assist in determining which standards need to be addressed in a technical memorandum issued under this section.

(c) The commission shall post the technical memorandum on the commission's Internet website.

(d) A technical memorandum issued under this section is binding and must be followed by a person conducting a life safety code survey under this chapter.

(e) This section does not affect the commission's rulemaking process.

Added by Acts 2017, 85th Leg., R.S., Ch. 66 (S.B. 1049), Sec. 1, eff. September 1, 2017.

Sec. 247.0264. ACCESSIBILITY STANDARDS. (a) The Texas Department of Licensing and Regulation governs the interpretation and enforcement of accessibility standards in assisted living facilities as provided by Chapter 469, Government Code.

(b) An assisted living facility that during initial licensing passed an on-site inspection by the Texas Department of Licensing and Regulation relating to the facility's compliance with the accessibility standards may not be cited by the commission for a violation relating to the accessibility standards. If the commission issues a citation relating to compliance with accessibility standards to a facility that has not been inspected by the Texas Department of Licensing and Regulation for compliance with the accessibility standards, the commission shall rescind the citation on the facility's passage of the on-site inspection by the Texas Department of Licensing and Regulation.

Added by Acts 2017, 85th Leg., R.S., Ch. 66 (S.B. 1049), Sec. 1, eff. September 1, 2017.

Sec. 247.027. INSPECTIONS. (a) In addition to the inspection required under Section 247.023(a), the commission:

(1) shall inspect each assisted living facility at least every two years following the initial inspection required under Section 247.023(a); and

(2) may inspect a facility at other reasonable times as necessary to assure compliance with this chapter.

(b) The commission shall establish an inspection checklist based on the minimum standards that describes the matters subject to inspection. The commission shall use the inspection checklist in conducting inspections under this section and Section 247.023(a).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 7, eff. September 1, 2017.

Sec. 247.0271. INSPECTION EXIT CONFERENCE. (a) At the conclusion of an inspection under Section 247.023(a) or Section 247.027, the inspector shall perform an exit conference to advise the assisted living facility of the findings resulting from the inspection.

(b) At the exit conference, the inspector shall provide a copy of the inspection checklist to the assisted living facility and list each violation discovered during the inspection, with specific reference to the standard violated.

(c) If, after the initial exit conference, additional violations are cited, the inspector shall conduct an additional exit conference regarding the newly identified violations. An additional exit conference must be held in person and may not be held by telephone, e-mail, or facsimile transmission.

(d) The assisted living facility shall submit a plan of correction to the regional director with supervisory authority over the inspector not later than the 10th working day after the date the facility receives the final official statement of violations.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 17, eff. Sept. 1,

2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. 344), Sec. 4, eff. September 1, 2007.

Sec. 247.0272. INSPECTOR TRAINING; REQUIRED EXAMINATION. (a) The department shall develop and implement a training program to provide specialized training to department employees who inspect assisted living facilities under this chapter. The training must emphasize the distinction between an assisted living facility and an institution licensed under Chapter 242.

(b) In developing and updating the training program required by this section, the department shall consult with operators of assisted living facilities and consumers of personal care services provided by assisted living facilities or legal representatives of those consumers.

(c) The department shall examine department employees who inspect or otherwise survey assisted living facilities under this chapter. In developing the examination, the department shall consult with operators of assisted living facilities or their representatives and with consumers of personal care services provided by assisted living facilities or representatives of consumers.

(d) A department employee may not independently inspect, survey, or take administrative action against an assisted living facility unless the employee has passed the examination administered under Subsection (c).

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 3, 4, eff. Sept. 1, 2001.

Sec. 247.0275. REGISTRATION WITH TEXAS INFORMATION AND REFERRAL NETWORK. (a) An assisted living facility licensed under this chapter shall register with the Texas Information and Referral Network under Section 526.0004, Government Code, to assist the state in identifying persons needing assistance if an area is evacuated because of a disaster or other emergency.

(b) The assisted living facility is not required to identify

individual residents who may require assistance in an evacuation or to register individual residents with the Texas Information and Referral Network for evacuation assistance.

(c) The assisted living facility shall notify each resident and the resident's next of kin or guardian regarding how to register for evacuation assistance with the Texas Information and Referral Network.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 1.18, eff. September 1, 2009.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.45, eff. April 1, 2025.

Sec. 247.028. ASSISTANCE BY DEPARTMENT. The department may provide assistance to an assisted living facility, including the provision of training materials, the coordination of training conferences and workshops with other state agencies, and the development of a provider's handbook explaining assisted living facility rules.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.029. FACILITIES FOR PERSONS WITH ALZHEIMER'S DISEASE. (a) The executive commissioner by rule shall establish a classification and license for a facility that advertises, markets, or otherwise promotes that the facility provides personal care services to residents who have Alzheimer's disease or related disorders. A facility is not required to be classified under this section to provide care or treatment to residents who have Alzheimer's disease or related disorders.

(b) The executive commissioner shall adopt minimum standards for an assisted living facility classified under this section.

(c) An individual may not serve as the manager of an assisted living facility classified under this section or as the supervisor of an assisted living facility unit classified under this section unless the individual is at least 21 years of age and has:

(1) an associate's degree from a public or private institution of higher education in nursing, health care management, or a related field;

(2) a bachelor's degree from a public or private institution of higher education in psychology, gerontology, nursing, or a related field; or

(3) at least one year of experience working with persons with dementia.

(d) The executive commissioner by rule shall adopt a definition of "Alzheimer's disease and related disorders," and may adopt by reference a definition published in a generally accepted clinical resource for medical professionals. The executive commissioner shall modify the definition as necessary to conform to changes in medical practice.

Added by Acts 1997, 75th Leg., ch. 444, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0708, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1256 (H.B. 2588), Sec. 4, eff. June 20, 2015.

Sec. 247.0291. TRAINING REQUIREMENTS FOR STAFF MEMBERS OF ASSISTED LIVING FACILITIES PROVIDING CARE TO RESIDENTS WITH ALZHEIMER'S DISEASE OR RELATED DISORDERS. (a) In this section:

(1) "Assisted living manager" means an individual who is in a senior personnel position at an assisted living facility, including a facility administrator or manager who directly supervises direct service staff members.

(2) "Direct service staff member" means a staff member whose work involves extensive contact with residents, including a certified nursing assistant, nurse aide, personal care assistant, home health or personal care aide, licensed practical nurse, licensed vocational nurse, registered nurse, social worker, activity director, licensed dietitian, physician assistant, nurse practitioner, physical therapist, speech language pathologist, and occupational therapist.

(3) "Staff member" means a full- or part-time employee of an assisted living facility.

(b) This section applies only to an assisted living facility that:

(1) provides personal care services to residents with Alzheimer's disease or related disorders; and

(2) does not hold a license classified under Section 247.029 to provide those services.

(c) An assisted living facility shall require each facility staff member to complete training on Alzheimer's disease and related disorders in accordance with this section. Training hours completed by a staff member under this section may be credited toward any applicable training requirements the executive commissioner prescribes for assisted living facility managers or employees.

(d) An assisted living facility shall require each direct service staff member to successfully complete four hours of training and pass a competency-based evaluation on:

(1) Alzheimer's disease and related disorders;

(2) the provision of person-centered care;

(3) assessment and care planning;

(4) daily life activities of residents with Alzheimer's disease or related disorders; and

(5) common behaviors and communications associated with residents with Alzheimer's disease and related disorders.

(e) A direct service staff member may not provide any direct care to a resident with Alzheimer's disease or related disorders until the staff member successfully completes the training and passes the evaluation required under Subsection (d).

(f) An assisted living facility shall require each assisted living manager employed by the facility to successfully complete four hours of training and pass a competency-based evaluation on:

(1) the topics listed under Subsection (d);

(2) administrative support services related to information for comorbidities management, care planning, and the provision of medically appropriate education and support services and resources in the community, including person-centered care, to residents with Alzheimer's disease or related disorders and their families;

(3) staffing requirements to facilitate collaboration and cooperation among facility staff members and to ensure each staff member obtains appropriate informational materials and training to properly care for and interact with residents with Alzheimer's disease or related disorders based on the staff member's position;

(4) the establishment of a supportive and therapeutic environment for residents with Alzheimer's disease or related disorders to enhance the sense of community among the residents and within the facility; and

(5) the transition of care and coordination of services for residents with Alzheimer's disease or related disorders.

(g) An assisted living facility shall require each staff member who is not required to complete the training or pass the evaluation under Subsection (d) or (f), including housekeeping staff, front desk staff, maintenance staff, and other staff members with incidental but recurring contact with residents with Alzheimer's disease or related disorders, to successfully complete training and pass a competency-based evaluation on the topics listed under Subsections (d)(1), (2), and (5).

(h) An assisted living facility shall provide a certificate of completion to and maintain records of each certificate, in accordance with applicable records retention policies the commission prescribes, for each staff member who successfully completes the training and passes the evaluation required under Subsection (d), (f), or (g).

(i) Each direct service staff member and assisted living manager who successfully completes the training and passes the evaluation required under Subsection (d) or (f) must annually complete two hours of continuing education on best practices related to the treatment of and provision of care to residents with Alzheimer's disease or related disorders.

(j) Except as provided by Subsection (k), an assisted living facility staff member who successfully completes the training and passes the evaluation required under Subsection (d), (f), or (g) and who transfers to another facility is not required to complete those requirements for the other facility.

(k) An assisted living facility may require a staff member who has had a lapse of employment with facilities to which this section applies for a period of two years or more to successfully complete the training and pass the evaluation required under Subsection (d), (f), or (g) even if the staff member previously completed those requirements.

(l) Each assisted living facility staff member who successfully completes the training, including continuing education requirements, and passes an evaluation required under this section must maintain documentation regarding the training and evaluation.

(m) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 820 (H.B. 1673), Sec. 1, eff. September 1, 2023.

Sec. 247.0295. NOTICE OF ALZHEIMER'S DISEASE OR RELATED DISORDERS LICENSE CLASSIFICATION. (a) An assisted living facility advertising, marketing, or otherwise promoting that the facility provides memory care services shall provide to each facility resident written notice disclosing whether the facility holds a license or does not hold a license classified under Section 247.029 to provide personal care services to residents with Alzheimer's disease or related disorders.

(b) An assisted living facility that provides the notice required under Subsection (a) is not required under Section 247.026(c-1) to include in the facility's consumer disclosure statement information on whether the facility holds a license classified under Section 247.029 to provide personal care services to residents with Alzheimer's disease or related disorders.

Added by Acts 2021, 87th Leg., R.S., Ch. 514 (S.B. 383), Sec. 2, eff. September 1, 2021.

Sec. 247.031. MUNICIPAL ENFORCEMENT. The governing body of a municipality by ordinance may:

(1) prohibit a person who does not hold a license issued under this chapter from establishing or operating an assisted living facility within the municipality; and

(2) establish a procedure for emergency closure of a facility in circumstances in which:

(A) the facility is established or operating in violation of Section 247.021; and

(B) the continued operation of the facility creates an immediate threat to the health and safety of a resident of the facility.

Added by Acts 1997, 75th Leg., ch. 1088, Sec. 2, eff. Sept. 1, 1997. Renumbered from Sec. 247.029 and amended by Acts 1999, 76th Leg., ch.

233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.032. ACCREDITATION SURVEY TO SATISFY INSPECTION REQUIREMENTS. (a) In this section, "accreditation commission" means the Commission on Accreditation of Rehabilitation Facilities (CARF), The Joint Commission, or another organization approved by the executive commissioner.

(b) The department shall accept an accreditation survey from an accreditation commission for an assisted living facility instead of an inspection under Section 247.023 or an annual inspection or survey conducted under the authority of Section 247.027, but only if:

(1) the accreditation commission's standards meet or exceed the requirements for licensing of the executive commissioner for an assisted living facility;

(2) the accreditation commission maintains an inspection or survey program that, for each assisted living facility, meets the department's applicable minimum standards as confirmed by the executive commissioner;

(3) the accreditation commission conducts an on-site inspection or survey of the facility at least as often as required by Section 247.023 or 247.027 and in accordance with the department's minimum standards;

(4) the assisted living facility submits to the department a copy of its required accreditation reports to the accreditation commission in addition to the application, the fee, and any report required for renewal of a license;

(5) the inspection or survey results are available for public inspection to the same extent that the results of an investigation or survey conducted under Section 247.023 or 247.027 are available for public inspection; and

(6) the department ensures that the accreditation commission has taken reasonable precautions to protect the confidentiality of personally identifiable information concerning the residents of the assisted living facility.

(c) The department shall coordinate its licensing activities with each of the accreditation commissions.

(d) Except as specifically provided by this section, this section does not limit the department in performing any power or duty under this chapter or inspection authorized by Section 247.027,

including taking appropriate action relating to an assisted living facility, such as suspending or revoking a license, investigating an allegation of abuse, exploitation, or neglect or another complaint, assessing an administrative penalty, or closing the facility.

(e) This section does not require an assisted living facility to obtain accreditation from an accreditation commission.

Added by Acts 2005, 79th Leg., Ch. 579 (H.B. 1558), Sec. 1, eff. January 1, 2006.
Added by Acts 2005, 79th Leg., Ch. 870 (S.B. 1055), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 8, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0709, eff. April 2, 2015.

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 247.041. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant, license holder, or a controlling person has:

(1) violated this chapter or a rule, standard, or order adopted or license issued under this chapter in either a repeated or substantial manner; or

(2) committed any act described by Sections 247.0451(a)(2)-(6).

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) The status of a person as an applicant for a license or as a license holder is preserved until final disposition of the contested matter, except as the court having jurisdiction of a judicial review of the matter may order in the public interest for the welfare and safety of the residents.

(d) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or

on the court's own motion, to resolve a dispute involving the denial, suspension, or revocation of a license under this section or the conduct with respect to which the denial, suspension, or revocation of the license is sought.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1248, Sec. 5, eff. Sept. 1, 2001.

Sec. 247.042. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) If the department finds an assisted living facility operating in violation of the standards prescribed by this chapter and the violations create an immediate threat to the health and safety of a resident in the facility, the department may suspend the license or order immediate closing of all or part of the facility.

(b) The order suspending a license under Subsection (a) is effective immediately on written notice to the license holder or on the date specified in the order.

(c) The order suspending the license and ordering closure of all or part of an assisted living facility is valid for 10 days after its effective date.

(d) The department shall provide for the relocation of residents of an assisted living facility that is closed. The relocation may not be to a facility with a more restrictive environment unless all other reasonable alternatives are exhausted. Relocation procedures shall be adopted as part of the memorandum of understanding adopted under Section 247.061.

(e) The department and the State Office of Administrative Hearings shall expedite any hearing or decision involving an emergency suspension or closing order issued under this section.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1248, Sec. 6, eff. Sept. 1, 2001.

Sec. 247.043. INVESTIGATION OF ABUSE, EXPLOITATION, OR NEGLECT.

(a) The department shall conduct an investigation in accordance with Section 260A.007 after receiving a report of abuse, exploitation, or neglect of a resident of an assisted living facility.

(b) If the thorough investigation reveals that abuse, exploitation, or neglect has occurred, the department shall:

(1) implement enforcement measures, including closing the facility, revoking the facility's license, relocating residents, and making referrals to law enforcement agencies;

(2) notify the Department of Family and Protective Services of the results of the investigation;

(3) notify a health and human services agency, as defined by Section 521.0001, Government Code, that contracts with the facility for the delivery of personal care services of the results of the investigation; and

(4) provide to a contracting health and human services agency access to the department's documents or records relating to the investigation.

(c) Providing access to a confidential document or record under Subsection (b)(4) does not constitute a waiver of confidentiality.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(j), eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0711, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.46, eff. April 1, 2025.

Sec. 247.044. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that:

(1) the violation creates an immediate threat to the health and safety of the assisted living facility residents; or

(2) the facility is operating without a license.

(b) A district court, on petition of the department and on a

finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

(1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;

(2) restrain the establishment or operation of an assisted living facility without a license issued under this chapter; or

(3) grant any other injunctive relief warranted by the facts.

(c) The department may petition a district court for a temporary restraining order to inspect a facility allegedly required to be licensed and operating without a license when admission to the facility cannot be obtained. If it is shown that admission to the facility cannot be obtained, the court shall order the facility to allow the department admission to the facility.

(d) The attorney general or local prosecuting attorney may institute and conduct a suit authorized by this section at the request of the department.

(e) Venue for a suit brought under this section is in the county in which the assisted living facility is located or in Travis County.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Renumbered from 247.043 and amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 416, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1088, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.0441. LICENSE REQUIRED; CRIMINAL PENALTY. (a) A person commits an offense if the person operates an assisted living facility without holding a license issued under this chapter.

(b) An offense under this section is a Class A misdemeanor, except the offense is a felony of the third degree if the person has been previously convicted of an offense under this section.

Added by Acts 2025, 89th Leg., R.S., Ch. 410 (H.B. 2510), Sec. 2, eff. September 1, 2025.

Sec. 247.045. CIVIL PENALTIES. (a) Except as provided by Subsections (b) and (c), a person who violates this chapter or who fails to comply with a rule adopted under this chapter and whose violation is determined by the department to threaten the health and safety of a resident of an assisted living facility is subject to a civil penalty of not less than $100 nor more than $10,000 for each act of violation. Each day of a continuing violation constitutes a separate ground of recovery.

(b) A person is subject to a civil penalty if the person:

(1) is in violation of Section 247.021; or

(2) has been determined to be in violation of Section 247.021 and violates any other provision of this chapter or fails to comply with a rule adopted under this chapter.

(c) The amount of a civil penalty under Subsection (b) may not be less than $1,000 or more than $10,000 for each act of violation. Each day of a continuing violation constitutes a separate ground of recovery.

(d) The attorney general may institute and conduct a suit to collect a penalty and fees under this section at the request of the department. If the attorney general fails to notify the department within 30 days of referral from the department that the attorney general will accept the case, the department shall refer the case to the local district attorney, county attorney, or city attorney. The district attorney, county attorney, or city attorney shall file suit in a district court to collect and retain the penalty.

(e) Investigation and attorney's fees may not be assessed or collected by or on behalf of the department or other state agency unless a penalty described under this chapter is assessed.

(f) The department and attorney general, or other legal representative as described in Subsection (d), shall work in close cooperation throughout any legal proceedings requested by the department.

(g) The commissioner must approve any settlement agreement to a suit brought under this chapter.

(h) If a person who is liable under this section fails to pay any amount the person is obligated to pay under this section, the state may seek satisfaction from any owner, other controlling person, or affiliate of the person found liable. The owner, other controlling person, or affiliate may be found liable in the same suit or in another suit on a showing by the state that the amount to be

paid has not been paid or otherwise legally discharged. The executive commissioner by rule may establish a method for satisfying an obligation imposed under this section from an insurance policy, letter of credit, or other contingency fund.

(i) In this section, "affiliate" means:

(1) with respect to a partnership other than a limited partnership, each partner of the partnership;

(2) with respect to a corporation:

(A) an officer;

(B) a director;

(C) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and

(D) a controlling individual;

(3) with respect to an individual:

(A) each partnership and each partner in the partnership in which the individual or any other affiliate of the individual is a partner; and

(B) each corporation or other business entity in which the individual or another affiliate of the individual is:

(i) an officer;

(ii) a director;

(iii) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and

(iv) a controlling individual;

(4) with respect to a limited partnership:

(A) a general partner; and

(B) a limited partner who is a controlling individual;

(5) with respect to a limited liability company:

(A) an owner who is a manager under the Texas Limited Liability Company Law as described by Section 1.008(e), Business Organizations Code; and

(B) each owner who is a controlling individual; and

(6) with respect to any other business entity, a controlling individual.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991.

Renumbered from Sec. 247.044 and amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 416, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1088, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 11.03, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1194 (H.B. 1168), Sec. 9, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0712, eff. April 2, 2015.

Sec. 247.0451. ADMINISTRATIVE PENALTY. (a) The commission may assess an administrative penalty against a person who:

(1) violates this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter;

(2) makes a false statement, that the person knows or should know is false, of a material fact:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by the commission;

(3) refuses to allow a representative of the commission to inspect:

(A) a book, record, or file required to be maintained by an assisted living facility; or

(B) any portion of the premises of an assisted living facility;

(4) wilfully interferes with the work of a representative of the commission or the enforcement of this chapter;

(5) wilfully interferes with a representative of the commission preserving evidence of a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter;

(6) fails to pay a penalty assessed under this chapter not later than the 30th day after the date the assessment of the penalty becomes final; or

(7) fails to notify the commission of a change of ownership

before the effective date of the change of ownership.

(b) Except as provided by Section 247.0452(c), the penalty may not exceed:

(1) $5,000 for each violation that:

(A) represents a pattern of violation that results in actual harm or is widespread in scope and results in actual harm; or

(B) constitutes an immediate threat to the health or safety of a resident; or

(2) $1,000 for each other violation.

(c) The executive commissioner shall establish gradations of penalties in accordance with the relative seriousness of the violation.

(d) In determining the amount of a penalty, the commission shall consider any matter that justice may require, but must consider each of the following and make a record of the extent to which each of the following was considered:

(1) the gradations of penalties established under Subsection (c);

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;

(3) the history of previous violations;

(4) deterrence of future violations;

(5) efforts to correct the violation; and

(6) the size of the facility and of the business entity that owns the facility.

(e) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

(f) The commission may not assess a penalty under this section against a resident of an assisted living facility unless the resident is also an employee of the facility or a controlling person.

(g) The commission shall develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate assisted living facility to deter future violations. The system:

(1) must be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and

severity of violations for nursing homes; and

(2) may be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

(h) In this section, "actual harm," "immediate threat to the health or safety of a resident," "pattern of violation," and "widespread in scope" have the meanings assigned by Section 247.0452.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 16, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0713, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 8, eff. September 1, 2017.

Sec. 247.0452. RIGHT TO CORRECT. (a) The commission may not collect an administrative penalty from an assisted living facility under Section 247.0451 if, not later than the 45th day after the date the facility receives notice under Section 247.0453(c), the facility corrects the violation.

(b) Subsection (a) does not apply:

(1) to a violation that the commission determines represents a pattern of violation that results in actual harm;

(2) to a violation that the commission determines is widespread in scope and results in actual harm;

(3) to a violation that the commission determines is widespread in scope, constitutes a potential for actual harm, and relates to:

(A) resident assessment;

(B) staffing, including staff training;

(C) administration of medication;

(D) infection control;

(E) restraints; or

(F) emergency preparedness and response;

(4) to a violation that the commission determines constitutes an immediate threat to the health or safety of a resident;

(5) to a violation described by Sections 247.0451(a)(2)-(7) or a violation of Section 260A.014 or 260A.015;

(6) to a second or subsequent violation of:

(A) a right of the same resident under Section 247.064; or

(B) the same right of all residents under Section 247.064;

(7) to a violation described by Section 247.066, which contains its own right to correct provisions; or

(8) to a second or subsequent violation of Section 326.002 that occurs before the second anniversary of the date of the first violation.

(c) An assisted living facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary of the date the correction was made, the commission may assess and collect an administrative penalty for the subsequent violation. An administrative penalty assessed under this subsection is equal to three times the amount of the original penalty assessed but not collected. The commission is not required to provide the facility with an opportunity under this section to correct the subsequent violation.

(d) In this section:

(1) "Actual harm" means a negative outcome that compromises a resident's physical, mental, or emotional well-being.

(2) "Immediate threat to the health or safety of a resident" means a situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a resident.

(3) "Pattern of violation" means repeated, but not pervasive, failures of an assisted living facility to comply with this chapter or a rule, standard, or order adopted under this chapter that:

(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same residents or facility employees.

(4) "Widespread in scope" means a violation of this chapter or a rule, standard, or order adopted under this chapter that:

(A) is pervasive throughout the services provided by the assisted living facility; or

(B) represents a systemic failure by the assisted living facility that affects or has the potential to affect a large portion of or all of the residents of the facility.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 17, eff. September 1, 2007.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(k), eff. September 28, 2011.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 9, eff. September 1, 2017.

Sec. 247.0453. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. (a) The department shall issue a preliminary report stating the facts on which the department concludes that a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter has occurred if the department has:

(1) examined the possible violation and facts surrounding the possible violation; and

(2) concluded that a violation has occurred.

(b) The report may recommend a penalty under Section 247.0451 and the amount of the penalty.

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the charges;

(2) a statement of the amount of penalty recommended;

(3) a statement of whether the violation is subject to correction under Section 247.0452 and, if the violation is subject to correction under that section, a statement of:

(A) the date on which the assisted living facility must file with the department a plan of correction to be approved by the department; and

(B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and

(4) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the

penalty, or both.

(d) Not later than the 20th day after the date on which the notice under Subsection (c) is received, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(e) If the violation is subject to correction under Section 247.0452, the assisted living facility shall submit a plan of correction to the department for approval not later than the 10th day after the date on which the notice under Subsection (c) is received.

(f) If the violation is subject to correction under Section 247.0452, and the person reports to the department that the violation has been corrected, the department shall inspect the correction or take any other step necessary to confirm the correction and shall notify the person that:

(1) the correction is satisfactory and a penalty will not be assessed; or

(2) the correction is not satisfactory and a penalty is recommended.

(g) Not later than the 20th day after the date on which a notice under Subsection (f)(2) is received, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(h) If the person charged with the violation consents to the penalty recommended by the department or does not timely respond to a notice sent under Subsection (c) or (f)(2), the department shall assess the recommended penalty.

(i) If the department assesses the recommended penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0714, eff. April 2, 2015.

Sec. 247.0454. HEARING ON ADMINISTRATIVE PENALTY. (a) An administrative law judge shall order a hearing and the department

shall give notice of the hearing if a person charged with a violation under Section 247.0451 timely requests a hearing.

(b) The hearing shall be held before an administrative law judge.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for decision regarding the occurrence of a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter and a recommendation regarding the amount of the proposed penalty if a penalty is warranted.

(d) Based on the findings of fact and conclusions of law and the recommendation of the administrative law judge, the department by order may:

(1) find that a violation has occurred and assess an administrative penalty; or

(2) find that a violation has not occurred.

(e) If the department finds that a violation has not occurred, the department shall order that all records reflecting that the department found a violation had occurred and attempted to impose an administrative penalty shall be expunged except:

(1) records obtained by the department during its investigation; and

(2) the administrative law judge's findings of fact.

(f) Proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0715, eff. April 2, 2015.

Sec. 247.0455. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) The department shall give notice of the findings made under Section 247.0454(d) to the person charged. If the department finds that a violation has occurred, the department shall give to the person charged written notice of:

(1) the findings;

(2) the amount of the administrative penalty;

(3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;

(4) whether action under Section 247.0457 is required in lieu of payment of all or part of the penalty; and

(5) the person's right to judicial review of the department order.

(b) Not later than the 30th day after the date on which the department order is final, the person charged with the penalty shall:

(1) pay the full amount of the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the department's dissatisfaction with efforts to correct the violation, or any combination of these issues.

(c) Notwithstanding Subsection (b), the department may permit the person to pay a penalty in installments or may require the person to use all or part of the amount of the penalty in accordance with Section 247.0457.

(d) If the person does not pay the penalty within the period provided by Subsection (b) or in accordance with Subsection (c), if applicable:

(1) the penalty is subject to interest; and

(2) the department may refer the matter to the attorney general for collection of the penalty and interest.

(e) Interest under Subsection (d)(1) accrues:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the day after the date on which the penalty becomes due and ending on the date the penalty is paid.

(f) If the amount of the penalty is reduced or the assessment of a penalty is not upheld on judicial review, the department shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(g) Accrued interest on amounts remitted by the department under Subsection (f)(1) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is

paid and ending on the date the penalty is remitted to the person charged.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0716, eff. April 2, 2015.

Sec. 247.0456. APPLICATION OF OTHER LAW. The department may not assess a monetary penalty under this chapter and a monetary penalty under Chapter 32, Human Resources Code, for the same act or failure to act.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Sec. 247.0457. AMELIORATION OF VIOLATION. (a) In lieu of demanding payment of an administrative penalty assessed under Section 247.0451, the department in accordance with this section may allow the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the assisted living facility affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of a resident of the assisted living facility.

(c) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of the recommended assessment of an administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 247.0454.

(d) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 247.0454 if the department approves the plan.

(e) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the assisted living facility that will improve services to or quality of care of residents of the assisted living facility;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the assisted living facility;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a time line for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(f) A plan for amelioration may include proposed changes to:

(1) improve staff recruitment and retention;

(2) offer or improve dental services for residents; and

(3) improve the overall quality of life for residents.

(g) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(h) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the commission or the State Office of Administrative Hearings, as appropriate, shall deny a pending request for a hearing submitted by the person under Section 247.0453.

(i) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0717, eff. April 2, 2015.

Sec. 247.0458. USE OF ADMINISTRATIVE PENALTY. Money from an administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established

under Section 161.074, Human Resources Code.

Added by Acts 2005, 79th Leg., Ch. 786 (S.B. 52), Sec. 3, eff. September 1, 2005.

Sec. 247.0459. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty against an assisted living facility that violates Section 166.004.

(b) A penalty assessed under this section shall be $500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 2.05, eff. Sept. 1, 1999. Renumbered from Sec. 247.0455 and amended by by Acts 2001, 77th Leg., ch. 1248, Sec. 7, eff. Sept. 1, 2001.

Sec. 247.046. COOPERATION AMONG AGENCIES. The executive commissioner by rule for the department and the Department of Family and Protective Services and the attorney general by rule shall adopt a memorandum of understanding that:

(1) defines those agencies' responsibilities concerning assisted living facilities and coordinates those agencies' activities;

(2) details coordinated procedures to be used by those agencies in responding to complaints relating to neglect or abuse of residents of facilities, to substandard facilities, and to unlicensed facilities;

(3) identifies enforcement needs those agencies may have in order to perform their duties under the memorandum of understanding, including any need for access to information or to facilities under investigation or operating under a plan of correction; and

(4) provides a plan for correcting violations in substandard or unlicensed assisted living facilities that specifies the conditions under which it is appropriate to impose such a plan and that outlines a schedule of implementation for the plan.

Added by Acts 1991, 72nd Leg., ch. 349, Sec. 1, eff. June 5, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.093, eff. Sept. 1,

1995; Acts 1997, 75th Leg., ch. 416, Sec. 5, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0718, eff. April 2, 2015.

Sec. 247.048. REGIONAL TRAINING FOR AGENCIES AND LOCAL GOVERNMENTS. The department periodically shall conduct regional training programs for representatives of local governments and appropriate state agencies relating to assisted living facility concerns. The training programs must provide to participants information relating to the assisted living facility industry, including information on:

(1) the general characteristics of assisted living facilities and residents of those facilities;

(2) the different types of assisted living facilities;

(3) the laws applicable to assisted living facilities; and

(4) the authority of the department and other entities to enforce applicable laws.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.049. USE OF REGULATORY REPORTS AND DOCUMENTS. (a) Except as otherwise provided by this section, a report or other document prepared by the department that relates to regulation of an assisted living facility is not admissible as evidence in a civil action to prove that the facility violated a standard prescribed under this chapter.

(b) Subsection (a) does not:

(1) bar the admission into evidence of department reports or other documents in an enforcement action in which the state or an agency or political subdivision of the state is a party, including:

(A) an action seeking injunctive relief under Section 247.044;

(B) an action seeking imposition of a civil penalty under Section 247.045;

(C) a contested case hearing involving denial, suspension, or revocation of a license issued under this chapter;

and

(D) an action seeking imposition of an administrative penalty under this subchapter;

(2) bar the admission into evidence of department reports or other documents that are offered:

(A) to establish warning or notice to an assisted living facility of a relevant department determination; or

(B) under any rule or evidentiary predicate of the Texas Rules of Evidence;

(3) prohibit or limit the testimony of a department employee, in accordance with the Texas Rules of Evidence, as to observations, factual findings, conclusions, or determinations that an assisted living facility violated a standard prescribed under this chapter if the observations, factual findings, conclusions, or determinations were made in the discharge of the employee's official duties for the department; or

(4) prohibit or limit the use of department reports or other documents in depositions or other forms of discovery conducted in connection with a civil action if use of the reports or other documents appears reasonably calculated to lead to the discovery of admissible evidence.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 9, eff. Sept. 1, 2001.

Sec. 247.050. MONITORING OF UNLICENSED FACILITIES; REPORTING. (a) The executive commissioner shall adopt procedures to monitor the status of unlicensed assisted living facilities. As part of these procedures, the department shall:

(1) maintain a registry of all reported unlicensed assisted living facilities for the purpose of periodic follow-up by the field staff in each region; and

(2) prepare a quarterly report that shows the number of:

(A) complaints relating to unlicensed assisted living facilities that are received;

(B) complaints that are investigated;

(C) unsubstantiated complaints;

(D) substantiated complaints; and

(E) cases referred to the attorney general.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 990, Sec. 10(5), eff. June 17, 2011.

(c) The department shall file a copy of the quarterly reports required by this section with the substantive committees of each house of the legislature with jurisdiction over regulation of assisted living facilities.

(d) The department shall permanently retain at least one copy or one electronic source of information pertaining to complaints and investigations of unlicensed assisted living facilities used to maintain a registry as required under Subsection (a)(1) and used to prepare a report under Subsection (a)(2).

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. 344), Sec. 5, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.09, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.18, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 990 (H.B. 1781), Sec. 8, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 990 (H.B. 1781), Sec. 10(5), eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0719, eff. April 2, 2015.

Sec. 247.051. INFORMAL DISPUTE RESOLUTION. (a) The executive commissioner by rule shall establish an informal dispute resolution process to address disputes between an assisted living facility and the commission concerning a statement of violations prepared by the commission in accordance with this section. The process must provide for adjudication by an appropriate disinterested person of disputes relating to a statement of violations. The informal dispute resolution process must require:

(1) the assisted living facility to request informal dispute resolution not later than the 10th day after the date of notification by the commission of the violation of a standard or

standards;

(2) that the process be completed not later than the 90th day after the date of receipt of a request from the assisted living facility for informal dispute resolution;

(3) that, not later than the 20th business day after the date an assisted living facility requests an informal dispute resolution, the commission forward to the assisted living facility a copy of all information referenced in the disputed statement of violations or on which a citation is based in connection with the survey, inspection, investigation, or other visit, including any notes taken by or e-mails or messages sent by a commission employee involved with the survey, inspection, investigation, or other visit and excluding the following information:

(A) the name of any complainant, witness, or informant, which must be redacted from information provided to the assisted living facility;

(B) any information that would reasonably lead to the identification of a complainant, witness, or informant, which must be redacted from information provided to the assisted living facility;

(C) information obtained from or contained in the records of the facility;

(D) information that is publicly available; or

(E) information that is confidential by law;

(4) that full consideration is given to all factual arguments raised during the informal dispute resolution process;

(5) that full consideration is given during the informal dispute resolution process to the information provided by the assisted living facility and the commission;

(6) that ex parte communications concerning the substance of any argument relating to a survey, inspection, investigation, visit, or statement of violations under consideration not occur between the informal dispute resolution staff and the assisted living facility or the commission;

(7) that the assisted living facility and the commission be given a reasonable opportunity to submit arguments and information supporting the position of the assisted living facility or the commission and to respond to arguments and information presented against them, provided the assisted living facility submits its arguments and supporting information not later than the 10th business day after the date of receipt of the materials provided under

Subdivision (3); and

(8) that the commission bears the burden of proving the violation of a standard or standards.

(b) The commission may not delegate its responsibility to administer the informal dispute resolution process established by this section to another state agency.

(c) An assisted living facility requesting an informal dispute resolution under this section must reimburse the commission for any costs associated with the commission's preparation, copying, and delivery of information requested by the facility.

(d) A statement of violations prepared by the commission following a survey, inspection, investigation, or visit is confidential pending the outcome of the informal dispute resolution process. Information concerning the outcome of a survey, inspection, investigation, or visit may be posted on any website maintained by the commission while the dispute is pending if the posting clearly notes each finding that is in dispute.

(e) The commission may charge and the assisted living facility shall pay the reasonable costs associated with making the redactions required by Subsections (a)(3)(A) and (B).

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 13, eff. Sept. 1, 2001. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0720, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 590 (S.B. 924), Sec. 1, eff. September 1, 2017.

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Sec. 247.061. COORDINATION BETWEEN AGENCIES. (a) The executive commissioner and the attorney general shall adopt by rule a memorandum of understanding that:

(1) defines the department's and the attorney general's responsibilities concerning assisted living facilities;

(2) outlines and coordinates procedures to be used by those agencies in responding to complaints concerning assisted living facilities; and

(3) provides a plan for correcting violations or deficiencies in assisted living facilities.

(b) The department shall prepare the initial draft of the memorandum of understanding and shall facilitate and ensure its adoption.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.095, eff. Sept. 1, 1995. Renumbered from Sec. 247.062 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0721, eff. April 2, 2015.

Sec. 247.062. DIRECTORY OF ASSISTED LIVING FACILITIES; CONSUMERS' GUIDE. (a) The department shall prepare a directory of assisted living facilities that includes the name of the owner, the address and telephone number of the facility, the number of beds in the facility, and the facility's accessibility to persons with disabilities.

(b) The department shall revise the directory annually and shall make it available to the public.

(c) The department shall prepare a consumers' guide to assisted living facilities and make it available to the public. The consumers' guide shall provide information on licensing requirements for assisted living facilities, a brief description of minimum standards for facilities, a copy of the residents' bill of rights, a copy of the providers' bill of rights, and any other information that the department determines may be useful to the public.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Renumbered from 247.063 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0722, eff. April 2, 2015.

Sec. 247.063. REFERRALS. (a) If the Department of State Health Services, the department, a local mental health authority, or

a local intellectual and developmental disability authority refers a patient or client to an assisted living facility, the referral may not be made to a facility that is not licensed under this chapter.

(b) If the Department of State Health Services or a local mental health or intellectual and developmental disability authority gains knowledge of an assisted living facility that is not operated or licensed by the department or the authority and that has four or more residents who are unrelated to the proprietor of the facility, the Department of State Health Services or the authority shall report the name, address, and telephone number of the facility to the department.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.096, eff. Sept. 1, 1995. Renumbered from Sec. 247.064 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0723, eff. April 2, 2015.

Sec. 247.0631. ACCESS. An employee of the Department of State Health Services or an employee of a local mental health or intellectual and developmental disability authority may enter an assisted living facility as necessary to provide services to a resident of the facility.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0724, eff. April 2, 2015.

Sec. 247.064. RESIDENTS' BILL OF RIGHTS. (a) Each assisted living facility shall post a residents' bill of rights in a prominent place in the facility.

(b) The residents' bill of rights must provide that each resident in the assisted living facility has the right to:

(1) manage the resident's financial affairs;

(2) determine the resident's dress, hair style, or other personal effects according to individual preference, except that the

resident has the responsibility to maintain personal hygiene;

(3) retain and use personal property in the resident's immediate living quarters and to have an individual locked cabinet in which to keep personal property;

(4) receive and send unopened mail;

(5) unaccompanied access to a telephone at a reasonable hour or in case of an emergency or personal crisis;

(6) privacy;

(7) unrestricted communication, including personal visitation with any person of the resident's choice, at any reasonable hour, including family members and representatives of advocacy groups and community service organizations;

(8) make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which the resident is capable;

(9) present grievances on behalf of the resident or others to the operator, state agencies, or other persons without threat of reprisal in any manner;

(10) a safe and decent living environment and considerate and respectful care that recognizes the dignity and individuality of the resident;

(11) refuse to perform services for the facility, except as contracted for by the resident and operator;

(12) practice the religion of the resident's choice;

(13) leave the facility temporarily or permanently, subject to contractual or financial obligations; and

(14) not be deprived of any constitutional, civil, or legal right solely by reason of residence in an assisted living facility.

(c) The residents' bill of rights must be written in the primary language of each resident of the facility and must also provide the toll-free telephone number of the department for reporting abuse or neglect.

(d) The rights provided under this section do not take precedence over health and safety rights of other residents of the facility.

(e) The department shall develop a residents' bill of rights in accordance with this section and provide a copy to each facility. The copy shall be written in the primary language of each resident of the facility.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 247.065 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.065. PROVIDERS' BILL OF RIGHTS. (a) Each assisted living facility shall post a providers' bill of rights in a prominent place in the facility.

(b) The providers' bill of rights must provide that a provider of personal care services has the right to:

(1) be shown consideration and respect that recognizes the dignity and individuality of the provider and assisted living facility;

(2) terminate a resident's contract for just cause after a written 30-day notice;

(3) terminate a contract immediately, after notice to the department, if the provider finds that a resident creates a serious or immediate threat to the health, safety, or welfare of other residents of the assisted living facility;

(4) present grievances, file complaints, or provide information to state agencies or other persons without threat of reprisal or retaliation;

(5) refuse to perform services for the resident or the resident's family other than those contracted for by the resident and the provider;

(6) contract with the community to achieve the highest level of independence, autonomy, interaction, and services to residents;

(7) access to patient information concerning a client referred to the facility, which must remain confidential as provided by law;

(8) refuse a person referred to the facility if the referral is inappropriate;

(9) maintain an environment free of weapons and drugs; and

(10) be made aware of a resident's problems, including self-abuse, violent behavior, alcoholism, or drug abuse.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 247.066 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.066. APPROPRIATE PLACEMENT DETERMINATION. (a) The department may not require the removal and relocation of a resident of an assisted living facility if the resident's presence in the facility does not endanger other residents and the resident can receive adequate care at the facility through services:

(1) provided by the facility in accordance with its license; or

(2) obtained by the resident from other providers.

(b) In assessing whether a resident can receive adequate care at a facility, the department shall consider all relevant factors, including the placement preference expressed by the resident with the agreement of the facility operator, the resident's physician, and the resident's family members or other representatives.

(b-1) If a facility identifies a resident who the facility believes is inappropriately placed at the facility, the facility is not required to move the resident if the facility obtains the written statements and waiver prescribed by Subsection (c).

(c) If a resident is inappropriately placed at a facility, the facility is not required to move the resident if, not later than the 10th business day after the date that the facility determines or is informed of the department's determination that a resident is inappropriately placed at the facility, the facility:

(1) obtains a written assessment from a physician that the resident is appropriately placed;

(2) obtains a written statement:

(A) from the resident that the resident wishes to remain in the facility; or

(B) from a family member of the resident that the family member wishes for the resident to remain in the facility, if the resident lacks capacity to give a statement under this subsection;

(3) states in writing that the facility wishes for the resident to remain in the facility; and

(4) applies for and obtains a waiver from the department of all applicable requirements for evacuation that the facility does not meet with respect to the resident, if the facility does not meet all requirements for the evacuation of residents with respect to the resident.

(d) If the department determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or does not obtain the written statements and waiver prescribed by Subsection (c) that would allow the resident to remain in the facility, the facility shall discharge the resident. The resident is allowed 30 days after the date of discharge to move from the facility. A discharge required under this subsection must be made notwithstanding:

(1) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(2) the terms of any contract.

(d-1) If a facility is required to discharge the resident because the facility has not obtained the written statements prescribed by Subsection (c) or the department does not approve a waiver based on the written statements submitted, the department may:

(1) assess an administrative penalty against the facility if the facility intentionally or repeatedly disregards department criteria for obtaining a waiver for inappropriate placement of a resident;

(2) seek an emergency suspension or closing order against the facility under Section 247.042 if the department determines there is a significant risk to the residents of the facility and an immediate threat to the health and safety of the residents; or

(3) seek other sanctions against the facility under Subchapter C in lieu of an emergency suspension or closing order if the department determines there is a significant risk to a resident of the facility and an immediate threat to the health and safety of a resident.

(d-2) The executive commissioner by rule shall develop criteria under which the department may determine when a facility has intentionally or repeatedly disregarded the waiver process.

(e) To facilitate obtaining the written statements required under Subsections (b-1) and (c)(1)-(3), the department shall develop standard forms that must be used under Subsections (b-1) or (c)(1)-(3), as appropriate. The executive commissioner by rule shall develop criteria under which the department will determine, based on a resident's specific situation, whether it will grant or deny a request for a waiver under Subsection (b-1) or (c)(4).

(f) The department shall ensure that each facility and resident is aware of the waiver process described by Subsection (c) for aging

in place. A facility must include with the facility disclosure statement required under Section 247.026(b)(4)(B) information regarding the policies and procedures for aging in place described by this section.

(g) The department, in cooperation with assisted living service providers, shall develop cost-effective training regarding aging in place, retaliation, and other issues determined by the department.

(h) Repealed by Acts 2025, 89th Leg., R.S., Ch. 590 (H.B. 2358), Sec. 1(1), eff. June 20, 2025.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 14, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 305 (H.B. 2109), Sec. 1, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0725, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 590 (H.B. 2358), Sec. 1(1), eff. June 20, 2025.

Sec. 247.067. HEALTH CARE PROFESSIONALS. (a) In this section, "health care professional" means an individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(b) Unless otherwise prohibited by law, a health care professional may be employed by an assisted living facility to provide at the facility to the facility's residents services that are authorized by this chapter and that are within the professional's scope of practice. This subsection does not authorize a facility to provide ongoing services comparable to the services available in an institution licensed under Chapter 242. A health care professional providing services under this subsection shall maintain medical records of those services in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law.

(c) A resident of an assisted living facility has the right to contract with a home and community support services agency licensed under Chapter 142 or with an independent health professional for health care services.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.08(c), eff. September 28, 2011.

Sec. 247.068. RETALIATION PROHIBITED. (a) A person licensed under this chapter may not retaliate against a person for filing a complaint, presenting a grievance, or providing in good faith information relating to personal care services provided by the license holder.

(b) This section does not prohibit a license holder from terminating an employee for a reason other than retaliation.

(c) A department employee may not retaliate against an assisted living facility, an employee of an assisted living facility, or a person in control of an assisted living facility for:

(1) complaining about the conduct of a department employee;

(2) disagreeing with a department employee about the existence of a violation of this chapter or a rule adopted under this chapter; or

(3) asserting a right under state or federal law.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 305 (H.B. 2109), Sec. 2, eff. June 17, 2011.

Sec. 247.069. CONSUMER CHOICE FOR ASSISTED LIVING IN COMMUNITY CARE PROGRAMS. The community based alternatives program and the residential care programs, which provide an assisted living option to consumers, shall provide a consumer the opportunity to choose an assisted living facility that meets the department's licensing standards relating to facility construction without regard to the number of units in the facility, if consumers are advised of all other community care options.

Added by Acts 2005, 79th Leg., Ch. 870 (S.B. 1055), Sec. 2, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 18, eff. September 1, 2007.

Sec. 247.070. GUARDIANSHIP ORDERS. An assisted living facility shall make a reasonable effort to request a copy of any court order appointing a guardian of a resident or a resident's estate from the resident's nearest relative or the person responsible for the resident's support. An assisted living facility that receives a copy of a court order appointing a guardian of a resident or a resident's estate shall maintain a copy of the court order in the resident's medical records.

Added by Acts 2015, 84th Leg., R.S., Ch. 724 (H.B. 1337), Sec. 2, eff. September 1, 2015.

Sec. 247.071. LOCAL APPROVAL OF ASSISTED LIVING FACILITY. (a) In this section, "governmental unit" means a municipality, county, or other political subdivision of the state that has the authority to adopt a building code or fire code.

(b) A governmental unit that adopts a building code or fire code governs the interpretation and enforcement of that building code or fire code.

(c) The commission may not issue a citation for a violation of a building code or fire code adopted by a governmental unit to an assisted living facility that presents evidence of the governmental unit's determination that the assisted living facility is compliant with the code. If the commission cites an assisted living facility for a building code or fire code violation and the assisted living facility subsequently provides the evidence described by this subsection, the commission shall rescind the citation.

(d) Subsection (c) does not restrict the authority of the commission to issue a citation to an assisted living facility for a violation of any National Fire Protection Association codes or standards adopted under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 66 (S.B. 1049), Sec. 3, eff.

September 1, 2017.

Sec. 247.072. APPLICANTS FOR EMPLOYMENT; CRIMINAL HISTORY CHECK. (a) In addition to the prohibitions provided by Section 250.003, an assisted living facility licensed under this chapter may not employ at the facility an applicant who fails to indicate in a written statement developed by the commission and included with the submitted application that the applicant has not been convicted of an offense described by Section 250.006. For purposes of this subsection, a person who commits an offense in another state that is substantially similar to an offense described by Section 250.006 is considered to have committed the offense described by that section.

(b) If an applicant for employment at an assisted living facility states in the application that the applicant resided in another state during the five years preceding the date of the application, the facility, before employing the applicant in a permanent position, shall conduct a name-based criminal history check in each state in which the applicant previously resided.

(c) The commission shall develop the statement described by Subsection (a) and make the statement available to assisted living facilities on the commission's Internet website.

(d) If an assisted living facility employs a person pending an out-of-state criminal history check under Subsection (b), the facility shall ensure the person has no direct contact with a resident until the facility obtains the person's criminal history record information and verifies the person is not barred from employment under Section 250.006.

Added by Acts 2021, 87th Leg., R.S., Ch. 363 (S.B. 271), Sec. 1, eff. September 1, 2021.

Sec. 247.073. EMERGENCY PREPAREDNESS AND CONTINGENCY OPERATIONS PLAN; TEMPERATURE REGULATION. (a) In this section:

(1) "Area of refuge" means a climate-controlled area in an assisted living facility that is designated for use during a power outage, or other emergency that does not require the evacuation of the entire facility, to provide safety, care, and other resources to residents.

(2) "Bedfast resident" means an assisted living facility resident who:

(A) is unable to transfer out of bed and unable to turn and position themselves in bed; and

(B) is unable to be transported by another person during an emergency.

(b) An assisted living facility shall adopt and implement an emergency preparedness and contingency operations plan that requires the facility to provide in the event of a power outage:

(1) for each assisted living facility resident other than a bedfast resident, a climate-controlled area of refuge with at least 15 square feet per resident;

(2) for each bedfast resident, a climate-controlled room; and

(3) notice to the commission of an unplanned interruption or loss for more than 12 hours of electric utility service.

(c) An emergency preparedness and contingency operations plan adopted in accordance with this section must require an assisted living facility to maintain a temperature between 68 and 82 degrees Fahrenheit for:

(1) each area of refuge designated for assisted living facility residents; and

(2) each climate-controlled room for bedfast residents.

(d) The executive commissioner shall adopt rules to enforce this section.

(e) The commission shall establish construction and licensure standards for assisted living facilities for which a permit is issued to begin construction after September 1, 2026, including standards for:

(1) backup power systems, such as the integration of multiple backup power sources or the use of a generator connection box to connect a building of the facility to a backup power source; and

(2) the evacuation of assisted living facility residents to an area of refuge or climate-controlled room, as applicable, in emergencies.

(f) An assisted living facility on request shall make the emergency preparedness and contingency operations plan required by this section available to the commission in the form and manner prescribed by the commission.

(g) An assisted living facility shall include in the emergency preparedness and contingency operations plan adopted in accordance with this section its policies and information on:

(1) building equipment, if any, including the location of and type of on-site generator equipment or backup power source; and

(2) assisted living facility residents, including bedfast residents and residents who are dependent on electrically powered medical equipment.

(h) On request, an assisted living facility shall provide a summary of the facility's emergency preparedness and contingency operations plan adopted in accordance with this section to a facility resident or a resident's family member.

(i) The commission may assess a penalty in accordance with Subchapter C against an assisted living facility found in violation of this section.

(j) To the extent of any conflict, this section and rules adopted under this section preempt and supersede any ordinance, resolution, rule, or other regulation adopted by a political subdivision of this state relating to emergency preparedness and contingency operations planning for assisted living facility residents during an emergency.

Added by Acts 2025, 89th Leg., R.S., Ch. 1081 (H.B. 3595), Sec. 1, eff. September 1, 2025.

SUBCHAPTER E. ARBITRATION

Sec. 247.081. SCOPE OF SUBCHAPTER. This subchapter applies to any dispute between a facility licensed under this chapter and the department relating to:

(1) renewal of a license under Section 247.023;

(2) suspension, revocation, or denial of a license under Section 247.041;

(3) assessment of a civil penalty under Section 247.045; or

(4) assessment of an administrative penalty under Section 247.0451.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.082. ELECTION OF ARBITRATION. (a) Except as provided by Subsection (d), an affected facility may elect binding arbitration of any dispute to which this subchapter applies. Arbitration under this subchapter is an alternative to a contested case hearing or to a judicial proceeding relating to the assessment of a civil penalty.

(b) An affected facility may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and sending notice of the election to the department and the office of the attorney general. The election must be filed not later than the 10th day after the date on which the answer is due or the date on which the answer is filed, whichever is earlier. If a civil penalty is requested after the initial filing of a Section 242.094 action through the filing of an amended or supplemental pleading, an affected facility must elect arbitration not later than the 10th day after the date on which the amended or supplemental pleading is served on the affected facility or the facility's counsel.

(c) The department may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and by notifying the facility of the election not later than the date on which the facility may elect arbitration under Subsection (b).

(d) Arbitration may not be used to resolve a dispute related to an affected facility that has had an arbitration award levied against it in the previous five years.

(e) If arbitration is not permitted under this subchapter or the election of arbitration is not timely filed:

(1) the court shall dismiss the arbitration election and retain jurisdiction of the lawsuit; and

(2) the State Office of Administrative Hearings shall dismiss the arbitration and does not have jurisdiction over the lawsuit.

(f) An election to engage in arbitration under this subchapter is irrevocable and binding on the facility and the department.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.083. ARBITRATION PROCEDURES. (a) The arbitration shall be conducted by an arbitrator.

(b) The arbitration and the appointment of the arbitrator shall be conducted in accordance with rules adopted by the chief administrative law judge of the State Office of Administrative Hearings. Before adopting rules under this subsection, the chief administrative law judge shall consult with the department and shall consider appropriate rules developed by any nationally recognized association that performs arbitration services.

(c) The party that elects arbitration shall pay the cost of the arbitration. The total fees and expenses paid for an arbitrator for a day may not exceed $1,000.

(d) The State Office of Administrative Hearings may designate a nationally recognized association that performs arbitration services to conduct arbitrations under this subchapter and may, after consultation with the department, contract with that association for the arbitrations.

(e) On request by the department, the attorney general may represent the department in the arbitration.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.084. ARBITRATOR QUALIFICATIONS. Each arbitrator must be on an approved list of a nationally recognized association that performs arbitration services or be otherwise qualified as provided in the rules adopted under Section 247.083(b).

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.085. ARBITRATOR SELECTION. The arbitrator shall be appointed in accordance with the rules adopted under Section 247.083(b).

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.086. ARBITRATOR DUTIES. The arbitrator shall:

(1) protect the interests of the department and the

facility;

(2) ensure that all relevant evidence has been disclosed to the arbitrator, department, and facility; and

(3) render an order consistent with this chapter and the rules adopted under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.087. SCHEDULING OF ARBITRATION. (a) The arbitrator conducting the arbitration shall schedule arbitration to be held not later than the 90th day after the date the arbitrator is selected and shall notify the department and the facility of the scheduled date.

(b) The arbitrator may grant a continuance of the arbitration at the request of the department or facility. The arbitrator may not unreasonably deny a request for a continuance.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.088. EXCHANGE AND FILING OF INFORMATION. Not later than the seventh day before the first day of arbitration, the department and the facility shall exchange and file with the arbitrator:

(1) all documentary evidence not previously exchanged and filed that is relevant to the dispute; and

(2) information relating to a proposed resolution of the dispute.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.089. ATTENDANCE. (a) The arbitrator may proceed in the absence of any party or representative of a party who, after notice of the proceeding, fails to be present or to obtain a postponement.

(b) An arbitrator may not make an order solely on the default of a party and shall require the party who is present to submit

evidence, as required by the arbitrator, before making an award.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.090. TESTIMONY; RECORD. (a) The arbitrator may require witnesses to testify under oath and shall require testimony under oath if requested by the department or the facility.

(b) The department shall make an electronic recording of the proceeding.

(c) An official stenographic record of the proceeding is not required, but the department or the facility may make a stenographic record. The party that makes the stenographic record shall pay the expense of having the record made.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.091. EVIDENCE. (a) The department or the facility may offer evidence and shall produce additional evidence as the arbitrator considers necessary to understand and resolve the dispute.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Strict conformity to rules applicable to judicial proceedings is not required.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.092. CLOSING STATEMENTS; BRIEFS. The department and the facility may present closing statements, but the record does not remain open for written briefs unless required by the arbitrator.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.093. EX PARTE CONTACTS PROHIBITED. (a) Except as provided by Subsection (b), the department and the facility may not

communicate with an arbitrator other than at an oral hearing unless the parties and the arbitrator agree otherwise.

(b) Any oral or written communication, other than a communication authorized under Subsection (a), from the parties to an arbitrator shall be directed to the association that is conducting the arbitration or, if there is no association conducting the arbitration, to the State Office of Administrative Hearings for transmittal to the arbitrator.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.094. ORDER. (a) The arbitrator may enter any order that may be entered by the department, executive commissioner, commissioner, or court under this chapter in relation to a dispute described by Section 247.081.

(b) The arbitrator shall enter the order not later than the 60th day after the last day of the arbitration.

(c) The arbitrator shall base the order on the facts established at arbitration, including stipulations of the parties, and on the law as properly applied to those facts.

(d) The order must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a statement of the arbitrator's decision on the contested issues and the department's and facility's stipulations on uncontested issues.

(e) The arbitrator shall file a copy of the order with the department and shall notify the department and the facility in writing of the decision.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0726, eff. April 2, 2015.

Sec. 247.095. EFFECT OF ORDER. An order of an arbitrator under this subchapter is final and binding on all parties. Except as

provided by Section 247.097, there is no right to appeal.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.096. CLERICAL ERROR. For the purpose of correcting a clerical error, an arbitrator retains jurisdiction of the award until the 20th day after the date of the award.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.097. COURT VACATING ORDER. (a) On a finding described by Subsection (b), a court shall:

(1) on application of a facility, vacate an arbitrator's order with respect to an arbitration conducted at the election of the department; or

(2) on application of the department, vacate an arbitrator's order with respect to an arbitration conducted at the election of a facility.

(b) A court shall vacate an arbitrator's order under Subsection (a) only on a finding that:

(1) the order was procured by corruption, fraud, or misrepresentation;

(2) the decision of the arbitrator was arbitrary or capricious and against the weight of the evidence; or

(3) the order exceeded the jurisdiction of the arbitrator under Section 247.094(a).

(c) If the order is vacated, the dispute shall be remanded to the department for another arbitration proceeding.

(d) A suit to vacate an arbitrator's order must be filed not later than the 30th day after:

(1) the date of the award; or

(2) the date the facility or department knew or should have known of a basis for suit under this section, but in no event later than the first anniversary of the date of the order.

(e) Venue for a suit to vacate an arbitrator's order is in the county in which the arbitration was conducted.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.098. ENFORCEMENT OF CERTAIN ARBITRATION ORDERS FOR CIVIL PENALTIES. (a) This section applies only to a suit for the assessment of a civil penalty under Section 247.045 in which binding arbitration has been elected under this subchapter as an alternative to the judicial proceeding.

(b) On application of a party to the suit, the district court in which the underlying suit has been filed shall enter a judgment in accordance with the arbitrator's order unless, within the time limit prescribed by Section 247.097(d)(2), a motion is made to the court to vacate the arbitrator's order in accordance with Section 247.097.

(c) A judgment filed under Subsection (b) is enforceable in the same manner as any other judgment of the court. The court may award costs for an application made under Subsection (b) and for any proceedings held after the application is made.

(d) Subsection (b) does not affect the right of a party, in accordance with Section 247.097 and within the time limit prescribed by Section 247.097(d)(2), if applicable, to make a motion to the court or initiate a proceeding in court as provided by law to vacate the arbitrator's order or to vacate a judgment of the court entered in accordance with the arbitrator's order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

CHAPTER 248. SPECIAL CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 248.001. SHORT TITLE. This chapter may be cited as the Texas Special Care Facility Licensing Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.002. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health

Services.

(2-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Medical care" means care that is:

(A) required for improving life span and quality of life, for comfort, for prevention and treatment of illness, and for maintenance of bodily and mental function;

(B) under the continued supervision of a physician; and

(C) provided by a registered nurse or licensed vocational nurse available to carry out a physician's plan of care for a resident.

(4) "Nursing care" means services provided by nursing personnel as prescribed by a physician, including services to:

(A) promote and maintain health;

(B) prevent illness and disability;

(C) manage health care during acute and chronic phases of illness;

(D) provide guidance and counseling of individuals and families; and

(E) provide referrals to physicians, other health care providers, and community resources when appropriate.

(5) "Person" means an individual, organization, establishment, or association of any kind.

(6) "Resident" means an individual accepted for care in a special care facility.

(7) "Services" means the provision of medical or nursing care, assistance, or treatment by special care facility personnel, volunteers, or other qualified individuals, agencies, or staff of an organization or other entity to meet a resident's medical, nursing, social, spiritual, and emotional needs.

(8) "Special care facility" means an institution or establishment that provides a continuum of nursing or medical care or services primarily to persons with acquired immune deficiency syndrome or other terminal illnesses. The term includes a special residential care facility.

(9) "Bereavement services" has the meaning assigned by Section 142.001.

(10) "Palliative care" has the meaning assigned by Section 142.001.

(11) "Support services" has the meaning assigned by Section 142.001.

(12) "Residential AIDS hospice" means a facility licensed and designated as a residential AIDS hospice under this chapter.

(13) "Residential AIDS hospice care" means hospice services provided in a residential AIDS hospice.

(14) "AIDS" means acquired immune deficiency syndrome.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 30, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0727, eff. April 2, 2015.

Sec. 248.003. EXEMPTIONS. This chapter does not apply to:

(1) a home and community support services agency required to be licensed under Chapter 142;

(2) a person required to be licensed under Chapter 241 (Texas Hospital Licensing Law);

(3) an institution required to be licensed under Chapter 242;

(4) an ambulatory surgical center required to be licensed under Chapter 243 (Texas Ambulatory Surgical Center Licensing Act);

(5) a birthing center required to be licensed under Chapter 244 (Texas Birthing Center Licensing Act);

(6) a facility required to be licensed under Chapter 245 (Texas Abortion Facility Reporting and Licensing Act);

(7) a general residential operation, foster group home, foster home, and child-placing agency, for children in foster care or other residential care who are under the conservatorship of the Department of Family and Protective Services; or

(8) a person providing medical or nursing care or services under a license or permit issued under other state law.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 504, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 800, Sec. 29, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0728, eff.

April 2, 2015.

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 248.021. LICENSE REQUIRED. A person may not establish or operate a special care facility unless the person holds a license issued under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.022. APPLICATION. (a) An applicant for a license must submit an application to the department on a form prescribed by the department and in accordance with department rules.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the executive commissioner by rule.

(c) The department may require that an application be approved by the local health authority or other local official for compliance with municipal ordinances on building construction, fire prevention, and sanitation.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0729, eff. April 2, 2015.

Sec. 248.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The department shall issue a license to an applicant if on inspection and investigation it finds that the applicant meets the requirements of this chapter and department rules.

(b) A license shall be renewed at the times and in accordance with department rules.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0730, eff. April 2, 2015.

Sec. 248.024. FEES. (a) The executive commissioner by rule

shall establish a license application fee and a license renewal fee in amounts as prescribed by Section 12.0111.

(b) The executive commissioner by rule may establish other reasonable and necessary fees in amounts that are adequate, with the license application and license renewal fees, to collect sufficient revenue to meet the expenses necessary to administer this chapter. The fees may include construction plan review and inspection fees.

(c) All fees collected under this chapter are nonrefundable.

(d) All fees received by the department shall be deposited to the credit of the General Revenue Fund.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0731, eff. April 2, 2015.

Sec. 248.025. NONTRANSFERABILITY; POSTING. (a) A license issued under this chapter is not transferable or assignable.

(b) A special care facility shall post in plain sight the license issued under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.026. DUTIES OF EXECUTIVE COMMISSIONER. (a) The executive commissioner shall adopt rules necessary to implement this chapter. The rules must establish minimum standards for special care facilities relating to:

(1) the issuance, renewal, denial, suspension, and revocation of the license required by this chapter;

(2) the qualifications, duties, and supervision of professional and nonprofessional personnel and volunteers;

(3) residents' rights;

(4) medical and nursing care and services provided by a license holder;

(5) the organizational structure, lines of authority, delegation of responsibility, and operation of a special care facility;

(6) records of care and services kept by the license holder, including the disposal or destruction of those records;

(7) safety, fire prevention, and sanitary provisions;

(8) transfer of residents in a medically appropriate manner from or to a special care facility;

(9) construction plan approval and inspection; and

(10) any aspects of a special care facility as necessary to protect the public or residents of the facility.

(b) Subsection (a) does not authorize the executive commissioner to establish the qualifications of licensed health care providers or permit the executive commissioner to authorize persons to provide health care services who are not authorized to provide those services under other state law.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0732, eff. April 2, 2015.

Sec. 248.027. CONSTRUCTION STANDARDS. (a) If there are no local regulations in effect or enforced in the area in which a special care facility is located, the facility's construction must conform to the minimum standards established by the executive commissioner.

(b) Construction of a facility is subject to construction plan approval by the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0733, eff. April 2, 2015.

Sec. 248.028. INSPECTIONS; INVESTIGATIONS. (a) The department may inspect a special care facility and its records at reasonable times as necessary to ensure compliance with this chapter.

(b) The department shall investigate each complaint received regarding a special care facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.029. RESIDENTIAL AIDS HOSPICE DESIGNATION. (a) The executive commissioner by rule shall adopt standards for the designation of a special care facility licensed under this chapter as a residential AIDS hospice. Those standards shall be consistent with other standards adopted under this chapter and consistent with the purposes for which special care facilities are created.

(b) In adopting the standards, the executive commissioner shall consider rules adopted for the designation of a hospice under Chapter 142 and shall establish specific standards requiring:

(1) the provision of exclusively palliative care by a facility;

(2) the provision of bereavement services;

(3) the provision of support services to the family of a client;

(4) the participation of a registered nurse in the development of an initial plan of care for a client and periodic review of the plan of care by an interdisciplinary team of the facility; and

(5) clinical and medical review of patient care services by a physician who acts as a medical consultant.

(c) A special care facility licensed under this chapter that satisfies the standards adopted under this section shall be designated as a residential AIDS hospice.

(d) Notwithstanding Chapter 142, a special care facility licensed and issued a designation as a residential AIDS hospice under this chapter may use the term "residential AIDS hospice" or a similar term or language in its title or in a description or representation of the facility if the similar term or language clearly identifies the facility as a facility regulated under this chapter and clearly distinguishes the facility from a hospice regulated under Chapter 142.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(65), eff. April 2, 2015.

Added by Acts 1993, 73rd Leg., ch. 800, Sec. 31, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0734, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(65), eff. April 2, 2015.

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 248.051. LICENSE DENIAL, SUSPENSION, PROBATION, OR REVOCATION. (a) The department may deny, revoke, or suspend a license issued under this chapter for a violation of this chapter or the rules adopted under this chapter.

(b) Except as provided by Section 248.052, the procedures by which the department denies, revokes, or suspends a license and by which those actions are appealed are governed by the department's rules for a contested case hearing and by Chapter 2001, Government Code.

(c) If the department finds that a special care facility is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not endanger public health and safety, the department may schedule the facility for probation rather than suspending or revoking the facility's license. The department shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the facility will remain under probation. During the probation period, the facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of a special care facility that does not correct items that were in noncompliance or that does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 802, Sec. 9, 10, eff. June 20, 2003.

Sec. 248.052. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend any license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder. On written request of the

license holder to the department for a hearing, the department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received by the department to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0735, eff. April 2, 2015.

Sec. 248.053. INJUNCTION. (a) The department may request that the attorney general petition a district court to restrain a license holder or other person from continuing to violate this chapter or any rule adopted by the executive commissioner under this chapter. Venue for a suit for injunctive relief is in Travis County.

(b) On application for injunctive relief and a finding that a license holder or other person has violated this chapter or department rules, the district court shall grant the injunctive relief that the facts warrant.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0736, eff. April 2, 2015.

Sec. 248.054. CIVIL PENALTY. A license holder or person who violates this chapter or a rule adopted by the executive commissioner under this chapter is liable for a civil penalty, to be imposed by a district court, of not more than $1,000 for each day of violation. All penalties collected under this section shall be deposited to the credit of the General Revenue Fund.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0737, eff. April 2, 2015.

Sec. 248.0545. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty against a special care facility that violates Section 166.004.

(b) A penalty assessed under this section shall be $500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 2.06, eff. Sept. 1, 1999.

Sec. 248.055. CRIMINAL PENALTY. (a) A person who knowingly establishes or operates a special care facility without a license issued under this chapter commits an offense.

(b) An offense under this section is a Class B misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

SUBCHAPTER D. ADMINISTRATIVE PENALTY

Sec. 248.101. IMPOSITION OF PENALTY. (a) The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) A penalty collected under this subchapter shall be deposited in the state treasury in the general revenue fund.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0738, eff. April 2, 2015.

Sec. 248.102. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed $1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed $5,000.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.103. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(b) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.104. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 20 days after the date the person receives the notice sent under Section 248.103, the person in writing may:

(1) accept the determination and recommended penalty of the department; or

(2) make a request for a hearing on the occurrence of the

violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the department by order shall impose the recommended penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0739, eff. April 2, 2015.

Sec. 248.105. HEARING. (a) If the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date. The department shall give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0740, eff. April 2, 2015.

Sec. 248.106. DECISION BY DEPARTMENT. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the department's order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1,

1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0741, eff. April 2, 2015.

Sec. 248.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Within 30 days after the date the order of the department under Section 248.106 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the department's order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0742, eff. April 2, 2015.

Sec. 248.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 248.107, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department by certified mail.

(b) If the department receives a copy of an affidavit under Subsection (a)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0743, eff. April 2, 2015.

Sec. 248.109. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.110. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.111. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount

plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.112. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.113. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

CHAPTER 248A. PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 248A.001. DEFINITIONS. In this chapter:

(1) "Basic services" includes:

(A) the development, implementation, and monitoring of a comprehensive protocol of care that:

(i) is provided to a medically dependent or technologically dependent minor;

(ii) is developed in conjunction with the minor's

parent or legal guardian; and

(iii) specifies the medical, nursing, psychosocial, therapeutic, and developmental services required by the minor served; and

(B) the caregiver training needs of the minor's parent or legal guardian.

(2) "Center" means a prescribed pediatric extended care center.

(3) "Commission" means the Health and Human Services Commission.

(4) "Commissioner" means the commissioner of aging and disability services.

(5) "Controlling person" has the meaning assigned by Section 248A.0012.

(6) "Department" means the Department of Aging and Disability Services.

(7) "Executive commissioner" means the executive commissioner of the commission.

(8) "Medically dependent or technologically dependent minor" means a minor who because of an acute, chronic, or intermittent medically complex or fragile condition or disability requires ongoing, technology-based skilled nursing care prescribed by the minor's physician to avert death or further disability or the routine use of a medical device to compensate for a deficit in a life-sustaining body function. The term does not include minor or occasional medical conditions that do not require continuous nursing care, including asthma or diabetes, or a condition that requires an epinephrine injection.

(9) "Minor" means an individual younger than 21 years of age.

(10) "Prescribed pediatric extended care center" means a facility operated for profit or on a nonprofit basis that provides nonresidential basic services to four or more medically dependent or technologically dependent minors who require the services of the facility and who are not related by blood, marriage, or adoption to the owner or operator of the facility.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.0012. CONTROLLING PERSON. (a) A person is a controlling person if the person has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management of, expenditure of money for, or policies of a center or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company, landlord, or other business entity that operates or contracts with another person for the operation of a center;

(2) any person who is a controlling person of a management company or other business entity that operates a center or that contracts with another person for the operation of a center; and

(3) any other person who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a center, is in a position of actual control of or authority with respect to the center, regardless of whether the person is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the center.

(c) Notwithstanding any other provision of this section, for purposes of this chapter, a controlling person of a center or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

(d) A controlling person described by Subsection (b)(3) does not include a person, including an employee, lender, secured creditor, or landlord, who does not exercise any formal or actual influence or control over the operation of a center.

(e) The executive commissioner may adopt rules that define the ownership interests and other relationships that qualify a person as a controlling person under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.002. EXEMPTIONS. This chapter does not apply to:

(1) a facility operated by the United States government or

a federal agency; or

(2) a health facility otherwise licensed under this subtitle.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.003. CONFLICT WITH LOCAL LAWS. To the extent of any conflict between the standards adopted under this chapter and a standard required in a local, county, or municipal ordinance, this chapter controls.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

SUBCHAPTER B. LICENSING OF CENTERS

Sec. 248A.051. LICENSE REQUIRED; PREMISES RESTRICTION. (a) A person may not own or operate a prescribed pediatric extended care center in this state unless the person holds an initial, renewal, or temporary license issued under this chapter. An applicant for a prescribed pediatric extended care center license may not provide services under that license until the department issues the license.

(b) A separate initial, renewal, or temporary license is required for each center located on separate premises, regardless of whether the centers are under the ownership or operation of the same person.

(c) A person may not operate a center on the same premises as:

(1) a child-care facility licensed under Chapter 42, Human Resources Code; or

(2) any other facility licensed by the department or the Department of State Health Services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 1, eff. September 1, 2015.

Sec. 248A.052. INITIAL LICENSE APPLICATION; ISSUANCE. (a) An applicant for an initial prescribed pediatric extended care center license shall submit to the department in accordance with department rules:

(1) a sworn application on the form prescribed by the department;

(2) a letter of credit as prescribed by the department to demonstrate the applicant's financial viability; and

(3) the required fees.

(b) The application must contain:

(1) the location of the premises of the center for which the license is sought;

(2) documentation, signed by the appropriate local government official, stating the location and use of the premises meet local zoning requirements;

(3) the name, address, and social security number of, and background and criminal history check information for:

(A) the applicant;

(B) the administrator responsible for daily operations of the center;

(C) the financial officer responsible for financial operations of the center; and

(D) each controlling person;

(4) the name, address, and federal employer identification number or taxpayer identification number of the applicant and of each controlling person, if the applicant or controlling person is not an individual;

(5) the business name of the center;

(6) the maximum patient capacity requested for the center; and

(7) a sworn affidavit that the applicant has complied with this chapter and rules adopted under this chapter.

(c) The department shall issue an initial license to a center under this chapter if the department determines that the applicant and the center meet the requirements of this chapter and the rules and standards adopted under this chapter. The license must include:

(1) the license holder's name;

(2) the location of the premises of the center; and

(3) a statement indicating the center provides services to minors for 12 hours or less in a 24-hour period and does not provide

24-hour care.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0744, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 2, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 3, eff. September 1, 2015.

Sec. 248A.0525. TEMPORARY LICENSE PROCEDURES. (a) An applicant for an initial license under Section 248A.052 may request, in the manner prescribed by the department and in accordance with this section, that the department issue a temporary license pending the department's review of the applicant's application for an initial license. An applicant is not required to request a temporary license to receive an initial or renewal license.

(b) A temporary license issued under this section authorizes an applicant to provide nonresidential basic services to not more than six minors until the temporary license expires or terminates in accordance with this section.

(c) On receipt of a temporary license request, the department shall conduct a review of the applicant's policies, procedures, and staffing plans to serve minors in the center.

(d) The department shall grant an applicant's request for a temporary license if the department determines the applicant is eligible for the license as provided by this subsection. The department may not grant a request for a temporary license if the department determines the applicant is ineligible for the license under this subsection. An applicant is eligible for a temporary license only if the applicant meets:

(1) the license application requirements of Sections 248A.052(a) and (b) and the license application rules adopted under this chapter;

(2) the building requirements and standards for a center provided in department rules adopted under this chapter; and

(3) the requirements of the department's review conducted

under Subsection (c).

(e) A temporary license issued under this section expires on the earlier of:

(1) the 90th day after the date the temporary license is issued or the last day of any extension period granted by the department; or

(2) the date an initial license is issued under Section 248A.052.

(f) The department may not grant more than one extension of a temporary license issued under this section and may not grant an extension for a period that exceeds 90 days. The department shall grant an extension if a temporary license holder submits to the department an extension request in the manner prescribed by the department not later than the 30th day before the date the temporary license expires.

(g) A temporary license holder must comply with this chapter and the rules adopted under this chapter for the period for which the temporary license is issued, including an extension, if applicable. The department may take an enforcement action against a temporary license holder for failure to comply with this chapter and the rules adopted under this chapter.

(h) The department may conduct a complaint investigation and inspection of a temporary license holder.

Added by Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 4, eff. September 1, 2015.

Sec. 248A.053. INITIAL OR RENEWAL LICENSE TERM; RENEWAL; NOTIFICATION. (a) An initial or renewal license issued under this chapter expires on the third anniversary of the date of issuance. The executive commissioner by rule shall adopt a system under which licenses expire on staggered dates during each three-year period. The commission shall prorate the license fee as appropriate if the expiration date of a license changes as a result of this subsection.

(b) A person applying to renew a center license shall:

(1) submit a renewal application to the commission on a prescribed form at least 60 days but not more than 120 days before expiration of the license;

(2) submit the renewal fee in the amount required by agency

rule; and

(3) comply with any other requirements specified by agency rule.

(c) The commission shall assess a $50 per day late fee to a license holder who submits a renewal application after the date required by Subsection (b)(1), except that the total amount of a late fee may not exceed the lesser of 50 percent of the license renewal fee or $500.

(d) At least 120 days before expiration of a center license, the commission shall notify the owner or operator of the center of the license expiration.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0745, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 6, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 10, eff. September 1, 2017.

Sec. 248A.054. LICENSE NOT TRANSFERABLE OR ASSIGNABLE. A license under this chapter is issued to the license holder named on the license at the location of the premises listed on the license and is not transferable or assignable.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

SUBCHAPTER C. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER, COMMISSION, AND DEPARTMENT

Sec. 248A.101. ADOPTION OF RULES AND STANDARDS. (a) The executive commissioner shall adopt rules necessary to implement this chapter.

(b) To protect the health and safety of the public and ensure the health, safety, and comfort of the minors served by a center, the rules must establish minimum center standards, including:

(1) standards relating to the issuance, renewal, denial,

suspension, probation, and revocation of a license to operate a center;

(2) standards relating to the provision of family-centered basic services that include individualized medical, developmental, and family training services;

(3) based on the size of the building and the number of minors served, building construction and renovation standards, including standards for plumbing, electrical, glass, manufactured buildings, accessibility for persons with physical disabilities, and fire protection;

(4) based on the size of the building and the number of minors served, building maintenance conditions relating to plumbing, heating, lighting, ventilation, adequate space, fire protection, and other conditions;

(5) standards relating to the minimum number of and qualifications required for personnel who provide personal care or basic services to the minors served;

(6) standards relating to the sanitary conditions within a center and its surroundings, including water supply, sewage disposal, food handling, and general hygiene;

(7) standards relating to the programs offered by the center to promote and maintain the health and development of the minors served and to meet the training needs of the minors' parents or legal guardians;

(8) standards relating to physician-prescribed supportive services;

(9) standards relating to transportation services and as required by Section 248A.1015; and

(10) standards relating to maintenance of patient medical records and program records in accordance with other law and with accepted professional standards and practices.

(c) The executive commissioner by rule shall authorize the commissioner to grant a waiver from compliance with standards adopted under Subsection (b)(3), (4), or (6) to a center located in a municipality that adopts a code to regulate any of those standards if the commissioner determines the applicable municipal code standards exceed the corresponding standards adopted under Subsection (b)(3), (4), or (6).

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1,

eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0746, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 862 (H.B. 3550), Sec. 1, eff. September 1, 2023.

Sec. 248A.1015. TRANSPORTATION STANDARDS. The executive commissioner by rule shall establish minimum standards for transportation services as required under Section 248A.101(b)(9). In adopting rules under this section, the executive commissioner:

(1) shall authorize a center to determine:

(A) in coordination with a minor client's parent, guardian, or other legally authorized representative, the schedule of transportation services; and

(B) in coordination with the client's prescribing physician, the necessary type of provider who must be present during transportation;

(2) shall permit a minor client's parent, guardian, or other legally authorized representative to decline a center's transportation services entirely or only on a specific date; and

(3) may not:

(A) require a plan of care or physician's order to document a client's need for transportation services to access a center's services; or

(B) consider transportation services as nursing services included in a client's plan of care.

Added by Acts 2023, 88th Leg., R.S., Ch. 862 (H.B. 3550), Sec. 2, eff. September 1, 2023.

Sec. 248A.102. INSPECTIONS; CORRECTIVE ACTION PLAN. (a) The department may inspect a center, including its records, at reasonable times as necessary to ensure compliance with this chapter and the rules adopted under this chapter. The center shall provide the department with access to all center records.

(b) The department shall inspect a center before issuing or renewing a license under this chapter.

(c) The department may require a center that undergoes an inspection to:

(1) take appropriate corrective action necessary to comply with the requirements of this chapter and rules adopted under this chapter; and

(2) submit a corrective action plan to the department for approval.

(d) A center shall make available to any person on request a copy of each inspection report pertaining to the center that has been issued by the department. Before making an inspection report available under this subsection, the center shall redact from the report any information that is confidential under other law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.103. FEES. (a) The executive commissioner by rule shall set fees imposed by this chapter in amounts reasonable and necessary to cover the cost of administering this chapter.

(b) A fee collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

(c) A fee collected under this chapter is nonrefundable.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0747, eff. April 2, 2015.

Sec. 248A.104. COMMISSION DUTIES. The commission shall designate a center licensed under this chapter as a health care services provider under the medical assistance program established under Chapter 32, Human Resources Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.105. INTERFERENCE WITH RIGHTS TO DETERMINE TREATMENT.

(a) Except as provided by Subsection (b), any rules the executive commissioner adopts under this subchapter may not interfere with the authority of a parent, guardian, or legally authorized representative of a minor client to make decisions regarding the treatment provided to the child.

(b) The executive commissioner, by rule, may limit the maximum amount of authorized services provided to a client.

Added by Acts 2023, 88th Leg., R.S., Ch. 862 (H.B. 3550), Sec. 2, eff. September 1, 2023.

SUBCHAPTER D. CENTER REGULATION

Sec. 248A.151. ADMISSION CRITERIA FOR MINOR CLIENT; ADULT ACCOMPANIMENT. (a) A center may not admit a minor client to the center unless:

(1) the client is a medically dependent or technologically dependent minor;

(2) the minor's prescribing physician issues a prescription ordering care at a center;

(3) the minor's parent or legal guardian consents to the minor's admission to the center; and

(4) the admission is voluntary based on the parent's or legal guardian's preference in both managed care and non-managed care service delivery systems.

(b) An admission authorized under this section is not intended to supplant the right to a Medicaid private duty nursing benefit, when medically necessary.

(c) A minor client's parent, legal guardian, or managing conservator is not required to accompany the client when:

(1) the client receives services in the center, including therapy services delivered in the center but billed separately; or

(2) the center transports or provides for the transport of the client to and from the center.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 7, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 8, eff.

September 1, 2015.

Sec. 248A.152. RESTRICTIONS ON HOURS, SERVICES, AND PATIENT CAPACITY. (a) A center may not provide services to a minor for more than 12 hours in any 24-hour period.

(b) A center may not provide services other than services regulated under this chapter and department rule.

(c) The maximum patient capacity at a center may not exceed 60.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0748, eff. April 2, 2015.

Sec. 248A.153. LICENSE DISPLAY. Each center licensed under this chapter shall display the center's license in a conspicuous location readily visible to a person entering the center.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.154. MAINTENANCE OF RECORDS. Each center shall maintain at the center the medical and other records required by this chapter and by rules adopted under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.155. COMPLAINTS. A person may file a complaint with the department against a center licensed or required to be licensed under this chapter. The department shall investigate the complaint in accordance with the complaint procedures established under Chapter 161, Human Resources Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.156. COMPLIANCE WITH OTHER LAW. (a) A center shall comply with Chapter 260A and rules adopted under that chapter.

(b) An owner, center employee, or other person subject to Chapter 260A shall comply with that chapter and rules adopted under that chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.157. CLOSING OF CENTER. At least 30 days before the date a center voluntarily discontinues operation, the owner or operator of the center shall inform the parent or legal guardian of each minor client to whom the center is providing services of:

(1) the discontinuance; and

(2) the proposed time of the discontinuance.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.158. RELATION TO NURSING SERVICES. (a) Subject to Subsection (b), nursing services provided to a client by a center must be a replacement of private duty nursing or other skilled nursing services provided in a setting other than a center unless additional nursing services are medically necessary.

(b) A center may provide nursing services in a group setting, consistent with appropriate staffing ratios as the executive commissioner determines.

Added by Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 9, eff. September 1, 2015.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 862 (H.B. 3550), Sec. 3, eff. September 1, 2023.

Sec. 248A.159. ADMISSION FORMS. (a) Before admission to a center, the center may obtain all required parent or legal guardian

signatures for a patient on one consent document.

(b) The consent document must illustrate the involvement of the parent or legal guardian in developing and establishing the care and treatment to be provided to the patient in the center.

Added by Acts 2023, 88th Leg., R.S., Ch. 862 (H.B. 3550), Sec. 4, eff. September 1, 2023.

SUBCHAPTER E. GENERAL ENFORCEMENT

Sec. 248A.201. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license issued under this chapter for:

(1) a violation of this chapter or a rule or standard adopted under this chapter;

(2) an intentional or negligent act by the center or an employee of the center that the department determines significantly affects the health or safety of a minor served by the center;

(3) use of drugs or intoxicating liquors to an extent that affects the license holder's or applicant's professional competence;

(4) a felony conviction, including a finding or verdict of guilty, an admission of guilt, or a plea of nolo contendere, in this state or in any other state of any person required to undergo a background and criminal history check under this chapter;

(5) fraudulent acts, including acts relating to Medicaid fraud and obtaining or attempting to obtain a license by fraud or deception; or

(6) a license revocation, suspension, or other disciplinary action taken against the license holder or any person listed in the application in another state.

(b) Except as provided by Section 248A.203, the procedures by which the department denies, suspends, or revokes a license and by which those actions are appealed are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. January 1, 2015.

Sec. 248A.202. PROBATION. (a) If the department finds that a center is in repeated noncompliance with this chapter, rules adopted

under this chapter, or a corrective action plan, but that the noncompliance does not endanger a minor served by the center or the public health and safety, the department may schedule the center for probation rather than suspending or revoking the center's license.

(b) The department shall provide notice to the center of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins.

(c) The department shall designate a period of not less than 30 days during which the center will remain under probation. During the probation period, the center must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of a center that does not correct items that were in noncompliance or does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. January 1, 2015.

Sec. 248A.203. EMERGENCY SUSPENSION. (a) The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to a minor served by the center or the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder.

(b) On written request of the license holder, the department shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded.

(c) The hearing and any appeal are governed by the department's rules for a contested case hearing and by Chapter 2001, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. January 1, 2015.

Sec. 248A.204. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of this chapter or a rule or standard adopted under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the minors served by a center.

(b) A district court, on petition of the department and on a finding by the court that a person is violating this chapter or the rules adopted under this chapter, may by injunction:

(1) prohibit the person from continuing the violation;

(2) restrain or prevent the establishment or operation of a center without a license issued under this chapter; or

(3) grant any other injunctive relief warranted by the facts.

(c) The attorney general may institute and conduct a suit authorized by this section at the request of the department. The attorney general and the department may recover reasonable expenses incurred in obtaining relief under this section, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses.

(d) Venue for a suit brought under this section is in the county in which the center is located or in Travis County.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. January 1, 2015.

Sec. 248A.205. CIVIL PENALTY. (a) A person who violates this chapter or a rule or standard adopted under this chapter or who fails to comply with a corrective action plan submitted under this chapter is liable for a civil penalty of not more than $500 for each violation if the department determines the violation threatens the health and safety of a minor served by the center.

(b) Each day a violation continues constitutes a separate violation for the purposes of this section.

(c) The attorney general may sue to collect the penalty. The attorney general and the department may recover reasonable expenses incurred in obtaining relief under this section, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses.

(d) All penalties collected under this section shall be deposited in the state treasury in the general revenue fund.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. January 1, 2015.

Sec. 248A.206. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly establishes or operates a center without the appropriate license issued under this chapter.

(b) An offense under this section is a Class B misdemeanor.

(c) Each day a violation continues constitutes a separate offense.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. January 1, 2015.

SUBCHAPTER F. ADMINISTRATIVE PENALTY

Sec. 248A.251. IMPOSITION OF PENALTY. The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or standard adopted or order issued under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. January 1, 2015.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0749, eff. April 2, 2015.

Sec. 248A.2515. SYSTEM FOR ASSESSMENT OF PENALTY. The commission shall develop and use a system to record and track the scope and severity of each violation of this chapter or a rule or standard adopted or order issued under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate center to deter future violations. The system:

(1) must be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes; and

(2) may be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

Added by Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 11, eff. September 1, 2017.

Sec. 248A.252. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed $500 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) any previous violations;

(4) the amount necessary to deter a future violation;

(5) the efforts made by the violator to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. January 1, 2015.

Sec. 248A.253. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the department shall give written notice of the report to the person.

(b) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. January 1, 2015.

Sec. 248A.254. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the

notice sent under Section 248A.253, the person in writing may:

(1) accept the determination and recommended penalty of the department; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the department by order shall approve the determination and impose the recommended penalty.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. January 1, 2015.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0750, eff. April 2, 2015.

Sec. 248A.255. HEARING. (a) If the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. January 1, 2015.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0751, eff. April 2, 2015.

Sec. 248A.256. DECISION BY DEPARTMENT. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the department's order under Subsection (a)

that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. January 1, 2015.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0752, eff. April 2, 2015.

Sec. 248A.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Not later than the 30th day after the date the order of the department imposing an administrative penalty under Section 248A.256 becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the department's order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. January 1, 2015.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0753, eff. April 2, 2015.

Sec. 248A.258. STAY OF ENFORCEMENT OF PENALTY. (a) Within the period prescribed by Section 248A.257, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account in the court registry; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the

person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department by certified mail.

(b) If the department receives a copy of an affidavit under Subsection (a)(2), the department may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. January 1, 2015.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0754, eff. April 2, 2015.

Sec. 248A.259. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty and may recover reasonable expenses, including attorney's fees, incurred in recovering the penalty.

(c) A penalty collected under this subchapter shall be deposited in the state treasury in the general revenue fund.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. January 1, 2015.

Sec. 248A.260. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. January 1, 2015.

Sec. 248A.261. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person not later than the 30th day after the date the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. January 1, 2015.

Sec. 248A.262. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. January 1, 2015.

Sec. 248A.263. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. January 1, 2015.

CHAPTER 250. NURSE AIDE REGISTRY AND CRIMINAL HISTORY CHECKS OF

EMPLOYEES AND APPLICANTS FOR EMPLOYMENT IN CERTAIN FACILITIES SERVING THE ELDERLY, PERSONS WITH DISABILITIES, OR PERSONS WITH TERMINAL ILLNESSES

Sec. 250.001. DEFINITIONS. In this chapter:

(1) "Nurse aide registry" means a list maintained by the Department of Aging and Disability Services of nurse aides under the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203).

(1-a) "Consumer" means a resident of or an individual receiving services from a facility covered by this chapter.

(1-b) "Consumer-directed service option" has the meaning assigned by Section 546.0101, Government Code.

(2) "Direct contact with a consumer" means any contact with a consumer.

(3) "Facility" means:

(A) a nursing facility, custodial care home, or other institution licensed by the Department of Aging and Disability Services under Chapter 242;

(B) an assisted living facility licensed by the Department of Aging and Disability Services under Chapter 247;

(C) a home and community support services agency licensed under Chapter 142;

(D) a day activity and health services facility licensed by the Department of Aging and Disability Services under Chapter 103, Human Resources Code;

(E) an ICF-IID licensed under Chapter 252;

(F) an adult foster care provider that contracts with the Department of Aging and Disability Services;

(G) a facility that provides mental health services and that is operated by or contracts with the Department of State Health Services;

(H) a local mental health authority designated under Section 533.035 or a local intellectual and developmental disability authority designated under Section 533.035;

(I) a person exempt from licensing under Section 142.003(a)(19) or (20);

(J) a special care facility licensed by the Department of State Health Services under Chapter 248;

(K) a mental health service unit of a hospital licensed under Chapter 241; or

(L) a prescribed pediatric extended care center

licensed by the Department of Aging and Disability Services under Chapter 248A.

(3-a) "Financial management services agency" means an entity that contracts with the commission to serve as a fiscal and employer agent for an individual employer in the consumer-directed service option described by Section 546.0101, Government Code.

(3-b) "Individual employer" means an individual or legally authorized representative who participates in the consumer-directed service option and is responsible for hiring service providers to deliver program services.

(4) "Private agency" means a person engaged in the business of obtaining criminal history checks on behalf of a facility.

(5) "Regulatory agency" means a state agency referred to in Subdivision (3).

(6) "Commission" means the Health and Human Services Commission.

(7) "Executive commissioner" means the executive commissioner of the commission.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 233, Sec. 3, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1209, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.198, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1189 (H.B. 3737), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.01, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 19, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 1, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 605 (S.B. 944), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 3, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0755, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 4, eff.

June 19, 2015.

Acts 2021, 87th Leg., R.S., Ch. 434 (S.B. 1103), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 958 (S.B. 1808), Sec. 2, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.47, eff. April 1, 2025.

Sec. 250.002. INFORMATION OBTAINED BY FACILITY, REGULATORY AGENCY, OR PRIVATE AGENCY. (a) A regulatory agency or a financial management services agency on behalf of an individual employer is entitled to obtain from the Department of Public Safety of the State of Texas criminal history record information maintained by the Department of Public Safety that relates to a person who is:

(1) an applicant for employment at a facility other than a facility licensed under Chapter 142;

(2) an employee of a facility other than a facility licensed under Chapter 142;

(3) an applicant for employment at or an employee of a facility licensed under Chapter 142 whose employment duties would or do involve direct contact with a consumer in the facility; or

(4) an applicant for employment by or an employee of an individual employer.

(a-1) A facility or a private agency on behalf of a facility is entitled to obtain from the Department of Public Safety of the State of Texas criminal history record information maintained by the Department of Public Safety that relates to a person who is:

(1) an applicant for employment with, an employee of, or a volunteer with the facility;

(2) an applicant for employment with or an employee of a person or business that contracts with the facility;

(3) an applicant for employment by or an employee of an individual employer; or

(4) a student enrolled in an educational program or course of study who is at the facility for educational purposes.

(b) A facility may:

(1) pay a private agency to obtain criminal history record information for a person described by Subsection (a-1) directly from the Department of Public Safety of the State of Texas; or

(2) obtain the information directly from the Department of Public Safety.

(c) The private agency shall forward criminal history record information received under this section to the facility requesting the information.

(c-1) A financial management services agency shall forward criminal history record information received under this section to the individual employer requesting the information.

(d) The executive commissioner of the Health and Human Services Commission may adopt rules relating to the processing of information requested or obtained under this chapter.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995; Acts 2001, 77th Leg., ch. 1025, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1267, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.02, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 20, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 266 (H.B. 729), Sec. 3, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0756, eff. April 2, 2015.

Sec. 250.003. VERIFICATION OF EMPLOYABILITY; ANNUAL SEARCH; DISCHARGE. (a) A facility or individual employer may not employ an applicant:

(1) if the facility or individual employer determines, as a result of a criminal history check, that the applicant has been convicted of an offense listed in this chapter that bars employment or that a conviction is a contraindication to employment with the facility or to direct contact with the individual using the consumer-directed service option;

(2) if the applicant is a nurse aide, until the facility or individual employer further verifies that the applicant is listed in the nurse aide registry; and

(3) until the facility or individual employer verifies that

the applicant is not designated in the registry maintained under this chapter or in the employee misconduct registry maintained under Section 253.007 as having a finding entered into the registry concerning abuse, neglect, or mistreatment of an individual using the consumer-directed service option or a consumer, or misappropriation of the property of an individual using the consumer-directed service option or of a consumer.

(a-1) Except for an applicant for employment at or an employee of a facility licensed under Chapter 242 or 247, a person licensed under another law of this state is exempt from the requirements of this chapter.

(a-2) If a facility employs a person pending a criminal history check, the facility shall ensure that the person has no direct contact with a consumer until the facility obtains the person's criminal history record information and verifies the person's employability under Section 250.006.

(b) The facility may not employ an applicant covered by Subsection (a), except that in an emergency requiring immediate employment, a facility may hire on a temporary or interim basis a person not listed in the registry pending the results of a criminal conviction check, which must be requested:

(1) within 72 hours of employment; or

(2) if the facility is licensed under Chapter 242 or 247, within 24 hours of employment.

(c) A facility or individual employer shall immediately discharge any employee:

(1) who is designated in the nurse aide registry or the employee misconduct registry established under Chapter 253 as having committed an act of abuse, neglect, or mistreatment of an individual using the consumer-directed service option or a consumer, or misappropriation of the property of an individual using the consumer-directed service option or of a consumer; or

(2) whose criminal history check reveals conviction of a crime that bars employment or that the individual employer or the facility determines is a contraindication to employment as provided by this chapter.

(c-1) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 363, Sec. 11, eff. January 1, 2014.

(d) In addition to the initial verification of employability, a facility or an individual employer or financial management services

agency on behalf of an individual employer shall:

(1) annually search the nurse aide registry maintained under this chapter and the employee misconduct registry maintained under Section 253.007 to determine whether any employee of the facility or of an individual employer is designated in either registry as having abused, neglected, or exploited a consumer or an individual using the consumer-directed service option; and

(2) maintain in the facility's or individual employer's books and records a copy of the results of the search conducted under Subdivision (1).

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 250.002 and amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995. Amended by Acts 2001, 77th Leg., ch. 1025, Sec. 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1267, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 911, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 436 (H.B. 2191), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 6, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 7, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(27), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.03, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 21, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 2, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 11, eff. January 1, 2014.

Sec. 250.0035. CERTIFICATE OF REGISTRATION; REQUIREMENTS FOR INCLUSION IN NURSE AIDE REGISTRY. (a) To be listed on the nurse aide registry, an applicant must:

(1) complete a training program approved by the commission

that includes:

(A) not less than 100 hours of course work as specified by rule; and

(B) a competency evaluation on completion of the training program; and

(2) hold a certificate of registration issued by the commission on completion of the training program required under Subdivision (1).

(b) A certificate of registration and listing on the nurse aide registry expire on the second anniversary of the date the certificate is issued and the nurse aide is listed in the registry.

(c) To renew a nurse aide's certificate of registration and listing on the registry, the nurse aide must complete at least 24 hours of in-service education every two years, including training in geriatrics and, if applicable, in the care of patients with Alzheimer's disease.

(c-1) Chapter 53, Occupations Code, does not apply to the issuance or renewal of a nurse aide's certificate of registration or an applicant's inclusion in the nurse aide registry under this section.

(d) The executive commissioner shall adopt the rules necessary to implement this section, including rules for the issuance and renewal of a certificate of registration under this section and the regulation of nurse aides as necessary to protect the public health and safety.

Added by Acts 2011, 82nd Leg., R.S., Ch. 408 (S.B. 795), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 434 (S.B. 1103), Sec. 2, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 1136 (S.B. 681), Sec. 4, eff. September 1, 2023.

Sec. 250.004. CRIMINAL HISTORY RECORD OF EMPLOYEES. (a) Identifying information of an employee in a covered facility or of an employee of an individual employer shall be submitted electronically, on disk, or on a typewritten form to the Department of Public Safety to obtain the person's criminal conviction record when the person

applies for employment and at other times as the facility or individual employer may determine appropriate. In this subsection, "identifying information" includes:

(1) the complete name, race, and sex of the employee;

(2) any known identifying number of the employee, including social security number, driver's license number, or state identification number; and

(3) the employee's date of birth.

(b) If the Department of Public Safety reports that a person has a criminal conviction of any kind, the conviction shall be reviewed by the facility, the financial management services agency, or the individual employer to determine if the conviction may bar the person from employment in a facility or by the individual employer under Section 250.006 or if the conviction may be a contraindication to employment.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 250.003 and amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 629, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1025, Sec. 5, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1267, Sec. 4, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.04, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 22, eff. September 1, 2011.

Sec. 250.005. NOTICE AND OPPORTUNITY TO BE HEARD CONCERNING ACCURACY OF INFORMATION. (a) If a facility, financial management services agency, or individual employer believes that a conviction may bar a person from employment in a facility or by the individual employer under Section 250.006 or may be a contraindication to employment, the facility or individual employer shall notify the applicant or employee.

(b) The Department of Public Safety of the State of Texas shall give a person notified under Subsection (a) the opportunity to be heard concerning the accuracy of the criminal history record information and shall notify the facility or individual employer if

inaccurate information is discovered.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Renumbered from Health & Safety Code Sec. 250.004 and amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.05, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 23, eff. September 1, 2011.

Sec. 250.006. CONVICTIONS BARRING EMPLOYMENT. (a) A person for whom the facility or the individual employer is entitled to obtain criminal history record information may not be employed in a facility or by an individual employer if the person has been convicted of an offense listed in this subsection:

(1) an offense under Chapter 19, Penal Code (criminal homicide);

(2) an offense under Chapter 20, Penal Code (kidnapping, unlawful restraint, and smuggling of persons);

(3) an offense under Section 21.02, Penal Code (continuous sexual abuse of young child or disabled individual), or Section 21.11, Penal Code (indecency with a child);

(4) an offense under Section 22.011, Penal Code (sexual assault);

(5) an offense under Section 22.02, Penal Code (aggravated assault);

(6) an offense under Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual);

(7) an offense under Section 22.041, Penal Code (abandoning or endangering a child, elderly individual, or disabled individual);

(8) an offense under Section 22.08, Penal Code (aiding suicide);

(9) an offense under Section 25.031, Penal Code (agreement to abduct from custody);

(10) an offense under Section 25.08, Penal Code (sale or purchase of child);

(11) an offense under Section 28.02, Penal Code (arson);

(12) an offense under Section 29.02, Penal Code (robbery);

(13) an offense under Section 29.03, Penal Code (aggravated robbery);

(14) an offense under Section 21.08, Penal Code (indecent exposure);

(15) an offense under Section 21.12, Penal Code (improper relationship between educator and student);

(16) an offense under Section 21.15, Penal Code (invasive visual recording);

(17) an offense under Section 22.05, Penal Code (deadly conduct);

(18) an offense under Section 22.021, Penal Code (aggravated sexual assault);

(19) an offense under Section 22.07, Penal Code (terroristic threat);

(20) an offense under Section 32.53, Penal Code (exploitation of child, elderly individual, or disabled individual);

(21) an offense under Section 33.021, Penal Code (online solicitation of a minor);

(22) an offense under Section 34.02, Penal Code (money laundering);

(23) an offense under Section 35A.02, Penal Code (health care fraud);

(24) an offense under Section 36.06, Penal Code (obstruction or retaliation);

(25) an offense under Section 42.09, Penal Code (cruelty to livestock animals), or under Section 42.092, Penal Code (cruelty to nonlivestock animals); or

(26) a conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed by this subsection.

(b) A person may not be employed in a position the duties of which involve direct contact with a consumer in a facility or may not be employed by an individual employer before the fifth anniversary of the date the person is convicted of:

(1) an offense under Section 22.01, Penal Code (assault), that is punishable as a Class A misdemeanor or as a felony;

(2) an offense under Section 30.02, Penal Code (burglary);

(3) an offense under Chapter 31, Penal Code (theft), that

is punishable as a felony;

(4) an offense under Section 32.45, Penal Code (misapplication of fiduciary property or property of financial institution), that is punishable as a Class A misdemeanor or a felony;

(5) an offense under Section 32.46, Penal Code (fraudulent securing of document execution), that is punishable as a Class A misdemeanor or a felony;

(6) an offense under Section 37.12, Penal Code (false identification as peace officer; misrepresentation of property); or

(7) an offense under Section 42.01(a)(7), (8), or (9), Penal Code (disorderly conduct).

(c) In addition to the prohibitions on employment prescribed by Subsections (a) and (b), a person for whom a facility licensed under Chapter 242 or 247 is entitled to obtain criminal history record information may not be employed in a facility licensed under Chapter 242 or 247 if the person has been convicted:

(1) of an offense under Section 30.02, Penal Code (burglary); or

(2) under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense under Section 30.02, Penal Code.

(d) For purposes of this section, a person who is placed on deferred adjudication community supervision for an offense listed in this section, successfully completes the period of deferred adjudication community supervision, and receives a dismissal and discharge in accordance with Article 42A.111, Code of Criminal Procedure, is not considered convicted of the offense for which the person received deferred adjudication community supervision.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.39, eff. Sept. 1, 1995. Renumbered from Health & Safety Code Sec. 250.005 and amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995. Amended by Acts 1997, 75th Leg., ch. 482, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1159, Sec. 1.33, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1025, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1267, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 911, Sec. 2, eff. June 20, 2003; Acts 2003, 78th Leg., ch.

1084, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1209, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.44, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 971 (S.B. 199), Sec. 1, eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 817 (H.B. 2609), Sec. 1, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.06, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 24, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 3, eff. January 1, 2014.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0757, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.68, eff. January 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 381 (H.B. 2894), Sec. 5, eff. September 1, 2019.
Acts 2021, 87th Leg., R.S., Ch. 221 (H.B. 375), Sec. 2.22, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 837 (S.B. 109), Sec. 7, eff. September 1, 2021.
Acts 2023, 88th Leg., R.S., Ch. 830 (H.B. 2187), Sec. 7, eff. September 1, 2023.

Sec. 250.007. RECORDS PRIVILEGED. (a) The criminal history records are for the exclusive use of the regulatory agency, the requesting facility, the private agency on behalf of the requesting facility, the financial management services agency on behalf of the individual employer, the individual employer, and the applicant or employee who is the subject of the records.

(b) All criminal records and reports and the information they contain that are received by the regulatory agency or private agency for the purpose of being forwarded to the requesting facility or received by the financial management services agency under this chapter are privileged information.

(c) The criminal records and reports and the information they contain may not be released or otherwise disclosed to any person or agency except on court order or with the written consent of the person being investigated.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.07, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 25, eff. September 1, 2011.

Sec. 250.008. CRIMINAL PENALTY. (a) A person commits an offense if the person releases or otherwise discloses any information received under this chapter except as prescribed by Section 250.007(b) or (c).
(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995.

Sec. 250.009. CIVIL LIABILITY. (a) A facility, an officer or employee of a facility, a financial management services agency, or an individual employer is not civilly liable for failure to comply with this chapter if the facility, financial management services agency, or individual employer makes a good faith effort to comply.
(b) A regulatory agency is not civilly liable to a person for criminal history record information forwarded to a requesting facility in accordance with this chapter.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.08, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 26, eff. September 1, 2011.

CHAPTER 251. END STAGE RENAL DISEASE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 251.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(66), eff. April 2, 2015.

(2) "Commissioner" means the commissioner of state health services.

(3) "Department" means the Department of State Health Services.

(4) "Dialysis" means a process by which dissolved substances are removed from a patient's body by diffusion from one fluid compartment to another across a semipermeable membrane.

(5) "Dialysis technician" means an individual who is not a registered nurse or physician and who provides dialysis care under the supervision of a registered nurse or physician.

(6) "End stage renal disease" means that stage of renal impairment that appears irreversible and permanent and that requires a regular course of dialysis or kidney transplantation to maintain life.

(7) "End stage renal disease facility" means a facility that provides dialysis treatment or dialysis training to individuals with end stage renal disease.

(7-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(8) "Medical review board" means a medical review board that:

(A) is appointed by a renal disease network organization which includes this state; and

(B) has a contract with the Centers for Medicare and Medicaid Services under Section 1881, Title XVIII, Social Security Act (42 U.S.C. Section 1395rr).

(9) "Physician" means an individual who is licensed to practice medicine under Subtitle B, Title 3, Occupations Code.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.790, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0758, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(66), eff. April 2, 2015.

Sec. 251.002. FEES. (a) The executive commissioner by rule shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter and as prescribed by Section 12.0111.

(b) In setting fees under this section, the executive commissioner shall consider setting a range of license and renewal fees based on the number of dialysis stations at each end stage renal disease facility and the patient census.

(c) An end stage renal disease facility owned or operated by a state agency is not required to pay fees imposed under this chapter.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0759, eff. April 2, 2015.

Sec. 251.003. ADOPTION OF RULES. The executive commissioner shall adopt rules to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0760, eff. April 2, 2015.

SUBCHAPTER B. LICENSING OF END STAGE RENAL DISEASE FACILITIES

Sec. 251.011. LICENSE REQUIRED. Except as provided by Section 251.012, a person may not operate an end stage renal disease facility without a license issued under this chapter.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.012. EXEMPTIONS FROM LICENSING REQUIREMENT. The

following facilities are not required to be licensed under this chapter:

(1) a home and community support services agency licensed under Chapter 142 with a home dialysis designation;

(2) a hospital licensed under Chapter 241 that provides dialysis only to individuals receiving:

(A) inpatient services from the hospital; or

(B) outpatient services due to a disaster declared by the governor or a federal disaster declared by the president of the United States occurring in this state or another state during the term of the disaster declaration;

(3) a hospital operated by or on behalf of the state as part of the managed health care provider network established under Chapter 501, Government Code, that provides dialysis only to individuals receiving:

(A) inpatient services from the hospital; or

(B) outpatient services while serving a term of confinement in a facility operated by or under contract with the Texas Department of Criminal Justice;

(4) an end stage renal disease facility operated by or on behalf of the state as part of the managed health care provider network established under Chapter 501, Government Code, that provides dialysis only to individuals receiving those services while serving a term of confinement in a facility operated by or under contract with the Texas Department of Criminal Justice; or

(5) the office of a physician unless the office is used primarily as an end stage renal disease facility.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 3.02, eff. September 1, 2009.
Reenacted by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.002, eff. September 1, 2011.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 65.05, eff. September 28, 2011.

Sec. 251.013. ISSUANCE AND RENEWAL OF LICENSE. (a) An

applicant for a license under this chapter must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee.

(c) Each application must contain evidence that there is at least one qualified physician on the staff of the facility and that each dialysis technician on staff has completed the training program required by this chapter.

(d) The department may grant a temporary initial license to an applicant. The temporary initial license expires on the earlier of:

(1) the date the department issues or denies the license; or

(2) the date six months after the date the temporary initial license was issued.

(e) The department shall issue a license if, after inspection and investigation, it finds the applicant meets the requirements of this chapter and the standards adopted under this chapter.

(f) The license is renewable every two years after submission of:

(1) the renewal application and fee; and

(2) a report on a form prescribed by the department.

(g) The report required under Subsection (f) must include information related to the quality of care at the end stage renal disease facility. The report must be in the form and documented by evidence as required by department rule.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0761, eff. April 2, 2015.

Sec. 251.014. MINIMUM STANDARDS. (a) The rules adopted under Section 251.003 must contain minimum standards to protect the health and safety of a patient of an end stage renal disease facility, including standards for:

(1) the qualifications and supervision of the professional staff, including physicians, and other personnel;

(2) the equipment used by the facility is compatible with the health and safety of the patients;

(3) the sanitary and hygienic conditions in the facility;

(4) quality assurance for patient care;

(5) the provision and coordination of treatment and services by the facility;

(6) clinical records maintained by the facility;

(7) design and space requirements for the facility for safe access by patients and personnel and for ensuring patient privacy;

(8) indicators of the quality of care provided by the facility; and

(9) water treatment and reuse by the facility.

(b) The standards described in Subsection (a)(7) of this section shall apply only:

(1) to a facility which initiates the provision of end stage renal disease services on or after September 1, 1996; or

(2) to the area of a facility affected by design and space modifications or renovations completed after September 1, 1996.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

Sec. 251.015. MEDICAL REVIEW BOARD. (a) A medical review board shall advise the executive commissioner and the department on minimum standards and rules to be adopted by the executive commissioner under this chapter.

(b) The medical review board shall review the information on quality of care provided in the annual report filed under Section 251.013(f) and other appropriate information provided to or compiled by the department with respect to an end stage renal disease facility. Based on the review, the medical review board may advise the department about the quality of care provided by a facility and recommend an appropriate corrective action plan under Section 251.061 or other enforcement proceedings against the facility.

(c) Information concerning quality of care provided to or compiled by the department or medical review board and a recommendation of the medical review board are confidential. The information or recommendation may not be made available for public inspection, is not subject to disclosure under Chapter 552, Government Code, and is not subject to discovery, subpoena, or other compulsory legal process.

(d) The department, in its discretion, may release to a

facility information relating to that facility that is made confidential under Subsection (c). Release of information to a facility under this subsection does not waive the confidentiality of that information or the privilege from compulsory legal process.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0762, eff. April 2, 2015.

Sec. 251.016. EMERGENCY PREPAREDNESS AND CONTINGENCY OPERATIONS PLANNING. (a) In this section and Section 251.017, "emergency" means an incident likely to threaten the health, welfare, or safety of end stage renal disease facility patients or staff or the public, including a fire, equipment failure, power outage, flood, interruption in utility service, medical emergency, or natural or other disaster.

(b) Each end stage renal disease facility shall adopt a written emergency preparedness and contingency operations plan to address the provision of care during an emergency. The plan must:

(1) be updated annually and approved by the facility's leadership each time the plan is updated;

(2) include procedures for notifying each of the following entities as soon as practicable regarding the closure or reduction in hours of operation of the facility due to an emergency:

(A) the department;

(B) each hospital with which the facility has a transfer agreement;

(C) the trauma service area regional advisory council that serves the geographic area in which the facility is located; and

(D) each applicable local emergency management agency;

(3) except as provided by Subsection (d), require the facility to execute a contract with another end stage renal disease facility located within a 100-mile radius of the facility stipulating that the other end stage renal disease facility will provide dialysis treatment to facility patients who are unable to receive scheduled dialysis treatment due to the facility's closure or reduction in hours; and

(4) include a documented patient communications plan that

includes procedures for notifying a patient when that patient's scheduled dialysis treatment is interrupted.

(c) As part of the emergency preparedness and contingency operations plan adopted under Subsection (b), each end stage renal disease facility shall develop and the facility's leadership must approve a continuity of care plan for the provision of dialysis treatment to facility patients during an emergency. The facility must provide a copy of the plan to each patient before providing or scheduling dialysis treatment. The plan must include:

(1) procedures for distributing written materials to facility patients that specifically describe the facility's emergency preparedness and contingency operations plan adopted under Subsection (b); and

(2) detailed procedures, based on the facility's patient population, on the facility's contingency plans, including transportation options, for patients to access dialysis treatment at each end stage renal disease facility with which the facility has an agreement or made advance preparations to ensure that the facility's patients have the option to receive dialysis treatment.

(d) An end stage renal disease facility is not required to contract with another end stage renal disease facility under Subsection (b)(3) if:

(1) no other end stage renal disease facility is located within a 100-mile radius of the facility; and

(2) the facility obtains written approval from the department exempting the facility from that requirement.

(e) On request, an end stage renal disease facility shall provide the facility's emergency preparedness and contingency operations plan adopted under Subsection (b) to:

(1) the department;

(2) each hospital with which the facility has a transfer agreement;

(3) the trauma service area regional advisory council that serves the geographic area in which the facility is located; and

(4) each applicable local emergency management agency.

(f) Each end stage renal disease facility shall provide annual training to facility staff on the facility's emergency preparedness and contingency operations plan under this section.

(g) Each end stage renal disease facility shall annually contact a local and state disaster management representative, an

emergency operations center, and a trauma service area regional advisory council to:

(1) request comments on whether the emergency preparedness and contingency operations plan adopted by the facility under Subsection (b) should be modified; and

(2) ensure that local agencies, regional agencies, state agencies, and hospitals are aware of the facility, the facility's policy on provision of life-saving treatment, the facility's patient population and potential transportation needs, and the anticipated number of patients affected.

Added by Acts 2021, 87th Leg., R.S., Ch. 961 (S.B. 1876), Sec. 1, eff. September 1, 2021.

Sec. 251.017. EMERGENCY CONTINGENCY PLAN FOR POWER AND POTABLE WATER. (a) Each end stage renal disease facility shall adopt an emergency contingency plan for the continuity of essential building systems during an emergency. A plan adopted by a facility under this subsection must meet the requirements described by Subsection (b), (d), or (e).

(b) Unless the facility adopts a plan described by Subsection (d) or (e), an end stage renal disease facility must adopt an emergency contingency plan as required by Subsection (a) under which the facility is required:

(1) to have an on-site emergency generator that:

(A) has a type 2 essential electrical distribution system in accordance with the National Fire Protection Association 99, Section 4.5, and the National Fire Protection Association 110;

(B) is installed, tested, and maintained in accordance with the National Fire Protection Association 99, Section 4.5.4, and the National Fire Protection Association 110; and

(C) is kept at all times not less than 10 feet from the electrical transformer;

(2) except as provided by Subsection (c), to maintain an on-site fuel source that contains enough fuel capacity to power the on-site generator for not less than 24 hours, as determined by the electrical load demand on the emergency generator for that period;

(3) to maintain a sufficient quantity of potable water on-site to operate the facility's water treatment system for not less

than 24 hours; and

(4) to maintain a water valve connection that allows an outside vendor to provide potable water to operate the facility's water treatment system.

(c) An end stage renal disease facility that adopts an emergency contingency plan under Subsection (b) is not required to maintain an on-site fuel source described by Subsection (b)(2) if the facility's on-site emergency generator uses a vapor liquefied petroleum gas system with a dedicated fuel supply.

(d) Unless the facility adopts a plan described by Subsection (b) or (e), an end stage renal disease facility must adopt an emergency contingency plan as required by Subsection (a) under which the facility is required:

(1) to maintain sufficient resources to provide on demand or to execute a contract with an outside supplier or vendor to provide on demand:

(A) a portable emergency generator that:

(i) has an electrical transfer switch with a plug-in device to provide emergency power for patient care areas and complies with National Fire Protection Association 99, Section 4.5.2.2.2; and

(ii) has a water valve connection that allows for the use of potable water to operate the facility's water treatment system;

(B) an alternate power source for light, including battery-powered light, that:

(i) is separate and independent from the normal electrical power source;

(ii) is capable of providing light for not less than one and a half hours;

(iii) is capable of providing a sufficient amount of light to allow for the safe evacuation of the building; and

(iv) is maintained and tested not less than four times each year; and

(C) potable water;

(2) to implement the plan when the facility loses electrical power due to a natural or man-made event during which the electrical power may not be restored within 24 hours; and

(3) to contact the outside supplier or vendor with which the facility contracts under Subdivision (1), if applicable, not

later than 36 hours after the facility loses electrical power.

(e) Unless the facility adopts a plan described by Subsection (b) or (d), an end stage renal disease facility must adopt an emergency contingency plan as required by Subsection (a) under which the facility is required to execute a contract with another end stage renal disease facility that is located within a 100-mile radius of the facility stipulating that the other end stage renal disease facility will provide emergency contingency care to the facility's patients. The other end stage renal disease facility with which the facility contracts must have an alternate power source for light, including battery-powered light, that:

(1) is separate and independent from the normal electrical power source;

(2) is capable of providing light for not less than one and a half hours;

(3) is capable of providing a sufficient amount of light to allow for the safe evacuation of the building; and

(4) is maintained and tested not less than four times each year.

Added by Acts 2021, 87th Leg., R.S., Ch. 961 (S.B. 1876), Sec. 1, eff. September 1, 2021.

SUBCHAPTER C. DIALYSIS TECHNICIANS

Sec. 251.031. TRAINING REQUIRED. An individual may not act as a dialysis technician employed by or working in an end stage renal disease facility unless that individual is trained and competent under this subchapter.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.032. MINIMUM REQUIREMENTS; TRAINING. The department rules adopted under Section 251.003 shall establish:

(1) minimum standards for the curricula and instructors used to train individuals to act as dialysis technicians;

(2) minimum standards for the determination of the competency of individuals who have been trained as dialysis technicians;

(3) minimum requirements for documentation that an

individual has been trained and determined to be competent as a dialysis technician and the acceptance of that documentation by another end stage renal disease facility that may later employ the individual; and

(4) the acts and practices that are allowed or prohibited for dialysis technicians.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0763, eff. April 2, 2015.

Sec. 251.033. PROVISION OF HOME DIALYSIS CARE IN NURSING FACILITIES. (a) A dialysis technician may provide home dialysis care in a nursing facility, including hemodialysis, only if:

(1) the care is provided under the personal supervision of a registered nurse who is:

(A) in compliance with all commission rules under 26 T.A.C. Section 558.405 regarding training and competency for registered nurses to provide care at end stage renal disease facilities; and

(B) employed by the same entity that employs the dialysis technician; and

(2) the dialysis technician has complied with all commission rules regarding training and competency for dialysis technicians.

(b) For purposes of this section, "personal supervision" means supervision of a dialysis technician by a registered nurse who is physically present in the room during the administration of dialysis services by the dialysis technician.

Added by Acts 2021, 87th Leg., R.S., Ch. 955 (S.B. 1692), Sec. 1, eff. September 1, 2021.

SUBCHAPTER D. INSPECTIONS

Sec. 251.051. INSPECTIONS. (a) The department may conduct an inspection of an end stage renal disease facility to verify compliance with this chapter, rules adopted under this chapter, or a corrective action plan under Section 251.061.

(b) An inspection conducted under this section may be unannounced.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

Sec. 251.052. DISCLOSURE OF UNANNOUNCED INSPECTION; CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally, knowingly, or recklessly discloses to an unauthorized person the date or time of or any other fact about an unannounced inspection of an end stage renal disease facility before the inspection occurs.

(b) In this section, "unauthorized person" does not include:

(1) the department;

(2) the Health and Human Services Commission, including the office of the inspector general;

(3) the office of the attorney general; or

(4) any other person authorized by law to make an inspection or to accompany an inspector.

(c) An offense under this section is a Class B misdemeanor.

(d) A person convicted under this section is not eligible for state employment.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0764, eff. April 2, 2015.

SUBCHAPTER E. ENFORCEMENT

Sec. 251.061. CORRECTIVE ACTION PLAN. (a) The department may use a corrective action plan as an alternative to enforcement action under this subchapter.

(b) Before taking enforcement action under this subchapter, the department shall consider whether the use of a corrective action plan under this section is appropriate. In determining whether to use a corrective action plan, the department shall consider whether:

(1) the end stage renal disease facility has violated this chapter or a rule adopted under this chapter and the violation has resulted in an adverse patient result;

(2) the facility has a previous history of lack of

compliance with this chapter, rules adopted under this chapter, or a corrective action plan; or

(3) the facility fails to agree to a corrective action plan.

(c) The department may use a level one, level two, or level three corrective action plan, as determined by the department in accordance with this section, after inspection of the end stage renal disease facility.

(d) A level one corrective action plan is appropriate if the department finds that the end stage renal disease facility is not in compliance with this chapter or rules adopted under this chapter, but the circumstances are not serious or life-threatening. Under a level one corrective action plan, the department shall require the facility to develop and implement a corrective action plan approved by the department. The department or a monitor may supervise the implementation of the plan.

(e) A level two corrective action plan is appropriate if the department finds that the end stage renal disease facility is not in compliance with this chapter or rules adopted under this chapter and the circumstances are potentially serious or life-threatening or if the department finds that the facility failed to implement or comply with a level one corrective action plan. Under a level two corrective action plan, the department shall require the facility to develop and implement a corrective action plan approved by the department. The department or a monitor shall supervise the implementation of the plan. Supervision of the implementation of the plan may include on-site supervision, observation, and direction.

(f) A level three corrective action plan is appropriate if the department finds that the end stage renal disease facility is not in compliance with this chapter or rules adopted under this chapter and the circumstances are serious or life-threatening or if the department finds that the facility failed to comply with a level two corrective action plan or to cooperate with the department in connection with that plan. Under a level three corrective action plan, the department shall require the facility to develop and implement a corrective action plan approved by the department. In connection with requiring a level three corrective action plan, the department may seek the appointment of a temporary manager under Subchapter F.

(g) A corrective action plan is not confidential. Information

contained in the plan may be excepted from required disclosure under Chapter 552, Government Code, in accordance with that chapter or other applicable law.

(h) The department shall select the monitor for a corrective action plan. The monitor shall be an individual or team of individuals and may include a professional with end stage renal disease experience or a member of the medical review board. The monitor may not be or include individuals who are current or former employees of the facility that is the subject of the corrective action plan or of an affiliated facility. The purpose of the monitor is to observe, supervise, consult, and educate the facility and the employees of the facility under a corrective action plan. The facility shall pay the cost of the monitor.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.062. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license issued under this chapter for a violation of this chapter or a rule adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) If the department finds that an end stage renal disease facility is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not endanger public health and safety, the department may schedule the facility for probation rather than suspending or revoking the facility's license. The department shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the facility will remain under probation. During the probation period, the facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of an end stage renal disease facility that does not correct items that were in

noncompliance or that does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996. Amended by Acts 2003, 78th Leg., ch. 802, Sec. 11, 12, eff. June 20, 2003.

Sec. 251.0621. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder. On written request of the license holder, the department shall refer the matter to the State Office of Administrative Hearings, and an administrative law judge of that office shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 802, Sec. 13, eff. June 20, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0765, eff. April 2, 2015.

Sec. 251.063. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of this chapter or a rule adopted under this chapter if the department finds that the violation creates an immediate threat to the health and safety of patients of an end stage renal disease facility.

(b) A district court, on petition of the department and on a finding that a person is violating this chapter or a rule adopted under this chapter, may by injunction:

(1) prohibit a person from continuing the violation;

(2) restrain or prevent the operation of an end stage renal disease facility without a license issued under this chapter; or

(3) grant other injunctive relief warranted by the facts.

(c) The attorney general may institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the end stage renal disease facility is located or in Travis County.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.064. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 251.011 or 251.031.

(b) An offense under this section is a Class C misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.065. CIVIL PENALTY. (a) A person who knowingly violates this chapter or who knowingly fails to comply with a rule adopted under this chapter is liable for a civil penalty of not more than $1,000 for each violation if the department finds that the violation threatens the health and safety of a patient of an end stage renal disease facility.

(b) Each day of a continuing violation constitutes a separate ground for recovery.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.066. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

(b) The penalty may not exceed $1,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(c) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.067. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. (a) If after investigation of a possible violation and the facts surrounding that possible violation the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice shall include:

(1) a brief summary of the alleged violation;

(2) a statement of the amount of the proposed penalty, based on the factors listed in Section 251.066(c); and

(3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date the notice is received, the person notified may accept the determination of the department made under this section, including the recommended penalty, or make a written request for a hearing on that determination.

(c) If the person notified of the violation accepts the determination of the department, the department shall order the person to pay the recommended penalty.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0766, eff. April 2, 2015.

Sec. 251.068. HEARING; ORDER. (a) If the person notified fails to respond in a timely manner to the notice under Section 251.067(b) or if the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings and an administrative law judge of that office shall conduct the hearing.

(a-1) The department shall give written notice of the hearing to the person.

(b) The administrative law judge shall make findings of fact and conclusions of law and shall promptly issue to the department a written proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the administrative law judge, the department by order may find that a violation has occurred and may assess a penalty, or may find that no violation has occurred.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0767, eff. April 2, 2015.

Sec. 251.069. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. (a) The department shall give notice of the department's order under Section 251.068(c) to the person notified. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty assessed; and

(3) a statement of the right of the person to judicial review of the department's order.

(b) Not later than the 30th day after the date the decision is final as provided by Chapter 2001, Government Code, the person shall:

(1) pay the penalty in full;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(e) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(f) Judicial review of the department's order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the

court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0768, eff. April 2, 2015.

Sec. 251.070. PENALTY DEPOSITED TO STATE TREASURY. A civil or administrative penalty collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.071. RECOVERY OF COSTS. (a) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, the person's license is denied, suspended, or revoked or if administrative penalties are assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date a department order requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

(b) If the attorney general brings an action against a person under Section 251.063 or 251.065 or to enforce an administrative penalty assessed under Section 251.066, and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(c) For purposes of this section, "reasonable expenses and costs" include expenses incurred by the department and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0769, eff. April 2, 2015.

SUBCHAPTER F. TEMPORARY MANAGER

Sec. 251.091. APPOINTMENT BY AGREEMENT. (a) A person holding a controlling interest in an end stage renal disease facility may, at any time, request the department to assume the management of the facility through the appointment of a temporary manager under this subchapter.

(b) After receiving the request, the department may enter into an agreement providing for the appointment of a temporary manager to manage the facility under conditions considered appropriate by both parties if the department considers the appointment desirable.

(c) An agreement under this section must:

(1) specify all terms and conditions of the temporary manager's appointment and authority; and

(2) preserve all rights of the individuals served by the facility granted by law.

(d) The primary duty of the temporary manager is to ensure that adequate and safe services are provided to patients until temporary management ceases.

(e) The appointment terminates at the time specified by the agreement.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

Sec. 251.092. INVOLUNTARY APPOINTMENT. (a) The department may request the attorney general to bring an action in the name and on behalf of the state for the appointment of a temporary manager to manage an end stage renal disease facility if:

(1) the facility is operating without a license;

(2) the department has denied, suspended, or revoked the facility's license but the facility continues to operate;

(3) license denial, suspension, or revocation proceedings against the facility are pending and the department determines that an imminent or reasonably foreseeable threat to the health and safety of a patient of the facility exists;

(4) the department determines that an emergency exists that presents an immediate threat to the health and safety of a patient of the facility;

(5) the facility is closing and arrangements for the care of patients by other licensed facilities have not been made before closure; or

(6) the department determines a level three corrective action plan under Section 251.061 that includes appointment of a temporary manager is necessary to address serious or life-threatening conditions at the facility.

(b) After a hearing, a court shall appoint a temporary manager to manage a facility if the court finds that the appointment of the manager is necessary.

(c) The court order shall address the duties and authority of the temporary manager, which may include management of the facility and the provision of dialysis services to facility patients until specified circumstances occur, such as new ownership of the facility, compliance with this chapter and rules adopted under this chapter, or closure of the facility.

(d) If possible, the court shall appoint as temporary manager an individual whose background includes administration of end stage renal disease facilities or similar facilities.

(e) Venue for an action under this section is in Travis County.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

Sec. 251.093. FEE; RELEASE OF FUNDS. (a) A temporary manager appointed under Section 251.092 is entitled to a reasonable fee as determined by the court. The fee shall be paid by the facility.

(b) The temporary manager may petition the court to order the release to the manager of any payment owed the manager for care and services provided to patients of the facility if the payment has been withheld.

(c) Withheld payments that may be released under Subsection (b) may include payments withheld by a governmental agency or other entity before or during the appointment of the temporary manager, including:

(1) Medicaid, Medicare, or insurance payments; or

(2) payments from another third party.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

CHAPTER 252. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 252.001. PURPOSE. The purpose of this chapter is to promote the public health, safety, and welfare by providing for the development, establishment, and enforcement of standards for the provision of services to individuals residing in intermediate care facilities for individuals with an intellectual disability and the establishment, construction, maintenance, and operation of facilities providing this service that, in light of advancing knowledge, will promote quality in the delivery of services and treatment of residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0771, eff. April 2, 2015.

Sec. 252.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(1-a) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Designee" means a state agency or entity with which the department contracts to perform specific, identified duties related to the fulfillment of a responsibility prescribed by this chapter.

(3-a) "Executive commissioner" means the executive

commissioner of the Health and Human Services Commission.

(4) "Facility" means a home or an establishment that:

(A) furnishes food, shelter, and treatment or services to four or more individuals unrelated to the owner;

(B) is primarily for the diagnosis, treatment, or rehabilitation of individuals with an intellectual disability or related conditions; and

(C) provides in a protected setting continuous evaluation, planning, 24-hour supervision, coordination, and integration of health or rehabilitative services to help each resident function at the resident's greatest ability.

(5) "Governmental unit" means the state or a political subdivision of the state, including a county or municipality.

(6) "Person" means an individual, firm, partnership, corporation, association, or joint stock company and includes a legal successor of those entities.

(7) "Resident" means an individual, including a client, with an intellectual disability or a related condition who is residing in a facility licensed under this chapter.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0772, eff. April 2, 2015.

Sec. 252.003. EXEMPTIONS. Except as otherwise provided by this chapter, this chapter does not apply to:

(1) an establishment that:

(A) provides training, habilitation, rehabilitation, or education to individuals with an intellectual disability or related conditions;

(B) is operated under the jurisdiction of a state or federal agency, including the department, commission, Department of Assistive and Rehabilitative Services, Department of State Health Services, Texas Department of Criminal Justice, and United States Department of Veterans Affairs; and

(C) is certified through inspection or evaluation as meeting the standards established by the state or federal agency; or

(2) an establishment that is conducted by or for the

adherents of a well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of individuals who are ill and who depend exclusively on prayer or spiritual means for healing, without the use of any drug or material remedy, if the establishment complies with safety, sanitary, and quarantine laws and rules.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.094, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0773, eff. April 2, 2015.

Sec. 252.004. ALLOCATED FEDERAL MONEY. The department may accept and use any money allocated by the federal government to the department for administrative expenses.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.005. LANGUAGE REQUIREMENTS PROHIBITED. A facility may not prohibit a resident or employee from communicating in the person's native language with another resident or employee for the purpose of acquiring or providing care, training, or treatment.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.006. RIGHTS OF RESIDENTS. Each facility shall implement and enforce Chapter 102, Human Resources Code.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.007. PAPERWORK REDUCTION RULES. (a) The executive commissioner shall adopt rules to reduce the amount of paperwork a facility must complete and retain.

(a-1) The department shall attempt to reduce the amount of paperwork to the minimum amount required by state and federal law

unless the reduction would jeopardize resident safety.

(b) The department and each facility shall work together to review rules and propose changes in paperwork requirements so that additional time is available for direct resident care.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0774, eff. April 2, 2015.

Sec. 252.008. RULES GENERALLY. The executive commissioner shall adopt rules related to the administration and implementation of this chapter.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 160, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0775, eff. April 2, 2015.

Sec. 252.0085. RESTRAINT AND SECLUSION. A person providing services to a resident of a facility licensed by the department under this chapter or operated by the department and exempt under Section 252.003 from the licensing requirements of this chapter shall comply with Chapter 322 and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 4, eff. September 1, 2005.

Sec. 252.009. CONSULTATION AND COORDINATION. (a) Whenever possible, the department shall:

(1) use the services of and consult with state and local agencies in carrying out the department's functions under this chapter; and

(2) use the facilities of the department, particularly in establishing and maintaining standards relating to the humane treatment of residents.

(b) The department may cooperate with local public health

officials of a municipality or county in carrying out this chapter and may delegate to those officials the power to make inspections and recommendations to the department under this chapter.

(c) The department may coordinate its personnel and facilities with a local agency of a municipality or county and may provide advice to the municipality or county if the municipality or county decides to supplement the state program with additional rules required to meet local conditions.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0776, eff. April 2, 2015.

Sec. 252.010. CHANGE OF ADMINISTRATORS; FEE. A facility that hires a new administrator or other person designated as the chief management officer for the facility shall:

(1) notify the department in writing of the change not later than the 30th day after the date on which the change becomes effective; and

(2) pay a $20 administrative fee to the department.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.011. PROHIBITION OF REMUNERATION. (a) A facility may not receive monetary or other remuneration from a person or agency that furnishes services or materials to the facility or residents for a fee.

(b) The department may revoke the license of a facility that violates Subsection (a).

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 252.031. LICENSE REQUIRED. A person or governmental unit, acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain a facility in this state without a license issued under this chapter.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.0311. PERSON INELIGIBLE FOR LICENSE. (a) In this section, "controlling person" means a person who, acting alone or with others, has the ability to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a facility or a person who operates a facility. The term includes:

(1) a management company or other business entity that operates or contracts with others for the operation of a facility;

(2) a person who is a controlling person of a management company or other business entity that operates a facility or that contracts with another person for the operation of a facility; and

(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of a facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(b) A controlling person described by Subsection (a)(3) does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of a facility.

(c) The executive commissioner may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

(d) A person is not eligible for a license or to renew a license if the applicant, a controlling person with respect to the applicant, or an administrator or chief financial officer of the applicant has been convicted of an offense that would bar a person's employment at a facility in accordance with Chapter 250.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 10, eff. June 11, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0777, eff. April 2, 2015.

Sec. 252.032. LICENSE APPLICATION. (a) An application for a license is made to the department on a form provided by the department and must be accompanied by the license fee adopted under Section 252.034.

(b) The application must contain information that the department requires. The department may require affirmative evidence of ability to comply with the standards and rules adopted under this chapter.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.033. ISSUANCE AND RENEWAL OF LICENSE. (a) After receiving the application, the commission shall issue a license if, after inspection and investigation, it finds that the applicant and facility meet the requirements established under this chapter.

(b) The commission may issue a license only for:

(1) the premises and persons or governmental unit named in the application; and

(2) the maximum number of beds specified in the application.

(c) A license may not be transferred or assigned.

(d) A license is renewable on the third anniversary of issuance or renewal of the license after:

(1) an inspection;

(2) filing and approval of a renewal report; and

(3) payment of the renewal fee.

(e) The renewal report required under Subsection (d)(2) must be filed in accordance with rules adopted by the executive commissioner that specify the form of the report, the date it must be submitted, and the information it must contain.

(f) The commission may not issue a license for new beds or an expansion of an existing facility under this chapter unless the addition of new beds or the expansion is included in the plan approved by the commission in accordance with Section 533A.062.

(g) A license or renewal fee imposed under this chapter is an allowable cost for reimbursement under the state Medicaid program. An increase in the amount of a fee shall be reflected in reimbursement rates prospectively.

(h) The executive commissioner by rule shall:

(1) define specific, appropriate, and objective criteria on which the commission may deny an initial license application or license renewal or revoke a license; and

(2) adopt a system under which:

(A) licenses expire on staggered dates during each three-year period; and

(B) the commission prorates the license fee as appropriate if the expiration date of a license changes as a result of the system adopted under Paragraph (A).

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 534, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0778, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 12, eff. September 1, 2017.

Sec. 252.034. LICENSE FEES. (a) The executive commissioner by rule may adopt a fee for a license issued under this chapter. The fee may not exceed $225 plus $7.50 for each unit of capacity or bed space for which the license is sought.

(b) The license fee must be paid with each application for an initial license or for a renewal or change of ownership of a license.

(c) A facility operated by the state is not required to pay a license fee.

(d) The executive commissioner by rule may adopt an additional fee for the approval of an increase in bed space.

(e) All license fees collected under this section shall be deposited in the state treasury to the credit of the commission and may be appropriated to the commission to administer and enforce this chapter.

(f) An applicant who submits an application for license renewal later than the 45th day before the expiration date of a current license is subject to a late fee in accordance with commission rules.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 19, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0779, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 13, eff. September 1, 2017.

Sec. 252.035. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant or license holder has substantially failed to comply with the requirements established under this chapter.

(b) The status of an applicant for a license or a license holder is preserved until final disposition of the contested matter, except as the court having jurisdiction of a judicial review of the matter may order in the public interest for the welfare and safety of the residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.036. MINIMUM STANDARDS. (a) The executive commissioner may adopt minimum standards relating to:

(1) the construction or remodeling of a facility, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;

(2) sanitary and related conditions in a facility and its surroundings, including water supply, sewage disposal, food handling, and general hygiene in order to ensure the residents' health, safety, and comfort;

(3) equipment essential to the residents' health and welfare;

(4) the reporting and investigation of injuries, incidents, and unusual accidents and the establishment of other policies and procedures necessary to ensure resident safety;

(5) behavior management, including use of seclusion and physical restraints;

(6) policies and procedures for the control of communicable diseases in employees and residents;

(7) the use and administration of medication in conformity with applicable law and rules for pharmacy services;

(8) specialized nutrition support such as delivery of enteral feedings and parenteral nutrients;

(9) requirements for in-service education of each employee who has any contact with residents;

(10) the regulation of the number and qualification of all personnel, including management and professional support personnel, responsible for any part of the care given to residents; and

(11) the quality of life and the provision of active treatment to residents.

(b) The department shall enforce the adopted minimum standards.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0780, eff. April 2, 2015.

Sec. 252.037. REASONABLE TIME TO COMPLY. The executive commissioner by rule shall give a facility that is in operation when a rule or standard is adopted under this chapter a reasonable time to comply with the rule or standard.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0781, eff. April 2, 2015.

Sec. 252.0375. EARLY COMPLIANCE REVIEW. (a) The executive commissioner by rule shall adopt a procedure under which a person proposing to construct or modify a facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the executive commissioner shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with the department's architectural requirements and inform the person in writing of the

results of the review. If the plans comply with the department's architectural requirements, the department may not subsequently change the architectural requirements applicable to the project unless:

(1) the change is required by federal law; or

(2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee for conducting a review under this section.

(d) A fee collected under this section shall be deposited in the general revenue fund.

(e) The review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced.

Added by Acts 2001, 77th Leg., ch. 339, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0782, eff. April 2, 2015.

Sec. 252.038. FIRE SAFETY REQUIREMENTS. (a) A facility shall comply with fire safety requirements established under this section.

(b) The executive commissioner by rule shall adopt the fire safety standards applicable to the facility. The fire safety standards must be the same as the fire safety standards established by an edition of the Life Safety Code of the National Fire Protection Association. If required by federal law or regulation, the edition selected may be different for facilities or portions of facilities operated or approved for construction at different times.

(c) A facility that is licensed under applicable law on September 1, 1997, must comply with the fire safety standards, including fire safety standards imposed by municipal ordinance, applicable to the facility on that date.

(d) The rules adopted under this section do not prevent a facility licensed under this chapter from voluntarily conforming to fire safety standards that are compatible with, equal to, or more stringent than those adopted by the executive commissioner.

(e) Notwithstanding any other provision of this section, a municipality may enact additional and more stringent fire safety

standards applicable to new construction begun on or after September 1, 1997.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0783, eff. April 2, 2015.

Sec. 252.039. POSTING. Each facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employees, and visitors:

(1) the license issued under this chapter;

(2) a sign prescribed by the commission that specifies complaint procedures established under this chapter or rules adopted under this chapter and that specifies how complaints may be registered with the commission;

(3) a notice in a form prescribed by the commission stating that inspection and related reports are available at the facility for public inspection and providing the commission's toll-free telephone number that may be used to obtain information concerning the facility;

(4) a concise summary of the most recent inspection report relating to the facility;

(5) a notice providing instructions for reporting an allegation of abuse, neglect, or exploitation to the commission; and

(6) a notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by Sections 252.132 and 252.133.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 192, Sec. 3, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 11, eff. June 11, 2009.
Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 6, eff. September 1, 2023.

Sec. 252.040. INSPECTIONS. (a) The department or the

department's designee may make any inspection, survey, or investigation that it considers necessary and may enter the premises of a facility at reasonable times to make an inspection, survey, or investigation in accordance with department rules.

(b) The department is entitled to access to books, records, and other documents maintained by or on behalf of a facility to the extent necessary to enforce this chapter and the rules adopted under this chapter.

(c) A license holder or an applicant for a license is considered to have consented to entry and inspection of the facility by a representative of the department in accordance with this chapter.

(d) The department shall establish procedures to preserve all relevant evidence of conditions the department finds during an inspection, survey, or investigation that the department reasonably believes threaten the health and safety of a resident. The procedures may include photography or photocopying of relevant documents, such as license holder's notes, physician's orders, and pharmacy records, for use in any legal proceeding.

(e) When photographing a resident, the department:

(1) shall respect the privacy of the resident to the greatest extent possible; and

(2) may not make public the identity of the resident.

(f) A facility, an officer or employee of a facility, and a resident's attending physician are not civilly liable for surrendering confidential or private material under this section, including physician's orders, pharmacy records, notes and memoranda of a state office, and resident files.

(g) The department shall establish in clear and concise language a form to summarize each inspection report and complaint investigation report.

(h) The executive commissioner shall establish proper procedures to ensure that copies of all forms and reports under this section are made available to consumers, service recipients, and the relatives of service recipients as the department considers proper.

(i) The department shall have specialized staff conduct inspections, surveys, or investigations of facilities under this section.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 2001, 77th Leg., ch. 160, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0784, eff. April 2, 2015.

Sec. 252.041. UNANNOUNCED INSPECTIONS. (a) Each licensing period, the commission shall conduct at least three unannounced inspections of each facility.

(b) In order to ensure continuous compliance, the commission shall randomly select a sufficient percentage of facilities for unannounced inspections to be conducted between 5 p.m. and 8 a.m. Those inspections must be cursory to avoid to the greatest extent feasible any disruption of the residents.

(c) The commission may require additional inspections.

(d) As considered appropriate and necessary by the commission, the commission may invite at least one person as a citizen advocate to participate in inspections. The invited advocate must be an individual who has an interest in or who is employed by or affiliated with an organization or entity that represents, advocates for, or serves individuals with an intellectual disability or a related condition.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0785, eff. April 2, 2015.
Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 14, eff. September 1, 2017.

Sec. 252.042. DISCLOSURE OF UNANNOUNCED INSPECTIONS; CRIMINAL PENALTY. (a) Except as expressly provided by this chapter, a person commits an offense if the person intentionally, knowingly, or recklessly discloses to an unauthorized person the date, time, or any other fact about an unannounced inspection of a facility before the inspection occurs.

(b) In this section, "unauthorized person" does not include:

(1) the department;

(2) the office of the attorney general;

(3) a representative of an agency or organization when a Medicaid survey is made concurrently with a licensing inspection; or

(4) any other person or entity authorized by law to make an inspection or to accompany an inspector.

(c) An offense under this section is a Class B misdemeanor.

(d) A person convicted under this section is not eligible for state employment.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.043. LICENSING SURVEYS. The department shall provide a team to conduct surveys to validate findings of licensing surveys. The purpose of a validation survey is to assure that survey teams throughout the state survey in a fair and consistent manner. A facility subjected to a validation survey must correct deficiencies cited by the validation team but is not subject to punitive action for those deficiencies.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.044. REPORTING VIOLATIONS. (a) The department or the department's representative conducting an inspection, survey, or investigation under this chapter shall:

(1) list each violation of a law or rule on a form designed by the department for inspections; and

(2) identify the specific law or rule the facility violates.

(b) At the conclusion of an inspection, survey, or investigation under this chapter, the department or the department's representative conducting the inspection, survey, or investigation shall discuss the violations with the facility's management in an exit conference. The department or the department's representative shall leave a written list of the violations with the facility and the person designated by the facility to receive notice under Section 252.066 at the time of the exit conference. If the department or the department's representative discovers any additional violations during the review of field notes or preparation of the official final list, the department or the department's representative shall give the facility an additional exit conference regarding the additional

violations. An additional exit conference must be held in person and may not be held by telephone, e-mail, or facsimile transmission.

(c) The facility shall submit a plan to correct the violations to the regional director not later than the 10th working day after the date the facility receives the final official statement of violations.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 2, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. 344), Sec. 6, eff. September 1, 2007.

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 252.061. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) The department shall suspend a facility's license or order an immediate closing of part of the facility if:

(1) the department finds the facility is operating in violation of the standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of a resident.

(b) The executive commissioner by rule shall provide for the placement of residents during the facility's suspension or closing to ensure their health and safety.

(c) An order suspending a license or closing a part of a facility under this section is immediately effective on the date on which the license holder receives written notice or a later date specified in the order.

(d) An order suspending a license or ordering an immediate closing of a part of a facility is valid for 10 days after the effective date of the order.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0786, eff. April 2, 2015.

Sec. 252.062. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a person from continuing a violation of the standards prescribed by this

chapter if the department finds that the violation creates an immediate threat to the health and safety of the facility's residents.

(b) A district court, on petition of the department, may by injunction:

(1) prohibit a person from continuing a violation of the standards or licensing requirements prescribed by this chapter;

(2) restrain or prevent the establishment, conduct, management, or operation of a facility without a license issued under this chapter; or

(3) grant the injunctive relief warranted by the facts on a finding by the court that a person is violating the standards or licensing requirements prescribed by this chapter.

(c) The attorney general, on request by the department, shall bring and conduct on behalf of the state a suit authorized by this section.

(d) A suit for a temporary restraining order or other injunctive relief must be brought in Travis County or the county in which the alleged violation occurs.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 192, Sec. 1, eff. Sept. 1, 1999.

Sec. 252.063. LICENSE REQUIREMENTS; CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 252.031.

(b) An offense under this section is punishable by a fine of not more than $1,000 for the first offense and not more than $500 for each subsequent offense.

(c) Each day of a continuing violation after conviction is a separate offense.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.064. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty of not less than $100 or more than $10,000 for each violation if the department determines the violation threatens the health and safety of a resident.

(b) Each day of a continuing violation constitutes a separate

ground for recovery.

(c) On request of the department, the attorney general may institute an action in a district court to collect a civil penalty under this section. Any amount collected shall be remitted to the comptroller for deposit to the credit of the general revenue fund.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 23, Sec. 1, eff. May 3, 1999.

Sec. 252.065. ADMINISTRATIVE PENALTY. (a) The commission may assess an administrative penalty against a person who:

(1) violates this chapter or a rule, standard, or order adopted or license issued under this chapter;

(2) makes a false statement, that the person knows or should know is false, of a material fact:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by the commission;

(3) refuses to allow a representative of the commission to inspect:

(A) a book, record, or file required to be maintained by the institution; or

(B) any portion of the premises of an institution;

(4) wilfully interferes with the work of a representative of the commission or the enforcement of this chapter;

(5) wilfully interferes with a representative of the commission preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter;

(6) fails to pay a penalty assessed by the commission under this chapter not later than the 10th day after the date the assessment of the penalty becomes final;

(7) fails to submit a plan of correction within 10 days after receiving a statement of licensing violations; or

(8) fails to notify the commission of a change in ownership before the effective date of that change of ownership.

(b) The penalty for a facility with fewer than 60 beds shall be not less than $100 or more than $1,000 for each violation. The

penalty for a facility with 60 beds or more shall be not less than $100 or more than $5,000 for each violation. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty. The total amount of penalties assessed under this subsection for an on-site regulatory visit or complaint investigation, regardless of the duration of any ongoing violations, may not exceed:

(1) $5,000 for a facility with fewer than 60 beds; and

(2) $25,000 for a facility with 60 beds or more.

(c) The executive commissioner by rule shall specify each violation for which an administrative penalty may be assessed. In determining which violations warrant penalties, the executive commissioner shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and

(2) whether the affected facility had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction.

(d) The executive commissioner by rule shall establish a specific and detailed schedule of appropriate and graduated penalties for each violation based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients;

(2) the history of previous violations;

(3) whether the affected facility had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction;

(4) the amount necessary to deter future violations;

(5) efforts made to correct the violation;

(6) the size of the facility; and

(7) any other matters that justice may require.

(e) The executive commissioner by rule shall provide the facility with a reasonable period of time, not less than 45 days, following the first day of a violation to correct the violation before the commission may assess an administrative penalty if a plan of correction has been implemented. This subsection does not apply to a violation described by Subsections (a)(2)-(8) or to a violation that the commission determines:

(1) represents a pattern of violation that results in actual harm;

(2) is widespread in scope and results in actual harm;

(3) is widespread in scope, constitutes a potential for actual harm, and relates to:

(A) staff treatment of a resident;

(B) active treatment;

(C) client behavior and facility practices;

(D) health care services;

(E) drug administration;

(F) infection control;

(G) food and nutrition services; or

(H) emergency preparedness and response;

(4) constitutes an immediate threat to the health or safety of a resident; or

(5) substantially limits the facility's capacity to provide care.

(f) The commission may not assess an administrative penalty for a minor violation if the person corrects the violation not later than the 46th day after the date the person receives notice of the violation.

(g) The executive commissioner shall establish a system to ensure standard and consistent application of penalties regardless of the facility location.

(h) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

(i) The commission may not assess an administrative penalty against a state agency.

(j) Notwithstanding any other provision of this section, an administrative penalty ceases to be incurred on the date a violation is corrected. The administrative penalty ceases to be incurred only if the facility:

(1) notifies the commission in writing of the correction of the violation and of the date the violation was corrected; and

(2) shows later that the violation was corrected.

(k) Rules adopted under this section shall include specific, appropriate, and objective criteria that describe the scope and severity of a violation that results in a recommendation for each specific penalty.

(l) The commission shall develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate facility to deter future violations. The system:

(1) must be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes; and

(2) may be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

(m) In this section:

(1) "Actual harm" means a negative outcome that compromises a resident's physical, mental, or emotional well-being.

(2) "Immediate threat to the health or safety of a resident" means a situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a resident.

(3) "Pattern of violation" means repeated, but not pervasive, failures of a facility to comply with this chapter or a rule, standard, or order adopted under this chapter that:

(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same residents or facility employees.

(4) "Widespread in scope" means a violation of this chapter or a rule, standard, or order adopted under this chapter that:

(A) is pervasive throughout the services provided by the facility; or

(B) that affects or has the potential to affect a large portion of or all of the residents of the facility.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 534, Sec. 3, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 20, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0787, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 15, eff.

September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1304 (H.B. 3803), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 906 (H.B. 3720), Sec. 3, eff. September 1, 2021.

Sec. 252.0651. APPLICATION OF OTHER LAW. The department may not assess more than one monetary penalty under this chapter for a violation arising out of the same act or failure to act.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 4, eff. Sept. 1, 1999.

Sec. 252.066. NOTICE; REQUEST FOR HEARING. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person designated by the facility to receive notice. The notice shall include:

(1) a brief summary of the alleged violation;

(2) a statement of the amount of the proposed penalty based on the factors listed in Section 252.065(d); and

(3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date on which the notice is received, the person notified may accept the determination of the department made under this section, including the proposed penalty, or may make a written request for a hearing on that determination.

(c) If the person notified under this section of the violation accepts the determination of the department or if the person fails to respond in a timely manner to the notice, the department shall issue an order approving the determination and ordering that the person pay the proposed penalty.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 534, Sec. 5, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0788, eff.

April 2, 2015.

Sec. 252.067. HEARING; ORDER. (a) If the person notified under Section 252.066 requests a hearing, an administrative law judge shall set a hearing and the department shall give written notice of the hearing to the person.

(b) The administrative law judge shall make findings of fact and conclusions of law and shall promptly issue to the department a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the administrative law judge, the department by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0789, eff. April 2, 2015.

Sec. 252.068. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. (a) The department shall give notice of the order under Section 252.067(c) to the person alleged to have committed the violation and the person designated by the facility to receive notice under Section 252.066. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty assessed; and

(3) a statement of the right of the person to judicial review of the order.

(b) Not later than the 30th day after the date on which the decision becomes final as provided by Chapter 2001, Government Code, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(2) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order becomes final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within 10 days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

(e) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the penalty.

(f) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty under Subsection (c)(1)(A) and if that amount is reduced or is not upheld by the court, the court shall order that the

appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the penalty is not upheld by the court, the court shall order the release of the escrow account or bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.

Sec. 252.069. USE OF ADMINISTRATIVE PENALTY. An administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 786 (S.B. 52), Sec. 4, eff. September 1, 2005.

Sec. 252.070. EXPENSES AND COSTS FOR COLLECTION OF CIVIL OR ADMINISTRATIVE PENALTY. (a) If the attorney general brings an action against a person under Section 252.062 or 252.064 or to enforce an administrative penalty assessed under Section 252.065 and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(b) For purposes of this section, reasonable expenses and costs include expenses incurred by the department and the attorney general in the investigation, initiation, and prosecution of an action, including reasonable investigative costs, attorney's fees, witness fees, and deposition expenses.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.

Sec. 252.071. AMELIORATION OF VIOLATION. (a) In lieu of demanding payment of an administrative penalty authorized by this subchapter, the department may allow a person subject to the penalty to use, under the supervision of the department, all or part of the amount of the penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of a facility resident.

(c) The department may not offer amelioration to a person if the department determines that the charged violation constitutes immediate jeopardy to the health and safety of a facility resident.

(d) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 252.067.

(e) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 252.067 if the department approves the plan.

(f) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the facility that will improve services to or quality of care of residents of the facility;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the facility;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a timeline for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(g) The department may require that an amelioration plan

propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(h) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the commission or the State Office of Administrative Hearings, as appropriate, shall deny a pending request for a hearing submitted by the person under Section 252.066(b).

(i) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

(j) In this section, "immediate jeopardy to health and safety" means a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the facility.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 619, Sec. 2, eff. Sept. 1, 2001.
Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1284, Sec. 8.02, eff. June 15, 2001.
Reenacted and amended by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0790, eff. April 2, 2015.

SUBCHAPTER D. TRUSTEES FOR FACILITIES

Sec. 252.091. FINDINGS AND PURPOSE. (a) The legislature finds that, under some circumstances, closing a facility for a violation of a law or rule may:

(1) have an adverse effect on the facility's residents and their families; and

(2) result in a lack of readily available financial resources to meet the basic needs of the residents for food, shelter, medication, and personal services.

(b) The purpose of this subchapter is to provide for:

(1) the appointment of a trustee to assume the operations of the facility in a manner that emphasizes resident care and reduces resident trauma; and

(2) a fund to assist a court-appointed trustee in meeting the basic needs of the residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.092. APPOINTMENT BY AGREEMENT. (a) A person who holds a controlling interest in a facility may request the department to assume the operation of the facility through the appointment of a trustee under this subchapter.

(b) After receiving the request, the department may enter into an agreement providing for the appointment of a trustee to take charge of the facility under conditions both parties consider appropriate if the department considers the appointment desirable.

(c) An agreement under this section must:

(1) specify the terms and conditions of the trustee's appointment and authority; and

(2) preserve the rights of the residents as granted by law.

(d) The agreement terminates at the time:

(1) specified by the parties; or

(2) either party notifies the other in writing that the party is terminating the appointment agreement.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.093. INVOLUNTARY APPOINTMENT. (a) The department may request the attorney general to bring an action on behalf of the state for the appointment of a trustee to operate a facility if:

(1) the facility is operating without a license;

(2) the department has suspended or revoked the facility's license;

(3) license suspension or revocation procedures against the facility are pending and the department determines that an imminent threat to the health and safety of the residents exists;

(4) the department determines that an emergency exists that presents an immediate threat to the health and safety of the residents; or

(5) the facility is closing and arrangements for relocation of the residents to other licensed facilities have not been made before closure.

(b) A trustee appointed under Subsection (a)(5) may only ensure an orderly and safe relocation of the facility's residents as quickly as possible.

(c) After a hearing, a court shall appoint a trustee to take charge of a facility if the court finds that involuntary appointment of a trustee is necessary.

(d) If possible, the court shall appoint as trustee an individual whose background includes intellectual disability service administration.

(e) An action under this section must be brought in Travis County or the county in which the violation is alleged to have occurred.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 192, Sec. 2, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0791, eff. April 2, 2015.

Sec. 252.094. FEE; RELEASE OF MONEY. (a) A trustee appointed under this subchapter is entitled to a reasonable fee as determined by the court.

(b) The trustee may petition the court to order the release to the trustee of any payment owed the trustee for care and services provided to the residents if the payment has been withheld, including a payment withheld by a governmental agency or other entity during the appointment of the trustee, such as payments:

(1) for Medicaid or insurance;

(2) by a third party; or

(3) for medical expenses borne by the residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.095. EMERGENCY ASSISTANCE FEE. (a) In addition to the licensing and renewal fee collected under Section 252.034, the department may collect an annual fee to be used to make emergency assistance money available to a facility licensed under this chapter.

(b) The fee collected under this section shall be in the amount prescribed by Section 242.097(c) and shall be deposited to the credit

of the nursing and convalescent home trust fund established under Section 242.096.

(c) The department may disburse money to a trustee for a facility licensed under this chapter to alleviate an immediate threat to the health or safety of the facility's residents. Payments under this section may include payments described by Section 242.096(b).

(d) A court may order the department to disburse emergency assistance money to a trustee for a facility licensed under this chapter if the court makes the findings provided by Section 242.096(c).

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0792, eff. April 2, 2015.

Sec. 252.096. REIMBURSEMENT. (a) A facility that receives emergency assistance money under this subchapter shall reimburse the department for the amounts received, including interest.

(b) Interest on unreimbursed amounts begins to accrue on the date on which the money is disbursed to the facility. The rate of interest is the rate determined under Section 304.003, Finance Code, to be applicable to judgments rendered during the month in which the money is disbursed to the facility.

(c) The owner of the facility when the trustee is appointed is responsible for the reimbursement.

(d) The amount that remains unreimbursed on the first anniversary of the date on which the money is received is delinquent and the commission may determine that the facility is ineligible for a Medicaid provider contract.

(e) The department shall deposit the reimbursement and interest received under this section to the credit of the nursing and convalescent home trust fund.

(f) The attorney general shall institute an action to collect money due under this section at the request of the department. An action under this section must be brought in Travis County.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0793, eff.

April 2, 2015.

Sec. 252.097. NOTIFICATION OF CLOSURE. (a) A facility that is closing temporarily or permanently, voluntarily or involuntarily, shall notify the residents of the closing and make reasonable efforts to notify in writing each resident's nearest relative or the person responsible for the resident's support within a reasonable time before the facility closes.

(b) If the department orders a facility to close or the facility's closure is in any other way involuntary, the facility shall make the notification, orally or in writing, immediately on receiving notice of the closing.

(c) If the facility's closure is voluntary, the facility shall make the notification not later than one week after the date on which the decision to close is made.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.098. CRIMINAL PENALTY FOR FAILURE TO NOTIFY. (a) A facility commits an offense if the facility knowingly fails to comply with Section 252.097.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER E. INVESTIGATIONS OF ABUSE, NEGLECT, AND EXPLOITATION AND REPORTS OF RETALIATION

Sec. 252.121. AUTHORITY TO RECEIVE REPORTS AND INVESTIGATE. (a) A person, including an owner or employee of a facility, who has cause to believe that a resident is being or has been subjected to abuse, neglect, or exploitation shall report the suspected abuse, neglect, or exploitation to the commission. The commission shall investigate the allegation of abuse, neglect, or exploitation in the manner prescribed by the commission.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 23(1), eff. September 1, 2023.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 13, eff. June 11, 2009.
Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 7, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 23(1), eff. September 1, 2023.

Sec. 252.122. NOTIFICATION OF DUTY TO REPORT ABUSE, NEGLECT, AND EXPLOITATION. Each facility shall require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee realizes that the employee may be criminally liable for failure to report abuse, neglect, or exploitation.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 13, eff. June 11, 2009.

Sec. 252.125. IMMEDIATE REMOVAL TO PROTECT RESIDENT. Before the completion of the investigation by the commission, the commission shall file a petition for temporary care and protection of a resident if the commission determines that immediate removal is necessary to protect the resident from further abuse, neglect, or exploitation.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 13, eff. June 11, 2009.
Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 8, eff. September 1, 2023.

Sec. 252.126. CONFIDENTIALITY; DISCLOSURE OF INVESTIGATION REPORT. (a) A report, record, or working paper used or developed in an investigation made under this subchapter is confidential and may be disclosed only as provided by Chapter 48, Human Resources Code, Chapter 261, Family Code, or this section.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 23(2), eff. September 1, 2023.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 13, eff. June 11, 2009.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 23(2), eff. September 1, 2023.

Sec. 252.132. SUIT FOR RETALIATION. (a) In this section, "employee" means a person who is an employee of a facility or any other person who provides services for a facility for compensation, including a contract laborer for the facility.

(b) An employee has a cause of action against a facility, the owner of the facility, or another employee of the facility that suspends or terminates the employment of the employee or otherwise disciplines, discriminates against, or retaliates against the employee for:

(1) reporting to the employee's supervisor, an administrator of the facility, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of this chapter or a rule adopted under this chapter; or

(2) initiating or cooperating in any investigation or proceeding of a governmental entity relating to the care, services, or conditions at the facility.

(c) A plaintiff who prevails in a suit under this section may recover:

(1) the greater of $1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown and damages for lost wages if the petitioner's employment was suspended or terminated;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

(d) In addition to the amounts that may be recovered under Subsection (c), a person whose employment is suspended or terminated is entitled to appropriate injunctive relief, including, if applicable:

(1) reinstatement in the person's former position; and

(2) reinstatement of lost fringe benefits or seniority rights.

(e) The petitioner, not later than the 90th day after the date on which the person's employment is suspended or terminated, must bring suit or notify the Texas Workforce Commission of the petitioner's intent to sue under this section. A petitioner who notifies the Texas Workforce Commission under this subsection must bring suit not later than the 90th day after the date of the delivery of the notice to the commission. On receipt of the notice, the commission shall notify the facility of the petitioner's intent to bring suit under this section.

(f) The petitioner has the burden of proof, except that there is a rebuttable presumption that the person's employment was suspended or terminated for reporting abuse or neglect if the person is suspended or terminated within 60 days after the date on which the person reported in good faith.

(g) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff resides;

(2) the plaintiff was employed by the defendant; or

(3) the defendant conducts business.

(h) Each facility shall require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee understands the employee's rights under this section. The statement must be part of the statement required under Section 252.122. If a facility does not require an employee to read and sign the statement, the periods prescribed by Subsection (e) do not apply, and the petitioner must bring suit not later than the second anniversary of the date on which the person's employment is suspended or terminated.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 192, Sec. 4, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 14, eff. June 11, 2009.

Sec. 252.133. SUIT FOR RETALIATION AGAINST VOLUNTEER, RESIDENT,

OR FAMILY MEMBER OR GUARDIAN OF RESIDENT. (a) A facility may not retaliate or discriminate against a volunteer, a resident, or a family member or guardian of a resident because the volunteer, the resident, the resident's family member or guardian, or any other person:

(1) makes a complaint or files a grievance concerning the facility;

(2) reports a violation of law, including a violation of this chapter or a rule adopted under this chapter; or

(3) initiates or cooperates in an investigation or proceeding of a governmental entity relating to the care, services, or conditions at the facility.

(b) A volunteer, a resident, or a family member or guardian of a resident against whom a facility retaliates or discriminates in violation of Subsection (a) is entitled to sue for:

(1) injunctive relief;

(2) the greater of $1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown;

(3) exemplary damages;

(4) court costs; and

(5) reasonable attorney's fees.

(c) A volunteer, a resident, or a family member or guardian of a resident who seeks relief under this section must report the alleged violation not later than the 180th day after the date on which the alleged violation of this section occurred or was discovered by the volunteer, the resident, or the family member or guardian of the resident through reasonable diligence.

(d) A suit under this section may be brought in the district court of the county in which the facility is located or in a district court of Travis County.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 192, Sec. 5, eff. Sept. 1, 2001.

SUBCHAPTER F. MEDICAL CARE

Sec. 252.151. ADMINISTRATION OF MEDICATION. The executive commissioner shall adopt rules relating to the administration of medication in facilities.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0794, eff. April 2, 2015.

Sec. 252.152. REQUIRED MEDICAL EXAMINATION. (a) The department shall require each resident to be given at least one medical examination each year.

(b) The executive commissioner shall specify the details of the examination.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0795, eff. April 2, 2015.

SUBCHAPTER G. RESPITE CARE

Sec. 252.181. DEFINITIONS. In this subchapter:

(1) "Plan of care" means a written description of the care, training, and treatment needed by a person during respite care.

(2) "Respite care" means the provision by a facility to a person, for not more than two weeks for each stay in the facility, of:

(A) room and board; and

(B) care at the level ordinarily provided for permanent residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.182. RESPITE CARE. (a) A facility licensed under this chapter may provide respite care for an individual who has a diagnosis of an intellectual disability or a related condition without regard to whether the individual is eligible to receive intermediate care services under federal law.

(b) The executive commissioner may adopt rules for the regulation of respite care provided by a facility licensed under this chapter.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0796, eff. April 2, 2015.

Sec. 252.183. PLAN OF CARE. (a) The facility and the person arranging the care must agree on the plan of care and the plan must be filed at the facility before the facility admits the person for the care.

(b) The plan of care must be signed by:

(1) a licensed physician if the person for whom the care is arranged needs medical care or treatment; or

(2) the person arranging for the respite care if medical care or treatment is not needed.

(c) The facility may keep an agreed plan of care for a person for not longer than six months from the date on which it is received. After each admission, the facility shall review and update the plan of care. During that period, the facility may admit the person as frequently as is needed and as accommodations are available.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.184. NOTIFICATION. A facility that offers respite care shall notify the department in writing that it offers respite care.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.185. INSPECTIONS. The department, at the time of an ordinary licensing inspection or at other times determined necessary by the department, shall inspect a facility's records of respite care services, physical accommodations available for respite care, and the plan of care records to ensure that the respite care services comply with the licensing standards of this chapter and with any rules the executive commissioner may adopt to regulate respite care services.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0797, eff. April 2, 2015.

Sec. 252.186. SUSPENSION. (a) The department may require a facility to cease providing respite care if the department determines that the respite care does not meet the standards required by this chapter and that the facility cannot comply with those standards in the respite care it provides.

(b) The department may suspend the license of a facility that continues to provide respite care after receiving a written order from the department to cease.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER H. QUALITY ASSURANCE FEE

Sec. 252.201. DEFINITION. In this subchapter, "gross receipts" means money paid as compensation for services provided to residents, including client participation. The term does not include charitable contributions to a facility.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001.

Sec. 252.202. COMPUTING QUALITY ASSURANCE FEE. (a) A quality assurance fee is imposed on each facility for which a license fee must be paid under Section 252.034, on each facility owned by a community mental health and intellectual disability center, as described by Subchapter A, Chapter 534, and on each facility owned by the department. The fee:

(1) is an amount established under Subsection (b) multiplied by the number of patient days as determined in accordance with Section 252.203;

(2) is payable monthly; and

(3) is in addition to other fees imposed under this chapter.

(b) The commission or the department at the direction of the commission shall set the quality assurance fee for each day in the amount necessary to produce annual revenues equal to an amount that

is not more than six percent of the facility's total annual gross receipts in this state. The fee is subject to a prospective adjustment as necessary.

(c) The amount of the quality assurance fee must be determined using patient days and gross receipts reported to the department and covering a period of at least six months.

(d) The quality assurance fee is an allowable cost for reimbursement under the Medicaid program.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.64, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 1(a), eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0798, eff. April 2, 2015.

Sec. 252.203. PATIENT DAYS. For each calendar day, a facility shall determine the number of patient days by adding the following:

(1) the number of patients occupying a facility bed immediately before midnight of that day; and

(2) the number of beds that are on hold on that day and that have been placed on hold for a period not to exceed three consecutive calendar days during which a patient is on therapeutic leave.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.65, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 2, eff. June 20, 2003.

Sec. 252.204. REPORTING AND COLLECTION. (a) The commission or the department at the direction of the commission shall collect the quality assurance fee.

(b) Each facility shall:

(1) not later than the 20th day after the last day of a month file a report with the commission or the department, as appropriate, stating the total patient days for the month; and

(2) not later than the 30th day after the last day of the

month pay the quality assurance fee.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.66, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 3, eff. June 20, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0799, eff. April 2, 2015.

Sec. 252.205. RULES; ADMINISTRATIVE PENALTY. (a) The executive commissioner shall adopt rules for the administration of this subchapter, including rules related to the imposition and collection of the quality assurance fee.

(b) The executive commissioner may not adopt rules granting any exceptions from the quality assurance fee.

(c) An administrative penalty assessed under this subchapter in accordance with Section 252.065 may not exceed one-half of the amount of the outstanding quality assurance fee or $20,000, whichever is greater.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0800, eff. April 2, 2015.

Sec. 252.206. QUALITY ASSURANCE FUND. (a) The quality assurance fund is an account in the general revenue fund. Notwithstanding any other law, the comptroller shall deposit fees collected under this subchapter to the credit of the fund.

(b) The quality assurance fund is composed of fees deposited to the credit of the fund under this subchapter.

(c) Money deposited to the quality assurance fund may be appropriated only for the purposes of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1), eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0801, eff. April 2, 2015.

Sec. 252.207. REIMBURSEMENT OF FACILITIES. (a) Subject to legislative appropriation and state and federal law, the commission may use money in the quality assurance fund, together with any federal money available to match that money:

(1) to offset expenses incurred to administer the quality assurance fee under this chapter;

(2) to increase reimbursement rates paid under the Medicaid program to facilities or waiver programs for individuals with an intellectual disability operated in accordance with 42 U.S.C. Section 1396n(c) and its subsequent amendments; or

(3) for any other health and human services purpose approved by the governor and Legislative Budget Board.

(b) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1) and Acts 2003, 78th Leg., ch. 1251, Sec. 4(b).

(c) If money in the quality assurance fund is used to increase a reimbursement rate in the Medicaid program, the commission shall ensure that the reimbursement methodology used to set that rate describes how the money in the fund will be used to increase the rate and provides incentives to increase direct care staffing and direct care wages and benefits.

(d) The increased Medicaid reimbursement paid to a facility under this section may not be based solely on the amount of the quality assurance fee paid by that facility unless authorized by 42 C.F.R. Section 433.68 or other federal law.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.67, 2.156(a)(1), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 4(a), (b), eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.003, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0802, eff. April 2, 2015.

Sec. 252.208. INVALIDITY; FEDERAL FUNDS. If any portion of this subchapter is held invalid by a final order of a court that is not subject to appeal, or if the commission determines that the imposition of the fee and the expenditure as prescribed by this subchapter of amounts collected will not entitle the state to receive additional federal funds under the Medicaid program, the commission shall stop collection of the quality assurance fee and shall return, not later than the 30th day after the date collection is stopped, any money collected, but not spent, under this subchapter to the facilities that paid the fees in proportion to the total amount paid by those facilities.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0803, eff. April 2, 2015.

CHAPTER 253. EMPLOYEE MISCONDUCT; REGISTRY

Sec. 253.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(1-a) "Consumer" means a resident of or an individual receiving services from a facility covered by this chapter.

(1-b) "Consumer-directed service option" has the meaning assigned by Section 546.0101, Government Code.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Employee" means a person who:

(A) works at a facility or for an individual employer;

(B) is an individual who provides personal care services, active treatment, or any other personal services to a consumer or to an individual using the consumer-directed service option; and

(C) is not licensed by an agency of the state to perform the services the employee performs for the individual using the consumer-directed service option or at the facility or is a nurse aide employed by a facility.

(3-a) "Executive commissioner" means the executive

commissioner of the Health and Human Services Commission.

(4) "Facility" means:

(A) a nursing facility licensed by the commission under Chapter 242;

(B) an intermediate care facility for individuals with an intellectual disability licensed by the commission under Chapter 252;

(C) an adult foster care provider that contracts with the commission;

(D) a home and community support services agency licensed by the commission under Chapter 142;

(E) a prescribed pediatric extended care center licensed by the commission under Chapter 248A;

(F) an assisted living facility licensed by the commission under Chapter 247;

(F-1) a facility licensed under Chapter 555;

(F-2) a facility licensed under Chapter 577;

(G) a day activity and health services facility licensed by the commission under Chapter 103, Human Resources Code;

(H) a residential child-care facility as defined by Section 42.002, Human Resources Code, at which an elderly person or an adult with a disability resides or is in the facility's care;

(I) a provider who provides home and community-based services under the home and community-based services (HCS) waiver program or the Texas home living (TxHmL) waiver program; or

(J) a facility that is exempt from licensure under Section 252.003.

(4-a) "Financial management services agency" means an entity that contracts with the department to serve as a fiscal and employer agent for an individual employer using the consumer-directed service option.

(4-b) "Individual employer" means an individual or legally authorized representative who participates in the consumer-directed service option and is responsible for hiring providers to deliver program services.

(5) "Reportable conduct" includes:

(A) abuse or neglect that causes or may cause death or harm to an individual using the consumer-directed service option or a consumer;

(B) sexual abuse of an individual using the consumer-

directed service option or a consumer;

(C) financial exploitation of an individual using the consumer-directed service option or a consumer in an amount of $25 or more; and

(D) emotional, verbal, or psychological abuse that causes harm to an individual using the consumer-directed service option or a consumer.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 21, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 15, eff. June 11, 2009.

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 8, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 4, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 4, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 674 (H.B. 1009), Sec. 4, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.48, eff. April 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 9, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 276 (H.B. 3560), Sec. 1, eff. September 1, 2025.

Sec. 253.002. INVESTIGATION BY DEPARTMENT. (a) If the department receives a report that an employee of a facility, other than a facility licensed under Chapter 252, committed reportable conduct, the department shall investigate the report to determine whether the employee has committed the reportable conduct.

(b) If the department receives a report that an employee of a facility licensed under Chapter 252 or of an individual employer committed reportable conduct, the department shall forward that

report to the Department of Family and Protective Services for investigation.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 7, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 16, eff. June 11, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 5, eff. January 1, 2014.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0804, eff. April 2, 2015.

Sec. 253.0025. EMPLOYMENT SUSPENSION FOR FACILITY EMPLOYEES ACCUSED OF COMMITTING REPORTABLE CONDUCT. A facility shall suspend the employment of a facility employee who the Health and Human Services Commission finds has engaged in reportable conduct while the employee exhausts any applicable appeals process, including informal and formal appeals and any hearing or judicial review conducted in accordance with Section 253.004 or 253.005, pending a final decision by an administrative law judge. The facility may not reinstate the employee's position during the course of any applicable appeals process.

Added by Acts 2023, 88th Leg., R.S., Ch. 674 (H.B. 1009), Sec. 5, eff. September 1, 2023.

Sec. 253.003. DETERMINATION; NOTICE. (a) If, after an investigation, the department determines that the reportable conduct occurred, the department shall give written notice of the department's findings. The notice must include:

(1) a brief summary of the department's findings; and

(2) a statement of the person's right to a hearing on the occurrence of the reportable conduct.

(b) Not later than the 30th day after the date on which the notice is received, the employee notified may accept the determination of the department made under this section or may make a written request for a hearing on that determination.

(c) If the employee notified of the violation accepts the determination of the department or fails to timely respond to the notice, the department shall order that the reportable conduct be recorded in the registry under Section 253.007.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 8, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0805, eff. April 2, 2015.

Sec. 253.004. HEARING; ORDER. (a) If the employee requests a hearing, an administrative law judge of the State Office of Administrative Hearings shall conduct a hearing and the department shall give written notice of the hearing to the employee.

(a-1) The administrative law judge must complete the hearing and the hearing record not later than the 120th day after the date the department receives a request for a hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the department a proposal for decision as to the occurrence of the reportable conduct.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the department by order may find that the reportable conduct has occurred. If the department finds that the reportable conduct has occurred, the department shall issue an order on that determination.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 9, eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 6, eff. January 1, 2014.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0806, eff. April 2, 2015.

Sec. 253.005. NOTICE; JUDICIAL REVIEW. (a) The department shall give notice of the order under Section 253.004 to the employee

alleged to have committed the reportable conduct. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) a statement of the right of the employee to judicial review of the order; and

(3) a statement that the reportable conduct will be recorded in the registry under Section 253.007 if:

(A) the employee does not request judicial review of the determination; or

(B) the determination is sustained by the court.

(b) Not later than the 30th day after the date on which the decision becomes final as provided by Chapter 2001, Government Code, the employee may file a petition for judicial review contesting the finding of the reportable conduct. If the employee does not request judicial review of the determination, the department shall record the reportable conduct in the registry under Section 253.007.

(c) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(d) If the court sustains the finding of the occurrence of the reportable conduct, the department shall record the reportable conduct in the registry under Section 253.007.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 10, eff. Sept. 1, 2001.

Sec. 253.0055. REMOVAL OF NURSE AIDE FINDING. If a finding of reportable conduct is the basis for an entry in the nurse aide registry maintained under Chapter 250 and the entry is subsequently removed from the nurse aide registry, the department shall immediately remove the record of reportable conduct from the employee misconduct registry maintained under Section 253.007.

Added by Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 9, eff. June 19, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0807, eff.

April 2, 2015.

Sec. 253.006. INFORMAL PROCEEDINGS. The executive commissioner by rule shall adopt procedures governing informal proceedings held in compliance with Section 2001.056, Government Code.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 10, eff. June 19, 2009.

Sec. 253.007. EMPLOYEE MISCONDUCT REGISTRY. (a) The department shall establish an employee misconduct registry. If the department in accordance with this chapter finds that an employee of a facility or of an individual employer has committed reportable conduct, the department shall make a record of the employee's name, the employee's address, the employee's social security number, the name of the facility or individual employer, the address of the facility or individual employer, the date the reportable conduct occurred, and a description of the reportable conduct.

(b) If an agency of another state or the federal government finds that an employee has committed an act that constitutes reportable conduct, the department may make a record in the employee misconduct registry of the employee's name, the employee's address, the employee's social security number, the name of the facility, the address of the facility, the date of the act, and a description of the act.

(c) The department shall make the registry available to the public.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 11, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 11, eff. June 19, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 7, eff. January 1, 2014.

Sec. 253.0075. RECORDING REPORTABLE CONDUCT REPORTED BY DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES. On receipt of a finding of an employee's reportable conduct by the Department of Family and Protective Services under Subchapter I, Chapter 48, Human Resources Code, the department shall record the information in the employee misconduct registry in accordance with Section 253.007.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 14, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 12, eff. June 19, 2009.

Sec. 253.008. VERIFICATION OF EMPLOYABILITY; ANNUAL SEARCH. (a) Before a facility or individual employer as defined in this chapter or an agency as defined in Section 48.401, Human Resources Code, may hire an employee, the individual employer or a financial management services agency on behalf of the individual employer, the facility, or agency shall search the employee misconduct registry under this chapter and the nurse aide registry maintained under Chapter 250 as required by the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to determine whether the applicant for employment is designated in either registry as having abused, neglected, or exploited an individual using the consumer-directed service option or a consumer.

(b) A facility, individual employer or financial management services agency on behalf of an individual employer, or agency may not employ a person who is listed in either registry as having abused, neglected, or exploited an individual using the consumer-directed service option or a consumer.

(c) In addition to the initial verification of employability, a facility, agency, individual employer, or financial management services agency on behalf of an individual employer shall:

(1) annually search the employee misconduct registry and the nurse aide registry maintained under Chapter 250 to determine whether any employee of the individual employer, facility, or applicable agency is designated in either registry as having abused, neglected, or exploited an individual using the consumer-directed service option or a consumer; and

(2) maintain in the facility's or individual employer's

books and records a copy of the results of the search conducted under Subdivision (1).

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 12, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.68, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 22, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 13, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 8, eff. January 1, 2014.

Sec. 253.009. NOTIFICATION. (a) Each facility or individual employer as defined in this chapter and each agency as defined in Section 48.401, Human Resources Code, shall notify its employees in a manner prescribed by the department:

(1) about the employee misconduct registry; and

(2) that an employee may not be employed if the employee is listed in the registry.

(b) The executive commissioner shall adopt rules to implement this section.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 13, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.69, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 23, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 14, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 9, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0808, eff. April 2, 2015.

Sec. 253.010. REMOVAL FROM REGISTRY. (a) The Health and Human Services Commission may remove a person from the employee misconduct

registry if, after receiving a written request from the person, the commission determines that the person does not meet the requirements for inclusion in the employee misconduct registry.

(b) The executive commissioner by rule may establish:

(1) criteria for a person to submit a request for removal under Subsection (a); and

(2) a process for the Health and Human Services Commission to determine whether the person meets the requirements for inclusion in the employee misconduct registry.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 14, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 2, eff. September 1, 2023.

CHAPTER 254. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 254.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of State Health Services.

(2) "Emergency care" has the meaning assigned by Sections 843.002 and 1301.155, Insurance Code.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Facility" means a freestanding emergency medical care facility.

(5) "Freestanding emergency medical care facility" means a facility, structurally separate and distinct from a hospital, that receives an individual and provides emergency care, as defined by Subdivision (2).

(6) "Provider network" has the meaning assigned by Section 1456.001, Insurance Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0809, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 185 (S.B. 425), Sec. 2, eff. September 1, 2015.

SUBCHAPTER B. LICENSING

Sec. 254.051. LICENSE REQUIRED. (a) Except as provided by Section 254.052, a person may not establish or operate a freestanding emergency medical care facility in this state without a license issued under this chapter.

(b) Except as provided by Section 254.052, a facility or person may not hold itself out to the public as a freestanding emergency medical care facility or use any similar term, as defined by department rule, that would give the impression that the facility or person is providing emergency care unless the facility or person holds a license issued under this chapter.

(c) Each separate facility location must have a separate license.

(d) A license issued under this chapter is not transferable or assignable.

(e) A license may be issued only for the establishment or operation of a facility that is in continuous operation 24 hours per day and 7 days per week.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(68), eff. April 2, 2015.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1040 (H.B. 3085), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0810, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(68), eff. April 2, 2015.

Sec. 254.052. EXEMPTIONS FROM LICENSING REQUIREMENT. The following facilities are not required to be licensed under this chapter:

(1) an office or clinic owned and operated by a manufacturing facility solely for the purposes of treating its employees and contractors;

(2) temporary emergency clinics in disaster areas;

(3) an office or clinic of a licensed physician, dentist, optometrist, or podiatrist;

(4) a licensed nursing home;

(5) a licensed hospital;

(6) a hospital that is owned and operated by this state;

(7) a facility located within or connected to a hospital described by Subsection (5) or (6);

(8) a facility that is owned or operated by a hospital described by Subsection (5) or (6) and is:

(A) surveyed as a service of the hospital by an organization that has been granted deeming authority as a national accreditation program for hospitals by the Centers for Medicare and Medicaid Services; or

(B) granted provider-based status by the Centers for Medicare and Medicaid Services; or

(9) a licensed ambulatory surgical center.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.053. LICENSE APPLICATION AND ISSUANCE. (a) An applicant for a license under this chapter must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the executive commissioner by rule.

(c) The application must contain evidence that there is at least one physician and one nurse on the staff of the facility who are licensed by the appropriate state licensing board.

(d) The application must contain evidence that the facility meets the minimum standards and requirements specified in Section 254.151.

(e) The department shall issue a license if, after inspection and investigation, it finds that the applicant and the facility meet the requirements of this chapter and the standards adopted under this chapter.

(f) The license fee must be paid on renewal of the license. The term of a license issued under this chapter is two years.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1,

eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1040 (H.B. 3085), Sec. 2, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0811, eff. April 2, 2015.

SUBCHAPTER C. EXECUTIVE COMMISSIONER AND DEPARTMENT POWERS AND DUTIES

Sec. 254.101. ADOPTION OF RULES. The executive commissioner shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate a facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.102. FEES. The executive commissioner by rule shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0812, eff. April 2, 2015.

Sec. 254.103. INSPECTIONS. The department may inspect a facility at reasonable times as necessary to ensure compliance with this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.104. FREESTANDING EMERGENCY MEDICAL CARE FACILITY LICENSING FUND. All fees and administrative penalties collected under this chapter shall be deposited in the state treasury to the

credit of the freestanding emergency medical care facility licensing fund and may be appropriated to the department only to administer and enforce this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 4, eff. September 1, 2019.

SUBCHAPTER D. REGULATION OF FACILITIES

Sec. 254.151. MINIMUM STANDARDS. (a) The executive commissioner shall adopt rules necessary to implement this chapter, including minimum standards for:

(1) the construction and design of the facility, including plumbing, heating, lighting, ventilation, and other design standards necessary to ensure the health and safety of patients;

(2) the number, qualifications, and organization of the professional staff and other personnel;

(3) the administration of the facility;

(4) the equipment essential to the health and welfare of the patients;

(5) the sanitary and hygienic conditions within the facility and its surroundings;

(6) the requirements for the contents, maintenance, and release of medical records;

(7) the minimal level of care and standards for denial of care;

(8) the provision of laboratory and radiological services;

(9) the distribution and administration of drugs and controlled substances;

(10) a quality assurance program for patient care;

(11) disclosure, if applicable, of the following:

(A) the name and social security number of the sole proprietor, if the facility is a sole proprietor;

(B) the name and social security number of each general partner who is an individual, if the facility is a partnership;

(C) the name and social security number of any individual who has an ownership interest of more than 25 percent in

the corporation, if the facility is a corporation; and

(D) the name and license numbers of any physicians licensed by the Texas Medical Board who have a financial interest in the facility or any entity which has an ownership interest in the facility;

(12) transfer protocols for patients requiring advanced medical care at a hospital; and

(13) any other aspect of the operation of a facility that the executive commissioner considers necessary to protect the facility's patients and the public.

(b) In adopting the rules required under Subsection (a) concerning transfer protocols, the executive commissioner must consult with physicians who provide emergency care, medical consultant organizations, and organizations representing hospitals licensed in this state.

(c) The minimum standards under this section shall apply to all facilities licensed under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0813, eff. April 2, 2015.

Sec. 254.153. FACILITY CARE REQUIREMENTS. (a) A facility shall provide to each facility patient, without regard to the individual's ability to pay, an appropriate medical screening, examination, and stabilization within the facility's capability, including ancillary services routinely available to the facility, to determine whether an emergency medical condition exists and any necessary stabilizing treatment.

(b) Before a facility accepts any patient for treatment or diagnosis, the facility shall enter into a referral, transmission, or admission agreement with a hospital licensed in this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.154. COMPLAINTS. A person may file a complaint with

the department against a facility licensed under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.155. NOTICE OF FEES. (a) A facility shall post notice that:

(1) states:

(A) the facility is a freestanding emergency medical care facility;

(B) the facility charges rates comparable to a hospital emergency room and may charge a facility fee;

(C) a facility or a physician providing medical care at the facility may be an out-of-network provider for the patient's health benefit plan provider network; and

(D) a physician providing medical care at the facility may bill separately from the facility for the medical care provided to a patient; and

(2) either:

(A) lists the health benefit plans in which the facility is an in-network provider in the health benefit plan's provider network; or

(B) states the facility is an out-of-network provider for all health benefit plans.

(b) The notice required by this section must be posted prominently and conspicuously:

(1) at the primary entrance to the facility;

(2) in each patient treatment room;

(3) at each location within the facility at which a person pays for health care services; and

(4) on the home page of the facility's Internet website or on a different page available through a hyperlink that is:

(A) entitled "Insurance Information"; and

(B) located prominently on the home page.

(c) The notice required by Subsections (b)(1), (2), and (3) must be in legible print on a sign with dimensions of at least 8.5 inches by 11 inches.

(d) Notwithstanding Subsection (b), a facility that is an in-network provider in one or more health benefit plan provider networks

complies with Subsection (a)(2) if the facility:

(1) provides notice on the facility's Internet website listing the health benefit plans in which the facility is an in-network provider in the health benefit plan's provider network; and

(2) provides to a patient written confirmation of whether the facility is an in-network provider in the patient's health benefit plan's provider network.

(e) A facility may not add to or alter the language of a notice required by this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 185 (S.B. 425), Sec. 3, eff. September 1, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 175 (H.B. 3276), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 5, eff. September 1, 2019.

Sec. 254.1555. CERTAIN FEES PROHIBITED. (a) A facility that provides a health care service, including testing or vaccination, to an individual accessing the service from the individual's vehicle may not charge the individual or a third-party payor a facility or observation fee.

(b) This section may not be construed as expanding the type of health care services a facility is authorized to provide under this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 2, eff. September 1, 2021.

Sec. 254.1556. DISCLOSURE OF CERTAIN PRICES AND FEES DURING DECLARED DISASTER; CONSTRUCTION. (a) A facility that provides testing or vaccination for an infectious disease for which a state of disaster has been declared under Chapter 418, Government Code, shall disclose the price the facility charges for the test or vaccine and any facility fees, supply costs, and other costs associated with the test or vaccine in accordance with the disclosure requirements described by Section 254.156, as added by Chapter 1093 (H.B. 2041), Acts of the 86th Legislature, Regular Session, 2019.

(b) This section may not be construed as expanding the type of health care services a facility is authorized to provide under this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 2, eff. September 1, 2021.

Sec. 254.156. DISCLOSURE STATEMENT REQUIRED. (a) In addition to the notice required under Section 254.155, a facility shall provide to a patient or a patient's legally authorized representative a written disclosure statement in accordance with this section that:

(1) lists the facility's observation and facility fees that may result from the patient's visit; and

(2) lists the health benefit plans in which the facility is a network provider in the health benefit plan's provider network or states that the facility is an out-of-network provider for all health benefit plans.

(b) A facility shall provide the disclosure statement in accordance with the standards prescribed by Section 254.153(a).

(c) The disclosure statement must be:

(1) printed in at least 16-point boldface type;

(2) in a contrasting color using a font that is easily readable; and

(3) in English and Spanish.

(d) The disclosure statement:

(1) must include:

(A) the name and contact information of the facility; and

(B) a place for the patient or the patient's legally authorized representative and an employee of the facility to sign and date the disclosure statement;

(2) may include information on the facility's procedures for seeking reimbursement from the patient's health benefit plan; and

(3) must, as applicable:

(A) state "This facility charges a facility fee for medical treatment" and include:

(i) the facility's median facility fee;

(ii) a range of possible facility fees; and

(iii) the facility fees for each level of care

provided at the facility; and

(B) state "This facility charges an observation fee for medical treatment" and include:

(i) the facility's median observation fee;

(ii) a range of possible observation fees; and

(iii) the observation fees for each level of care provided at the facility.

(e) A facility may include only the information described by Subsection (d) in the required disclosure statement and may not include any additional information in the statement. The facility annually shall update the statement.

(f) A facility shall provide each patient with a physical copy of the disclosure statement even if the patient refuses or is unable to sign the statement. If a patient refuses or is unable to sign the statement, as required by this section, the facility shall indicate in the patient's file that the patient failed to sign.

(g) A facility shall retain a copy of a signed disclosure statement provided under this section until the first anniversary of the date on which the disclosure was signed.

(h) A facility is not required to provide notice to a patient or a patient's legally authorized representative under this section if the facility determines before providing emergency health care services to the patient that the patient will not be billed for the services.

(i) A facility complies with the requirements of Subsections (a)(1) and (d)(3) if the facility posts on the facility's Internet website in a manner that is easily accessible and readable:

(1) the facility's standard charges, including the fees described by those subsections; and

(2) updates to the standard charges at least annually or more frequently as appropriate to reflect the facility's current charges.

(j) A facility's failure to obtain the signed disclosure statement required by this section from the patient or the patient's legally authorized representative may not be a determining factor in the adjudication of liability for health care services provided to the patient at the facility.

Added by Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 6, eff. September 1, 2019.

Sec. 254.157. CERTAIN ADVERTISING PROHIBITED. (a) A facility may not advertise or hold itself out as a network provider, including by stating that the facility "takes" or "accepts" any insurer, health maintenance organization, health benefit plan, or health benefit plan network, unless the facility is a network provider of a health benefit plan issuer.

(b) A facility may not post the name or logo of a health benefit plan issuer in any signage or marketing materials if the facility is an out-of-network provider for all of the issuer's health benefit plans.

(c) A violation of this section is a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17, Business & Commerce Code, and is actionable under that subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 6, eff. September 1, 2019.

Sec. 254.158. REMOVAL OF SIGNS. A facility that closes or for which a license issued under this chapter expires or is suspended or revoked shall immediately remove or cause to be removed any signs within view of the general public indicating that the facility is in operation.

Added by Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 6, eff. September 1, 2019.

Sec. 254.160. PROHIBITED PRICING PRACTICES DURING DECLARED STATE OF DISASTER. (a) In this section, "unconscionable price" means a price that is more than 200 percent of the average price for the same or a substantially similar product or service provided to other individuals by health care facilities located in the same county or nearest county to the county in which the freestanding emergency medical care facility is located, as applicable, according to data collected by the department under Chapter 108.

(b) During a state of disaster declared by the governor under Chapter 418, Government Code, a facility may not:

(1) charge an individual an unconscionable price for a

product or service provided at the facility; or

(2) knowingly or intentionally charge a third-party payor, including a health benefit plan insurer, a price higher than the price charged to an individual for the same product or service based on the payor's liability for payment or partial payment of the product or service.

(c) Subsection (b)(2) does not prohibit a facility from:

(1) offering an uninsured individual a cash discount for a particular product or service; or

(2) accepting directly from an individual full payment for a health care product or service in lieu of submitting a claim to the individual's health benefit plan.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 3, eff. September 1, 2021.

Sec. 254.161. HUMAN TRAFFICKING SIGNS REQUIRED. (a) A freestanding emergency medical care facility shall display a sign, at least 11 inches by 17 inches in size, written in at least a 16-point font and in the form prescribed by the attorney general, that includes:

(1) the following statements:

(A) "All health care practitioners and first responders are required to receive human trafficking prevention training."; and

(B) "A freestanding emergency medical care facility employee may not be disciplined, retaliated against, or otherwise discriminated against for reporting in good faith a suspected act of human trafficking.";

(2) information on recognizing and reporting human trafficking and a list of human trafficking indicators;

(3) a phone number the attorney general designates for reporting a suspected act of human trafficking; and

(4) contact information for reporting suspicious activity to the Department of Public Safety.

(b) The sign described by Subsection (a) must be posted:

(1) in a location easily visible to all facility employees; and

(2) separately in English, Spanish, and any other primary language spoken by 10 percent or more of the facility's employees.

Added by Acts 2025, 89th Leg., R.S., Ch. 375 (H.B. 742), Sec. 4, eff. September 1, 2025.

Sec. 254.162. DISCRIMINATION AND RETALIATION PROHIBITED. A freestanding emergency medical care facility may not discipline, retaliate against, or otherwise discriminate against a facility employee who in good faith reports a suspected act of human trafficking to the facility, a law enforcement agency, the National Human Trafficking Resource Center, the attorney general, or any other appropriate authority.

Added by Acts 2025, 89th Leg., R.S., Ch. 375 (H.B. 742), Sec. 4, eff. September 1, 2025.

SUBCHAPTER E. ENFORCEMENT AND PENALTIES

Sec. 254.201. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license for a violation of this chapter or a rule adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) If the department finds that a facility is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not endanger public health and safety, the department may schedule the facility for probation rather than suspending or revoking the facility's license. The department shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the facility remains under probation. During the probation period, the facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of a facility that does not correct items that were in noncompliance or that does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. March 1, 2010.

Sec. 254.202. EMERGENCY SUSPENSION. (a) The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety.

(b) An emergency suspension under this section is effective immediately without a hearing on notice to the license holder.

(c) On written request of the license holder to the department for a hearing, the department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received by the department to determine if the emergency suspension is to be continued, modified, or rescinded.

(d) A hearing and any appeal under this section are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. March 1, 2010.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0814, eff. April 2, 2015.

Sec. 254.203. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter or of Section 254.158 if the department finds that the violation creates an immediate threat to the health and safety of the patients of a facility or of the public.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter or is violating Section 254.158, may by injunction:

(1) prohibit a person from continuing the violation;

(2) restrain or prevent the establishment or operation of a facility without a license issued under this chapter; or

(3) grant any other injunctive relief warranted by the facts.

(c) The attorney general shall institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the facility is located or in Travis County.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. March 1, 2010.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1062 (H.B. 1112), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 7, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.004(b), eff. September 1, 2021.

Sec. 254.204. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 254.051.

(b) An offense under this section is a Class C misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2010.

Sec. 254.205. IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. A penalty collected under this section or Section 254.206 shall be deposited in the state treasury to the credit of the freestanding emergency medical care facility licensing fund described by Section 254.104.

(b) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

(c) The penalty may not exceed $1,000 for each violation. Each day of a continuing violation may be considered a separate violation

for purposes of imposing a penalty.

(d) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

(e) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(f) The notice under Subsection (e) must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(g) Within 20 days after the date the person receives the notice under Subsection (e), the person in writing may:

(1) accept the determination and recommended penalty of the department; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(h) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the department by order shall impose the recommended penalty.

(i) If the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date. The department shall give written notice of the time and place of the hearing to the person. An administrative law judge of that office shall conduct the hearing.

(j) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for decision about the occurrence of the violation and the amount of a proposed penalty.

(k) Based on the findings of fact, conclusions of law, and proposal for decision, the department by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(l) The notice of the order under Subsection (k) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. March 1, 2010.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0815, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 8, eff. September 1, 2019.

Sec. 254.206. PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an order of the department under Section 254.205(k) that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the department's order contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department by certified mail.

(c) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(d) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected. The attorney general may sue to collect the penalty.

(e) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(f) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(g) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final. The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(h) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. March 1, 2010.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0816, eff. April 2, 2015.

Sec. 254.207. ENFORCEMENT. Notwithstanding any conflicting provision in this subchapter and except for good cause shown, the Health and Human Services Commission shall impose the following on a person licensed under this chapter who violates Section 254.160 or a rule adopted under that section:

(1) for the first violation, an administrative penalty in an amount equal to $10,000;

(2) for the second violation:

(A) an administrative penalty in an amount equal to $50,000; and

(B) a suspension of the person's license for 30 days; and

(3) for the third violation, a permanent revocation of the person's license.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 4, eff. September 1, 2021.

CHAPTER 255. QUALITY ASSURANCE EARLY WARNING SYSTEM FOR LONG-TERM CARE FACILITIES; RAPID RESPONSE TEAMS

Sec. 255.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Aging and Disability Services.

(2) "Long-term care facility" means a nursing institution, an assisted living facility, or an ICF-IID licensed under Chapter 242, 247, or 252, or certified under Chapter 32, Human Resources Code.

(3) "Quality-of-care monitor" means a registered nurse, pharmacist, or nutritionist who:

(A) is employed by the department;

(B) is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of patient care; and

(C) functions independently of other divisions of the department.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 7.03, eff. June 15, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 837 (S.B. 874), Sec. 1, eff. September

1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0817, eff. April 2, 2015.

Sec. 255.002. EARLY WARNING SYSTEM. The department shall establish an early warning system to detect conditions that could be detrimental to the health, safety, and welfare of residents. The early warning system shall include analysis of financial and quality-of-care indicators that would predict the need for the department to take action.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 7.03, eff. June 15, 2001.

Sec. 255.003. QUALITY-OF-CARE MONITORS. (a) The department shall establish regional offices with one or more quality-of-care monitors, based on the number of long-term care facilities in the region, to monitor the facilities in the region on a regular, aperiodic basis, including nights, evenings, weekends, and holidays. A monitoring visit conducted under this chapter may be announced or unannounced.

(b) Monitoring visits shall be given to long-term care facilities:

(1) with a history of patient care deficiencies; or

(2) that are identified as medium risk through the department's early warning system.

(b-1) A long-term care facility may request a monitoring visit under this section.

(c) Quality-of-care monitors may not be deployed by the department as a part of the regional survey team in the conduct of routine, scheduled surveys.

(d) A quality-of-care monitor may not interfere with, impede, or otherwise adversely affect the performance of the duties of a surveyor, inspector, or investigator of the department.

(e) Quality-of-care monitors shall assess:

(1) the overall quality of life in the long-term care facility; and

(2) specific conditions in the facility directly related to

patient care, including conditions identified through the long-term care facility's quality measure reports based on Minimum Data Set Resident Assessments.

(f) The quality-of-care monitor shall include in a monitoring visit:

(1) observation of the care and services rendered to residents; and

(2) formal and informal interviews with residents, family members, facility staff, resident guests, volunteers, other regulatory staff, and representatives of a human rights advocacy committee.

(g) The identity of a resident or a family member of a resident interviewed by a quality-of-care monitor as provided by Subsection (f)(2) shall remain confidential and may not be disclosed to any person under any other provision of this section.

(h) The findings of a monitoring visit, both positive and negative, shall be provided orally and in writing to the long-term care facility administrator or, in the absence of the facility administrator, to the administrator on duty or the director of nursing.

(i) The quality-of-care monitor may recommend to the long-term care facility administrator procedural and policy changes and staff training to improve the care or quality of life of facility residents.

(i-1) The department shall schedule a follow-up visit not later than the 45th day after the date of an initial monitoring visit conducted under this section.

(j) Conditions observed by the quality-of-care monitor that create an immediate threat to the health or safety of a resident shall be reported immediately to the long-term care facility administrator, to the regional office supervisor for appropriate action, and, as appropriate or as required by law, to law enforcement, adult protective services, other divisions of the department, or other responsible agencies.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 7.03, eff. June 15, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 837 (S.B. 874), Sec. 2, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1142 (S.B. 304), Sec. 3, eff. June 19, 2015.

Sec. 255.004. RAPID RESPONSE TEAMS. (a) In this section:

(1) "Abuse" has the meaning assigned by Section 260A.001.

(2) "Immediate threat to health and safety" means a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(3) "Neglect" has the meaning assigned by Section 260A.001.

(a-1) The department shall create rapid response teams composed of health care experts that can visit a long-term care facility that:

(1) is identified as high risk through the department's early warning system; or

(2) if the long-term care facility is a nursing institution, has committed three violations described by Section 242.061(a-1), within a 24-month period, that constitute an immediate threat to health and safety related to the abuse or neglect of a resident.

(a-2) A long-term care facility shall cooperate with a rapid response team deployed under this section to improve the quality of care provided at the facility.

(b) Rapid response teams may visit long-term care facilities that request the department's assistance. A visit under this subsection may not occur before the 60th day after the date of an exit interview following an annual or follow-up survey or inspection.

(c) The rapid response teams may not be deployed for the purpose of helping a long-term care facility prepare for a regular inspection or survey conducted under Chapter 242, 247, or 252 or in accordance with Chapter 32, Human Resources Code.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 7.03, eff. June 15, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1142 (S.B. 304), Sec. 4, eff. June 19, 2015.

Sec. 255.005. REPORT. (a) The Health and Human Services Commission shall assess and evaluate the effectiveness of the quality assurance early warning system and shall report its findings annually to the governor, the lieutenant governor, and the speaker of the house of representatives.

(b) The Health and Human Services Commission shall submit the report required under this section with the report required under Section 543A.0008, Government Code.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 7.03, eff. June 15, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 738 (H.B. 3265), Sec. 3, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 9.001, eff. September 1, 2025.

CHAPTER 256. SAFE PATIENT HANDLING, MOVEMENT, AND DISCHARGE PRACTICES

Sec. 256.001. DEFINITIONS. In this chapter:

(1) "Hospital" means a general or special hospital, as defined by Section 241.003, a private mental hospital licensed under Chapter 577, or another hospital that is maintained or operated by the state.

(2) "Nursing home" means an institution licensed under Chapter 242.

Added by Acts 2005, 79th Leg., Ch. 401 (S.B. 1525), Sec. 1, eff. January 1, 2006.

Sec. 256.002. REQUIRED SAFE PATIENT HANDLING AND MOVEMENT POLICY. (a) The governing body of a hospital or the quality assurance committee of a nursing home shall adopt and ensure implementation of a policy to identify, assess, and develop strategies to control risk of injury to patients and nurses associated with the lifting, transferring, repositioning, or movement of a patient.

(b) The policy shall establish a process that, at a minimum, includes:

(1) analysis of the risk of injury to both patients and nurses posed by the patient handling needs of the patient populations served by the hospital or nursing home and the physical environment in which patient handling and movement occurs;

(2) education of nurses in the identification, assessment, and control of risks of injury to patients and nurses during patient handling;

(3) evaluation of alternative ways to reduce risks associated with patient handling, including evaluation of equipment and the environment;

(4) restriction, to the extent feasible with existing equipment and aids, of manual patient handling or movement of all or most of a patient's weight to emergency, life-threatening, or otherwise exceptional circumstances;

(5) collaboration with and annual report to the nurse staffing committee;

(6) procedures for nurses to refuse to perform or be involved in patient handling or movement that the nurse believes in good faith will expose a patient or a nurse to an unacceptable risk of injury;

(7) submission of an annual report to the governing body or the quality assurance committee on activities related to the identification, assessment, and development of strategies to control risk of injury to patients and nurses associated with the lifting, transferring, repositioning, or movement of a patient; and

(8) in developing architectural plans for constructing or remodeling a hospital or nursing home or a unit of a hospital or nursing home in which patient handling and movement occurs, consideration of the feasibility of incorporating patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date.

Added by Acts 2005, 79th Leg., Ch. 401 (S.B. 1525), Sec. 1, eff. January 1, 2006.

Sec. 256.003. PROHIBITED DISCHARGE OF PATIENTS TO CERTAIN GROUP-CENTERED FACILITIES. (a) Subject to Subsection (b), a hospital or other health facility may discharge or otherwise release a patient to the care of a group home, boarding home facility, or

similar group-centered facility only if the person who operates the group-centered facility holds a license or permit issued in accordance with applicable state law.

(b) A hospital or other health facility may discharge or otherwise release a patient to the care of a group home, boarding home facility, or similar group-centered facility operated by a person who does not hold a license or permit issued in accordance with applicable state law only if:

(1) no group-centered facility is operated in the county in which the patient is discharged by a person who holds the applicable license or permit; or

(2) the patient voluntarily elects to reside in the group-centered facility of the unlicensed or unpermitted person.

(c) A hospital or other health facility is not liable for damages to a patient resulting from the patient's discharge or release to a group home, boarding home facility, or similar group-centered facility under Subsection (b).

(d) A local health authority may not issue an order authorizing a hospital or health facility to discharge or release a patient to a group-centered facility in a manner that conflicts with this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 1045 (S.B. 186), Sec. 2, eff. September 1, 2023.

CHAPTER 257. NURSE STAFFING

Sec. 257.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(1-a) "Committee" means a nurse staffing committee required by this chapter.

(2) "Department" means the Department of State Health Services.

(3) "Hospital" means:

(A) a general hospital or special hospital, as those terms are defined by Section 241.003, including a hospital maintained or operated by this state; or

(B) a mental hospital licensed under Chapter 577.

(4) "Patient care unit" means a unit or area of a hospital in which registered nurses provide patient care.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 398 (H.B. 2187), Sec. 1, eff. September 1, 2025.

Sec. 257.002. LEGISLATIVE FINDINGS. (a) The legislature finds that:

(1) research supports a conclusion that adequate nurse staffing is directly related to positive patient outcomes and nurse satisfaction with the practice environment;

(2) nurse satisfaction with the practice environment is in large measure determined by providing an adequate level of nurse staffing based on research findings and patient intensity;

(3) nurse satisfaction and patient safety can be adversely affected when nurses work excessive hours; and

(4) hospitals and nurses share a mutual interest in patient safety initiatives that create a healthy environment for nurses and appropriate care for patients.

(b) In order to protect patients, support greater retention of registered nurses, and promote adequate nurse staffing, the legislature intends to establish a mechanism whereby nurses and hospital management shall participate in a joint process regarding decisions about nurse staffing.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 257.003. NURSE STAFFING POLICY AND PLAN. (a) The governing body of a hospital shall adopt, implement, and enforce a written nurse staffing policy to ensure that an adequate number and skill mix of nurses are available to meet the level of patient care needed. The policy must include a process for:

(1) requiring the hospital to give significant consideration to the nurse staffing plan recommended by the hospital's nurse staffing committee and to that committee's evaluation of any existing plan;

(2) adopting, implementing, and enforcing an official nurse

services staffing plan that is based on the needs of each patient care unit and shift and on evidence relating to patient care needs;

(3) using the official nurse services staffing plan as a component in setting the nurse staffing budget;

(4) encouraging nurses to provide input to the committee relating to nurse staffing concerns;

(5) protecting from retaliation nurses who provide input to the committee; and

(6) ensuring compliance with rules adopted by the executive commissioner of the Health and Human Services Commission relating to nurse staffing.

(b) The official nurse services staffing plan adopted under Subsection (a) must:

(1) reflect current standards established by private accreditation organizations, governmental entities, national nursing professional associations, and other health professional organizations;

(2) set minimum staffing levels for patient care units that are:

(A) based on multiple nurse and patient considerations; and

(B) determined by the nursing assessment and in accordance with evidence-based safe nursing standards;

(3) include a method for adjusting the staffing plan for each patient care unit to provide staffing flexibility to meet patient needs; and

(4) include a contingency plan when patient care needs unexpectedly exceed direct patient care staff resources.

(c) The hospital shall:

(1) use the official nurse services staffing plan:

(A) as a component in setting the nurse staffing budget; and

(B) to guide the hospital in assigning nurses hospital-wide; and

(2) make readily available to nurses on each patient care unit at the beginning of each shift the official nurse services staffing plan levels and current staffing levels for that unit and that shift.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff.

September 1, 2009.

Sec. 257.004. NURSE STAFFING COMMITTEE. (a) A hospital shall establish a nurse staffing committee as a standing committee of the hospital.

(b) The committee shall be composed of members who are representative of the types of nursing services provided in the hospital.

(c) The chief nursing officer of the hospital is a voting member of the committee.

(d) At least 60 percent of the members of the committee must be registered nurses who:

(1) provide direct patient care during at least 50 percent of their work time; and

(2) are selected by their peers who provide direct patient care during at least 50 percent of their work time.

(e) The committee shall meet at least quarterly.

(f) Participation on the committee by a hospital employee as a committee member is part of the employee's work time, and the hospital shall compensate that member for that time accordingly. The hospital shall relieve a committee member of other work duties during committee meetings.

(g) The committee shall:

(1) develop and recommend to the hospital's governing body a nurse staffing plan that meets the requirements of Section 257.003;

(2) review, assess, and respond to staffing concerns expressed to the committee;

(3) identify the nurse-sensitive outcome measures the committee will use to evaluate the effectiveness of the official nurse services staffing plan;

(4) evaluate, at least semiannually, the effectiveness of the official nurse services staffing plan and variations between the plan and the actual staffing; and

(5) submit to the hospital's governing body, at least semiannually, a report on nurse staffing and patient care outcomes, including the committee's evaluation of the effectiveness of the official nurse services staffing plan and aggregate variations between the staffing plan and actual staffing.

(h) In evaluating the effectiveness of the official nurse

services staffing plan, the committee shall consider patient needs, nursing-sensitive quality indicators, nurse satisfaction measures collected by the hospital, and evidence-based nurse staffing standards.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 257.005. REPORTING OF STAFFING INFORMATION TO DEPARTMENT. (a) A hospital shall annually report to the department on:

(1) whether the hospital's governing body has adopted a nurse staffing policy as required by Section 257.003;

(2) whether the hospital has established a nurse staffing committee as required by Section 257.004 that meets the membership requirements of that section;

(3) whether the nurse staffing committee has evaluated the hospital's official nurse services staffing plan as required by Section 257.004 and has reported the results of the evaluation to the hospital's governing body as provided by that section; and

(4) the nurse-sensitive outcome measures the committee adopted for use in evaluating the hospital's official nurse services staffing plan.

(a-1) The chief nursing officer of each hospital shall attest to the accuracy of information reported under Subsection (a).

(b) Information reported under Subsection (a) is public information.

(c) To the extent possible, the department shall collect the data required under Subsection (a) as part of a survey required by the department under other law.

(d) The department shall provide the information reported under Subsection (a) to the commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 398 (H.B. 2187), Sec. 2, eff. September 1, 2025.

Sec. 257.006. PROHIBITED RETALIATION. A hospital may not

retaliate against a nurse who provides information to the committee or reports violations of this chapter to hospital management or the commission.

Added by Acts 2025, 89th Leg., R.S., Ch. 398 (H.B. 2187), Sec. 3, eff. September 1, 2025.

Sec. 257.007. ENFORCEMENT; COMPLAINT RESOLUTION. (a) The commission shall enforce this chapter in accordance with:

(1) Subchapter C, Chapter 241, against a hospital licensed under that chapter as if the hospital violated that chapter;

(2) Chapter 577 and rules adopted under Sections 577.010 and 577.013, against a hospital licensed under Chapter 577 as if the hospital violated that chapter; and

(3) rules adopted under Section 241.026(a).

(b) The commission shall establish a process to provide prompt review and timely resolution of each complaint submitted under this chapter. The commission must:

(1) develop a procedure, or designate an existing procedure, through which a party may submit a written or verbal complaint;

(2) establish a time to review and respond to the complaint; and

(3) provide the complainant written notice of the commission's decision regarding the complaint, including:

(A) the contact information of the commission employee responsible for the complaint;

(B) commission actions in reviewing, evaluating, or investigating the complaint;

(C) the results of the commission's review of the complaint;

(D) for each reviewed complaint for which an investigation is not conducted, an explanation of the reason the commission resolved the complaint without investigation; and

(E) the date the complaint is resolved.

(c) All information and materials in the possession of or obtained or compiled by the commission in connection with a complaint and investigation are confidential and not subject to disclosure in accordance with:

(1) Section 241.051(d) for a complaint submitted against a hospital licensed under Chapter 241; or

(2) Section 577.013(e) for a complaint submitted against a hospital licensed under Chapter 577.

Added by Acts 2025, 89th Leg., R.S., Ch. 398 (H.B. 2187), Sec. 3, eff. September 1, 2025.

CHAPTER 258. MANDATORY OVERTIME FOR NURSES PROHIBITED

Sec. 258.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(1-a) "Hospital" means:

(A) a general hospital or special hospital, as those terms are defined by Section 241.003, including a hospital maintained or operated by this state; or

(B) a mental hospital licensed under Chapter 577.

(2) "Nurse" means a registered nurse or vocational nurse licensed under Chapter 301, Occupations Code.

(3) "On-call time" means time spent by a nurse who is not working but who is compensated for availability.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 398 (H.B. 2187), Sec. 4, eff. September 1, 2025.

Sec. 258.002. MANDATORY OVERTIME. For purposes of this chapter, "mandatory overtime" means a requirement that a nurse work hours or days that are in addition to the hours or days scheduled, regardless of the length of a scheduled shift or the number of scheduled shifts each week. In determining whether work is mandatory overtime, prescheduled on-call time or time immediately before or after a scheduled shift necessary to document or communicate patient status to ensure patient safety is not included.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 258.003. PROHIBITION OF MANDATORY OVERTIME. (a) A hospital may not require a nurse to work mandatory overtime, and a nurse may refuse to work mandatory overtime.

(b) This section does not prohibit a nurse from volunteering to work overtime.

(c) A hospital may not use on-call time as a substitute for mandatory overtime.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 258.004. EXCEPTIONS. (a) Section 258.003 does not apply if:

(1) a health care disaster, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affects the county in which the nurse is employed or affects a contiguous county;

(2) a federal, state, or county declaration of emergency is in effect in the county in which the nurse is employed or is in effect in a contiguous county;

(3) there is an emergency or unforeseen event of a kind that:

(A) does not regularly occur;

(B) increases the need for health care personnel at the hospital to provide safe patient care; and

(C) could not prudently be anticipated by the hospital; or

(4) the nurse is actively engaged in an ongoing medical or surgical procedure and the continued presence of the nurse through the completion of the procedure is necessary to ensure the health and safety of the patient.

(b) If a hospital determines that an exception exists under Subsection (a)(3), the hospital shall, to the extent possible, make a good faith effort to meet the staffing need through voluntary overtime, including calling per diems and agency nurses, assigning floats, or requesting an additional day of work from off-duty employees.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 258.005. RETALIATION PROHIBITED. A hospital may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to work mandatory overtime or reports violations of this chapter to hospital management or the commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 398 (H.B. 2187), Sec. 5, eff. September 1, 2025.

Sec. 258.006. ENFORCEMENT; COMPLAINT RESOLUTION. (a) The commission shall enforce this chapter in accordance with:

(1) Subchapter C, Chapter 241, against a hospital licensed under that chapter as if the hospital violated that chapter;

(2) Chapter 577 and rules adopted under Sections 577.010 and 577.013, against a hospital licensed under Chapter 577 as if the hospital violated that chapter; and

(3) rules adopted under Section 241.026(a).

(b) The commission shall establish a process to provide prompt review and timely resolution of each complaint submitted under this chapter. The commission must:

(1) develop a procedure, or designate an existing procedure, through which a party may submit a written or verbal complaint;

(2) establish a time to review and respond to the complaint; and

(3) provide the complainant written notice of the commission's decision regarding the complaint, including:

(A) the contact information of the commission employee responsible for the complaint;

(B) commission actions in reviewing, evaluating, or investigating the complaint;

(C) the results of the commission's review of the complaint;

(D) for each reviewed complaint for which an investigation is not conducted, an explanation of the reason the commission resolved the complaint without investigation; and

(E) the date the complaint is resolved.

(c) All information and materials in the possession of or obtained or compiled by the commission in connection with a complaint and investigation are confidential and not subject to disclosure in accordance with:

(1) Section 241.051(d) for a complaint submitted against a hospital licensed under Chapter 241; or

(2) Section 577.013(e) for a complaint submitted against a hospital licensed under Chapter 577.

Added by Acts 2025, 89th Leg., R.S., Ch. 398 (H.B. 2187), Sec. 6, eff. September 1, 2025.

CHAPTER 259. SURGICAL TECHNOLOGISTS AT HEALTH CARE FACILITIES

Sec. 259.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of State Health Services.

(2) "Surgical technologist" means a person who practices surgical technology.

(3) "Surgical technology" means intraoperative surgical patient care as follows:

(A) preparing the operating room for surgical procedures by ensuring that surgical equipment is functioning properly and safely;

(B) preparing the operating room and the sterile field for surgical procedures by preparing sterile supplies, instruments, and equipment using sterile technique;

(C) anticipating the needs of the surgical team based on knowledge of human anatomy and pathophysiology and how they relate to the surgical patient and the patient's surgical procedure;

(D) as directed in an operating room setting, performing the following tasks at the sterile field:

(i) passing supplies, equipment, or instruments;

(ii) sponging or suctioning an operative site;

(iii) preparing and cutting suture material;

(iv) transferring and pouring irrigation fluids;
(v) transferring but not administering drugs within the sterile field;
(vi) handling specimens;
(vii) holding retractors and other instruments;
(viii) applying electrocautery to clamps on bleeders;
(ix) connecting drains to suction apparatus;
(x) applying dressings to closed wounds; and
(xi) assisting in counting sponges, needles, supplies, and instruments with the registered nurse circulator;
(E) cleaning and preparing instruments for sterilization on completion of the surgery; and
(F) assisting the surgical team with cleaning of the operating room on completion of the surgery.

Added by Acts 2009, 81st Leg., R.S., Ch. 321 (H.B. 643), Sec. 1, eff. September 1, 2009.

Sec. 259.002. REQUIREMENTS FOR PRACTICING SURGICAL TECHNOLOGY; CONTINUING EDUCATION. (a) A health care facility licensed by the department under this subtitle or owned or operated by the state may not employ a person to practice surgical technology in that health care facility unless that person provides evidence that the person:
(1) has successfully completed an accredited educational program for surgical technologists and holds and maintains certification as a surgical technologist by:
(A) the National Board of Surgical Technology and Surgical Assisting or its successor;
(B) the National Center for Competency Testing or its successor; or
(C) another surgical technologist certification program approved by the department;
(2) has completed an appropriate training program for surgical technology in the army, navy, air force, marine corps, or coast guard of the United States or in the United States Public Health Service;
(3) was employed to practice surgical technology in a health care facility before September 1, 2009; or

(4) is in the service of the federal government, to the extent the person is performing duties related to that service.

(b) Notwithstanding Subsection (a), a health care facility may employ a person to practice surgical technology at that health care facility from the date the person graduates from an accredited educational program for surgical technologists until the 180th day after the date of graduation. The person may not continue to practice surgical technology after the 180th day after the date of graduation without showing documentation to the health care facility that the person holds and maintains the surgical technologist certification required by Subsection (a)(1).

(c) Notwithstanding Subsection (a), a health care facility may employ a surgical technologist who does not meet the requirements of this section if:

(1) after a diligent and thorough effort has been made, the health care facility is unable to employ a sufficient number of qualified surgical technologists who meet the requirements of this section; and

(2) the health care facility makes a written record of its efforts under Subdivision (1) and retains the record at the health care facility.

(d) A person employed by a health care facility to practice surgical technology under Subsection (a)(1) shall complete the number of hours of continuing education required to maintain certification by the organization that issued the surgical technologist certification to the person. On the facility's request, the person shall submit to the facility evidence of completion of the continuing education.

(e) A person employed by a health care facility to practice surgical technology under Subsection (a)(2) or (3) or Subsection (c) shall complete every two years 30 hours of continuing education related to surgical technology. On the facility's request, the person shall submit to the facility evidence of completion of the continuing education.

(f) A health care facility may restrict the ability of a person employed by the facility to practice surgical technology in the facility if the person fails to complete the continuing education required by Subsection (d) or (e).

Added by Acts 2009, 81st Leg., R.S., Ch. 321 (H.B. 643), Sec. 1, eff.

September 1, 2009.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 435 (S.B. 1239), Sec. 1, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 435 (S.B. 1239), Sec. 2, eff. September 1, 2019.

Sec. 259.003. SUPERVISION OF SURGICAL TECHNOLOGISTS. This chapter does not repeal or modify any law relating to the supervision of surgical technologists.

Added by Acts 2009, 81st Leg., R.S., Ch. 321 (H.B. 643), Sec. 1, eff. September 1, 2009.

Sec. 259.004. OTHER LICENSED PRACTITIONERS. This chapter does not prohibit a licensed practitioner from performing a task or function within the scope of the practitioner's license.

Added by Acts 2009, 81st Leg., R.S., Ch. 321 (H.B. 643), Sec. 1, eff. September 1, 2009.

Sec. 259.005. APPLICABILITY. This chapter does not apply to:
(1) a licensed registered nurse or a licensed vocational nurse; or
(2) the employment by a health care facility of an individual whose primary functions include the cleaning or sterilization of supplies, instruments, equipment, or operating rooms.

Added by Acts 2009, 81st Leg., R.S., Ch. 321 (H.B. 643), Sec. 1, eff. September 1, 2009.

Sec. 259.006. ENFORCEMENT. (a) The executive commissioner of the Health and Human Services Commission may adopt rules to administer and enforce this chapter.
(b) A health care facility that violates Section 259.002 is subject to an administrative penalty, a civil penalty, or other

disciplinary action, as applicable, in the same manner as if the facility violated the chapter under which the facility is licensed.

Added by Acts 2009, 81st Leg., R.S., Ch. 321 (H.B. 643), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0818, eff. April 2, 2015.

CHAPTER 260. BOARDING HOME FACILITIES

Sec. 260.001. DEFINITIONS. In this chapter:

(1) "Assistance with self-administering medication" means assisting a resident by reminding the resident to take medication, opening and removing medications from a container, or reminding the resident when a prescription medication needs to be refilled.

(2) "Boarding home facility" means an establishment that:

(A) furnishes, in one or more buildings, lodging to three or more persons with disabilities or elderly persons who are unrelated to the owner of the establishment by blood or marriage; and

(B) provides community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication but does not provide personal care services as defined by Section 247.002 to those persons.

(3) "Commission" means the Health and Human Services Commission.

(4) "Elderly person" has the meaning assigned by Section 48.002, Human Resources Code.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "Person with a disability" means a disabled person as defined by Section 48.002, Human Resources Code.

(7) "Resident" means a person who is residing in a boarding home facility.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Sec. 260.002. EXEMPTIONS. This chapter does not apply to:

(1) a person that is required to be licensed under Chapter 142, 242, 246, 247, or 252;

(2) a person that is exempt from licensing under Section 142.003(a)(19) or (20), 242.003(3), or 247.004(4);

(3) a hotel as defined by Section 156.001, Tax Code;

(4) a retirement community;

(5) a monastery or convent;

(6) a child-care facility as defined by Section 42.002, Human Resources Code;

(7) a family violence shelter center as defined by Section 51.002, Human Resources Code; or

(8) a sorority or fraternity house or other dormitory associated with an institution of higher education.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 958 (S.B. 1808), Sec. 3, eff. September 1, 2021.

Sec. 260.003. MODEL STANDARDS. The executive commissioner shall develop and publish in the Texas Register model standards for the operation of a boarding home facility relating to:

(1) the construction or remodeling of a boarding home facility, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;

(2) sanitary and related conditions in a boarding home facility and its surroundings, including insect and rodent control, water supply, sewage disposal, food handling, and general hygiene to ensure the residents' health, safety, and comfort;

(3) the reporting and investigation of injuries, incidents, and unusual accidents and the establishment of other policies and procedures necessary to ensure resident health and safety;

(4) assistance with self-administering medication;

(5) requirements for in-service education of the facility's staff;

(6) criminal history record checks; and

(7) assessment and periodic monitoring to ensure that a resident:

(A) does not require the boarding home facility to provide personal care, nursing, or other services not listed in Section 260.001(2); and

(B) is capable of self-administering medication or is aware of what the resident's medications look like and knows when the medications should be taken but requires assistance with self-administering medication.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.
Redesignated and amended from Health and Safety Code, Section 254.003 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(6), eff. September 1, 2011.

Sec. 260.004. LOCAL REGULATION. A county or municipality may require a person to obtain a permit from the county or municipality to operate a boarding home facility within the county's or municipality's jurisdiction. A county or municipality may adopt the standards developed by the executive commissioner under Section 260.003 and require a boarding home facility that holds a permit issued by the county or municipality to comply with the adopted standards.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.
Redesignated and amended from Health and Safety Code, Section 254.004 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(7), eff. September 1, 2011.

Sec. 260.005. PERMIT PROCEDURES; FEES; FINES. (a) A county or municipality that requires a person to obtain a boarding home facility permit as authorized by Section 260.004 may establish procedures for the submission of a boarding home facility permit application and for the issuance, denial, renewal, suspension, and

revocation of the permit.

(b) A county or municipality that requires a person to obtain a boarding home facility permit as authorized under Section 260.004 may set reasonable fees for issuance of the permit, renewal of the permit, and inspections and may impose fines for noncompliance with the county or municipal boarding home facility regulations. The fees collected and fines imposed by the county or municipality must be used to administer the county or municipal permitting program or for other purposes directly related to providing boarding home facility or other assisted living services to elderly persons and persons with disabilities.

(c) A person required to obtain a boarding home facility permit from a county or municipality as authorized under Section 260.004 shall pay any fees required or fines imposed by the county or municipality.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.
Redesignated and amended from Health and Safety Code, Section 254.005 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(8), eff. September 1, 2011.

Sec. 260.0051. CRIMINAL PENALTY. (a) This section applies only to a county or municipality that requires a person to obtain a permit to operate a boarding home facility as authorized by Section 260.004.

(b) A person commits an offense if the person operates a boarding home facility without a permit in a county or municipality to which this section applies.

(c) An offense under this section is a Class B misdemeanor.

Added by Acts 2021, 87th Leg., R.S., Ch. 517 (S.B. 500), Sec. 1, eff. September 1, 2021.

Sec. 260.006. POSTING. A boarding home facility that holds a permit issued by a county or municipality shall prominently and conspicuously post for display in a public area of the boarding home facility that is readily available to residents, the operator,

employees, and visitors:

(1) the permit issued by a county or municipality;

(2) a sign prescribed by the county or municipality that issued the permit that specifies how complaints may be registered with the county or municipality;

(3) a notice in a form prescribed by the county or municipality that issued the permit stating that inspection and related reports are available at the boarding home facility for public inspection and providing a telephone number that may be used to obtain information concerning the boarding home facility;

(4) a concise summary of the most recent inspection report relating to the boarding home facility; and

(5) a notice in a form prescribed by the county or municipality that issued the permit that lists the name, location, and contact information for:

(A) the closest local public health services agency in the proximity of the boarding home facility; and

(B) a local organization or entity that represents, advocates, or serves elderly persons or persons with disabilities, including any related toll-free contact information for reporting emergencies to the organization or entity.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Sec. 260.007. INSPECTIONS. (a) A county or municipality may conduct any inspection, survey, or investigation that it considers necessary and may enter the premises of a boarding home facility at reasonable times to make an inspection, survey, or investigation.

(b) A county or municipality is entitled to access to books, records, and other documents maintained by or on behalf of a boarding home facility to the extent necessary to enforce the standards adopted by the county or municipality.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Sec. 260.008. INTERLOCAL COOPERATION. Two or more counties or municipalities may cooperate and contract with each other for the purpose of inspecting and permitting boarding home facilities.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Sec. 260.009. REPORTING AND INVESTIGATION OF ABUSE, NEGLECT, OR EXPLOITATION. (a) A person, including an owner, operator, or employee of a boarding home facility that holds a permit issued by a county or municipality, who has cause to believe that a resident who is an elderly person or a person with a disability is being or has been abused, neglected, or exploited shall report the abuse, neglect, or exploitation to the Department of Family and Protective Services for investigation by that agency. The Department of Family and Protective Services shall investigate the allegation of abuse, neglect, or exploitation as authorized and in the manner provided by Chapter 48, Human Resources Code.

(b) Each boarding home facility that holds a permit issued by a county or municipality shall require each employee of the boarding home facility, as a condition of employment with the boarding home facility, to sign a statement that the employee acknowledges that the employee may be criminally liable under Section 48.052, Human Resources Code, for failure to report abuse, neglect, or exploitation.

(c) An owner, operator, or employee of a boarding home facility that holds a permit issued by a county or municipality may not retaliate against an employee of the facility who in good faith makes a complaint to the office of the inspector general of the Health and Human Services Commission, cooperates with the office of the inspector general in an investigation, or reports abuse, neglect, or exploitation of a resident to the Department of Family and Protective Services.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Sec. 260.0091. REQUIRED REPORT BY LESSOR OF ABUSE, NEGLECT, OR EXPLOITATION; CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) owns a building that the person leases to another person who operates a boarding home facility in the building;

(2) has actual knowledge that a resident of the boarding home facility is being or has been abused, neglected, or exploited; and

(3) fails to report the abuse, neglect, or exploitation to the Department of Family and Protective Services for investigation by that agency.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2023, 88th Leg., R.S., Ch. 1046 (S.B. 189), Sec. 1, eff. September 1, 2023.

Sec. 260.010. ANNUAL REPORT TO COMMISSION; LEGISLATIVE REPORT. (a) Not later than September 30 of each year following the establishment of a county or municipal permitting requirement under this chapter, each county or municipality that requires a person to obtain a boarding home facility permit under Section 260.004 shall submit to the commission a report. The report must include:

(1) the total number of:

(A) boarding home facilities permitted during the preceding state fiscal year;

(B) boarding home facility applications denied permitting, including a summary of cause for denial; and

(C) boarding home facility permits active on August 31 of the preceding state fiscal year;

(2) the total number of residents reported housed in each boarding home facility reported;

(3) the total number of inspections conducted at each boarding home facility by the county or municipality that requires the permit;

(4) the total number of permits revoked or suspended as a result of an inspection described by Subdivision (3) and a summary of the outcome for the residents displaced by revocation or suspension of a permit; and

(5) the total number of incidents occurring at each

boarding home facility that required the intervention of a peace officer as defined by Article 2A.001, Code of Criminal Procedure.

(b) The commission shall establish and maintain a standardized compilation of information reported under this section and provide to the legislature a report of this information not later than January 1 of each odd-numbered year.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(9), eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 1046 (S.B. 189), Sec. 2, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 9.002, eff. September 1, 2025.

Sec. 260.011. EXCLUSION PROHIBITED. If an entity meets the requirements established by a county or municipality under this chapter, the entity may not be excluded from a residential area by zoning ordinances or similar regulations.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

CHAPTER 260A. REPORTS OF ABUSE, NEGLECT, AND EXPLOITATION OF RESIDENTS OF CERTAIN FACILITIES

Sec. 260A.001. DEFINITIONS. In this chapter:

(1) "Abuse" means:

(A) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or

(B) sexual abuse of a resident, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure), or

Chapter 22, Penal Code (assaultive offenses), committed by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident.

(1-a) "Commission" means the Health and Human Services Commission.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Exploitation" means the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(5) "Facility" means:

(A) an institution as that term is defined by Section 242.002;

(B) an assisted living facility as that term is defined by Section 247.002; and

(C) a prescribed pediatric extended care center as that term is defined by Section 248A.001.

(6) "Neglect" means the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide such goods or services.

(7) "Resident" means an individual, including a patient, who resides in or receives services from a facility.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 5, eff. September 1, 2013.
Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 10, eff. September 1, 2023.

Sec. 260A.002. REPORTING OF ABUSE, NEGLECT, AND EXPLOITATION. (a) A person, including an owner or employee of a facility, who has cause to believe that the physical or mental health or welfare of a

resident has been or may be adversely affected by abuse, neglect, or exploitation caused by another person shall report the abuse, neglect, or exploitation in accordance with this chapter.

(a-1) Notwithstanding any other provision of this chapter, a report made under this section that a provider is or may be alleged to have committed abuse, neglect, or exploitation of a resident of a facility other than a prescribed pediatric extended care center shall be investigated by the commission in accordance with Subchapter F, Chapter 48, Human Resources Code, and this chapter does not apply to that investigation. In this subsection, "facility" and "provider" have the meanings assigned by Section 48.251, Human Resources Code.

(b) Each facility shall require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee realizes that the employee may be criminally liable for failure to report those abuses.

(c) A person shall make an oral or electronic report immediately on learning of the abuse, neglect, or exploitation.

(d) A facility or provider shall submit a provider investigation report to the commission not later than the fifth day after the date the facility or provider makes the oral or electronic report under Subsection (c).

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 14, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 8, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 11, eff. September 1, 2023.

Sec. 260A.003. CONTENTS OF REPORT. (a) A report of abuse, neglect, or exploitation is nonaccusatory and reflects the reporting person's belief that a resident has been or will be abused, neglected, or exploited or has died of abuse or neglect.

(b) The report must contain:

(1) the name and address of the resident;

(2) the name and address of the person responsible for the

care of the resident, if available; and

(3) other relevant information.

(c) Except for an anonymous report under Section 260A.004, a report of abuse, neglect, or exploitation under Section 260A.002 should also include the address or phone number of the person making the report so that an investigator can contact the person for any necessary additional information. The phone number, address, and name of the person making the report must be deleted from any copy of any type of report that is released to the public, to the facility, or to an owner or agent of the facility.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.004. ANONYMOUS REPORTS OF ABUSE, NEGLECT, OR EXPLOITATION. (a) An anonymous report of abuse, neglect, or exploitation, although not encouraged, shall be received and acted on in the same manner as an acknowledged report.

(b) An anonymous report about a specific individual that accuses the individual of abuse, neglect, or exploitation need not be investigated.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.005. TELEPHONE HOTLINE; PROCESSING OF REPORTS. (a) The department shall operate the department's telephone hotline to:

(1) receive reports of abuse, neglect, or exploitation; and

(2) dispatch investigators.

(b) A report of abuse, neglect, or exploitation shall be made to the department's telephone hotline or to a local or state law enforcement agency. A report made relating to abuse, neglect, or exploitation or another complaint described by Section 260A.007(c)(1) shall be made to the department's telephone hotline and to the law enforcement agency described by Section 260A.017(a).

(c) Except as provided by Section 260A.017, a local or state law enforcement agency that receives a report of abuse, neglect, or exploitation shall refer the report to the department.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.006. NOTICE. (a) Each facility shall prominently and conspicuously post a sign for display in a public area of the facility that is readily available to residents, employees, and visitors.

(b) The sign must include the statement: CASES OF SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION SHALL BE REPORTED TO THE TEXAS DEPARTMENT OF AGING AND DISABILITY SERVICES BY CALLING (insert telephone hotline number).

(c) A facility shall provide the telephone hotline number to an immediate family member of a resident of the facility upon the resident's admission into the facility.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.007. INVESTIGATION AND REPORT OF DEPARTMENT. (a) The department shall make a thorough investigation after receiving an oral or written report of abuse, neglect, or exploitation under Section 260A.002 or another complaint alleging abuse, neglect, or exploitation.

(b) The primary purpose of the investigation is the protection of the resident.

(c) The department shall begin the investigation:

(1) within 24 hours after receipt of the report or other allegation, if the report of abuse, neglect, exploitation, or other complaint alleges that:

(A) a resident's health or safety is in imminent danger;

(B) a resident has recently died because of conduct alleged in the report of abuse, neglect, exploitation, or other complaint;

(C) a resident has been hospitalized or been treated in an emergency room because of conduct alleged in the report of abuse, neglect, exploitation, or other complaint;

(D) a resident has been a victim of any act or

attempted act described by Section 21.02, 21.11, 22.011, or 22.021, Penal Code; or

(E) a resident has suffered bodily injury, as that term is defined by Section 1.07, Penal Code, because of conduct alleged in the report of abuse, neglect, exploitation, or other complaint; or

(2) before the end of the next working day after the date of receipt of the report of abuse, neglect, exploitation, or other complaint, if the report or complaint alleges the existence of circumstances that could result in abuse, neglect, or exploitation and that could place a resident's health or safety in imminent danger.

(d) The executive commissioner shall adopt rules governing the conduct of investigations, including procedures to ensure that the complainant and the resident, the resident's next of kin, and any person designated to receive information concerning the resident receive periodic information regarding the investigation.

(e) In investigating the report of abuse, neglect, exploitation, or other complaint, the investigator for the commission shall:

(1) conduct an unannounced investigation to determine the nature and cause of the alleged abuse, neglect, or exploitation of the resident;

(2) interview each available witness, including the resident who suffered the alleged abuse, neglect, or exploitation if the resident is able to communicate or another resident or other witness identified by any source as having personal knowledge relevant to the report of abuse, neglect, exploitation, or other complaint;

(3) inspect any physical circumstance that is relevant and material to the report of abuse, neglect, exploitation, or other complaint and that may be objectively observed;

(4) if an on-site investigation is conducted, make a photographic record of any injury to a resident, subject to Subsection (n);

(5) write an investigation report that includes:

(A) the investigator's personal observations;

(B) a review of relevant documents and records;

(C) a summary of each witness statement, including the statement of the resident that suffered the alleged abuse, neglect, or exploitation and any other resident interviewed in the

investigation; and

(D) a statement of the factual basis for the findings for each incident or problem alleged in the report or other allegation; and

(6) for a resident of an institution or assisted living facility, inspect any court order appointing a guardian of the resident who was the subject of the alleged abuse, neglect, or exploitation that is maintained in the resident's medical records under Section 242.019 or 247.070.

(e-1) In addition to the requirements under Subsection (e), the commission shall make an unannounced visit to a facility to conduct an investigation of abuse or neglect.

(f) An investigator for an investigating agency shall conduct an interview under Subsection (e)(2) in private unless the witness expressly requests that the interview not be private.

(g) Not later than the 30th day after the date the investigation is complete, the investigator shall prepare the written report required by Subsection (e). The department shall make the investigation report available to the public on request after the date the department's letter of determination is complete. The department shall delete from any copy made available to the public:

(1) the name of:

(A) any resident, unless the department receives written authorization from a resident or the resident's legal representative requesting the resident's name be left in the report;

(B) the person making the report of abuse, neglect, exploitation, or other complaint; and

(C) an individual interviewed in the investigation; and

(2) photographs of any injury to the resident.

(h) In the investigation, the department shall determine:

(1) the nature, extent, and cause of the abuse, neglect, or exploitation;

(2) the identity of the person responsible for the abuse, neglect, or exploitation;

(3) the names and conditions of the other residents;

(4) an evaluation of the persons responsible for the care of the residents;

(5) the adequacy of the facility environment; and

(6) any other information required by the department.

(i) If the department attempts to carry out an on-site investigation and it is shown that admission to the facility or any place where the resident is located cannot be obtained, a probate or county court shall order the person responsible for the care of the resident or the person in charge of a place where the resident is located to allow entrance for the interview and investigation.

(j) Before the completion of the investigation, the department shall file a petition for temporary care and protection of the resident if the department determines that immediate removal is necessary to protect the resident from further abuse, neglect, or exploitation.

(k) If the department determines the report of abuse, neglect, or exploitation is substantiated at the conclusion of the investigation, the department shall make a complete final written report of the investigation and submit the report and its recommendations to the appropriate law enforcement agency.

(l) Within 24 hours after receipt of a report of abuse, neglect, exploitation, or other complaint described by Subsection (c)(1), the department shall report the report or complaint to the law enforcement agency described by Section 260A.017(a). The department shall cooperate with that law enforcement agency in the investigation of the report or complaint as described by Section 260A.017.

(m) The inability or unwillingness of a local law enforcement agency to conduct a joint investigation under Section 260A.017 does not constitute grounds to prevent or prohibit the department from performing its duties under this chapter. The department shall document any instance in which a law enforcement agency is unable or unwilling to conduct a joint investigation under Section 260A.017.

(n) If the department determines that, before a photographic record of an injury to a resident may be made under Subsection (e), consent is required under state or federal law, the investigator:

(1) shall seek to obtain any required consent; and

(2) may not make the photographic record unless the consent is obtained.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0819, eff.

April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 724 (H.B. 1337), Sec. 3, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1031 (H.B. 1642), Sec. 1, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 12, eff. September 1, 2023.

Sec. 260A.008. CONFIDENTIALITY. A report, record, or working paper used or developed in an investigation made under this chapter and the name, address, and phone number of any person making a report under this chapter are confidential and may be disclosed only for purposes consistent with rules adopted by the executive commissioner. The report, record, or working paper and the name, address, and phone number of the person making the report shall be disclosed to a law enforcement agency as necessary to permit the law enforcement agency to investigate a report of abuse, neglect, exploitation, or other complaint in accordance with Section 260A.017.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.009. IMMUNITY. (a) A person who reports as provided by this chapter is immune from civil or criminal liability that, in the absence of the immunity, might result from making the report.

(b) The immunity provided by this section extends to participation in any judicial proceeding that results from the report.

(c) This section does not apply to a person who reports in bad faith or with malice.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.010. PRIVILEGED COMMUNICATIONS. In a proceeding regarding the abuse, neglect, or exploitation of a resident or the cause of any abuse, neglect, or exploitation, evidence may not be excluded on the ground of privileged communication except in the case

of a communication between an attorney and client.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.011. CENTRAL REGISTRY. (a) The department shall maintain in the city of Austin a central registry of reported cases of resident abuse, neglect, or exploitation.

(b) The executive commissioner may adopt rules necessary to carry out this section.

(c) The rules shall provide for cooperation with hospitals and clinics in the exchange of reports of resident abuse, neglect, or exploitation.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.012. FAILURE TO REPORT; CRIMINAL PENALTY. (a) A person commits an offense if the person has cause to believe that a resident's physical or mental health or welfare has been or may be further adversely affected by abuse, neglect, or exploitation and knowingly fails to report in accordance with Section 260A.002.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.013. BAD FAITH, MALICIOUS, OR RECKLESS REPORTING; CRIMINAL PENALTY. (a) A person commits an offense if the person reports under this chapter in bad faith, maliciously, or recklessly.

(b) An offense under this section is a Class A misdemeanor.

(c) The criminal penalty provided by this section is in addition to any civil penalties for which the person may be liable.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.014. RETALIATION AGAINST EMPLOYEES PROHIBITED. (a) In this section, "employee" means a person who is an employee of a facility or any other person who provides services for a facility for compensation, including a contract laborer for the facility.

(b) An employee has a cause of action against a facility, or the owner or another employee of the facility, that suspends or terminates the employment of the person or otherwise disciplines or discriminates or retaliates against the employee for reporting to the employee's supervisor, an administrator of the facility, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of Chapter 242 or 247 or a rule adopted under Chapter 242 or 247, or for initiating or cooperating in any investigation or proceeding of a governmental entity relating to care, services, or conditions at the facility.

(c) The petitioner may recover:

(1) the greater of $1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown, and damages for lost wages if the petitioner's employment was suspended or terminated;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

(d) In addition to the amounts that may be recovered under Subsection (c), a person whose employment is suspended or terminated is entitled to appropriate injunctive relief, including, if applicable:

(1) reinstatement in the person's former position; and

(2) reinstatement of lost fringe benefits or seniority rights.

(e) The petitioner, not later than the 90th day after the date on which the person's employment is suspended or terminated, must bring suit or notify the Texas Workforce Commission of the petitioner's intent to sue under this section. A petitioner who notifies the Texas Workforce Commission under this subsection must bring suit not later than the 90th day after the date of the delivery of the notice to the commission. On receipt of the notice, the commission shall notify the facility of the petitioner's intent to bring suit under this section.

(f) The petitioner has the burden of proof, except that there is a rebuttable presumption that the person's employment was

suspended or terminated for reporting abuse, neglect, or exploitation if the person is suspended or terminated within 60 days after the date on which the person reported in good faith.

(g) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff resides;

(2) the plaintiff was employed by the defendant; or

(3) the defendant conducts business.

(h) Each facility shall require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee understands the employee's rights under this section. The statement must be part of the statement required under Section 260A.002. If a facility does not require an employee to read and sign the statement, the periods under Subsection (e) do not apply, and the petitioner must bring suit not later than the second anniversary of the date on which the person's employment is suspended or terminated.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.015. RETALIATION AGAINST VOLUNTEERS, RESIDENTS, OR FAMILY MEMBERS OR GUARDIANS OF RESIDENTS. (a) A facility may not retaliate or discriminate against a volunteer, resident, or family member or guardian of a resident because the volunteer, resident, resident's family member or guardian, or any other person:

(1) makes a complaint or files a grievance concerning the facility;

(2) reports a violation of law, including a violation of Chapter 242 or 247 or a rule adopted under Chapter 242 or 247; or

(3) initiates or cooperates in an investigation or proceeding of a governmental entity relating to care, services, or conditions at the facility.

(b) A volunteer, resident, or family member or guardian of a resident who is retaliated or discriminated against in violation of Subsection (a) is entitled to sue for:

(1) injunctive relief;

(2) the greater of $1,000 or actual damages, including damages for mental anguish even if an injury other than mental

anguish is not shown;

(3) exemplary damages;

(4) court costs; and

(5) reasonable attorney's fees.

(c) A volunteer, resident, or family member or guardian of a resident who seeks relief under this section must report the alleged violation not later than the 180th day after the date on which the alleged violation of this section occurred or was discovered by the volunteer, resident, or family member or guardian of the resident through reasonable diligence.

(d) A suit under this section may be brought in the district court of the county in which the facility is located or in a district court of Travis County.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.016. REPORTS RELATING TO DEATHS OF RESIDENTS OF AN INSTITUTION. (a) In this section, "institution" has the meaning assigned by Section 242.002.

(b) An institution shall submit a report to the department concerning deaths of residents of the institution. The report must be submitted not later than the 10th day after the last day of each month in which a resident of the institution dies. The report must also include the death of a resident occurring within 24 hours after the resident is transferred from the institution to a hospital.

(c) The institution must make the report on a form prescribed by the department. The report must contain the name and social security number of the deceased.

(d) The department shall correlate reports under this section with death certificate information to develop data relating to the:

(1) name and age of the deceased;

(2) official cause of death listed on the death certificate;

(3) date, time, and place of death; and

(4) name and address of the institution in which the deceased resided.

(e) Except as provided by Subsection (f), a record under this section is confidential and not subject to the provisions of Chapter

552, Government Code.

(f) The department shall develop statistical information on official causes of death to determine patterns and trends of incidents of death among residents and in specific institutions. Information developed under this subsection is public.

(g) A licensed institution shall make available historical statistics on all required information on request of an applicant or applicant's representative.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.017. DUTIES OF LAW ENFORCEMENT; JOINT INVESTIGATION. (a) The department shall investigate a report of abuse, neglect, exploitation, or other complaint described by Section 260A.007(c)(1) jointly with:

(1) the municipal law enforcement agency, if the facility is located within the territorial boundaries of a municipality; or

(2) the sheriff's department of the county in which the facility is located, if the facility is not located within the territorial boundaries of a municipality.

(b) The law enforcement agency described by Subsection (a) shall acknowledge the report of abuse, neglect, exploitation, or other complaint and begin the joint investigation required by this section within 24 hours after receipt of the report or complaint. The law enforcement agency shall cooperate with the department and report to the department the results of the investigation.

(c) The requirement that the law enforcement agency and the department conduct a joint investigation under this section does not require that a representative of each agency be physically present during all phases of the investigation or that each agency participate equally in each activity conducted in the course of the investigation.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

CHAPTER 260B. RIGHT TO ESSENTIAL CAREGIVER VISITS FOR CERTAIN RESIDENTS

Sec. 260B.0001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Essential caregiver" means a family member, friend, guardian, or other individual selected by a resident, resident's guardian, or resident's legally authorized representative for in-person visits.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Facility" means:

(A) a nursing facility licensed under Chapter 242;

(B) an assisted living facility licensed under Chapter 247; or

(C) an intermediate care facility for individuals with an intellectual disability licensed under Chapter 252.

(5) "Program provider" means a person that provides services through the home and community-based services (HCS) waiver program in a residence.

(6) "Residence" means a three-person or four-person residence, as defined by the home and community-based services (HCS) waiver program billing guidelines, that is leased or owned by a program provider. The term does not include a host home or companion care.

(7) "Resident" means:

(A) an individual, including a patient, who resides in a facility; or

(B) an individual enrolled in the home and community-based services (HCS) waiver program who resides in a residence.

Added by Acts 2021, 87th Leg., R.S., Ch. 531 (S.B. 25), Sec. 2, eff. September 1, 2021.

Sec. 260B.0002. RESIDENT'S RIGHT TO ESSENTIAL CAREGIVER VISITS. (a) A resident, resident's guardian, or resident's legally authorized representative has the right to designate an essential caregiver with whom the facility or program provider may not prohibit in-person visitation.

(b) Notwithstanding Subsection (a), the executive commissioner by rule shall develop guidelines to assist facilities and program

providers in establishing essential caregiver visitation policies and procedures. The guidelines must require the facilities and program providers to:

(1) allow a resident, resident's guardian, or resident's legally authorized representative to designate for in-person visitation an essential caregiver in the same manner that a resident would designate a power of attorney;

(2) establish a visitation schedule allowing the essential caregiver to visit the resident for at least two hours each day;

(3) establish procedures to enable physical contact between the resident and essential caregiver; and

(4) obtain the signature of the essential caregiver certifying that the caregiver will follow the facility's or program provider's safety protocols and any other rules adopted under this section.

(c) A facility or program provider may revoke an individual's designation as an essential caregiver if the caregiver violates the facility's or provider's safety protocols or rules adopted under this section. If a facility or program provider revokes an individual's designation as an essential caregiver under this subsection, the resident, resident's guardian, or resident's legally authorized representative has the right to immediately designate another individual as the resident's essential caregiver. The commission by rule shall establish an appeals process to evaluate the revocation of an individual's designation as an essential caregiver under this subsection.

(d) Safety protocols adopted by a facility or program provider for an essential caregiver under this section may not be more stringent than safety protocols for the staff of the facility or residence.

(e) A facility or program provider may petition the commission to suspend in-person essential caregiver visits for not more than seven days if in-person visitation poses a serious community health risk. The commission may deny the facility's or program provider's request to suspend in-person essential caregiver visitation if the commission determines that in-person visitation does not pose a serious community health risk. A facility or program provider may request an extension from the commission to suspend in-person essential caregiver visitation for more than seven days. The commission may not approve an extension under this subsection for a

period that exceeds seven days, and a facility or program provider must separately request each extension. A facility or program provider may not suspend in-person essential caregiver visitation in any year for a number of days that exceeds 14 consecutive days or a total of 45 days.

(f) This section may not be construed as requiring an essential caregiver to provide necessary care to a resident, and a facility or program provider may not require an essential caregiver to provide necessary care.

Added by Acts 2021, 87th Leg., R.S., Ch. 531 (S.B. 25), Sec. 2, eff. September 1, 2021.

Chapter 260C, consisting of Secs. 260C.001 to 260C.002, was added by Acts 2021, 87th Leg., R.S., Ch. 519 (S.B. 572), Sec. 2.

For another Chapter 260C, consisting of Secs. 260C.001 to 260C.002, added by Acts 2021, 87th Leg., R.S., Ch. 732 (H.B. 3961), Sec. 1, see Sec. 260C.001 et seq., post.

CHAPTER 260C. IN-PERSON VISITATION WITH RELIGIOUS COUNSELOR

Sec. 260C.001. DEFINITIONS. In this chapter:

(1) "Health care facility" means:

(A) a home and community support services agency licensed under Chapter 142;

(B) a hospital licensed under Chapter 241;

(C) a nursing facility licensed under Chapter 242;

(D) a continuing care facility regulated under Chapter 246;

(E) an assisted living facility licensed under Chapter 247; or

(F) a special care facility licensed under Chapter 248.

(2) "Public health emergency" means:

(A) a state of disaster or local disaster declared under Chapter 418, Government Code; or

(B) a public health disaster as defined by Section 81.003.

(3) "Religious counselor" means an individual acting substantially in a pastoral or religious capacity to provide spiritual counsel to other individuals.

Added by Acts 2021, 87th Leg., R.S., Ch. 519 (S.B. 572), Sec. 2, eff. June 14, 2021.

Sec. 260C.002. IN-PERSON VISITATION WITH RELIGIOUS COUNSELOR. (a) A health care facility may not prohibit a resident or patient of the facility from receiving in-person visitation with a religious counselor during a public health emergency on the request of:

(1) the patient or resident; or

(2) if the patient or resident is incapacitated, the patient's or resident's legally authorized representative, including a family member of the patient or resident.

(b) Notwithstanding Subsection (a), the executive commissioner by rule shall develop guidelines to assist health care facilities in establishing in-person religious counselor visitation policies and procedures. The guidelines must:

(1) establish minimum health and safety requirements for in-person visitation with religious counselors;

(2) allow health care facilities to adopt reasonable time, place, and manner restrictions on in-person visitation with religious counselors to:

(A) mitigate the spread of a communicable disease; and

(B) address the patient's or resident's medical condition;

(3) provide special consideration to patients and residents who are receiving end-of-life care; and

(4) allow health care facilities to condition in-person visitation with religious counselors on the counselor's compliance with guidelines, policies, and procedures established under this subsection.

(c) A health care facility may prohibit in-person visitation with a religious counselor during a public health emergency if federal law or a federal agency requires the health care facility to prohibit in-person visitation during that period.

Added by Acts 2021, 87th Leg., R.S., Ch. 519 (S.B. 572), Sec. 2, eff. June 14, 2021.

CHAPTER 260D. POSTING OF OFFICE OF STATE LONG-TERM CARE OMBUDSMAN

INFORMATION BY CERTAIN FACILITIES

Sec. 260D.001. DEFINITION. In this chapter, "long-term care facility" means:

(1) a nursing facility licensed under Chapter 242;

(2) an assisted living facility licensed under Chapter 247; or

(3) any other facility providing care to residents who are assisted by the state long-term care ombudsman established under Subchapter F, Chapter 101A, Human Resources Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 732 (H.B. 3961), Sec. 1, eff. January 1, 2022.
Redesignated from Health and Safety Code, Chapter 260C by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(24), eff. September 1, 2023.

Sec. 260D.002. POSTING OF OFFICE OF STATE LONG-TERM CARE OMBUDSMAN INFORMATION ON INTERNET WEBSITE. (a) Except as provided by Subsection (b), a long-term care facility shall post on the facility's Internet website information about the office of the state long-term care ombudsman established under Subchapter F, Chapter 101A, Human Resources Code, including:

(1) information regarding the office's role as an advocate for residents of long-term care facilities; and

(2) the office's statewide toll-free telephone number.

(b) A long-term care facility:

(1) may comply with this section by posting the required information on the Internet website of the facility's parent company if the facility does not maintain a unique Internet website; and

(2) is not required to comply with this section if the facility and any parent company do not maintain an Internet website.

Added by Acts 2021, 87th Leg., R.S., Ch. 732 (H.B. 3961), Sec. 1, eff. January 1, 2022.
Redesignated from Health and Safety Code, Chapter 260C by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(24), eff. September 1, 2023.

SUBTITLE C. LOCAL HOSPITALS

CHAPTER 261. MUNICIPAL HOSPITALS

SUBCHAPTER A. TYPE A GENERAL-LAW MUNICIPALITIES

Sec. 261.001. REGULATION OF HOSPITALS BY TYPE A GENERAL-LAW MUNICIPALITY. The governing body of a Type A general-law municipality may:

(1) construct or establish one or more hospitals and control and regulate those hospitals; and

(2) prohibit or permit and regulate the establishment of private hospitals.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. SALE, LEASE, OR CLOSURE OF MUNICIPAL HOSPITAL

Sec. 261.011. AUTHORITY OF GOVERNING BODY. (a) The governing body of a municipality by ordinance may order the sale, lease, or closure of all or part of a hospital owned and operated by the municipality, including real property. The ordinance must include a finding by the governing body that the sale, lease, or closure is in the best interest of the residents of the municipality.

(b) A sale or closure may not take effect before the expiration of the period in which a petition may be filed under Section 261.012.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 261.012. SALE OR CLOSURE PETITION; ELECTION. (a) The governing body shall order and conduct an election on the sale or closure of a hospital if, before the 31st day after the date the governing body orders the sale or closure, the governing body receives a petition signed by at least 10 percent of the qualified voters of the municipality requesting the election.

(b) If a petition is filed under Subsection (a), the sale or closure is contingent on voter approval. If a majority of the qualified voters voting on the question approve the sale or closure, the hospital may be sold or closed. The number of qualified voters of the municipality is determined according to the most recent official list of qualified voters.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 261.013. FORM AND TERMS OF LEASE IN MUNICIPALITY OF 25,000 OR LESS. (a) The governing body of a municipality with a population of 25,000 or less may lease all or part of a hospital owned by the municipality for operation by the lessee as a public hospital under terms that are satisfactory to the governing body and the lessee. The term of the lease may not exceed 50 years.

(b) The lease must:

(1) be authorized by ordinance or resolution adopted by the governing body;

(2) be executed on behalf of the municipality by the mayor and the municipal secretary or clerk; and

(3) have the seal of the municipality impressed on the lease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. LIABILITY OF NONPROFIT MANAGEMENT CONTRACTOR

Sec. 261.051. DEFINITION. In this subchapter, "municipal hospital management contractor" means a nonprofit corporation, partnership, or sole proprietorship that manages or operates a hospital or provides services under a contract with a municipality or municipal hospital authority.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 11.02, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 289, Sec. 2, eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 26.01, eff. Jan. 11, 2004.

Sec. 261.052. LIABILITY OF A MUNICIPAL HOSPITAL MANAGEMENT CONTRACTOR. A municipal hospital management contractor in its management or operation of a hospital under a contract with a municipality or a municipal hospital authority is considered a governmental unit for purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code, and any employee of the contractor is, while performing services under the contract for the benefit of the hospital, an employee of the municipality for the purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 11.02, eff. Sept. 1,

2003; Acts 2003, 78th Leg., ch. 289, Sec. 2, eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 26.01, eff. Jan. 11, 2004.

CHAPTER 262. MUNICIPAL HOSPITAL AUTHORITIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 262.001. SHORT TITLE. This chapter may be cited as the Hospital Authority Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.002. DEFINITIONS. In this chapter:

(1) "Authority" means a hospital authority created under this chapter.

(2) "Board" means the board of directors of an authority.

(3) "Bond" includes a note.

(4) "Bond resolution" means the resolution authorizing the issuance of revenue bonds.

(5) "Governing body" means the governing body of a municipality.

(6) "Hospital" means a hospital project as defined by Section 223.002.

(7) "Trust indenture" means the mortgage, deed of trust, or other instrument pledging revenues of, or creating a mortgage lien on, properties to secure revenue bonds issued by an authority.

(8) "Trustee" means the trustee under a trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.003. CREATION. (a) A governing body may adopt an ordinance creating a hospital authority and designating the name of the authority if the governing body finds that creation of the authority is in the best interest of the municipality and its residents.

(b) The governing bodies of two or more municipalities may each adopt an ordinance creating a hospital authority that includes those municipalities and designating the name of the authority if the governing bodies find that creation of the authority is in the best

interest of the municipalities.

(c) The authority is composed only of the territory in each municipality in the authority.

(d) The authority is a body politic and corporate.

(e) The authority does not have taxing power.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.004. TAX EXEMPTION. The authority's property is exempt from taxation because it is held for public purposes only and devoted exclusively to the use and benefit of the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.005. DISSOLUTION. (a) A governing body by ordinance may dissolve an authority created by the governing body if the governing body and the authority provide for the sale or transfer of the authority's assets and liabilities to the municipality or to another person.

(b) The dissolution of an authority and the sale or transfer of the authority's assets and liabilities may not:

(1) violate a trust indenture or bond resolution relating to the outstanding bonds of the authority; or

(2) diminish or impair the rights of the holders of outstanding bonds, warrants, or other obligations of the authority.

(c) Except as otherwise provided by this section, an ordinance dissolving an authority takes effect on the 31st day after the date the governing body adopts the ordinance.

(d) If before the ordinance takes effect the municipality receives a petition requesting a referendum on the dissolution that is signed by a number of registered voters of the municipality equal to at least 10 percent of the number of voters who voted in the most recent municipal election, the ordinance does not take effect and the governing body shall order the election.

(e) Section 41.001(a), Election Code, requiring an election to be held on a uniform election date, does not apply to an election under this section. The ballot shall be printed to provide for voting for or against the proposition: "Dissolution of the (name of the authority)."

(f) If a majority of the votes in the election are cast in favor of the proposition, the ordinance takes effect on a date stated in the order declaring the results of the election. If a majority of the votes in the election are cast against the proposition, the ordinance does not take effect and the governing body may not adopt an ordinance dissolving the authority before the first anniversary of the date of the election. That ordinance is also subject to the petition and election requirements of this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 262.011. BOARD OF DIRECTORS. (a) The authority is governed by a board of directors with at least seven and not more than 11 members.

(b) The number of directors shall be determined at the time the authority is created. The number may be changed by amendment of the ordinance or ordinances creating the authority unless prohibited by a resolution or trust indenture described by Section 262.012. A reduction in the number of directors may not shorten the term of an incumbent director.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 349 (H.B. 3788), Sec. 1, eff. September 1, 2025.

Sec. 262.012. APPOINTMENT OF BOARD; TERMS OF OFFICE. (a) The governing body or governing bodies shall appoint the initial directors of the authority for terms not to exceed two years except as otherwise provided by this section. If the authority includes more than one municipality, each governing body shall appoint an equal number of directors unless the governing bodies agree otherwise.

(b) The board may prescribe in the resolution authorizing the issuance of revenue bonds or the trust indenture securing the bonds, in an agreement securing notes of any kind issued by the authority, or in another resolution the method of selecting the directors and the term of office of those directors. Except as provided by

Subsections (c), (d), and (e), the method of selecting the directors and the term of office of those directors prescribed by the board may not be changed except by a subsequent resolution adopted by the board. The terms of directors appointed before the issuance of the bonds are subject to the resolution or trust indenture. The governing body or governing bodies shall appoint any remaining directors.

(c) The trust indenture may provide that in the event of a default, as defined in the trust indenture, the trustee may appoint all directors. On that appointment, the terms of the directors in office terminate.

(d) If the authority purchases an existing hospital or a hospital under construction from a nonprofit corporation, the directors shall be determined as provided in the contract of purchase.

(e) If the authority is financed under Chapter 223, the governing body or governing bodies by ordinance may require the board to submit nominees for appointment to the board. If a nominee is rejected by the governing body or governing bodies, the board shall submit another nominee. The governing body or governing bodies shall select the directors from the nominees submitted by the board and any other nominee submitted by a member of a governing body. The governing body or governing bodies may also limit the number of successive terms that a director may serve.

(f) An officer or employee of a municipality in the authority or an employee of the authority is not eligible for appointment as a director.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 349 (H.B. 3788), Sec. 2, eff. September 1, 2025.

Sec. 262.013. OFFICERS. (a) The board shall elect:

(1) a president and a vice-president, who must be directors;

(2) a secretary and a treasurer, who are not required to be directors; and

(3) any other officers authorized by the authority's

bylaws.

(b) The offices of secretary and treasurer may be combined.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.014. AUTHORITY OF BOARD. (a) Action may be taken by a majority of the directors present if a quorum is present.

(b) The president has the same right to vote as other directors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.015. COMPENSATION. A director may not receive compensation for services but is entitled to reimbursement for expenses incurred in performing services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 262.021. GENERAL POWERS. (a) The authority has the power of perpetual succession.

(b) The authority may:

(1) have a seal;

(2) sue and be sued; and

(3) make, amend, and repeal its bylaws.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.022. ACQUISITION, OPERATION, AND LEASE OF HOSPITALS. (a) The authority may construct, purchase, enlarge, furnish, or equip one or more hospitals. A hospital may be located outside the municipality or municipalities.

(b) The authority may operate and maintain one or more hospitals. The authority shall operate a hospital without the intervention of private profit for the use and benefit of the public unless the authority leases the hospital.

(c) The board may lease a hospital, or part of a hospital,

owned by the authority for operation by the lessee as a hospital under terms that are satisfactory to the board and the lessee. The lease must:

(1) be authorized by resolution of the board;

(2) be executed on behalf of the authority by the president and secretary of the board; and

(3) have the seal of the authority impressed on the lease.

(d) The bond resolution or trust indenture may prescribe procedures and policies for the operation of a hospital. If a hospital is used, operated, or acquired by a nonprofit corporation or is leased, the authority may delegate to the nonprofit corporation or lessee the duty to establish the procedures and policies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.0225. AUTHORITY TO BORROW MONEY. (a) This section applies only to an authority created by a municipality with a population of less than 25,000.

(b) The board may, on behalf of the authority, borrow money from a federally insured lending institution for any of the authority's purposes.

(c) The board may borrow money in the amount it considers advisable subject to a rate of interest and other terms and conditions it considers advisable.

(d) A loan for which bonds are pledged shall mature not later than the first anniversary of the date on which the loan is made.

Added by Acts 1995, 74th Leg., ch. 740, Sec. 1, eff. Aug. 28, 1995. Amended by Acts 2003, 78th Leg., ch. 702, Sec. 1, eff. June 20, 2003.

Sec. 262.023. EMPLOYEES. (a) The board may employ a manager or executive director of a hospital and other employees, experts, and agents.

(b) The board may delegate to the manager or executive director the authority to manage the hospital and to employ and discharge employees.

(c) The board may employ legal counsel.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.024. MANAGEMENT AGREEMENT. (a) The board may enter into an agreement with any person for the management or operation of a hospital, or part of a hospital, owned by the authority under terms that are satisfactory to the board and the contracting party.

(b) The agreement must:

(1) be authorized by resolution of the board;

(2) be executed on behalf of the authority by the president and secretary of the board; and

(3) have the seal of the authority impressed on the agreement.

(c) The board may delegate to the manager the authority to manage the hospital and to employ and discharge employees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.025. COMMITTEES. (a) The board, by a resolution adopted by a majority of the directors in office, may designate one or more committees if authorized to do so by the authority's bylaws.

(b) At least two directors must serve on each committee. Each committee may have additional nonvoting members who are not directors if authorized by the resolution or the bylaws.

(c) A committee may exercise the board's power to manage the authority to the extent and in the manner provided by the resolution or the bylaws. However, the board may not delegate to a committee the authority to:

(1) issue bonds;

(2) make or amend a lease of a hospital or a management agreement relating to a hospital; or

(3) employ or discharge a manager or executive director.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.026. RATES FOR HOSPITAL SERVICES. (a) Except as provided by Subsection (b), through charging sufficient rates for services provided by a hospital and through its other revenue sources the board shall produce revenue sufficient to:

(1) pay the expenses of owning, operating, and maintaining

the hospital;

(2) pay the interest on the bonds as it becomes due;

(3) create a sinking fund to pay the bonds as they become due; and

(4) create and maintain a bond reserve fund and other funds as provided in the bond resolution or trust indenture.

(b) If the hospital is used, operated, or acquired by a nonprofit corporation under Chapter 223 or is leased, the board shall require the nonprofit corporation or the lessee to charge rates for services provided by the hospital that are sufficient with the nonprofit corporation's or lessee's other sources of revenue to:

(1) pay the expenses of operating and maintaining the hospital; and

(2) make payments or pay rentals to the authority that are sufficient with the authority's other pledged sources of estimated revenue to:

(A) pay the interest on the bonds as it becomes due;

(B) create a sinking fund to pay the bonds as they become due; and

(C) create and maintain a bond reserve fund and other funds as provided in the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.027. DEPOSITORY. The authority may:

(1) select a depository in the same manner that a municipality may select a depository under Chapter 105, Local Government Code; or

(2) award its depository contract to the depository or depositories selected as the depository or depositories of the municipality or municipalities in the authority and on the same terms as the terms of the municipal depository agreement or agreements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.028. EMINENT DOMAIN. (a) To carry out a power granted by this chapter, the authority may acquire the fee simple title to land, other property, and easements by condemnation under Chapter 21, Property Code.

(b) The authority is considered to be a municipal corporation for the purposes of Section 21.021(c), Property Code.

(c) The board shall determine the amount and character of the interest in land, other property, and easements to be acquired under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.029. GIFTS AND ENDOWMENTS. The board may accept gifts and endowments to hold and administer as required by the respective donors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.030. MEDICAL RECORDS. (a) The preservation, microfilming, destruction, or other disposition of the records of the authority is subject to Subtitle C, Title 6, Local Government Code.

(b) The period that medical records are retained shall be in accordance with rules relating to the retention of medical records adopted by the Texas Department of Health and with other applicable federal and state laws and rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 116, eff. Sept. 1, 1991.

Sec. 262.031. SALE OF PROPERTY; GENERAL PROVISIONS. (a) The board may sell, through sealed bids or at a public auction, real property acquired by gift or purchase that the board determines is not needed for hospital purposes if the sale does not violate:

(1) a trust indenture or bond resolution relating to outstanding bonds of the authority;

(2) prior restrictions placed on the use of the property; or

(3) an agreement between the authority and a nonprofit corporation under Chapter 223.

(b) If the board conducts the sale by sealed bids, the board shall provide notice of the sale under Section 272.001, Local Government Code.

(c) If the board conducts the sale by public auction, the board shall publish a notice of the sale once a week for three consecutive weeks in a newspaper of general circulation in each municipality in the authority. The notice must include a description of the property and the date, time, and place of the auction. The first notice must be published not later than the 21st day before the date of the auction.

(d) This section does not affect the authority's powers under Chapter 223.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.032. SALE OF PROPERTY TO POLITICAL SUBDIVISION. (a) The authority may sell property to a political subdivision for the fair market value of the property.

(b) The board must publish a notice of its intention to sell, a description of the property, and the scheduled date of sale in one or more newspapers of general circulation in the authority once a week for two consecutive weeks. The first notice must be published not later than the 15th day before the scheduled sale date.

(c) A petition requesting an election on the question of the sale, signed by at least 10 percent of the qualified voters residing in the authority, may be presented to the secretary or president of the board before the scheduled sale date.

(d) The board shall order the election on receiving the petition. If no petition is filed, the board may sell the property without an election or may order an election on its own motion. The order must contain the same information contained in the notice of the election under Subsection (f).

(e) Section 41.001(a), Election Code, requiring elections to be held on uniform election dates, does not apply to the election.

(f) In addition to the contents of the notice required by the Election Code, the notice must state the names of the presiding judge, alternate judge, and clerks for each polling place. The board shall publish notice of the election in one or more newspapers of general circulation in the authority once a week for two consecutive weeks. The first notice must be published not later than the 31st day before election day.

(g) The ballot shall be printed to provide for voting for or

against the proposition: "The sale of _____ by the _____ Hospital Authority."

(h) If a majority of qualified voters who vote in the election favor the sale, the board may sell the property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.033. SALE OR CLOSING OF HOSPITAL. (a) The board may sell a hospital, or part of a hospital, owned by the authority or close a hospital, or part of a hospital, owned or operated by the authority. The sale or closure must:

(1) be authorized by resolution of the board;

(2) be executed on behalf of the authority by the president and secretary of the board; and

(3) be made by a document having the seal of the authority impressed on it.

(b) A sale or closing may not take effect before the expiration of the period in which a petition may be filed under Subsection (c).

(c) The board shall order and conduct an election on the sale or closing of a hospital if, before the 31st day after the date the governing body authorizes the sale or closing, the board receives a petition requesting the election signed by at least 10 percent of the qualified voters of the authority. The number of qualified voters is determined according to the most recent official list of registered voters.

(d) If a petition is filed under Subsection (c), the hospital may be sold or closed only if a majority of the qualified voters voting on the question approve the sale or closing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.0331. EXPENDITURE OF FUNDS FOR PUBLIC HEALTH INITIATIVES AFTER SALE OR CLOSING OF HOSPITAL. (a) If, after the sale or closing of a hospital under Section 262.033, the authority does not own or operate a hospital, the board may use the authority's available assets to promote public health and general welfare initiatives that the board determines will benefit the residents served by the authority, including:

(1) owning, operating, or funding an:

(A) administrative office; or

(B) indigent health care clinic, medical research facility, fitness or physical health center, medical training or education facility, or other health care facility;

(2) providing direct or indirect financial assistance to a nonprofit organization that:

(A) owns or operates a hospital, indigent health care clinic, medical research facility, medical training facility, or other health care facility; or

(B) supports an initiative promoting health education, wellness, or disease prevention; and

(3) undertaking any other activity that the board determines is necessary or appropriate to improve public health, promote wellness, prevent disease, or enhance the general welfare of the residents served by the authority.

(b) The board may not make an expenditure under Subsection (a) unless:

(1) the board makes appropriate provisions for the satisfaction of any outstanding bonds, debt obligations, or other liabilities of the authority;

(2) the predominant purpose of the expenditure is to promote the public health and general welfare of the residents served by the authority; and

(3) the board establishes sufficient controls to ensure that the expenditure promotes the public health and general welfare of the residents served by the authority.

(c) The authority may issue revenue bonds and other notes in accordance with this chapter to undertake any initiative authorized by this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 154 (S.B. 233), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 349 (H.B. 3788), Sec. 3, eff. September 1, 2025.

Sec. 262.0335. LIABILITY OF CERTAIN MUNICIPAL HOSPITAL AUTHORITIES UNDER CONTRACT FOR SALE OF HOSPITAL. (a) This section applies only to a municipal hospital authority wholly located in a

county with a population of less than 70,000.

(b) A municipal hospital authority that enters into a contract to sell a hospital owned by the authority waives governmental immunity to suit for the purpose of adjudicating a claim for breach of the contract.

(c) For a breach of contract claim described by Subsection (b), a claimant may not be awarded:

(1) a total amount that exceeds the amount due and owed by the municipal hospital authority under the contract; or

(2) consequential or exemplary damages.

(d) A municipal hospital authority that enters into a contract to sell a hospital owned by the authority may indemnify the purchaser of the hospital according to the terms of the contract.

Added by Acts 2023, 88th Leg., R.S., Ch. 111 (S.B. 1097), Sec. 1, eff. May 23, 2023.

Sec. 262.034. FACILITIES AND SERVICES FOR ELDERLY AND DISABLED. (a) The authority may construct, acquire, own, operate, enlarge, improve, furnish, or equip one or more of the following types of facilities or services for the care of the elderly or disabled:

(1) a nursing home or similar long-term care facility;

(2) elderly housing;

(3) assisted living;

(4) home health;

(5) personal care;

(6) special care;

(7) continuing care; and

(8) durable medical equipment.

(b) The authority may lease or enter into an operations or management agreement relating to all or part of a facility or service for the care of the elderly or disabled that is owned by the authority. The authority may sell, transfer, otherwise convey, or close all or part of the facility and may discontinue a service.

(c) The authority may issue revenue bonds and other notes in accordance with this chapter to acquire, construct, or improve a facility for the care of the elderly or disabled or to implement the delivery of a service for the care of the elderly or disabled.

(d) Repealed by Acts 2025, 89th Leg., R.S., Ch. 349 (H.B. 3788

), Sec. 6, eff. September 1, 2025.

(e) Repealed by Acts 2025, 89th Leg., R.S., Ch. 349 (H.B. 3788), Sec. 6, eff. September 1, 2025.

(f) Repealed by Acts 2025, 89th Leg., R.S., Ch. 349 (H.B. 3788), Sec. 6, eff. September 1, 2025.

(g) Repealed by Acts 2025, 89th Leg., R.S., Ch. 349 (H.B. 3788), Sec. 6, eff. September 1, 2025.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 117, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 965, Sec. 4, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 793, Sec. 1, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 1030, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 70, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 349 (H.B. 3788), Sec. 6, eff. September 1, 2025.

Sec. 262.035. POWERS AND DUTIES OF CERTAIN HOSPITAL AUTHORITIES; LEASE. (a) This section applies only to an authority created in a county with a population of at least 350,000 in which a hospital district is not located.

(b) A municipality may lease to an authority subject to this section all or part of a hospital and any other health facilities owned by the municipality. The lease may provide that the municipality may retain during the term of the lease specified rights relating to the operation of the authority and the facilities leased from the municipality. The lease may provide that:

(1) the municipality may retain the power to appoint all directors of the authority, notwithstanding Section 262.012;

(2) the authority is required to perform specified health care services on behalf of the municipality;

(3) the municipality may agree to fund specified health care services;

(4) the authority is prohibited from eliminating or curtailing specified health care services offered at the facilities leased from the municipality without prior consultation with or the approval of the municipality;

(5) the authority is prohibited from subletting the

facilities leased from the municipality or assigning its rights under the lease for a total term of more than five years, or entering into a management contract for the operation of the facilities leased from the municipality as a whole, or pledging the authority's revenues derived from the operation of the facilities leased from the municipality, without prior consultation with or the approval of the municipality;

(6) the board may be subject to any ethics or conflict of interest ordinance applicable to other sovereign city boards and commissions adopted by the municipality and any goals for hiring and contracting with minorities or women adopted by and for the municipality;

(7) the authority will comply with Chapter 252, Local Government Code, relating to purchasing and contracts;

(8) the municipality may issue general obligation bonds for the use and benefit of the authority;

(9) an authority and its employees may participate in the municipality's employee retirement plan, employee health plans, and other employee benefit plans; and

(10) the lease may contain other terms and conditions that the municipality and authority agree on and which are not prohibited by law or by the constitution.

(c) If the municipality retains in the lease the right to appoint all members of the board, the municipality may remove the entire board or any member of the board at any time with cause. The municipality may remove the board or a member of the board under this subsection only after reasonable written notice to the board or board members and on the affirmative vote of a majority of the members of the governing body of the municipality.

(d) For purposes of Chapters 101 and 102, Civil Practice and Remedies Code, a municipal hospital authority subject to this section is a unit of local government and not a municipality.

(e) An authority subject to this section is subject to Chapter 551, Government Code, and Chapter 552, Government Code.

Added by Acts 1993, 73rd Leg., ch. 558, Sec. 1, eff. June 11, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), (88), eff. Sept. 1, 1995.

Sec. 262.036. RETIREMENT BENEFITS. If any authority is created by the governing body of a municipality which has established a municipal retirement system pursuant to Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n, Vernon's Texas Civil Statutes), then the board of such authority shall have the authority to provide and shall provide retirement benefits for employees of the authority by participating in and making all contributions required or authorized by the municipal retirement system established by the municipality pursuant to Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n, Vernon's Texas Civil Statutes).

Added by Acts 1993, 73rd Leg., ch. 614, Sec. 1, eff. July 1, 1993. Renumbered from Health & Safety Code Sec. 262.035 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(23), eff. Sept. 1, 1995.

Sec. 262.037. ESTABLISHMENT OF NONPROFIT CORPORATION. (a) The authority may form and sponsor a nonprofit corporation under the Texas Nonprofit Corporation Law, as described by Section 1.008, Business Organizations Code, to own and operate all or part of one or more ancillary health care facilities consistent with the purposes of an authority under this chapter.

(b) The board shall appoint the board of directors of a nonprofit corporation formed under this section.

(c) The authority may contribute money to or solicit money for the nonprofit corporation. If the authority contributes money to or solicits money for the corporation, the authority shall establish procedures and controls sufficient to ensure that the money is used by the corporation for public purposes.

(d) A nonprofit corporation formed under this section has the same powers as a development corporation under Section 221.030.

(e) A nonprofit corporation formed under this section shall comply with Chapter 2258, Government Code, in the same manner and to the same extent that the authority is required to comply with that chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 1, eff. June 16, 2007.

Sec. 262.038. HOSPITAL AUTHORITY CONTRACTS, COLLABORATIONS, AND JOINT VENTURES. The authority may, directly or through any nonprofit corporation formed by the authority, contract, collaborate, or enter into a joint venture with any public or private entity as necessary to carry out the functions of or provide services to the authority.

Added by Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 1, eff. June 16, 2007.

Sec. 262.039. INVESTMENT OF AUTHORITY FUNDS. (a) This section applies only to an authority that:

(1) is located in:

(A) a county with a population of 2.4 million or more; or

(B) a municipality with a population of less than 30,000;

(2) has assets that exceed the amount of any outstanding bonds issued under Subchapter D; and

(3) does not operate a hospital.

(b) Notwithstanding any other law, an authority may invest authority funds:

(1) as provided by Chapter 2256, Government Code; and

(2) in any investment a trustee is authorized to make under Subtitle B, Title 9, Property Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 154 (S.B. 233), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 581 (H.B. 3333), Sec. 1, eff. September 1, 2015.

Acts 2025, 89th Leg., R.S., Ch. 349 (H.B. 3788), Sec. 4, eff. September 1, 2025.

SUBCHAPTER D. BONDS

Sec. 262.041. REVENUE BONDS. (a) The authority may issue revenue bonds to provide funds for any of the authority's purposes, including the purposes described by Sections 262.0331 and 262.034, regardless of whether the authority owns or operates a hospital.

(b) Revenue bonds must be payable from, and secured by a pledge

of, revenues from:

(1) the operation of one or more hospitals and any other revenues from the ownership or investment of hospital property; or

(2) any initiative described by Section 262.0331 or any facility or service described by Section 262.034.

(c) Additionally, revenue bonds may be secured by a mortgage or deed of trust on real property owned by the authority or by a chattel mortgage on the authority's personal property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 349 (H.B. 3788), Sec. 5, eff. September 1, 2025.

Sec. 262.042. FORM AND PROCEDURE. (a) Revenue bonds must be authorized by a resolution adopted by a majority vote of a quorum of the board. The bonds must:

(1) be signed by the president or vice-president of the board;

(2) be countersigned by the secretary of the board; and

(3) have the seal of the authority impressed or printed on the bonds.

(b) Printed facsimile signatures may be substituted for the actual signatures of the president, vice-president, or secretary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.043. TERMS. (a) Revenue bonds must mature serially or otherwise not more than 40 years after they are issued.

(b) Revenue bonds may:

(1) be sold at a price and under terms that the board considers the most advantageous reasonably obtainable, except that the net effective interest rate computed according to Chapter 1204, Government Code, may not exceed 10 percent a year;

(2) be made callable before maturity at times and prices prescribed in the resolution authorizing the bonds; and

(3) be made registrable as to principal or as to principal and interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.252, eff. Sept. 1, 2001.

Sec. 262.044. NOTICE. (a) Before the board adopts a resolution authorizing the issuance of bonds other than refunding bonds, the board shall publish a notice of its intention to adopt the resolution and of the maximum amount and maximum maturity of the bonds.

(b) The notice must be published once a week for two consecutive weeks in one or more newspapers of general circulation in the authority. The first notice must be not later than the 15th day before the date set for adoption of the resolution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.045. REFERENDUM. (a) A petition requesting an election on the proposition for the issuance of the revenue bonds may be presented to the president or secretary of the board before the date set for the adoption of the bond resolution. The petition must be signed by at least 10 percent of the qualified voters residing in the authority who own taxable property in the authority.

(b) The election shall be ordered and held as provided by Chapter 1251, Government Code. The board, president, and secretary shall perform the functions assigned under that chapter respectively to the municipality's governing body, mayor, and municipal secretary.

(c) If a majority of voters who vote at the election approve the issuance of the bonds, the board may issue the bonds. If a petition is not filed, the board may issue the bonds without an election. However, the board may order the election on its own motion if a petition is not filed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.253, eff. Sept. 1, 2001.

Sec. 262.046. JUNIOR LIEN BONDS; PARITY BONDS. (a) Bonds constituting a junior lien on the revenues or properties may be issued unless prohibited by the bond resolution or the trust indenture.

(b) Parity bonds may be issued under conditions specified by the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.047. BOND PROCEEDS; INVESTMENT OF FUNDS. (a) The board may set aside from the proceeds from the sale of bonds:

(1) an amount for payment of not more than two years' interest on the bonds;

(2) the amount required for operating expenses during the first year of operation as estimated by the board; and

(3) an amount to fund any bond reserve fund or other reserve funds provided for in the bond resolution or trust indenture.

(b) The bond proceeds may be deposited in banks and paid out under terms as provided in the bond resolution or trust indenture.

(c) The law relating to the security for and the investment of municipal funds controls, to the extent applicable, the investment of the authority's funds. The bond resolution or trust indenture may further restrict those investments. Additionally, the authority may invest its bond proceeds, until that money is needed, as authorized by the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.048. REFUNDING BONDS. (a) The authority may issue bonds to refund outstanding bonds in the same manner that other bonds are issued under this chapter.

(b) Bonds issued under this chapter may be exchanged by the comptroller or sold. The proceeds shall be applied as provided by Subchapters B and C, Chapter 1207, Government Code, or other applicable law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.254, eff. Sept. 1, 2001.

Sec. 262.049. APPROVAL AND REGISTRATION OF BONDS. (a) The authority shall submit to the attorney general bonds issued under this chapter and the record relating to the issuance of those bonds.

(b) If the attorney general finds that the bonds were issued in accordance with this chapter, are valid and binding obligations of the authority, and are secured as recited in the bonds:

(1) the attorney general shall approve the bonds; and

(2) the comptroller shall register the bonds and certify the registration on the bonds.

(c) Following approval and registration, the bonds are incontestable.

(d) The bonds are negotiable and must contain the following provision: "The holder hereof shall never have the right to demand payment thereof out of money raised or to be raised by taxation."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.050. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Bonds issued under this chapter are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company; or

(6) the interest and sinking fund or other public fund of an authority.

(b) The bonds are eligible and lawful security, to the extent of the value of the bonds, for the deposits of public funds of the state or an authority if accompanied by all appurtenant unmatured interest coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 263. COUNTY HOSPITALS AND OTHER HEALTH FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 263.0001. DEFINITION. In this chapter, "executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0820, eff. April 2, 2015.

Sec. 263.001. TWO OR MORE COUNTIES MAY JOIN. (a) Two or more adjacent counties may act together to carry out the purposes of this chapter and construct one or more hospitals for their joint use as provided by this chapter for a single county if:

(1) each of the counties has fewer than 15,000 inhabitants; and

(2) the executive commissioner approves.

(b) The counties acting together have the same powers and liabilities under this chapter as a single county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0821, eff. April 2, 2015.

Sec. 263.002. ADDITIONAL HOSPITAL. A county may maintain more than one county hospital if considered advisable by the commissioners court of the county and approved by the executive commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0822, eff. April 2, 2015.

SUBCHAPTER B. ESTABLISHING, ENLARGING, SELLING, AND CLOSING COUNTY HOSPITALS

Sec. 263.021. ESTABLISHING OR ENLARGING HOSPITAL ON PETITION; SUBMISSION OF BOND PROPOSITION. (a) The commissioners court of a county may establish a county hospital or any medical or other health facility or enlarge an existing hospital or facility for the care and treatment of persons who are sick or injured in accordance with this subchapter.

(b) Ten percent or more of the qualified property taxpaying voters of a county may petition the commissioners court of the county to establish or enlarge a county hospital or any medical or other health facility.

(c) A petition may not be presented to the commissioners court

during the 12-month period succeeding the date on which a petition under this section was last presented to the court unless the county does not own a hospital.

(d) On proper petition, the commissioners court shall, within the period designated in the petition, submit to the qualified voters of the county at a special or regular election the proposition of issuing bonds in the amount designated in the petition to establish or enlarge the hospital or facility.

(e) The commissioners court may not submit to the voters a bond proposition to establish or enlarge a county hospital or facility more than twice during any 12-month period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.022. POWERS AND DUTIES OF COMMISSIONERS COURT AFTER PASSAGE OF BOND PROPOSITION. (a) If a bond proposition under Section 263.021 is approved by a majority of the qualified voters voting at the election, the commissioners court of the county shall establish or enlarge a hospital or medical or other health facility as provided in the proposition and maintain the hospital or facility.

(b) In establishing, enlarging, or maintaining a hospital or facility, the commissioners court may:

(1) purchase or lease real or personal property or acquire real property and easements to real property by condemnation;

(2) purchase or construct any necessary buildings;

(3) make necessary improvements, repairs, and alterations to an existing building;

(4) impose property taxes in the county for all necessary expenditures related to the hospital or facility, including maintenance expenses;

(5) issue county bonds to provide funds to establish, enlarge, and equip the hospital or facility or make any necessary permanent improvements in connection with the hospital or facility; and

(6) accept and hold a grant or devise of land or a gift or bequest of money or personal property in trust for the county and apply the principal or income, or both, for the benefit of the hospital or facility and in accordance with the terms of the gift.

(c) Subject to this chapter, the commissioners court may

purchase or lease real or personal property, or both, in an adjacent county if the court considers the purchase or lease necessary for hospital purposes. The commissioners court may not acquire real property in an adjacent county by condemnation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.023. CONSTRUCTION OF HOSPITAL TO AVOID INADEQUATE CARE IN CERTAIN COUNTIES. (a) The commissioners court of a county shall provide for the construction of a county hospital if:

(1) the county has a municipality with more than 10,000 inhabitants as ascertained by the court in the manner determined by a resolution of the court; and

(2) the county does not have a county hospital or the county hospital is inadequate.

(b) The commissioners court shall provide for the construction of the hospital within six months after the date the number of inhabitants of the municipality exceeds 10,000 except that the executive commissioner may, for good cause, extend this period.

(c) The hospital must have a room or ward for the care of confinement cases and a room or ward for the temporary care of persons suffering from mental or nervous disease.

(d) The hospital must have separate buildings for persons suffering from tuberculosis and other communicable diseases.

(e) Sufficient accommodations shall be added to the hospital as needed to take care of persons in the county who are sick or injured.

(f) If adequate funds for the issuance of county warrants and scrip for the construction of the hospital are not available from the county, the commissioners court shall submit, either at a special election called for the purpose or at a regular election, the proposition of the issuance of county bonds for the construction of the hospital. If the proposition is not approved by a majority vote at the election, the court shall, on petition of 10 percent or more of the qualified voters of the county, resubmit the proposition.

(g) A petition may not be presented to the commissioners court if a petition has been presented to the court in the preceding 12 months.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0823, eff. April 2, 2015.

Sec. 263.024. HOSPITAL REVENUE BONDS. (a) A county may issue revenue bonds for:

(1) acquiring, constructing, repairing, equipping, or renovating buildings and improvements for county hospital purposes; or

(2) acquiring land for county hospital purposes.

(b) The county may issue bonds to refund previously issued revenue bonds.

(c) The revenue bonds shall be payable from and secured by a pledge of all or a part of the revenues of the county derived from the operation of the hospital. The bonds may be additionally secured by a mortgage or deed of trust lien on all or part of the county's hospital property.

(d) The revenue bonds must be issued in accordance with Sections 264.042-264.047(a), 264.048, and 264.049, and with the effect specified by Section 264.050.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.025. HOSPITAL OPERATING FUNDS USED FOR IMPROVEMENTS IN CERTAIN COUNTIES. The commissioners court of a county with a population of 24,000 or more but less than 24,500 or a population of 24,700 or more but less than 27,000 may use excess money in the county hospital operating fund for making permanent improvements to the county hospital and for the payment of county bonds issued for the construction and improvement of a county hospital facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 71, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 35, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 71, eff. September 1, 2023.

Sec. 263.026. HEALTH UNIT OR CENTER IN COUNTY WITH POPULATION

GREATER THAN 100,000. (a) The commissioners court of a county with a population of more than 100,000 that has a county hospital may acquire sites and construct or otherwise acquire buildings to use for county public health units or public health centers as part of the county hospital system. The commissioners court may locate a health unit or center anywhere in the county.

(b) Payments for the sites or buildings shall be made from the county permanent improvement fund. To pay for a site or building for a health unit or center, the commissioners court may:

(1) issue negotiable bonds and impose taxes to pay the principal of and interest on the bonds in accordance with Subtitles A and C, Title 9, Government Code;

(2) issue time warrants and impose taxes to pay the principal of and interest on the time warrants in accordance with Subchapter C, Chapter 262, Local Government Code; or

(3) by order issue certificates of indebtedness and impose taxes to pay the principal of and interest on the certificates in accordance with this section.

(c) The certificates of indebtedness must:

(1) mature not later than 35 years after the date of the certificates; and

(2) be signed by the county judge and attested by the county clerk, either by their actual or facsimile signatures as provided by the order of issuance.

(d) The interest on certificates of indebtedness may be evidenced by interest coupons at the discretion of the commissioners court. The interest coupons must be executed by the facsimile signatures of the county judge and county clerk.

(e) The certificates of indebtedness and the record relating to their issuance shall be submitted to the attorney general for examination. If the certificates are issued in accordance with the Texas Constitution and this section, the attorney general shall approve the certificates and the comptroller shall register the certificates. If the certificates are registered, they are incontestable after they are delivered to the purchasers.

(f) The commissioners court shall sell the certificates of indebtedness for not less than their par value plus accrued interest. The commissioners court shall impose a continuing annual ad valorem tax sufficient to pay the principal of and interest on the certificates as each becomes due and payable.

(g) Certificates of indebtedness issued under this section are negotiable instruments.

(h) The commissioners court may issue refunding bonds to refund bonds and certificates issued under this section, subject to state law applicable to refunding bonds issued by counties. The commissioners court may issue the refunding bonds without notice or a referendum.

(i) The commissioners court may issue refunding bonds to refund time warrants issued under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 32, eff. Sept. 1, 1999.

Sec. 263.027. APPROVAL OF CONSTRUCTION OR REPAIR. If requested by the commissioners court of a county, the executive commissioner must approve plans for the construction, alteration, or repair of a hospital or facility under this chapter before the construction, alteration, or repair may begin.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0824, eff. April 2, 2015.

Sec. 263.028. CONTRACT FOR CARE. (a) The commissioners court of a county that does not have a municipality with a population of more than 10,000 may contract with a hospital in the county, an incorporated society or municipality in the county that maintains a hospital, or an adjacent county for the care of residents of the county who are sick or injured.

(b) The term of the contract may not exceed one year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.029. SALE OR LEASE OF HOSPITAL. (a) A county may sell or lease all or part of a county hospital or medical or other health facility operated by the county, including real property, if the commissioners court of the county, by order entered in the

minutes of the court, finds that the sale or lease is in the best interest of the county.

(b) The commissioners court shall set a time and place for a hearing on the proposed sale or lease. The date of the hearing may not be earlier than the 16th day or later than the 30th day from the date of the order.

(c) The county clerk, immediately after the time and place of the hearing are set, shall give notice informing all qualified voters of the county and other persons interested in the issue of selling or leasing the hospital of the time and place of the hearing and their right to appear at the hearing and to speak for or against the proposed action. The county clerk shall publish notice once a week for two consecutive weeks in a newspaper published in the county. The first notice must be published not later than the 15th day before the date set for the hearing. If no newspaper is published in the county, the county clerk shall post the notice at the courthouse door for 14 days before the date set for the hearing.

(d) Ten percent or more of the qualified voters in the county may petition the commissioners court in writing before the time set for the hearing for a referendum on whether the hospital shall be sold or leased or shall continue under county operation. The commissioners court may not sell or lease the hospital unless the proposition to sell or lease the hospital is approved by a majority of the votes cast at the election. The election shall be held under and governed by the election provisions of Section 263.021.

(e) If no petition is filed with the county clerk, the commissioners court may conduct the hearing. Any person interested may appear in person or by attorney. The commissioners court may adjourn the hearing from day to day and from time to time as it considers necessary. On completion of the hearing, the commissioners court may enter an order determining whether or not to sell or lease the hospital. If the court finds that due notice was given, no petition was filed, and the proposed sale or lease is in the best interest of the county, the commissioners court may enter in its minutes an order that the hospital be sold or leased.

(f) The commissioners court may submit the issue of the sale or lease to the voters and withhold its final determination pending the election even if no petition is filed.

(g) The court may sell the hospital or may lease the hospital to be operated as a hospital by the lessee under terms satisfactory

to the commissioners court and the lessee. The commissioners court shall enter in its minutes an order of the sale or lease that contains a complete copy of the sales or lease contract.

(h) If 50 qualified property taxpaying voters in a county with a population of 5,000 to 10,390 file a written petition with the commissioners court requesting a referendum on the issue of leasing all or part of the county hospital and if the proposition to lease all or part of the hospital is not approved by a majority of the votes cast at the election, the commissioners court may not lease all or part of the hospital for a period greater than five years.

(i) The commissioners court may deposit all or part of the proceeds from the sale of a county hospital to the credit of a fund to be known as the county health care fund and shall deposit any of the remainder to the credit of the county general fund. The county health care fund may be used only to finance items related to providing health care to county residents, including indigent residents. The commissioners court may deposit to the credit of the county health care fund all or part of the interest from that fund and shall deposit any remainder to the credit of the county general fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.030. CLOSING OF HOSPITAL. (a) The commissioners court of a county by order on terms it considers reasonable may close a hospital or medical facility constructed, purchased, or acquired under this chapter.

(b) The order is final 30 days after the date of adoption unless at least 10 percent of the qualified voters in the county petition the commissioners court requesting an election to determine whether the hospital or facility should be closed.

(c) On proper petition, the commissioners court shall set a time for an election and shall submit to the qualified voters of the county ballots providing for voting for or against the proposition: "The closing of (name of hospital or facility to be closed)."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.031. CLOSING PART OF HOSPITAL. A county may close a

part of a county hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. BOARD OF MANAGERS

Sec. 263.041. APPOINTMENT OF BOARD OF MANAGERS. (a) The commissioners court of a county shall appoint at least six but not more than 12 residents of the county as the board of managers of a county hospital or medical or other health facility after the court acquires the site for the hospital and awards the contracts for the buildings and improvements necessary for the hospital.

(b) A manager is appointed for a term of two years except that the commissioners court may set the terms of the initial managers at less than two years so that as close as possible to one-half of the managers' terms expire each year.

(c) An appointment to fill a vacancy is for the unexpired term.

(d) A vacancy is created if a manager misses three consecutive board meetings unless the board takes formal action to excuse the absences.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.042. OPERATION OF BOARD OF MANAGERS. (a) The board of managers shall elect from among its members a president, at least one vice-president, a secretary, and a treasurer.

(b) The county judge of the county in which the hospital is located may vote to break a tie vote by the board of managers.

(c) The board of managers shall meet at the hospital at least once a month and may meet at other times as provided by its bylaws.

(d) The board of managers shall hold an annual meeting before the beginning of the third week preceding the date of the meeting of the commissioners court at which the court considers appropriations for the following year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.043. COMPENSATION AND EXPENSES OF BOARD OF MANAGERS. (a) The commissioners court may provide hospitalization insurance as

compensation for the services of the board of managers.

(b) The commissioners court shall pay and audit, in the same manner as other expenses of the hospital, the managers' actual and necessary traveling and other expenses within this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.044. TORT CLAIMS PAYMENTS. A member of the board of managers is a county officer for purposes of Chapter 102, Civil Practice and Remedies Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.045. REMOVAL OF MANAGER. After citation, the commissioners court may, at any time, remove a member of the board of managers from office for cause.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.046. GENERAL POWERS AND DUTIES OF BOARD OF MANAGERS. (a) The board of managers shall generally manage and control the hospital, including:

(1) its buildings and grounds;

(2) its officers and employees;

(3) its patients; and

(4) all matters relating to its government, discipline, contracts, and fiscal concerns.

(b) The board of managers may adopt rules it considers necessary to carry out the purposes of the hospital.

(c) The board of managers shall maintain an effective inspection of the hospital and keep itself informed of the hospital's affairs and management.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.047. SALARIES. (a) The board of managers shall determine the salaries of the officers and employees of the hospital,

including the superintendent.

(b) The salaries may not exceed the appropriation made for the salaries by the commissioners court.

(c) The salaries are full compensation for all services rendered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.048. VISITING PHYSICIANS. (a) The board of managers shall appoint a staff of visiting physicians who visit and treat hospital patients at the request of the board or the superintendent.

(b) The physicians serve without pay from the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.049. DISCHARGE OF PATIENTS. (a) The board of managers shall make the final disposition of a case concerning the discharge of a patient from the hospital.

(b) The decision of the board of managers regarding discharge of a patient may not be appealed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.050. DISPENSARIES AND CLINICS. (a) The board of managers may establish and operate:

(1) an outpatient department or a free dispensary and clinic at the hospital or in the municipality located nearest the hospital; and

(2) a branch dispensary or clinic in a municipality that is located in the county and that has 5,000 or more inhabitants.

(b) The board of managers shall appoint a physician to serve at the dispensary or clinic, determine the time that the physician is required to spend at the dispensary or clinic, and fix the salary, if any, of the physician.

(c) The board of managers shall appoint a trained visiting nurse to serve in connection with the dispensary or clinic and the hospital. The board shall fix the salary of the nurse within the limits of the appropriation made for the salary by the commissioners

court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.051. SCHOOL FOR CHILDREN HAVING TUBERCULOSIS. (a) The board of managers may establish a special and separate school for the education, care, and treatment of children having tuberculosis.

(b) The school may be located at the hospital, in the municipality nearest the hospital, or in the largest municipality in the county.

(c) The school shall be conducted as a branch of the hospital and the children at the school are patients of the hospital and subject to this chapter.

(d) The board of managers shall employ a specially qualified teacher to instruct and care for the children of the school.

(e) The board of managers shall assign the superintendent of the hospital, a member of the staff of visiting physicians, or a physician serving a county dispensary or shall employ a physician to attend the children of the school and to supervise their care and treatment.

(f) The board of managers shall assign a nurse from the hospital or a visiting nurse or shall employ a nurse to assist in the care and treatment of the children of the school.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.052. CONTRACT FOR CARE BY BOARD. The board of managers may contract for the care of a person who is sick or injured and who applies to the hospital for admission. The board may contract for this care with:

(1) a hospital in the county; or

(2) an incorporated society or municipality in the county that maintains a hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.053. RECORDS. (a) The board of managers shall keep a proper record of its proceedings in a book provided for that purpose.

The record must be open for inspection at all times to the board, the commissioners court, and any resident of the county.

(b) The board of managers shall certify all bills and accounts, including salaries and wages, and transmit them to the commissioners court, which shall provide for their payment in the same manner that other charges against the county are paid.

(c) The board of managers shall report to the commissioners court annually, and at other times as directed by the court, on the details of the operation during the year of the hospital dispensaries and school for children suffering from tuberculosis. The report must contain:

(1) the number of patients admitted and the methods and result of their treatment, together with suitable recommendations and other material required by the court; and

(2) full and detailed estimates of the appropriations required during the following year for all purposes, including maintenance, building construction, repairs, renewals, extensions, and improvements.

(d) The board of managers shall incorporate into its report to the commissioners court the accounts and records prepared by the superintendent of the hospital under Section 263.077.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. SUPERINTENDENT

Sec. 263.071. APPOINTMENT OF SUPERINTENDENT. (a) The board of managers shall appoint a superintendent of the hospital who holds office at the pleasure of the board.

(b) The superintendent may not be a member of the board of managers and must be a qualified practitioner of medicine or be specially trained for the work of a superintendent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.072. ROLE OF SUPERINTENDENT. (a) The superintendent is the chief executive officer of the hospital.

(b) The superintendent is subject to the bylaws and rules of the hospital and to the board of managers.

(c) The board of managers shall determine the amount of time

that a superintendent must spend at the hospital in the performance of the superintendent's duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.073. BOND. The superintendent, before beginning to discharge the duties of office, shall give a bond in a sum determined by the board of managers to secure the faithful performance of the superintendent's duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.074. GENERAL POWERS AND DUTIES OF SUPERINTENDENT. (a) The superintendent has general supervision and control of:

(1) the records and accounts of the hospital;

(2) the hospital buildings; and

(3) the internal affairs of the hospital, including discipline.

(b) The superintendent shall enforce the bylaws and rules adopted by the board of managers for the government, discipline, and management of the hospital and its employees and patients.

(c) The superintendent may adopt additional rules and orders the superintendent considers necessary that are not inconsistent with law or the rules and directions of the board of managers.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.075. EQUIPPING THE HOSPITAL. (a) The superintendent shall, with the consent of the board of managers, equip the hospital with furniture, appliances, fixtures, and other facilities necessary for the care and treatment of patients and the use of officers and employees.

(b) The superintendent shall purchase all supplies necessary for the hospital.

(c) Expenditures under this section may not exceed the amount provided for them by the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.076. OFFICERS AND EMPLOYEES. (a) With the consent of the board of managers, the superintendent shall appoint resident officers and employees considered proper and necessary by the superintendent for the efficient performance of the hospital's business.

(b) The superintendent shall determine the duties of the officers and employees of the hospital.

(c) The superintendent may discharge an officer or employee at the discretion of the superintendent for cause stated in writing after an opportunity for a hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.077. ACCOUNTS AND RECORDS. (a) The superintendent shall require daily accounts and records of the hospital's business and operations.

(b) The superintendent shall require that:

(1) a record is kept of the condition of a patient on and after admission; and

(2) proper records and accounts are kept of the admission of a patient, including the patient's name, age, sex, color, marital condition, residence, occupation, and place of past employment.

(c) The superintendent shall present the accounts and records to the board of managers in an annual report.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.078. FORMS FOR ADMISSION. (a) The county hospital shall provide forms for application for admission to the hospital and the superintendent shall forward the forms free to a licensed physician in the county in which the hospital is located at the request of the physician.

(b) An application for admission to a county hospital must be made, if practicable, on a form provided under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.079. ADMISSION OF PERSONS FROM COUNTY. (a) A resident of a county in which a county hospital is located who desires treatment in the hospital may apply in person to the superintendent or to a licensed physician for examination. If the physician finds that the resident is sick or injured, the physician may apply to the superintendent for admission of the resident.

(b) After the superintendent receives an application for admission to the hospital, the superintendent shall notify the applicant to appear in person at the hospital if:

(1) it appears from the application that the applicant is sick or injured; and

(2) there is a vacancy in the hospital.

(c) The superintendent, acting under the general direction of the board of managers, shall admit an applicant for admission to the hospital in order of application or according to the urgency of need of treatment if:

(1) after a personal examination of the applicant, the superintendent is satisfied that the applicant is sick or injured; and

(2) the applicant resides in the county at the time of the application for admission to the hospital.

(d) An application for admission must state whether, in the judgment of the physician, the applicant is able to pay, in whole or in part, for the applicant's care and treatment while in the hospital.

(e) An application must be filed and recorded in a book kept for that purpose in the order it is received.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.080. ADMISSION OF PERSONS FROM ADJACENT COUNTY. The superintendent shall admit to the hospital a person sent by the commissioners court of an adjacent county if:

(1) the adjacent county has contracted with the board of managers for the care and treatment of persons who are sick or injured;

(2) the person resides in the adjacent county at the time of the application for admission to the hospital; and

(3) there is sufficient provision for the care of persons

who are sick or injured and who reside in the county in which the hospital is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.081. CONDITION AND TREATMENT OF PATIENT. The superintendent shall require that a patient's physical condition is carefully examined and the treatment the patient needs is provided.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.082. PAYMENT BY PATIENT. (a) A patient may not be permitted to pay an amount for the patient's maintenance in the hospital greater than the average per capita cost of maintenance in the hospital, including a reasonable allowance for the interest on the cost of the hospital.

(b) An officer or employee of a county hospital may not accept from a patient a fee, payment, or gratuity for any service.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.083. SUPPORT. (a) The superintendent shall inquire into a patient's circumstances and the circumstances of the patient's relatives legally responsible for the patient's support if the patient is admitted to the hospital from the county in which the hospital is located. If the superintendent finds that the patient or the patient's relatives are liable to pay for the patient's care and treatment in whole or in part, the superintendent shall issue an order directing the patient or the patient's relatives to pay to the treasurer of the hospital a specified amount each week in proportion to the financial ability of the patient or the patient's relatives to pay.

(b) A patient or the patient's relatives may not be required to pay an amount greater than the actual per capita cost of maintenance.

(c) A superintendent may collect an amount owed under this section from the estate of a patient, or the relatives legally responsible for the patient's support, in the manner provided by law for the collection of expenses of the last illness of a decedent.

(d) A county court of the county in which a patient's hospital is located shall hear and determine the ability of the patient or the patient's relatives to pay under this section if there is a dispute over that ability or if there is doubt in the mind of the superintendent of the hospital over that ability. The court shall hear witnesses and issue any order that may be proper. The order may not be appealed.

(e) Discrimination in the accommodations, care, or treatment of a patient may not be made because the patient or the patient's relatives contribute to the cost, in whole or in part, of the patient's maintenance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.084. DISCHARGE OF PATIENTS. (a) The superintendent shall temporarily or permanently discharge a patient from the hospital if the patient:

(1) is not sick or injured or recovers from the sickness or injury;

(2) wilfully or habitually violates hospital rules; or

(3) is not suitable for treatment for any other reason.

(b) The superintendent shall make a full report of a discharge of a patient from the hospital at the next meeting of the board of managers after the discharge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.085. COLLECTION OF MONEY. (a) The superintendent shall collect money due the hospital.

(b) The superintendent shall keep an accurate account of money collected at the hospital, report at the monthly meeting of the board of managers the amount of money collected, and transmit the money to the county treasurer of the county in which the hospital is located within 10 days after the date of the meeting of the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. ENFORCEMENT AND DISSEMINATION OF INFORMATION

Sec. 263.101. INSPECTIONS. (a) A resident officer of a county hospital shall admit a member of the board of managers into every part of the hospital and its premises.

(b) On the demand of a member of the board of managers, a resident officer of the hospital shall:

(1) give the board access to all books, papers, accounts, and other records pertaining to the hospital; and

(2) furnish the board with copies, abstracts, and reports.

(c) A hospital established or maintained under this chapter is subject to inspection by an authorized representative of:

(1) the Department of State Health Services;

(2) the commissioners court; or

(3) a state board of charities, if such a board is created.

(d) A resident officer of a county hospital shall admit a representative listed in Subsection (c) into every part of the hospital and its buildings.

(e) On the demand of a representative listed in Subsection (c), a resident officer of the hospital shall give the representative access to all books, papers, accounts, reports, and other records pertaining to the hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0825, eff. April 2, 2015.

Sec. 263.102. RULES AND PUBLICATIONS. (a) The board of managers shall print, or purchase from the Department of State Health Services at the actual cost of printing:

(1) rules adopted by the executive commissioner for the care of persons having a communicable disease and for the prevention and spread of communicable disease; and

(2) bulletins and other publications prepared by the department providing information about the cause, nature, treatment, and prevention of disease.

(b) The board of managers shall send or deliver copies of those rules, bulletins, and publications to:

(1) all practicing physicians in the county in which the hospital is located;

(2) all public schools;

(3) private schools that request copies; and

(4) organizations, churches, societies, unions, and individuals who present a written request for copies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0826, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0827, eff. April 2, 2015.

CHAPTER 264. COUNTY HOSPITAL AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 264.001. SHORT TITLE. This chapter may be cited as the County Hospital Authority Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.002. DEFINITIONS. In this chapter:

(1) "Authority" means a county hospital authority created under this chapter.

(2) "Board" means the board of directors of an authority.

(3) "Bond" includes a note.

(4) "Bond resolution" means the resolution authorizing the issuance of revenue bonds.

(5) "Hospital" means a hospital project as defined under Section 223.002.

(6) "Trust indenture" means the mortgage, deed of trust, or other instrument pledging revenues of or creating a mortgage lien on properties to secure revenue bonds issued by an authority.

(7) "Trustee" means the trustee under a trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.003. CREATION. (a) The commissioners court of a county by order may create a county hospital authority and designate the name of the authority if the commissioners court finds that

creation of the authority is in the best interest of the county and its residents.

(b) The authority is composed only of the territory in the county.

(c) The authority is a body politic and corporate and a political subdivision of the state.

(d) The authority does not have taxing power.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.004. DISSOLUTION. (a) The commissioners court of a county by order may dissolve an authority created by the commissioners court if the commissioners court and the authority provide for the sale or transfer of the authority's assets and liabilities to the county.

(b) The dissolution of an authority and the sale or transfer of the authority's assets and liabilities may not:

(1) violate a trust indenture or bond resolution relating to the outstanding bonds of the authority; or

(2) diminish or impair the rights of the holders of outstanding bonds, warrants, or other obligations of the authority.

(c) An order dissolving an authority takes effect on the 31st day after the date the commissioners court adopts the order.

(d) All records of the authority remaining when the authority is dissolved shall be transferred to the county clerk of the county in which the authority is located.

Added by Acts 2017, 85th Leg., R.S., Ch. 120 (H.B. 594), Sec. 1, eff. May 26, 2017.

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 264.011. BOARD OF DIRECTORS. (a) The authority is governed by a board of directors with at least seven and not more than 11 members.

(b) The number of directors shall be determined at the time the authority is created. The number may be changed by amendment of the order creating the authority unless prohibited by the resolution authorizing the issuance of bonds or by the trust indenture securing the bonds. However, a reduction in the number of directors may not

shorten the term of an incumbent director.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.012. APPOINTMENT OF BOARD; TERMS OF OFFICE. (a) The commissioners court shall appoint the directors of the authority for terms not to exceed three years except as otherwise provided by this section.

(b) The resolution authorizing the issuance of revenue bonds or the trust indenture securing the bonds may prescribe the method of selecting a majority of the directors and the term of office of those directors, and the terms of directors appointed before the issuance of the bonds are subject to the resolution or trust indenture. The commissioners court shall appoint the remaining directors.

(c) The trust indenture may provide that in the event of a default, as defined in the trust indenture, the trustee may appoint all directors. On that appointment, the terms of the directors in office terminate.

(d) If the authority purchases an existing hospital or a hospital under construction from a nonprofit corporation, the directors shall be determined as provided in the contract of purchase.

(e) An officer or employee of the county is not eligible for appointment as a director.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.013. OFFICERS. (a) The board shall elect:

(1) a president and a vice-president, who must be directors;

(2) a secretary and a treasurer, who are not required to be directors; and

(3) any other officers authorized by the authority's bylaws.

(b) The offices of secretary and treasurer may be combined.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.014. AUTHORITY OF BOARD. (a) Action may be taken by a majority of the directors present if a quorum is present.

(b) The president has the same right to vote as other directors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.015. COMPENSATION. A director may not receive compensation for services but is entitled to reimbursement for expenses incurred in performing services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 264.021. GENERAL POWERS. (a) The authority has the power of perpetual succession.

(b) The authority may:

(1) have a seal;

(2) sue and be sued; and

(3) make, amend, and repeal its bylaws.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.022. ACQUISITION, OPERATION, AND LEASE OF HOSPITALS. (a) The authority may construct, purchase, enlarge, furnish, or equip one or more hospitals located in the county.

(b) The authority may operate and maintain one or more hospitals. The authority shall operate a hospital without the intervention of private profit for the use and benefit of the public unless the authority leases the hospital.

(c) The board may lease a hospital or part of a hospital owned by the authority for operation by the lessee as a hospital under terms that are satisfactory to the board and the lessee. The lease must:

(1) be authorized by resolution of the board;

(2) be executed on behalf of the authority by the president and secretary of the board; and

(3) have the seal of the authority impressed on the lease.

(d) The bond resolution or trust indenture may prescribe procedures and policies for the operation of a hospital. If a hospital is used, operated, or acquired by a nonprofit corporation or is leased, the authority may delegate to the nonprofit corporation or lessee the duty to establish the procedures and policies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.023. EMPLOYEES. (a) The board may employ a manager or executive director of a hospital and other employees, experts, and agents.

(b) The board may delegate to the manager or executive director the power to manage the hospital and to employ and discharge employees.

(c) The board may employ legal counsel.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.024. MANAGEMENT AGREEMENT. (a) The board may enter into an agreement with any person for the management or operation of a hospital or part of a hospital owned by the authority under terms that are satisfactory to the board and the contracting party.

(b) The agreement must:

(1) be authorized by resolution of the board;

(2) be executed on behalf of the authority by the president and secretary of the board; and

(3) have the seal of the authority impressed on the agreement.

(c) The board may delegate to the manager the power to manage the hospital and to employ and discharge employees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.025. COMMITTEES. (a) The board, by a resolution adopted by a majority of the directors in office, may designate one or more committees if authorized to do so by the authority's bylaws.

(b) At least two directors must serve on each committee. Each committee may have additional nonvoting members who are not directors

if authorized by the resolution or the bylaws.

(c) A committee may exercise the board's power to manage the authority to the extent and in the manner provided by the resolution or the bylaws. However, the board may not delegate to a committee the power to:

(1) issue bonds;

(2) make or amend a lease of a hospital or a management agreement relating to a hospital; or

(3) employ or discharge a manager or executive director.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.026. RATES FOR HOSPITAL SERVICES. (a) Except as provided by Subsection (b), through charging sufficient rates for services provided by a hospital and through its other revenue sources, the board shall produce revenue sufficient to:

(1) pay the expenses of owning, operating, and maintaining the hospital;

(2) pay the interest on the bonds as it becomes due;

(3) create a sinking fund to pay the bonds as they become due; and

(4) create and maintain a bond reserve fund and other funds as provided in the bond resolution or trust indenture.

(b) If the hospital is used, operated, or acquired by a nonprofit corporation under Chapter 223 or is leased, the board shall require the nonprofit corporation or the lessee to charge rates for services provided by the hospital that are sufficient, with the nonprofit corporation's or lessee's other sources of revenue, to:

(1) pay the expenses of operating and maintaining the hospital; and

(2) make payments or pay rentals to the authority that are sufficient, with the authority's other pledged sources of estimated revenue, to:

(A) pay the interest on the bonds as it becomes due;

(B) create a sinking fund to pay the bonds as they become due; and

(C) create and maintain a bond reserve fund and other funds as provided in the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.027. DEPOSITORY. The authority may:

(1) select a depository in the same manner that a county may select a depository under Chapter 116, Local Government Code; or

(2) award its depository contract to the depository or depositories of the county on the same terms as the terms of the county depository agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.028. EMINENT DOMAIN. (a) To carry out a power granted by this chapter, the authority may acquire the fee simple title to land, other property, and easements by condemnation under Chapter 21, Property Code.

(b) The authority is considered to be a municipal corporation for the purposes of Section 21.021(c), Property Code.

(c) The board shall determine the amount and character of the interest in land, other property, and easements to be acquired under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.029. GIFTS AND ENDOWMENTS. The board may accept gifts and endowments to hold and administer as required by the respective donors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.030. SALE OF PROPERTY; GENERAL PROVISIONS. (a) The board may sell, through sealed bids or at a public auction, real property acquired by gift or purchase that the board determines is not needed for hospital purposes if the sale does not violate:

(1) a trust indenture or bond resolution relating to outstanding bonds of the authority; or

(2) an agreement between the authority and a nonprofit corporation under Chapter 223.

(b) If the board conducts the sale by sealed bids, the board

must provide notice of the sale under Section 272.001, Local Government Code.

(c) If the board conducts the sale by public auction, the board must publish a notice of the sale once a week for three consecutive weeks in a newspaper of general circulation in the county. The notice must include a description of the property and the date, time, and place of the auction. The first notice must be published not later than the 21st day before the date of the auction.

(d) This section does not affect the authority's powers under Chapter 223.

(e) This section does not apply to the sale or closing of a hospital as provided in Section 264.031.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1011, Sec. 2, eff. Sept. 1, 1997.

Sec. 264.031. SALE OR CLOSING OF HOSPITAL. (a) The board may sell all or part of a hospital owned by the authority or close all or part of a hospital owned or operated by the authority. The sale or closing must:

(1) be authorized by resolution of the board;

(2) be executed on behalf of the authority by the president and secretary of the board; and

(3) be made by a document having the seal of the authority impressed on it.

(b) The sale or closing of a hospital may not take effect before the expiration of the time in which a petition may be filed under Subsection (c).

(c) The board shall order and conduct an election on the sale or closing if, before the 31st day after the date the governing body authorizes the sale or closing, the board receives a petition requesting the election signed by at least 10 percent of the qualified voters of the county. The number of qualified voters is determined by the most recent official list of registered voters.

(d) If a petition is filed under Subsection (c), the hospital may be sold or closed only if a majority of the qualified voters voting on the question approve the sale or closing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.032. EMERGENCY BORROWING. (a) If the board declares that funds are not available to meet lawfully authorized obligations of the authority and that an emergency exists, the board may borrow money at a rate of interest not to exceed the maximum annual percentage rate allowed by law for authority obligations at the time the loan is made.

(b) To secure a loan, the board may pledge:

(1) revenues of the authority that are not pledged to pay bonded indebtedness of the authority;

(2) authority bonds that have been authorized but not sold; or

(3) revenues of the authority if the pledge is subordinate to any pledge securing outstanding bonds of the authority.

(c) A loan for which bonds are pledged must mature not later than the first anniversary of the date on which the loan is made. A loan for which authority revenues are pledged must mature not later than the fifth anniversary of the date on which the loan is made.

(d) The board may not spend money obtained from a loan under this section for any purpose other than the purpose for which the board declared an emergency and, if bonds are pledged to pay the loan, for any purpose other than the purposes for which the pledged bonds were authorized.

Added by Acts 1997, 75th Leg., ch. 1011, Sec. 1, eff. Sept. 1, 1997.

Sec. 264.033. TIME WARRANTS. The authority may issue time warrants in the manner in which a commissioners court may issue time warrants under Subchapter C, Chapter 262, Local Government Code.

Added by Acts 1997, 75th Leg., ch. 1011, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 33, eff. Sept. 1, 1999.

Sec. 264.034. FACILITIES AND SERVICES FOR THE DISABLED OR THE ELDERLY. (a) The authority may construct, acquire, own, operate, enlarge, improve, furnish, equip, or provide the following facilities and services to care for the disabled or the elderly:

(1) a nursing home or similar long-term care facility;

(2) elderly housing;

(3) assisted living services;
(4) home health care;
(5) personal care;
(6) special care;
(7) continuing care; or
(8) durable medical equipment.

(b) The authority may lease or enter into an operations or management agreement to care for the disabled or the elderly under Subsection (a).

(c) The authority may sell, transfer, otherwise convey, or close all or part of a facility described by Subsection (a) and discontinue a service described by Subsection (a).

(d) The authority may issue revenue bonds, notes, and time warrants as provided by this chapter to acquire, construct, or improve a facility described by Subsection (a).

(e) For purposes of Chapter 223, a facility or service described by Subsection (a) is a hospital project.

Added by Acts 1997, 75th Leg., ch. 1011, Sec. 1, eff. Sept. 1, 1997.

Sec. 264.035. ESTABLISHMENT OF NONPROFIT CORPORATION. (a) The authority may form and sponsor a nonprofit corporation under the Texas Nonprofit Corporation Law, as described by Section 1.008, Business Organizations Code, to own and operate all or part of one or more ancillary health care facilities consistent with the purposes of an authority under this chapter.

(b) The board shall appoint the board of directors of a nonprofit corporation formed under this section.

(c) The authority may contribute money to or solicit money for the nonprofit corporation. If the authority contributes money to or solicits money for the corporation, the authority shall establish procedures and controls sufficient to ensure that the money is used by the corporation for public purposes.

(d) A nonprofit corporation formed under this section has the same powers as a development corporation under Section 221.030.

(e) A nonprofit corporation formed under this section shall comply with Chapter 2258, Government Code, in the same manner and to the same extent that the authority is required to comply with that chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 2, eff. June 16, 2007.

Sec. 264.036. HOSPITAL AUTHORITY CONTRACTS, COLLABORATIONS, AND JOINT VENTURES. The authority may, directly or through any nonprofit corporation formed by the authority, contract, collaborate, or enter into a joint venture with any public or private entity as necessary to carry out the functions of or provide services to the authority.

Added by Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 2, eff. June 16, 2007.

SUBCHAPTER D. BONDS

Sec. 264.041. REVENUE BONDS. (a) The authority may issue revenue bonds to provide funds for any of the authority's purposes.

(b) Revenue bonds must be payable from, and secured by a pledge of, revenues from the operation of one or more hospitals and any other revenues from owning hospital property. Additionally, revenue bonds may be secured by a mortgage or deed of trust on real property owned by the authority or by a chattel mortgage on the authority's personal property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.042. FORM AND PROCEDURE. (a) Revenue bonds must be authorized by a resolution adopted by a majority vote of a quorum of the board. The bonds must:

(1) be signed by the president or vice-president of the board;

(2) be countersigned by the secretary of the board; and

(3) have the seal of the authority impressed or printed on the bonds.

(b) Printed facsimile signatures may be substituted for the actual signatures of the president, vice-president, or secretary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.043. TERMS. (a) Revenue bonds must mature serially or otherwise not more than 40 years after they are issued.

(b) Revenue bonds may:

(1) be sold at a price and under terms that the board considers the most advantageous reasonably obtainable, except that the net effective interest rate computed according to Chapter 1204, Government Code, may not exceed 10 percent a year;

(2) be made callable before maturity at times and prices prescribed in the resolution authorizing the bonds; and

(3) be made registrable as to principal or as to principal and interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.255, eff. Sept. 1, 2001.

Sec. 264.044. NOTICE. (a) Before the board adopts a resolution authorizing the issuance of bonds other than refunding bonds, the board must publish a notice of its intention to adopt the resolution and of the maximum amount and maximum maturity of the bonds.

(b) The notice must be published once a week for two consecutive weeks in one or more newspapers of general circulation in the authority. The first notice must be published not later than the 15th day before the date set for adoption of the resolution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.045. REFERENDUM. (a) A petition requesting an election on the proposition for the issuance of the revenue bonds may be presented to the secretary or president of the board before the date set for the adoption of the bond resolution. The petition must be signed by at least 10 percent of the qualified voters residing in the county who own taxable property in the authority.

(b) The election shall be ordered and held as provided by Chapter 1251, Government Code. The board, president, and secretary shall perform the functions assigned under that chapter respectively to the commissioners court, county judge, and county clerk.

(c) If a majority of voters who vote at the election approve the issuance of the bonds, the board may issue the bonds. If a

petition is not filed, the board may issue the bonds without an election. However, the board may order the election on its own motion if a petition is not filed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.256, eff. Sept. 1, 2001.

Sec. 264.046. JUNIOR LIEN BONDS; PARITY BONDS. (a) Bonds constituting a junior lien on the revenues or properties may be issued unless prohibited by the bond resolution or the trust indenture.

(b) Parity bonds may be issued under conditions specified by the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.047. BOND PROCEEDS; INVESTMENT OF FUNDS. (a) The board may set aside from the proceeds from the sale of bonds:

(1) an amount for payment of not more than two years' interest on the bonds;

(2) the amount required for operating expenses during the first year of operation as estimated by the board; and

(3) an amount to fund any bond reserve fund or other reserve funds provided for in the bond resolution or trust indenture.

(b) The bond proceeds may be deposited in banks and paid out under terms as provided in the bond resolution or trust indenture.

(c) The law relating to the security for and the investment of county funds controls, to the extent applicable, the investment of the authority's funds. The bond resolution or trust indenture may further restrict those investments. Additionally, the authority may invest its bond proceeds, until that money is needed, as authorized by the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.048. REFUNDING BONDS. (a) The authority may issue bonds to refund outstanding bonds in the same manner that other bonds are issued under this chapter.

(b) Bonds issued under this section may be exchanged by the comptroller or sold. The proceeds shall be applied as provided by Subchapters B and C, Chapter 1207, Government Code, or other applicable law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.257, eff. Sept. 1, 2001.

Sec. 264.049. APPROVAL AND REGISTRATION OF BONDS. (a) The authority shall submit to the attorney general the bonds issued under this chapter and the record relating to the issuance of those bonds.

(b) If the attorney general finds that the bonds were issued in accordance with this chapter, are valid and binding obligations of the authority, and are secured as recited in the bonds:

(1) the attorney general shall approve the bonds; and

(2) the comptroller shall register the bonds and certify the registration on the bonds.

(c) Following approval and registration, the bonds are incontestable.

(d) The bonds are negotiable and must contain the following provision: "The holder hereof shall never have the right to demand payment thereof out of money raised or to be raised by taxation."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.050. LEGAL INVESTMENTS. Bonds of the authority are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company; or

(6) the sinking fund of a political corporation or subdivision of the state, including a municipality, county, or school district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 265. JOINT MUNICIPAL AND COUNTY HOSPITALS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 265.001. MUNICIPALITY WITH POPULATION OF AT LEAST 10,000 AND ANY COUNTY. (a) The commissioners court of a county may cooperate with the proper authorities of a municipality with at least 10,000 inhabitants to establish, build, equip, and maintain a hospital in the municipality.

(b) The commissioners court may appropriate funds for the hospital that the commissioners court considers appropriate after a joint conference with the municipal authorities.

(c) The commissioners court and the municipal authorities shall jointly control the management of the hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.002. COUNTY AND ANY TWO OR MORE MUNICIPALITIES. (a) The commissioners court of a county may cooperate with the proper authorities of two or more municipalities to establish, build, equip, and maintain a hospital in the county.

(b) The commissioners court may appropriate funds for the hospital that the court considers appropriate after a joint conference with the municipal authorities.

(c) The commissioners court and the municipal authorities shall jointly control the management of the hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.003. COUNTY WITH POPULATION OF AT LEAST 92,600 AND MUNICIPALITY WITH POPULATION OF AT LEAST 57,250. (a) The commissioners court of a county with a population of at least 92,600 and the governing body of a municipality in that county with a population of at least 57,250 may establish, build, equip, maintain, and operate a hospital for the care and treatment of sick, infirm, or injured inhabitants of the county or municipality.

(b) The commissioners court and the governing body by agreement may divide the hospital costs between the county and the municipality.

(c) If the amounts in the county or municipal general funds are insufficient to pay the hospital costs, the commissioners court or

the governing body at a special or general election may submit to the qualified voters of the county or municipality, respectively, a proposition for the county and municipality to establish, build, equip, maintain, and operate a hospital and for:

(1) the levy of a tax for that purpose not to exceed 10 cents on each $100 of the taxable value of real and personal property that is taxable by the county or municipality; or

(2) the issuance of bonds by the county or municipality in an amount not to exceed the amount specified in the proposition for all or part of the cost of establishing, building, or equipping the hospital and for the levy of a tax to create a sinking fund for the payment of interest on the bonds not to exceed 10 cents on each $100 of the taxable value of real and personal property that is taxable by the county or municipality.

(d) The commissioners court or governing body may assess and levy a tax, or may issue bonds in the manner provided for issuance of other bonds by the county or municipality and assess and levy a tax, as stated in the proposition if the proposition is approved by a majority of votes cast in the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. JOINT HOSPITAL WITH BOARD OF MANAGERS

Sec. 265.011. ESTABLISHMENT OF HOSPITAL BY COMMISSIONERS COURT AND MUNICIPAL GOVERNING BODY. The commissioners court of a county and the governing body of a municipality in that county may jointly appoint a board of managers to establish, build, equip, maintain, and operate one or more hospitals for the care and treatment of the sick, infirm, or injured.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.012. FINANCING. (a) If the municipality or county has issued and sold bonds to establish, build, equip, maintain, and operate a joint municipal and county hospital, the municipality or county may finance the hospital out of general revenue and may levy and collect a tax to finance the hospital not to exceed 10 cents on each $100 of the taxable value of property taxable by the municipality or county.

(b) The commissioners court and the municipal governing body may contribute to the funds necessary for the hospital in a proportion to which they agree.

(c) The board of managers may spend, in a manner determined by the board, funds provided by the county or municipality through the issuance of bonds or other obligations or by appropriation from other funds, for purposes related to the hospital as if the action were taken by the commissioners court or the governing body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.013. BOARD OF MANAGERS. (a) The board of managers is composed of seven members.

(b) The commissioners court and the municipal governing body shall each appoint three members to the board, and the commissioners court and the governing body shall jointly appoint one member to the board. Members are appointed for six-year terms. However, in making the initial appointments to the board, each appointing entity shall designate one of its appointees for a term expiring two years after the date of appointment, one for a term expiring four years after the date of appointment, and one for a term expiring six years after the date of appointment. The term of the initial joint appointee expires six years after the date of appointment.

(c) The entity that made an original appointment shall appoint a successor member on the expiration of a member's term or to fill, for the unexpired part of a term, a vacancy caused by death or resignation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.014. CHAIRMAN. The board of managers shall select a chairman from among its members who shall:

(1) preside over the board's meetings; and

(2) sign any contract, agreement, or other instrument made by the board on behalf of the county and municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.015. CONTRACTS. The board of managers may execute any contract relating to establishing, building, equipping, maintaining, or operating the hospital as if the action were taken by the commissioners court or the municipal governing body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.016. FINANCIAL STATEMENT; BUDGET. (a) The board of managers shall annually prepare and present to the commissioners court and the municipal governing body a statement of the hospital's financial status with a proposed budget for the following year.

(b) On the basis of the financial statement and budget, the commissioners court and the governing body shall appropriate an amount those entities consider proper and necessary for the use of the board of managers in the operation of the hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.017. ISSUANCE OF REVENUE BONDS. (a) The board of managers may issue and sell revenue bonds in the name of the hospital to finance:

(1) the acquisition of real property, the acquisition, construction, improvement, repair, or rehabilitation of hospital facilities, or the acquisition of equipment or supplies necessary for the hospital to provide hospital services; or

(2) the installation of equipment necessary for the hospital to provide hospital services.

(b) The board of managers has the powers of an issuer under Chapter 1371, Government Code, and may enter into a credit agreement under that chapter. A bond issued under this subchapter is an obligation under Chapter 1371, Government Code, but is not required to be rated as required by that chapter. In this subsection, "credit agreement" and "obligation" have the meanings assigned by Section 1371.001, Government Code.

(c) Bonds issued under this subchapter must be approved by:

(1) a resolution adopted by the board of managers; and

(2) a resolution or order adopted by the commissioners court of the county and the governing body of the municipality that appointed the board.

(d) At the time of issuance of the bonds, the board of managers may:

(1) determine the title of the bonds, provided the title includes the following: "Board of Managers Joint (insert county name)-(insert municipality name) Hospital Revenue Bonds";

(2) prescribe procedures for the operation and maintenance of the hospital in the proceedings authorizing issuance of the revenue bonds; and

(3) provide for the issuance of additional parity bonds or subordinate lien bonds under terms prescribed by the board of managers in the proceedings authorizing issuance of the revenue bonds.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0171. REPAYMENT OF BONDS. The board of managers may provide for the payment of principal of, premium on, if any, and interest on the bonds by pledging all or any part of the hospital's revenue derived from the operation of the hospital or from other sources.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0172. ADDITIONAL SECURITY FOR BONDS. The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the hospital and rights appurtenant to those properties.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0173. MATURITY. A bond issued under this subchapter must mature not later than 40 years after its date.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0174. BONDS NOT PAYABLE FROM TAXES. A bond issued under this subchapter must contain the following provision: "The

holder of this obligation is not entitled to demand payment of this obligation out of any money raised by taxation by (name of county) or by (name of municipality) or from any other income of the county or municipality. The board of managers of the hospital has no taxing power."

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0175. SALE OF BONDS. The board of managers may sell bonds issued under this subchapter at public or private sale in the manner and on the terms approved by the board.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0176. REFUNDING BONDS. (a) The board of managers may refund bonds issued under this subchapter by issuing refunding bonds under terms approved by the board.

(b) All appropriate provisions of this subchapter apply to the refunding bonds. The refunding bonds shall be issued in the manner provided by this subchapter for issuing other bonds.

(c) The refunding bonds may be sold and delivered in amounts sufficient to pay the principal of and interest and any redemption premium on the bonds to be refunded, at maturity or on any redemption date.

(d) The refunding bonds may be issued to be exchanged for the bonds being refunded by them. In that case, the comptroller shall register the refunding bonds and deliver them to the holder of the bonds being refunded as approved by the board. The exchange may be made in one delivery or in installment deliveries.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0177. AUTHORITY TO BORROW MONEY. (a) After approval by resolution of the commissioners court of the county and the governing body of the municipality that appointed the board, the board of managers may, on behalf of the hospital, borrow money from a federally insured lending institution for a purpose described by Section 265.0179. The board may execute a loan agreement or

promissory note as evidence of the obligation to repay the loan.

(b) The board of managers may borrow money in an amount it considers advisable, subject to a rate of interest, security, and other terms it considers advisable. The loan shall mature not later than the 30th anniversary of the date on which the loan is made.

(c) Before entering into a loan under this section, the board of managers must determine that there will be sufficient money available from revenues generated by the hospital to pay the loan when the loan becomes due.

(d) The commissioners court of the county and the governing body of the municipality that appointed the board of managers must approve the terms of a loan agreement by written resolution.

(e) Chapter 1202, Government Code, does not apply to a promissory note or any other instrument evidencing a loan under this section.

Added by Acts 2003, 78th Leg., ch. 719, Sec. 1, eff. June 20, 2003.

Sec. 265.0178. PLEDGE OF SECURITY. (a) A loan under Section 265.0177 may be:

(1) payable from and secured by a pledge of all or part of the revenues, income, or resources of the hospital that are not pledged to pay a bonded indebtedness of the hospital; or

(2) secured by a deed of trust or other security interest in any property of the hospital that is not pledged to pay a bonded indebtedness of the hospital.

(b) The holder of a loan obligation under Section 265.0177 is not entitled to demand payment of the principal and interest on the loan from any money or property of the hospital other than the money or property specifically pledged to secure payment of the loan.

Added by Acts 2003, 78th Leg., ch. 719, Sec. 1, eff. June 20, 2003.

Sec. 265.0179. PERMISSIBLE USES OF LOAN PROCEEDS. The proceeds from a loan under Section 265.0177 may be used to pay costs related to the acquisition, construction, rehabilitation, and equipping of a hospital facility, including costs related to the acquisition of real property and any other improvement considered necessary and appropriate by the board of managers.

Added by Acts 2003, 78th Leg., ch. 719, Sec. 1, eff. June 20, 2003.

Sec. 265.018. HOSPITAL PROPERTY. The board of managers may acquire, hold, or dispose of property or an interest in property. As agreed by the county and municipality, the county or municipality may hold title to hospital property, or title may be held in the name of the hospital.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0181. TRANSFER OF PROPERTY. On dissolution of the board of managers, title to property held by the board or in the name of the hospital shall be transferred to the county and municipality as agreed to by the county and municipality.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.019. USE OF EARNINGS OR ASSETS FOR PRIVATE PURPOSES PROHIBITED. Except as reasonable compensation for services rendered or reasonable allowance for authorized expenditures incurred on behalf of the board of managers or the hospital, the net earnings of the board or the hospital may not be used for the benefit of a private officer, board member, individual, or substantial contributor to the board of managers or the hospital. The assets of the board or the hospital may not be distributed to, be divided among, be used for, accrue to, or benefit a private officer, board member, individual, or substantial contributor to the board or the hospital.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.020. APPLICABILITY. Sections 265.017-265.019 apply only to a hospital located in a county with a population of 75,000 or more.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

SUBCHAPTER C. JOINT HOSPITAL CONTROLLED BY MUNICIPALITY OR COUNTY

Sec. 265.021. OWNERSHIP AND CONTROL DESIGNATED. (a) A county with a population of at least 200,000 and one or more municipalities in the county that jointly own and operate a hospital in the county may by agreement designate one of those governmental entities to assume the entire ownership and control of the hospital on terms to which those governmental entities agree.

(b) On the agreement of the commissioners court and the governing body of each municipality that jointly owns and operates the hospital, a countywide election on the issue of the future ownership and operation of the hospital may be ordered. The majority vote on the propositions submitted shall govern the future ownership and operation of the hospital. The commissioners court shall pay the costs of the election from county funds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.022. BOARD OF MANAGERS OF HOSPITAL CONTROLLED BY COUNTY. (a) If the county is designated to own and control the hospital, the commissioners court shall appoint a board of managers with at least three and not more than nine members.

(b) The board of managers has control of the management of the hospital.

(c) The board of managers shall give a report of their management, including all acts and rules of the board, to the commissioners court once each quarter or more often at the request of the commissioners court.

(d) The board of managers shall give a quarterly financial statement to the commissioners court that shows all money spent and received by the board and the purposes of the expenditures.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.023. BOARD OF MANAGERS OF HOSPITAL CONTROLLED BY MUNICIPALITY. If the municipality is designated to own and control the hospital, the governing body of the municipality may appoint the board of managers under its charter or as it considers appropriate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.024. TERMS. Members of the board of managers shall be appointed for staggered six-year terms, with one-third of the terms expiring every two years.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.025. TAX. (a) The commissioners court may authorize and levy a tax not to exceed 50 cents on each $100 of the taxable value of property taxable by the county for construction of buildings or building additions, for other improvements or equipment, or for operation and maintenance of the hospital if the tax is approved by a majority vote at a county election. Additional taxes may be authorized at subsequent elections if the total tax does not exceed the limit imposed by this subsection.

(b) The voters may approve a part of the tax to be used for the interest and sinking fund for outstanding bonds of the municipality or county issued for construction or maintenance of the hospital, whether issued before or after the ownership and control of the hospital are designated under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.026. TUBERCULOSIS CONTROL. (a) The commissioners court and each municipal governing body that designates the ownership and control of a joint hospital under this subchapter may conduct a joint program of tuberculosis control in their jurisdictions to protect the public health through alleviation, suppression, and prevention of the spread of tuberculosis.

(b) The program may include cooperation with public or private agencies that have the same objective, whether federal, state, or local.

(c) The commissioners court may levy a tax not to exceed 10 cents on each $100 of the taxable value of property taxable by the county, in addition to the tax under Section 265.025, if approved by a majority vote at a county election. The revenue from that tax shall be kept separate from other funds and shall be used only for the purposes of this section.

(d) The governing body of a municipality participating in the program may levy a tax not to exceed five cents on each $100 of the taxable value of property taxable by the municipality if approved by a majority vote at a municipal election in accordance with the municipal charter in a home-rule municipality or with other law in a general-law municipality. The revenue from the tax shall be kept separate from other funds and shall be used only for the purposes of this section. The municipal charter of a home-rule municipality may be amended to create the fund for the tax proceeds or other income.

(e) The county and each municipality participating in the program and levying the taxes may create a joint tuberculosis control board to administer this section. The board must have at least five members. The district judges of the county by majority action, the county health board, the municipal health board of the participating municipality with the largest population, the county judge, and the mayor of each participating municipality shall each appoint a member to the board. Board members serve without compensation.

(f) The members are appointed for three-year terms. However, the term of the first appointment by the county health board or by a mayor expires one year after the date of appointment, the term of the first appointment by the municipal health board or the county judge expires two years after the date of appointment, and the term of the first appointment by the district judges expires three years after the date of appointment. The entity that made an original appointment shall appoint a successor member on the expiration of a member's term or to fill, for the unexpired part of a term, a vacancy caused by death or resignation.

(g) The board may administer this section to alleviate, suppress, and prevent the spread of tuberculosis in the county as a public health function.

(h) The county and each municipality participating under this section may combine the proceeds from taxes levied under this section to be spent under the board's direction only to:

(1) provide necessary economic aid to indigent persons with tuberculosis and dependent members of their immediate family, on certification by the county or municipal health authority that those persons are indigent and have resided in the county for at least six months before receiving aid or assistance from a public or private charity or service for the person's support or the support of the person's family, in order to treat and prevent the disease and

protect the public health; or

(2) pay administrative expenses, including the expenses of case investigation and necessary equipment and services.

(i) The board quarterly shall report the condition of the fund, the expenditures from the fund, and the services performed to the commissioners court and the governing body of each municipality participating under this section. The commissioners court or the governing body of a municipality participating under this section may examine and audit the books and other records of the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. JOINT COUNTY-MUNICIPAL HOSPITAL BOARDS

Sec. 265.031. CREATION OF BOARD. (a) The commissioners court of a county and the governing body of a municipality located in whole or in part in that county may adopt resolutions creating a joint county-municipal hospital board, without taxing power, designated the "_____ County-Municipality of _____, Texas, Hospital Board."

(b) A board created under this section is a public agency and body politic.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.032. APPOINTMENT OF BOARD. (a) The board consists of seven directors. A director may serve successive terms.

(b) The commissioners court shall appoint four directors in its resolution creating the board, and the municipal governing body shall appoint three directors in its resolution creating the board.

(c) Directors are appointed for staggered terms of two years. However, in making the initial appointments to the board the commissioners court shall designate two of its appointees to serve two-year terms and two to serve one-year terms, and the governing body shall designate two of its appointees to serve two-year terms and one to serve a one-year term.

(d) The entity that makes an original appointment shall appoint a successor director on the expiration of a director's term or to fill, for the unexpired part of a term, a vacancy caused by death or resignation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.033. OFFICERS. (a) The board shall elect a director as chairman. The chairman shall preside at board meetings and perform other duties and functions prescribed by the board. The chairman may vote in the same manner as any other director.

(b) The board shall elect a secretary, who is not required to be a director. The secretary is the official custodian of the minutes, books, records, and seal of the board and shall perform other duties and functions prescribed by the board.

(c) The board may elect any other officer that the board considers necessary or advisable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.034. AUTHORITY OF BOARD. (a) The board shall act through resolutions adopted by the board. The affirmative vote of four directors is required to adopt a resolution.

(b) The board is a joint agent of the county and the municipality for hospital purposes and shall act solely for the joint benefit of the county and the municipality. However, the board shall act independently in the exercise of powers, duties, and functions under this subchapter.

(c) The board may appoint or employ any agent, employee, or official that the board considers necessary or advisable to carry out any power, duty, or function of the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.035. SUITS. The board may sue and be sued in its own name, capacity, and behalf.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.036. COMPENSATION. A director may not receive compensation but is entitled to reimbursement for actual expenses incurred in the performance of the duties of director to the extent

authorized by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.037. HOSPITAL FACILITIES; OTHER PROPERTY. (a) The board may purchase, construct, receive, lease, or otherwise acquire hospital facilities and may improve, enlarge, furnish, equip, operate, and maintain those facilities.

(b) The county or the municipality may lease or convey title to, or any other interest in, all or part of the county's or municipality's hospital facilities, including real and personal property, to the board on terms agreed to by the county or municipality and the board.

(c) The board may own, receive, encumber, sell, lease, or convey any interest in real or personal property, including gifts and grants. However, the board may not encumber, sell, lease, or convey real or personal property unless the commissioners court and the governing body of the municipality by resolution approve the transaction.

(d) A board existing in a county with a population of more than 100,000 and a municipality with a population of more than 75,000, as an exercise of its powers as a public agency and body politic, may purchase, construct, receive, lease, or otherwise acquire hospital facilities, including the sublease of one or more hospital facilities, regardless of whether the action might be considered anticompetitive under the antitrust laws of the United States or this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 909, Sec. 1, eff. Sept. 1, 1997.

Sec. 265.038. CONTRACTS FOR HOSPITAL SERVICES. The county or the municipality may contract with the board for the care and treatment of indigent or needy patients or for any other hospital services. The county or the municipality may make payments to the board under the contract and may levy ad valorem taxes or pledge funds or resources for the payments.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.039. FUNDS. (a) The board may apply for, receive, and spend federal or state funds available for hospital purposes.

(b) The county or the municipality by resolution may authorize the board to apply for, receive, and spend federal or state funds available for county or municipal hospital purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.040. AUTHORITY TO ISSUE REVENUE BONDS. (a) The board may issue revenue bonds to perform any power, duty, or function under this subchapter. The issuance must be approved by resolution by the commissioners court and the municipal governing body.

(b) The board may prescribe procedures for the operation and maintenance of the hospital in the proceedings authorizing the issuance of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.041. TERMS OF BONDS. (a) The revenue bonds may mature serially or otherwise not more than 40 years after they are issued. The bonds may bear interest at a rate not to exceed the maximum rate provided by Chapter 1204, Government Code, and may be made redeemable prior to maturity.

(b) The bonds and any appurtenant interest coupons are negotiable instruments.

(c) The bonds may be made registrable as to principal or as to principal and interest.

(d) The directors may determine, in the proceedings authorizing the issuance of the bonds:

(1) the form, denominations, and manner in which the bonds are issued;

(2) the terms and details under which the bonds are issued; and

(3) the manner in which the bonds are executed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.258, eff. Sept. 1, 2001.

Sec. 265.042. PLEDGE OF SECURITY. (a) The revenue bonds may be payable from, and secured by a pledge of, all or part of the revenues, income, or resources of the board or the board's hospital facilities. Additionally, the bonds may be secured by a mortgage or deed of trust on real or personal property, and the board may authorize the execution and delivery of trust indentures or other encumbrances to evidence the security.

(b) The bonds must contain substantially the following statement: "The owner hereof shall never have the right to demand payment of this obligation from taxes levied by the hospital board."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.043. SALE AND USE OF PROCEEDS. (a) The revenue bonds may be sold at public or private sale at a price and under terms determined by the directors. The bonds may bear interest at a rate not to exceed the maximum rate provided by Chapter 1204, Government Code.

(b) Proceeds from the sale of the bonds may be used, if the use is authorized in the proceedings authorizing issuance of the bonds, to:

(1) pay interest on the bonds during the construction of hospital facilities acquired through issuance of the bonds;

(2) pay operation and maintenance expense of the hospital facilities to the extent and for the time specified in the proceedings;

(3) create reserves for the payment of principal of and interest on the bonds; or

(4) invest, until needed, to the extent and in the manner provided in the bond resolution or a trust indenture executed in connection with the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.259, eff. Sept. 1, 2001.

Sec. 265.044. PARITY AND SUBORDINATE LIEN BONDS. The directors may provide in the authorization of the revenue bonds for the

subsequent issuance of additional parity bonds or subordinate lien bonds under terms set by the board in the proceedings authorizing the issuance of the revenue bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.045. NOTICE; PETITION FOR ELECTION. (a) Before the directors authorize the issuance of bonds other than refunding bonds, the directors shall prepare and publish a notice of:

(1) its intention to adopt a resolution authorizing the issuance of bonds;

(2) the date it intends to adopt the resolution; and

(3) the maximum amount and maximum maturity of the bonds.

(b) The notice must be published once a week for two consecutive weeks in a newspaper of general circulation in the county and the municipality. The first notice must be published not later than the 15th day before the date set for adopting the bond resolution.

(c) A petition requesting an election on the proposition for the issuance of the bonds may be presented to the hospital board secretary before the date set for adoption of the bond resolution. The petition must be signed by at least 10 percent of the qualified voters residing in the county and in any part of the municipality that is not in the county.

(d) The directors shall order an election requested under Subsection (c) in the county and any part of the municipality that is not in the county. The election shall be held substantially as provided by Chapter 1251, Government Code. The board may issue the bonds if the issuance is approved at the election.

(e) The bond resolution may be adopted on the date set for the adoption, or not later than the 30th day after that date, if no petition is filed, and the bonds may be issued and delivered without an election or the creation of an encumbrance.

(f) The directors may order an election on the issuance of the bonds on their own motion if they consider it advisable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.260, eff. Sept. 1, 2001.

Sec. 265.046. REFUNDING BONDS. Any bonds issued under this subchapter may be refunded by the issuance of refunding bonds in the manner provided by this subchapter for the issuance of other bonds, except the refunding bonds may be issued to be exchanged for the bonds being refunded. If the refunding bonds are issued to be exchanged, the comptroller shall register the refunding bonds and deliver them to each holder of the bonds being refunded as provided by the proceedings authorizing the refunding bonds. The exchange may be made in one delivery or several installment deliveries.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.047. EXAMINATION, APPROVAL, AND REGISTRATION OF BONDS. (a) The board shall submit to the attorney general for examination the bonds issued under this subchapter and the proceedings authorizing their issuance.

(b) The attorney general shall approve the bonds if the attorney general finds that the bonds have been authorized in accordance with this subchapter, and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds are incontestable and are valid and binding obligations in accordance with their terms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.048. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Bonds issued under this subchapter are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company;

(6) a fiduciary;

(7) a trustee;

(8) a guardian; and

(9) an interest and sinking fund or other public fund of the state or of an agency, subdivision, or instrumentality of the

state, including a municipality, county, school district, special district, public agency, and body politic.

(b) The bonds are eligible and lawful security for the deposits of public funds of the state or of an agency, subdivision, or instrumentality of the state, including a municipality, county, school district, special district, public agency, and body politic. The bonds may secure those deposits in an amount up to the value of the bonds, if accompanied by all appurtenant unmatured interest coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.049. CHARGES FOR SERVICES AND FACILITIES. The board shall operate its hospital facilities for the use and benefit of the public, but shall establish and collect charges for services and facilities that are sufficient combined with other revenue and income to:

(1) pay all expenses related to ownership, operation, and maintenance of its hospital facilities;

(2) pay principal of and interest on its bonds; and

(3) create and maintain reserves and any other funds provided for in the proceedings authorizing the issuance of bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.050. DEPOSITORY. The board may:

(1) select a depository in the same manner that a municipality or county may select a depository under Chapter 105 or Chapter 116, Local Government Code; or

(2) execute a depository contract with a depository selected by the municipality or the county on the same terms as the municipality or county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.051. INVESTMENT OF FUNDS. (a) The law relating to security for and investment of municipal or county funds applies to hospital board funds. A bond resolution or trust indenture executed

for hospital board bonds may further restrict the security for and investment of hospital board funds.

(b) The hospital board may invest, until needed, all or part of its bond proceeds in direct obligations of the United States to the extent authorized in the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.052. EMINENT DOMAIN. (a) The hospital board may acquire the fee simple title to or any other interest in land and other property by condemnation under Chapter 21, Property Code, to carry out any power, duty, or function under this subchapter.

(b) The board has the same rights as a county or municipality under Section 21.021, Property Code.

(c) The board shall determine the amount and character of the interest in land or other property to be acquired under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. SALE, LEASE, OR CLOSING

Sec. 265.071. OFFICIAL ACTION. (a) The commissioners court by order and the governing body of a municipality by ordinance may order the sale, lease, or closing of all or part of a joint municipal and county hospital, including real property, owned and operated by the county and municipality.

(b) The order and ordinance must include a finding that the sale, lease, or closing is in the best interest of the residents of the county or municipality, respectively.

(c) A sale or closing may not take effect before the expiration of the period in which a petition may be filed under Section 265.072.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.072. PETITION AND ELECTION. (a) A petition requesting an election on the sale or closing of the hospital may be presented to the commissioners court and the municipal governing body before the 31st day after the date the commissioners court and the governing body order the sale or closing.

(b) The petition must be signed by at least 10 percent of the qualified voters of the county and any part of the municipality that is not in the county.

(c) On receipt of the petition, the commissioners court and the governing body shall order and conduct the election. The commissioners court and the governing body may sell or close the hospital only if a majority of the qualified voters voting at the election approve the sale or closing.

(d) The number of qualified voters of the county and any part of the municipality that is not in the county is determined according to the most recent official list of registered voters.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBTITLE D. HOSPITAL DISTRICTS

CHAPTER 281. HOSPITAL DISTRICTS IN COUNTIES OF AT LEAST 190,000

SUBCHAPTER A. CREATION OF DISTRICT

Sec. 281.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of a district.

(2) "District" means a hospital district created under this chapter.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0828, eff. April 2, 2015.

Sec. 281.002. DISTRICT AUTHORIZATION. (a) A county with at least 190,000 inhabitants that does not own or operate a hospital system for indigent or needy persons may create a countywide hospital district and provide for the establishment of a hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district.

(b) A county with at least 190,000 inhabitants that owns and operates a hospital or hospital system for indigent or needy persons, separately or jointly with a municipality, may create a countywide

hospital district and take over the hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district.

(c) A county with at least 190,000 inhabitants that has within its boundaries a municipality that owns a hospital or hospital system for indigent or needy persons that is operated by or on behalf of the municipality may create a countywide hospital district to assume ownership of the hospital or hospital system and to furnish medical aid and hospital care to indigent and needy persons residing in the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.208, eff. Sept. 1, 2003.

Sec. 281.003. CREATION ELECTION REQUIRED. (a) The district may be created only if the creation is approved by a majority of the qualified voters of the county in which the proposed district is to be located who vote at an election called and held for that purpose.

(b) The commissioners court may order a creation election to be held on its own motion and shall order the election on the presentation of a petition for a creation election signed by at least 100 qualified property taxpaying voters of the county.

(c) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.004. BALLOT PROPOSITIONS. (a) Except as provided by Subsection (a-1) or (b), the ballot for an election under this chapter shall be printed to provide for voting for or against the proposition: "The creation of a hospital district and the levy of a tax not to exceed 75 cents on each $100 of the taxable value of property taxable by the district."

(a-1) The ballot for an election under this chapter held in a county with a population of more than 1.2 million that is not included in the boundaries of a hospital district before September 1, 2003, shall be printed to provide for voting for or against the proposition: "The creation of a hospital district and the levy of a

tax not to exceed 25 cents on each $100 of the taxable value of property taxable by the district."

(b) If the county or a municipality in the county has any outstanding bonds issued for hospital purposes, the ballot for an election under this chapter shall contain the proposition prescribed by Subsection (a) or (a-1), as appropriate, followed by ", and the assumption by the district of all outstanding bonds previously issued for hospital purposes by _____ County and by any municipality in the county."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.209, eff. Sept. 1, 2003. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 72, eff. September 1, 2023.

SUBCHAPTER B. DISTRICT ADMINISTRATION

Sec. 281.021. APPOINTMENT OF BOARD. (a) The commissioners court of a county in which a district is created under this chapter shall appoint a board of hospital managers composed of not less than five or more than seven members.

(b) The commissioners court of a county with a population of more than 2.1 million but less than 2.5 million in which a district is created under this chapter shall appoint a board composed of not less than five or more than 15 members.

(c) The Harris County Commissioners Court shall appoint a board composed of not less than seven or more than nine members.

(d) If a district is created under this chapter in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003, the district shall be governed by a nine-member board of hospital managers, appointed as follows:

(1) the commissioners court of the county shall appoint four members;

(2) the governing body of the municipality with the largest population in the county shall appoint four members; and

(3) the commissioners court and the governing body of the municipality described by Subdivision (2) shall jointly appoint one member.

(e) The El Paso County Commissioners Court shall appoint a board composed of seven members, and shall by order provide for the qualifications of appointees to the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 72, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 36, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.210, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 206 (S.B. 534), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 841 (H.B. 3462), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 35, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 73, eff. September 1, 2023.

Sec. 281.0211. APPOINTMENT OF DALLAS COUNTY HOSPITAL DISTRICT BOARD; MEMBERS' TERMS. (a) The Dallas County Hospital District is governed by a board composed of 11 members, appointed as follows:

(1) the Dallas County Commissioners Court shall appoint one member;

(2) each commissioner on the Dallas County Commissioners Court shall appoint two members; and

(3) the county judge of Dallas County shall appoint two members.

(b) Board members appointed under this section serve staggered three-year terms, with as near as possible to one-third of the members' terms expiring each year.

(c) On or after September 1, 2030, the Dallas County Commissioners Court shall appoint members to the board in accordance with Sections 281.021(a) and 281.022(a).

(d) Subsection (c) does not affect the entitlement of a member of the board of the Dallas County Hospital District appointed to the board under this section before September 1, 2030, to continue to carry out the member's functions for the remainder of the member's term.

(e) On the expiration of the terms of the board members

described by Subsection (d), the Dallas County Commissioners Court shall take appropriate action to ensure that, as soon as possible, the board of the Dallas County Hospital District complies with the requirements of Sections 281.021(a) and 281.022(a).

Added by Acts 2015, 84th Leg., R.S., Ch. 899 (S.B. 1461), Sec. 1, eff. June 18, 2015.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 385 (S.B. 1165), Sec. 1, eff. June 7, 2021.

Sec. 281.022. TERM. (a) A board member serves a two-year term, except that the commissioners court may make some initial appointments for one year in order to stagger terms.

(b) The members of the board of hospital managers of the Nueces County Hospital District serve staggered three-year terms, with as near as possible to one-third of the members' terms expiring each year.

(c) The members of a board of hospital managers appointed under Section 281.021(d) serve staggered four-year terms, with as near as possible to one-fourth of the members' terms expiring each year. The terms of the members appointed under that section are as follows:

(1) the members appointed solely by the governing body of the municipality with the largest population in the county shall draw lots to determine which member serves a one-year term, which member serves a two-year term, which member serves a three-year term, and which member serves a four-year term;

(2) the members appointed solely by the commissioners court of the county shall draw lots to determine which member serves a one-year term, which member serves a two-year term, which member serves a three-year term, and which member serves a four-year term; and

(3) the member appointed jointly by the governing body of the municipality described by Subdivision (1) and the commissioners court serves a four-year term.

(d) The members of the board of hospital managers of the El Paso County Hospital District serve staggered three-year terms, with as near as possible to one-third of the members' terms expiring each year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1995, 74th Leg., ch. 212, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.211, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 206 (S.B. 534), Sec. 2, eff. September 1, 2009.

Sec. 281.0222. QUALIFICATIONS FOR OFFICE. (a) This section applies only to the El Paso County Hospital District.

(b) The El Paso County Commissioners Court may not appoint a person to the board of hospital managers of the district if the person is:

(1) an employee of El Paso County;

(2) a district employee; or

(3) related within the third degree of consanguinity or affinity, as determined under Subchapter B, Chapter 573, Government Code, to a member of the commissioners court or to a person described by Subdivision (1) or (2).

Added by Acts 2011, 82nd Leg., R.S., Ch. 841 (H.B. 3462), Sec. 2, eff. June 17, 2011.

Sec. 281.023. OFFICERS. (a) The board shall elect from among its members:

(1) a chairman; and

(2) a vice-chairman to preside in the chairman's absence.

(b) The board shall appoint a board member or the administrator to serve as secretary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.024. COMPENSATION. A board member serves without compensation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.025. RECORD OF BOARD MEETING. (a) The board shall require the secretary to keep a suitable record of each board

meeting.

(b) The presiding member shall read and sign the record after the meeting, and the secretary shall attest to the record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.026. ADMINISTRATOR; DUTIES. (a) The board shall appoint a person qualified by training and experience as the administrator for the district.

(b) The administrator serves at the will of the board and for terms of not more than four years.

(c) The administrator is entitled to compensation as determined by the board.

(d) Before assuming duties, the administrator shall execute a bond payable to the district in the amount of not less than $10,000, conditioned on the faithful performance of the administrator's duties and any other requirements determined by the board.

(e) Subject to the limitations prescribed by the board, the administrator shall:

(1) perform duties required by the board;

(2) supervise the work and activities of the district; and

(3) generally direct the affairs of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 424 (S.B. 1769), Sec. 1, eff. June 17, 2005.

Sec. 281.027. ASSISTANT ADMINISTRATOR. (a) If the administrator is incapacitated, absent, or unable to perform the administrator's duties, the board may designate an assistant administrator to perform any of the administrator's powers or duties, subject to limitations prescribed by board order.

(b) The assistant administrator or other persons shall execute a bond as required by board order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.028. STAFF. (a) The board may appoint doctors to the district's staff and hire technicians, nurses, and other employees the board considers advisable for the district's efficient operation.

(b) An employment contract of a person appointed or hired under this section may not exceed four years.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 110, Sec. 1, eff. Aug. 26, 1991.

Sec. 281.0281. EMPLOYMENT OF HEALTH CARE PROVIDERS. (a) This section applies only to a district created in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003.

(b) The board, as it considers necessary for the efficient operation of the district, may employ:

(1) physicians as provided in this section and Sections 162.001(c-4) and (c-5), Occupations Code; and

(2) dentists or other health care providers.

(c) The board may employ a licensed physician as a medical director if the physician:

(1) provides only policy, administrative, and managerial services; and

(2) does not provide direct patient care or otherwise practice medicine, as defined by Section 151.002, Occupations Code, at or for the district.

(d) This section does not authorize the board to supervise or control the practice of medicine or permit the unauthorized practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 164 (S.B. 1107), Sec. 4, eff. September 1, 2007.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 74, eff. September 1, 2023.

Sec. 281.02815. EMPLOYMENT OF PHYSICIANS BY CERTAIN HOSPITAL DISTRICTS. (a) This section applies only to a district created in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1,

2003.

(b) In addition to the authority to employ physicians under Section 281.0281 in the manner and for the purposes provided by that section, the board of the district may appoint, contract for, or employ physicians as the board considers necessary for the efficient operation of the district.

(c) The term of an employment contract entered into under this section may not exceed four years.

(d) This section may not be construed as authorizing the board to supervise or control the practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.

(e) The authority granted to the board under Subsection (b) to employ physicians shall apply as necessary for the district to fulfill the district's statutory mandate to provide medical care for the indigent and needy residents of the district as provided by Section 281.046.

(f) The medical executive board of the district shall adopt, maintain, and enforce policies to ensure that a physician employed by the district under this section exercises the physician's independent medical judgment in providing care to patients.

(g) The policies adopted by the medical executive board under this section must include:

(1) policies relating to:

(A) governance of the medical executive board;

(B) credentialing;

(C) quality assurance;

(D) utilization review;

(E) peer review;

(F) medical decision-making; and

(G) due process; and

(2) rules requiring the disclosure of financial conflicts of interest by a member of the medical executive board.

(h) The medical executive board and the board of the district shall jointly develop and implement a conflict management process to resolve any conflict between a policy adopted by the medical executive board under this section and a policy of the district.

(i) A member of the medical executive board who is a physician shall provide biennially to the chair of the medical executive board a signed, verified statement indicating that the board member:

(1) is licensed by the Texas Medical Board;

(2) will exercise independent medical judgment in all medical executive board matters, including matters relating to:

(A) credentialing;

(B) quality assurance;

(C) utilization review;

(D) peer review;

(E) medical decision-making; and

(F) due process;

(3) will exercise the board member's best efforts to ensure compliance with the policies that are adopted or established by the medical executive board; and

(4) will report immediately to the Texas Medical Board any action or event that the board member reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(j) For all matters relating to the practice of medicine, each physician employed by the district under this section shall ultimately report to the chair of the medical executive board for the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 27 (S.B. 1142), Sec. 1, eff. May 7, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 75, eff. September 1, 2023.

Sec. 281.0282. DALLAS COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF HEALTH CARE PROVIDERS AND PHYSICIANS. (a) The board of the Dallas County Hospital District may appoint, contract for, or employ physicians, dentists, and other health care providers as the board considers necessary for the efficient operation of the district.

(b) The term of an employment contract entered into under this section may not exceed four years.

(c) This section may not be construed as authorizing the board of the Dallas County Hospital District to supervise or control the practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.

(d) The authority granted to the board of the Dallas County Hospital District under Subsection (a) to employ physicians shall

apply only as necessary for the district to fulfill the district's statutory mandate to provide medical and dental care for the indigent and needy residents of the district as provided by Section 281.046.

(e) The Dallas County Hospital District shall establish a committee consisting of at least five actively practicing physicians who provide care in the district. The committee shall approve existing policies or adopt new policies, if no policies exist, to ensure that a physician who is employed by the district is exercising the physician's independent medical judgment in providing care to patients.

(f) The chair of the committee must be a member of the executive committee of the Dallas County Hospital District's medical staff.

(g) The policies adopted or approved by the committee shall include policies relating to credentialing, quality assurance, utilization review, peer review, medical decision-making, governance of the committee, and due process.

(h) Each member of a committee shall provide biennially to the chief medical officer of the Dallas County Hospital District a signed, verified statement indicating that the committee member:

(1) is licensed by the Texas Medical Board;

(2) will exercise independent medical judgment in all committee matters, including matters relating to credentialing, quality assurance, utilization review, peer review, medical decision-making, and due process;

(3) will exercise the committee member's best efforts to ensure compliance with the Dallas County Hospital District's policies that are adopted or established by the committee; and

(4) will report immediately to the Texas Medical Board any action or event that the committee member reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(i) The committee shall adopt rules requiring the disclosure of financial conflicts of interest by a committee member.

(j) For all matters relating to the practice of medicine, each physician employed by the board shall ultimately report to the chief medical officer of the Dallas County Hospital District.

Added by Acts 2009, 81st Leg., R.S., Ch. 823 (S.B. 1705), Sec. 1, eff. June 19, 2009.

Sec. 281.0283. HARRIS COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF PHYSICIANS. (a) The board of the Harris County Hospital District may appoint, contract for, or employ physicians as the board considers necessary for the efficient operation of the district.

(b) The term of an employment contract entered into under this section may not exceed four years.

(c) This section may not be construed as authorizing the board of the Harris County Hospital District to supervise or control the practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.

(d) The authority granted to the board of the Harris County Hospital District under Subsection (a) to employ physicians shall apply as necessary for the district to fulfill the district's statutory mandate to provide medical care for the indigent and needy residents of the district as provided by Section 281.046.

(e) The medical executive board of the Harris County Hospital District shall adopt, maintain, and enforce policies to ensure that a physician employed by the district exercises the physician's independent medical judgment in providing care to patients.

(f) The policies adopted by the medical executive board under this section must include:

(1) policies relating to:

(A) governance of the medical executive board;

(B) credentialing;

(C) quality assurance;

(D) utilization review;

(E) peer review;

(F) medical decision-making; and

(G) due process; and

(2) rules requiring the disclosure of financial conflicts of interest by a member of the medical executive board.

(g) The medical executive board and the board of the Harris County Hospital District shall jointly develop and implement a conflict management process to resolve any conflict between a policy adopted by the medical executive board under this section and a policy of the Harris County Hospital District.

(h) A member of the medical executive board who is a physician shall provide biennially to the chair of the medical executive board

a signed, verified statement indicating that the board member:

(1) is licensed by the Texas Medical Board;

(2) will exercise independent medical judgment in all medical executive board matters, including matters relating to:

(A) credentialing;

(B) quality assurance;

(C) utilization review;

(D) peer review;

(E) medical decision-making; and

(F) due process;

(3) will exercise the board member's best efforts to ensure compliance with the policies that are adopted or established by the medical executive board; and

(4) will report immediately to the Texas Medical Board any action or event that the board member reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(i) For all matters relating to the practice of medicine, each physician employed by the Harris County Hospital District shall ultimately report to the chair of the medical executive board for the district.

Added by Acts 2011, 82nd Leg., R.S., Ch. 975 (H.B. 1568), Sec. 1, eff. June 17, 2011.

Sec. 281.0284. BEXAR COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF PHYSICIANS. (a) The board of the Bexar County Hospital District may employ physicians as the board considers necessary for the efficient operation of the district.

(b) A physician employed by the Bexar County Hospital District under this section must practice with a nonprofit health organization certified by the Texas Medical Board and created by the Bexar County Hospital District.

(c) The term of an employment contract entered into under this section may not exceed four years.

(d) This section may not be construed as authorizing the board of the Bexar County Hospital District to supervise or control the practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 524 (H.B. 2351), Sec. 1, eff. June 17, 2011.
Redesignated from Health and Safety Code, Section 281.0283 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(26), eff. September 1, 2013.

Sec. 281.0285. EL PASO COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF PHYSICIANS, DENTISTS, AND OTHER HEALTH CARE PROVIDERS. (a) The board of the El Paso County Hospital District may appoint, contract for, or employ physicians, dentists, and other health care providers as the board considers necessary for the efficient operation of the district.

(b) The term of an employment contract entered into under this section may not exceed four years.

(c) This section may not be construed as authorizing the board of the El Paso County Hospital District to supervise or control the practice of medicine as prohibited by Subtitle B, Title 3, Occupations Code, or to supervise or control the practice of dentistry as prohibited by Subtitle D, Title 3, Occupations Code.

(d) The authority granted to the board of the El Paso County Hospital District under Subsection (a) to employ physicians shall apply as necessary for the district to fulfill the district's statutory mandate to provide medical care for the indigent and needy residents of the district as provided by Section 281.046.

(e) The medical executive committee of the El Paso County Hospital District, in accordance with the bylaws adopted by the board of the El Paso County Hospital District, shall adopt, maintain, and enforce policies to ensure that a physician employed by the district exercises the physician's independent medical judgment in providing care to patients.

(f) The policies adopted by the medical executive committee under this section must include:

(1) policies relating to:

(A) governance of the medical executive committee;

(B) credentialing;

(C) quality assurance;

(D) utilization review;

(E) peer review;

(F) medical decision-making; and

(G) due process; and

(2) rules requiring the disclosure of financial conflicts of interest by a member of the medical executive committee.

(g) The medical executive committee and the board of the El Paso County Hospital District shall jointly develop and implement a conflict management process to resolve any conflict between the policies adopted under this section and a policy of the El Paso County Hospital District.

(h) A member of the medical executive committee who is a physician shall provide biennially to the chair of the medical executive committee a signed, verified statement indicating that the committee member:

(1) is licensed by the Texas Medical Board;

(2) will exercise independent medical judgment in all medical executive committee matters, including matters relating to:

(A) credentialing;

(B) quality assurance;

(C) utilization review;

(D) peer review;

(E) medical decision-making; and

(F) due process;

(3) will exercise the committee member's best efforts to ensure compliance with the policies that are adopted or established by the medical executive committee; and

(4) will report immediately to the Texas Medical Board any action or event that the committee member reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(i) For all matters relating to the practice of medicine, each physician employed by the El Paso County Hospital District shall ultimately report to the chair of the medical executive committee for the district.

Added by Acts 2011, 82nd Leg., R.S., Ch. 417 (S.B. 860), Sec. 1, eff. June 17, 2011.

Sec. 281.0286. TARRANT COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF PHYSICIANS. (a) The board of the Tarrant County Hospital District may appoint, contract for, or employ physicians as the board

considers necessary for the efficient operation of the district.

(b) The term of an employment contract entered into under this section may not exceed four years.

(c) This section may not be construed as authorizing the board of the Tarrant County Hospital District to supervise or control the practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.

(d) The authority granted to the board of the Tarrant County Hospital District under Subsection (a) to employ physicians shall apply as necessary for the district to fulfill the district's statutory mandate to provide medical care for the indigent and needy residents of the district as provided by Section 281.046.

(e) The medical executive committee of the Tarrant County Hospital District shall adopt, maintain, and enforce policies to ensure that a physician employed by the district exercises the physician's independent medical judgment in providing care to patients.

(f) The policies adopted by the medical executive committee under this section must include:

(1) policies relating to:

(A) governance of the medical executive committee;

(B) credentialing;

(C) quality assurance;

(D) utilization review;

(E) peer review;

(F) medical decision-making; and

(G) due process; and

(2) rules requiring the disclosure of financial conflicts of interest by a member of the medical executive committee.

(g) The medical executive committee and the board of the Tarrant County Hospital District shall jointly develop and implement a conflict management process to resolve any conflict between a policy adopted by the medical executive committee under this section and a policy of the Tarrant County Hospital District.

(h) A member of the medical executive committee who is a physician shall provide biennially to the chair of the medical executive committee a signed, verified statement indicating that the member of the medical executive committee:

(1) is licensed by the Texas Medical Board;

(2) will exercise independent medical judgment in all

medical executive committee matters, including matters relating to:

(A) credentialing;

(B) quality assurance;

(C) utilization review;

(D) peer review;

(E) medical decision-making; and

(F) due process;

(3) will exercise the committee member's best efforts to ensure compliance with the policies that are adopted or established by the medical executive committee; and

(4) will report immediately to the Texas Medical Board any action or event that the committee member reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(i) For all matters relating to the practice of medicine, each physician employed by the Tarrant County Hospital District shall ultimately report to the chair of the medical executive committee for the district.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1320 (S.B. 303), Sec. 3, eff. September 1, 2011.

Sec. 281.029. RETIREMENT PROGRAMS. (a) With the approval of the commissioners court, the board may contract with the state or the federal government as necessary to establish or continue a retirement program for the benefit of district employees.

(b) In addition to the retirement programs authorized by Subsection (a), the board may establish a retirement program the board considers necessary and advisable for the benefit of district employees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.030. SEAL. The board shall have a seal engraved with the district's name. The seal shall be kept by the secretary and used to authenticate the board's acts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.031. REMOVAL OF BOARD MEMBER. (a) A member of the board of hospital managers of the El Paso County Hospital District is considered to have resigned the member's position if the member:

(1) is absent from all the regularly scheduled board and committee meetings that the member is eligible to attend during a 90-day period;

(2) is absent from more than half of the regularly scheduled board and committee meetings that the member is eligible to attend during a 12-month period;

(3) fails to pay a local tax, including an ad valorem tax, when due; or

(4) would be ineligible to serve on the board as provided by Section 281.0222.

(b) A resignation under Subsection (a) is effective immediately on the date the absence, disqualifying conduct, or ineligibility specified by Subsection (a) occurs or exists.

Added by Acts 2009, 81st Leg., R.S., Ch. 206 (S.B. 534), Sec. 3, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 841 (H.B. 3462), Sec. 3, eff. June 17, 2011.

SUBCHAPTER C. GENERAL POWERS AND DUTIES

Sec. 281.041. TRANSFER OF COUNTY AND MUNICIPAL HOSPITAL PROPERTY AND FUNDS. (a) Except as provided by Subsection (e), on the creation of a district under this chapter and the appointment and qualification of the district board, the county owning the hospital or hospital system, the county and municipality jointly operating a hospital or hospital system, or the municipality owning a hospital or hospital system shall execute and deliver to the district board a written instrument conveying to the district the title to land, buildings, and equipment jointly or separately owned by the county and municipality and used to provide medical services or hospital care, including geriatric care, to indigent or needy persons of the county or municipality.

(b) On the creation of a district under this chapter and the appointment and qualification of the district board, the county owning the hospital or hospital system, the county and municipality

jointly operating a hospital or hospital system, or the municipality owning a hospital or hospital system shall, on the receipt of a certificate executed by the board's chairman stating that a depository for the district has been chosen and qualified, transfer to the district:

(1) all joint or separate county and municipal funds that are the proceeds of any bonds assumed by the district under Section 281.044; and

(2) all unexpended joint or separate county and municipal funds that have been established or appropriated by the county or municipality to support and maintain the hospital facilities for the year in which the district is created, to be used by the district to operate and maintain those facilities for the remainder of the year.

(c) Funds transferred to the district under this section may be used only for a purpose for which the county or the municipality that transferred the funds could lawfully have used the funds if the funds had remained the property and funds of the county or municipality.

(d) On the creation of the district, the board of managers of the county or municipal hospital system shall continue to manage and control the property and affairs of that system until the board of the district is appointed and organized. At that time, the county or municipal board of managers shall transfer to the district board all county and municipal hospital system records, property, and affairs and shall cease to exist.

(e) A county or municipality transferring property or funds under this section is not required to transfer to the district:

(1) a medical facility used primarily for the treatment of inmates of a jail or any other correctional facilities, including juvenile justice facilities;

(2) property owned by the municipality that is used in connection with the provision of utility services, including electricity, water, wastewater, and sewer services;

(3) any real property or other assets related to a medical clinic facility on which construction has begun, but has not been completed, by the date on which the board members have been appointed and qualified to serve;

(4) a building and related land owned by the county or municipality that are used for purposes related or unrelated to the hospital or hospital system, except that:

(A) if the county or municipality retains ownership of

the building and related land, the county or municipality shall lease the space used for hospital or hospital system purposes to the district for an initial term of three years unless a shorter term is otherwise agreed to by the district and the transferring entity; or

(B) if the county or municipality transfers the building and related land to the district, the district shall lease to the transferring entity the space not used for hospital or hospital system purposes for an initial term of three years unless a shorter term is otherwise agreed to by the district and the transferring entity;

(5) any or all of the public health services and related facilities of the county or municipality, other than a hospital or hospital district, unless the transfer of the public health services or a related facility to the district is mutually agreed to by the district and the transferring entity; or

(6) an ambulance service, emergency medical service, search and rescue service, or medical transport service that is owned or operated by the county or municipality, unless the transfer of all or part of the service and related buildings and equipment to the district is mutually agreed to by the district and the transferring entity.

(f) A transfer of an asset under this section, including a federally qualified health center, that would violate federal or state law unless a waiver or other authorization or approval is granted by a federal or state agency may not occur until the required waiver, authorization, or approval is obtained. A facility designated as a federally qualified health center under 42 U.S.C. Section 1396d(l)(2)(B), as amended, may not be transferred to the district until the district board has confirmed that the transfer will not jeopardize the federal designation of that facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.212, eff. Sept. 1, 2003.

Sec. 281.042. RETURN OF TRANSFERRED PROPERTY TO COUNTY OR MUNICIPALITY. (a) The board by deed may transfer to the county or a municipality any property that:

(1) was transferred to the district by that county or municipality under Section 281.041; and

(2) the board considers is not and will not be useful for the purposes for which the property was originally transferred to the district.

(b) The transfer may be made on terms determined suitable by the board and the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.043. ASSUMPTION OF CONTRACT OBLIGATIONS. On the creation of the district, the district assumes, without prejudice to the rights of third parties, any outstanding contract obligations legally incurred by the county or municipality, or both, for the construction, support, maintenance, or operation of hospital facilities and the provision of health care services or hospital care, including mental health care, to indigent residents of the county or municipality before the creation of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.213, eff. Sept. 1, 2003.

Sec. 281.044. ASSUMPTION OF BONDED INDEBTEDNESS; CANCELLATION OF UNSOLD MUNICIPAL OR COUNTY BONDS. (a) On the creation of the district, the district assumes:

(1) any outstanding bonded indebtedness incurred by the county or municipality, or both, in the acquisition of land, buildings, and equipment transferred to the district or in the construction and equipping of hospital facilities; and

(2) any other outstanding bonds issued by the county or municipality for hospital purposes, the proceeds of which are in whole or in part unexpended.

(b) On the creation of the district, the county or a municipality in the district that issued bonds for hospital purposes is no longer liable for the payment of the bonds or for providing interest and sinking fund requirements on those bonds.

(c) This section does not limit or affect the rights of a bondholder against the county or municipality if there is a default in payment of the principal or interest on the bonds in accordance with their terms.

(d) If the issuance of bonds by the county or municipality, or

both, to provide hospital facilities was approved at a bond election but the bonds have not been sold on the date on which the hospital district is created under this chapter, the bond authority is canceled and the county or municipality, or both, may not sell the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.045. LIMITATION ON TAXING POWER BY GOVERNMENTAL ENTITY; DISPOSITION OF DELINQUENT TAXES. (a) On or after the creation of the district, the county or a municipality located in the district may not levy taxes for hospital purposes.

(b) The county or a municipality located in the district that collects delinquent taxes owed to the county or municipality on levies for county and municipal hospital systems under Chapter 265 shall pay the amount of the collected delinquent taxes to the district, and the district shall apply that money to the purposes for which the taxes were originally levied.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.046. DISTRICT RESPONSIBILITY FOR MEDICAL AID AND HOSPITAL CARE. Beginning on the date on which taxes are collected for the district, the district assumes full responsibility for furnishing medical and hospital care for indigent and needy persons residing in the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.0465. NURSING SERVICES FOR SCHOOL DISTRICTS. A hospital district may contract with a school district included in the hospital district to provide nursing services and assistance to employees or students of the school district.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 38, eff. May 30, 1995.

Sec. 281.047. MANAGEMENT, CONTROL, AND ADMINISTRATION. The

board shall manage, control, and administer the hospital or hospital system of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.0475. RENAMING DISTRICT. (a) This section applies only to a district created in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003.

(b) With the approval of the commissioners court, the board may rename the district.

Added by Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 10, eff. September 1, 2005.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 76, eff. September 1, 2023.

Sec. 281.048. DISTRICT RULES. The board may adopt rules governing the operation of the hospital or hospital system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.049. PURCHASING AND ACCOUNTING METHODS AND PROCEDURES. (a) The commissioners court may prescribe:

(1) the method of making purchases and expenditures by and for the district; and

(2) accounting and control procedures for the district.

(b) The commissioners court by resolution or order may delegate its powers under Subsection (a) to the board.

(c) A county officer, employee, or agent shall perform any function or service required by the commissioners court under this section.

(d) The district shall pay salaries and expenses necessarily incurred by the county or by a county officer or agent in performing a duty prescribed or required under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.050. POWERS RELATING TO DISTRICT PROPERTY, FACILITIES, AND EQUIPMENT. (a) With the approval of the commissioners court, the board may construct, condemn, acquire, lease, add to, maintain, operate, develop, regulate, sell, exchange, and convey any property, property right, equipment, hospital facility, or system to maintain a hospital, building, or other facility or to provide a service required by the district. Approval of the commissioners court shall be required for the sale or lease of a hospital facility regardless of the provisions of Section 285.051.

(b) Notwithstanding any other law, the board may, with the approval of the commissioners court, enter into a lease, including a lease with an option to purchase, an installment purchase agreement, an installment sale agreement, or any other type of agreement that relates to real property considered appropriate by the board to provide for the development, improvement, acquisition, or management of developed or undeveloped real property designed to generate revenue for the financial benefit of the district. The board, directly or through a nonprofit corporation, may contract or enter into a joint venture with a public or private entity as necessary to enter into an agreement under this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 137, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 535 (S.B. 1478), Sec. 1, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 104 (H.B. 2559), Sec. 1, eff. May 23, 2015.

Sec. 281.051. CONTRACTING AUTHORITY. (a) With the approval of the commissioners court, the board may, in performing its powers under Section 281.050, contract or cooperate with:

(1) the federal government;

(2) this state;

(3) another governmental entity; or

(4) a privately owned or operated hospital.

(b) With the approval of the commissioners court, the board may

contract with:

(1) a county for care and treatment of the county's sick, diseased, or injured persons; and

(2) this state or the federal government for care and treatment of sick, diseased, or injured persons for whom the state or federal government is responsible.

(c) The board shall encourage and promote participation by all sectors of the business community, including small businesses and businesses owned by members of a minority group or by women, in the process by which the district enters into contracts. The board shall develop a plan for the district to identify and remove barriers that do not have a definite or objective relationship to quality or competence and that unfairly discriminate against small businesses and businesses owned by members of a minority or by women. These barriers may include contracting procedures and contract specifications or conditions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 996, Sec. 1, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 137, Sec. 2, eff. Sept. 1, 1997.

Sec. 281.0511. CONTRACTING AUTHORITY OF CERTAIN DISTRICTS; LEASE OF PROPERTY OR HOSPITAL FACILITIES. (a) This section applies only to a district created in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003.

(b) Notwithstanding Sections 281.050 and 281.051, the board may contract with any person, including a private or public entity or a political subdivision of this state, to provide or assist in the provision of services.

(c) Notwithstanding Section 281.050, the board may lease any property or hospital facility without the approval of the commissioners court. The board may enter into a lease under this subsection only after an open meeting in accordance with Chapter 551, Government Code, including Section 551.072, Government Code.

(d) Notwithstanding any other law, the board may, with the approval of the commissioners court at a meeting subject to Chapter 551, Government Code, lease undeveloped or vacant real property for not more than 99 years to provide for the development and

construction of facilities designed to generate revenue for the financial benefit of the district. The board, directly or through a nonprofit corporation, may contract or enter into a joint venture with a public or private entity as necessary to enter into a lease under this subsection.

Added by Acts 2007, 80th Leg., R.S., Ch. 164 (S.B. 1107), Sec. 5, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 917 (S.B. 1352), Sec. 1, eff. June 17, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 917 (S.B. 1352), Sec. 2, eff. June 17, 2011.
Acts 2015, 84th Leg., R.S., Ch. 104 (H.B. 2559), Sec. 2, eff. May 23, 2015.
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 77, eff. September 1, 2023.

Sec. 281.0512. CONTRACT TO PROVIDE ADMINISTRATIVE FUNCTIONS AND SERVICES. (a) This section applies only to a federally qualified health center as defined by 42 U.S.C. Section 1396d(l)(2)(B) or a federally qualified health center look-alike organized and operated under the authority of and in compliance with 42 U.S.C. Section 254b that is substantially devoted to providing services to socially and economically disadvantaged individuals in the geographical area of the district.

(b) The board may contract with a federally qualified health center or a federally qualified health center look-alike to perform for the center administrative functions and services that the district and the center may perform independently.

Added by Acts 2011, 82nd Leg., R.S., Ch. 633 (S.B. 847), Sec. 1, eff. June 17, 2011.

Sec. 281.0514. HARRIS COUNTY HOSPITAL DISTRICT; CONTRACT WITH CERTAIN HOSPITALS. (a) The Harris County Hospital District may contract for indigent health care services with at least one hospital that is:

(1) located in the district;

(2) exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt entity under any subdivision of Section 501(c) of that code; and

(3) substantially devoted to providing hospital services to socially and economically disadvantaged individuals in the geographical area of the district.

(b) A contract under this section is subject to Section 281.051(a).

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 1.24, eff. Sept. 1, 1999.

Sec. 281.0515. PROCEDURES FOR HEALTH MAINTENANCE ORGANIZATION. A district may establish a health maintenance organization in accordance with Chapter 843, Insurance Code, to provide or arrange for health care services for the residents of the district.

Added by Acts 1993, 73rd Leg., ch. 908, Sec. 2, eff. Aug. 30, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0829, eff. April 2, 2015.

Sec. 281.0517. INTEGRATED HEALTH CARE SYSTEM. (a) In this section:

(1) "Integrated health care system" means a nonprofit corporation established and operated by a district and a medical school to provide or arrange for comprehensive health care services for residents of the district.

(2) "Provider" means a physician or a provider as defined under Section 843.002, Insurance Code.

(3) "Medical school" means a medical school governed by Chapter 110, Education Code.

(b) The El Paso County Hospital District and a medical school may establish and operate an integrated health care system.

(c) To provide or arrange for comprehensive health care services, an integrated health care system created under this section may:

(1) own, acquire, lease, or contract for all necessary

assets;

(2) enter into contracts with providers for the provision of health care services directly or indirectly through subcontract;

(3) provide or enter into a contract with an individual or business entity under which the individual or entity provides necessary management or administrative services for the system and the system's providers;

(4) enter into a contract or other agreement with a business or governmental entity under which the system is paid to provide health care services; and

(5) enter into a fee-for-service, capitated, or risk-sharing health care service arrangement.

(d) An integrated health care system that recites in its articles of incorporation that it is created under this section is:

(1) subject to:

(A) Chapter 551, Government Code;

(B) Chapter 552, Government Code;

(C) Chapter 843, Insurance Code;

(D) Chapter 844, Insurance Code; and

(E) Chapter 262, Local Government Code; and

(2) a unit of local government for the purposes of Chapter 101, Civil Practice and Remedies Code.

(e) Notwithstanding Subsection (d)(1)(A), an integrated health care system created under this section may hold a closed meeting to deliberate:

(1) pricing or financial planning relating to a bid or negotiation for a contract to provide a service or product line, if an open meeting would have a detrimental effect on the position of the system in the bid or negotiation process; or

(2) a proposed new service or product line, if the meeting is held before public announcement of the service or product line.

(f) Notwithstanding Subsection (d)(1)(B), information relating to the following is confidential and not subject to disclosure:

(1) pricing or financial planning relating to a bid or negotiation for a contract to provide a service or product line, if disclosure would have a detrimental effect on the position of the integrated health care system in the bid or negotiation process; or

(2) a proposed new service or product line, if disclosure is requested before public announcement of the service or product line.

(g) Subject to the requirements and limitations of the local health care market, an integrated health care system created under this section shall make reasonable efforts to include in its provider group community providers other than the medical school and a hospital of the El Paso County Hospital District.

Added by Acts 1997, 75th Leg., ch. 947, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.528, 10A.529, eff. Sept. 1, 2003.

Sec. 281.0518. DALLAS COUNTY HOSPITAL DISTRICT; AUTHORITY TO SELL OR LICENSE INTELLECTUAL PROPERTY. (a) The Dallas County Hospital District or a nonprofit corporation formed by the district may:

(1) sell or license technology or intellectual property that is owned by or licensed to the district or a nonprofit corporation formed by the district;

(2) enter into a contract to provide services related to technology or intellectual property sold or licensed under Subdivision (1);

(3) contract, collaborate, or enter into a joint venture or other agreement with a public or private entity to engage in an activity authorized under Subdivision (1) or (2); or

(4) take any other action necessary to protect or benefit from the exclusivity of technology and intellectual property owned by or licensed to the district or a nonprofit corporation formed by the district, including applying for, acquiring, registering, securing, holding, protecting, and renewing under applicable provisions of state, federal, or international law:

(A) a patent;

(B) a copyright;

(C) a trademark, service mark, collective mark, or certification mark; or

(D) any other form of protection of intellectual property provided by law.

(a-1) For purposes of Subsection (a)(3):

(1) a public or private entity may be a for-profit or a nonprofit entity; and

(2) a nonprofit corporation formed by the district may hold

an ownership interest in a public or private entity described by Subsection (a)(3).

(b) Information prepared or compiled by or for the Dallas County Hospital District or a nonprofit corporation formed by the district relating to the development of technology or intellectual property to which this section applies is exempt from public disclosure under Chapter 552, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1375 (S.B. 1916), Sec. 1, eff. June 14, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 363 (H.B. 2557), Sec. 1, eff. June 9, 2015.

Sec. 281.0519. TARRANT COUNTY HOSPITAL DISTRICT; AUTHORITY TO SELL OR LICENSE INTELLECTUAL PROPERTY. (a) The Tarrant County Hospital District or a nonprofit corporation formed by the district may:

(1) sell or license technology or intellectual property that is owned by or licensed to the district or a nonprofit corporation formed by the district;

(2) enter into a contract to provide services related to technology or intellectual property sold or licensed under Subdivision (1);

(3) contract, collaborate, or enter into a joint venture or other agreement with a public or private entity to engage in an activity authorized under Subdivision (1) or (2); or

(4) take any other action necessary to protect or benefit from the exclusivity of technology and intellectual property owned by or licensed to the district or a nonprofit corporation formed by the district, including applying for, acquiring, registering, securing, holding, protecting, and renewing under applicable provisions of state, federal, or international law:

(A) a patent;

(B) a copyright;

(C) a trademark, service mark, collective mark, or certification mark; or

(D) any other form of protection of intellectual property provided by law.

(b) For purposes of Subsection (a)(3):

(1) a public or private entity may be a for-profit or a nonprofit entity; and

(2) a nonprofit corporation formed by the district may hold an ownership interest in a public or private entity described by Subsection (a)(3).

(c) Information prepared or compiled by or for the Tarrant County Hospital District or a nonprofit corporation formed by the district relating to the development of technology or intellectual property to which this section applies is exempt from public disclosure under Chapter 552, Government Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 351 (H.B. 2847), Sec. 1, eff. June 7, 2021.

Sec. 281.052. COUNTY AUTHORITY TO SELL, LEASE, AND PURCHASE FACILITIES FOR DISTRICT PURPOSES. (a) The commissioners court of a county in which a district is created under this chapter may sell real or personal property in order to enter into a contract to:

(1) lease or rent buildings, land, facilities, equipment, or services from others for district purposes;

(2) construct, repair, renovate, improve, or enlarge buildings, land, facilities, or equipment for district purposes; and

(3) pay regular monthly utility bills, including electricity, gas, and water bills, for the leased or rented buildings, land, facilities, equipment, or services.

(b) The commissioners court may pay for the facilities, equipment, and services and for the regular monthly utility bills for those facilities, equipment, and services from the county's general fund if a majority of the commissioners court considers the facilities, equipment, and services essential to the proper administration of the county.

(c) A construction project under this section shall be let by contract. The contract must contain the prevailing wage for mechanics, laborers, and other persons employed in the project. The Tarrant County Commissioners Court shall set the prevailing wage in the amount set by the commissioners court for all construction projects involving the expenditure of county funds.

(d) On or before the expiration of the lease or rental

contract, the county may purchase the facilities with county general funds if a majority of the commissioners court considers the purchase price reasonable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.053. DISTRICT INSPECTIONS. (a) The district may be inspected by a representative of the commissioners court or the Department of State Health Services.

(b) A district officer shall:

(1) admit an inspector into the district facilities; and

(2) on demand give the inspector access to records, reports, books, papers, and accounts related to the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0830, eff. April 2, 2015.

Sec. 281.054. EMINENT DOMAIN. (a) The district has the power of eminent domain to acquire any interest in real, personal, or mixed property located in the district if the property interest is necessary or convenient for the exercise of the rights or authority conferred on the district by this chapter.

(b) The district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, but the district is not required to deposit with the trial court money or a bond as provided by Section 21.021(a), Property Code.

(c) In a condemnation proceeding brought by the district, the district is not required to:

(1) pay in advance or give bond or other security for costs in the trial court;

(2) give bond for the issuance of a temporary restraining order or a temporary injunction; or

(3) give bond for costs or supersedeas on an appeal or writ of error.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.055. GIFTS AND ENDOWMENTS. On behalf of the district, the board may accept gifts and endowments to be held in trust and administered by the board for the purposes and under the directions, limitations, or provisions prescribed in writing by the donor that are consistent with the proper management of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.056. AUTHORITY TO SUE AND BE SUED; LEGAL REPRESENTATION. (a) The board may sue and be sued. A health care liability claim, as defined by Section 74.001, Civil Practice and Remedies Code, may be brought against the district only in the county in which the district is established.

(b) Except as provided by Subsection (b-1), a district may employ or contract with private legal counsel to represent the district on any legal matter. If the district does not employ or contract with private legal counsel on a legal matter, the county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters shall represent the district.

(b-1) The county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters shall, in all legal matters, represent a district located in:

(1) a county that borders the United Mexican States and in which a municipality with a population of 500,000 or more is located;

(2) a county with a population of 3.4 million or more; or

(3) a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003.

(c) A board that receives legal services from a county attorney, district attorney, or criminal district attorney may employ additional private legal counsel when the board determines that additional counsel is advisable. A board that contracts or employs private legal counsel under Subsection (b) may request and receive additional legal services from the county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters when the board determines that additional counsel is necessary.

(d) If the district receives legal services from a county attorney, district attorney, or criminal district attorney, the district shall contribute sufficient funds to the general fund of the county for the account of the budget of the county attorney, district attorney, or criminal district attorney, as appropriate, to pay all additional salaries and expenses incurred by that officer in performing the duties required by the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 204, Sec. 3.08, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 11, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 36, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 78, eff. September 1, 2023.

Sec. 281.0565. CHARITABLE ORGANIZATIONS. (a) In this section, "charitable organization" means an organization that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) or 501(c)(4) of the code.

(b) A district may create a charitable organization to facilitate the management of a district health care program by providing or arranging health care services, developing resources for health care services, or providing ancillary support services for the district.

(c) A charitable organization created by a district under this section is a unit of local government only for purposes of Chapter 101, Civil Practice and Remedies Code.

(d) A district may make a capital or other financial contribution to a charitable organization created by the district to provide regional administration and delivery of health care services to or for the district.

(e) A charitable organization created by a district under this section may contract, collaborate, or enter into a joint venture or other agreement with a public or private entity, without regard to that entity's for-profit or nonprofit status, and may hold an

ownership interest in such an entity.

(f) A charitable organization created by a district under this section remains subject to the laws of this state and the United States that govern charitable organizations. Nothing in this section may be construed as abrogating or modifying any other provision of law governing charitable organizations.

Added by Acts 1997, 75th Leg., ch. 104, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 164 (S.B. 1107), Sec. 6, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 363 (H.B. 2557), Sec. 2, eff. June 9, 2015.

Sec. 281.057. EMPLOYMENT OF DISTRICT PEACE OFFICERS. (a) The board of the Dallas County Hospital District, the Tarrant County Hospital District, the Bexar County Hospital District, the El Paso County Hospital District, or the Harris County Hospital District may employ and commission peace officers for the district.

(b) The jurisdiction of a peace officer commissioned under this section includes the property owned or controlled by the district that employs the peace officer and any street abutting, right-of-way over or through, or easement in the property.

(c) In a district peace officer's jurisdiction, the peace officer has the authority granted by Chapter 14, Code of Criminal Procedure. The peace officer may also make an arrest without a warrant in the officer's jurisdiction if the offense involves injury or harm to any property owned or controlled by the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 853, Sec. 1, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 888, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 402 (S.B. 601), Sec. 1, eff. June 17, 2011.

Acts 2025, 89th Leg., R.S., Ch. 255 (S.B. 434), Sec. 1, eff. September 1, 2025.

Sec. 281.058. AUTHORITY TO FORM CAPTIVE INSURANCE OR CAPTIVE

MANAGEMENT COMPANY. (a) In this section, "captive insurance company" and "captive management company" have the meanings assigned to those terms by Section 964.001, Insurance Code.

(b) A district, a combination of districts, or a nonprofit corporation formed by a district or a combination of districts to further the purposes of the district or districts, as appropriate, may form a captive insurance company or a captive management company in accordance with the provisions of Chapter 964, Insurance Code, for the purpose of engaging in the business of insurance under that chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 363 (H.B. 2557), Sec. 3, eff. June 9, 2015.

Sec. 281.059. DALLAS COUNTY HOSPITAL DISTRICT; BROKER AGREEMENTS AND FEES FOR SALE OF REAL PROPERTY. (a) In this section:

(1) "Broker" means a person licensed as a broker under Chapter 1101, Occupations Code.

(2) "District" means the Dallas County Hospital District.

(b) Except as provided by Subsection (c), the Dallas County Hospital District may contract with a broker to lease or sell a tract of real property that is owned by the district.

(c) The district may not contract with a broker who is related within the third degree of consanguinity, as determined under Chapter 573, Government Code, to:

(1) a member of the board of hospital managers of the district; or

(2) a public official who serves on the Dallas County Commissioners Court.

(d) The district may pay a fee if a broker produces a ready, willing, and able buyer to purchase a tract of real property.

(e) If a contract made under Subsection (b) requires a broker to list the tract of real property for sale for at least 30 days with a multiple-listing service used by other brokers in the county in which the real property is located, the district, on or after the 30th day after the date the property is listed, may sell the tract of real property to a ready, willing, and able buyer who is produced by any broker, including a broker described by Subsection (c), using the multiple-listing service and who submits the most advantageous offer.

(f) The district must post a notice of intent to sell the real property in a newspaper of general circulation, not less than once, at least 14 days before the date the district accepts an offer produced by a broker.

(g) The district may sell a tract of real property under this section without complying with the requirements of Section 272.001, Local Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 1066 (H.B. 3178), Sec. 1, eff. June 15, 2017.

Sec. 281.060. EL PASO COUNTY HOSPITAL DISTRICT; BROKER AGREEMENTS AND FEES FOR SALE OF REAL PROPERTY. (a) In this section:

(1) "Broker" means a person licensed as a broker under Chapter 1101, Occupations Code.

(2) "District" means the El Paso County Hospital District.

(b) Except as provided by Subsection (c), the El Paso County Hospital District may contract with a broker to sell a tract of real property that is owned by the district.

(c) The district may not contract with a broker who is related within the third degree of consanguinity, as determined under Chapter 573, Government Code, to:

(1) a member of the board of hospital managers of the district; or

(2) a public official who serves on the El Paso County Commissioners Court.

(d) The district may pay a fee if a broker produces a ready, willing, and able buyer to purchase a tract of real property.

(e) If a contract made under Subsection (b) requires a broker to list the tract of real property for sale for at least 30 days with a multiple-listing service used by other brokers in the county in which the real property is located, the district, on or after the 30th day after the date the property is listed, may sell the tract of real property to a ready, willing, and able buyer who is produced by any broker, including a broker described by Subsection (c), using the multiple-listing service and who submits the most advantageous offer.

(f) The district must post a notice of intent to sell the real property in a newspaper of general circulation, not less than once, at least 14 days before the date the district accepts an offer

produced by a broker.

(g) The district may sell a tract of real property under this section without complying with the requirements of Section 272.001, Local Government Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 697 (H.B. 2382), Sec. 1, eff. June 15, 2021.

Sec. 281.061. NUECES COUNTY HOSPITAL DISTRICT; BROKER AGREEMENTS AND FEES FOR SALE OF REAL PROPERTY. (a) In this section:

(1) "Broker" means a person licensed as a broker under Chapter 1101, Occupations Code.

(2) "District" means the Nueces County Hospital District.

(3) "Fair market value" means the price that a property would bring in an arms-length transaction when offered for sale by a person who wishes, but is not obliged, to sell the property and when bought by a person who is under no necessity of buying the property. The value shall be determined as if the property were available for immediate possession and for use for any reasonable purpose.

(b) Except as provided by Subsection (c), the Nueces County Hospital District may contract with a broker to sell a tract of real property that is owned by the district.

(c) The district may not contract with a broker who is related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code, to:

(1) a member of the board of hospital managers of the district; or

(2) a public official who serves on the Nueces County Commissioners Court.

(d) The district may pay a fee if a broker produces a ready, willing, and able buyer to purchase a tract of real property.

(e) If a contract made under Subsection (b) requires a broker to list the tract of real property for sale for at least 30 days with a multiple-listing service used by other brokers in the county in which the real property is located, the district, on or after the 30th day after the date the property is listed, may sell the tract of real property to a ready, willing, and able buyer who is produced by any broker with whom the district may contract under Subsection (c) using the multiple-listing service and who submits the most

advantageous offer.

(f) The district must post a notice of intent to sell the real property in a newspaper of general circulation, not less than once, at least 30 days before the date the district accepts an offer produced by a broker.

(g) The district may sell a tract of real property under this section without complying with the requirements of Section 272.001, Local Government Code.

(h) The district may not sell a tract of real property under this section for less than the fair market value of the tract of real property, as determined by an independent appraisal prepared by an appraiser certified under Chapter 1103, Occupations Code, and obtained by the district in accordance with Subsection (j).

(i) The district may not sell a tract of real property under this section to a buyer who:

(1) is related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code, to:

(A) a member of the board of hospital managers of the district;

(B) a public official who serves on the Nueces County Commissioners Court; or

(C) the broker for the sale; or

(2) has a business or financial relationship with a member of the board of hospital managers of the district or a public official who serves on the Nueces County Commissioners Court that could reasonably be expected to materially and adversely affect the judgment of the member or public official.

(j) The district may not obtain an appraisal under Subsection (h) from an appraiser who is related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code, to:

(1) a member of the board of hospital managers of the district; or

(2) a public official who serves on the Nueces County Commissioners Court.

Added by Acts 2023, 88th Leg., R.S., Ch. 992 (H.B. 4844), Sec. 1, eff. June 18, 2023.

SUBCHAPTER D. MEDICAL TREATMENT AND CARE

Sec. 281.071. PAYMENT AND SUPPORT. (a) The administrator shall inquire into a patient's circumstances and the circumstances of the patient's relatives legally responsible for the patient's support if the patient is admitted to district facilities from the county in which the hospital is located. If the administrator finds that the patient or the patient's relatives are liable for the patient's care and treatment in whole or in part, the administrator shall issue an order directing the patient or the patient's relatives to pay to the district treasurer a specified amount each week in proportion to the financial ability of the patient or the patient's relatives to pay.

(b) A patient or the patient's relatives may not be required to pay an amount greater than the actual per capita cost of maintenance.

(c) An administrator may collect an amount owed under this section from the estate of a patient, or the relatives legally responsible for the patient's support, in the manner provided by law for the collection of expenses of the last illness of a deceased person.

(d) If the administrator finds that the patient and the patient's relatives are not able to pay in whole or in part, the district shall without charge supply the care and treatment to the patient.

(e) A county court of the county in which a patient's hospital is located shall hear and determine the ability of the patient or the patient's relatives to pay under this section if there is a dispute over this ability or if there is doubt in the mind of the administrator over this ability. The court shall hear witnesses and issue any order that may be proper.

(f) An appeal from an order of the county court must be made to a district court in the county in which the district is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.072. REIMBURSEMENT FOR SERVICES. The board shall require reimbursement from a county, municipality, or public hospital located outside the boundaries of the district for the district's care and treatment of a sick, diseased, or injured person of that county, municipality, or public hospital as provided by Chapter 61 (Indigent Health Care and Treatment Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.073. DISPOSITION OF DISTRICT RECORDS. (a) The preservation, microfilming, destruction, or other disposition of the records of a district is subject to Subtitle C, Title 6, Local Government Code.

(b) The period that medical records are retained shall be in accordance with rules relating to the retention of medical records adopted by the executive commissioner and with other applicable federal and state laws and rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 118, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0831, eff. April 2, 2015.

SUBCHAPTER E. DISTRICT FINANCES

Sec. 281.091. BUDGET. (a) The administrator shall prepare an annual budget under the board's direction.

(b) The budget and budget revisions must be approved by the board and then shall be presented to the commissioners court for final approval.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.092. ADMINISTRATOR'S REPORT. (a) As soon as practicable after the close of the fiscal year, the administrator shall make a report to the board, commissioners court, executive commissioner, and comptroller.

(b) The report must:

(1) consist of a sworn statement of all money and choses in action received by the administrator and their disposition; and

(2) show in detail the operations of the district for the fiscal year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0832, eff. April 2, 2015.

Sec. 281.093. DEPOSITORY. (a) Not later than the 30th day after the appointment of the board, the board shall:

(1) select a depository for district funds in the manner provided by law for the selection of a county depository; or

(2) elect to use the depository previously selected by the county.

(b) If the board selects a depository in accordance with Subsection (a)(1), the depository shall serve as the district depository for four years and until its successor is selected and qualified.

(c) The board may extend any contract with a depository to the next October and then select a depository for the following four years.

(d) All income of the district shall be deposited in the district depository.

(e) Warrants against district funds do not require the county clerk's signature.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 246, Sec. 1, eff. Aug. 30, 1993.

Sec. 281.094. USE OF CERTAIN FUNDS BY THE NUECES COUNTY HOSPITAL DISTRICT. (a) With the approval of the Nueces County Commissioners Court, the board of the Nueces County Hospital District may use funds made available to the district from sources other than a tax levy to fund health care services, including public health services, mental health services, intellectual disability services, emergency medical services, health services provided to persons confined in jail facilities, and for other health related purposes.

(b) The board of the Nueces County Hospital District may use funds made available to the district from any source to fund:

(1) indigent health care; and

(2) intergovernmental transfers from the district to the state for use as the nonfederal share of Medicaid supplemental payment program or waiver program payments for eligible health care

providers located inside or outside the district's boundaries, including, but not limited to, any payments available through a waiver granted under Section 1115, Social Security Act (42 U.S.C. Section 1315), or other similar payment programs, subject to the limitation prescribed by Subsection (c).

(c) Neither the funds comprising an intergovernmental transfer described by Subsection (b)(2) nor any federal funds obtained from any such transfer may be used by the board of the Nueces County Hospital District or any entity to expand eligibility for medical assistance (Medicaid) under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 1999, 76th Leg., ch. 1133, Sec. 1, eff. June 18, 1999. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1373 (S.B. 1863), Sec. 1, eff. June 14, 2013.

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.03, eff. September 1, 2023.

Sec. 281.095. PROHIBITION AGAINST PARTICIPATION IN TAX INCREMENT FINANCING BY CERTAIN HOSPITAL DISTRICTS. (a) In this section, "district" means Bexar County Hospital District, Nueces County Hospital District, El Paso County Hospital District, or Harris County Hospital District.

(b) The district may not enter into a contract or agreement to pay into a tax increment fund any of the district's tax increment produced from property located in a reinvestment zone under Chapter 311, Tax Code. This subsection does not affect the validity of an agreement entered into by the district before September 1, 2001, to pay a portion of the district's tax increment into a tax increment fund under Chapter 311, Tax Code.

(c) The proceeds of a tax imposed under Section 281.121 may not be used to make a payment into a tax increment fund under Chapter 311, Tax Code, if that payment is prohibited by this section.

(d) A project plan or reinvestment zone financing plan approved under Section 311.011, Tax Code, on or after September 1, 2001, may not include any of the district's tax increment or any other funds derived from the district as a source of revenue to finance or pay

project costs.

(e) A project plan or reinvestment zone financing plan approved under Section 311.011, Tax Code, before September 1, 2001, may not be amended on or after September 1, 2001, to:

(1) increase the percentage of the district's tax increment to be contributed to a tax increment fund;

(2) increase the time during which the district is to contribute any of the district's tax increment to a tax increment fund;

(3) allow or require the district, if it was not included in the originally approved project plan or reinvestment zone financing plan, to contribute any of the district's tax increment or other money to a tax increment fund; or

(4) allow the district to pay into a tax increment fund any of the district's tax increment derived from property added to the reinvestment zone on or after September 1, 2001.

(f) An agreement entered into by the district under Section 311.013(f), Tax Code, before September 1, 2001, may not be amended on or after September 1, 2001, to include any of the conditions prohibited by Subsection (e).

Added by Acts 2001, 77th Leg., ch. 588, Sec. 1, eff. Sept. 1, 2001.

Sec. 281.096. AUTHORITY TO TAKE ACTIONS RELATING TO AD VALOREM TAXES. (a) With respect to the imposition or collection of an ad valorem tax imposed for the benefit of a hospital district, the commissioners court of the county in which the district is located has the authority assigned by law to the governing body of the hospital district, including the authority to:

(1) adopt an exemption, partial exemption, or other form of relief from an ad valorem tax;

(2) elect to tax property that would otherwise be exempt from an ad valorem tax; and

(3) exercise a power granted to a taxing unit under Section 6.30, Tax Code.

(b) The board of a hospital district may not exercise a power granted by Subsection (a) to the commissioners court with respect to the imposition or collection of an ad valorem tax imposed for the benefit of the hospital district.

Added by Acts 2003, 78th Leg., ch. 102, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER F. DISTRICT BONDS AND CERTIFICATES OF OBLIGATION

Sec. 281.101. GENERAL OBLIGATION BONDS. The commissioners court, in the district's name and on the district's faith and credit, may issue and sell bonds to acquire, construct, equip, or enlarge the hospital or hospital system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.102. BOND ELECTION. (a) The district may not issue bonds, excluding refunding bonds, unless the bonds are authorized by a majority of the qualified voters of the district voting at an election called and held for that purpose.

(b) The commissioners court may order a bond election on its own motion or on the board's request.

(c) The election must be:

(1) called and held in accordance with Chapter 1251, Government Code; and

(2) conducted in the same manner as other countywide elections.

(d) The district shall pay for the cost of the election and shall provide for payment before the commissioners court orders the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.261, eff. Sept. 1, 2001.

Sec. 281.103. REFUNDING BONDS. (a) Refunding bonds of the district may be issued to refund and pay any outstanding bonded indebtedness of the district, including assumed bonded indebtedness.

(b) The refunding bonds must be issued in the manner provided for other bonds of the district except that an election is not required.

(c) The refunding bonds may be:

(1) sold and the proceeds applied to the payment of outstanding bonds; or

(2) exchanged in whole or in part for not less than a

similar principal amount of the outstanding bonds plus the unpaid, matured interest on those bonds.

(d) The average annual interest cost on the refunding bonds, computed in accordance with recognized standard bond interest cost tables, may not exceed the average annual interest cost so computed on the bonds to be discharged out of the proceeds of the refunding bonds, unless the total interest cost on the refunding bonds, computed to their respective maturity dates, is less than the total interest cost so computed on the bonds to be discharged out of those proceeds. In those computations, any premium required to be paid on the bonds to be refunded as a condition to payment in advance of their stated maturity dates shall be taken into account as an addition to the net interest cost to the district of the refunding bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.104. EXECUTION OF BONDS. The county judge of the county in which the district is created shall execute the bonds in the name of the district, and the county clerk shall countersign the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.105. APPROVAL AND REGISTRATION OF BONDS. (a) District bonds are subject to the same requirements with regard to approval by the attorney general and registration by the comptroller as the law provides for approval and registration of bonds issued by the county.

(b) The attorney general's approval of district bonds has the same effect as that approval for other bonds issued by the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.106. AUTHORITY TO ISSUE CERTIFICATES OF OBLIGATION. With the approval of the commissioners court, the board may issue certificates of obligation in accordance with Subchapter C, Chapter 271, Local Government Code, for district purposes as authorized by

this chapter.

Added by Acts 2003, 78th Leg., ch. 47, Sec. 2, eff. Sept. 1, 2003.

Sec. 281.107. ALTERNATIVE FINANCING AND ELECTION PROCEDURES. (a) This section is applicable to any hospital district that was created pursuant to the authority granted by Section 4, Article IX, Texas Constitution, is operating under this chapter, and has previously held an election at which the voters approved the levy and assessment of an ad valorem tax at a rate not greater than 75 cents per $100 of assessed valuation of taxable property within the district.

(b) The commissioners court may, in the district's name, call, order, and hold an election and submit thereat the proposition and ballot prescribed in Subsections (c) and (d) if the district's board of managers:

(1) finds that capital funds are needed to acquire, construct, equip, and improve the district's hospital system;

(2) finds that financing such improvements through the issuance of combination tax and revenue bonds or other obligations is the best available method to provide the capital funds that are needed to furnish the highest quality of medical treatment and hospital care to persons residing in the district; and

(3) requests that the commissioners court call and hold an election under the alternative procedures authorized by this section.

(c) The official proposition submitted to the voters at an election held under this section shall include, at a minimum, the information included in the election order as prescribed by Subsection (e).

(d) The ballot shall be arranged in a manner that will permit the voters to vote for or against the following summary of the proposition:

"Authorizing (insert name of district) to (insert description of proposed district improvement) and to pledge (insert amount of combination tax and revenue bonds or other obligations) for the purpose of financing the proposed hospital district improvement project."

(e) The election order shall include:

(1) a statement of the maximum aggregate principal amount

of bonds and obligations having maturities longer than five years that will be secured by the hospital system and tax revenues authorized by this section if approved by the voters at the election unless another election is held and the voters approve an increased amount; and

(2) a general description of the district's proposed financing and improvement plans, including:

(A) the expected uses of the proposed improvements to the hospital system according to the proposed plans;

(B) estimates of the costs of the proposed improvements, estimates of the amount of the expected revenues that will be received from the operation of the proposed improvements, and estimates of the amount of revenues, including tax revenues, that will be required to pay the long-term combination tax and revenue bonds and other obligations when due, based on the interest rate and other assumptions stated in the order; and

(C) any other matter deemed by the board of managers to be appropriate to inform the voters of the details of the proposed improvements to the district's hospital system and the financing plans.

(f) An election conducted pursuant to this section shall be conducted in accordance with the procedures provided in Section 281.102.

(g) If a majority of the votes received at the election favor the proposition submitted at the election, the commissioners court is authorized to issue and execute, on behalf and in the name of the district, combination tax and revenue bonds and other short-term and long-term obligations in the amounts and upon the terms recommended and at the times requested by the board of managers. If requested by the board of managers, the commissioners court may also, by order, extend or confirm the pledge to previously issued bonds and other obligations of the district.

(h) Bonds and other short-term or long-term obligations that are secured in the manner authorized by this section shall be payable from and secured by the revenues of the district's hospital system and from the ad valorem tax revenues of the district to the extent prescribed and agreed in the orders, resolutions, indentures, contracts, or other documents authorizing their issuance or execution. The district, through the commissioners court, shall annually levy, assess, and collect ad valorem taxes on taxable

property in the district, within the limited tax rate previously authorized by the voters, when and as required by the proceedings authorizing the bonds and other obligations.

(i) Each district that utilizes the alternative procedures permitted by this section is authorized to enter into, execute, and deliver any of the credit agreements permitted by Chapter 1371, Government Code, and to secure them by pledging revenues and taxes to the same extent they are pledged to bonds or other short-term or long-term obligations in accordance with this section.

(j) The portion of the rate of ad valorem tax that is to be levied and assessed each year by or for the district that is allocated by the district to the payment of the principal of and the interest on bonds and other obligations or the maintenance of reserves therefor in accordance with this section shall be applied as a payment on current debt in calculating the current debt rate under the applicable voter-approval tax rate provisions of Chapter 26, Tax Code.

(k) The procedures authorized by this section are alternative to the provisions of Chapter 284 and the other sections of this chapter and are cumulative of and in addition to any powers granted to any district under those or any other laws.

Added by Acts 2003, 78th Leg., ch. 55, Sec. 1, eff. May 15, 2003. Renumbered from Health and Safety Code, Section 281.106 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(48), eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 371 (H.B. 1366), Sec. 1, eff. June 19, 2009.

Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 76, eff. January 1, 2020.

SUBCHAPTER G. TAXES

Sec. 281.121. TAXES TO PAY BONDS AND CERTIFICATES OF OBLIGATION; TAX ASSESSMENT AND COLLECTION. (a) When the district issues bonds or certificates of obligation payable from and secured by taxes under this chapter, the commissioners court shall impose a tax for the benefit of the district on all property subject to district taxation. The commissioners court may impose the tax for

the entire year in which the district is created in order to finance initial district operation and to pay bonds assumed by the district.

(b) The tax amount:

(1) must be sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds as they mature; and

(2) may not exceed 75 cents on each $100 of the taxable value of property taxable by the district, or the rate authorized in the election to create the district.

(c) The proceeds of the tax may be used:

(1) to pay the interest on and create a sinking fund for bonds that may be assumed or issued by the district for hospital purposes in accordance with this chapter;

(2) to provide for the operation and maintenance of the hospital or hospital system;

(3) if requested by the board and approved by the commissioners court, to make further improvements and additions to the hospital system, including acquiring necessary sites by purchase, lease, or condemnation; and

(4) to pay for certificates of obligation issued under Section 281.106 that are payable from and secured by taxes.

(d) The county tax assessor-collector shall collect the tax.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 47, Sec. 3, 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 198, Sec. 2.2216, eff. Sept. 1, 2003.

Sec. 281.122. REDUCTION IN AD VALOREM TAX RATE BY GOVERNMENTAL ENTITY. (a) This section applies only to a district created in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003.

(b) The commissioners court of the county and the governing body of the municipality with the largest population in the county, in determining the ad valorem tax rate of the county or municipality, as appropriate, for the first year in which the district imposes ad valorem taxes on property in the district, shall:

(1) take into account the decrease in the amount the county or municipality will spend for health care purposes in that year

because the district is providing health care services previously provided or paid for by the county or municipality; and

(2) reduce the ad valorem tax rate adopted for the county or municipality, as appropriate, in accordance with the amount of the decrease.

(c) The commissioners court of the county and the governing body of the municipality with the largest population in the county shall retain an independent auditor to verify that the ad valorem tax rate of the county or municipality, as appropriate, has been reduced as required by Subsection (b).

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.217, eff. Sept. 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 79, eff. September 1, 2023.

Sec. 281.124. ELECTION TO APPROVE TAX RATE IN EXCESS OF VOTER-APPROVAL TAX RATE. (a) This section applies only to a district created in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003.

(b) The board may hold an election at which the registered voters of the district may approve a tax rate for the current tax year that exceeds the district's voter-approval tax rate for the year computed under Chapter 26, Tax Code, by a specific rate stated in dollars and cents per $100 of taxable value.

(c) An election under this section must be held at least 180 days before the date on which the district's tax rate is adopted by the board. At the election, the ballot shall be prepared to permit voting for or against the proposition: "Approving the ad valorem tax rate of $ (insert total proposed tax rate) per $100 valuation in (insert district name) for the (insert current tax year) tax year, a rate that exceeds the district's voter-approval tax rate. The proposed ad valorem tax rate exceeds the ad valorem tax rate most recently adopted by the district by $ (insert difference between proposed and preceding year's tax rates) per $100 valuation."

(d) If a majority of the votes cast in the election favor the proposition, the tax rate for the specified tax year is the rate

approved by the voters, and that rate is not subject to Section 26.07, Tax Code. The board shall adopt the tax rate as provided by Chapter 26, Tax Code.

(e) If the proposition is not approved as provided by Subsection (d), the board may not adopt a tax rate for the district for the specified tax year that exceeds the rate that was not approved, and Section 26.07, Tax Code, applies to the adopted rate if that rate exceeds the district's voter-approval tax rate.

(f) Notwithstanding any other law, if a majority of the votes cast in the election favor the proposition, a governing body with approval authority over the district's budget or tax rate may not disapprove the tax rate approved by the voters or disapprove the budget based solely on the tax rate approved by the voters.

Added by Acts 2007, 80th Leg., R.S., Ch. 164 (S.B. 1107), Sec. 7, eff. September 1, 2007.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 77, eff. January 1, 2020.

Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 78, eff. January 1, 2020.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 80, eff. September 1, 2023.

CHAPTER 282. HOSPITAL DISTRICTS IN COUNTIES OF 75,000 OR LESS

SUBCHAPTER A. CREATION OF DISTRICT

Sec. 282.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of trustees of a district.

(2) "District" means a hospital district created under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.002. DISTRICT AUTHORIZATION. (a) The commissioners court of a county with a population of 75,000 or less and an assessed property valuation of at least $200,000,000 may create one or more hospital districts.

(b) The district may include a municipality or town, or a part of a municipality or town, but the district may not include part of

another district.

(c) To be formed the proposed district must be composed of territory having property of an assessed value of more than $25,000,000.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.003. CREATION ELECTION REQUIRED. The creation of the district must be approved by a majority of the qualified voters of the area of the proposed district who vote at an election ordered and held for that purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.004. PETITION FOR ELECTION. (a) To propose the establishment of a district:

(1) a petition for a creation election signed by at least five percent of the qualified property taxpaying voters of the area of the proposed district must be presented to the commissioners court; and

(2) $200 in cash must be deposited with the county clerk at the time of the presentation of the petition.

(b) The petition must state:

(1) the boundaries of the proposed district;

(2) the public necessity for the proposed district; and

(3) the name of the proposed district which includes the county name.

(c) The petition may include a request for the commissioners court to provide on the ballot at the creation election for voting for or against:

(1) imposing a tax to provide funds to construct, equip, maintain, or purchase hospital buildings or land for the district; or

(2) the issuance of bonds to acquire sites for and to construct hospital buildings and imposing a tax at the rate necessary to create an interest and sinking fund sufficient to pay the principal of and interest on the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.005. HEARING; ELECTION ORDER. (a) When the petition is presented to the commissioners court, the commissioners court shall:

(1) set a date for a hearing on the petition at a regular session or special session called for that purpose, not less than 30 days nor more than 60 days after the date on which the petition is presented; and

(2) order the county clerk to give notice of the date and place of the hearing by posting a copy of the petition and the order for at least 20 days before the date of the election at the courthouse door and at four other places in the proposed district.

(b) If the court finds at the hearing that the petition meets the requirements of this chapter, the court shall order an election to be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

(c) The order must contain a description of the metes and bounds of the proposed district and must set the date of the election.

(d) The ballot for election shall be printed to provide for voting for or against:

(1) the creation of the district; and

(2) if the petition includes a request under Section 282.004(c), the imposition of a tax or the issuance of bonds according to the terms of the petition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.006. ELECTION COSTS; DISPOSITION OF DEPOSIT. (a) The county clerk shall retain the amount deposited under Section 282.004(a) until the commissioners court declares the election results.

(b) If at the election the majority of the voters approved the creation of the district, the county clerk shall return that amount to the petitioners or the petitioners' agent or attorney.

(c) If at the election the majority of the voters disapproved the creation of the district, the county clerk shall:

(1) pay from the amount deposited on warrants approved and signed by the county judge, all costs and expenses pertaining to the proposed district, including the costs related to the elections;

(2) return the remaining amount, if any, to the petitioners or the petitioners' agent or attorney.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. DISTRICT ADMINISTRATION

Sec. 282.021. ELECTION OF BOARD. (a) Board members shall be elected from the district at large.

(b) Initial board members shall be elected at the district creation election.

(c) A person who wishes to have his name printed on the ballot as a candidate to serve as an initial district board member must present to the commissioners court a petition requesting that the person's name be placed on the ballot at the district creation election. The petition must be accompanied by a second petition signed by at least 100 qualified voters of the proposed district requesting that the person's name be placed on the ballot as a candidate for board membership. The petitions must be filed with the commissioners court before the third day before the date on which the election order is issued.

(d) The commissioners court shall declare that the five candidates receiving the highest number of votes at the initial election of board members are district board members. When they are qualified under this chapter, the candidates shall serve as district board members.

(e) The initial board members shall serve as district board members until the next regular election of state and county officers. An election for board members shall be held at that time and at the general election in each second year after that time.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.0211. OPTIONAL FOUR-YEAR TERMS. (a) The board may, on its own motion, order that board members are to be elected in even-numbered years to serve staggered four-year terms.

(b) The first election of board members in an even-numbered

year that occurs at least 120 days after the date on which an order is entered under Subsection (a) shall be held as previously scheduled. The three candidates receiving the highest number of votes at that election serve for a term of four years. The remaining two directors elected at that election serve for a term of two years. Subsequent members shall be elected in even-numbered years and shall serve four-year terms.

Added by Acts 1991, 72nd Leg., ch. 645, Sec. 1, eff. June 16, 1991.

Sec. 282.022. OATH AND BOND. (a) Before assuming the duties of office on the board, each district board member elect must:

(1) take and subscribe an oath before the county judge to faithfully and impartially discharge the duties of a board member and to give an account of the member's activities to the commissioners court when requested to do so; and

(2) execute a good and sufficient bond for $5,000 payable to the county judge for the use and benefit of the district, conditioned on the faithful performance of the person's duties as a board member.

(b) The county clerk shall file and maintain the oath as part of the district records.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.023. COMPENSATION. A board member serves without compensation but is entitled to reimbursement for actual expenses incurred in the performance of official duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.024. OFFICERS. The board shall elect from among its members a chairman, a secretary, and other officers the board considers appropriate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.025. QUORUM; MEETING PROCEDURE AND RECORD. (a) Three board members constitute a quorum.

(b) All board proceedings shall be by motion or resolution and shall be recorded in a book kept for that purpose. The book is a public record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.026. SEAL. The board shall adopt an official seal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.027. SUPERINTENDENT; DUTIES. (a) The board shall appoint a superintendent to serve as the district's chief administrator.

(b) The superintendent serves at the will of the board and is responsible to the board for the efficient administration of hospital affairs.

(c) The superintendent is entitled to compensation as determined by the board.

(d) The superintendent may attend board meetings and meetings of a board committee and may participate in the discussion of matters within the superintendent's functions, but the superintendent may not vote on matters considered by the board.

(e) The superintendent shall:

(1) control administrative functions of the hospital;

(2) carry out the board orders;

(3) ensure that the district complies with state law relating to matters within the superintendent's functions; and

(4) fully advise the board of the district's financial condition and needs.

(f) At least once a year, the superintendent shall:

(1) prepare an estimate of administrative expenses for the succeeding fiscal year;

(2) recommend to the board and estimate the cost of improvements to be made in the succeeding fiscal year;

(3) certify to the board district bills, allowances, and payrolls, including public works contractors' claims; and

(4) recommend to the board salary amounts of district

employees under the administrator and a salary scale to be paid for different services required by the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.028. OTHER OFFICERS AND DISTRICT EMPLOYEES. (a) The board shall appoint other district officers that the board considers necessary.

(b) A person appointed under Subsection (a) serves at the will of the board and is entitled to receive compensation as determined by the board.

(c) The board may contract with or employ legal, technical, and professional assistance and other employees.

(d) If the superintendent is temporarily incapacitated or absent, the board may designate a competent person to perform the superintendent's powers or duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. GENERAL POWERS AND DUTIES

Sec. 282.041. MANAGEMENT, CONTROL, AND ADMINISTRATION. (a) The board shall manage, control, and administer the district.

(b) The board is a corporate body in the name of the "_____ County Public Hospital District No. _____."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.042. DISTRICT RULES. The board may adopt rules and bylaws the board considers proper.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.043. POWERS RELATING TO DISTRICT PROPERTY, FACILITIES, AND EQUIPMENT. (a) On the district's behalf, the board may hold, construct, condemn, purchase, acquire, lease, add to, maintain, operate, develop, regulate, sell, and convey land, property, a property right, equipment, a hospital facility, or a hospital system

to maintain a district hospital, building, structure, or other facility.

(b) The board may lease an existing hospital, equipment, or property used in connection with a district hospital and equipment at a rate the board considers proper.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.044. CONTRACTING AUTHORITY. (a) In performing its powers under this subchapter the board may contract with:

(1) the federal government;

(2) this state;

(3) a municipality; and

(4) another hospital district.

(b) The district may incur indebtedness or borrow money for district purposes on the credit of the district or secured by the revenues of a district hospital.

(c) The district may contract with another community, corporation, or individual for services provided by the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.045. PURCHASING PROCEDURES. The district is subject to the County Purchasing Act (Subchapter C, Chapter 262, Local Government Code), and the board shall comply with the competitive bidding or proposal procedures prescribed by that Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.046. EMINENT DOMAIN. (a) On a resolution by the board, the district may exercise the power of eminent domain for the acquisition of property necessary to carry out the powers and duties of the district, including preventing damage to district property, property rights, equipment, hospital facilities and systems, and property adjacent to district property.

(b) The district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, for the exercise of that power by a municipality.

(c) The district may not exercise the power of eminent domain against:

(1) a hospital, clinic, or sanatorium operated as a charitable, nonprofit establishment or operated by a religious organization; or

(2) a privately owned or operated hospital or clinic, whether or not incorporated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.047. GIFTS AND ENDOWMENTS. The board may accept bequests and contributions on behalf of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.048. AUTHORITY TO SUE AND BE SUED; DISTRICT LIABILITY. (a) The board may sue and be sued on behalf of the district.

(b) A suit against the district must be brought in the county in which the district is located.

(c) The district is not liable for negligence for an act of a district officer, agent, or employee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.049. OTHER BOARD POWERS. The board may:

(1) promote health in the district;

(2) print and publish information; and

(3) do any other thing necessary to the performance of the board's duties under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.050. PROVISION OF HOSPITAL SERVICES. (a) The district shall provide adequate hospital services for the district. A person who resides in the district is entitled to receive those services at available district hospital facilities at a rate

determined by the board and in any manner the board considers expedient or necessary under existing conditions. The district may provide the services in hospitals located outside the district.

(b) The district may furnish hospital services to a person who does not reside in the district at a reasonable and fair rate the board considers proper, but the district shall give priority to a district resident in the provision of hospital services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. DISTRICT FINANCES

Sec. 282.061. ANNUAL REPORT. (a) Not later than June 1 of each year, the board shall prepare and file with the commissioners court a full, detailed report of the condition of the district. The report must include:

(1) an estimate of the cost of maintenance, operation, and needed repairs for the succeeding year;

(2) an inventory of all funds and other property of the district; and

(3) a list of all legal demands, debts, and obligations against the district.

(b) The board shall verify the report.

(c) The commissioners court shall carefully investigate and consider the report before setting a tax rate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.062. TREASURER. (a) The county treasurer of the county in which the district is located serves as treasurer of the construction and maintenance fund and the interest and sinking fund of the district.

(b) All money to be credited to the construction and maintenance fund or the interest and sinking fund shall be paid to the treasurer.

(c) The treasurer may not pay money from the construction and maintenance fund or the interest and sinking fund unless the treasurer receives a warrant ordering the payment signed by the district board chairman or another district officer designated by the board.

(d) The treasurer shall open a construction and maintenance fund account and an interest and sinking fund account with the district and shall keep a record of all of the district's money received for the accounts and paid from the accounts. The treasurer may not pay money from the accounts except on a voucher signed by the chairman or two board members.

(e) The treasurer shall maintain a file of the payment orders from the accounts.

(f) As required by the board or the commissioners court, the treasurer shall give a correct accounting to the board or the commissioners court of all matters relating to the accounts.

(g) For services on behalf of the district, the treasurer is entitled to receive an amount equal to:

(1) one-fourth of one percent of all money received by the treasurer for the construction and maintenance fund or the interest and sinking fund; and

(2) one-eighth of one percent of all money received by the treasurer and paid out of the construction and maintenance fund or the interest and sinking fund of the district.

(h) The treasurer is not entitled to receive a commission under Subsection (g) on district money the treasurer receives from the preceding treasurer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 119, eff. Sept. 1, 1991.

Sec. 282.063. DISTRICT FUNDS; INVESTMENT OF FUNDS. (a) The treasurer shall maintain a construction and maintenance fund and an interest and sinking fund for the district and shall place money in those funds as required by this chapter or as the board by resolution directs. All other money received by the district shall be placed in a fund or funds as provided by the board.

(b) The amount of taxes collected that is necessary to pay the principal of and interest on the bonds as they mature shall be credited to the interest and sinking fund. All money received by the district from the sale of bonds shall be credited to the construction and maintenance fund.

(c) The treasurer shall pay from the construction and maintenance fund or from a fund or funds designated by the board the

expenses, debts, and obligations of the district created after the filing of the original petition and incurred in the creation, operation, and maintenance of the district, other than the principal of and interest on bonds.

(d) The interest and sinking fund may be invested for the benefit of the district in bonds and securities approved by the attorney general.

(e) The construction and maintenance fund and interest and sinking fund shall be held for the purposes for which they were created. If money is improperly paid from either fund, the commissioners court may require the county treasurer to transfer to the fund from the district account the amount necessary to restore that amount.

(f) District funds shall be deposited in the county depositories in the manner required by law for county depositories. Interest collected on those funds belongs to the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 119, eff. Sept. 1, 1991.

Sec. 282.064. FISCAL YEAR. (a) The district operates on the fiscal year established by the board.

(b) The fiscal year may not be changed if revenue bonds of the district are outstanding.

(c) The fiscal year may not be changed more than once in any 24-month period.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 120, eff. Sept. 1, 1991.

Sec. 282.065. ANNUAL AUDIT; OPEN RECORDS. (a) The board annually shall have an audit made of the financial condition of the district.

(b) The audit and other district records are open to inspection during regular business hours at the district's principal office.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 120, eff. Sept. 1, 1991.

SUBCHAPTER E. DISTRICT BONDS

Sec. 282.071. GENERAL OBLIGATION BONDS. The commissioners court may issue and sell bonds in the district's name and on the district's faith and credit to acquire or construct hospital buildings or land if the bonds are approved by a majority of the qualified voters at the election to create the district in accordance with Subchapter A.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.072. INTEREST, MATURITY, AND DENOMINATION. (a) District bonds mature not more than 30 years after their date and bear interest at a rate ordered by the commissioners court but not more than six percent annually.

(b) The bonds must provide the interest rate and the time, place, manner, and conditions of payment as ordered by the commissioners court.

(c) The bonds may be payable annually or semiannually.

(d) The bonds must be issued in denominations of not less than $100 nor more than $1,000.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.073. EXECUTION OF BONDS. The county judge shall sign the bonds, and the county clerk shall attest the signature and place the seal of the court on the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.074. APPROVAL AND REGISTRATION OF BONDS. (a) Before the bonds are offered for sale, the district shall forward to the attorney general:

(1) a copy of the bonds to be issued;

(2) a certified copy of the court order imposing the tax to pay the interest on the bonds and provide a sinking fund;

(3) a statement of the total bonded indebtedness of the district, including the series of bonds proposed;

(4) the assessed value of property for the purpose of taxation as shown by the most recent official county assessment; and

(5) any other information that the attorney general requires.

(b) The attorney general shall:

(1) examine the bonds; and

(2) certify the bonds if the attorney general determines that the bonds are issued in conformity with the constitution and law and that they are valid and binding obligations of the district.

(c) When the bonds are approved by the attorney general, the comptroller shall register the bonds in a book kept for that purpose and maintain the certificate of approval for the bonds.

(d) On approval and registration under this section, the bonds are incontestable for any cause. The certificate of approval or a certified copy of the certificate is admissible evidence in a suit to enforce the collection of the bonds as prima facie proof of the validity of the bonds with attached coupons. In that suit, only forgery or fraud may be offered as a defense against the validity of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.075. BOND RECORD BOOK. (a) Before issuing the bonds, the commissioners court shall provide to the county clerk a well-bound book in which the clerk shall record all bonds issued, including the following information:

(1) the bond numbers, amount, rate of interest, and date of issue;

(2) the date when the bonds are due;

(3) the place where the bonds are payable;

(4) the amount received for each bond;

(5) the annual assessment made to pay bond interest and to provide a sinking fund to pay the bonds; and

(6) the payment made of each bond.

(b) The record book must be open for inspection at all times by a taxpayer of the district or a bondholder.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.076. COMPENSATION OF COUNTY CLERK. For recording services provided to the district, the county clerk is entitled to

receive fees as provided by Chapter 118, Local Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.077. BOND OF COUNTY JUDGE. (a) When the bonds are registered, the county judge shall execute a good and sufficient bond, approved by the board and payable to the board, for an amount not less than the amount of the bonds issued. The bond must be conditioned on the faithful performance of the judge's duties.

(b) If the bond is executed by a satisfactory surety, the district may pay from the district construction and maintenance fund a reasonable premium on the bond on receipt of an invoice for the premium. If the amount of the premium is disputed as unreasonable, a court of competent jurisdiction may determine whether or not the premium is reasonable.

(c) The board may charge the cost of the bond premium against the commission allowed the county judge on the sale of district bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.078. SALE OF THE BONDS. (a) When the bonds are registered, the county judge, under the direction of the commissioners court, shall advertise and sell the bonds on the best terms and for the best price possible, but for a price not less than the sum of the amounts of the par value and the accrued interest.

(b) The county judge shall give the money received from the sale of a bond to the county treasurer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.079. DISPOSITION OF UNNEEDED BONDS. With the consent of the commissioners court made of record, bonds that are not required for the purpose for which they were voted may be sold and the proceeds may be used to maintain, preserve, and operate the district hospital and to pay district debts and other obligations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.080. ADDITIONAL BOND ISSUE AND ELECTION. (a) The board shall certify to the commissioners court the necessity for an additional bond issue if:

(1) the proceeds of the original bond issue are insufficient to complete the construction, equipment, maintenance, or purchase of hospital buildings or land for the district; or

(2) the board decides to provide for additional construction, equipment, maintenance, or purchase of hospital buildings or land.

(b) The certification must state:

(1) the amount required;

(2) the purpose for the funds;

(3) the rate of interest of the proposed bonds; and

(4) the maturity date of the proposed bonds.

(c) When the commissioners court receives the certification, the commissioners court shall order an election on the issuance of the bonds to be held in the district on the first uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

(d) The sum of the amount of any outstanding bonds and the amount of additional bonds issued under this section may not exceed one-fourth of the assessed value of the real property in the district, as shown by the most recent annual assessment made for county taxation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.081. CHANGE IN USE OF BOND PROCEEDS AFTER BOND ISSUANCE. (a) After the issuance of bonds, the board may change the use of the bond proceeds to include a change or improvement to the district hospital if the change or improvement will not increase the cost of the proposed project beyond the amount of the authorized bonds.

(b) The board may make the change in the use of the bond proceeds by:

(1) entering in the minutes of the board a notation of the change; and

(2) by giving notice of the change by publication of the notation and the page number of the board minutes on which the notation was entered.

(c) The publication must be in English and must run for two successive weeks in a newspaper of general circulation in the county in which the district is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER F. TAXES TO PAY BONDS

Sec. 282.101. TAXES TO PAY BONDS. (a) When the bonds have been approved by the voters at the election authorizing the levy of taxes, the commissioners court shall impose a property tax for the benefit of the district. The tax rate must be sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds as they become due.

(b) After investigation and consideration of the annual report in accordance with Section 282.061, the commissioners court shall impose and collect taxes annually on all taxable property in the district. The amount of tax revenue:

(1) must be sufficient to maintain, preserve, and operate the district hospital and to pay all legal district debts and other obligations; and

(2) may not exceed two-tenths of one percent of the annual total assessed valuation of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.102. TAX ASSESSOR-COLLECTOR. (a) The county tax assessor-collector shall levy and collect taxes for the district.

(b) After receiving a petition of at least five percent of the qualified taxpaying voters of a created district, the commissioners court may order an election to determine whether the district should have a tax assessor and collector other than the county tax assessor-collector. The commissioners court may order the election after:

(1) the district is created; and

(2) giving notice in the manner as provided for the creation election.

(c) If the voters determine by a two-thirds vote that the

district should have a district tax assessor-collector, the board shall appoint a suitable person to serve in that position.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER G. CONVERSION OF DISTRICTS

Sec. 282.121. AUTHORITY TO CONVERT. A district created in accordance with this chapter may be converted into a district operating under Article IX, Section 9, of the Texas Constitution.

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

Sec. 282.122. CONVERSION HEARING AND ELECTION. (a) A district may be converted under this subchapter only if the conversion is approved by a majority of the qualified voters of the district who vote at an election called and held for that purpose.

(b) The board by order may set a time and place to hold a hearing on the question of converting the district under this subchapter. The board shall set a date for the hearing that is after the 30th day after the date on which the board issues the order.

(c) If after the hearing the board finds that conversion of the district would be in the best interest of the district, the board may order an election on the question of converting the district.

(d) The election shall be held not later than the 60th day after the date on which the election is ordered. Section 41.001(a), Election Code, does not apply to an election ordered under this section.

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

Sec. 282.123. BALLOT PROPOSITION. The ballot for the election shall be printed to permit voting for or against the proposition: "The conversion of the _____ County Public Hospital District No. _____ (name of district) from a district operating under Chapter 282, Health and Safety Code, to a district operating under Article IX, Section 9, of the Texas Constitution, and the levy of annual taxes for hospital purposes at a rate not to exceed _____ (insert amount not to exceed 75 cents) on each $100 valuation of all taxable

property in the district."

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

Sec. 282.124. EFFECTIVE DATE OF CONVERSION. If a majority of the qualified voters participating in the election vote in favor of the proposition, the conversion becomes effective on the 30th day after the date that the election results are declared.

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

Sec. 282.125. RESPONSIBILITY OF COUNTY. On conversion of a district under this subchapter, the county in which the district is located shall convey or transfer to the district:

(1) money held by the county treasurer for the district under Subchapter D, including any money in the district's construction and maintenance fund or interest and sinking fund; and

(2) taxes levied by the county for the benefit of the district under Subchapter F.

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

Sec. 282.126. DISTRICT RESPONSIBILITIES. On conversion of the district under this subchapter, the district assumes any outstanding indebtedness incurred by the county under Subchapter E.

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

Sec. 282.127. EFFECT OF CONVERSION. (a) A district converted under this subchapter is governed by Article IX, Section 9, of the Texas Constitution and by Chapter 206, Acts of the 71st Legislature, Regular Session, 1989 (Article 4494q-1, Vernon's Texas Civil Statutes), as if it had been originally created under that section and that Act, except that the board shall continue to be elected as provided by this chapter.

(b) The district's identity is not affected by the conversion, and the district is liable for all outstanding debts and obligations

assumed or incurred by the district.

(c) Notwithstanding any other provision of law, the board may impose taxes for the entire year in which the district is converted unless the county has imposed taxes for the benefit of the district for that year.

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

CHAPTER 283. OPTIONAL HOSPITAL DISTRICT LAW OF 1957

SUBCHAPTER A. CREATION OF DISTRICT

Sec. 283.001. SHORT TITLE. This Act may be cited as the Optional Hospital District Law of 1957.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of a district.

(2) "District" means a hospital district created under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.003. DISTRICT AUTHORIZATION. (a) A county authorized to establish a hospital district under Article IX, Section 4, of the Texas Constitution may create a hospital district and provide for the establishment of a countywide hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district.

(b) If the county authorized to establish a hospital district under Article IX, Section 4, of the Texas Constitution owns and operates a hospital or hospital system for indigent or needy persons, separately or jointly with a municipality, the countywide hospital district may take over the hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.004. CREATION ELECTION REQUIRED. (a) The district may be created only if the creation is approved by a majority of the qualified voters of the county in which the proposed district will be located who vote at an election called and held for that purpose.

(b) The commissioners court may order a creation election to be held on its own motion or on the presentation of a petition for a creation election signed by at least 100 qualified property taxpaying voters of the county.

(c) When the commissioners court orders the election, the court shall determine, subject to Section 283.121(c)(2), a rate of property tax that produces the amount of tax revenue necessary:

(1) to operate and maintain the proposed district's hospital system; and

(2) to pay when due the principal of and interest on bonds assumed by the district.

(d) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.005. BALLOT PROPOSITIONS. (a) Except as provided by Subsection (b), the ballot for an election under this subchapter shall be printed to provide for voting for or against the proposition: "The creation of a hospital district under the Optional Hospital District Law of 1957 and the levy of a tax not to exceed _____ cents (the amount determined by the commissioners court in the election order) on each $100 of the taxable value of property taxable by the district."

(b) If the county or a municipality in the county has any outstanding bonds issued for hospital purposes, the ballot for an election under this subchapter shall be printed to provide for voting for or against the proposition: "The creation of a hospital district, the levy of a tax not to exceed (the amount determined by the commissioners court in the election order) on each $100 of the taxable value of property taxable by the district, and the assumption by the district of all outstanding bonds previously issued for

hospital purposes by _____ County and by any municipality in the county."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. DISTRICT ADMINISTRATION

Sec. 283.021. DISTRICT BOARD; OFFICERS. (a) The commissioners court of a county in which a district is created under this chapter serves as the district board of hospital managers.

(b) The county judge of the county in which the district is located serves as the district board chairman.

(c) The county clerk serves as the district board secretary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.022. COMPENSATION. A board member serves without compensation other than the compensation provided by law for a county judge or a commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.023. RECORD OF BOARD MEETING. The secretary shall keep a suitable record of each board meeting.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.024. ADMINISTRATOR; DUTIES. (a) The board shall appoint an administrator for the district. The person must be qualified by training and experience.

(b) The administrator holds an office for a term of not more than two years but is subject to removal by the board at any time.

(c) The administrator is entitled to compensation as determined by the board.

(d) Before assuming duties, the administrator shall execute a bond payable to the district in the amount of not less than $10,000, conditioned on the faithful performance of the administrator's duties and any other requirements determined by the board.

(e) Subject to the limitations prescribed by the board, the administrator shall:

(1) perform duties required by the board;

(2) supervise the work and activities of the district; and

(3) generally direct the affairs of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.025. ASSISTANT ADMINISTRATOR. (a) If the administrator is absent or unable to perform any of the administrator's duties, the board may designate an assistant administrator to perform any of the administrator's functions or duties, subject to limitations prescribed by board order.

(b) The assistant administrator and other employees shall execute a bond as required by board order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.026. STAFF. (a) The board may hire doctors, technicians, nurses, and other employees the board considers advisable for the district's efficient operation.

(b) An employment contract may not exceed two years.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.027. RETIREMENT PROGRAMS. The commissioners court may include district employees in:

(1) an existing county employees' pension or retirement program; or

(2) an employees' pension or retirement program established for the benefit of district employees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.028. SEAL. The commissioners court's seal is the district seal. The seal shall be used to authenticate the board's acts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. GENERAL POWERS AND DUTIES

Sec. 283.041. TRANSFER OF COUNTY AND MUNICIPAL HOSPITAL PROPERTY AND FUNDS. (a) On the creation of a district under this chapter and the appointment and qualification of the district board, the county owning a hospital or hospital system located in the district, or the county and municipality jointly operating a hospital or hospital system located in the district, shall execute and deliver to the district board a written instrument conveying to the district the title to land, buildings, and equipment jointly or separately owned by the county or municipality and used to provide medical services or hospital care, including geriatric care, to indigent or needy persons of the county or municipality.

(b) On the creation of a district under this chapter and the appointment and qualification of the district board, the county owning the hospital or hospital system, or the county and municipality jointly operating a hospital or hospital system, shall, on the receipt of a certificate executed by the board's chairman stating that a depository for the district has been chosen and qualified, transfer to the district:

(1) the unspent proceeds of any bonds assumed by the district under Section 283.043; and

(2) all unspent joint or separate county or municipal funds that have been established or appropriated by the county or municipality to support and maintain the hospital facilities for the year in which the district is created.

(c) Funds transferred to the district under this section may be used only for a purpose for which the county or the municipality that transferred the funds could lawfully have used the funds if the funds had remained the property and funds of the county or municipality.

(d) As soon as practical after the declaration of the election results, the county or municipal board of managers shall transfer to the district board all county and municipal hospital system records, property, and affairs and shall cease to exist.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.042. ASSUMPTION OF CONTRACT OBLIGATIONS. On the creation of the district, the district assumes without prejudice to the rights of third parties any outstanding contract obligations legally incurred by the county or municipality, or both, for the construction, support, or maintenance of hospital facilities before the creation of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.043. ASSUMPTION OF BONDED INDEBTEDNESS; CANCELLATION OF UNSOLD MUNICIPAL OR COUNTY BONDS. (a) On the creation of the district, the district assumes:

(1) any outstanding bonded indebtedness incurred by the county or municipality, or both, in the acquisition of land, buildings, and equipment transferred to the district or in the construction and equipping of hospital facilities; and

(2) any other outstanding bonds issued by the county or municipality for hospital purposes, the proceeds of which are in whole or in part unexpended.

(b) A county or municipality in the district that issued bonds for hospital purposes is no longer liable for the payment of bonds assumed by the district or for providing interest and sinking fund requirements on those bonds.

(c) This section does not limit or affect the rights of a bondholder against the county or municipality if there is a default in payment of the principal or interest on the bonds in accordance with their terms.

(d) If the issuance of bonds to provide hospital facilities was approved at a bond election but the bonds have not been sold on the date on which the hospital district is created under this chapter, the bond authority is canceled and the bonds may not be sold.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.044. LIMITATION ON TAXING POWER BY GOVERNMENTAL ENTITY; DISPOSITION OF DELINQUENT TAXES. (a) On or after the creation of the district, the county or a municipality located in the district may not levy taxes for hospital purposes.

(b) The county or a municipality located in the district that

collects delinquent taxes owed to the county or municipality on levies for county and municipal hospital systems or for the payment of bonds issued for the systems shall pay the amount of the collected delinquent taxes to the district, and the district shall apply that money to the purposes for which the taxes were originally levied.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.045. DISTRICT RESPONSIBILITY FOR MEDICAL AID AND HOSPITAL CARE. The district assumes full responsibility for furnishing medical and hospital care for indigent and needy persons residing in the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.046. MANAGEMENT, CONTROL, AND ADMINISTRATION. The board shall manage, control, and administer the hospital or hospital system of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.047. DISTRICT RULES. The board may adopt rules governing the operation of the hospital or hospital system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.048. PURCHASING AND ACCOUNTING METHODS AND PROCEDURES. (a) The commissioners court may prescribe:

(1) the method of making purchases and expenditures by and for the district; and

(2) accounting and control procedures for the district.

(b) A county officer, employee, or agent shall perform any function or service required by the commissioners court under this section.

(c) The district shall pay salaries and expenses necessarily incurred by the county or by a county officer or agent in performing a duty prescribed or required under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.049. DISTRICT INSPECTIONS. (a) The district facilities may be inspected by a representative of the Department of State Health Services or any other state agency or board authorized to supervise a hospital.

(b) A resident district officer shall:

(1) admit an inspector into the district facilities; and

(2) on demand give the inspector access to records, reports, books, papers, and accounts related to the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0833, eff. April 2, 2015.

Sec. 283.050. EMINENT DOMAIN. (a) The district may exercise the power of eminent domain to acquire by condemnation a fee simple or other interest in real, personal, or mixed property located in the district if the property interest is necessary or convenient for the exercise of the rights or authority conferred on the district by this chapter.

(b) The district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, but the district is not required to deposit in the trial court money or a bond as provided by Section 21.021(a), Property Code.

(c) In a condemnation proceeding brought by the district, the district is not required to:

(1) pay in advance or give bond or other security for costs in the trial court;

(2) give bond for the issuance of a temporary restraining order or a temporary injunction; or

(3) give bond for costs or supersedeas on an appeal or writ of error.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.051. GIFTS AND ENDOWMENTS. (a) On behalf of the

district, the board may accept gifts and endowments to be held in trust and administered by the board for the purposes and under the directions, limitations, or provisions prescribed in writing by the donor that are consistent with the proper management of the district.

(b) The board may contract with the state to receive a payment or grant provided by the state for the care or treatment of hospital patients or patients in district facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.052. AUTHORITY TO SUE AND BE SUED; LEGAL REPRESENTATION. (a) The board may sue and be sued.

(b) The county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters shall represent the district in all legal matters.

(c) The board may employ additional legal counsel when the board determines that additional counsel is advisable.

(d) The district shall contribute sufficient funds to the general fund of the county for the account of the budget of the county attorney, district attorney, or criminal district attorney, as appropriate, to pay all additional salaries and expenses incurred by that officer in performing the duties required by the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. MEDICAL TREATMENT AND CARE

Sec. 283.071. ADMISSION CRITERIA AND PAYMENT; CRIMINAL PENALTY. (a) The board shall enter an order in district records defining "indigent or needy person" for the purpose of determining qualifications for admission to district hospital facilities.

(b) An order under Subsection (a) must detail the criteria for an emergency admission to district facilities without regard to indigency and for the length and basis of the stay at the facility.

(c) The board may require evidence of indigency that it considers appropriate, including an affidavit of inability to pay.

(d) The board may hire personnel necessary to determine the eligibility of an applicant for admission to district facilities and to process admissions.

(e) A person commits an offense if the person is able to pay for the person's hospital care at a district facility and makes a false statement for the purpose of obtaining admission to a district hospital facility. An offense under this subsection is a misdemeanor and punishable by a fine not to exceed $200.

(f) A person who violates Subsection (e) is also liable for the cost of the person's hospital care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. DISTRICT FINANCES

Sec. 283.081. BUDGET. (a) The administrator shall prepare an annual budget.

(b) The budget and all budget revisions shall be approved by the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.082. ADMINISTRATOR'S REPORT. (a) As soon as practicable after the close of the fiscal year, the administrator shall make a report to the commissioners court, executive commissioner of the Health and Human Services Commission, and comptroller.

(b) The report must:

(1) contain a sworn statement of all money and choses in action received by the administrator and the disposition of the money and actions; and

(2) detail the operations of the district for the fiscal year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0834, eff. April 2, 2015.

Sec. 283.083. DEPOSITORY. (a) Not later than the 30th day after the appointment of the board, the board shall:

(1) select a depository for district funds in the manner

provided by law for the selection of a county depository; or

(2) elect to use the county depository.

(b) If the board selects a depository in accordance with Subsection (a)(1), the depository shall serve as the district depository for two years and until its successor is selected and qualified.

(c) All income of the district shall be deposited in the district depository.

(d) The county clerk's signature is not required on warrants against district funds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER F. DISTRICT BONDS

Sec. 283.101. GENERAL OBLIGATION BONDS. The commissioners court may issue and sell bonds in the district's name and on the district's faith and credit to acquire, purchase, construct, equip, or enlarge the hospital or hospital system if:

(1) a tax may be imposed at a rate that:

(A) is sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds; and

(B) when added to the rates of other taxes imposed by the district, does not exceed the maximum tax rate of the district; and

(2) the bonds are authorized by majority vote of the qualified voters of the district voting at an election held for the purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.102. BOND ELECTION. (a) A bond election may be held at any time the commissioners court considers advisable, except that it may not be held within two years after the date of a previous election.

(b) The election must be:

(1) ordered and held in accordance with Chapter 1251, Government Code; and

(2) conducted in the same manner as other countywide elections.

(c) The district shall pay for the cost of the election and shall provide for payment before the commissioners court orders the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.262, eff. Sept. 1, 2001.

Sec. 283.103. REFUNDING BONDS. (a) Refunding bonds of the district may be issued to refund outstanding bonded indebtedness the district has issued or assumed.

(b) The bonds must be issued in the manner provided for other bonds of the district except that an election to authorize their issuance is not required.

(c) The refunding bonds may be:

(1) sold and the proceeds applied to the payment of outstanding bonds; or

(2) exchanged in whole or in part for not less than a similar principal amount of the outstanding bonds plus the unpaid, matured interest on those bonds.

(d) The average annual interest cost on the refunding bonds, computed in accordance with recognized standard bond interest cost tables, may not exceed the average annual interest cost so computed on the bonds to be discharged from the proceeds of the refunding bonds, unless the total interest cost on the refunding bonds, computed to their respective maturity dates, is less than the total interest cost so computed on the bonds to be discharged from those proceeds. In those computations, any premium required to be paid on the bonds to be refunded as a condition to payment in advance of their stated maturity dates shall be taken into account as an addition to the net interest cost to the district of the refunding bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.104. EXECUTION OF BONDS. The county judge of the county in which the district is created shall execute the bonds in the name of the district, and the county clerk shall countersign the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.105. APPROVAL AND REGISTRATION OF BONDS. (a) District bonds must be approved by the attorney general and registered by the comptroller subject to the same requirements for approval and registration of bonds issued by the county.

(b) The attorney general's approval of district bonds has the same effect as that approval for other bonds issued by the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER G. TAXES

Sec. 283.121. TAX ASSESSMENT AND COLLECTION. (a) If the district has issued or assumed bonds payable from taxes, the commissioners court shall impose a tax for the benefit of the district on all property subject to district taxation.

(b) The commissioners court may impose a tax for:

(1) the entire year in which the district is created;

(2) maintenance and operation of the district; and

(3) improvements and additions to the hospital system.

(c) The total tax rate of the district may not exceed:

(1) the rate authorized by the voters of the district; or

(2) the constitutional tax rate limit.

(d) The tax revenue may be used:

(1) to create an interest and sinking fund for bonds that may be assumed or issued by the district for hospital purposes in accordance with this chapter;

(2) to provide for the operation and maintenance of the hospital or hospital system; and

(3) to make improvements and additions to the hospital system, including the acquisition of necessary sites.

(e) The county tax assessor-collector shall collect the tax.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.122. ELECTION TO INCREASE TAX AMOUNT. (a) The tax rate approved in the creation of the district may be increased only if the increase is approved by a majority of the qualified voters of

the district who vote in an election called and held for that purpose.

(b) The commissioners court may order an election to increase the allowable tax rate to be held on its own motion or on the presentation of a petition for an election signed by at least 100 qualified property taxpaying voters of the district.

(c) When the commissioners court orders the election, the court shall determine the amount of tax necessary for the proper maintenance of the hospital district.

(d) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with the other requirements of law and that occurs at least 30 days after the date on which the court orders the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.123. BALLOT PROPOSITION FOR TAX INCREASE. The ballot for a tax increase under this subchapter shall be printed to provide for voting for or against the proposition: "The increase of the hospital district tax from (the existing tax levy) to (the amount of existing tax plus the increase determined by the commissioners court in its order calling the election) on each $100 of the taxable value of property taxable by the district."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER H. DISTRICT CONVERSION

Sec. 283.131. DISTRICT CONVERSION AUTHORITY. A hospital district created in accordance with Chapter 281 may be converted into a district subject to this chapter, or a district created in accordance with this chapter may be converted into a district subject to Chapter 281.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.132. CONVERSION ELECTION REQUIRED. (a) A district may be converted under this subchapter only if the conversion is approved by a majority of the qualified voters of the county in which

the district is located who vote at an election called and held for that purpose.

(b) The commissioners court shall order a conversion election not later than the 20th day after the date of presentation of a petition for conversion signed by at least five percent of the qualified property taxpaying voters of the county.

(c) If the election is on the question of conversion of a district created in accordance with Chapter 281, when the commissioners court orders the election, the court shall determine the amount of tax necessary:

(1) to operate and maintain the district's hospital system;

(2) to make improvements and additions to the hospital system, including the acquisition of necessary sites; and

(3) to pay when due the principal of and interest on district bonds assumed by the original district but excluding bonds issued by the original district.

(d) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law and that occurs at least 30 days after the date on which the court orders the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.133. BALLOT PROPOSITIONS. (a) The ballot for the election held to determine the question of conversion of a district created under this chapter shall be printed to provide for voting for or against the proposition: "The conversion of the hospital district from a district operated under the Optional Hospital District Law of 1957 to a district operated under Chapter 281, Health and Safety Code, and the levy of a tax not to exceed 75 cents on each $100 of the taxable value of property taxable by the district."

(b) The ballot for an election held to determine the question of conversion of a district created in accordance with Chapter 281, if no bonds issued by the district are outstanding, shall be printed to provide for voting for or against the proposition: "The conversion of the hospital district from a district operated under Chapter 281, Health and Safety Code, to a district operated under the Optional Hospital District Law of 1957, and the levy of a tax not to exceed (the amount determined by the commissioners court in the election

order) on each $100 of the taxable value of property taxable by the district."

(c) The ballot for an election held to determine the question of conversion of a district created in accordance with Chapter 281, if bonds issued by the district are outstanding, shall be printed to provide for voting for or against the proposition: "The conversion of the hospital district from a district operated under Chapter 281, Health and Safety Code, to a district operated under the Optional Hospital District Law of 1957, and the levy of a tax not to exceed 75 cents on each $100 of the taxable value of property taxable by the district until presently outstanding bonds issued by the district have been retired, and thereafter the levy of a tax not to exceed (the amount determined by the commissioners court in the election order) on each $100 of the taxable value of property taxable by the district."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.134. EFFECTIVE DATE OF CONVERSION. If a majority of the qualified voters participating in the election vote in favor of the proposition, the conversion becomes effective on the 30th day after the date that the election results are declared.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.135. EFFECT OF CONVERSION. (a) The district's identity is not affected by the conversion, and the district is liable for all outstanding debts and obligations assumed or incurred by the district.

(b) Any bonds voted by a district originally created under Chapter 281 which have not been issued on the date of the conversion election may not be issued.

(c) On conversion of a district from one operated under Chapter 281 to one operated under this chapter, the district may not impose a tax in excess of the amount determined by the commissioners court in the election order for any purposes other than to pay the principal of and interest on the unpaid bonds issued by the district before the date of conversion.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.136. LIMITATION ON FURTHER ELECTIONS. (a) If the proposition fails to carry at the conversion election, the district may not hold another election on the proposition for two years after the date of the election.

(b) A district that has converted under this subchapter may hold an election for reconversion after five years after the date of the conversion. The election for reconversion must be held in the same manner as provided in this subchapter for the conversion.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 284. SPECIAL PROVISIONS RELATING TO HOSPITAL DISTRICT BONDS

SUBCHAPTER A. ISSUANCE OF REVENUE BONDS IN COUNTIES WITH POPULATION OF AT LEAST 200,000

Sec. 284.001. AUTHORITY TO ISSUE; FORM OF BONDS. (a) The commissioners court of a county with a population of at least 200,000 in which a hospital district has been created in accordance with Article IX of the Texas Constitution may issue revenue bonds to provide funds to:

(1) acquire, construct, repair, renovate, improve, enlarge, and equip a hospital facility; and

(2) acquire any real or personal property on behalf of the district for those purposes.

(b) The commissioners court may not issue revenue bonds under this subchapter on behalf of a hospital district to purchase a nursing home for long-term care.

(c) The bonds and bond interest coupons are negotiable instruments.

(d) The bonds may be issued in the form, denomination, and manner and under the terms and conditions determined and provided by the commissioners court in the order authorizing the issuance of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.002. TERMS. (a) The bonds must mature serially or

otherwise not more than 40 years after the date they are issued.

(b) The bonds may be:

(1) made redeemable before maturity; and

(2) issued registrable as to principal or as to principal and interest.

(c) The bonds shall be executed in the manner and bear interest at the rate provided by the commissioners court in the order authorizing the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.003. APPROVAL AND REGISTRATION OF BONDS. (a) The commissioners court shall submit the bonds and the proceedings authorizing their issuance to the attorney general for examination. If the attorney general finds that the bonds are authorized in accordance with law, the attorney general shall approve the bonds and the comptroller shall register the bonds.

(b) After approval and registration, the bonds are incontestable and are binding obligations according to their terms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.004. SECURITY. (a) The commissioners court may make bonds issued under this subchapter payable from and secured by a lien on or pledge of all or part of the hospital district revenue from operation or ownership of hospital facilities, except ad valorem taxes.

(b) The commissioners court may also secure the bonds by:

(1) a pledge of all or part of a grant, a donation, or other income received from a public or private source, whether in accordance with an agreement or otherwise; and

(2) a mortgage or deed of trust on real property on which a district hospital facility is or will be located and any real or personal property incident or appurtenant to that facility.

(c) The commissioners court may authorize the execution and delivery of a trust indenture, mortgage, deed of trust, or other form of encumbrance to evidence a security agreement under Subsection (b)(2).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.005. SALE OF BONDS; USE OF PROCEEDS. (a) The bonds may be sold in the manner, at the price, and under the terms determined and provided by the commissioners court in the order authorizing the issuance of the bonds.

(b) If permitted by the bond order, a required part of the proceeds from the bond sale may be used for:

(1) the payment of interest on the bonds during the construction of hospital facilities financed with bond proceeds;

(2) the payment of operation and maintenance expenses of those facilities to the extent and for the period specified by the bond order; and

(3) the creation of reserves for the payment of bond principal and interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.006. INVESTMENT OF BOND PROCEEDS. Proceeds from the sale of bonds may be invested until needed to the extent and in the manner provided by the bond order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.007. LEGAL INVESTMENTS. The bonds are legal and authorized investments for:

(1) a bank;

(2) a trust company;

(3) a savings and loan association;

(4) an insurance company;

(5) a small business investment corporation;

(6) a fiduciary;

(7) a trustee;

(8) a guardian; or

(9) an interest or sinking fund or other public funds of the state or a municipality, county, school district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.008. SECURITY FOR DEPOSITS. The bonds are eligible to secure deposits of public funds of the state or of a municipality, county, school district, or other political subdivision of the state. The bonds are lawful and sufficient security for deposits to the extent of their market value if accompanied by all appurtenant unmatured coupons, if any.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.009. AUTHORITY TO ISSUE SUBSEQUENT BONDS. In the authorization of bonds under Section 284.001, the commissioners court may provide for the subsequent issuance of additional parity, subordinate lien, or other bonds, under the terms or conditions stated in the order authorizing the issuance of the original bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.010. REFUNDING BONDS AND REFINANCING. (a) Revenue bonds issued by the commissioners court under this subchapter or under any other statute of this state and payable from hospital facility revenue may be refunded or otherwise refinanced by the commissioners court.

(b) The provisions of this subchapter pertinent and appropriate to the issuance of revenue bonds generally apply to the refunding bonds.

(c) In issuing refunding bonds or in refinancing revenue bonds, the commissioners court in the same authorizing proceedings may:

(1) refund or refinance bonds issued under this subchapter and bonds issued under another statute of this state and combine the refunding bonds with other new bonds to be issued under those laws into one or more issues or series of bonds; and

(2) provide for the subsequent issuance of additional parity, subordinate lien, or other bonds.

(d) Refunding bonds shall be issued and delivered under the terms and conditions stated in the authorizing proceedings.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.011. TAXES TO PAY OPERATING AND MAINTENANCE EXPENSES. (a) Ad valorem taxes of the hospital district shall be used to pay hospital facility operation and maintenance expenses to the extent that hospital facility revenue and income are not available at any time to pay all those expenses.

(b) The proceeds of an annual ad valorem tax may be pledged to pay hospital facility operation and maintenance expenses in the order authorizing the issuance of bonds under this subchapter.

(c) During each year that any of the bonds are outstanding, the commissioners court shall compute and determine the rate and amount of ad valorem tax that is sufficient to raise and produce the funds required to pay required hospital facility operation and maintenance expenses if the annual ad valorem tax is pledged as security for the payment of those expenses. In determining the tax rate, the commissioners court may allow for tax delinquencies and the cost of tax collection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.012. AUTHORITY OF DISTRICT GOVERNING BODY IN ABSENCE OF AD VALOREM TAX. If a hospital district created under Article IX of the Texas Constitution does not have ad valorem taxes levied on behalf of the district by the commissioners court of the county in which the hospital district is located, the district board of directors or other governing body has all of the powers and duties otherwise provided to a commissioners court under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.013. ANNUAL BUDGET. (a) The commissioners court, board of hospital managers, or hospital district board of directors shall provide in each annual hospital district budget for the payment of all operation and maintenance expenses of the hospital district.

(b) In preparing the budget, the commissioners court or board may consider the estimated revenue and income from hospital facilities that will be available for paying operation and

maintenance expenses after providing for all principal, interest, and reserve requirements in connection with the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.014. AUTHORITY TO CHARGE FOR HOSPITAL SERVICES. (a) The commissioners court, board of hospital managers, or hospital district board of directors may fix and collect charges for the occupancy or use of hospital facilities and hospital services in the amount and manner determined by the commissioners court or board.

(b) The charges shall be fixed and collected in an amount:

(1) sufficient, with other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds; and

(2) required by the bond order to provide for payment of all or part of the operation, maintenance, and other expenses of the hospital facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.015. USE OF OTHER LAW. A commissioners court may use other law not in conflict with this chapter to the extent convenient or necessary to carry out any power expressly or impliedly granted by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. ISSUING AND REFUNDING REVENUE BONDS BY HOSPITAL DISTRICTS CREATED UNDER ARTICLE IX, SECTION 9, OF THE TEXAS CONSTITUTION

Sec. 284.031. AUTHORITY TO ISSUE. (a) A hospital district created in accordance with Article IX, Section 9, of the Texas Constitution may issue revenue bonds to:

(1) acquire, construct, repair, renovate, or equip buildings and improvements for hospital purposes; and

(2) acquire sites for hospital purposes.

(b) The hospital district may refund revenue bonds previously issued for the purposes specified by Subsection (a).

(c) The bonds must be payable from and secured by a pledge of all or part of district revenues from operation of a hospital. The bonds may also be secured by a mortgage or deed of trust lien on all or part of the district's property.

(d) The bonds must be issued in accordance with Sections 264.042-264.047(a), 264.048, and 264.049, and with the effect specified by Section 264.050.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. BOND ELECTIONS IN HOSPITAL DISTRICTS

Sec. 284.041. BOND ELECTIONS FOR REVENUE BONDS. (a) The commissioners court of a county authorized by law to issue revenue bonds on behalf of a hospital district in the county may, on its own motion, order an advisory election to determine whether a majority of the qualified voters of the hospital district voting at the election favor the issuance of revenue bonds. The order must contain the same information contained in the notice of the election.

(b) In addition to the contents of the notice required by the Election Code, the notice must state any other matters that the commissioners court considers necessary or advisable.

(c) Subject to any additional notice requirements under Section 4.003, Election Code, the commissioners court shall publish notice of the election one time, at least 10 days before the date set for the election, in a newspaper of general circulation in the hospital district.

(d) The election is advisory only and does not affect the authority of the commissioners court to issue revenue bonds on behalf of the hospital district under an applicable law that does not require an election.

(e) The expenses of holding the election shall be paid from hospital district funds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 285. SPECIAL PROVISIONS RELATING TO HOSPITAL DISTRICTS

SUBCHAPTER A. PAYMENT OF HOSPITAL DISTRICT OPERATING EXPENSES IN CERTAIN POPULOUS COUNTIES

Sec. 285.001. DEFINITION. In this subchapter, "bond" includes

a note.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.002. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a county having:

(1) a population of:

(A) at least 1.2 million; or

(B) at least 830,000 and not more than 870,000; and

(2) a countywide hospital district that:

(A) has taxes imposed and collected by the commissioners court of the county; and

(B) has teaching hospital facilities affiliated with a state-owned or private medical school.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 73, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 37, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 37, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 81, eff. September 1, 2023.

Sec. 285.003. AUTHORITY TO MAKE REVENUE ANTICIPATION AGREEMENT. (a) The commissioners court of the county may make a revenue anticipation agreement with a person, including a bank or other financial institution, on the determination by the commissioners court that the county hospital district's projected revenue, including tax collections, will not be received by the district at the times necessary to pay when due the district's operating and maintenance expenses.

(b) Under the revenue anticipation agreement, the contracting person agrees to advance to the hospital district, and the county and district agree to repay from the sources specified by Section 285.006, funds necessary for the district hospital facilities' operation and maintenance during the term of the agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.004. TERMS. (a) Subject to this section, the parties to a revenue anticipation agreement determine its terms.

(b) The term of the revenue anticipation agreement may not exceed two years.

(c) An advance may not be made to a district under a revenue anticipation agreement more than once each month. The amount of an advance may not exceed the difference between (1) the district's accumulated, unpaid operating and maintenance expenses, and (2) the district's revenue and income, including tax revenue, actually received by the district to the date of the advance and lawfully available for paying those expenses, together with the operating reserves reasonably required for one month.

(d) The party making the advances may rely on a certification made by the district's authorized officers concerning facts specified by Subsection (c).

(e) Amounts advanced under a revenue anticipation agreement may bear interest at a rate or rates not more than the legal rate for district revenue bonds, and the agreement may provide that the rate of interest on those amounts may be determined at the time the advance is made by reference to any determinative factors and formulae on which the parties agree.

(f) The agreement must provide:

(1) for the advanced amounts to mature and become due and payable on a date on or before the day the agreement ends; and

(2) that the advanced amounts may be paid without penalty at any time before maturity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.005. REFUNDING PROHIBITED; REPAYMENT REQUIRED. (a) An advance may not be refunded, refinanced, or extended.

(b) When district revenues are received, the commissioners court shall apply them to the payment or prepayment of outstanding, unpaid advances under the revenue anticipation agreement if:

(1) those revenues are not required or committed to pay other district obligations and expenses; and

(2) the revenues are received during the term of the

revenue anticipation agreement.

(c) Until all advances under a revenue anticipation agreement are repaid, retired, and canceled, an advance may not be made under a subsequent revenue anticipation agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.006. SECURITY; DEFAULT OF REPAYMENT. (a) An advance under a revenue anticipation agreement is secured by and payable from:

(1) a pledge of and lien on district revenue from the operation and maintenance of its hospital facilities; or

(2) tax revenues, when collected, imposed for the purpose of operating and maintaining the district's facilities for the year during which the advances are made.

(b) If the district fails to repay any advanced amount when due under an agreement or under this subchapter, an application for a writ of mandamus or other action may be filed in a district court to enforce the agreement and repayment as required by this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.007. LIMITATION ON USE OF PROCEEDS; AUDIT. (a) An advance under a revenue anticipation agreement may be used only for the purposes authorized by this subchapter.

(b) It is not a defense to repayment of advanced amounts that the funds are used for a purpose not authorized by this subchapter.

(c) The auditor of the hospital district shall:

(1) audit the use of advanced funds at the time of the district's regular audit; and

(2) certify to the commissioners court whether those funds are used for proper operating and maintenance purposes authorized by this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.008. BONDS. (a) In a revenue anticipation agreement, the commissioners court may promise to execute and deliver,

concurrently with the making of advances under the agreement, interest-bearing bonds evidencing the county's and hospital district's obligation to repay the advances as provided by the agreement and this subchapter.

(b) The bonds may be delivered on terms consistent with the terms specified for a revenue anticipation agreement by this subchapter.

(c) The provisions of this subchapter that relate to advances apply to bonds issued under this section.

(d) Bonds issued under this subchapter are:

(1) incontestable in a court or other forum;

(2) valid and binding obligations;

(3) investment securities under the Uniform Commercial Code (Title 1, Business & Commerce Code);

(4) legal and authorized security for public funds of the state and its political subdivisions; and

(5) legal and authorized investments by a bank, savings bank, savings and loan association, or insurance company.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.009. TAXES TO SECURE BONDS. (a) The commissioners court may pay and secure the principal of and interest on bonds issued under this subchapter with annual ad valorem taxes imposed by the hospital district as required by the bonds and any relevant revenue anticipation agreement if:

(1) the hospital district is created under Article IX, Section 4, of the Texas Constitution and the creation of the district is approved at an election held in the district as required by that constitutional provision; or

(2) the hospital district is created under another constitutional provision that permits the imposition and pledge of taxes.

(b) The commissioners court shall set the tax rate of the hospital district at a rate sufficient to pay the bond principal and interest when due if taxes are pledged in accordance with this section. In setting the tax rate, the commissioners court shall give consideration to the amount of money estimated to be received from revenues pledged under a revenue anticipation agreement that may be

available for the payment of bond principal and interest as provided by the revenue anticipation agreement, making allowance for tax delinquencies and the cost of tax collection.

(c) The sum of all annual ad valorem taxes imposed by the hospital district may not exceed 75 cents on $100 valuation of all taxable property in the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. PARKING STATIONS NEAR HOSPITALS IN COUNTIES OF AT LEAST 1.5 MILLION

Sec. 285.021. DEFINITIONS. In this subchapter:

(1) "Bond order" means the order authorizing the issuance of revenue bonds.

(2) "Parking station" means a lot, an area, or a surface or a subsurface structure for automotive vehicle parking. The term includes the equipment used in connection with the maintenance and operation of the station and the site of the station.

(3) "Trust indenture" means the indenture pledging revenues to secure revenue bonds issued by a hospital district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.022. AUTHORITY TO CONSTRUCT, IMPROVE, OPERATE, AND LEASE PARKING STATION. (a) A hospital district located in a county with a population of more than 1.5 million may construct, enlarge, furnish, equip, operate, or lease a parking station near a hospital in the district on the determination by the commissioners court of the county that the action is in the best interest of the hospital district and the residents of the district.

(b) A lease under this section may be made to a person on terms considered appropriate by the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 38, eff. September 1, 2011.

Sec. 285.023. AUTHORITY TO ISSUE REVENUE BONDS; SECURITY. (a) The commissioners court may issue revenue bonds on behalf of the hospital district to pay the costs to construct, enlarge, furnish, or equip the parking station.

(b) The bonds must be payable from and secured by a pledge of:

(1) the net revenues derived from the operation of the parking station; and

(2) other revenues resulting from the ownership of the parking station properties, including receipts from leasing all or part of the parking station.

(c) The bonds must be authorized by an order adopted by a majority vote of a quorum of the commissioners court on behalf of the hospital district. An election is not required.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.024. FORM AND EXECUTION OF BONDS. The bonds must:

(1) be negotiable;

(2) be signed by the county judge;

(3) be countersigned by the county clerk;

(4) be registered by the county treasurer;

(5) have the seal of the commissioners court impressed or printed on the bonds; and

(6) contain the following provision: "The holder hereof shall never have the right to demand payment thereof out of money raised or to be raised by taxation."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.025. TERMS. (a) Bonds issued under this subchapter must mature serially or otherwise not more than 40 years after they are issued. The bonds may:

(1) be sold at a price and under terms that the commissioners court considers the most advantageous reasonably obtainable; and

(2) be made callable before maturity at times and prices prescribed in the order authorizing the bonds.

(b) The bonds may not bear interest at a rate greater than that allowed by Chapter 1204, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.263, eff. Sept. 1, 2001.

Sec. 285.026. APPROVAL AND REGISTRATION OF BONDS. (a) The county must submit to the attorney general bonds issued under this subchapter and the record relating to the issuance of those bonds.

(b) If the attorney general finds that the bonds were issued in accordance with this subchapter, are valid and binding obligations of the county, and are secured as recited in the bonds:

(1) the attorney general shall approve the bonds; and

(2) the comptroller shall register the bonds and certify the registration of the bonds.

(c) The bonds are incontestable after the comptroller certifies the registration of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.027. OTHER BONDS. (a) Bonds constituting a junior lien on the net revenues may be issued unless prohibited by the bond order or the trust indenture.

(b) Parity bonds may be issued under conditions specified in the bond order or trust indenture.

(c) The county may issue bonds to refund outstanding bonds in the same manner that other bonds are issued under this subchapter.

(d) Refunding bonds issued under this section may be exchanged for previous bonds by the comptroller or may be sold. If the bonds are sold, the proceeds shall be applied to the payment of outstanding bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.028. USE OF PROCEEDS; INITIAL COSTS. An amount necessary for the payment of not more than two years' interest on the bonds and an amount estimated by the commissioners court to be required for operating expenses until the parking station becomes sufficiently operative may be set aside out of the proceeds from the sale of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.029. CHANGE FOR DISTRICT SERVICES. The hospital district shall charge sufficient rentals or rates for services rendered by the parking station to produce revenues sufficient to:

(1) pay all expenses of owning, operating, and maintaining the parking station;

(2) pay the principal of and interest on the bonds when due; and

(3) create and maintain a bond reserve fund and other funds as provided by the bond order or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.030. PROCEDURES FOR STATION OPERATION. The bond order or trust indenture may prescribe procedures for the operation of the parking station.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. APPOINTMENT OF TAX ASSESSOR AND COLLECTOR IN HOSPITAL DISTRICTS CREATED UNDER CONSTITUTION

Sec. 285.041. APPOINTMENT OF TAX ASSESSOR AND COLLECTOR. A hospital district created under Article IX, Section 9, of the Texas Constitution may appoint a tax assessor and collector for the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. SALE, LEASE, OR CLOSING OF HOSPITAL

Sec. 285.051. AUTHORITY OF GOVERNING BODY. (a) The governing body of a hospital district by resolution may order the sale, lease, or closing of all or part of a hospital owned and operated by the hospital district, including real property. The resolution must include a finding by the governing body that the sale, lease, or closing is in the best interest of the residents of the hospital district.

(b) A sale or closing may not take effect before the expiration of the period in which a petition may be filed under Section 285.052.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.052. PETITION; ELECTION. (a) The governing body of the hospital district shall order and conduct an election on the sale or closing of a hospital if, before the 31st day after the date the governing body orders the sale or closing, the governing body receives a petition requesting the election signed by at least 10 percent of the qualified voters of the hospital district. The number of qualified voters of the hospital district is determined according to the most recent official lists of registered voters.

(b) If a petition is filed under Subsection (a), the hospital may be sold or closed only if a majority of the qualified voters voting on the question approve the sale or closing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. SALES AND USE TAX TO LOWER AD VALOREM TAXES

Sec. 285.061. TAX AUTHORIZED; TAX RATES. (a) A hospital district that is authorized to impose ad valorem taxes may adopt a sales and use tax to lower the district's ad valorem taxes at an election held as provided by this subchapter. A district may change the rate of the sales and use tax or abolish the sales and use tax at an election held as provided by this subchapter. Subject to the limitations provided by Subsections (c) and (d), the district may impose the tax in increments of one-eighth of one percent, with a minimum tax of one-eighth of one percent and a maximum tax of two percent.

(b) Chapter 323, Tax Code, applies to the application, collection, and administration of the tax imposed under this subchapter. The comptroller may make rules for the collection and administration of this tax in the same manner as for a tax imposed under Chapter 323, Tax Code. Where a county and a hospital district both impose a sales and use tax, the comptroller may by rule provide for proportionate allocation of sales and use tax collections between a county and a hospital district on the basis of the period of time each tax is imposed and the relative tax rates.

(c) A district may not adopt a tax under this subchapter or increase the rate of the tax if as a result of the adoption of the tax or the tax increase the combined rate of all sales and use taxes imposed by the district and other political subdivisions of this state having territory in the district would exceed two percent at any location in the district.

(d) If the voters of a district approve the adoption of the tax or an increase in the tax rate at an election held on the same election date on which another political subdivision of this state adopts a sales and use tax or approves the increase in the rate of its sales and use tax and as a result the combined rate of all sales and use taxes imposed by the district and other political subdivisions of this state having territory in the district would exceed two percent at any location in the district, the election to adopt a sales and use tax or to increase the rate of the sales and use tax in the district under this subchapter has no effect.

(e) to (h) Expired.

Added by Acts 1989, 71st Leg., 1st C.S., c. 40, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 658, Sec. 1, eff. June 16, 1991; Acts 1997, 75th Leg., ch. 158, Sec. 1, eff. May 20, 1997; Acts 2001, 77th Leg., ch. 1290, Sec. 2, eff. Sept. 1, 2001.

Sec. 285.062. TAX ELECTION PROCEDURES. (a) Except as otherwise provided by this subchapter, an election to adopt or abolish the tax or to change the rate of the tax is governed by the provisions of Subchapter E, Chapter 323, Tax Code, applicable to an election to adopt or abolish a county sales and use tax.

(b) An election is called by the adoption of a resolution by the governing body of the district. The governing body shall call an election if a number of qualified voters of the district equal to at least five percent of the number of registered voters in the district petitions the governing body to call the election.

(c) At an election to adopt the tax, the ballot shall be prepared to permit voting for or against the proposition: "The adoption of a local sales and use tax in (name of district) at the rate of (proposed tax rate) percent to be used to reduce the district property taxes."

(d) At an election to abolish the tax, the ballot shall be

prepared to permit voting for or against the proposition: "The abolition of the local sales and use tax in (name of district)."

(e) At an election to change the rate of the tax, the ballot shall be prepared to permit voting for or against the proposition: "The (increase or decrease, as applicable) in the rate of the local sales and use tax imposed by (name of district) from (tax rate on election date) percent to (proposed tax rate) percent."

Added by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 3, eff. Sept. 1, 2001.

Sec. 285.063. EFFECTIVE DATE OF TAX OR TAX CHANGE; BOUNDARY CHANGE. (a) The adoption or abolition of the tax or change in the tax rate takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete calendar quarter occurring after the date on which the comptroller receives a notice of the results of the election.

(b) If the comptroller determines that an effective date provided by Subsection (a) will occur before the comptroller can reasonably take the action required to begin collecting the tax or to implement the abolition of the tax or the tax rate change, the effective date may be extended by the comptroller until the first day of the next succeeding calendar quarter.

(c) The provisions of Section 321.102, Tax Code, governing the application of a municipal sales and use tax in the event of a change in the boundaries of a municipality apply to the application of a tax imposed under this chapter in the event of a change in the district's boundaries.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.064. USE OF TAX REVENUE. Revenue from the tax may be used for any purpose for which ad valorem tax revenue of the district may be used.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER F. LIABILITY OF NONPROFIT MANAGEMENT CONTRACTOR

Sec. 285.071. DEFINITION. In this chapter, "hospital district management contractor" means a nonprofit corporation, partnership, or sole proprietorship that manages or operates a hospital or provides services under contract with a hospital district that was created by general or special law.

Added by Acts 1991, 72nd Leg., ch. 523, Sec. 1, eff. Aug. 26, 1991. Amended by Acts 2003, 78th Leg., ch. 204, Sec. 11.03, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 289, Sec. 3, eff. Sept. 1, 2003.

Sec. 285.072. LIABILITY OF A HOSPITAL DISTRICT MANAGEMENT CONTRACTOR. A hospital district management contractor in its management or operation of a hospital under a contract with a hospital district is considered a governmental unit for purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code, and any employee of the contractor is, while performing services under the contract for the benefit of the hospital, an employee of the hospital district for the purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code.

Added by Acts 1991, 72nd Leg., ch. 523, Sec. 1, eff. Aug. 26, 1991. Amended by Acts 2003, 78th Leg., ch. 204, Sec. 11.04, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 289, Sec. 4, eff. Sept. 1, 2003.

SUBCHAPTER G. TERMS OF MEMBERS OF GOVERNING BOARD

Sec. 285.081. OPTIONAL FOUR-YEAR TERMS. (a) The governing board of a hospital district created under general or special law may, on its own motion, order that the members of the governing board are to be elected in even-numbered years to serve staggered four-year terms.

(b) The first election of board members in an even-numbered year that occurs at least 120 days after the date on which an order is entered under Subsection (a) shall be held as previously scheduled and the members elected shall serve two-year terms. The subsequent election of board members previously scheduled to be held in an odd-numbered year shall be held as scheduled and the members elected

shall serve three-year terms. Subsequent members shall be elected in even-numbered years and shall serve four-year terms.

(c) This section does not apply to a hospital district created under Chapter 281, Chapter 282, and Chapter 283.

Added by Acts 1991, 72nd Leg., ch. 645, Sec. 2, eff. June 16, 1991. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 1, eff. September 1, 2023.

Sec. 285.082. OPTIONAL THREE-YEAR TERMS. (a) The governing board of a hospital district created under general or special law may, on its own motion, order that the members of the governing board are to be elected to serve staggered three-year terms if:

(1) the members of the governing board serve staggered four-year terms on the date the governing board enters the order; and

(2) Subsection (b), (c), or (d) applies to the governing board.

(b) This subsection applies to a governing board of a hospital district with five members. The election of board members in the even-numbered year following the date an order is entered under Subsection (a) in which three board members are to be elected shall be held as previously scheduled. Two of the members elected at that election shall serve three-year terms, and one of the members elected at that election shall serve a four-year term, to be determined by random draw. Board members elected in subsequent elections shall serve three-year terms.

(c) This subsection applies to a governing board of a hospital district with seven members. The election of board members in the even-numbered year following the date an order is entered under Subsection (a) in which four members are to be elected shall be held as previously scheduled. Two of the members elected at that election shall serve three-year terms and two of the members elected at that election shall serve four-year terms, to be determined by random draw. Board members elected in subsequent elections shall serve three-year terms.

(d) This subsection applies to a governing board of a hospital district with nine members. The election of board members in the even-numbered year following the date an order is entered under

Subsection (a) in which five members are to be elected shall be held as previously scheduled. Two of the members elected at that election shall serve three-year terms and three of the members elected at that election shall serve four-year terms, to be determined by random draw. The election of board members in the next even-numbered year following the date an order is entered under Subsection (a) in which four members are to be elected shall be held as previously scheduled. Three of the members elected at that election shall serve three-year terms and one of the members elected at that election shall serve a four-year term, to be determined by random draw. Board members elected in subsequent elections shall serve three-year terms.

Added by Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 2, eff. September 1, 2023.

Sec. 285.083. RESIGNATION OF TERM. (a) A member of the governing board of a hospital district is considered to have resigned the member's position if the member is absent from five or more regularly scheduled board meetings that the member is eligible to attend in any 12-month period without an excuse approved by a majority vote of the board.

(b) A resignation under Subsection (a) is effective on the date of the fifth regularly scheduled board meeting at which the member is absent without an excuse approved by the board.

(c) The validity of an action of the board is not affected by the fact that the action is taken during a period in which a board member is considered to have resigned under Subsection (a).

(d) This section does not apply to a hospital district created under Chapter 281.

Added by Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 2, eff. September 1, 2023.

SUBCHAPTER H. CONTRACTS, COLLABORATIONS, AND JOINT VENTURES

Sec. 285.091. HOSPITAL DISTRICT CONTRACTS, COLLABORATIONS, AND JOINT VENTURES. (a) A hospital district created under general or special law may, directly or through a nonprofit corporation created or formed by the district, contract, collaborate, or enter into a joint venture with any public or private entity as necessary to carry

out the functions of or provide services to the district.

(b) A hospital district created under general or special law may contract with the Texas Department of Health for the provision of health care services and assistance, including preventive health care services, to eligible residents of the district.

(c) A hospital district created under general or special law may contract or collaborate with a local governmental entity, as defined by Section 534.002, Government Code, or any other public or private entity as necessary to provide or deliver health care services under a demonstration project established under Section 534.201 or 534.202, Government Code, in which the hospital district participates.

Added by Acts 1995, 74th Leg., ch. 46, Sec. 1, eff. Aug. 28, 1995, and Acts 1995, 74th Leg., ch. 444, Sec. 3, eff. June 13, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 20.01, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1139, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 3, eff. June 16, 2007.

SUBCHAPTER I. LONG-TERM CARE AND RELATED FACILITIES

Sec. 285.101. FACILITIES OR SERVICES FOR ELDERLY OR DISABLED. (a) This subchapter applies only to a hospital, hospital district, or authority created and operated under Article IX, Texas Constitution, under a special law, or under this title that is located in:

(1) a county with a population of 35,000 or less;

(2) those portions of extended municipalities that the federal census bureau has determined to be rural; or

(3) an area that is not delineated as an urbanized area by the federal census bureau.

(b) A hospital, hospital district, or authority covered by this subchapter may:

(1) construct, acquire, own, operate, enlarge, improve, furnish, or equip one or more of the following types of facilities or services for the care of the elderly or disabled:

(A) a nursing home or similar long-term care facility;

(B) elderly housing;

(C) assisted living;
(D) home health;
(E) personal care;
(F) special care;
(G) continuing care; or
(H) durable medical equipment;

(2) lease or enter into an operations or management agreement relating to all or part of a facility or service described in Subdivision (1) that is owned by the hospital district or authority;

(3) close, transfer, sell, or otherwise convey all or part of a facility and discontinue services; and

(4) issue revenue bonds and other notes to acquire, construct, or improve a facility for the care of the elderly or disabled or to implement the delivery of a service for the care of the elderly or disabled.

(c) For the purpose of this section, a facility or service created under Subsection (b) is considered to be a hospital project under Chapter 223.

(d) This section does not authorize a hospital, hospital district, or authority to issue revenue bonds or other notes in accordance with this chapter to construct, acquire, own, enlarge, improve, furnish, or equip a facility or service listed in Subsection (b)(1) if a private provider of the facility or service is available and accessible in the service area of the hospital, hospital district, or authority.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 5, eff. June 16, 1995.

SUBCHAPTER J. WRITE-IN VOTING IN ELECTION FOR BOARD MEMBERS

Sec. 285.131. WRITE-IN VOTING IN ELECTION FOR BOARD MEMBERS. (a) In a general or special election for board members of a hospital district created under general or special law, a write-in vote may not be counted unless the name written in appears on the list of write-in candidates.

(b) To be entitled to a place on the list of write-in candidates, a candidate must make a declaration of write-in candidacy.

(c) A declaration of write-in candidacy must be filed with the

authority with whom an application for a place on the ballot is required to be filed in the election.

(d) A declaration of write-in candidacy must be filed not later than the deadline prescribed by Section 146.054, Election Code, for a write-in candidate in a city election.

(e) Subchapter B, Chapter 146, Election Code, applies to write-in voting in an election for board members except to the extent of a conflict with this section.

(f) The secretary of state shall adopt rules necessary to implement this section.

(g) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1318, Sec. 51(3), eff. September 1, 2011.

Added by Acts 1997, 75th Leg., ch. 1343, Sec. 2, eff. June 20, 1997. Amended by Acts 2003, 78th Leg., ch. 925, Sec. 11, eff. Nov. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1109 (H.B. 2339), Sec. 34, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1318 (S.B. 100), Sec. 46, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1318 (S.B. 100), Sec. 51(3), eff. September 1, 2011.

SUBCHAPTER K. DISSOLUTION OF HOSPITAL DISTRICT

Sec. 285.151. ASSETS TRANSFERRED ON DISSOLUTION. Notwithstanding any general or special law, if a hospital district is dissolved and the money or other assets of the district are transferred to a county or other governmental entity under a process established in accordance with Section 9, Article IX, Texas Constitution, the governmental entity shall use all transferred assets to:

(1) pay the outstanding debts and obligations of the district relating to the assets at the time of the transfer, if any; and

(2) furnish medical and hospital care for indigent persons who reside in the territory within the jurisdiction of the governmental entity.

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 4.01, eff. Sept. 1, 1999.

SUBCHAPTER L. SALES AND USE TAX TO RAISE REVENUE FOR DISTRICTS IN SMALL COUNTIES

Sec. 285.161. TAX AUTHORIZED. (a) A majority of voters in a hospital district created under general or special law of which all or a majority of the territory is located in a county or counties each with a population of 75,000 or less may impose a sales and use tax to raise revenue if the imposition is authorized at an election under this subchapter.

(b) A district may not adopt a tax under this subchapter or increase the rate of the tax if as a result of the adoption or increase the combined rate of all sales and use taxes imposed by the district and other political subdivisions of this state having territory in the district would exceed two percent at any location in the district.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001.

Sec. 285.162. TAX RATE; CHANGE IN RATE. (a) A district may impose the tax in increments of one-eighth of one percent, with a minimum rate of one-eighth of one percent and a maximum rate of two percent.

(b) A district may increase the rate of the tax to a maximum of two percent or decrease the rate of the tax to a minimum of one-eighth of one percent if the change is approved by a majority of the voters of the district at an election called for that purpose.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001.

Sec. 285.163. TAX ELECTION PROCEDURES. (a) An election is called by the adoption of a resolution by the governing body of the district. The governing body shall call an election if at least five percent of the number of registered voters in the district petition the governing body to call the election.

(b) At an election to adopt the tax, the ballot shall be prepared to permit voting for or against the proposition: "The adoption of a local sales and use tax to raise revenue in (name of district) at the rate of (proposed tax rate) percent."

(c) At an election to abolish the tax, the ballot shall be prepared to permit voting for or against the proposition: "The abolition of the local sales and use tax to raise revenue in (name of district)."

(d) At an election to change the rate of the tax, the ballot shall be prepared to permit voting for or against the proposition: "The (increase or decrease, as applicable) in the rate of the local sales and use tax to raise revenue imposed by (name of district) from (tax rate on election date) percent to (proposed tax rate) percent."

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001.

Sec. 285.164. ELECTION IN OTHER TAXING AUTHORITY. (a) In this section, "taxing authority" means any entity authorized to impose a local sales and use tax.

(b) If a district or proposed district is included within the boundaries of another taxing authority and the adoption or increase of the tax under this subchapter would result in a combined tax rate by the district and other political subdivisions of this state of more than two percent at any location in the district, an election to approve or increase the tax under this subchapter has no effect unless:

(1) one or more of the other taxing authorities holds an election in accordance with the law governing that authority on the same date as the election under this chapter to reduce the tax rate of that authority to a rate that will result in a combined tax rate by the district and other political subdivisions of not more than two percent at any location in the district; and

(2) the combined tax rate is reduced to not more than two percent as a result of that election.

(c) This section does not permit a taxing authority to impose taxes at differential tax rates within the territory of the authority.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001.

Sec. 285.165. USE OF TAX. The taxes imposed may be used to pay:

(1) the indebtedness issued or assumed by the district;

and

(2) the maintenance and operating expenses of the district.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001. Renumbered from Health & Safety Code Sec. 286.165 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(93), eff. Sept. 1, 2003.

Sec. 285.166. EFFECTIVE DATE. (a) The adoption or abolition of the tax or a change in the rate of the tax takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete calendar quarter occurring after the date the comptroller receives a notice of the results of the election.

(b) If the comptroller determines that an effective date provided by Subsection (a) will occur before the comptroller can reasonably take the action required to begin collecting the tax or to implement the abolition of the tax or the change in the rate of the tax, the effective date may be extended by the comptroller until the first day of the next calendar quarter.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001.

Sec. 285.167. COUNTY SALES AND USE TAX ACT APPLICABLE. Except to the extent that a provision of this chapter applies, Chapter 323, Tax Code, applies to the tax authorized by this chapter in the same manner as that chapter applies to the tax authorized by that chapter.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001.

SUBCHAPTER M. REGULATION OF SERVICES

Sec. 285.201. PROVISION OF MEDICAL AND HOSPITAL CARE. As authorized by 8 U.S.C. Section 1621(d), this chapter affirmatively establishes eligibility for a person who would otherwise be ineligible under 8 U.S.C. Section 1621(a), provided that only local funds are utilized for the provision of nonemergency public health benefits. A person is not considered a resident of a governmental entity or hospital district if the person attempted to establish residence solely to obtain health care assistance.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.70(a), eff. Sept. 1, 2003.

Sec. 285.202. USE OF TAX REVENUE FOR ABORTIONS; EXCEPTION FOR MEDICAL EMERGENCY. (a) In this section, "medical emergency" means:

(1) a condition exists that, in a physician's good faith clinical judgment, complicates the medical condition of the pregnant woman and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function; or

(2) the fetus has a severe fetal abnormality.

(a-1) In Subsection (a), a "severe fetal abnormality" means a life threatening physical condition that, in reasonable medical judgment, regardless of the provision of life saving medical treatment, is incompatible with life outside the womb.

(a-2) In Subsection (a-1), "reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(b) Except in the case of a medical emergency, a hospital district created under general or special law that uses tax revenue of the district to finance the performance of an abortion may not receive state funding.

(c) A physician who performs an abortion in a medical emergency at a hospital or other health care facility owned or operated by a hospital district that receives state funds shall:

(1) include in the patient's medical records a statement signed by the physician certifying the nature of the medical emergency; and

(2) not later than the 30th day after the date the abortion is performed, certify to the Department of State Health Services the specific medical condition that constituted the emergency.

(d) The statement required under Subsection (c)(1) shall be placed in the patient's medical records and shall be kept by the hospital or other health care facility where the abortion is performed until:

(1) the seventh anniversary of the date the abortion is performed; or

(2) if the pregnant woman is a minor, the later of:

(A) the seventh anniversary of the date the abortion is performed; or

(B) the woman's 21st birthday.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 15.02, eff. September 28, 2011.

SUBCHAPTER N. CHANGE IN RATE OF AD VALOREM TAXES

Sec. 285.231. ELECTION TO INCREASE MAXIMUM TAX RATE. (a) Registered voters of a hospital district that is authorized to impose ad valorem taxes and that has a maximum tax rate of less than 75 cents on the $100 valuation of all taxable property in the district may file a petition with the secretary of the governing body of the hospital district requesting an election to authorize the increase of that maximum tax rate. The petition must be signed by at least the lesser of:

(1) 100 of the registered voters of the district; or

(2) the number equal to 15 percent of the registered voters of the district.

(b) The petition must state the maximum tax rate to be voted on at the election, which may not exceed 75 cents on the $100 valuation of all taxable property in the district.

(c) The governing body of the hospital district by order shall set a time and place to hold a hearing on the petition to increase the maximum tax rate of the district. The governing body shall set a date for the hearing that is not earlier than the 10th day after the date the governing body issues the order.

(d) If after the hearing the governing body of the hospital district finds that the petition is in proper form and that an increase of the maximum tax rate would benefit the district, the governing body shall order an election to authorize the increase of the maximum tax rate to the tax rate stated in the petition. The order calling the election must state the:

(1) nature of the election, including the proposition that is to appear on the ballot;

(2) date of the election;

(3) maximum tax rate to be voted on at the election;

(4) hours during which the polls will be open; and

(5) location of the polling places.

(e) The governing body of the hospital district shall give notice of the election by publishing a substantial copy of the election order in a newspaper with general circulation in the district once a week for two consecutive weeks. The first publication must appear before the 35th day before the date set for the election.

(f) The ballot for the election shall be printed to permit voting for or against the proposition: "The increase by the _____ (name of district) Hospital District of the maximum rate of annual taxes imposed for hospital purposes to a rate not to exceed _____ (insert the amount prescribed by the petition, not to exceed 75 cents) on each $100 valuation of all taxable property in the district."

(g) After ordering an election under this subchapter, the governing body of the hospital district shall hold the election on the first authorized uniform election date prescribed by Section 41.001, Election Code, that allows sufficient time to comply with other requirements of law.

(h) If the majority of the votes cast in the district favor the proposition, the maximum tax rate of the district is increased to the tax rate stated in the petition.

Added by Acts 2003, 78th Leg., ch. 272, Sec. 1, eff. June 18, 2003. Renumbered from Health and Safety Code, Section 285.201 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(49), eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1001 (S.B. 1972), Sec. 1, eff. September 1, 2007.

SUBCHAPTER O. NONPROFIT CORPORATION CREATED OR FORMED BY DISTRICT

Sec. 285.301. ESTABLISHMENT OF NONPROFIT CORPORATION. (a) A hospital district created under general or special law may form and sponsor a nonprofit corporation under the Texas Nonprofit Corporation Law, as described by Section 1.008, Business Organizations Code, to own and operate all or part of one or more ancillary health care facilities consistent with the purposes of the district.

(b) The governing body of the hospital district shall appoint

the board of directors of a nonprofit corporation formed under this section.

(c) The hospital district may contribute money to or solicit money for the nonprofit corporation. If the district contributes money to or solicits money for the corporation, the district shall establish procedures and controls sufficient to ensure that the money is used by the corporation for public purposes.

(d) A nonprofit corporation formed under this section has the same powers as a development corporation under Section 221.030.

Added by Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 4, eff. June 16, 2007.

Sec. 285.302. COMPLIANCE BY NONPROFIT CORPORATION WITH CERTAIN LAWS. A nonprofit corporation created or formed under this subchapter or other law by a hospital district that is created under general or special law shall comply with Chapter 2258, Government Code, in the same manner and to the same extent that the hospital district that created or formed the corporation is required to comply with that chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 4, eff. June 16, 2007.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 285.901. DISPOSITION OF SALVAGE AND SURPLUS PROPERTY. (a) In this section:

(1) "Salvage property" has the meaning assigned by Section 263.151, Local Government Code.

(2) "Surplus property" has the meaning assigned by Section 263.151, Local Government Code.

(b) The governing board of a hospital district may dispose of the hospital district's surplus or salvage property in the same way that a commissioners court of a county may dispose of the county's surplus or salvage property under Section 263.152, Local Government Code.

Added by Acts 2003, 78th Leg., ch. 345, Sec. 2, eff. June 18, 2003.

CHAPTER 286. HOSPITAL DISTRICTS CREATED BY VOTER APPROVAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 286.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the district.

(2) "District" means a hospital district created under this chapter.

(3) "Director" means a member of the board.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.002. DISTRICT AUTHORIZATION. A hospital district may be created and established and, if created, must be maintained, operated, and financed in the manner provided by Article IX, Section 9, of the Texas Constitution and by this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 286.021. PETITION FOR CREATION OF DISTRICT. (a) Before a district located wholly in one county may be created, the county judge of that county must receive a petition signed by the greater of:

(1) at least three percent of the registered voters of the territory of the proposed district; or

(2) 100 registered voters of the territory of the proposed district.

(b) Before a district that contains territory located in more than one county may be created, the county judge of each county in which the proposed district will be located must receive a petition signed by the greater of:

(1) at least three percent of the registered voters of the territory of the county in which the judge presides and of the proposed district; or

(2) 100 registered voters of the territory of the county in which the judge presides and of the proposed district.

(c) If there are fewer than 100 registered voters in any area for which a separate petition must be filed, the petition must be signed by a majority of the registered voters in the area.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 257 (H.B. 1618), Sec. 1, eff. September 1, 2021.

Sec. 286.022. CONTENTS OF PETITION. (a) The petition prescribed by Section 286.021 must show:

(1) that the district is to be created and is to operate under Article IX, Section 9, of the Texas Constitution;

(2) the name of the proposed district;

(3) the district's boundaries as designated by metes and bounds or other sufficient legal description;

(4) that none of the territory in the district is included in another hospital district;

(5) the names of the temporary directors the commissioners court must appoint under Section 286.030 or a request that the commissioners court appoint temporary directors;

(6) whether the district is to impose a property tax and the maximum tax rate to be voted on at the creation election, which may not exceed 75 cents on the $100 valuation of all taxable property in the district;

(7) whether the district is to impose a sales and use tax under Subchapter I and the maximum tax rate to be voted on at the creation election, which may not exceed the rate allowed under that subchapter;

(8) the method by which the permanent directors will be elected, as provided by Subsection (c); and

(9) the mailing address of each petitioner.

(b) The petition must provide for the appointment of the same number of temporary directors as there will be permanent directors.

(c) The petition may provide:

(1) the number of directors for the district, which number must be an odd number;

(2) the method by which directors are to be elected, whether at large, by place, or by a combination of both, so that a specific number of directors are elected from each commissioner precinct and a specific number are elected at large; and

(3) whether directors will be elected to serve two-year or four-year terms.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 5, eff. Sept. 1, 2001.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 3, eff. September 1, 2023.

Sec. 286.023. FILING OF PETITION; HEARING; ORDERING ELECTION. (a) If the petition is in proper form, the county judge shall receive the petition and shall file the petition with the county clerk.

(b) At the next regular or special session of the commissioners court held after the petition is filed with the county clerk, the commissioners court shall set a place, date, and time for the hearing to consider the petition.

(c) The county clerk shall issue a notice of the hearing in accordance with Chapter 551, Government Code.

(d) At the time and place set for the hearing, the commissioners court shall consider the petition. The commissioners court shall grant the petition if the court finds that the petition is in proper form and contains the information required by Section 286.022. The commissioners court may grant a petition proposing creation of a hospital district that imposes a sales and use tax under Subchapter I only if all or a majority of the territory of the district is located in a county or counties each with a population of 75,000 or less.

(e) If a petition is granted, the commissioners court shall order an election to confirm the district's creation and to authorize the levy of a tax not to exceed the maximum tax rate prescribed by the petition.

(f) If the petition indicates that the proposed district will contain territory in more than one county, the commissioners court may not order an election until the commissioners court of each county in which the district will be located has granted the petition.

(g) Repealed by Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 17(1), eff. September 1, 2023.

(h) Section 41.001(a), Election Code, does not apply to an election ordered under this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1290, Sec. 6, eff. Sept. 1, 2001. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 17(1), eff. September 1, 2023.

Sec. 286.0235. BOND PROPOSITION AT ELECTION. (a) The petition prescribed by Section 286.021 may include a request that a proposition be submitted at the election to determine whether the board may issue general obligation bonds if the district is created. The petition must specify the maximum amount of bonds to be issued and their maximum maturity date.

(b) Even though the petition does not request submission of a proposition on whether the board may issue general obligation bonds, the commissioners court may, on the request of a petitioner, submit a proposition at the creation election on the issuance of bonds.

(c) The board may issue general obligation bonds as provided by Subchapter G if a majority of the votes cast in the election favor creation of the district and issuance of the bonds.

Added by Acts 1991, 72nd Leg., ch. 648, Sec. 1, eff. Aug. 26, 1991.

Sec. 286.024. ELECTION ORDER. The order calling the election must state:

(1) the nature of the election, including the proposition that is to appear on the ballot;

(2) the date of the election;

(3) the hours during which the polls will be open; and

(4) the location of the polling places.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.025. NOTICE. (a) The commissioners court shall give notice of the election by publishing a substantial copy of the election order in a newspaper with general circulation in the proposed district in accordance with Section 4.003, Election Code.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191

), Sec. 17(2), eff. September 1, 2023.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 4, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 17(2), eff. September 1, 2023.

Sec. 286.026. BALLOT PROPOSITION. (a) The ballot for an election proposing to create a hospital district that imposes a property tax shall be printed to permit voting for or against the proposition: "The creation of the _____ (name of district) Hospital District and the levy of annual property taxes for hospital purposes at a rate not to exceed _____ (insert the amount prescribed by the petition, not to exceed 75 cents) cents on each $100 valuation of all taxable property in the district."

(b) The ballot for an election proposing to create a hospital district that imposes a sales and use tax under Subchapter I shall be printed to permit voting for or against the proposition: "The creation of the _____ (name of district) Hospital District and the levy of sales and use taxes for hospital purposes at a rate not to exceed _____ (insert the amount prescribed by the petition, not to exceed the amount allowed under Subchapter I) percent."

(c) If a bond proposition is submitted to the voters, the ballot for the election shall contain the proposition prescribed by Subsection (a) or (b) followed by: " and the issuance of bonds in an amount not to exceed _____ (insert the amount prescribed by the petition or the commissioners court's order) and to mature not later than _____ (insert the date prescribed by the petition or the commissioners court's order)."

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 648, Sec. 2, eff. Aug. 26, 1991; Acts 2001, 77th Leg., ch. 1290, Sec. 7, eff. Sept. 1, 2001.

Sec. 286.027. ELECTION RESULT. (a) Except as provided in Subsections (b) and (c), a district is created and organized under this chapter if a majority of the votes cast in the election favor

creation of the district.

(b) If the proposed district contains territory in more than one county, a majority of the votes cast in each county must also favor creation of the district.

(c) If a majority of the votes cast in a county within the proposed district are against the creation of the district and a majority of the votes cast in the remaining county or counties favor creation of the district, the district may be created only in the counties voting in favor of the proposed district.

(d) If a majority of those voting at the election vote against creation of the district, another election on the question of creating the district may not be held before the first anniversary of the most recent election concerning the creation of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.028. COMMISSIONERS COURT ORDER. When a district is created, the commissioners court of each county in which the district is located shall enter an order in its minutes that reads substantially as follows:

"Whereas, at an election held on the _____ day of _____, 19___, in that part of _____ County, State of Texas, described as (insert description unless the district is countywide), there was submitted to the qualified voters the question of whether that territory should be formed into a hospital district under state law; and

"Whereas, at the election _____ votes were cast in favor of formation of the district and _____ votes were cast against formation; and

"Whereas, the formation of the hospital district received the affirmative vote of the majority of the votes cast at the election as provided by law;

"Now, therefore, the Commissioners Court of _____ County, State of Texas, finds and orders that the tract described in this order has been duly and legally formed into a hospital district (or a portion thereof) under the name of _____, under Article IX, Section 9, of the Texas Constitution, and has the powers vested by law in the district."

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.029. OVERLAPPING DISTRICTS. (a) If the territory in one or more districts overlaps, the commissioners court of the county in which the most recently created district is located by order shall exclude the overlapping territory from that district.

(b) For purposes of this section, a district is created on the date the election approving its creation was held. If the elections approving the creation of two or more districts are held on the same date, the most recently created district is the district for which the hearing required by Section 286.023 was most recently held.

(c) The fact that a district is created with boundaries that overlap the boundaries of another district does not affect the validity of either district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.030. TEMPORARY DIRECTORS. (a) On the date a commissioners court enters the order required by Section 286.028, the commissioners court shall also appoint the temporary directors of the district.

(b) If the petition prescribed by Section 286.021 specifically names temporary directors, the commissioners court shall name those persons to serve as temporary directors of the district. If the petition requests that the commissioners court appoint the temporary directors, the court shall appoint the appropriate number of persons to serve as temporary directors of the district. If the petition fails to name or state the number of directors, there are five directors.

(c) If the district is located in more than one county, the commissioners courts shall each appoint a percentage of temporary directors equal to the ratio that the number of district residents in the county bears to the total number of district residents.

(d) From the time the district is created under Section 286.027 until the elected directors take office, the temporary directors serve as directors of the district.

(e) The commissioners court shall fill a vacancy in the office of temporary director by appointment.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

SUBCHAPTER C. DISTRICT ADMINISTRATION

Sec. 286.041. BOARD OF DIRECTORS. The directors shall be elected at large, by place, or by a combination of both, in accordance with the petition prescribed by Section 286.021.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 5, eff. September 1, 2023.

Sec. 286.042. DIRECTOR'S ELECTION. (a) The initial directors shall be elected at an election to be held on the uniform election date in May following the creation of the district.

(b) If the directors are elected at large for two-year terms:

(1) the appropriate number of candidates receiving the highest number of votes at the initial election of directors are directors for the district;

(2) the number of directors equal to a majority of the directors who receive the highest number of votes at the initial election serve for a term of two years; and

(3) the remaining directors serve for a term of one year.

(c) If the directors are elected by place for two-year terms:

(1) the candidate for a place receiving the highest number of votes for election to that place is a director for the district;

(2) a director elected to fill an even-numbered place at the initial election serves for a term of one year; and

(3) a director elected to fill an odd-numbered place at the initial election serves for a term of two years.

(d) If the directors are elected from commissioners precincts and at large for two-year terms:

(1) the number of candidates equal to the number of directors to be elected from each precinct who receive the highest number of votes from a commissioner precinct are directors for that precinct;

(2) the number of candidates equal to the number of directors to be elected at large who receive the highest number of votes from the district at large are directors for the district at

large;

(3) a candidate elected from an odd-numbered precinct at the initial election serves for a term of two years;

(4) a candidate elected from an even-numbered precinct at the initial election serves for a term of one year;

(5) a candidate elected as the director from the district at large at the initial election serves for a term of two years; and

(6) if more than one director is elected at large, half of the directors elected serve two-year terms, and the other half serve one-year terms.

(d-1) If the directors are elected at large for four-year terms:

(1) the appropriate number of candidates receiving the highest number of votes at the initial election of directors are directors for the district;

(2) the number of directors equal to a majority of the directors who receive the highest number of votes at the initial election serve for a term of three years if elected in an odd-numbered year or four years if elected in an even-numbered year; and

(3) the remaining directors serve for a term of one year if elected in an odd-numbered year or two years if elected in an even-numbered year.

(d-2) If the directors are elected by place for four-year terms:

(1) the candidate for a place receiving the highest number of votes for election to that place is a director for the district;

(2) a director elected to fill an even-numbered place at the initial election serves for a term of one year if elected in an odd-numbered year or two years if elected in an even-numbered year; and

(3) a director elected to fill an odd-numbered place at the initial election serves for a term of three years if elected in an odd-numbered year or four years if elected in an even-numbered year.

(d-3) If the directors are elected from commissioners precincts and at large for four-year terms:

(1) the number of candidates equal to the number of directors to be elected from each precinct who receive the highest number of votes from a commissioner precinct are directors for that precinct;

(2) the number of candidates equal to the number of

directors to be elected at large who receive the highest number of votes from the district at large are directors for the district at large;

(3) a candidate elected from an odd-numbered precinct at the initial election serves for a term of three years if elected in an odd-numbered year or four years if elected in an even-numbered year;

(4) a candidate elected from an even-numbered precinct at the initial election serves for a term of one year if elected in an odd-numbered year or two years if elected in an even-numbered year;

(5) a candidate elected as the director from the district at large at the initial election serves for a term of three years if elected in an odd-numbered year or four years if elected in an even-numbered year; and

(6) if more than one director is elected at large, half of the directors elected at large serve for a term described by Subdivision (4) for a candidate elected from an even-numbered precinct, and the other half serve for a term described by Subdivision (3) for a candidate elected from an odd-numbered precinct.

(e) After the initial election of directors, an election shall be held on the uniform election date in May of each year or every other year, as applicable, to elect the appropriate number of successor directors for two-year terms or four-year terms as specified in the petition to create the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 6, eff. September 1, 2023.

Sec. 286.043. NOTICE OF ELECTION. Notice of an election shall be published in a newspaper with general circulation in the district in accordance with Section 4.003, Election Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 7, eff. September 1, 2023.

Sec. 286.044. APPLICATION FOR PLACE ON BALLOT. (a) A person who wishes to have the person's name printed on the ballot as a candidate for director must file an application with the secretary of the board in accordance with Chapter 144, Election Code.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 17(3), eff. September 1, 2023.

(c) If directors are elected by place, the application must specify the place for which the applicant is to be a candidate.

(d) If the directors are elected from commissioners precincts and at large, the application must specify:

(1) the commissioner precinct the candidate wishes to represent; or

(2) that the candidate wishes to represent the district at large.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 8, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 9, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 17(3), eff. September 1, 2023.

Sec. 286.045. QUALIFICATIONS FOR OFFICE. (a) To be eligible to be a candidate for or to serve as a director, a person must be:

(1) a resident of the district; and

(2) a qualified voter.

(b) In addition to the qualifications required by Subsection (a), if directors are elected from commissioners precincts, a person who is elected from a commissioner precinct or who is appointed to fill a vacancy for a commissioner precinct must be a resident of that commissioner precinct.

(c) An employee of the district may not serve as a director.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.046. BOND. (a) Before assuming the duties of the office, each director must execute a bond for $5,000 payable to the

district, conditioned on the faithful performance of the person's duties as director.

(b) The bond shall be kept in the permanent records of the district.

(c) The board may pay for directors' bonds with district funds.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.047. BOARD VACANCY. A vacancy in the office of director shall be filled for the unexpired term by appointment by the remaining directors.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.048. OFFICERS. (a) The board shall elect from among its members a president and a vice-president.

(b) The board shall appoint a secretary who need not be a director.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.049. OFFICERS' TERMS; VACANCY. (a) Each officer of the board serves for a term of one year.

(b) The board shall fill a vacancy in a board office for the unexpired term.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.050. COMPENSATION. (a) Directors and officers serve without compensation but may be reimbursed for actual expenses incurred in the performance of official duties.

(b) Expenses reimbursed under this section must be:

(1) reported in the district's minute book or other district records; and

(2) approved by the board.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.051. VOTING REQUIREMENT. A majority of the members of the board voting must concur in a matter relating to the business of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.052. ADMINISTRATOR, ASSISTANT ADMINISTRATOR, AND ATTORNEY. (a) The board may appoint qualified persons as administrator of the district, assistant administrator, and attorney for the district.

(b) The administrator, assistant administrator, and attorney serve at the will of the board.

(c) The administrator, assistant administrator, and attorney are entitled to compensation as determined by the board.

(d) Before assuming the administrator's duties, the administrator shall execute a bond payable to the hospital district in an amount not less than $5,000 as determined by the board, conditioned on the faithful performance of the administrator's duties under this chapter. The board may pay for the bond with district funds.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.053. APPOINTMENTS TO STAFF. The board may:

(1) appoint to the staff any health care practitioners the board considers necessary for the efficient operation of the district; and

(2) grant clinical privileges on a temporary or emergency basis as the board considers necessary.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 10, eff. September 1, 2023.

Sec. 286.054. TECHNICIANS, NURSES, AND OTHER DISTRICT

EMPLOYEES. (a) The district may employ technicians, nurses, fiscal agents, accountants, architects, additional attorneys, and other necessary employees.

(b) The board may delegate to the administrator the authority to employ persons for the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.055. GENERAL DUTIES OF ADMINISTRATOR. The administrator shall:

(1) supervise the work and activities of the district; and

(2) direct the general affairs of the district, subject to the limitations prescribed by the board.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.056. RETIREMENT BENEFITS. The board may provide retirement benefits for employees of the district by:

(1) establishing or administering a retirement program; or

(2) electing to participate in the Texas County and District Retirement System or in any other statewide retirement system in which the district is eligible to participate.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 286.071. RESPONSIBILITY OF GOVERNMENTAL ENTITY. On creation of a district, a county, municipality, or other governmental entity in which the district is located shall convey or transfer to the district:

(1) title to land, buildings, improvements, and equipment related to the hospital system located wholly in the district that are owned by the county, municipality, or other governmental entity in which the district is located;

(2) operating funds and reserves for operating expenses and funds that have been budgeted by the county, municipality, or other governmental entity in which the district is located to provide medical care for residents of the district for the remainder of the

fiscal year in which the district is established;

(3) taxes levied by the county, municipality, or other governmental entity in which the district is located for hospital purposes for residents of the district for the year in which the district is created; and

(4) funds established for payment of indebtedness assumed by the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.072. LIMITATION ON GOVERNMENTAL ENTITY. On or after creation of the district, a county, municipality, or other governmental entity in which the district is located may not levy taxes or issue bonds or other obligations for hospital purposes or for providing medical care for the residents of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.073. DISTRICT RESPONSIBILITIES. (a) On creation of a district, the district:

(1) assumes full responsibility for operating hospital facilities and for furnishing medical and hospital care for the district's needy inhabitants;

(2) assumes any outstanding indebtedness incurred by a county, municipality, or other governmental entity in which all or part of the district is located in providing hospital care for residents of the territory of the district before the district's creation; and

(3) may operate or provide for the operation of a mobile emergency medical service.

(b) If part of a county, municipality, or other governmental entity is included in a district and part is not included in the district, the amount of indebtedness the district assumes under Subsection (a)(2) is that portion of the total outstanding indebtedness of the county, municipality, or other entity for hospital care for all residents of the county, municipality, or other entity that the value of taxable property in the district bears to the total value of taxable property in the county, municipality, or other entity according to the last preceding approved assessment

rolls of the county, municipality, or other entity before the district is confirmed.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.074. MANAGEMENT, CONTROL, AND ADMINISTRATION. The board shall manage, control, and administer the hospital system and the funds and resources of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.075. DISTRICT RULES. The board may adopt rules governing the operation of the hospital and hospital system and the duties, functions, and responsibilities of district staff and employees.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.076. METHODS AND PROCEDURES. The board may prescribe:

(1) the method of making purchases and expenditures by and for the district; and

(2) accounting and control procedures for the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.077. HOSPITAL PROPERTY, FACILITIES, AND EQUIPMENT. (a) The board shall determine:

(1) the type, number, and location of buildings required to establish and maintain an adequate hospital system; and

(2) the type of equipment necessary for hospital care.

(b) The board may:

(1) acquire property, facilities, and equipment for the district for use in the hospital system;

(2) mortgage or pledge the property, facilities, or equipment acquired as security for the payment of the purchase price;

(3) transfer by lease to physicians, individuals, companies, corporations, or other legal entities or acquire by lease

district hospital facilities; and

(4) sell or otherwise dispose of district property, facilities, or equipment.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.078. CONSTRUCTION CONTRACTS. (a) The board may enter into construction contracts for the district.

(b) The board may enter into a public work contract as authorized under Chapter 2269, Government Code.

(c) Chapter 2253, Government Code, as it relates to performance and payment bonds, applies to construction contracts let by the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 11, eff. September 1, 2023.

Sec. 286.079. DISTRICT OPERATING AND MANAGEMENT CONTRACTS. The board may enter into operating or management contracts relating to hospital facilities.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.080. EMINENT DOMAIN. (a) A district may exercise the power of eminent domain to acquire a fee simple or other interest in property located in the territory of the district if the property interest is necessary to the exercise of the rights or authority conferred by this chapter.

(b) A district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, but the district is not required to deposit in the trial court money or a bond as provided by Section 21.021(a), Property Code.

(c) In a condemnation proceeding brought by a district, the district is not required to:

(1) pay in advance or give bond or other security for costs in the trial court;

(2) give bond for the issuance of a temporary restraining order or a temporary injunction; or

(3) give bond for costs or supersedeas on an appeal or writ of error.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.081. EXPENSES FOR MOVING FACILITIES OF RAILROADS OR UTILITIES. If, in exercising the power of eminent domain, the board requires relocating, raising, lowering, rerouting, changing the grade, or altering the construction of any railroad, highway, pipeline, or electric transmission and electric distribution, telegraph, or telephone lines, conduits, poles, or facilities, the district must bear the actual cost of relocating, raising, lowering, rerouting, changing the grade, or altering the construction to provide comparable replacement without enhancement of a facility, after deducting the net salvage value derived from the old facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.082. INDIGENT CARE. (a) The district without charge shall supply to a patient residing in the district the care and treatment that the patient or a relative of the patient who is legally responsible for the patient's support cannot pay.

(b) Not later than the first day of each operating year, the district shall adopt an application procedure to determine eligibility for assistance, as provided by Section 61.053.

(c) The administrator of the district may have an inquiry made into the financial circumstances of:

(1) a patient residing in the district and admitted to a district facility; and

(2) a relative of the patient who is legally responsible for the patient's support.

(d) On finding that a patient or a relative of the patient legally responsible for the patient's support can pay for all or any part of the care and treatment provided by the district, the administrator shall report that finding to the board, and the board

shall issue an order directing the patient or the relative to pay the district each week a specified amount that the individual is able to pay.

(e) The administrator may collect money owed to the district from the estate of a patient or from that of a relative who was legally responsible for the patient's support in the manner provided by law for collection of expenses in the last illness of a deceased person.

(f) If there is a dispute relating to an individual's ability to pay or if the administrator has any doubt concerning an individual's ability to pay, the board shall call witnesses, hear and resolve the question, and issue a final order. An appeal from a final order of the board must be made to a district court in the county in which the district is located, and the substantial evidence rule applies.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.083. REIMBURSEMENT FOR SERVICES. (a) The board shall require reimbursement from a county, municipality, or public hospital located outside the boundaries of the district for the district's care and treatment of a sick, diseased, or injured person of that county, municipality, or public hospital as provided by Chapter 61 (Indigent Health Care and Treatment Act).

(b) The board shall require reimbursement from the sheriff or police chief of a county or municipality for the district's care and treatment of a person confined in a jail facility of the county or municipality who is not a resident of the district.

(c) The board may contract with the state or federal government for the state or federal government to reimburse the district for treatment of a sick, diseased, or injured person.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.084. SERVICE CONTRACTS. The board may contract with a municipality, county, special district, or other political subdivision of the state or with a state or federal agency for the district to:

(1) furnish a mobile emergency medical service; or

(2) provide for the investigatory or welfare needs of inhabitants of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.085. GIFTS AND ENDOWMENTS. On behalf of the district, the board may accept gifts and endowments to be held in trust for any purpose and under any direction, limitation, or provision prescribed in writing by the donor that is consistent with the proper management of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.086. AUTHORITY TO SUE AND BE SUED. The board may sue and be sued on behalf of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

SUBCHAPTER E. CHANGE IN BOUNDARIES OR DISSOLUTION OF DISTRICT

Sec. 286.101. EXPANSION OF DISTRICT TERRITORY. (a) Registered voters of a defined territory that is not included in a district may file a petition with the secretary of the board requesting the inclusion of the territory in the district. The petition must be signed by at least 50 registered voters of the territory or a majority of those voters, whichever is less.

(b) The board by order shall set a time and place to hold a hearing on the petition to include the territory in the district. The board shall set a date for the hearing that is after the 30th day after the date the board issues the order.

(c) If after the hearing the board finds that annexation of the territory into the district would be feasible and would benefit the district, the board may approve the annexation by a resolution entered in its minutes. The board is not required to include all of the territory described in the petition if the board finds that a modification or change is necessary or desirable.

(d) Annexation of territory is final when approved by a majority of the voters at an election held in the district and by a majority of the voters at a separate election held in the territory

to be annexed. If the district has outstanding debts or taxes, the voters in the election to approve the annexation must also determine if the annexed territory will assume its proportion of the debts or taxes if added to the district.

(e) The election ballots shall be printed to provide for voting for or against the following, as applicable:

(1) "Adding (description of territory to be added) to the _____ Hospital District."

(2) "(Description of territory to be added) assuming its proportionate share of the outstanding debts and taxes of the _____ Hospital District, if it is added to the district."

(f) The election shall be ordered and notice of the election shall be given in the same manner as provided by Sections 286.024 and 286.025 for ordering and giving notice of an election authorizing creation of the district. Section 41.001(a), Election Code, does not apply to an election held under this section.

(g) If a district imposes a sales and use tax under Subchapter I, the territory added to the district must be located in a county or counties each with a population of 75,000 or less, and the addition of the territory may not result in a combined tax rate by the hospital district and other political subdivisions of this state of more than two percent at any location in the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 8, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 12, eff. September 1, 2023.

Sec. 286.102. DISSOLUTION. (a) A district may be dissolved as provided by this section.

(b) The board may order an election on the question of dissolving the district and disposing of the district's assets and obligations. The board shall order an election if the board receives a petition requesting an election that is signed by a number of residents of the district equal to at least 15 percent of the registered voters in the district.

(c) Section 41.001(a), Election Code, does not apply to an

election ordered under this section.

(d) The ballot for the election shall be printed to permit voting for or against the proposition: "The dissolution of the _____ Hospital District." The election shall be held in accordance with the applicable provisions of the Election Code.

(e) If a majority of the votes in the election favor dissolution, the board shall find that the district is dissolved. If a majority of the votes in the election do not favor dissolution, the board shall continue to administer the district, and another election on the question of dissolution may not be held before the first anniversary of the most recent election to dissolve the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 13, eff. September 1, 2023.

Sec. 286.103. TRANSFER OF ASSETS AFTER DISSOLUTION. (a) If a majority of the votes in the election favor dissolution, the board shall:

(1) transfer the land, buildings, improvements, equipment, and other assets that belong to the district to a county or another governmental entity in the district; or

(2) administer the property, assets, and debts in accordance with Section 286.104.

(b) If the district transfers the land, buildings, improvements, equipment, and other assets to a county or other governmental entity, the county or entity assumes all debts and obligations of the district at the time of the transfer, and the district is dissolved.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.104. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) If the district does not transfer the land, buildings, improvements, equipment, and other assets to a county or another governmental entity in the district, the board shall continue to control and administer the property, debts, and assets of the district until all funds have been disposed of and all district debts

have been paid or settled.

(b) After the board finds that the district is dissolved, the board shall determine the debt owed by the district and:

(1) if the district imposes a property tax, impose on the property included in the district's tax rolls a tax that is in proportion of the debt to the property value; or

(2) if the district imposes a sales and use tax under Subchapter I, continue the tax until the debt is repaid.

(c) The board may institute a suit to enforce payment of taxes and to foreclose liens to secure the payment of property taxes due the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 9, eff. Sept. 1, 2001.

Sec. 286.105. RETURN OF SURPLUS PROPERTY TAX MONEY. (a) When all outstanding debts and obligations of the district are paid, the board shall order the secretary to return the pro rata share of all unused property tax money to each district taxpayer.

(b) A taxpayer may request that the taxpayer's share of surplus property tax money be credited to the taxpayer's county taxes. If a taxpayer requests the credit, the board shall direct the secretary to transmit the funds to the county tax assessor-collector.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 10, eff. Sept. 1, 2001.

Sec. 286.106. REPORT; DISSOLUTION ORDER. (a) After the district has paid all its debts and has disposed of all its assets and funds as prescribed by Sections 286.104 and 286.105, the board shall file a written report with the commissioners court of each county in which the district is located setting forth a summary of the board's actions in dissolving the district.

(b) Not later than the 10th day after the date it receives the report and determines that the requirements of this section have been fulfilled, the commissioners court of each county shall enter an order dissolving the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

SUBCHAPTER F. DISTRICT FINANCES

Sec. 286.121. FISCAL YEAR. (a) The district operates on the fiscal year established by the board.

(b) The fiscal year may not be changed if revenue bonds of the district are outstanding or more than once in a 24-month period.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.122. ANNUAL AUDIT. The board annually shall have an audit made of the financial condition of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.123. DISTRICT AUDIT AND RECORDS. The annual audit and other district records are open to inspection during regular business hours at the principal office of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.124. ANNUAL BUDGET. (a) The administrator of the district shall prepare a proposed annual budget for the district.

(b) The proposed budget must contain a complete financial statement, including a statement of:

(1) the outstanding obligations of the district;

(2) the amount of cash on hand to the credit of each fund of the district;

(3) the amount of money received by the district from all sources during the previous year;

(4) the amount of money available to the district from all sources during the ensuing year;

(5) the amount of the balances expected at the end of the year in which the budget is being prepared;

(6) the estimated amount of revenues and balances available to cover the proposed budget; and

(7) the estimated property tax rate that will be required,

if the district imposes a property tax.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 11, eff. Sept. 1, 2001.

Sec. 286.125. NOTICE; HEARING; ADOPTION OF BUDGET. (a) The board shall hold a public hearing on the proposed annual budget.

(b) The board shall publish notice of the hearing in a newspaper of general circulation in the district not later than the 10th day before the date of the hearing.

(c) Any resident of the district is entitled to be present and participate at the hearing.

(d) At the conclusion of the hearing, the board shall adopt a budget by acting on the budget proposed by the administrator. The board may make any changes in the proposed budget that in its judgment the interests of the taxpayers demand.

(e) The budget is effective only after adoption by the board.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.126. AMENDING BUDGET. After adoption, the annual budget may be amended on the board's approval.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.127. LIMITATION OF EXPENDITURES. Money may not be spent for an expense not included in the annual budget or an amendment to it.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.128. SWORN STATEMENT. As soon as practicable after the close of the fiscal year, the administrator shall prepare for the board a sworn statement of the amount of money that belongs to the district and an account of the disbursements of that money.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.129. SPENDING AND INVESTMENT LIMITATIONS. (a) Except as provided by Sections 286.078(a), 286.141, 286.144, and 286.145, and Chapter 315, the district may not incur a debt payable from revenues of the district other than the revenues on hand or to be on hand in the current and immediately following fiscal year of the district.

(b) The board may invest operating, depreciation, or building reserves only in investments authorized under Chapter 2256, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.101, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 14, eff. September 1, 2023.

Sec. 286.130. DEPOSITORY. (a) The board shall name at least one bank to serve as depository for district funds.

(b) District funds, other than those invested as provided by Section 286.129(b) and those transmitted to a bank of payment for bonds or obligations issued or assumed by the district, shall be deposited as received with the depository bank and must remain on deposit. This subsection does not limit the power of the board to place a portion of district funds on time deposit or to purchase certificates of deposit.

(c) Before the district deposits funds in a bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation, the bank must execute a bond or other security in an amount sufficient to secure from loss the district funds that exceed the amount secured by the Federal Deposit Insurance Corporation.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

SUBCHAPTER G. BONDS

Sec. 286.141. GENERAL OBLIGATION BONDS. The board may issue and sell bonds authorized by an election in the name and on the faith and credit of the hospital district to:

(1) purchase, construct, acquire, repair, or renovate buildings or improvements;

(2) equip buildings or improvements for hospital purposes; or

(3) acquire and operate a mobile emergency medical service.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.142. TAXES TO PAY BONDS. (a) At the time the bonds are issued by the district, the board shall levy a tax.

(b) The tax must be sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds as they mature.

(c) In any year, the tax together with any other tax the district levies may not exceed the limit approved by the voters at the election authorizing the levy of taxes.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.143. BOND ELECTION. (a) The district may issue general obligation bonds only if the bonds are authorized by a majority of the qualified voters of the district voting at an election called and held for that purpose under this section or under Subchapter B.

(b) The board may order a bond election. The order calling the election must state:

(1) the nature and date of the election;

(2) the hours during which the polls will be open;

(3) the location of the polling places;

(4) the amount of bonds to be authorized; and

(5) the maximum maturity of the bonds.

(c) Notice of a bond election shall be given as provided by Section 1251.003, Government Code.

(d) The board shall canvass the returns and declare the results of the election.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 648, Sec. 3, eff. Aug. 26, 1991; Acts 2001, 77th Leg., ch. 1420, Sec. 8.264, eff. Sept. 1, 2001.

Sec. 286.144. REVENUE BONDS. (a) The board may issue revenue bonds to:

(1) purchase, construct, acquire, repair, equip, or renovate buildings or improvements for hospital purposes;

(2) acquire sites to be used for hospital purposes; or

(3) acquire and operate a mobile emergency medical service to assist the district in carrying out its hospital purposes.

(b) The bonds must be payable from and secured by a pledge of all or part of the revenues derived from the operation of the district's hospital system. The bonds may be additionally secured by a mortgage or deed of trust lien on all or part of district property.

(c) The bonds must be issued in the manner provided by Sections 264.042, 264.043, 264.046, 264.047, 264.048, and 264.049 for issuance of revenue bonds by county hospital authorities.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.145. REFUNDING BONDS. (a) Refunding bonds of the district may be issued to refund an outstanding indebtedness the district has issued or assumed.

(b) The bonds must be issued in the manner provided by Subchapter D, Chapter 1207, Government Code.

(c) The refunding bonds may be sold and the proceeds applied to the payment of outstanding indebtedness or may be exchanged in whole or in part for not less than a similar principal amount of outstanding indebtedness. If the refunding bonds are to be sold and the proceeds applied to the payment of outstanding indebtedness, the refunding bonds must be issued and payments made in the manner provided by Subchapters A-C, Chapter 1207, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.265, eff. Sept. 1, 2001.

Sec. 286.146. INTEREST AND MATURITY. District bonds must mature not later than the 50th anniversary of the date of their issuance and must bear interest at a rate not to exceed that provided by Chapter 1204, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.266, eff. Sept. 1, 2001.

Sec. 286.147. EXECUTION OF BONDS. The president of the board shall execute the bonds in the name of the district, and the secretary of the board shall countersign the bonds in the manner provided by Chapter 618, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.266, eff. Sept. 1, 2001.

Sec. 286.148. APPROVAL AND REGISTRATION OF BONDS. (a) District bonds are subject to the same requirements with regard to approval by the attorney general and registration by the comptroller as the law provides for approval and registration of bonds issued by counties.

(b) On approval by the attorney general and registration by the comptroller, the bonds are incontestable for any cause.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.149. BONDS AS INVESTMENTS. District bonds and indebtedness assumed by the district are legal and authorized investments for:

(1) banks;
(2) savings banks;
(3) trust companies;
(4) savings and loan associations;
(5) insurance companies;
(6) fiduciaries;
(7) trustees;

(8) guardians; and

(9) sinking funds of municipalities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.150. BONDS AS SECURITY FOR DEPOSITS. District bonds are eligible to secure deposits of public funds of the state and of municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value if accompanied by all unmatured coupons.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.151. TAX STATUS OF BONDS. Because the district created under this chapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds, and profits made in the sale of the bonds are free from taxation by the state or by any municipality, county, special district, or other political subdivision of the state.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

SUBCHAPTER H. PROPERTY TAXES

Sec. 286.161. TAX AUTHORIZED. (a) A majority of voters in a district or proposed district may, at the creation election under Subchapter B or in conjunction with any other district election, authorize the district to impose a property tax.

(b) The board annually may impose property taxes in an amount not to exceed the limit approved by the voters at the election authorizing the levy of taxes.

(c) The tax rate for all purposes may not exceed 75 cents on each $100 valuation of all taxable property in the district.

(d) The taxes may be used to pay:

(1) the indebtedness issued or assumed by the district;

and

(2) the maintenance and operating expenses of the district.

(e) The district may not impose taxes to pay the principal of or interest on revenue bonds issued under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 13, eff. Sept. 1, 2001.

Sec. 286.162. BOARD AUTHORITY. The board may impose taxes for the entire year in which the district is created.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.163. ADOPTING TAX RATE. In adopting the tax rate, the board shall consider the income of the district from sources other than taxation.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.164. TAX ASSESSMENT AND COLLECTION. (a) The Tax Code governs the appraisal, assessment, and collection of district taxes.

(b) The board may provide for the appointment of a tax assessor-collector for the district or may contract for the assessment and collection of taxes as provided by the Tax Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

SUBCHAPTER I. SALES AND USE TAXES FOR DISTRICTS IN SMALL COUNTIES

Sec. 286.171. TAX AUTHORIZED. (a) A majority of voters in a proposed district of which all or a majority of the territory is located in a county or counties each with a population of 75,000 or less may impose a sales and use tax if the imposition is authorized at the creation election under Subchapter B.

(b) An election to authorize the imposition of a sales and use tax under this subchapter may be held only in conjunction with a creation election under Subchapter B.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

Sec. 286.172. LIMITATION ON COMBINED TAX RATE; EFFECT ON ELECTIONS. An election to create a hospital district and to authorize the imposition of a sales and use tax under this subchapter, or an election to change the tax rate under Section 286.174, has no effect if as a result of the adoption of the sales and use tax or the change in the rate the combined rate of all sales and use taxes imposed by the district and other political subdivisions of this state having territory in the district would exceed two percent at any location in the district.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

Sec. 286.173. ELECTION IN OTHER TAXING AUTHORITY. (a) In this section, "taxing authority" means any entity authorized to impose a local sales and use tax.

(b) If a district or proposed district is included within the boundaries of another taxing authority and the adoption or increase of the tax under this subchapter would result in a combined tax rate by the district and other political subdivisions of this state of more than two percent at any location in the district, an election to approve or increase the tax under this subchapter has no effect unless:

(1) one or more of the other taxing authorities holds an election in accordance with the law governing that authority on the same date as the election under this chapter to reduce the tax rate of that authority to a rate that will result in a combined tax rate by the district and other political subdivisions of not more than two percent at any location in the district; and

(2) the combined tax rate is reduced to not more than two percent as a result of that election.

(c) This section does not permit a taxing authority to impose taxes at differential tax rates within the territory of the authority.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

Sec. 286.174. TAX RATE; CHANGE IN RATE. (a) A district may impose the tax in increments of one-eighth of one percent, with a minimum rate of one-eighth of one percent and a maximum rate of two percent.

(b) Subject to Section 286.172, a district may increase the rate of the tax to a maximum of two percent or decrease the rate of the tax to a minimum of one-eighth of one percent if the change is approved by a majority of the voters of the district at an election called for that purpose.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

Sec. 286.175. USE OF TAX. The taxes imposed may be used to pay:

(1) the indebtedness issued or assumed by the district; and

(2) the maintenance and operating expenses of the district.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

Sec. 286.176. EFFECTIVE DATE. (a) The adoption or abolition of the tax or a change in the rate of the tax takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete calendar quarter occurring after the date the comptroller receives a notice of the results of the election.

(b) If the comptroller determines that an effective date provided by Subsection (a) will occur before the comptroller can reasonably take the action required to begin collecting the tax or to implement the abolition of the tax or the change in the rate of the tax, the effective date may be extended by the comptroller until the first day of the next calendar quarter.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

Sec. 286.177. COUNTY SALES AND USE TAX ACT APPLICABLE. Except to the extent that a provision of this chapter applies, Chapter 323, Tax Code, applies to the tax authorized by this chapter in the same

manner as that chapter applies to the tax authorized by that chapter.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

SUBCHAPTER X. MISCELLANEOUS

Sec. 286.951. LIMITATION ON STATE ASSISTANCE. The state may not become obligated for the support or maintenance of a hospital district created under this chapter, and the legislature may not make a direct appropriation for the construction, maintenance, or improvement of a facility of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Renumbered from Sec. 286.181 by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

CHAPTER 287. HEALTH SERVICES DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 287.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of a district.

(2) "District" means a health services district created under this chapter.

(3) "Director" means a member of the board.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.002. DISTRICT AUTHORIZATION. A health services district may be created and established and, if created, must be maintained, operated, and financed in the manner provided by this chapter.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 287.021. CREATION BY CONCURRENT ORDERS. (a) Except as provided by Subsection (b), a county or hospital district and one or more other counties or hospital districts may create a health services district by adopting concurrent orders.

(b) A county or portion of a county that is in the boundaries of a hospital district may not be a party to the creation of a health services district or to a contract with a health services district. The hospital district that serves the county or portion of the county may create and contract with the health services district for the boundaries of the hospital district.

(c) A concurrent order to create a health services district must:

(1) be approved by the governing body of each creating county and hospital district;

(2) contain identical provisions; and

(3) define the boundaries of the district to be coextensive with the combined boundaries of each creating county and hospital district.

(d) A concurrent order to create a health services district adopted by a hospital district for which the tax rate is set by the commissioners court of the county in which the hospital district operates must be approved by the commissioners court of that county.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.022. CONTRACT TERMS. (a) A county or hospital district that creates a district under this chapter shall contract with the district to provide, at a minimum, the health care services the county or hospital district is required to provide by law or under the constitution. A contract with a county or hospital district that created the health services district under this chapter must:

(1) state the term of the contract, not to exceed six years;

(2) specify the purpose, terms, rights, and duties of the district, as authorized by this chapter;

(3) specify the financial contributions to be made by each party to the contract to fund the district, as described by Section 287.024; and

(4) specify the land, buildings, improvements, equipment, and other assets owned by a party to the contract that the district will be required to manage and operate.

(b) Chapter 791, Government Code, does not apply to a contract

made under this chapter.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.023. PURPOSE AND DUTIES. (a) A health services district shall:

(1) provide health care services to indigent residents of the district;

(2) manage the funds contributed to the district by each county or hospital district that contracts with the district; and

(3) plan and coordinate with public and private health care providers and entities for the long-term provision of health care services to residents of the district.

(b) A health services district may:

(1) provide health care services on a sliding-fee scale to residents of the district who do not meet the basic income and resources requirements established under Sections 61.006 and 61.008 to be eligible for assistance under Chapter 61 but who are unable to pay for the full cost of health care services; and

(2) assume responsibility for management and operation of the land, buildings, improvements, equipment, and other assets that are acquired by the district or for which the district agrees to assume responsibility under the terms of the contract.

(c) A health services district may not:

(1) establish, conduct, or maintain an institution as defined by Section 242.002; or

(2) establish or operate a personal care facility as defined by Section 247.002.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.024. FUNDING. (a) Each county or hospital district that contracts with the district shall contribute to the district for its operation:

(1) a specified dollar amount from or a percentage of the contracting entity's operating budget and reserves if the contracting entity is a hospital district;

(2) a specified percentage, not less than the percentage required under Section 61.037 for state assistance, of the

contracting entity's general revenue levy for each state fiscal year for the term of the contract, if the contracting entity is a county;

(3) state assistance received under Chapter 61;

(4) federal matching funds received by a hospital district under the Medicaid disproportionate share program; and

(5) any funds that are:

(A) received under the Agreement Regarding Disposition of Settlement Proceeds dated July 18, 1998, or July 24, 1998, and filed in the United States District Court, Eastern District of Texas, in the case styled The State of Texas v. The American Tobacco Company, et al., No. 5-96CV-91; and

(B) received on or after the date on which the district is created and before the district is dissolved.

(b) The district shall maintain an accounting of the funds received from each county or hospital district that contracts with the district.

(c) The district may administer the financial contributions of all parties to the contract for district purposes.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. DISTRICT ADMINISTRATION

Sec. 287.041. BOARD OF DIRECTORS. (a) A county or hospital district that creates the district and has a population of 125,000 or more shall appoint one director to the board for every 125,000 persons in the population of the county or hospital district, rounded to the nearest 125,000.

(b) A county or hospital district that creates the district and has a population of less than 125,000 may appoint one director to the board.

(c) The county judges of a county that creates the district shall appoint the directors to the board on behalf of the county. The board of directors of a hospital district that creates the district shall appoint the directors to the board on behalf of the hospital district.

(d) Directors serve staggered two-year terms, with as near as possible to one-half of the directors' terms expiring each year.

(e) The number of directors appointed to the board by each county or hospital district that creates the district is determined

at the time of the initial appointment of directors under this section and does not vary with subsequent variations in the population of the county or hospital district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.042. QUALIFICATIONS FOR OFFICE. (a) To be eligible to serve as a director, a person must be a resident of the county or hospital district that appoints the person under Section 287.041.

(b) An employee of the district may not serve as a director.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.043. BOND. (a) Before assuming the duties of the office, each director must execute a bond for $5,000 payable to the district, conditioned on the faithful performance of the person's duties as director.

(b) The bond shall be kept in the permanent records of the district.

(c) The board may pay for directors' bonds with district funds.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.044. BOARD VACANCY. A vacancy in the office of director shall be filled for the unexpired term in the same manner as the original appointment.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.045. OFFICERS. (a) The board shall elect from among its members a president and a vice president.

(b) The board shall appoint a secretary, who need not be a director.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.046. OFFICERS' TERMS; VACANCY. (a) Each officer of the board serves for a term of one year.

(b) The board shall fill a vacancy in a board office for the unexpired term.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.047. COMPENSATION. (a) Directors and officers serve without compensation but may be reimbursed for actual expenses incurred in the performance of official duties.

(b) Expenses reimbursed under this section must be:

(1) reported in the district's minute book or other district records; and

(2) approved by the board.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.048. VOTING REQUIREMENT. A majority of the members of the board voting must concur in a matter relating to the business of the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.049. ADMINISTRATOR AND ADDITIONAL STAFF. (a) The board may appoint qualified persons as administrator of the district and as additional administrative staff members as the board considers necessary for the efficient operation of the district.

(b) The administrator and other administrative staff members serve at the will of the board.

(c) The administrator and other administrative staff members are entitled to compensation as determined by the board.

(d) Before assuming the administrator's duties, the administrator shall execute a bond payable to the health services district in an amount not less than $5,000 as determined by the board, conditioned on the faithful performance of the administrator's duties under this chapter. The board may pay for the bond with district funds.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.050. APPOINTMENTS TO STAFF. The board may:

(1) appoint to the staff any doctors the board considers necessary for the efficient operation of the district; and

(2) make temporary appointments the board considers necessary.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.051. TECHNICIANS, NURSES, AND OTHER DISTRICT EMPLOYEES. (a) The district may employ technicians, nurses, fiscal agents, accountants, architects, additional attorneys, and other necessary employees.

(b) The board may delegate to the administrator the authority to employ persons for the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.052. GENERAL DUTIES OF ADMINISTRATOR. The administrator shall:

(1) supervise the work and activities of the district; and

(2) direct the general affairs of the district, subject to the limitations prescribed by the board.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.053. RETIREMENT BENEFITS. The board may provide retirement benefits for employees of the district by:

(1) establishing or administering a retirement program; or

(2) electing to participate in the Texas County and District Retirement System or in any other statewide retirement system in which the district is eligible to participate.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 287.071. RESPONSIBILITY OF GOVERNMENTAL ENTITY. On creation of a district, a county or hospital district that creates the district may transfer to the district:

(1) management and operation of any land, buildings, improvements, and equipment related to the health care system located wholly in the district that are owned by the county or hospital district in which the district is located, as specified in the contract with the counties and hospital districts that created the district; and

(2) operating funds and reserves for operating expenses and funds that have been budgeted by the county or hospital district in which the district is located to provide medical care for residents of the district, as specified in the contract with the counties and hospital districts that created the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.072. DISTRICT RESPONSIBILITIES. On creation of a district, the district assumes the duties required under Section 287.023 and any additional duties specified in the contract with the counties and hospital districts that created the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.073. MANAGEMENT, CONTROL, AND ADMINISTRATION. The board shall manage, control, and administer the health care system and the funds and resources of the district that are transferred under Section 287.071.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.074. DISTRICT RULES. The board may adopt rules governing the operation of the district and the duties, functions, and responsibilities of district staff and employees.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.075. METHODS AND PROCEDURES. The board may prescribe:

(1) the method of making purchases and expenditures by and for the district; and

(2) accounting and control procedures for the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.076. HEALTH CARE PROPERTY, FACILITIES, AND EQUIPMENT. (a) The board shall determine:

(1) the type, number, and location of buildings required to establish and maintain an adequate health care system; and

(2) the type of equipment necessary for health care.

(b) The board may:

(1) acquire property, facilities, and equipment for the district for use in the health care system;

(2) mortgage or pledge the property, facilities, or equipment acquired as security for the payment of the purchase price;

(3) transfer by lease to physicians, individuals, companies, corporations, or other legal entities or acquire by lease district health care facilities;

(4) sell or otherwise dispose of property, facilities, or equipment acquired by the district; and

(5) contract with a state agency or other qualified provider to provide services.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.077. CONSTRUCTION CONTRACTS. (a) The board may enter into construction contracts for the district.

(b) The board may enter into construction contracts that involve spending more than $10,000 only after competitive bidding as provided by Subchapter B, Chapter 271, Local Government Code.

(c) Chapter 2253, Government Code, as it relates to performance and payment bonds, applies to construction contracts let by the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.078. DISTRICT CONTRACTS AND COLLABORATIONS. (a) The board may enter into operating or management contracts relating to health care facilities owned by the district or for which the district assumes responsibility for managing and operating under the terms of the contract with the counties and hospital districts that created the district.

(b) The board may contract or collaborate with a local governmental entity, as defined by Section 534.002, Government Code, or any other public or private entity as necessary to provide or deliver health care services under a demonstration project established under Section 534.201 or 534.202, Government Code, in which the district participates.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1139, Sec. 3, eff. Sept. 1, 2003.

Sec. 287.079. PAYMENT FOR HEALTH CARE SERVICES. (a) The district without charge shall supply to a patient residing in the district the care and treatment that the patient or a relative of the patient who is legally responsible for the patient's support cannot pay.

(b) Not later than the first day of each operating year, the district shall adopt an application procedure to determine eligibility for assistance that complies with Section 61.053.

(c) The administrator of the district may have an inquiry made into the financial circumstances of:

(1) a patient residing in the district and admitted to a district facility; and

(2) a relative of the patient who is legally responsible for the patient's support.

(d) The board may adopt a sliding-fee scale for health care services provided to a patient who can pay for some, but not all, of the care and treatment provided by the district.

(e) A county that created and contracted with the district may credit a district expenditure for the care and treatment of an eligible county resident to the same extent and in the same manner the county would be able to claim the expenditure under Chapter 61 if the county made the expenditure.

(f) The board shall adopt rules regarding the collection of money that is owed to the district for health care services provided to a patient who is determined to be able to pay for all or any part of the services from a patient, a patient's estate, or a relative who is legally responsible for the patient's support.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.080. REIMBURSEMENT FOR SERVICES. (a) The board shall require reimbursement from a county, municipality, or public hospital located outside the boundaries of the district for the district's care and treatment of a sick, diseased, or injured person of that county, municipality, or public hospital as provided by Chapter 61.

(b) The board shall require reimbursement from the sheriff or police chief of a county or municipality for the district's care and treatment of a person confined in a jail facility of the county or municipality who is not a resident of the district, as determined in the same manner as the person's residence is determined under Chapter 61.

(c) The board may contract with a state or federal agency or political subdivision of the state to provide health care services.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.081. SERVICE CONTRACTS. The board may contract with a municipality, county, special district, or other political subdivision of the state or with a state or federal agency for the district to:

(1) furnish a mobile emergency medical service; or

(2) provide for the investigatory or welfare needs of inhabitants of the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.082. GIFTS AND ENDOWMENTS. On behalf of the district, the board may accept gifts and endowments to be held in trust for any purpose and under any direction, limitation, or provision prescribed in writing by the donor that is consistent with the proper management

of the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.083. AUTHORITY TO SUE AND BE SUED. The board may sue and be sued on behalf of the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. DISSOLUTION OF DISTRICT

Sec. 287.101. DISSOLUTION. (a) A district shall be dissolved if:

(1) the contract with the counties and hospital districts that created the district expires and is not renewed; or

(2) the counties and hospital districts that created the district adopt concurrent orders to terminate the contract and dissolve the district and the concurrent orders:

(A) are approved by the governing bodies of each county and hospital district; and

(B) contain identical provisions.

(b) The governing body of a county or hospital district may adopt orders to terminate the contract with the district and end the county's or hospital district's participation in the district. The county or hospital district must give written notice to the district at least one fiscal year, as established by the board under Section 287.121, before terminating the contract and ending participation in the district. On termination of the contract with the district, the district shall transfer to the county or hospital district all unspent funds contributed by the county or hospital district to the district and the land, buildings, improvements, equipment, and other assets acquired by the district that are located in the county or hospital district. The termination of the contract by a county or hospital district does not affect the operation of the district with respect to each other county or hospital district that created the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.102. TRANSFER OF ASSETS AFTER DISSOLUTION. (a) If the district is dissolved, the board shall:

(1) transfer the land, buildings, improvements, equipment, and other assets acquired by the district to the county or hospital district in which the property is located; or

(2) administer the property, assets, and debts in accordance with Section 287.103.

(b) If the district transfers its land, buildings, improvements, equipment, and other assets to a county or hospital district, the county or hospital district assumes all debts and obligations of the district related to the land, buildings, improvements, equipment, or assets at the time of the transfer, and the district is dissolved.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.103. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) If the district does not transfer its land, buildings, improvements, equipment, and other assets to a county or hospital district in the district, the board shall continue to control and administer the property, debts, and assets of the district until all funds have been disposed of and all district debts have been paid or settled.

(b) If, after administering the property and assets, the board determines that the district's property and assets are insufficient to pay the debts of the district, the district shall transfer the remaining debts to the counties and hospital districts that created the district in proportion to the funds contributed to the district by each county or hospital district.

(c) If, after administering the property and assets, the board determines that unused funds remain, the board shall transfer the unused funds to the counties and hospital districts that created the district in proportion to the funds contributed to the district by each county or hospital district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.104. ACCOUNTING. After the district has paid all its debts and has disposed of all its assets and funds as prescribed by

Sections 287.102 and 287.103, the board shall provide an accounting to each county and hospital district that created and contracted with the district. The accounting must show the manner in which the assets and debts of the district were distributed.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER F. DISTRICT FINANCES

Sec. 287.121. FISCAL YEAR. (a) The district operates on the fiscal year established by the board.

(b) The fiscal year may not be changed if revenue bonds of the district are outstanding or more than once in a 24-month period.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.122. ANNUAL AUDIT. (a) The board annually shall have an independent audit made of the financial condition of the district.

(b) A copy of the audit must be provided to:

(1) each county and hospital district that created and contracted with the district;

(2) each state and federal agency with which the district contracts; and

(3) each other entity that contributes substantial funds to the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.123. DISTRICT AUDIT AND RECORDS. The annual audit and other district records are open to inspection during regular business hours at the principal office of the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.124. ANNUAL BUDGET. (a) The administrator of the district shall prepare a proposed annual budget for the district.

(b) The proposed budget must contain a complete financial statement, including a statement of:

(1) the outstanding obligations of the district;

(2) the amount of cash on hand to the credit of each fund of the district;

(3) the amount of money received by the district from all sources during the previous year;

(4) the amount of money available to the district from all sources during the ensuing year;

(5) the amount of the balances expected at the end of the year in which the budget is being prepared; and

(6) the estimated amount of revenues and balances available to cover the proposed budget.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.125. NOTICE; HEARING; ADOPTION OF BUDGET. (a) The board shall hold a public hearing on the proposed annual budget.

(b) The board shall publish notice of the hearing in a newspaper of general circulation in the district not later than the 10th day before the date of the hearing.

(c) Any resident of the district is entitled to be present and participate at the hearing.

(d) At the conclusion of the hearing, the board shall adopt a budget by acting on the budget proposed by the administrator. The board may make any changes in the proposed budget that in its judgment the interests of the residents of the district demand.

(e) The budget is effective only after adoption by the board.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.126. AMENDING BUDGET. After adoption, the annual budget may be amended on the board's approval.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.127. LIMITATION OF EXPENDITURES. Money may not be spent for an expense not included in the annual budget or an amendment to it.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.128. SWORN STATEMENT. As soon as practicable after the close of the fiscal year, the administrator shall prepare for the board a sworn statement of the amount of money that belongs to the district and an account of the disbursements of that money.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.129. SPENDING AND INVESTMENT LIMITATIONS. (a) Except for construction contracts under Section 287.077(a) or as provided by Sections 287.142 and 287.143, the district may not incur a debt payable from revenues of the district other than the revenues on hand or to be on hand in the current and immediately following fiscal year of the district.

(b) The board may invest operating, depreciation, or building reserves only in:

(1) bonds of the United States;

(2) certificates of indebtedness issued by the United States secretary of the treasury;

(3) bonds of this state or a county, municipality, or school district of this state; or

(4) shares or share accounts of savings and loan associations organized under the laws of this state or federal savings and loan associations domiciled in this state, if the shares or share accounts are insured by the Federal Deposit Insurance Corporation.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.102, eff. Sept. 1, 2001.

Sec. 287.130. DEPOSITORY. (a) The board shall name at least one bank to serve as depository for district funds.

(b) District funds, other than those invested as provided by Section 287.129(b) and those transmitted to a bank of payment for bonds or obligations issued or assumed by the district, shall be deposited as received with the depository bank and must remain on

deposit. This subsection does not limit the power of the board to place a portion of district funds on time deposit or to purchase certificates of deposit.

(c) Before the district deposits funds in a bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation, the bank must execute a bond or other security in an amount sufficient to secure from loss the district funds that exceed the amount secured by the Federal Deposit Insurance Corporation.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.131. AD VALOREM TAXATION. A district may not impose an ad valorem tax.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER G. BONDS

Sec. 287.141. GENERAL OBLIGATION BONDS. A district may not issue general obligation bonds.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.142. REVENUE BONDS. (a) The board may issue revenue bonds to:

(1) purchase, construct, acquire, repair, equip, or renovate buildings or improvements for district purposes;

(2) acquire sites to be used for district purposes; or

(3) acquire and operate a mobile emergency medical service to assist the district in carrying out its purposes.

(b) The bonds must be payable from and secured by a pledge of all or part of the revenues derived from the operation of the district. The bonds may be additionally secured by a mortgage or deed of trust lien on all or part of district property.

(c) The bonds must be issued in the manner provided by Sections 264.042, 264.043, 264.046, 264.047, 264.048, and 264.049 for issuance of revenue bonds by county hospital authorities.

(d) Revenue derived from the operation of the district and

pledged to the repayment of revenue bonds issued by the district must be used to repay the principal and interest owed on the bonds before being used to repay any other obligation of the district, including money owed to physicians who are employed by or who contract with the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.143. REFUNDING BONDS. (a) Refunding bonds of the district may be issued to refund an outstanding indebtedness the district has issued or assumed.

(b) The bonds must be issued in the manner provided by Subchapter D, Chapter 1207, Government Code.

(c) The refunding bonds may be sold and the proceeds applied to the payment of outstanding indebtedness or may be exchanged in whole or in part for not less than a similar principal amount of outstanding indebtedness. If the refunding bonds are to be sold and the proceeds applied to the payment of outstanding indebtedness, the refunding bonds must be issued and payments made in the manner provided by Subchapters A-C, Chapter 1207, Government Code.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.267, eff. Sept. 1, 2001.

Sec. 287.144. INTEREST AND MATURITY. District bonds must mature not later than the 50th anniversary of the date of their issuance and must bear interest at a rate not to exceed that provided by Chapter 1204, Government Code.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.268, eff. Sept. 1, 2001.

Sec. 287.145. EXECUTION OF BONDS. The president of the board shall execute the bonds in the name of the district, and the secretary of the board shall countersign the bonds in the manner provided by Chapter 618, Government Code.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.268, eff. Sept. 1, 2001.

Sec. 287.146. APPROVAL AND REGISTRATION OF BONDS. (a) District bonds are subject to the same requirements with regard to approval by the attorney general and registration by the comptroller as the law provides for approval and registration of bonds issued by counties.

(b) On approval by the attorney general and registration by the comptroller, the bonds are incontestable for any cause.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.147. BONDS AS INVESTMENTS. District bonds and indebtedness assumed by the district are legal and authorized investments for:

(1) banks;

(2) savings banks;

(3) trust companies;

(4) savings and loan associations;

(5) insurance companies;

(6) fiduciaries;

(7) trustees;

(8) guardians; and

(9) sinking funds of municipalities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.148. BONDS AS SECURITY FOR DEPOSITS. District bonds are eligible to secure deposits of public funds of the state and of municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value if accompanied by all unmatured coupons.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.149. TAX STATUS OF BONDS. Because the district created under this chapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds, and profits made in the sale of the bonds are free from taxation by the state or by any municipality, county, special district, or other political subdivision of the state.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 288. HEALTH CARE FUNDING DISTRICTS IN CERTAIN COUNTIES LOCATED ON TEXAS-MEXICO BORDER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 288.001. DEFINITIONS. In this chapter:

(1) "Commission" means the commission of a district created under this chapter.

(2) "District" means a county health care funding district created under this chapter.

(3) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(4) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 2, eff. June 14, 2013.
Acts 2015, 84th Leg., R.S., Ch. 231 (H.B. 2476), Sec. 1, eff. May 29, 2015.

Sec. 288.002. CREATION OF DISTRICT. A district may be created by order of the commissioners court of each county located on the Texas-Mexico border that has a population of:

(1) 500,000 or more and is adjacent to two or more counties each of which has a population of 50,000 or more;

(2) 350,000 or more and is adjacent to a county described

by Subdivision (1); or

(3) less than 300,000 and contains one or more municipalities with a population of 200,000 or more.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 3, eff. June 14, 2013.

Sec. 288.0031. DISSOLUTION. A district created under this chapter may be dissolved in the manner provided for the dissolution of a hospital district under Subchapter E, Chapter 286.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 4, eff. June 14, 2013.

Sec. 288.005. DISTRICT TERRITORY. The boundaries of each district are coextensive with the boundaries of the county in which the district is created.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

SUBCHAPTER B. DISTRICT ADMINISTRATION

Sec. 288.051. COMMISSION; DISTRICT GOVERNANCE. (a) Each district created under Section 288.002 is governed by a commission consisting of the commissioners court of the county in which the district is created.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1369, Sec. 19, eff. June 14, 2013.

(c) Service on the commission by a county commissioner or county judge is an additional duty of that person's office.

(d) A district is a component of county government and is not a separate political subdivision of this state.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 5, eff. June 14, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 6, eff. June 14, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 19, eff. June 14, 2013.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 288.101. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. Each district may require a mandatory payment only in the manner provided by this chapter.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 7, eff. June 14, 2013.

Sec. 288.102. MAJORITY VOTE REQUIRED. (a) A district may not require any mandatory payment authorized by this chapter, spend any money, including for the administrative expenses of the district, or conduct any other business of the commission without an affirmative vote of a majority of the members of the commission.
(b) Before requiring a mandatory payment under this chapter in any one year, the commission must obtain the affirmative vote required by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 8, eff. June 14, 2013.

Sec. 288.104. RULES AND PROCEDURES. (a) The commission may adopt rules governing the operation of the district, including rules relating to the administration of a mandatory payment authorized by this chapter.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1369, Sec. 19, eff. June 14, 2013.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 9, eff. June 14, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 19, eff. June 14, 2013.

Sec. 288.106. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) A district shall require an institutional health care provider to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the department to implement those sections.

(b) A district may inspect the records of an institutional health care provider to the extent necessary to ensure that the provider has submitted all required data under this section.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 288.151. HEARING. (a) Each year, the commission of a district shall hold a public hearing on the amounts of any mandatory payments that the commission intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing, the commission shall publish at least once notice of the hearing in a newspaper of general circulation in the county in which the district is located.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments required by the district under this chapter.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 10, eff. June 14, 2013.
Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 1, eff. June 12, 2017.

Sec. 288.152. FISCAL YEAR. Each district's fiscal year begins on September 1 and ends on August 31 of each year.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 288.154. DEPOSITORY. (a) Each commission by resolution shall designate one or more banks located in the district as the depository for the district. A bank designated as depository serves for two years or until a successor is designated.
(b) All income received by a district, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the district depository as provided by Section 288.203 and may be withdrawn only as provided by this chapter.
(c) All district funds shall be secured in the manner provided for securing county funds.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 11, eff. June 14, 2013.

Sec. 288.155. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each district shall create a local provider participation fund.
(b) The local provider participation fund consists of:
(1) all revenue from the mandatory payment required by this chapter, including any penalties and interest attributable to

delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the district to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the district;

(4) refund a portion of a mandatory payment collected in error from a paying hospital;

(5) refund to paying hospitals the proportionate share of the money received by the district from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; and

(6) refund to paying hospitals the proportionate share of money that the district determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the district as a result of an intergovernmental transfer described by that subdivision may not be used by the district, the county in which the district is located, or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010

(Pub. L. No. 111-152).

Added by Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 12, eff. June 14, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 2, eff. June 12, 2017.

Sec. 288.156. ALLOCATION OF CERTAIN FUNDS. Not later than the 15th day after the date the district receives a payment described by Section 288.155(c)(5), the district shall transfer to each paying hospital an amount equal to the proportionate share of those funds to which the hospital is entitled.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 12, eff. June 14, 2013.

SUBCHAPTER E. MANDATORY PAYMENTS

Sec. 288.201. MANDATORY PAYMENT BASED ON HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commission of a district may require an annual mandatory payment to be assessed quarterly on the net patient revenue of an institutional health care provider located in the district. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2010. The district shall update the amount of the mandatory payment on a biennial basis.

(b) The amount of a mandatory payment required under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the district. A mandatory payment required under this section may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commission of a district shall set the amount of the mandatory payment required under this section. The amount of the mandatory payment required of each paying hospital may not exceed an amount that, when added to the amount of the mandatory payments

required from all other paying hospitals in the district, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the district.

(d) Subject to the maximum amount prescribed by Subsection (c), the commission shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the district in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) An institutional health care provider may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 14, eff. June 14, 2013.

Sec. 288.202. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The district may collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments required under this chapter.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 15, eff. June 14, 2013.
Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 3, eff. June 12, 2017.

Sec. 288.203. DEPOSIT OF REVENUE FROM MANDATORY PAYMENTS. Revenue from the mandatory payment required by this chapter shall be deposited in the district's local provider participation fund.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 16, eff. June 14, 2013.

Sec. 288.204. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this subchapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 17, eff. June 14, 2013.

Sec. 288.205. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue from a mandatory payment required by the district to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment under this chapter to be ineligible for federal matching funds, the district may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 18, eff. June 14, 2013.

CHAPTER 289. COUNTY HEALTH CARE FUNDING DISTRICTS IN CERTAIN COUNTIES LOCATED ON TEXAS-MEXICO BORDER THAT HAVE POPULATION OF LESS THAN 300,000

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 289.001. DEFINITIONS. In this chapter:

(1) "Commission" means the commission of a district created under this chapter.

(2) "District" means a county health care funding district created by this chapter.

(3) "District taxpayer" means a person or entity who has paid a tax imposed under this chapter.

(4) "Institutional health care provider" means a nonpublic hospital licensed under Chapter 241.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.002. CREATION OF DISTRICT. A district is created in each county located on the Texas-Mexico border that has a population of less than 300,000 and contains one or more municipalities with a population of 200,000 or more.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 40, eff. September 1, 2011.

Sec. 289.003. DURATION OF DISTRICT. (a) Unless continued in existence by the legislature, a district created by this chapter is abolished September 1, 2007.

(b) Any money held by a district at the time the district is abolished shall be used to pay any outstanding administrative expenses of the district, and the commission shall direct the secretary of the commission to return the pro rata share of any remaining district money to each district taxpayer.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.004. POLITICAL SUBDIVISION. A district created by this chapter is a political subdivision of this state.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.005. DISTRICT TERRITORY. The boundaries of each district are coextensive with the boundaries of the county in which the district is created.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

SUBCHAPTER B. DISTRICT ADMINISTRATION

Sec. 289.051. COMMISSION; APPOINTMENT. (a) Each district is governed by a commission of five members appointed as provided by this section.

(b) Each county commissioner on the commissioners court of the county in which the district is located shall appoint one member who meets the qualifications prescribed by Section 289.052 to serve on the commission. The county judge of the county shall appoint any remaining members who meet the qualifications prescribed by Section 289.052 to serve on the commission.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.052. QUALIFICATION OF MEMBERS OF COMMISSION. To be eligible to serve as a member of the commission, a person must:

(1) be a United States citizen;

(2) be 18 years of age or older on the first day of the term that the person is appointed to fill;

(3) have not been determined mentally incompetent by a final judgment of a court;

(4) have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities;

(5) have resided continuously in this state for 12 months and in the county in which the district is located for six months immediately preceding the date of the appointment; and

(6) be a person knowledgeable in the field of health care.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.053. TERM OF MEMBERS OF COMMISSION. The members of the commission serve staggered two-year terms.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.054. VACANCY. (a) If a vacancy occurs on the commission, the commissioners court of the county in which the district is located shall appoint a qualified person to fill the vacancy not later than the 30th day after the date the vacancy occurs.

(b) If the commissioners court of the county in which the district is located does not appoint a member to the commission to fill a vacancy by the 30th day after the date the vacancy occurs, the remaining members of the commission may, by vote of the commission, appoint a replacement.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.055. OFFICERS. (a) Each commission shall elect a chairperson and a secretary from among its members.

(b) The chairperson and secretary shall each serve in that office until the expiration of their term as a member of the commission.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.056. COMPENSATION; EXPENSES. A member of the commission serves without compensation but may, on the approval of the entire commission, be reimbursed for actual expenses incurred in the performance of the member's official duties.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.057. EMPLOYEES AND INDEPENDENT CONTRACTORS. The commission may employ an attorney, financial advisor, and bookkeeper for the district or contract for those services.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.058. MAINTENANCE OF RECORDS; PUBLIC INSPECTION. Except as otherwise provided by law, all district records, including books, accounts, notices, minutes, and all other matters of the district and the operation of its facilities, shall be:

(1) maintained at the district office; and

(2) open to public inspection at the district office during reasonable hours.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 289.101. LIMITATION ON TAXING AUTHORITY. Each district may impose taxes only in the manner provided by this chapter.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.102. MAJORITY VOTE REQUIRED. (a) A district may not impose any tax authorized by this chapter, spend any money, including for the administrative expenses of the district, or conduct any other business of the commission without an affirmative vote of a majority of the members of the commission.

(b) Before imposing a tax under this chapter in any one year, the commission must obtain the affirmative vote required by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.103. ELECTION REQUIRED FOR CERTAIN EXPENDITURES. (a) In addition to the majority vote required under Section 289.102, a district may not spend any money of the district unless the district receives the approval of at least 95 percent of the district taxpayers.

(b) This section does not apply to expenditures related to the administrative matters of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.104. RULES AND PROCEDURES. (a) The commission may adopt rules governing the operation of the district, including rules relating to the administration of a tax authorized by this chapter.

(b) In order to implement the requirements of Sections 289.102 and 289.103, the commission shall adopt any necessary procedures.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.105. PURCHASING AND ACCOUNTING PROCEDURES. (a) The commission may prescribe the method and manner for making purchases and expenditures by the district.

(b) The commission shall prescribe:

(1) all accounting and control procedures; and

(2) the method of purchasing necessary supplies, materials, and equipment.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.106. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) A district shall require an institutional health care provider to submit to the district a copy

of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the department to implement those sections.

(b) A district may inspect the records of an institutional health care provider to the extent necessary to ensure that the provider has submitted all required data under this section.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.107. AUTHORITY TO SUE AND BE SUED. Each district may sue and be sued in its own name in any court of this state as a governmental agency.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 289.151. BUDGET. (a) Each year, the commission shall prepare a budget for the following fiscal year that includes:

(1) proposed expenditures and disbursements;

(2) estimated receipts and collections; and

(3) the rates and amounts of any taxes that the commission intends to impose during the year.

(b) The commission shall hold a public hearing on the proposed budget. Not later than the 10th day before the date of the hearing, the commission shall publish at least once notice of the hearing in a newspaper of general circulation in the county in which the district is located.

(c) Any district taxpayer is entitled to appear at the time and place designated in the public notice and to be heard regarding any item shown in the proposed budget.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.152. FISCAL YEAR. Each district's fiscal year begins

on September 1 and ends on August 31 of each year.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.153. ANNUAL AUDIT. (a) For each fiscal year, each commission shall have an independent audit made of the district's books and records.

(b) Not later than December 31 of each year, the audit made for a district shall be filed with the comptroller and at the office of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.154. DEPOSITORY. (a) Each commission by resolution shall designate one or more banks located in the district as the depository for the district. A bank designated as depository serves for two years or until a successor is designated.

(b) All income received by a district, including tax revenue after deducting discounts and fees for assessing and collecting the taxes, shall be deposited with the district depository and may be withdrawn only as provided by this chapter.

(c) All district funds shall be secured in the manner provided for securing county funds.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

SUBCHAPTER E. TAXES

Sec. 289.201. TAX ON OUTPATIENT SERVICES. (a) The commission of a district may impose an annual tax to be assessed quarterly on all outpatient hospital visits to an institutional health care provider located in the district. In the first year in which the tax is imposed, the tax is assessed on the total number of outpatient hospital visits of an institutional health care provider reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2003. The district shall update

this tax basis with the number of outpatient hospital visits reported on a biennial basis.

(b) A tax imposed under this section must be imposed uniformly on each institutional health care provider of outpatient hospital services located in the district. A tax imposed under this section also may not hold harmless any institutional health care provider of outpatient hospital services, as required under 42 U.S.C. Section 1396b(w).

(c) The commission shall set the rate of the tax imposed under this section. The rate may not exceed $100 for each outpatient hospital visit.

(d) Subject to the maximum tax rate prescribed by Subsection (c), the commission shall set the rate of the tax at a rate that will generate sufficient revenue to cover the administrative expenses of the district, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of tax revenue used for administrative expenses of the district in a year may not exceed the lesser of four percent of the total revenue generated from the tax or $20,000.

(e) An institutional health care provider may not add a tax imposed under this section as a surcharge to a patient.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.202. ASSESSMENT AND COLLECTION OF TAXES. (a) Except as provided by Subsection (b), the county tax assessor-collector shall collect a tax imposed under this subchapter unless the commission employs a tax assessor and collector for the district. The county tax assessor-collector shall charge and deduct from taxes collected for the district a fee for collecting the tax in an amount determined by the commission, not to exceed the county tax assessor-collector's usual and customary charges for the collection of similar taxes.

(b) If determined by the commission to be appropriate, the commission may contract for the assessment and collection of taxes in the manner provided by Title 1, Tax Code, for the assessment and collection of ad valorem taxes.

(c) Revenue from a fee charged by a county tax assessor-

collector for collecting the tax shall be deposited in the county general fund and, if appropriate, shall be reported as fees of the county tax assessor-collector.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.203. USE OF TAX REVENUE. Revenue generated by a district from a tax imposed under this subchapter may be used only to:

(1) provide the nonfederal share of a Medicaid supplemental payment program;

(2) subsidize indigent programs; and

(3) pay administrative expenses of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.204. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on taxes imposed under this subchapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.205. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue from a tax imposed by the district to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a tax under this chapter to be ineligible for federal matching funds, the district may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.206. ELECTION REQUIRED FOR CERTAIN PROVISIONS OR PROCEDURES. (a) In order to amend any provision or procedure set out in this chapter, the district must obtain the approval of at least 95 percent of the institutional health care providers potentially subject to the tax.

(b) This section does not apply to rules or procedures related to the daily administrative matters of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

CHAPTER 290. COUNTY HEALTH CARE FUNDING DISTRICTS IN CERTAIN COUNTIES WITH POPULATION OF 2.1 MILLION OR LESS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 290.001. DEFINITIONS. In this chapter:

(1) "Commission" means the commission of a district created under this chapter.

(2) "District" means a county health care funding district created by this chapter.

(3) "District taxpayer" means a person or entity who has paid a tax imposed under this chapter.

(4) "Institutional health care provider" means a nonpublic hospital licensed under Chapter 241.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.002. CREATION OF DISTRICT. A district is created in each county that has a population of 2.1 million or less and in which a municipality with a population of 1.1 million or more is predominantly located.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 42, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 83, eff. September 1, 2023.

Sec. 290.003. DURATION OF DISTRICT. (a) Unless continued in existence by the legislature, a district created by this chapter is abolished September 1, 2007.

(b) Any money held by a district at the time the district is abolished shall be used to pay any outstanding administrative expenses of the district, and the commission shall direct the secretary of the commission to return the pro rata share of any remaining district money to each district taxpayer.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.004. POLITICAL SUBDIVISION. A district created by this chapter is a political subdivision of this state.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.005. DISTRICT TERRITORY. The boundaries of each district are coextensive with the boundaries of the county in which the district is created.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

SUBCHAPTER B. DISTRICT ADMINISTRATION

Sec. 290.051. COMMISSION; APPOINTMENT. (a) Each district is governed by a commission of five members appointed as provided by this section.

(b) Each county commissioner on the commissioners court of the county in which the district is located shall appoint one member who meets the qualifications prescribed by Section 290.052 to serve on the commission. The county judge of the county shall appoint any remaining members who meet the qualifications prescribed by Section 290.052 to serve on the commission.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.052. QUALIFICATION OF MEMBERS OF COMMISSION. To be eligible to serve as a member of the commission, a person must:

(1) be a United States citizen;

(2) be 18 years of age or older on the first day of the term that the person is appointed to fill;

(3) have not been determined mentally incompetent by a final judgment of a court;

(4) have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities;

(5) have resided continuously in this state for 12 months and in the county in which the district is located for six months immediately preceding the date of the appointment; and

(6) be a person knowledgeable in the field of health care.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.053. TERM OF MEMBERS OF COMMISSION. The members of the commission serve staggered two-year terms.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.054. VACANCY. (a) If a vacancy occurs on the commission, the commissioners court of the county in which the district is located shall appoint a qualified person to fill the vacancy not later than the 30th day after the date the vacancy occurs.

(b) If the commissioners court of the county in which the district is located does not appoint a member to the commission to fill a vacancy by the 30th day after the date the vacancy occurs, the remaining members of the commission may, by vote of the commission, appoint a replacement.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.055. OFFICERS. (a) Each commission shall elect a chairperson and a secretary from among its members.

(b) The chairperson and secretary shall each serve in that office until the expiration of their term as a member of the commission.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.056. COMPENSATION; EXPENSES. A member of the commission serves without compensation but may, on the approval of the entire commission, be reimbursed for actual expenses incurred in the performance of the member's official duties.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.057. EMPLOYEES AND INDEPENDENT CONTRACTORS. The commission may employ an attorney, financial advisor, and bookkeeper for the district or contract for those services.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.058. MAINTENANCE OF RECORDS; PUBLIC INSPECTION. Except as otherwise provided by law, all district records, including books, accounts, notices, minutes, and all other matters of the district and the operation of its facilities, shall be:

(1) maintained at the district office; and

(2) open to public inspection at the district office during reasonable hours.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 290.101. LIMITATION ON TAXING AUTHORITY. Each district may impose taxes only in the manner provided by this chapter.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.102. MAJORITY VOTE REQUIRED. (a) A district may not impose any tax authorized by this chapter, spend any money, including for the administrative expenses of the district, or conduct any other business of the commission without an affirmative vote of a majority of the members of the commission.

(b) Before imposing a tax under this chapter in any one year, the commission must obtain the affirmative vote required by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.103. ELECTION REQUIRED FOR CERTAIN EXPENDITURES. (a) In addition to the majority vote required under Section 290.102, a district may not spend any money of the district unless the district receives the approval of at least 95 percent of the district taxpayers.

(b) This section does not apply to expenditures related to the administrative matters of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.104. RULES AND PROCEDURES. (a) The commission may adopt rules governing the operation of the district, including rules relating to the administration of a tax authorized by this chapter.

(b) In order to implement the requirements of Sections 290.102 and 290.103, the commission shall adopt any necessary procedures.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.105. PURCHASING AND ACCOUNTING PROCEDURES. (a) The commission may prescribe the method and manner for making purchases and expenditures by the district.

(b) The commission shall prescribe:

(1) all accounting and control procedures; and

(2) the method of purchasing necessary supplies, materials, and equipment.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.106. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) A district shall require an institutional health care provider to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the department to implement those sections.

(b) A district may inspect the records of an institutional health care provider to the extent necessary to ensure that the provider has submitted all required data under this section.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.107. AUTHORITY TO SUE AND BE SUED. Each district may sue and be sued in its own name in any court of this state as a governmental agency.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 290.151. BUDGET. (a) Each year, the commission shall

prepare a budget for the following fiscal year that includes:

(1) proposed expenditures and disbursements;

(2) estimated receipts and collections; and

(3) the rates and amounts of any taxes that the commission intends to impose during the year.

(b) The commission shall hold a public hearing on the proposed budget. Not later than the 10th day before the date of the hearing, the commission shall publish at least once notice of the hearing in a newspaper of general circulation in the county in which the district is located.

(c) Any district taxpayer is entitled to appear at the time and place designated in the public notice and to be heard regarding any item shown in the proposed budget.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.152. FISCAL YEAR. Each district's fiscal year begins on September 1 and ends on August 31 of each year.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.153. ANNUAL AUDIT. (a) For each fiscal year, each commission shall have an independent audit made of the district's books and records.

(b) Not later than December 31 of each year, the audit made for a district shall be filed with the comptroller and at the office of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.154. DEPOSITORY. (a) Each commission by resolution shall designate one or more banks located in the district as the depository for the district. A bank designated as depository serves for two years or until a successor is designated.

(b) All income received by a district, including tax revenue

after deducting discounts and fees for assessing and collecting the taxes, shall be deposited with the district depository and may be withdrawn only as provided by this chapter.

(c) All district funds shall be secured in the manner provided for securing county funds.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

SUBCHAPTER E. TAXES

Sec. 290.201. TAX ON EMERGENCY ROOM SERVICES. (a) The commission of a district may impose an annual tax to be assessed quarterly on all emergency room visits to an institutional health care provider located in the district. In the first year in which the tax is imposed, the tax is assessed on the total number of emergency room visits of an institutional health care provider reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2003. The district shall update this tax basis with the number of emergency room visits reported on a biennial basis.

(b) A tax imposed under this section must be imposed uniformly on each institutional health care provider of emergency room services located in the district. A tax imposed under this section also may not hold harmless any institutional health care provider of emergency room services, as required under 42 U.S.C. Section 1396b(w).

(c) The commission shall set the rate of the tax imposed under this section. The rate may not exceed $100 for each emergency room visit.

(d) Subject to the maximum tax rate prescribed by Subsection (c), the commission shall set the rate of the tax at a rate that will generate sufficient revenue to cover the administrative expenses of the district, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of tax revenue used for administrative expenses of the district in a year may not exceed the lesser of four percent of the total revenue generated from the tax or $20,000.

(e) An institutional health care provider may not add a tax imposed under this section as a surcharge to a patient.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June

18, 2005.

Sec. 290.202. ASSESSMENT AND COLLECTION OF TAXES. (a) Except as provided by Subsection (b), the county tax assessor-collector shall collect any tax imposed under this subchapter unless the commission employs a tax assessor and collector for the district. The county tax assessor-collector shall charge and deduct from taxes collected for the district a fee for collecting the tax in an amount determined by the commission, not to exceed the county tax assessor-collector's usual and customary charges for the collection of similar taxes.

(b) If determined by the commission to be appropriate, the commission may contract for the assessment and collection of taxes in the manner provided by Title 1, Tax Code, for the assessment and collection of ad valorem taxes.

(c) Revenue from a fee charged by a county tax assessor-collector for collecting the tax shall be deposited in the county general fund and, if appropriate, shall be reported as fees of the county tax assessor-collector.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.203. USE OF TAX REVENUE. Revenue generated by a district from a tax imposed under this subchapter may be used only to:

(1) provide the nonfederal share of a Medicaid supplemental payment program;

(2) subsidize indigent programs; and

(3) pay administrative expenses of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.204. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on taxes imposed under this subchapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.205. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue from a tax imposed by the district to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a tax under this chapter to be ineligible for federal matching funds, the district may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.206. ELECTION REQUIRED FOR CERTAIN PROVISIONS OR PROCEDURES. (a) In order to amend any provision or procedure set out in this chapter, the district must obtain the approval of at least 95 percent of the institutional health care providers potentially subject to the tax.

(b) This section does not apply to rules or procedures related to the daily administrative matters of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

CHAPTER 291. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES IN THE TEXAS-LOUISIANA BORDER REGION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 291.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.

Sec. 291.002. APPLICABILITY. This chapter applies only to a county that:

(1) is not served by a hospital district or a public hospital;

(2) is located in the Texas-Louisiana border region, as that region is defined by Section 2056.002, Government Code; and

(3) has a population of more than 51,000 but less than 65,000.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 84, eff. September 1, 2023.

Sec. 291.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 291.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.

Sec. 291.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.

Sec. 291.053. RULES AND PROCEDURES. After the commissioners court has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.

Sec. 291.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 291.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 4, eff. June 12, 2017.

Sec. 291.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county. A bank designated as a depository serves for two years or until a successor is designated.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.

Sec. 291.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital;

(5) refund to paying hospitals the proportionate share of money received by the county from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; and

(6) refund to paying hospitals the proportionate share of money that the county determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 5, eff. June 12, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 291.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2013 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2013 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless

any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying hospitals in the county, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the county.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund an intergovernmental transfer described by Section 291.103(c)(1), and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.

Sec. 291.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 6, eff. June 12, 2017.

Sec. 291.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest,

penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.

Sec. 291.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.

CHAPTER 291A. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 291A.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

Sec. 291A.002. APPLICABILITY. This chapter applies only to:

(1) a county that:

(A) is not served by a hospital district or a public hospital;

(B) has a population of more than 75,000; and

(C) borders or includes a portion of the Sam Rayburn Reservoir; and

(2) a county that has a population of more than 200,000 and less than 233,500.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 85, eff. September 1, 2023.

Sec. 291A.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 291A.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

Sec. 291A.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

Sec. 291A.053. RULES AND PROCEDURES. After the commissioners court has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

Sec. 291A.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 291A.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any

mandatory payments that the commissioners court intends to require during the year.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

Sec. 291A.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

Sec. 291A.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any

penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital; and

(5) refund to paying hospitals the proportionate share of money received by the county that is not used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 291A.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2015 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2015 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed six percent of the paying hospital's net patient revenue.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund an intergovernmental transfer described by Section 291A.103(c)(1), and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative

expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

Sec. 291A.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

Sec. 291A.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

Sec. 291A.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

CHAPTER 292. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 292.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

Sec. 292.002. APPLICABILITY. This chapter applies only to a county that is not served by a hospital district and:

(1) is located in the Texas-Louisiana border region, as that region is defined by Section 2056.002, Government Code, and has a population of more than 90,000 but less than 200,000; or

(2) has a population of less than 51,000 and is adjacent to a county with a population of more than 200,000 but less than 233,500.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 86, eff. September 1, 2023.

Sec. 292.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 292.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

Sec. 292.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

Sec. 292.053. RULES AND PROCEDURES. After the commissioners court has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

Sec. 292.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and

reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 292.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 7, eff. June 12, 2017.

Sec. 292.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county. A bank designated as a depository serves for two years or

until a successor is designated.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

Sec. 292.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital;

(5) refund to paying hospitals the proportionate share of money received by the county from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; and

(6) refund to paying hospitals the proportionate share of money that the county determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 8, eff. June 12, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 292.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the

mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2013 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2013 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying hospitals in the county, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the county.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

Sec. 292.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 9, eff. June 12, 2017.

Sec. 292.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

Sec. 292.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

CHAPTER 292A. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES BORDERING RED RIVER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 292A.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.002. APPLICABILITY. This chapter applies only to a county that:

(1) is not served by a hospital district or a public hospital;

(2) has a population of more than 100,000;

(3) contains at least two municipalities, each of which has a population of more than 15,000; and

(4) borders the Red River.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 292A.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.053. RULES AND PROCEDURES. After the commissioners court has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection

(a).

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 292A.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital; and

(5) refund to paying hospitals the proportionate share of money received by the county that is not used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 292A.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2015 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2015 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment

required of each paying hospital may not exceed six percent of the paying hospital's net patient revenue.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund an intergovernmental transfer described by Section 292A.103(c)(1), and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid

supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

CHAPTER 292B. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES BORDERING COUNTY CONTAINING STATE CAPITAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 292B.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.002. APPLICABILITY. This chapter applies only to a county that:

(1) is not served by a hospital district or a public hospital;

(2) has a population of more than 400,000; and

(3) is adjacent to the county containing the state capital.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a

mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 292B.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.053. RULES AND PROCEDURES. After the commissioners court of a county has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 292B.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the public hearing and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the

county.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital; and

(5) refund to paying hospitals the proportionate share of money received by the county that is not used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 292B.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2015 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2015 fiscal year or

for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed six percent of the paying hospital's net patient revenue.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund an intergovernmental transfer described by Section 292B.103(c)(1), and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest,

penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

CHAPTER 292C. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES WITH HOSPITAL DISTRICT BORDERING OKLAHOMA

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 292C.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services and that is not located within the boundaries of a hospital district.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Sec. 292C.002. APPLICABILITY. This chapter applies only to a county that:

(1) contains a hospital district that is not countywide;

(2) has a population of more than 125,000 but less than 135,000; and

(3) borders Oklahoma.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 87, eff. September 1, 2023.

Sec. 292C.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers as provided by this chapter.

(b) The commissioners court of a county may adopt an order authorizing the county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Sec. 292C.004. EXPIRATION. The authority of a county to administer and operate a program under this chapter expires December 31, 2027.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff.

June 10, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 454 (H.B. 4928), Sec. 1, eff. June 9, 2023.
Acts 2023, 88th Leg., R.S., Ch. 857 (H.B. 3456), Sec. 1, eff. June 13, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 292C.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Sec. 292C.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Sec. 292C.053. RULES AND PROCEDURES. After the commissioners court of a county has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Sec. 292C.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider located in the county to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 292C.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Sec. 292C.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Sec. 292C.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) pay the administrative expenses of the county solely for activities under this chapter;

(3) refund a portion of a mandatory payment collected in error from a paying hospital; and

(4) refund to paying hospitals the proportionate share of money received by the county that is not used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money deposited to the local provider participation fund may not be used to pay for the services of a consultant or a person required to register under Chapter 305, Government Code.

(e) Money in the local provider participation fund may not be commingled with other county funds.

(f) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 292C.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional

health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2017 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2017 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed six percent of the paying hospital's net patient revenue.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter and to fund an intergovernmental transfer described by Section 292C.103(c)(1), except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed $20,000, plus the cost of collateralization of deposits. If the county demonstrates to the paying hospitals that the costs of administering the program under this chapter, excluding those costs associated with the collateralization of deposits, exceed $20,000 in any year, on consent of a majority of the paying hospitals, the county may use additional revenue from mandatory payments received under this chapter to compensate the county for its administrative expenses. A

paying hospital may not unreasonably withhold consent to compensate the county for administrative expenses.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Sec. 292C.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Sec. 292C.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Sec. 292C.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the

requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

CHAPTER 292D. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES BORDERING NECHES RIVER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 292D.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Sec. 292D.002. APPLICABILITY. This chapter applies only to a county that:

(1) is not served by a hospital district;

(2) has a population of more than 250,000; and

(3) borders the Neches River.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Sec. 292D.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county as provided by Section 292D.103(c).

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 292D.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENTS. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Sec. 292D.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Sec. 292D.053. RULES AND PROCEDURES. The commissioners court may adopt rules relating to the administration of the program, including the collection of a mandatory payment, expenditures, an audit, and any other administrative aspect of the program.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Sec. 292D.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) If the commissioners court of a county authorizes the county to participate in a program under this chapter, the commissioners court shall require each institutional health care

provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 292D.101. HEARING. (a) In each year that the commissioners court of a county authorizes a program under this chapter, the commissioners court shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county and provide written notice of the hearing to each institutional health care provider located in the county.

(c) A representative of a paying hospital is entitled to appear at the public hearing and be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Sec. 292D.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county.

(b) All income received by a county under this chapter,

including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Sec. 292D.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to nonpublic hospitals, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs;

(B) uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the county is

located;

(C) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to nonpublic hospitals described by Paragraph (A) or (B);

(D) payments to Medicaid managed care organizations that are dedicated for payment to hospitals; or

(E) any reimbursement to nonpublic hospitals for which federal matching funds are available;

(2) subject to Section 292D.151(d), pay the administrative expenses of the county in administering the program, including collateralization of deposits;

(3) refund all or a portion of a mandatory payment collected in error from a paying hospital;

(4) refund to paying hospitals a proportionate share of the money attributable to mandatory payments collected under this chapter that the county:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments;

(5) transfer funds to the Health and Human Services Commission if the county is legally required to transfer the funds to address a disallowance of federal matching funds with respect to payments, rate enhancements, and reimbursements for which the county made intergovernmental transfers described by Subdivision (1); and

(6) reimburse the county if the county is required by the rules governing the uniform rate enhancement program described by Subdivision (1)(B) to incur an expense or forego Medicaid reimbursements from the state because the balance of the local provider participation fund is not sufficient to fund that rate enhancement program.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by the county, any funds received by the state or county as a result of the transfer may not be used by the state, county, or any other entity to:

(1) expand Medicaid eligibility under the Patient

Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152); or

(2) fund the nonfederal share of payments to nonpublic hospitals available through the Medicaid disproportionate share hospital program.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 292D.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), if the commissioners court of a county authorizes a program under this chapter, the commissioners court may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court shall provide that the mandatory payment is to be assessed at least annually, but not more often than quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The commissioners court shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount

of the mandatory payment. The aggregate amount of the mandatory payment required of all paying hospitals may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying hospitals in the county.

(d) Subject to Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter and to fund an intergovernmental transfer described by Section 292D.103(c)(1). The annual amount of revenue from mandatory payments that may be used to pay the administrative expenses of the county for activities under this chapter may not exceed $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Sec. 292D.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The county may collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter.

(b) The person charged by the county with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the county a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the county, any revenue from a collection fee charged under Subsection (b) shall be deposited in the county general fund and, if appropriate, shall be reported as fees of the county.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Sec. 292D.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Sec. 292D.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of certain Medicaid programs as described by Section 292D.103(c)(1).

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the commissioners court of the county administering the program may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the county or an institutional health care provider located in the county beyond the provisions of this chapter. This section does not require the commissioners court of a county to adopt a rule.

(c) The county may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 292D.103(c)(1) is available to the county.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

CHAPTER 292E. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 292E.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care

provider required to make a mandatory payment under this chapter.

(3) "Program" means a county health care provider participation program authorized by this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 621 (H.B. 3348), Sec. 1, eff. June 20, 2025.

Sec. 292E.002. APPLICABILITY. This chapter applies only to a county that:

(1) is not served by a hospital district; and

(2) is:

(A) a county that:

(i) has a population of more than 46,000 and less than 50,000; and

(ii) is adjacent to the county containing the state capital;

(B) a county that:

(i) has a population of 900,000 or more; and

(ii) borders two counties, each of which has a population of two million or more; or

(C) a county that:

(i) has a population of one million or more;

(ii) contains all or part of a municipality with a population of one million or more; and

(iii) is adjacent to a county with a population of 2.5 million or more.

Added by Acts 2025, 89th Leg., R.S., Ch. 621 (H.B. 3348), Sec. 1, eff. June 20, 2025.

Sec. 292E.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county as provided by Section 292E.103(b).

(b) The commissioners court of a county may adopt an order authorizing the county to participate in the program, subject to the

limitations provided by this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 621 (H.B. 3348), Sec. 1, eff. June 20, 2025.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 292E.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENTS. The commissioners court of a county may require a mandatory payment under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 621 (H.B. 3348), Sec. 1, eff. June 20, 2025.

Sec. 292E.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2025, 89th Leg., R.S., Ch. 621 (H.B. 3348), Sec. 1, eff. June 20, 2025.

Sec. 292E.053. RULES AND PROCEDURES. After the commissioners court of a county has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the program, including the collection of a mandatory payment, expenditures, an audit, and any other administrative aspect of the program.

Added by Acts 2025, 89th Leg., R.S., Ch. 621 (H.B. 3348), Sec. 1, eff. June 20, 2025.

Sec. 292E.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. (a) The commissioners court of a county that authorizes the county to participate in a program under this chapter shall require each institutional health care provider located in the county to submit to the county a copy of any financial and utilization data required by

and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court may inspect the records of an institutional health care provider in the county to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2025, 89th Leg., R.S., Ch. 621 (H.B. 3348), Sec. 1, eff. June 20, 2025.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 292E.101. HEARING. (a) In each year that the commissioners court of a county authorizes a mandatory payment under this chapter, the commissioners court shall hold a public hearing on the amounts of any mandatory payments that the county intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court shall publish notice of the hearing in a newspaper of general circulation in the county and provide written notice of the hearing to each institutional health care provider located in the county.

(c) A representative of a paying hospital is entitled to appear at the public hearing and be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 621 (H.B. 3348), Sec. 1, eff. June 20, 2025.

Sec. 292E.102. LOCAL PROVIDER PARTICIPATION FUND; DEPOSITORY. (a) The commissioners court of a county that requires a mandatory payment under this chapter shall create a local provider participation fund.

(b) If the commissioners court of a county creates a local provider participation fund, the commissioners court shall designate one or more banks as the depository for the county's local provider participation fund.

(c) The commissioners court may withdraw or use money in the county's local provider participation fund only for a purpose authorized under this chapter.

(d) All funds collected under this chapter shall be secured in the manner provided for securing other funds of the county.

Added by Acts 2025, 89th Leg., R.S., Ch. 621 (H.B. 3348), Sec. 1, eff. June 20, 2025.

Sec. 292E.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) The local provider participation fund established by a county under Section 292E.102 consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer described by Subsection (b)(1), provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(b) Money deposited to a county's local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to nonpublic hospitals authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs;

(B) uniform rate enhancements or other directed payment programs for nonpublic hospitals;

(C) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to nonpublic hospitals described by Paragraph (A) or (B); or

(D) any reimbursement to nonpublic hospitals, or that may benefit nonpublic hospitals as determined by the commissioners court, for which federal matching funds are available;

(2) subject to Section 292E.151(e), pay the administrative expenses of the county in administering the program, including

collateralization of deposits;

(3) refund all or a portion of a mandatory payment collected in error from a paying hospital; and

(4) refund to paying hospitals a proportionate share of the money that the county:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

(c) Money in the local provider participation fund may not be commingled with other county money.

(d) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (b)(1) made by the county, any funds received by the state, county, or other entity as a result of the transfer may not be used by the state, county, or other entity to:

(1) expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152); or

(2) fund the nonfederal share of payments to nonpublic hospitals available through the Medicaid disproportionate share hospital program.

Added by Acts 2025, 89th Leg., R.S., Ch. 621 (H.B. 3348), Sec. 1, eff. June 20, 2025.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 292E.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (f), if the commissioners court of a county authorizes a program under this chapter, the commissioners court shall require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court shall provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the

data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare cost report submitted for the most recent fiscal year for which the provider submitted the Medicare cost report. The commissioners court shall update the amount of the mandatory payment on an annual basis.

(b) The commissioners court of a county that requires a mandatory payment under this chapter shall provide each institutional health care provider on which the payment will be assessed written notice of an assessment under this chapter. The institutional health care provider must pay the assessment not later than the 30th day after the date the provider receives the written notice.

(c) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A program may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w) and 42 C.F.R. Section 433.68.

(d) The commissioners court of a county that requires a mandatory payment under this chapter shall set the amount of the mandatory payment. The aggregate amount of the mandatory payment required of all paying hospitals in the county may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying hospitals in the county.

(e) Subject to Subsection (d), the commissioners court of a county that requires a mandatory payment under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter and to fund an intergovernmental transfer described by Section 292E.103(b)(1). The annual amount of revenue from mandatory payments that may be used to pay the administrative expenses of the county for activities under this chapter may not exceed the following amounts, plus the collateralization of deposits, regardless of the actual expenses:

(1) for a county described by Section 292E.002(2)(A), $20,000;

(2) for a county described by Section 292E.002(2)(B),

$150,000; or

(3) for a county described by Section 292E.002(2)(C), $300,000.

(f) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2025, 89th Leg., R.S., Ch. 621 (H.B. 3348), Sec. 1, eff. June 20, 2025.

Sec. 292E.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The county may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

(b) The person charged by the county with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the county a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the county, any revenue from a collection fee charged under Subsection (b) shall be deposited in the county general fund and, if appropriate, shall be reported as fees of the county.

Added by Acts 2025, 89th Leg., R.S., Ch. 621 (H.B. 3348), Sec. 1, eff. June 20, 2025.

Sec. 292E.153. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter is to authorize a county to establish a program to enable the county to collect mandatory payments from institutional health care providers to fund the nonfederal share of certain Medicaid programs as described by Section 292E.103(b)(1).

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the commissioners court of the county administering the program may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially

expand the legal or financial liability or responsibility of the county or an institutional health care provider located in the county beyond the provisions of this chapter. This section does not require the commissioners court of a county to adopt a rule.

(c) A county administering a program may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 292E.103(b)(1) is available to the county.

(d) This chapter does not authorize a county administering a program to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for nonpublic hospitals and to cover the administrative expenses of the county associated with activities under this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 621 (H.B. 3348), Sec. 1, eff. June 20, 2025.

Sec. 292E.154. REPORTING REQUIREMENTS. (a) The commissioners court of a county that authorizes a program under this chapter shall report information to the Health and Human Services Commission regarding the program on a schedule determined by the commission.

(b) The information must include:

(1) the amount of the mandatory payments required and collected in each year the program is authorized; and

(2) any expenditure or other use of money attributable to mandatory payments collected under this chapter.

(c) The executive commissioner of the Health and Human Services Commission may adopt rules to administer this section.

Added by Acts 2025, 89th Leg., R.S., Ch. 621 (H.B. 3348), Sec. 1, eff. June 20, 2025.

Sec. 292E.155. AUTHORITY TO REFUSE FOR VIOLATION. The Health and Human Services Commission may refuse to accept money from a local provider participation fund administered under this chapter if the commission determines that acceptance of the money may violate federal law.

Added by Acts 2025, 89th Leg., R.S., Ch. 621 (H.B. 3348), Sec. 1, eff. June 20, 2025.

Sec. 292E.156. INTEREST AND PENALTIES. The county may impose and collect interest and penalties on delinquent mandatory payments assessed under this chapter in any amount that does not exceed the maximum amount authorized for other delinquent payments owed to the county.

Added by Acts 2025, 89th Leg., R.S., Ch. 621 (H.B. 3348), Sec. 1, eff. June 20, 2025.

CHAPTER 293. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 293.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 10, eff. June 12, 2017.

Sec. 293.002. APPLICABILITY. This chapter applies only to a county that:

(1) is not served by a hospital district or a public hospital;

(2) borders the county in which the State Capitol is located; and

(3) has a population of more than 100,000 but less than 300,000.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

Sec. 293.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 293.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

Sec. 293.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

Sec. 293.053. RULES AND PROCEDURES. After the commissioners court has voted to require a mandatory payment authorized under this

chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

Sec. 293.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 293.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 11, eff. June 12, 2017.

Sec. 293.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county. A bank designated as a depository serves for two years or until a successor is designated.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

Sec. 293.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching

payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital;

(5) refund to paying hospitals the proportionate share of money received by the county from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; and

(6) refund to paying hospitals the proportionate share of money that the county determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 12, eff.

June 12, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 293.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed quarterly on the net patient revenue of each institutional health care provider located in the county. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2014. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying hospitals in the county, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the county.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue

generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

Sec. 293.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 13, eff. June 12, 2017.

Sec. 293.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

Sec. 293.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

CHAPTER 293A. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES INCLUDING PORTION OF CONCHO RIVER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 293A.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means a county health care provider participation program authorized by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

Sec. 293A.002. APPLICABILITY. This chapter applies only to a county that:

(1) is not served by a hospital district or a public hospital;

(2) has a population of more than 100,000; and

(3) includes a portion of the Concho River.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

Sec. 293A.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court of a county may adopt an order authorizing the county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 293A.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

Sec. 293A.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

Sec. 293A.053. RULES AND PROCEDURES. After the commissioners court of a county has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

Sec. 293A.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider located in the county to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 293A.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the public hearing and be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

Sec. 293A.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

Sec. 293A.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital; and

(5) refund to paying hospitals the proportionate share of money received by the county that is not used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 293A.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2015 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2015 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a

mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed six percent of the paying hospital's net patient revenue.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund an intergovernmental transfer described by Section 293A.103(c)(1), and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

Sec. 293A.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

Sec. 293A.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

Sec. 293A.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue

by collecting from institutional health care providers a mandatory payment to be used to provide an intergovernmental transfer described by Section 293A.103(c)(1).

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

CHAPTER 293C. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES NOT BORDERING CERTAIN POPULOUS COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 293C.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means a county health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

Sec. 293C.002. APPLICABILITY. This chapter applies only to a county that:

(1) is not served by a hospital district or a public hospital;

(2) has a population of more than 140,000 and less than 155,000; and

(3) is not adjacent to a county with a population of 1.2 million or more.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 88, eff. September 1, 2023.

Sec. 293C.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court of a county may adopt an order authorizing the county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 293C.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

Sec. 293C.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

Sec. 293C.053. RULES AND PROCEDURES. After the commissioners court of a county has voted to require a mandatory payment authorized

under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

Sec. 293C.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider located in the county to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 293C.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the public hearing and be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff.

May 31, 2019.

Sec. 293C.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

Sec. 293C.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the

state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital; and

(5) refund to paying hospitals the proportionate share of money received by the county that is not used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 293C.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the

mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2017 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2017 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed six percent of the hospital's net patient revenue.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund an intergovernmental transfer described by Section 293C.103(c)(1), and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

Sec. 293C.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS.

The county may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

Sec. 293C.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

Sec. 293C.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide an intergovernmental transfer described by Section 293C.103(c)(1).

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

CHAPTER 294. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES CONTAINING A PRIVATE UNIVERSITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 294.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider

participation program authorized by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 14, eff. June 12, 2017.

Sec. 294.002. APPLICABILITY. This chapter applies only to a county that:

(1) is not served by a hospital district or a public hospital;

(2) contains a private institution of higher education with a student enrollment of more than 12,000; and

(3) has a population of less than 265,000.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 89, eff. September 1, 2023.

Sec. 294.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 294.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.

Sec. 294.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.

Sec. 294.053. RULES AND PROCEDURES. After the commissioners court has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.

Sec. 294.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 294.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 15, eff. June 12, 2017.

Sec. 294.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county. A bank designated as a depository serves for two years or until a successor is designated.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.

Sec. 294.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital;

(5) refund to paying hospitals the proportionate share of money received by the county from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid

supplemental payment program payments; and

(6) refund to paying hospitals the proportionate share of money that the county determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 16, eff. June 12, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 294.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed quarterly on the net patient revenue of each institutional health care provider located in the county. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2014. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying hospitals in the county, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the county.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.

Sec. 294.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 17, eff. June 12, 2017.

Sec. 294.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem

taxes.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.

Sec. 294.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.

CHAPTER 295A. CITY OF AMARILLO HOSPITAL DISTRICT HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 295A.001. PURPOSE. The purpose of this chapter is to authorize the district to administer a health care provider participation program to provide additional compensation to hospitals in the district by collecting mandatory payments from each hospital in the district to be used to provide the nonfederal share of a Medicaid supplemental payment program and for other purposes as authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

Sec. 295A.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of the district.

(2) "District" means the City of Amarillo Hospital

District.

(3) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(4) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means the health care provider participation program authorized by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

Sec. 295A.003. APPLICABILITY. This chapter applies only to the City of Amarillo Hospital District.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

Sec. 295A.004. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. The board may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 295A.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter by an institutional health care provider in the district only in the manner provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

Sec. 295A.052. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the health care provider

participation program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

Sec. 295A.053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a health care provider participation program under this chapter, the board shall require each institutional health care provider to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 295A.101. HEARING. (a) In each year that the board authorizes a health care provider participation program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district and provide written notice of the hearing to the chief operating officer of each institutional health care provider in the district.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

Sec. 295A.102. LOCAL PROVIDER PARTICIPATION FUND; DEPOSITORY. (a) If the board collects a mandatory payment authorized under this chapter, the board shall create a local provider participation fund

in one or more banks designated by the district as a depository for public funds.

(b) The board may withdraw or use money in the fund only for a purpose authorized under this chapter.

(c) All funds collected under this chapter shall be secured in the manner provided by Chapter 1001, Special District Local Laws Code, for securing other public funds of the district.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

Sec. 295A.103. DEPOSITS TO FUND; AUTHORIZED USES OF MONEY. (a) The local provider participation fund established under Section 295A.102 consists of:

(1) all mandatory payments authorized under this chapter and received by the district;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the district to the state as the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(b) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) pay costs associated with indigent care provided by institutional health care providers in the district;

(3) pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(4) refund a portion of a mandatory payment collected in error from a paying hospital; and

(5) refund to paying hospitals a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

(c) Money in the local provider participation fund may not be commingled with other district funds.

(d) An intergovernmental transfer of funds described by Subsection (b)(1) and any funds received by the district as a result of an intergovernmental transfer described by that subsection may not be used by the district or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 295A.151. MANDATORY PAYMENTS. (a) Except as provided by Subsection (e), if the board authorizes a health care provider participation program under this chapter, the board shall require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the district. The board shall provide that the mandatory payment is to be collected at least annually, but not more often than quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent

fiscal year for which the provider submitted the Medicare cost report. The district shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be a uniform percentage of the amount of net patient revenue generated by each paying hospital in the district. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The aggregate amount of the mandatory payments required of all paying hospitals in the district may not exceed six percent of the aggregate net patient revenue of all paying hospitals in the district.

(d) Subject to the maximum amount prescribed by Subsection (c), the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter, fund an intergovernmental transfer described by Section 295A.103(b)(1), or make other payments authorized under this chapter. The amount of revenue from mandatory payments that may be used for administrative expenses by the district in a year may not exceed $25,000, plus the cost of collateralization of deposits. If the board demonstrates to the paying hospitals that the costs of administering the health care provider participation program under this chapter, excluding those costs associated with the collateralization of deposits, exceed $25,000 in any year, on consent of all of the paying hospitals, the district may use additional revenue from mandatory payments received under this chapter to compensate the district for its administrative expenses. A paying hospital may not unreasonably withhold consent to compensate the district for administrative expenses.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient or insurer.

(f) A mandatory payment under this chapter is not a tax for purposes of Section 5(a), Article IX, Texas Constitution, or Chapter 1001, Special District Local Laws Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

Sec. 295A.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The district may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

Sec. 295A.153. CORRECTION OF INVALID PROVISION OR PROCEDURE. To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

CHAPTER 296. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 296.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

Sec. 296.002. APPLICABILITY. This chapter applies only to a county that:

(1) is not served by a hospital district or a public hospital; and

(2) has a population of less than 235,000 and contains two municipalities both with populations of 83,000 or more.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 91, eff. September 1, 2023.

Sec. 296.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 296.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

Sec. 296.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of

a majority of the members of the commissioners court.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

Sec. 296.053. RULES AND PROCEDURES. After the commissioners court has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

Sec. 296.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 296.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing

required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 21, eff. June 12, 2017.

Sec. 296.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county. A bank designated as a depository serves for two years or until a successor is designated.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

Sec. 296.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to

mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital;

(5) refund to paying hospitals the proportionate share of money received by the county from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; and

(6) refund to paying hospitals the proportionate share of money that the county determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No.

111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 22, eff. June 12, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 296.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2013 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2013 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed an amount that, when added to the amount of the mandatory payments required from all other

paying hospitals in the county, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the county.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund an intergovernmental transfer described by Section 296.103(c)(1), and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

Sec. 296.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 23, eff. June 12, 2017.

Sec. 296.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

Sec. 296.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

CHAPTER 296A. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES BORDERING TWO POPULOUS COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 296A.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

Sec. 296A.002. APPLICABILITY. This chapter applies only to a county that:

(1) is not served by a hospital district or a public hospital; and

(2) has a population of less than 600,000 and borders two counties both with populations of 1.1 million or more.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 92, eff. September 1, 2023.

Sec. 296A.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 296A.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

Sec. 296A.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

Sec. 296A.053. RULES AND PROCEDURES. After the commissioners court has voted to require a mandatory payment authorized under this

chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

Sec. 296A.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 296A.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the 10th day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

Sec. 296A.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county. A bank designated as a depository serves for two years or until a successor is designated.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

Sec. 296A.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund

may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital; and

(5) refund to paying hospitals the proportionate share of money received by the county from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by Subsection (c)(1) may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 296A.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional

health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2017 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2017 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying hospitals in the county, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the county.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

Sec. 296A.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

Sec. 296A.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

Sec. 296A.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

CHAPTER 297. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES CONTAINING A MILITARY BASE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 297.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 24, eff. June 12, 2017.

Sec. 297.002. APPLICABILITY. This chapter applies only to a county:

(1) that is not served by a hospital district or a public hospital;

(2) on which a military base with more than 30,000 military personnel is partially located; and

(3) that has a population of more than 300,000.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

Sec. 297.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 297.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

Sec. 297.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

Sec. 297.053. RULES AND PROCEDURES. After the commissioners court has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

Sec. 297.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection

(a).

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 297.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 25, eff. June 12, 2017.

Sec. 297.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county. A bank designated as a depository serves for two years or until a successor is designated.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner

provided for securing county funds.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

Sec. 297.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital;

(5) refund to paying hospitals the proportionate share of

money received by the county from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; and

(6) refund to paying hospitals the proportionate share of money that the county determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 26, eff. June 12, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 297.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed quarterly on the net patient revenue of each institutional health care provider located in the county. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2013. The county may update the amount of the mandatory payment on an annual basis based on data reported to the Department of State Health Services in a more recent fiscal year.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net

patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying hospitals in the county, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the county.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

Sec. 297.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 27, eff. June 12, 2017.

Sec. 297.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

Sec. 297.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

For expiration of this chapter, see Section 298A.004.

CHAPTER 298A. DALLAS COUNTY HOSPITAL DISTRICT HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 298A.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of the district.

(2) "District" means the Dallas County Hospital District.

(3) "Institutional health care provider" means a nonpublic hospital located in the district that provides inpatient hospital services.

(4) "Paying provider" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means the health care provider participation program authorized by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

Sec. 298A.002. APPLICABILITY. This chapter applies only to the Dallas County Hospital District.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

Sec. 298A.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. The board may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

Sec. 298A.004. EXPIRATION. (a) Subject to Section 298A.153(d), the authority of the district to administer and operate a program under this chapter expires December 31, 2027.

(b) This chapter expires December 31, 2027.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 194 (H.B. 2326), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 857 (H.B. 3456), Sec. 2, eff. June 13, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 298A.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter by an institutional health care provider in the district only in the manner provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

Sec. 298A.052. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

Sec. 298A.053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a program under this chapter, the board shall require each institutional health care provider to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 298A.101. HEARING. (a) In each year that the board authorizes a program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district and provide written notice of the hearing to each institutional health care provider in the district.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

Sec. 298A.102. DEPOSITORY. (a) If the board requires a mandatory payment authorized under this chapter, the board shall designate one or more banks as a depository for the district's local provider participation fund.

(b) All funds collected under this chapter shall be secured in the manner provided for securing other district funds.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

Sec. 298A.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) If the district requires a mandatory payment authorized under this chapter, the district shall create a local provider participation fund.

(b) The local provider participation fund consists of:

(1) all revenue received by the district attributable to mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer under the program, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund of the district may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to nonpublic hospitals affiliated with the district, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(B) uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the district is located;

(C) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to nonpublic hospitals described by Subdivision (A) or (B); or

(D) any reimbursement to nonpublic hospitals for which

federal matching funds are available;

(2) subject to Section 298A.151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund a mandatory payment collected in error from a paying provider;

(4) refund to paying providers a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments;

(5) transfer funds to the Health and Human Services Commission if the district is legally required to transfer the funds to address a disallowance of federal matching funds with respect to programs for which the district made intergovernmental transfers described by Subdivision (1); and

(6) reimburse the district if the district is required by the rules governing the uniform rate enhancement program described by Subdivision (1)(B) to incur an expense or forego Medicaid reimbursements from the state because the balance of the local provider participation fund is not sufficient to fund that rate enhancement program.

(d) Money in the local provider participation fund may not be commingled with other district funds.

(e) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by the district, any funds received by the state, district, or other entity as a result of that transfer may not be used by the state, district, or any other entity to:

(1) expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152); or

(2) fund the nonfederal share of payments to nonpublic hospitals available through the Medicaid disproportionate share hospital program or the delivery system reform incentive payment program.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 298A.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER NET PATIENT REVENUE. (a) Except as provided by Subsection (e), if the board authorizes a health care provider participation program under this chapter, the board may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the district. The board may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. If the mandatory payment is required, the district shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying provider in the district as permitted under federal law. A health care provider participation program authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) If the board requires a mandatory payment authorized under this chapter, the board shall set the amount of the mandatory payment, subject to the limitations of this chapter. The aggregate amount of the mandatory payments required of all paying providers in the district may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying providers in the district.

(d) Subject to Subsection (c), if the board requires a mandatory payment authorized under this chapter, the board shall set

the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 298A.103(c)(1). The annual amount of revenue from mandatory payments that shall be paid for administrative expenses by the district is $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying provider may not add a mandatory payment required under this section as a surcharge to a patient.

(f) A mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of Section 4, Article IX, Texas Constitution, or Section 281.045.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

Sec. 298A.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) The person charged by the district with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the district a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the district, any revenue from a collection fee charged under Subsection (b) shall be deposited in the district general fund and, if appropriate, shall be reported as fees of the district.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

Sec. 298A.153. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter is to authorize the district to establish a program to enable the district to collect mandatory payments from institutional health care providers to fund the nonfederal share of a Medicaid supplemental

payment program or the Medicaid managed care rate enhancements for nonpublic hospitals to support the provision of health care by institutional health care providers to district residents in need of health care.

(b) This chapter does not authorize the district to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for nonpublic hospitals and to cover the administrative expenses of the district associated with activities under this chapter.

(c) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

(d) The district may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 298A.103(c)(1) is available to the district.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

CHAPTER 298B. TARRANT COUNTY HOSPITAL DISTRICT HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 298B.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of the district.

(2) "District" means the Tarrant County Hospital District.

(3) "Institutional health care provider" means a nonpublic hospital located in the district that provides inpatient hospital services.

(4) "Paying provider" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means the health care provider participation program authorized by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

Sec. 298B.002. APPLICABILITY. This chapter applies only to the Tarrant County Hospital District.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

Sec. 298B.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. The board may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

Sec. 298B.004. EXPIRATION OF AUTHORITY. (a) Subject to Sections 298B.153(d) and 298B.154, the authority of the district to administer and operate a program under this chapter expires December 31, 2027.

(b) Subsection (a) does not affect the authority of the district to require and collect a mandatory payment under Section 298B.154 after December 31, 2027, if necessary.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 100 (H.B. 2324), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 857 (H.B. 3456), Sec. 3, eff. June 13, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 298B.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter by an institutional health care provider in the district only in the manner provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

Sec. 298B.052. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

Sec. 298B.053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a program under this chapter, the board shall require each institutional health care provider to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 298B.101. HEARING. (a) In each year that the board authorizes a program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing

required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district and provide written notice of the hearing to each institutional health care provider in the district.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

Sec. 298B.102. DEPOSITORY. (a) If the board requires a mandatory payment authorized under this chapter, the board shall designate one or more banks as a depository for the district's local provider participation fund.

(b) All funds collected under this chapter shall be secured in the manner provided for securing other district funds.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

Sec. 298B.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) If the district requires a mandatory payment authorized under this chapter, the district shall create a local provider participation fund.

(b) The local provider participation fund consists of:

(1) all revenue received by the district attributable to mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer under the program, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund of the district may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to nonpublic hospitals affiliated with the district, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(B) uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the district is located;

(C) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to nonpublic hospitals described by Paragraph (A) or (B); or

(D) any reimbursement to nonpublic hospitals for which federal matching funds are available;

(2) subject to Section 298B.151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund a mandatory payment collected in error from a paying provider;

(4) refund to paying providers a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments;

(5) transfer funds to the Health and Human Services Commission if the district is legally required to transfer the funds to address a disallowance of federal matching funds with respect to programs for which the district made intergovernmental transfers described by Subdivision (1); and

(6) reimburse the district if the district is required by the rules governing the uniform rate enhancement program described by Subdivision (1)(B) to incur an expense or forego Medicaid reimbursements from the state because the balance of the local provider participation fund is not sufficient to fund that rate enhancement program.

(d) Money in the local provider participation fund may not be commingled with other district funds.

(e) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by the district, any funds received by the state, district, or other entity as a result of that transfer may not be used by the state, district, or any other entity to:

(1) expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended

by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152); or

(2) fund the nonfederal share of payments to nonpublic hospitals available through the Medicaid disproportionate share hospital program or the delivery system reform incentive payment program.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 298B.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER NET PATIENT REVENUE. (a) Except as provided by Subsection (e), if the board authorizes a health care provider participation program under this chapter, the board may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the district. The board may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. If the mandatory payment is required, the district shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying provider in the district as permitted under federal law. A health care provider participation program authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) If the board requires a mandatory payment authorized under this chapter, the board shall set the amount of the mandatory

payment, subject to the limitations of this chapter. The aggregate amount of the mandatory payments required of all paying providers in the district may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying providers in the district.

(d) Subject to Subsection (c), if the board requires a mandatory payment authorized under this chapter, the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 298B.103(c)(1). The annual amount of revenue from mandatory payments that shall be paid for administrative expenses by the district is $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying provider may not add a mandatory payment required under this section as a surcharge to a patient.

(f) A mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of Section 4, Article IX, Texas Constitution, or Section 281.045.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

Sec. 298B.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) The person charged by the district with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the district a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the district, any revenue from a collection fee charged under Subsection (b) shall be deposited in the district general fund and, if appropriate, shall be reported as fees of the district.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

Sec. 298B.153. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter is to authorize the district to establish a program to enable the district to collect mandatory payments from institutional health care providers to fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for nonpublic hospitals to support the provision of health care by institutional health care providers to district residents in need of health care.

(b) This chapter does not authorize the district to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for nonpublic hospitals and to cover the administrative expenses of the district associated with activities under this chapter.

(c) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

(d) The district may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 298B.103(c)(1) is available to the district.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

Sec. 298B.154. FEDERAL DISALLOWANCE. Notwithstanding any other provision of this chapter, if the Centers for Medicare and Medicaid Services issues a disallowance of federal matching funds for a

purpose for which intergovernmental transfers described by Section 298B.103(c)(1) were made and the Health and Human Services Commission demands repayment from the district of federal funds paid to the district for that purpose, the district may require and collect mandatory payments from each paying provider that received those federal funds in an amount sufficient to satisfy the repayment demand made by the commission. The percentage limitation prescribed by Section 298B.151(c) does not apply to a mandatory payment required under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

CHAPTER 298C. NUECES COUNTY HOSPITAL DISTRICT HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 298C.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of the district.

(2) "District" means the Nueces County Hospital District.

(3) "Institutional health care provider" means a hospital that is not owned and operated by a federal or state government and provides inpatient hospital services.

(4) "Paying provider" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means the health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

Sec. 298C.002. APPLICABILITY. This chapter applies only to the Nueces County Hospital District.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

Sec. 298C.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM;

PARTICIPATION IN PROGRAM. The board may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 298C.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter by an institutional health care provider located in the district only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

Sec. 298C.052. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

Sec. 298C.053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a program under this chapter, the board shall require each institutional health care provider located in the district to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 298C.101. HEARING. (a) In each fiscal year that the board authorizes a program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district and provide written notice of the hearing to each institutional health care provider located in the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

Sec. 298C.102. DEPOSITORY. (a) If the board requires a mandatory payment authorized under this chapter, the board shall designate one or more banks as a depository for the district's local provider participation fund.

(b) All funds collected under this chapter shall be secured in the manner provided for securing other district funds.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

Sec. 298C.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) If the district requires a mandatory payment authorized under this chapter, the district shall create a local provider participation fund.

(b) The local provider participation fund consists of:

(1) all revenue received by the district attributable to mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer under the program, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund of the district may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to hospitals in the Medicaid managed care service area in which the district is located, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(B) delivery system reform incentive payments, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(C) uniform rate enhancements for hospitals in the Medicaid managed care service area in which the district is located;

(D) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to hospitals described by Paragraph (A), (B), or (C); or

(E) any reimbursement to hospitals for which federal matching funds are available;

(2) subject to Section 298C.151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund a mandatory payment collected in error from a paying provider;

(4) refund to paying providers a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments or uniform rate enhancements described by Subdivision (1)(C); or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments or uniform rate enhancements described by Subdivision (1)(C);

(5) transfer funds to the Health and Human Services Commission if the district is legally required to transfer the funds to address a disallowance of federal matching funds with respect to programs for which the district made intergovernmental transfers described by Subdivision (1); and

(6) reimburse the district if the district is required by the rules governing the uniform rate enhancement program described by

Subdivision (1)(C) to incur an expense or forego Medicaid reimbursements from the state because the balance of the local provider participation fund is not sufficient to fund that rate enhancement program.

(d) Money in the local provider participation fund may not be commingled with other district funds.

(e) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by the district, any funds received by the state, district, or other entity as a result of that transfer may not be used by the state, district, or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 298C.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER NET PATIENT REVENUE. (a) Except as provided by Subsection (e), if the board authorizes a health care provider participation program under this chapter, the board may require a mandatory payment to be assessed, either annually or periodically throughout the fiscal year at the discretion of the board, on the net patient revenue of each institutional health care provider located in the district. The board shall provide an institutional health care provider written notice of each assessment under this subsection, and the provider has 30 calendar days following the date of receipt of the notice to pay the assessment. In the first fiscal year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for

which the provider submitted the Medicare cost report. If the mandatory payment is required, the district shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment assessed under this chapter by the board must be uniformly proportionate with the amount of net patient revenue generated by each paying provider in the district as permitted under federal law. A health care provider participation program authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) If the board requires a mandatory payment authorized under this chapter, the board shall set the amount of the mandatory payment, subject to the limitations of this chapter. The aggregate amount of the mandatory payments required of all paying providers in the district may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying providers in the district.

(d) Subject to Subsection (c), if the board requires a mandatory payment authorized under this chapter, the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 298C.103(c)(1). The annual amount of revenue from mandatory payments that shall be paid for administrative expenses by the district is $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying provider may not add a mandatory payment required under this section as a surcharge to a patient.

(f) A mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of Section 4, Article IX, Texas Constitution, or Section 281.045 of this code.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

Sec. 298C.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) The person charged by the district with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the district a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the district, any revenue from a collection fee charged under Subsection (b) shall be deposited in the district general fund and, if appropriate, shall be reported as fees of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

Sec. 298C.153. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter is to authorize the district to establish a program to enable the district to collect mandatory payments from institutional health care providers to fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for hospitals to support the provision of health care by institutional health care providers located in the district.

(b) This chapter does not authorize the district to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for hospitals and to cover the administrative expenses of the district associated with activities under this chapter.

(c) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

(d) The district may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 298C.103(c)(1) is available to at least one institutional health care provider located in the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

CHAPTER 298D. LUBBOCK COUNTY HOSPITAL DISTRICT OF LUBBOCK COUNTY, TEXAS: HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 298D.001. PURPOSE. The purpose of this chapter is to authorize the district to administer a health care provider participation program to provide additional compensation to nonpublic hospitals by collecting mandatory payments from each nonpublic hospital in the district to be used to provide the nonfederal share of a Medicaid supplemental payment program and for other purposes as authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

Sec. 298D.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of the district.

(2) "District" means the Lubbock County Hospital District of Lubbock County, Texas.

(3) "Institutional health care provider" means a nonpublic hospital located in the district that provides inpatient hospital services.

(4) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means the health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff.

June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

Sec. 298D.003. APPLICABILITY. This chapter applies only to the Lubbock County Hospital District of Lubbock County, Texas.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

Sec. 298D.004. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. The board may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 298D.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter from an institutional health care provider in the district only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

Sec. 298D.052. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a program under this chapter, the board shall require each institutional health

care provider to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

Sec. 298D.053. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the health care provider participation program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 298D.101. HEARING. (a) In each year that the board authorizes a program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district and provide written notice of the hearing to the chief operating officer of each institutional health care provider in the district.

(c) The board's determination of the amount of mandatory payments to be collected during the year must be shown to be based on reasonable estimates of the amount of revenue necessary to fund intergovernmental transfers from the district to the state providing the nonfederal share of payments described by Section 298D.103(b)(1) that is otherwise unfunded.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.002(13), eff. September 1, 2021.

Sec. 298D.102. LOCAL PROVIDER PARTICIPATION FUND; DEPOSITORY. (a) If the board collects a mandatory payment authorized under this chapter, the board shall create a local provider participation fund in one or more banks located in the district that are designated by the district as a depository for public funds.

(b) All money received by the district under this chapter, including the amount of revenue from mandatory payments remaining after deducting any discounts and fees for assessing and collecting the payments, shall be deposited with a depository designated under Subsection (a).

(c) The board may withdraw or use money in the fund only for a purpose authorized under this chapter.

(d) All funds collected under this chapter shall be secured in the manner provided by Chapter 1053, Special District Local Laws Code, for securing public funds of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

Sec. 298D.103. DEPOSITS TO FUND; AUTHORIZED USES OF MONEY. (a) The local provider participation fund established under Section 298D.102 consists of:

(1) all mandatory payments authorized under this chapter and received by the district;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the district to the state as the nonfederal share of Medicaid supplemental payment program payments, provided that the

intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(b) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care and delivery system reform incentive payments to nonpublic hospitals, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(B) uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the district is located;

(C) payments available to nonpublic hospitals under another waiver program authorizing payments that are substantially similar to Medicaid payments to nonpublic hospitals described by Paragraph (A) or (B); or

(D) any reimbursement to nonpublic hospitals for which federal matching funds are available;

(2) subject to Section 298D.151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund a portion of a mandatory payment collected in error from a paying hospital; and

(4) refund to paying hospitals a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments described by Subdivision (1); or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments described by Subdivision (1).

(c) Money in the local provider participation fund may not be commingled with other district funds.

(d) An intergovernmental transfer of funds described by Subsection (b)(1) and any funds received by the district as a result of an intergovernmental transfer described by that subsection may not

be used by the district or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.002(14), eff. September 1, 2021.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 298D.151. MANDATORY PAYMENTS. (a) If the board authorizes a program under this chapter, the board shall require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the district. The board may provide that the mandatory payment is to be collected at least annually, but not more often than quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The district shall update the amount of the mandatory payment on an annual basis and may update the amount on a more frequent basis.

(b) The amount of a mandatory payment authorized under this chapter must be a uniform percentage of the amount of net patient revenue generated by each paying hospital in the district. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The aggregate amount of the mandatory payments required of all paying hospitals in the district may not exceed six percent of the aggregate net patient revenue of all paying hospitals in the district.

(d) Subject to the maximum amount prescribed by Subsection (c) and this subsection, the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter, fund an intergovernmental transfer described by Section 298D.103(b)(1), or make other payments authorized under this chapter. The amount of the mandatory payments must be based on reasonable estimates of the amount of revenue necessary to cover the administrative expenses, intergovernmental transfers, and other payments described by this subsection as authorized under this chapter. The amount of revenue from mandatory payments that may be used for administrative expenses by the district in a year may not exceed $25,000, plus the cost of collateralization of deposits. If the board demonstrates to the paying hospitals that the costs of administering the program under this chapter, excluding those costs associated with the collateralization of deposits, exceed $25,000 in any year, on consent of all of the paying hospitals, the district may use additional revenue from mandatory payments received under this chapter to compensate the district for its administrative expenses. A paying hospital may not unreasonably withhold consent to compensate the district for administrative expenses.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient or insurer.

(f) A mandatory payment under this chapter is not a tax for purposes of Section 9, Article IX, Texas Constitution, or Chapter 1053, Special District Local Laws Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.002(15), eff. September 1, 2021.

Sec. 298D.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The district may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

Sec. 298D.153. CORRECTION OF INVALID PROVISION OR PROCEDURE. To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

For expiration of this chapter, see Section 298E.004.

CHAPTER 298E. HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN HOSPITAL DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 298E.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of a district.

(2) "District" means a hospital district to which this chapter applies.

(3) "Institutional health care provider" means a hospital that is not owned and operated by a federal, state, or local government and provides inpatient hospital services.

(4) "Paying provider" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means a health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.

Sec. 298E.002. APPLICABILITY. This chapter applies only to a hospital district created in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 93, eff. September 1, 2023.

Sec. 298E.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. The board of a district may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.

Sec. 298E.004. EXPIRATION. (a) Subject to Section 298E.153(d), the authority of a district to administer and operate a program under this chapter expires December 31, 2027.

(b) This chapter expires December 31, 2027.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 77 (S.B. 699), Sec. 1, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 857 (H.B. 3456), Sec. 4, eff. June 13, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 298E.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board of a district may require a mandatory payment authorized under this chapter by an institutional health care provider located in the district only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.

Sec. 298E.052. RULES AND PROCEDURES. The board of a district may adopt rules relating to the administration of the program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.

Sec. 298E.053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board of a district authorizes the district to participate in a program under this chapter, the board shall require each institutional health care provider located in the district to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under

Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 298E.101. HEARING. (a) In each year that the board of a district authorizes a program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district and provide written notice of the hearing to each institutional health care provider located in the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.

Sec. 298E.102. DEPOSITORY. (a) If the board of a district requires a mandatory payment authorized under this chapter, the board shall designate one or more banks as a depository for the district's local provider participation fund.

(b) All funds collected by a district under this chapter shall be secured in the manner provided for securing other funds of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.

Sec. 298E.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) If a district requires a mandatory payment authorized under this chapter, the district shall create a local provider participation fund.

(b) A district's local provider participation fund consists of:

(1) all revenue received by the district attributable to mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer under the program, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund of a district may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to hospitals in the Medicaid managed care service area in which the district is located, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(B) uniform rate enhancements for hospitals in the Medicaid managed care service area in which the district is located;

(C) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to hospitals described by Paragraph (A) or (B); or

(D) any reimbursement to hospitals for which federal matching funds are available;

(2) subject to Section 298E.151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund a mandatory payment collected in error from a paying provider;

(4) refund to paying providers a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal

share of Medicaid supplemental payment program payments;

(5) transfer funds to the Health and Human Services Commission if the district is legally required to transfer the funds to address a disallowance of federal matching funds with respect to programs for which the district made intergovernmental transfers described by Subdivision (1); and

(6) reimburse the district if the district is required by the rules governing the uniform rate enhancement program described by Subdivision (1)(B) to incur an expense or forego Medicaid reimbursements from the state because the balance of the local provider participation fund is not sufficient to fund that rate enhancement program.

(d) Money in the local provider participation fund of a district may not be commingled with other district funds.

(e) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by a district, any funds received by the state, district, or other entity as a result of that transfer may not be used by the state, district, or any other entity to:

(1) expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152); or

(2) fund the nonfederal share of payments to hospitals available through the Medicaid disproportionate share hospital program or the delivery system reform incentive payment program.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 298E.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER NET PATIENT REVENUE. (a) Except as provided by Subsection (e), if the board of a district authorizes a health care provider participation program under this chapter, the board may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the district. The

board may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as reported in the provider's Medicare cost report submitted for the most recent fiscal year for which the provider submitted a Medicare cost report. If the mandatory payment is required, the district shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment assessed under this chapter by the board of a district must be uniformly proportionate with the amount of net patient revenue generated by each paying provider in the district as permitted under federal law. A health care provider participation program authorized under this chapter may not hold harmless any institutional health care provider located in the district, as required under 42 U.S.C. Section 1396b(w).

(c) If the board of a district requires a mandatory payment authorized under this chapter, the board shall set the amount of the mandatory payment, subject to the limitations of this chapter. The aggregate amount of the mandatory payments required of all paying providers in the district may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying providers in the district.

(d) Subject to Subsection (c), if the board of a district requires a mandatory payment authorized under this chapter, the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 298E.103(c)(1). The annual amount of revenue from mandatory payments that shall be paid for administrative expenses by the district is $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying provider may not add a mandatory payment required under this section as a surcharge to a patient.

(f) A mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of Section 4, Article IX, Texas Constitution, or Section 281.045 of this code.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff.

May 31, 2019.

Sec. 298E.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) A district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) The person charged by the district with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the district a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the district, any revenue from a collection fee charged under Subsection (b) shall be deposited in the district general fund and, if appropriate, shall be reported as fees of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.

Sec. 298E.153. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter is to authorize a district to establish a program to enable the district to collect mandatory payments from institutional health care providers to fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for hospitals to support the provision of health care by institutional health care providers located in the district to district residents in need of health care.

(b) This chapter does not authorize a district to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for hospitals and to cover the administrative expenses of the district associated with activities under this chapter.

(c) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board of a district may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

(d) A district may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 298E.103(c)(1) is available to the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.

For expiration of this chapter, see Section 298F.004.

CHAPTER 298F. BEXAR COUNTY HOSPITAL DISTRICT HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 298F.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of the district.

(2) "District" means the Bexar County Hospital District.

(3) "Institutional health care provider" means a nonpublic hospital located in the district that provides inpatient hospital services.

(4) "Paying provider" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means the health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.002. APPLICABILITY. This chapter applies only to the Bexar County Hospital District.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. The board may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.004. EXPIRATION. (a) Subject to Section 298F.153(d), the authority of the district to administer and operate a program under this chapter expires December 31, 2027.

(b) This chapter expires December 31, 2027.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 202 (S.B. 1155), Sec. 1, eff. May 24, 2023.

Acts 2023, 88th Leg., R.S., Ch. 857 (H.B. 3456), Sec. 5, eff. June 13, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 298F.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter by an institutional health care provider in the district only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.052. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a program under this chapter, the board shall require each institutional health care provider to submit to the district a copy of any financial and utilization data reported in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 298F.101. HEARING. (a) In each year that the board authorizes a program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district and provide written notice of the hearing to each paying provider in the district.

(c) A representative of a paying provider is entitled to appear at the public hearing and be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.102. DEPOSITORY. (a) If the board requires a mandatory payment authorized under this chapter, the board shall designate one or more banks as a depository for the district's local provider participation fund.

(b) All funds collected under this chapter shall be secured in the manner provided for securing other district funds.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) If the district requires a mandatory payment authorized under this chapter, the district shall create a local provider participation fund.

(b) The local provider participation fund consists of:

(1) all revenue received by the district attributable to mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer under the program, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund of the district may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid payments for:

(A) payments to nonpublic hospitals, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(B) uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the district is located;

(C) payments available under another federal waiver program authorizing Medicaid payments to nonpublic hospitals;

(D) any payments to Medicaid managed care organizations for the benefit of nonpublic hospitals and for which federal matching funds are available; or

(E) any reimbursement to nonpublic hospitals for which

federal matching funds are available;

(2) subject to Section 298F.151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund a mandatory payment collected in error from a paying provider;

(4) refund to paying providers a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments; and

(5) transfer funds to the Health and Human Services Commission if the district is legally required to transfer the funds to address a disallowance of federal matching funds with respect to programs for which the district made intergovernmental transfers described by Subdivision (1).

(d) Money in the local provider participation fund may not be commingled with other district funds.

(e) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by the district, any funds received by the state, district, or other entity as a result of that transfer may not be used by the state, district, or any other entity to:

(1) expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152); or

(2) fund the nonfederal share of payments to nonpublic hospitals available through the Medicaid disproportionate share hospital program.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 298F.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER NET PATIENT REVENUE. (a) If the board authorizes a health care provider

participation program under this chapter, for each year the program is authorized, the board may require a mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the district. The board may provide for the mandatory payment to be assessed periodically throughout the year. The board shall provide an institutional health care provider written notice of each assessment under this subsection, and the provider has 30 calendar days following the date of receipt of the notice to pay the assessment. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider, which is the amount of that revenue as reported in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. If the mandatory payment is required, the district shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying provider in the district as permitted under federal law. A health care provider participation program authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) If the board requires a mandatory payment authorized under this chapter, the board shall set the amount of the mandatory payment, subject to the limitations of this chapter. The aggregate amount of the mandatory payments required of all paying providers in the district may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying providers in the district.

(d) Subject to Subsection (c), if the board requires a mandatory payment authorized under this chapter, the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 298F.103(c)(1). The amount of revenue from mandatory payments that may be used for administrative expenses by the district in a year for activities under this chapter may not exceed $184,000, plus the cost of collateralization of deposits. If the board demonstrates to the

paying providers that the costs of administering the health care provider participation program under this chapter, excluding those costs associated with the collateralization of deposits, exceed $184,000 in any year, on consent of all of the paying providers, the district may use additional revenue from mandatory payments received under this chapter to compensate the district for its administrative expenses. A paying provider may not unreasonably withhold consent to compensate the district for administrative expenses.

(e) A paying provider may not add a mandatory payment required under this section as a surcharge to a patient.

(f) A mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of Section 4, Article IX, Texas Constitution, or Section 281.045 of this code.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) The person charged by the district with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the district a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the district, any revenue from a collection fee charged under Subsection (b) shall be deposited in the district general fund and, if appropriate, shall be reported as fees of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.153. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter is to authorize the district to establish a program to enable the district to collect mandatory payments from institutional health care

providers to fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for nonpublic hospitals to support the provision of health care by institutional health care providers to district residents in need of health care.

(b) This chapter does not authorize the district to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for nonpublic hospitals and to cover the administrative expenses of the district associated with activities under this chapter and other amounts for which the fund may be used as described by Section 298F.103(c).

(c) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

(d) The district may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, reimbursement, or other payment described by Section 298F.103(c)(1) is available to nonpublic hospitals in the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.154. INTEREST AND PENALTIES. The district may impose and collect interest and penalties on delinquent mandatory payments assessed under this chapter in any amount that does not exceed the maximum amount authorized for other delinquent payments owed to the district.

Added by Acts 2023, 88th Leg., R.S., Ch. 202 (S.B. 1155), Sec. 2, eff. May 24, 2023.

For expiration of this chapter, see Section 298G.004.

CHAPTER 298G. EL PASO COUNTY HOSPITAL DISTRICT HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 298G.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of the district.

(2) "District" means the El Paso County Hospital District.

(3) "Institutional health care provider" means a nonpublic hospital located in the district that provides inpatient hospital services.

(4) "Paying provider" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means the health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Sec. 298G.002. APPLICABILITY. This chapter applies only to the El Paso County Hospital District.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Sec. 298G.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. The board may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Sec. 298G.004. EXPIRATION. (a) Subject to Section 298G.153(d), the authority of the district to administer and operate

a program under this chapter expires December 31, 2027.

(b) This chapter expires December 31, 2027.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 347 (S.B. 849), Sec. 1, eff. June 2, 2023.

Acts 2023, 88th Leg., R.S., Ch. 857 (H.B. 3456), Sec. 6, eff. June 13, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 298G.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter by an institutional health care provider in the district only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Sec. 298G.052. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Sec. 298G.053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a program under this chapter, the board shall require each institutional health care provider to submit to the district a copy of any financial and utilization data reported in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff.

May 31, 2019.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 298G.101. HEARING. (a) In each year that the board authorizes a program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district.

(c) A representative of a paying provider is entitled to appear at the public hearing and be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Sec. 298G.102. DEPOSITORY. (a) If the board requires a mandatory payment authorized under this chapter, the board shall designate one or more banks as a depository for the district's local provider participation fund.

(b) All funds collected under this chapter shall be secured in the manner provided for securing other district funds.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Sec. 298G.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) If the district requires a mandatory payment authorized under this chapter, the district shall create a local provider participation fund.

(b) The local provider participation fund consists of:

(1) all revenue received by the district attributable to mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer under the program, provided that the intergovernmental transfer does not

receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund of the district may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of:

(A) any payment to nonpublic hospitals, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315); or

(B) Medicaid payments for:

(i) uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the district is located;

(ii) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments described by Paragraph (A) or Subparagraph (i) to nonpublic hospitals or any payments to Medicaid managed care organizations for the benefit of nonpublic hospitals; or

(iii) any reimbursement to nonpublic hospitals located in the district for which federal matching funds are available;

(2) subject to Section 298G.151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund a mandatory payment collected in error from a paying provider;

(4) refund to paying providers a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments; and

(5) transfer funds to the Health and Human Services Commission if the district is legally required to transfer the funds to address a disallowance of federal matching funds with respect to programs for which the district made intergovernmental transfers described by Subdivision (1).

(d) Money in the local provider participation fund may not be

commingled with other district funds.

(e) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by the district, any funds received by the state, district, or other entity as a result of the transfer may not be used by the state, district, or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 298G.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER NET PATIENT REVENUE. (a) If the board authorizes a health care provider participation program under this chapter, the board may require a mandatory payment to be assessed, either annually or periodically throughout the year at the discretion of the board, on the net patient revenue of each institutional health care provider located in the district. The board shall provide an institutional health care provider written notice of each assessment under this subsection, and the provider has 30 calendar days following the date of receipt of the notice to make the assessed mandatory payment. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider, as determined by the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. If the mandatory payment is required, the district shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying provider in the district as permitted under federal law. A health care provider participation program authorized under this chapter may not hold harmless any paying provider, as required under 42 U.S.C. Section 1396b(w).

(c) If the board requires a mandatory payment authorized under this chapter, the board shall set the amount of the mandatory

payment, subject to the limitations of this chapter. The aggregate amount of the mandatory payments required of all paying providers in the district may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying providers in the district.

(d) Subject to Subsection (c), if the board requires a mandatory payment authorized under this chapter, the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 298G.103(c)(1). The annual amount of revenue from mandatory payments that shall be paid for administrative expenses by the district is $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying provider may not add a mandatory payment required under this section as a surcharge to a patient.

(f) A mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of Section 4, Article IX, Texas Constitution, or Section 281.045 of this code.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Sec. 298G.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) The person charged by the district with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the district a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the district, any revenue from a collection fee charged under Subsection (b) shall be deposited in the district general fund and, if appropriate, shall be reported as fees of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Sec. 298G.153. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter is to authorize the district to establish a program to enable the district to collect mandatory payments from institutional health care providers to fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for nonpublic hospitals to support the provision of health care by institutional health care providers to district residents in need of health care.

(b) This chapter does not authorize the district to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to:

(1) fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for nonpublic hospitals; and

(2) cover the administrative expenses of the district associated with activities under this chapter and other uses of the fund described by Section 298G.103(c).

(c) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

(d) The district may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 298G.103(c)(1) is available to nonpublic hospitals in the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Sec. 298G.154. INTEREST AND PENALTIES. The district may impose

and collect interest and penalties on delinquent mandatory payments assessed under this chapter in any amount that does not exceed the maximum amount authorized for other delinquent payments owed to the district.

Added by Acts 2023, 88th Leg., R.S., Ch. 347 (S.B. 849), Sec. 2, eff. June 2, 2023.

For expiration of this chapter, see Section 298H.004.

CHAPTER 298H. NACOGDOCHES COUNTY HOSPITAL DISTRICT HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 298H.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the district.

(2) "District" means the Nacogdoches County Hospital District.

(3) "Institutional health care provider" means a nonpublic hospital located in the district that provides inpatient hospital services.

(4) "Paying provider" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means the health care provider participation program authorized by this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

Sec. 298H.002. APPLICABILITY. This chapter applies only to the Nacogdoches County Hospital District.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

Sec. 298H.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) The board may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

(b) The board may not authorize the district to participate in a health care provider participation program under Chapter 300 or 300A.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

Sec. 298H.004. EXPIRATION. (a) Subject to Section 298H.153(d), the authority of the district to administer and operate a program under this chapter expires December 31, 2027.

(b) This chapter expires December 31, 2027.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 298H.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter by an institutional health care provider located in the district only in the manner provided by this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

Sec. 298H.052. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the program, including collection of the mandatory payments, expenditures, audits, and other administrative aspects of the program.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

Sec. 298H.053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a program under this chapter, the board may require each institutional health care provider to submit to the district a copy of any financial and utilization data reported in the provider's Medicare cost report

submitted for the most recent fiscal year for which the provider submitted the Medicare cost report.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 298H.101. HEARING. (a) In each year that the board authorizes a program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district.

(c) A representative of a paying provider is entitled to appear at the public hearing and be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

Sec. 298H.102. DEPOSITORY. (a) If the board requires a mandatory payment authorized under this chapter, the board shall designate one or more banks as a depository for the district's local provider participation fund.

(b) All funds collected under this chapter shall be secured in the manner provided for securing other district funds.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

Sec. 298H.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) If the district requires a mandatory payment authorized under this chapter, the district shall create a local provider participation fund.

(b) The local provider participation fund consists of:

(1) all revenue received by the district attributable to

the mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer under the program, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund of the district may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid supplemental payments for:

(A) uncompensated care payments to nonpublic hospitals, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(B) rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the district is located;

(C) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to nonpublic hospitals described by Paragraph (A) or (B); or

(D) any reimbursement to nonpublic hospitals for which federal matching funds are available;

(2) subject to Section 298H.151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund a mandatory payment collected in error from a paying provider;

(4) refund to paying providers a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payments or rate enhancements described by Subdivision (1); or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payments or rate enhancements described by Subdivision (1); and

(5) transfer funds to the Health and Human Services Commission if the district is legally required to transfer the funds to address a disallowance of federal matching funds with respect to

Medicaid supplemental payments for which the district made intergovernmental transfers described by Subdivision (1).

(d) Money in the local provider participation fund may not be commingled with other district funds.

(e) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by the district, any funds received by the state, district, or other entity as a result of that transfer may not be used by the state, district, or other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 298H.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER NET PATIENT REVENUE. (a) If the board authorizes a health care provider participation program under this chapter, the board may require a mandatory payment to be assessed, either annually or periodically throughout the year at the discretion of the board, on the net patient revenue of each institutional health care provider located in the district. The board shall provide an institutional health care provider written notice of each assessment under this subsection, and the provider has 30 calendar days following the date of receipt of the notice to make the assessed mandatory payment. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider, as determined by the provider's Medicare cost report submitted for the most recent fiscal year for which the provider submitted the Medicare cost report. If the mandatory payment is required, the district shall periodically update the amount of the mandatory payment.

(b) The amount of a mandatory payment authorized under this chapter must be determined in a manner that ensures the revenue generated qualifies for federal matching funds under federal law, consistent with 42 U.S.C. Section 1396b(w).

(c) If the board requires a mandatory payment authorized under

this chapter, the board shall set the amount of the mandatory payment, subject to the limitations of this chapter. The aggregate amount of the mandatory payments required of all paying providers in the district may not exceed six percent of the aggregate net patient revenue from hospital services provided in the district.

(d) Subject to Subsection (c), if the board requires a mandatory payment authorized under this chapter, the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 298H.103(c)(1). The annual amount of revenue from the mandatory payments used by the district may not exceed $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying provider may not add a mandatory payment required under this section as a surcharge to a patient.

(f) A mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of Section 9, Article IX, Texas Constitution, or Section 1069.301, Special District Local Laws Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

Sec. 298H.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) The person charged by the district with the assessment and collection of the mandatory payments may not charge the district a fee for assessing and collecting the payments unless the district authorizes the fee in writing.

(c) If the person charged with the assessment and collection of the mandatory payments is an official of the district, any revenue from a fee authorized under Subsection (b) shall be deposited in the district general fund and, if appropriate, shall be reported as fees of the district.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

Sec. 298H.153. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter is to authorize the district to establish a program to enable the district to collect the mandatory payments from institutional health care providers to fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for nonpublic hospitals to support the provision of health care by institutional health care providers to district residents in need of health care.

(b) This chapter does not authorize the district to collect the mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to:

(1) fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for nonpublic hospitals; and

(2) cover the administrative expenses of the district associated with activities under this chapter and other uses of the fund described by Section 298H.103(c).

(c) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

(d) The district may only assess and collect a mandatory payment authorized under this chapter if a waiver program, rate enhancement, or reimbursement described by Section 298H.103(c)(1) is available for nonpublic hospitals located in the district.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

For expiration of this chapter, see Section 299.004.

CHAPTER 299. HARRIS COUNTY HOSPITAL DISTRICT HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 299.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of the district.

(2) "District" means the Harris County Hospital District.

(3) "Institutional health care provider" means a nonpublic hospital located in the district that provides inpatient hospital services.

(4) "Paying provider" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means the health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

Sec. 299.002. APPLICABILITY. This chapter applies only to the Harris County Hospital District.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

Sec. 299.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. The board may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

For expiration of this chapter, see Section 299.004.

Sec. 299.004. EXPIRATION. (a) Subject to Section 299.153(d), the authority of the district to administer and operate a program under this chapter expires December 31, 2027.

(b) This chapter expires December 31, 2027.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 316 (H.B. 1338), Sec. 1, eff. June 7, 2021.
Acts 2023, 88th Leg., R.S., Ch. 433 (H.B. 1925), Sec. 1, eff. June 9, 2023.
Acts 2023, 88th Leg., R.S., Ch. 857 (H.B. 3456), Sec. 7, eff. June 13, 2023.
Acts 2025, 89th Leg., R.S., Ch. 217 (H.B. 1327), Sec. 1, eff. May 28, 2025.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 299.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter by an institutional health care provider in the district only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

Sec. 299.052. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

Sec. 299.053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a program under this chapter, the board shall require each institutional health care provider to submit to the district a copy of any financial and utilization data as reported in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 299.101. HEARING. (a) In each year that the board authorizes a program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district and provide written notice of the hearing to each institutional health care provider in the district.

(c) A representative of a paying provider is entitled to appear at the public hearing and be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

Sec. 299.102. DEPOSITORY. (a) If the board requires a mandatory payment authorized under this chapter, the board shall designate one or more banks as a depository for the district's local provider participation fund.

(b) All funds collected under this chapter shall be secured in the manner provided for securing other district funds.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

Sec. 299.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) If the district requires a mandatory payment authorized under this chapter, the district shall create a local provider participation fund.

(b) The local provider participation fund consists of:

(1) all revenue received by the district attributable to mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer under the program, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund of the district may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to nonpublic hospitals, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(B) uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the district is located;

(C) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to nonpublic hospitals described by Paragraph (A) or (B); or

(D) any reimbursement to nonpublic hospitals for which federal matching funds are available;

(2) subject to Section 299.151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund a mandatory payment collected in error from a paying provider;

(4) refund to paying providers a proportionate share of the money attributable to mandatory payments collected under this chapter that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments; and

(5) transfer funds to the Health and Human Services Commission if the district is legally required to transfer the funds to address a disallowance of federal matching funds with respect to programs for which the district made intergovernmental transfers described by Subdivision (1).

(d) Money in the local provider participation fund may not be commingled with other district funds.

(e) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by the district, any funds received by the state, district, or other entity as a result of the transfer may not be used by the state, district, or any other entity to:

(1) expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152); or

(2) fund the nonfederal share of payments to nonpublic hospitals available through the Medicaid disproportionate share hospital program or the delivery system reform incentive payment program.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 299.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER NET PATIENT REVENUE. (a) If the board authorizes a health care provider participation program under this chapter, the board may require a mandatory payment to be assessed, either annually or periodically throughout the year at the discretion of the board, on the net patient revenue of each institutional health care provider located in the district. The board shall provide an institutional health care provider written notice of each assessment under this subsection, and the provider has 30 calendar days following the date of receipt of the notice to pay the assessment. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider, as determined by the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. If the mandatory payment is required, the district shall update the amount of the mandatory payment on an annual basis and may update the amount on a more frequent basis.

(b) The amount of a mandatory payment authorized under this

chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying provider in the district as permitted under federal law. A health care provider participation program authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) If the board requires a mandatory payment authorized under this chapter, the board shall set the amount of the mandatory payment, subject to the limitations of this chapter. The aggregate amount of the mandatory payments required of all paying providers in the district may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying providers in the district.

(d) Subject to Subsection (c), if the board requires a mandatory payment authorized under this chapter, the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 299.103(c)(1). The annual amount of revenue from mandatory payments used for administrative expenses by the district for activities under this chapter is $600,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying provider may not add a mandatory payment required under this section as a surcharge to a patient.

(f) A mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of Section 4, Article IX, Texas Constitution, or Section 281.045.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 316 (H.B. 1338), Sec. 2, eff. June 7, 2021.

Sec. 299.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) The person charged by the district with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the district a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the district, any revenue from a collection fee charged under Subsection (b) shall be deposited in the district general fund and, if appropriate, shall be reported as fees of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

Sec. 299.153. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter is to authorize the district to establish a program to enable the district to collect mandatory payments from institutional health care providers to fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for nonpublic hospitals to support the provision of health care by institutional health care providers to district residents in need of health care.

(b) This chapter does not authorize the district to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to:

(1) fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for nonpublic hospitals; and

(2) cover the administrative expenses of the district associated with activities under this chapter and other uses of the fund described by Section 299.103(c).

(c) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or

responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

(d) The district may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 299.103(c)(1) is available to the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

CHAPTER 300. HEALTH CARE PROVIDER PARTICIPATION PROGRAMS IN CERTAIN POLITICAL SUBDIVISIONS IN THIS STATE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 300.0001. PURPOSE. The purpose of this chapter is to authorize a hospital district, county, or municipality in this state to administer a health care provider participation program to provide additional compensation to certain hospitals located in the hospital district, county, or municipality by collecting mandatory payments from each of those hospitals to be used to provide the nonfederal share of a Medicaid supplemental payment program and for other purposes as authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0002. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Local government" means a hospital district, county, or municipality to which this chapter applies.

(3) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(4) "Program" means a health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0003. APPLICABILITY. (a) Except as provided by Subsection (b), this chapter applies only to:

(1) a hospital district that is not participating in a health care provider participation program authorized by another chapter of this subtitle; and

(2) a county or municipality that:

(A) is not participating in a health care provider participation program authorized by another chapter of this subtitle; and

(B) is not served by a hospital district or a public hospital.

(b) This chapter does not apply to a municipality that is located in a county described by Section 292D.002.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 2, eff. September 1, 2023.

Sec. 300.0004. LOCAL JURISDICTION HEALTH CARE PROVIDER PARTICIPATION PROGRAM; ORDER REQUIRED FOR PARTICIPATION. The governing body of a local government may only adopt an order or ordinance authorizing that local government to participate in a health care provider participation program after an affirmative vote of the majority of the governing body.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

SUBCHAPTER B. POWERS AND DUTIES OF GOVERNING BODY

Sec. 300.0051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The governing body of a local government may require a mandatory payment authorized under this chapter by an institutional health care provider located in that hospital district, county, or municipality, as applicable, only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff.

June 10, 2019.

Sec. 300.0052. RULES AND PROCEDURES. The governing body of a local government may adopt rules relating to the administration of the health care provider participation program in the local government, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the governing body of a local government authorizes the local government to participate in a health care provider participation program under this chapter, the governing body shall require each institutional health care provider to submit to the local government a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 300.0101. HEARING. (a) In each year that the governing body of a local government authorizes a health care provider participation program under this chapter, the governing body shall hold a public hearing on the amounts of any mandatory payments that the governing body intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the governing body shall publish notice of the hearing in a newspaper of general circulation in the hospital district, county, or municipality, as applicable, and provide written notice of the hearing to the chief operating officer of each institutional health care provider located in the hospital

district, county, or municipality, as applicable.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0102. LOCAL PROVIDER PARTICIPATION FUND; DEPOSITORY. (a) Each governing body of a local government that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) If a governing body of a local government creates a local provider participation fund, the governing body shall designate one or more banks as a depository for the mandatory payments received by the local government.

(c) The governing body of a local government may withdraw or use money in the local provider participation fund of the local government only for a purpose authorized under this chapter.

(d) All funds collected under this chapter shall be secured in the manner provided for securing other funds of the local government.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) The local provider participation fund established by a local government under Section 300.0102 consists of:

(1) all revenue received by the local government attributable to mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the local government to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(b) Money deposited to the local provider participation fund of

a local government may be used only to:

(1) fund intergovernmental transfers from the local government to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to nonpublic hospitals, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(B) uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the local government is located;

(C) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to nonpublic hospitals described by Paragraph (A) or (B); or

(D) any reimbursement to nonpublic hospitals for which federal matching funds are available;

(2) subject to Section 300.0151(d), pay the administrative expenses of the local government in administering the program, including collateralization of deposits;

(3) refund all or a portion of a mandatory payment collected in error from a paying hospital;

(4) refund to paying hospitals a proportionate share of the money that the local government:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments;

(5) transfer funds to the Health and Human Services Commission if the local government is required by law to transfer the funds to address a disallowance of federal matching funds with respect to payments, rate enhancements, and reimbursements for which the local government made intergovernmental transfers described by Subdivision (1); and

(6) reimburse the local government if the local government is required by the rules governing the uniform rate enhancement program described by Subdivision (1)(B) to incur an expense or forego Medicaid reimbursements from the state because the balance of the local provider participation fund is not sufficient to fund that rate

enhancement program.

(c) Money in the local provider participation fund of a local government may not be commingled with other funds of the local government.

(d) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (b)(1) made by the local government, any funds received by the state, local government, or other entity as a result of that transfer may not be used by the state, local government, or any other entity to:

(1) expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152); or

(2) fund the nonfederal share of payments to nonpublic hospitals available through the Medicaid disproportionate share hospital program or the delivery system reform incentive payment program.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 300.0151. MANDATORY PAYMENTS. (a) Except as provided by Subsection (e), if the governing body of a local government authorizes a health care provider participation program under this chapter, the governing body shall require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the hospital district, county, or municipality, as applicable. The governing body of the local government shall provide that the mandatory payment is to be assessed at least annually, but not more often than quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider located in the hospital district, county, or municipality, as applicable, as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report

any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The local government shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter for a local government must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the hospital district, county, or municipality, as applicable, as permitted under federal law. A health care provider participation program authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The governing body of a local government that authorizes a program under this chapter shall set the amount of the mandatory payment. The aggregate amount of the mandatory payments required of all paying hospitals in the hospital district, county, or municipality, as applicable, may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying hospitals in the hospital district, county, or municipality, as applicable.

(d) Subject to Subsection (c), the governing body of a local government shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the local government for activities under this chapter and to fund an intergovernmental transfer described by Section 300.0103(b)(1). The annual amount of revenue from mandatory payments that shall be paid for administrative expenses for activities under this chapter by the local government may not exceed $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

(f) A mandatory payment required by the governing body of a hospital district under this chapter is not a tax for purposes of the applicable provision of Article IX, Texas Constitution.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) A hospital district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) A county or municipality may collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter.

(c) The person charged by the local government with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the local government a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(d) If the person charged with the assessment and collection of mandatory payments is an official of the local government, any revenue from a collection fee charged under Subsection (c) shall be deposited in the local government general fund and, if appropriate, shall be reported as fees of the local government.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0153. CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) This chapter does not authorize a local government to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for nonpublic hospitals and to cover the administrative expenses of the local government associated with activities under this chapter and other uses of the fund described by Section 300.0103(b).

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the local government may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or

responsibility of the local government or an institutional health care provider in the local hospital district, county, or municipality, as applicable, beyond the provisions of this chapter. This section does not require the governing body of a local government to adopt a rule.

(c) The local government may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 300.0103(b)(1) is available to the local government.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0154. REPORTING REQUIREMENTS. (a) The governing body of each local government that authorizes a program under this chapter shall report information to the Health and Human Services Commission regarding the program on a schedule determined by the commission.

(b) The information must include:

(1) the amount of the mandatory payments required and collected in each year the program is authorized;

(2) any expenditure of money attributable to mandatory payments collected under this chapter, including:

(A) any contract with an entity for the administration or operation of a program authorized by this chapter; or

(B) a contract with a person for the assessment and collection of a mandatory payment as authorized under Section 300.0152; and

(3) the amount of money attributable to mandatory payments collected under this chapter that is used for any other purpose.

(c) The executive commissioner of the Health and Human Services Commission shall adopt rules to administer this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0155. EXPIRATION OF AUTHORITY. The authority of a local government to administer and operate a program under this chapter expires on September 1 following the second anniversary of the date the governing body of the local government adopted the order

or ordinance authorizing the local government to participate in the program as provided by Section 300.0004.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0156. AUTHORITY TO REFUSE FOR VIOLATION. The Health and Human Services Commission may refuse to accept money from a local provider participation fund established under this chapter if the commission determines that doing so may violate federal law.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

CHAPTER 300A. HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN DISTRICTS COMPOSED OF CERTAIN LOCAL GOVERNMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 300A.0001. PURPOSE. The purpose of this chapter is to authorize certain local governments to create a district to administer a health care provider participation program to provide additional compensation to certain hospitals in the district by collecting mandatory payments from each of those hospitals in the district to be used to provide the nonfederal share of a Medicaid supplemental payment program and for other purposes as authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0002. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of a district.

(2) "Director" means a member of the board.

(3) "District" means a health care provider participation district created under this chapter.

(4) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(5) "Local government" means a hospital district, county, or municipality to which this chapter applies.

(6) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(7) "Program" means a health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0003. APPLICABILITY. This chapter applies only to:

(1) a hospital district that:

(A) is not participating in a health care provider participation program authorized by another chapter of this subtitle; and

(B) has only one institutional health care provider located in the district; and

(2) a county or municipality that:

(A) is not participating in a health care provider participation program authorized by another chapter of this subtitle;

(B) is not served by a hospital district or a public hospital; and

(C) has only one institutional health care provider located in the county or municipality.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

SUBCHAPTER B. CREATION, OPERATION, AND DISSOLUTION OF DISTRICT

Sec. 300A.0021. CREATION BY CONCURRENT ORDERS. (a) A local government and one or more other local governments may create a district by adopting concurrent orders.

(b) A concurrent order to create a district must:

(1) be approved by the governing body of each creating local government;

(2) contain identical provisions; and

(3) define the boundaries of the district to be coextensive with the combined boundaries of each creating local government.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0022. POWERS. A district may authorize and administer a health care provider participation program in accordance with this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0023. BOARD OF DIRECTORS. (a) If three or more local governments create a district, the presiding officer of the governing body of each local government that creates the district shall appoint one director.

(b) If two local governments create a district:

(1) the presiding officer of the governing body of the most populous local government shall appoint two directors; and

(2) the presiding officer of the governing body of the other local government shall appoint one director.

(c) Directors serve staggered two-year terms, with as near as possible to one-half of the directors' terms expiring each year.

(d) A vacancy in the office of director shall be filled for the unexpired term in the same manner as the original appointment.

(e) The board shall elect from among its members a president. The president may vote and may cast an additional vote to break a tie.

(f) The board shall also elect from among its members a vice president.

(g) The board shall appoint a secretary, who need not be a director.

(h) Each officer of the board serves for a term of one year.

(i) The board shall fill a vacancy in a board office for the unexpired term.

(j) A majority of the members of the board voting must concur in a matter relating to the business of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0024. QUALIFICATIONS FOR OFFICE. (a) To be eligible

to serve as a director, a person must be a resident of the local government that appoints the person under Section 300A.0023.

(b) An employee of the district may not serve as a director.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0025. COMPENSATION. (a) Directors and officers serve without compensation but may be reimbursed for actual expenses incurred in the performance of official duties.

(b) Expenses reimbursed under this section must be:

(1) reported in the district's minute book or other district records; and

(2) approved by the board.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0026. AUTHORITY TO SUE AND BE SUED. The board may sue and be sued on behalf of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0027. DISTRICT FINANCES. Subchapter F, Chapter 287, other than Sections 287.129 and 287.130, applies to the district in the same manner that those provisions apply to a health services district created under Chapter 287. This section does not authorize the district to issue bonds.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0028. DISSOLUTION. A district shall be dissolved if the local governments that created the district adopt concurrent orders to dissolve the district and the concurrent orders contain identical provisions.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0029. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) After dissolution of a district under Section 300A.0028, the board shall continue to control and administer any property, debts, and assets of the district until all funds have been disposed of and all district debts have been paid or settled.

(b) As soon as practicable after the dissolution of the district, the board shall transfer to each institutional health care provider in the district the provider's proportionate share of any remaining funds in any local provider participation fund created by the district under Section 300A.0102.

(c) If, after administering any property and assets, the board determines that the district's property and assets are insufficient to pay the debts of the district, the district shall transfer the remaining debts to the local governments that created the district in proportion to the funds contributed to the district by each local government, including a paying hospital in the local government.

(d) If, after complying with Subsections (b) and (c) and administering the property and assets, the board determines that unused funds remain, the board shall transfer the unused funds to the local governments that created the district in proportion to the funds contributed to the district by each local government, including a paying hospital in the local government.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0030. ACCOUNTING AFTER DISSOLUTION. After the district has paid all its debts and has disposed of all its assets and funds as prescribed by Section 300A.0029, the board shall provide an accounting to each local government that created the district. The accounting must show the manner in which the assets and debts of the district were distributed.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

SUBCHAPTER C. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; POWERS AND DUTIES OF DISTRICT BOARD

Sec. 300A.0051. HEALTH CARE PROVIDER PARTICIPATION PROGRAM. The board of a district may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0052. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter by an institutional health care provider in the district only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0053. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the health care provider participation program in the district, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a health care provider participation program under this chapter, the board shall require each institutional health care provider located in the district to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 300A.0101. HEARING. (a) In each year that the board authorizes a health care provider participation program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in each local government that creates the district and provide written notice of the hearing to the chief operating officer of each institutional health care provider in the district.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0102. LOCAL PROVIDER PARTICIPATION FUND; DEPOSITORY. (a) If the board collects a mandatory payment authorized under this chapter, the board shall create a local provider participation fund in one or more banks designated by the district as a depository for the mandatory payments received by the district.

(b) The board may withdraw or use money in the local provider participation fund of the district only for a purpose authorized under this chapter.

(c) All funds collected under this chapter shall be secured in the manner provided for securing public funds.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0103. DEPOSITS TO FUND; AUTHORIZED USES OF MONEY.

(a) The local provider participation fund established under Section 300A.0102 consists of:

(1) all revenue received by the district attributable to mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the district to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(b) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to nonpublic hospitals, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(B) uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the district is located;

(C) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to nonpublic hospitals described by Paragraph (A) or (B); or

(D) any reimbursement to nonpublic hospitals for which federal matching funds are available;

(2) subject to Section 300A.0151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund all or a portion of a mandatory payment collected in error from a paying hospital;

(4) refund to paying hospitals a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments;

(5) transfer funds to the Health and Human Services Commission if the district is required by law to transfer the funds to address a disallowance of federal matching funds with respect to payments, rate enhancements, and reimbursements for which the district made intergovernmental transfers described by Subdivision (1); and

(6) reimburse the district if the district is required by the rules governing the uniform rate enhancement program described by Subdivision (1)(B) to incur an expense or forego Medicaid reimbursements from the state because the balance of the local provider participation fund is not sufficient to fund that rate enhancement program.

(c) Money in the local provider participation fund may not be commingled with other district funds or other funds of a local government that creates the district.

(d) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (b)(1) made by the district, any funds received by the state, district, or other entity as a result of the transfer may not be used by the state, district, or any other entity to:

(1) expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152); or

(2) fund the nonfederal share of payments to nonpublic hospitals available through the Medicaid disproportionate share hospital program or the delivery system reform incentive payment program.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0104. ACCOUNTING OF FUNDS. The district shall maintain an accounting of the funds received from each local government that creates the district, including a paying hospital located in a hospital district, county, or municipality that created the district, as applicable.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

SUBCHAPTER E. MANDATORY PAYMENTS

Sec. 300A.0151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), if the board authorizes a health care provider participation program under this chapter, the district shall require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the district. The board shall provide that the mandatory payment is to be assessed at least annually, but not more often than quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider located in the district as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The district shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the district as permitted under federal law. A health care provider participation program authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The board shall set the amount of a mandatory payment authorized under this chapter. The aggregate amount of the mandatory payments required of all paying hospitals in the district may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying hospitals in the district.

(d) Subject to Subsection (c), the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 300A.0103(b)(1). The

annual amount of revenue from mandatory payments that shall be paid for administrative expenses by the district for activities under this chapter may not exceed $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

(f) For purposes of any hospital district that creates a district under this chapter, a mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of the applicable provision of Article IX, Texas Constitution.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) The person charged by the district with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the district a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the district, any revenue from a collection fee charged under Subsection (b) shall be deposited in the district general fund and, if appropriate, shall be reported as fees of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0153. CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) This chapter does not authorize the district to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to:

(1) fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for

nonpublic hospitals; and

(2) cover the administrative expenses of the district associated with activities under this chapter and other uses of the fund described by Section 300A.0103(b).

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

(c) The district may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 300A.0103(b)(1) is available to the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0154. REPORTING REQUIREMENTS. (a) The board of a district that authorizes a program under this chapter shall report information to the Health and Human Services Commission regarding the program on a schedule determined by the commission.

(b) The information must include:

(1) the amount of the mandatory payments required and collected in each year the program is authorized;

(2) any expenditure of money attributable to mandatory payments collected under this chapter, including:

(A) any contract with an entity for the administration or operation of a program authorized by this chapter; or

(B) a contract with a person for the assessment and collection of a mandatory payment as authorized under Section 300A.0152; and

(3) the amount of money attributable to mandatory payments collected under this chapter that is used for any other purpose.

(c) The executive commissioner of the Health and Human Services

Commission shall adopt rules to administer this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0155. EXPIRATION OF AUTHORITY. The authority of a district to administer and operate a program under this chapter expires on September 1 following the second anniversary of the date the board of the district authorized the district to participate in the program as provided by Section 300A.0051.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0156. AUTHORITY TO REFUSE FOR VIOLATION. The Health and Human Services Commission may refuse to accept money from a local provider participation fund established under this chapter if the commission determines that doing so may violate federal law.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

CHAPTER 300C. HEALTH CARE PROVIDER PARTICIPATION DISTRICTS CREATED BY CERTAIN LOCAL GOVERNMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 300C.0001. PURPOSE. The purpose of this chapter is to authorize a health care provider participation district created by certain local governments to administer a health care provider participation program to provide additional compensation to certain hospitals in the district by collecting mandatory payments from each of those hospitals in the district to be used to provide the nonfederal share of a Medicaid supplemental payment program and for other purposes as authorized under this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0002. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of a district.

(2) "Director" means a member of the board.

(3) "District" means a health care provider participation district created under Chapter 300A and operating under this chapter.

(4) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(5) "Local government" means a hospital district, county, or municipality to which this chapter applies.

(6) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(7) "Program" means a health care provider participation program authorized by this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0003. APPLICABILITY. This chapter applies only to a local government that jointly created a health care provider participation district by concurrent order under Chapter 300A and is:

(1) a county with a population of more than 80,000 and less than 90,000 that borders the Trinity River;

(2) a county with a population of more than 45,000 and less than 55,000 that borders Oklahoma; or

(3) a hospital district located in a county that has a population of more than 30,000 and contains a portion of Jim Chapman Lake.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

SUBCHAPTER B. OPERATION AND DISSOLUTION OF DISTRICT

Sec. 300C.0021. OPERATION. (a) A health care provider participation district created under Chapter 300A may operate under and be governed by the provisions of this chapter instead of Chapter 300A if:

(1) each local government that jointly created the district adopts a concurrent order authorizing the district to operate under and be governed by the provisions of this chapter; and

(2) the district's board ratifies the concurrent order adopted by each participating local government.

(b) A concurrent order authorizing a district to operate under this chapter must:

(1) be approved by the governing body of each participating local government;

(2) contain provisions that are identical to the provisions of the concurrent order adopted by each other participating local government;

(3) affirm that the district's territory is the area contained within the boundaries of each participating local government; and

(4) provide that the district begins to operate under this chapter immediately on the expiration of the district's authority to administer and operate a program under Chapter 300A.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0022. POWERS. (a) A district may authorize and administer a health care provider participation program in accordance with this chapter.

(b) Notwithstanding Section 300A.0155, a district that complies with the provisions of this chapter may administer and operate a health care provider participation program under this chapter after its authority to administer and operate a program under Chapter 300A has expired.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0023. BOARD OF DIRECTORS. (a) If three or more local governments adopt concurrent orders authorizing a health care provider participation district to operate under this chapter, the presiding officer of the governing body of each local government that created the district shall appoint one director.

(b) If two local governments adopt concurrent orders described by Subsection (a):

(1) the presiding officer of the governing body of the most

populous local government shall appoint two directors; and

(2) the presiding officer of the governing body of the local government not described by Subdivision (1) shall appoint one director.

(c) Directors serve staggered two-year terms, with as near as possible to one-half of the directors' terms expiring each year.

(d) A vacancy in the office of director shall be filled for the unexpired term in the same manner as the original appointment.

(e) The board shall elect from among its members a president and a vice president.

(f) The president may vote and may cast an additional vote to break a tie.

(g) The board shall appoint a secretary, who need not be a director.

(h) Each officer of the board serves for a term of one year.

(i) The board shall fill a vacancy in a board office for the unexpired term.

(j) A majority of the members of the board voting must concur in a matter relating to the business of the district.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0024. QUALIFICATIONS FOR OFFICE. (a) To be eligible to serve as a director, a person must be a resident of the local government that appoints the person.

(b) An employee of the district may not serve as a director.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0025. COMPENSATION. (a) Directors and officers serve without compensation but may be reimbursed for actual expenses incurred in the performance of official duties.

(b) Expenses reimbursed under this section must be:

(1) reported in the district's minute book or other district records; and

(2) approved by the board.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0026. AUTHORITY TO SUE AND BE SUED. The board may sue and be sued on behalf of the district.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0027. DISTRICT FINANCES. (a) Except as otherwise provided by this section, Subchapter F, Chapter 287, applies to a district in the same manner that the provisions of that subchapter apply to a health services district created under Chapter 287.

(b) Sections 287.129 and 287.130 do not apply to a district.

(c) This section does not authorize a district to issue bonds.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0028. DISSOLUTION. A district shall be dissolved if the local governments that created the district adopt concurrent orders to dissolve the district and the concurrent orders contain identical provisions.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0029. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) After dissolution of a district under Section 300C.0028, the board shall continue to control and administer any property, debts, and assets of the district until all of the district's property and assets have been disposed of and all of the district's debts have been paid or settled.

(b) As soon as practicable after the dissolution of the district, the board shall transfer to each institutional health care provider in the district the provider's proportionate share of any remaining money in any local provider participation fund created by

the district.

(c) If, after administering the district's property and assets, the board determines that the property and assets are insufficient to pay the debts of the district, the district shall transfer the remaining debts to the local governments that created the district in proportion to the money contributed to the district by each local government, including a paying hospital in the local government.

(d) If, after complying with Subsections (b) and (c) and administering the district's property and assets, the board determines that unused money remains, the board shall transfer the unused money to the local governments that created the district in proportion to the money contributed to the district by each local government, including a paying hospital in the local government.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0030. ACCOUNTING AFTER DISSOLUTION. After the district has paid or settled all its debts and has disposed of all its property and assets, including money, as prescribed by Section 300C.0029, the board shall provide an accounting to each local government that created the district. The accounting must show the manner in which the property, assets, and debts of the district were distributed.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

SUBCHAPTER C. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; POWERS AND DUTIES OF DISTRICT BOARD

Sec. 300C.0051. HEALTH CARE PROVIDER PARTICIPATION PROGRAM. The board of a district may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0052. LIMITATION ON AUTHORITY OF BOARD TO REQUIRE MANDATORY PAYMENT. (a) The board may require a mandatory payment authorized under this chapter by an institutional health care provider in the district only in the manner provided by this chapter.

(b) The board may not require a mandatory payment under this chapter during a period for which the board requires a mandatory payment under Chapter 300A.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0053. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the health care provider participation program in the district, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. (a) If the board authorizes the district to participate in a health care provider participation program under this chapter, the board shall require each institutional health care provider located in the district to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The board may inspect the records of an institutional health care provider in the district to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 300C.0101. HEARING. (a) In each year that the board

authorizes a health care provider participation program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in each local government that created the district and provide written notice of the hearing to the chief operating officer of each institutional health care provider in the district.

(c) A representative of a paying hospital is entitled to appear at the public hearing and be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0102. LOCAL PROVIDER PARTICIPATION FUND; DEPOSITORY. (a) The board shall deposit all mandatory payments received by a district in the local provider participation fund created by the district under Chapter 300A.

(b) The board may designate one or more banks as the depository for the district's local provider participation fund.

(c) The board may withdraw or use money in the district's local provider participation fund only for a purpose authorized under this chapter.

(d) All funds collected under this chapter shall be secured in the manner provided for securing other funds of the local governments that created the district.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0103. DEPOSITS TO FUND; AUTHORIZED USES OF MONEY. (a) The local provider participation fund described by Section 300C.0102 consists of:

(1) all revenue received by the district attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer described by Subsection (b)(1), provided that the intergovernmental transfer does not receive a federal matching payment;

(3) money received by the district and deposited to the fund in accordance with Chapter 300A that remains in the fund on the date the district begins to operate under this chapter; and

(4) the earnings of the fund.

(b) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to nonpublic hospitals, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs;

(B) uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the district is located;

(C) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to nonpublic hospitals described by Paragraph (A) or (B); or

(D) any reimbursement to nonpublic hospitals, or that may benefit nonpublic hospitals as determined by the board, for which federal matching funds are available;

(2) subject to Section 300C.0151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund all or a portion of a mandatory payment collected in error from a paying hospital, regardless of whether the payment was collected under this chapter or Chapter 300A; and

(4) refund to paying hospitals a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

(c) Money in the local provider participation fund may not be commingled with other district money or other money of a local government that created the district.

(d) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (b)(1) made by the district, any funds received by the state, district, or other entity as a result of the transfer may not be used by the state, district, or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0104. ACCOUNTING. The district shall maintain an accounting of the money received from each local government that created the district, including a paying hospital located in a hospital district, county, or municipality that created the district, as applicable.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

SUBCHAPTER E. MANDATORY PAYMENTS

Sec. 300C.0151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), if the board authorizes a health care provider participation program under this chapter, the district shall require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the district. The board shall provide that the mandatory payment is to be assessed at least annually, but not more often than quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider located in the district as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report

any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The district shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the district. A health care provider participation program authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w) and 42 C.F.R. Section 433.68.

(c) The board shall set the amount of a mandatory payment authorized under this chapter. The aggregate amount of the mandatory payments required of all paying hospitals in the district may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying hospitals in the district.

(d) Subject to Subsection (c), the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 300C.0103(b)(1). The annual amount of revenue from mandatory payments that shall be paid for administrative expenses by the district for activities under this chapter may not exceed $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

(f) For purposes of any hospital district that participates in a district authorized to operate under this chapter, a mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of the applicable provision of Article IX, Texas Constitution.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0152. ASSESSMENT AND COLLECTION OF MANDATORY

PAYMENTS. (a) The district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) The person charged by the district with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the district a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the district, any revenue from a collection fee charged under Subsection (b) shall be deposited in the district's general fund and, if appropriate, shall be reported as fees of the district.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0153. LIMITATION ON AUTHORITY; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) This chapter does not authorize the district to assess and collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to:

(1) fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for nonpublic hospitals; and

(2) cover the administrative expenses of the district associated with activities under this chapter and other uses of the fund described by Section 300C.0103(b).

(b) The district may assess and collect a mandatory payment authorized under this chapter only if a waiver program, uniform rate enhancement, or reimbursement described by Section 300C.0103(b)(1) is available to the district.

(c) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or

responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0154. REPORTING REQUIREMENTS. (a) The board of a district that authorizes a program under this chapter shall report information to the Health and Human Services Commission regarding the program on a schedule determined by the commission.

(b) The information must include:

(1) the amount of the mandatory payments required and collected in each year the program is authorized;

(2) any expenditure or other use of money attributable to mandatory payments collected under this chapter, including:

(A) any contract with an entity for the administration or operation of a program authorized by this chapter; or

(B) a contract with a person for the assessment and collection of a mandatory payment as authorized under Section 300C.0152; and

(3) the amount of money attributable to mandatory payments collected under this chapter that is used for a purpose other than a purpose described by Subdivisions (1) and (2).

(c) The executive commissioner of the Health and Human Services Commission shall adopt rules to administer this section.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0155. AUTHORITY TO REFUSE FOR VIOLATION. The Health and Human Services Commission may refuse to accept money from a local provider participation fund administered under this chapter if the commission determines that acceptance of the money may violate federal law.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

Sec. 300C.0156. INTEREST AND PENALTIES. The district may impose and collect interest and penalties on delinquent mandatory payments assessed under this chapter in any amount that does not exceed the maximum amount authorized for other delinquent payments owed to the local governments that created the district.

Added by Acts 2025, 89th Leg., R.S., Ch. 525 (H.B. 3505), Sec. 1, eff. June 20, 2025.

SUBTITLE E. COOPERATIVE ASSOCIATIONS
CHAPTER 301. COOPERATIVE ASSOCIATIONS
SUBCHAPTER A. HOSPITAL LAUNDRY COOPERATIVE ASSOCIATIONS

Sec. 301.001. DEFINITIONS. In this subchapter:

(1) "Eligible institution" means an entity engaged in health-related pursuits that, except for cooperative associations, is exempt from federal income tax and includes only:

(A) a municipality;

(B) a political subdivision of the state;

(C) a state-supported health-related institution, including:

(i) The Texas A&M University System;

(ii) The University of Texas System; and

(iii) the Texas Woman's University System;

(D) a nonprofit health-related institution; or

(E) a cooperative association created under Subchapter B, a unit of which is located in a county with a population of more than 3.3 million.

(2) "Laundry system" includes:

(A) buildings in which soiled or infected clothing, uniforms, or linens are laundered;

(B) land and interests in land as sites for buildings or access to buildings;

(C) equipment and appliances for a laundry operation;

(D) supplies for a laundry operation;

(E) clothing, uniforms, and linens;

(F) automotive and other personal property appropriate for delivery and pickup services; and

(G) other property and equipment incidental or appropriate to the operation of laundry facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 74, eff. Sept. 1, 1991. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 43, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 145 (S.B. 1126), Sec. 32, eff. May 26, 2021.

Sec. 301.002. CREATION OF HOSPITAL LAUNDRY COOPERATIVE ASSOCIATION. (a) Eligible institutions may create a hospital laundry cooperative association to establish, operate, and maintain a laundry system on a nonprofit, cooperative basis solely for the use and benefit of eligible institutions.

(b) An association is created under the terms prescribed by the governing bodies of the respective eligible institutions.

(c) An association created under this subchapter shall include as part of its name "Hospital Laundry Cooperative Association."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.003. ARTICLES OF INCORPORATION. (a) Eligible institutions creating a hospital laundry cooperative association may file articles of incorporation under the general corporation law of this state, including the Texas Business Corporation Act.

(b) An association incorporated as provided by this section is governed by the law under which it is incorporated except to the extent that that law conflicts with this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.004. USE OF PUBLIC FUNDS PROHIBITED. Public funds appropriated to a state department or to a state institution may not be used to create a hospital laundry cooperative association under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.005. MEMBERSHIP; MEMBERSHIP PRIVILEGES; EXPULSION OF MEMBERS. (a) An eligible institution may be elected to membership in a hospital laundry cooperative association by:

(1) the organizers of the association at the time of organization; or

(2) the board of directors of the association according to the association's bylaws.

(b) Only an eligible institution may become a member of an association created under this subchapter.

(c) A membership certificate is transferable only to an eligible institution in the manner provided by the rules prescribed in the bylaws.

(d) Each member has voting rights in the management of an association as prescribed in the bylaws.

(e) A member may be suspended or expelled for misconduct under the rules prescribed in the bylaws.

(f) An association shall pay an expelled member for cancellation of the membership if the member's contractual obligations pledged to the payment of the association's notes, bonds, or other obligations have been fully paid or other provision has been made. The amount and date of payment are as prescribed in the bylaws.

(g) Amounts paid or property conveyed or transferred to an association by an expelled member and not required to be returned to the member under Subsection (f) may be retained by the association. Facilities or property acquired by the association remains the property of the association and the expelled member does not have a lien or other right to the facilities or property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.006. MEMBERSHIP NOT REQUIRED. A component institution of a state-supported institution is not required to be a member of a hospital laundry cooperative association created under this subchapter but may be a member of one or more associations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.007. POWERS OF HOSPITAL LAUNDRY COOPERATIVE

ASSOCIATION. A hospital laundry cooperative association may:

(1) acquire, own, and operate a laundry system on a cooperative basis solely for the benefit of eligible institutions, regardless of whether the eligible institution is a member of the association, and may engage in activities for the benefit of eligible institutions that are necessarily related to the acquisition, ownership, operation, and maintenance of a laundry system;

(2) acquire by purchase, lease, or other method land and interests in land appropriate or reasonably incidental to a laundry system and may own, hold, improve, develop, and manage land and interests in land acquired;

(3) construct, improve, enlarge, and equip buildings or other structures on that land;

(4) encumber or dispose of any land or interests in land, buildings, or structures owned or held by the association;

(5) acquire by lease, purchase, manufacture, or other method any personal property appropriate or reasonably incidental to a laundry system, including property for the cleaning, washing, steaming, bleaching, dry cleaning, and disinfecting of all types of clothing and fabrics, and the transportation and distribution of those articles;

(6) encumber and dispose of any personal property owned or held by the association;

(7) acquire by purchase or other method uniforms, clothing, or linen for its members;

(8) borrow or raise money without limit as to amount;

(9) sell, grant security interest in, pledge, or otherwise dispose of and collect on accounts receivable, contract rights, and other choses in action; and

(10) make, draw, accept, endorse, execute, and issue bonds, debentures, notes, or other obligations for money borrowed or payment of property purchased, and may secure the payment by mortgage on, creation of security interests in, or pledge of or conveyance of assignment in trust of all or part of any property held by the association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.008. COST OF SERVICES. A hospital laundry cooperative

association may determine the amount to be charged for providing laundry services through its laundry system to eligible institutions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.009. BONDS, NOTES, OR OTHER OBLIGATIONS. (a) A hospital laundry cooperative association may borrow money from public or private sources or issue bonds, notes, or other obligations in amounts necessary to create, enlarge, maintain, or operate a laundry system.

(b) The association shall pay bonds, notes, or other obligations of the association solely from revenue received from the operation of a laundry system or from funds specifically provided for that purpose from other sources. An association may pledge its revenues or funds to secure payment of the bonds, notes, or other obligations.

(c) Bonds, notes, or other obligations issued by an association do not constitute indebtedness of the state or of any eligible institution that is a member of the association. Holders of bonds, notes, or other obligations may not demand or enforce payment of principal of or interest on the bonds, notes, or other obligations out of funds other than those specifically pledged to secure payment of those bonds, notes, or other obligations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.010. BONDS AS INVESTMENTS. Bonds issued by a hospital laundry cooperative association under this subchapter are legal and authorized investments for:

(1) a bank;

(2) a savings and loan association;

(3) an insurance company;

(4) a fiduciary;

(5) a trustee; and

(6) a sinking fund of a municipality, county, school district, or other political subdivision or corporation of the state or other public fund of the state or a state agency, including the permanent school fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.011. BONDS AS SECURITY FOR DEPOSITS. A hospital laundry cooperative association's bonds may secure the deposits of public funds of the state or a municipality, county, school district, or other political subdivision or corporation of the state. The bonds are lawful and sufficient security for those deposits in an amount up to their face value, if accompanied by all appurtenant unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.012. LIABILITY TO CREDITORS. Except as provided by this subchapter, a member of a hospital laundry cooperative association is not liable to the association or its creditors in excess of the amount contracted for by the member. When the contract is paid in the amount and at the time specified in the contract, the member's liability ceases.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.013. TAX EXEMPTION. (a) A hospital laundry cooperative association created under this subchapter is not required to pay a tax or assessment on its property or on any purchase made by the association.

(b) Except as provided by Subsection (c), an association is not required to pay an annual franchise tax.

(c) An association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.014. ANNUAL REPORT. A hospital laundry cooperative association shall file an annual report with the secretary of state showing the assets and conditions of the association's affairs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.015. SURPLUS REVENUE. The directors of a hospital laundry cooperative association may, in accordance with the association's bylaws, deposit to the credit of the surplus fund any surplus revenue derived from the laundry system or divide the surplus revenue among the patrons in proportion to the patrons' respective contributions to the working capital of the association and their patronage.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.016. LOANS TO MEMBERS PROHIBITED. A hospital laundry cooperative association may not loan money to a member.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. MISCELLANEOUS COOPERATIVE ASSOCIATIONS

Sec. 301.031. DEFINITIONS. In this subchapter:

(1) "Eligible institution" means an entity engaged in health-related pursuits that, except for cooperative associations, is exempt from federal income tax and includes only:

(A) a municipality;

(B) a political subdivision of the state;

(C) a health-related institution supported by the state or federal government or by a federal department, division, or agency, including:

(i) The Texas A&M University System;

(ii) The University of Texas System;

(iii) the Texas Woman's University System; and

(iv) the Children's Nutrition Research Center;

(D) a nonprofit health-related institution; and

(E) a cooperative association created to provide a system, a unit of which is located in a county that has a population of more than 1.3 million and in which a municipality with a population of more than one million is primarily located, or in a county contiguous to a county having those characteristics.

(2) "System" includes all property and facilities,

including buildings and land and interests in land, necessary, incidental, or appropriate to provide the following services for the benefit of members of a cooperative association:

(A) laundering services;

(B) central heating and cooling services, including steam and chilled water supply;

(C) communication services, including broadcast and other electronic communications, cable television, and transmission of X-rays, records, and documents;

(D) facilities and services for parking and traffic control, including the installation of appropriate traffic control devices on private streets;

(E) preparation, processing, delivery, and service of food, including food necessary for special diets;

(F) central administrative, financial, billing, conference, and educational services;

(G) child care services for the children of employees, consultants, students, and volunteers of cooperative association members, and temporary child care services for the children of patients and customers of those members;

(H) waste removal and disposal services of all types, including incineration and the removal, disposal, and abatement of hazardous wastes, including asbestos, lead, and other toxic substances;

(I) generation, cogeneration, purchase, sale, and pooling of energy in any form to the extent reasonably necessary to support the activities of a cooperative association;

(J) production and publication of educational or research materials;

(K) storage and warehousing services;

(L) transportation services;

(M) police and security services; and

(N) housing for employees, consultants, students, volunteers, and patients of members of the cooperative association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.05(a), eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 597, Sec. 75, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 38, eff. Sept. 1, 2001.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 145 (S.B. 1126), Sec. 33, eff. May 26, 2021.

Sec. 301.032. CREATION OF COOPERATIVE ASSOCIATION. (a) Eligible institutions may create a cooperative association to establish, operate, and maintain a system on a nonprofit, cooperative basis solely for the use and benefit of eligible institutions.

(b) An association is created under the terms prescribed by the governing bodies of the respective eligible institutions.

(c) An association created under this subchapter shall include as part of its name "Cooperative Association."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.033. ARTICLES OF INCORPORATION. (a) Eligible institutions creating a cooperative association may prepare and file articles of incorporation under the general corporation law of this state, including the Texas Business Corporation Act.

(b) An association incorporated as provided by this section is governed by the law under which it is incorporated except to the extent that that law conflicts with this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.034. USE OF PUBLIC FUNDS PROHIBITED. Public funds appropriated to a state department or to a state institution may not be used to create a cooperative association under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.035. MEMBERSHIP; MEMBERSHIP PRIVILEGES; EXPULSION OF MEMBERS. (a) An eligible institution may be elected to membership in a cooperative association by:

(1) the organizers of the association at the time of organization; or

(2) the board of directors of the association according to the association's bylaws.

(b) Only an eligible institution may become a member of an association created under this subchapter.

(c) A membership certificate is transferable only to an eligible institution in the manner provided by the rules prescribed in the bylaws.

(d) Each member has voting rights in the management of an association as prescribed in the bylaws.

(e) A member may be suspended or expelled for misconduct under the rules prescribed in the bylaws.

(f) An association shall pay an expelled member for cancellation of the membership, if the member's contractual obligations pledged to the payment of the association's notes, bonds, or other obligations have been fully paid or other provision has been made. The amount and date of payment are as prescribed in the bylaws.

(g) Amounts paid or property conveyed or transferred to an association by an expelled member and not required to be returned to the member under Subsection (f) may be retained by the association. Facilities or property acquired by the association remains the property of the association and the expelled member does not have a lien or other right to the facilities or property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.036. MEMBERSHIP NOT REQUIRED. A component institution of an institution that is supported by the federal or state government or a department, division, or agency of the federal government is not required to be a member of a cooperative association created under this subchapter but may be a member of one or more associations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.037. POWERS OF COOPERATIVE ASSOCIATION. To carry out the purposes of this subchapter, a cooperative association may:

(1) acquire, own, and operate a system on a cooperative basis solely for the benefit of eligible institutions, regardless of whether the eligible institution is a member of the association, and may engage in activities for the benefit of eligible institutions

that are necessarily related to the acquisition, ownership, operation, and maintenance of a system;

(2) acquire by purchase, lease, or other method land and interests in land appropriate or reasonably incidental to a system and may own, hold, improve, develop, and manage any land and interests in land acquired;

(3) construct, improve, enlarge, or equip buildings or other structures on that land;

(4) encumber or dispose of any land or interests in land, buildings, or structures owned or held by the association;

(5) acquire by lease, purchase, manufacture, or other method any personal property appropriate or reasonably incidental to a system;

(6) borrow or raise money;

(7) sell, grant security interest in, pledge, or otherwise dispose of and collect on accounts receivable, contract rights, and other choses in action; and

(8) make, draw, accept, endorse, execute, and issue bonds, debentures, notes, or other obligations for money borrowed or payment of property purchased, and may secure the payment by mortgage on, creation of security interests in, or pledge of or conveyance of assignment in trust of all or part of any property held by the association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.038. PROVISION OF SERVICES; COSTS. (a) A cooperative association may provide services from a system to eligible institutions and may determine the amount to be charged for providing the services.

(b) Notwithstanding Sections 301.032 and 301.037, a cooperative association may provide from a system central heating and cooling services, including steam and heated and chilled water supply, to persons other than eligible institutions and may determine the amount to be charged for providing services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 10, eff. September 1, 2007.

Sec. 301.039. BONDS, NOTES, OR OTHER OBLIGATIONS. (a) A cooperative association may borrow money from public or private sources or issue bonds, notes, or other obligations in amounts necessary to create, enlarge, maintain, or operate a system.

(b) The association shall pay the bonds, notes, or other obligations of the association solely from revenue received from the operation of a system or from funds specifically provided for that purpose from other sources. An association may pledge its revenues or funds to secure payment of the bonds, notes, or other obligations.

(c) Bonds, notes, or other obligations issued by an association do not constitute indebtedness of the state or of any eligible institution that is a member of the association. Holders of bonds, notes, or other obligations may not demand or enforce payment of principal of or interest on the bonds, notes, or other obligations out of funds other than those specifically pledged to secure payment of those bonds, notes, or other obligations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.040. BONDS AS INVESTMENTS. Bonds issued by a cooperative association under this subchapter are legal and authorized investments for:

(1) a bank;

(2) a savings and loan association;

(3) an insurance company;

(4) a fiduciary; and

(5) a trustee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.041. LIABILITY TO CREDITORS. (a) Except as provided by this subchapter, a member of a cooperative association is not liable to the association or its creditors in excess of the amount contracted for by the member. When the contract is paid in the amount and at the time specified in the contract, the member's liability ceases.

(b) This subchapter does not authorize a state-supported

health-related institution to make a financial commitment beyond the current budget period for the institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.042. TAX EXEMPTION. (a) A cooperative association created under this subchapter is not required to pay a tax or assessment on its property or on any purchase made by the association.

(b) Except as provided by Subsection (c), an association is not required to pay an annual franchise tax.

(c) An association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.043. ANNUAL REPORT. A cooperative association shall file an annual report with the secretary of state showing the assets and conditions of the association's affairs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.044. SURPLUS REVENUE. The directors of a cooperative association may, in accordance with the association's bylaws, deposit to the credit of the surplus fund any surplus revenue derived from a system or divide the surplus revenue among the patrons in proportion to the patrons' respective contributions to the working capital of the association and their patronage.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.045. LOANS TO MEMBERS PROHIBITED. A cooperative association may not loan money to a member.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.046. LIBERAL CONSTRUCTION. This subchapter shall be liberally construed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.047. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter does not prevent a cooperative association from:

(1) creating recourse or nonrecourse debt in the form of bonds, debentures, notes, or any other form of obligation;

(2) encumbering, mortgaging, pledging, or granting a security interest in any property of the cooperative association;

(3) refunding existing debt or obligations by any means available under this subchapter; or

(4) otherwise exercising all express or implied powers granted by Section 301.033(b), 301.037, 301.038, 301.039, or 301.044, or granted by state corporation laws.

(b) This section only clarifies the powers of cooperative associations and does not expand their powers.

Added by Acts 1993, 73rd Leg., ch. 902, Sec. 1, eff. June 19, 1993.

SUBTITLE F. POWERS AND DUTIES OF HOSPITALS

CHAPTER 311. POWERS AND DUTIES OF HOSPITALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 311.001. SPECIAL HOSPITAL REQUIREMENTS FOR GRADUATE OF FOREIGN MEDICAL SCHOOL PROHIBITED. (a) A hospital may not, as a condition to beginning a hospital internship or residency, require a United States citizen who resides in this state and who holds a diploma from a medical school outside the United States that is listed in the AVICENNA Directory for Medicine published by the University of Copenhagen, in collaboration with the World Health Organization and the World Federation for Medical Education, to:

(1) take an examination other than an examination required by the Texas Medical Board to be taken by a graduate of a medical school in the United States before allowing that graduate to begin an internship or residency;

(2) complete a period of internship or graduate clinical training; or

(3) be certified by the Educational Commission for Foreign

Medical Graduates.

(b) This section applies only to a hospital that:

(1) is licensed by this state;

(2) is operated by this state or a political subdivision of this state; or

(3) receives direct or indirect state financial assistance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0835, eff. April 2, 2015.

Sec. 311.002. ITEMIZED STATEMENT OF BILLED SERVICES. (a) Each hospital shall develop, implement, and enforce a written policy for the billing of hospital services and supplies. The policy must include:

(1) a periodic review of the itemized statements required by Subsection (b); and

(2) a procedure for handling complaints relating to billed services.

(b) Repealed by Acts 2025, 89th Leg., R.S., Ch. 717 (H.B. 216), Sec. 3, eff. September 1, 2025.

(c) Repealed by Acts 2025, 89th Leg., R.S., Ch. 717 (H.B. 216), Sec. 3, eff. September 1, 2025.

(d) Repealed by Acts 2025, 89th Leg., R.S., Ch. 717 (H.B. 216), Sec. 3, eff. September 1, 2025.

(e) A hospital shall provide an itemized statement of billed services to a third party payor who is actually or potentially responsible for paying all or part of the billed services provided to a patient and who has received a claim for payment of those services. To be entitled to receive a statement, the third party payor must request the statement from the hospital and must have received a claim for payment. The request must be made not later than one year after the date on which the payor received the claim for payment. The hospital shall provide the statement to the payor not later than the 30th day after the date on which the payor requests the statement. If a third party payor receives a claim for payment of part but not all of the billed services, the third party payor may request an itemized statement of only the billed services for which

payment is claimed or to which any deduction or copayment applies.

(f) If a person, including a third party payor, requests more than two copies of the statement, the hospital may charge a reasonable fee for the third and subsequent copies provided to that person. The fee may not exceed the hospital's cost to copy, process, and deliver the copy to the person.

(g) The Department of State Health Services or other appropriate licensing agency may enforce this section by assessing an administrative penalty, obtaining an injunction, or providing any other appropriate remedy, including suspending, revoking, or refusing to renew a hospital's license.

(h) In this section, "hospital" includes:

(1) a treatment facility licensed under Chapter 464; and

(2) a mental health facility licensed under Chapter 577.

(i) This section does not apply to a hospital maintained or operated by the federal government.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 2.01, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 610, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 5, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0836, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 717 (H.B. 216), Sec. 3, eff. September 1, 2025.

Sec. 311.0025. AUDITS OF BILLING. (a) A hospital, treatment facility, mental health facility, or health care professional may not submit to a patient or a third party payor a bill for a treatment that the hospital, facility, or professional knows was not provided or knows was improper, unreasonable, or medically or clinically unnecessary.

(b) If the appropriate licensing agency receives a complaint alleging a violation of Subsection (a), the agency may audit the billings and patient records of the hospital, treatment facility, mental health facility, or health care professional.

(c) A hospital, treatment facility, mental health facility, or

health care professional that violates Subsection (a) is subject to disciplinary action, including denial, revocation, suspension, or nonrenewal of the license of the hospital, facility, or professional. Disciplinary action taken under this section is in addition to any other civil, administrative, or criminal penalty provided by law.

(d) In this section:

(1) "Health care professional" means an individual licensed, certified, or regulated by a health care regulatory agency who is eligible for reimbursement for treatment ordered or rendered by that professional.

(2) "Hospital" means a hospital licensed under Chapter 241.

(3) "Mental health facility" means a mental health facility licensed under Chapter 577.

(4) "Treatment facility" means a treatment facility licensed under Chapter 464.

(e) A licensing agency may not take disciplinary action against a hospital, treatment facility, mental health facility, or health care professional for unknowing and isolated billing errors.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 2.02, eff. Aug. 30, 1993. Amended by Acts 1999, 76th Leg., ch. 1271, Sec. 1, eff. Sept. 1, 1999.

Sec. 311.003. REIMBURSEMENT FOR INFANT TRANSPORT TO HOSPITAL NEONATAL INTENSIVE CARE UNIT. (a) A hospital that agrees to admit an infant into its level III neonatal intensive care unit shall pay for the part of the cost of transporting the infant to the hospital from any location in this state that the hospital administrator determines cannot be paid:

(1) by a member of the infant's immediate family or other person legally responsible for the infant's support through personal means; or

(2) by insurance or another benefit system that pays for transportation for that purpose.

(b) A hospital is entitled to receive state reimbursement for funds spent by the hospital under Subsection (a).

(c) The Department of State Health Services shall administer the state funds for reimbursement under this section, and may spend not more than $100,000 each fiscal year from earned federal funds or

private donations to implement this section.

(d) The executive commissioner of the Health and Human Services Commission shall adopt rules that establish qualifications for reimbursement and provide procedures for applying for reimbursement.

(e) In this section, "level III neonatal intensive care unit" means a neonatal care unit that complies with standards adopted by the American Academy of Pediatrics.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0837, eff. April 2, 2015.

Sec. 311.004. STANDARDIZED PATIENT RISK IDENTIFICATION SYSTEM. (a) In this section:

(1) "Department" means the Department of State Health Services.

(1-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(2) "Hospital" means a general or special hospital as defined by Section 241.003. The term includes a hospital maintained or operated by this state.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(69), eff. April 2, 2015.

(c) Unless the department authorizes an exemption for the reason stated in Subsection (d), the department shall require each hospital to implement and enforce the statewide standardized patient risk identification system under which a patient with a specific medical risk may be readily identified through the use of the system to communicate to hospital personnel the existence of that risk.

(d) The department may exempt from the statewide standardized patient risk identification system a hospital that seeks to adopt another patient risk identification methodology supported by evidence-based protocols for the practice of medicine.

(e) The department shall modify the statewide standardized patient risk identification system in accordance with evidence-based medicine as necessary.

(f) The executive commissioner may adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 5.01, eff. September 28, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0838, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0839, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(69), eff. April 2, 2015.

Sec. 311.005. WATER WELLS FOR USE BY HOSPITALS IN CERTAIN COUNTIES IN EVENT OF EMERGENCY OR NATURAL DISASTER. (a) This section applies only to a hospital located in a county that:

(1) has a population of more than 250,000; and

(2) borders the Neches River.

(b) A hospital to which this section applies may drill a water well on property owned by the hospital for the purpose of producing water to supplement the hospital's water supply in the event that an emergency or natural disaster prevents the hospital from receiving water from the hospital's usual source.

(c) This section does not affect the authority of a groundwater conservation district to regulate groundwater production under Chapter 36, Water Code, or other law governing a groundwater conservation district.

Added by Acts 2023, 88th Leg., R.S., Ch. 978 (S.B. 2406), Sec. 1, eff. September 1, 2023.

Sec. 311.006. DIRECT PAYMENT TO HOSPITAL. (a) In this section:

(1) "Enrollee" means an individual who is enrolled in a health benefit plan or otherwise entitled to coverage under a health benefit plan.

(2) "Health benefit plan" means any individual or group arrangement with a public or private entity under which the entity will pay for, reimburse expenses for, or otherwise contract with a health care provider for the provision of health care services, supplies, or devices to a patient. The term includes an arrangement

with:

(A) an insurance company;

(B) the sponsor or administrator of a self-insured health benefit plan;

(C) a group hospital service corporation operating under Chapter 842, Insurance Code;

(D) a health maintenance organization operating under Chapter 843, Insurance Code;

(E) the state Medicaid program, including the Medicaid managed care program operating under Chapter 540, Government Code;

(F) a health benefit plan offered or administered by or on behalf of this state or a political subdivision of this state or an agency or instrumentality of the state or a political subdivision of this state, including:

(i) a basic coverage plan under Chapter 1551, Insurance Code;

(ii) a basic plan under Chapter 1575, Insurance Code;

(iii) a primary care coverage plan under Chapter 1579, Insurance Code; and

(iv) a plan providing basic coverage under Chapter 1601, Insurance Code; or

(G) any other entity providing a health insurance or health benefit plan subject to regulation by the Texas Department of Insurance.

(3) "Health care service" means a service to diagnose, prevent, alleviate, cure, or heal a human illness or injury that is provided to an individual by a physician or other health care provider.

(4) "Hospital" means a public or private institution licensed under Chapter 241. The term does not include an ambulatory surgical center licensed under Chapter 243.

(b) At the request of a patient who is not an enrollee, and subject to Subsection (c), a hospital must accept directly from the patient full payment for a health care service provided by the hospital.

(c) A request under Subsection (b) must be made not later than the 60th day after the date on which the patient receives a bill for or other final accounting of the health care service provided. The bill or other final accounting must notify the patient of the ability

to make a request under Subsection (b).

(d) Notwithstanding Section 552.003, Insurance Code, or any other law, in accepting payments as described by Subsection (b) for health care services provided by the hospital, a hospital may charge patients amounts that are either:

(1) not more than 25 percent greater than the amounts generally billed, as defined by 26 C.F.R. Section 1.501(r)-1, for a health care service; or

(2) not more than 50 percent greater than the lowest contracted rate for a health care service that the hospital has agreed to accept as payment in full as a contracted, preferred, or participating provider of a health benefit plan other than:

(A) the state Medicaid program, including the Medicaid managed care program operated under Chapter 540, Government Code;

(B) the child health plan program operated under Chapter 62; or

(C) Medicare benefits.

(e) Nothing in this section precludes a patient from receiving from a hospital charity care that the patient would otherwise qualify for or be entitled to.

Added by Acts 2025, 89th Leg., R.S., Ch. 565 (H.B. 1612), Sec. 1, eff. September 1, 2025.

SUBCHAPTER B. EMERGENCY SERVICES

Sec. 311.021. DEFINITION. In this subchapter, "emergency services" means services that are usually and customarily available at a hospital and that must be provided immediately to:

(1) sustain a person's life;

(2) prevent serious permanent disfigurement or loss or impairment of the function of a body part or organ; or

(3) provide for the care of a woman in active labor or, if the hospital is not equipped for that service, to provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 311.022. DISCRIMINATION PROHIBITED IN DENIAL OF SERVICES;

CRIMINAL PENALTIES. (a) An officer, employee, or medical staff member of a general hospital may not deny emergency services because a person cannot establish the person's ability to pay for the services or because of the person's race, religion, or national ancestry if:

(1) the services are available at the hospital; and

(2) the person is diagnosed by a licensed physician as requiring those services.

(b) An officer or employee of a general hospital may not deny a person in need of emergency services access to diagnosis by a licensed physician on the hospital staff because the person cannot establish the person's ability to pay for the services or because of the person's race, religion, or national ancestry.

(c) In addition, the person needing emergency services may not be subjected to arbitrary, capricious, or unreasonable discrimination based on age, sex, physical condition, or economic status.

(d) An officer, employee, or medical staff member of a general hospital commits an offense if that person recklessly violates this section. An offense under this subsection is a Class B misdemeanor, except that if the offense results in permanent injury, permanent disability, or death, the offense is a Class A misdemeanor.

(e) An officer, employee, or medical staff member of a general hospital commits an offense if that person intentionally or knowingly violates this section. An offense under this subsection is a Class A misdemeanor, except that if, as a direct result of the offense, a person denied emergency services dies, the offense is a felony of the third degree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 311.023. NO LIABILITY FOR FAILURE TO PROVIDE EMERGENCY SERVICES AFTER GOOD FAITH EFFORT. An employee of a general hospital that does not have physician services available at the time of an emergency is not in violation of Section 311.022 if, after a reasonable good faith effort, a physician fails to provide or delegate the provision of medical services as required by state statutes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 311.024. PAYMENT FOR SERVICES REQUIRED. This subchapter does not relieve a person of that person's obligation to pay for services provided by a hospital if the person can pay for those services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 311.025. SUMMARY OF CERTAIN PARTS OF EMERGENCY OPERATIONS PLAN. (a) In this section:

(1) "Commission" means the Health and Human Services Commission.

(2) "Emergency operations plan" means a hospital's process for temporarily routing patients in need of emergency services to other hospitals or health facilities during a period when:

(A) the hospital's capacity to provide emergency services to those patients is significantly diminished; and

(B) the patients, if routed to the hospital, would likely receive substantially delayed care resulting in worse health outcomes than would otherwise occur were the patient routed to another hospital or health facility.

(3) "Hospital" means a hospital licensed under Chapter 241.

(b) This section applies only to a hospital that has an emergency department or otherwise regularly provides emergency services.

(c) A hospital to which this section applies shall submit to the commission a written summary of the part of the hospital's emergency operations plan that addresses diversions from the hospital's emergency department in the event that the hospital experiences a cyber attack or an electrical power outage.

(d) If a hospital to which this section applies makes changes to the part of the plan described by Subsection (c), the hospital shall update the previously submitted summary and submit the updated summary to the commission not later than the 30th day after the date the changes to the plan are adopted by the hospital's governing body or otherwise approved by the appropriate hospital administrator.

(e) A summary submitted to the commission under this section is confidential and excepted from public disclosure under Chapter 552, Government Code.

Added by Acts 2025, 89th Leg., R.S., Ch. 982 (S.B. 672), Sec. 1, eff.

September 1, 2025.

SUBCHAPTER C. HOSPITAL DATA REPORTING AND COLLECTION SYSTEM

Sec. 311.031. DEFINITIONS. In this subchapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(69), eff. April 2, 2015.

(2) "Charity care" means the unreimbursed cost to a hospital of:

(A) providing, funding, or otherwise financially supporting health care services on an inpatient or outpatient basis to a person classified by the hospital as "financially indigent" or "medically indigent"; and/or

(B) providing, funding, or otherwise financially supporting health care services provided to financially indigent persons through other nonprofit or public outpatient clinics, hospitals, or health care organizations.

(3) "Contractual allowances" means the difference between revenue at established rates and amounts realizable from third-party payors under contractual agreements.

(4) "Department" means the Department of State Health Services.

(5) "Donations" means the unreimbursed costs of providing cash and in-kind services and gifts, including facilities, equipment, personnel, and programs, to other nonprofit or public outpatient clinics, hospitals, or health care organizations.

(6) "Education-related costs" means the unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting educational benefits, services, and programs including:

(A) education of physicians, nurses, technicians, and other medical professionals and health care providers;

(B) provision of scholarships and funding to medical schools, colleges, and universities for health professions education;

(C) education of patients concerning diseases and home care in response to community needs; and

(D) community health education through informational programs, publications, and outreach activities in response to community needs.

(6-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(7) "Financially indigent" means an uninsured or underinsured person who is accepted for care with no obligation or a discounted obligation to pay for the services rendered based on the hospital's eligibility system.

(8) "Government-sponsored indigent health care" means the unreimbursed cost to a hospital of providing health care services to recipients of Medicaid and other federal, state, or local indigent health care programs, eligibility for which is based on financial need.

(9) "Health care organization" means a nonprofit or public organization that provides, funds, or otherwise financially supports health care services provided to financially indigent persons.

(10) "Hospital" means:

(A) a general or special hospital licensed under Chapter 241;

(B) a private mental hospital licensed under Chapter 577; and

(C) a treatment facility licensed under Chapter 464.

(11) "Hospital eligibility system" means the financial criteria and procedure used by a hospital to determine if a patient is eligible for charity care. The system shall include income levels and means testing indexed to the federal poverty guidelines; provided, however, that a hospital may not establish an eligibility system which sets the income level eligible for charity care lower than that required by counties under Section 61.023 or higher, in the case of the financially indigent, than 200 percent of the federal poverty guidelines. A hospital may determine that a person is financially or medically indigent pursuant to the hospital's eligibility system after health care services are provided.

(12) "Hospital system" means a system of local nonprofit hospitals under the common governance of a single corporate parent that are located within a radius of not more than 125 linear miles of the corporate parent.

(13) "Medically indigent" means a person whose medical or hospital bills after payment by third-party payors exceed a specified percentage of the patient's annual gross income, determined in accordance with the hospital's eligibility system, and the person is financially unable to pay the remaining bill.

(14) "Research-related costs" means the unreimbursed cost to a hospital of providing, funding, or otherwise financially

supporting facilities, equipment, and personnel for medical and clinical research conducted in response to community needs.

(15) "Subsidized health services" means those services provided by a hospital in response to community needs for which the reimbursement is less than the hospital's cost for providing the services and which must be subsidized by other hospital or nonprofit supporting entity revenue sources. Subsidized health services may include but are not limited to:

(A) emergency and trauma care;

(B) neonatal intensive care;

(C) free-standing community clinics; and

(D) collaborative efforts with local government or private agencies in preventive medicine, such as immunization programs.

(16) "Unreimbursed costs" means the costs a hospital incurs for providing services after subtracting payments received from any source for such services including but not limited to the following: third-party insurance payments; Medicare payments; Medicaid payments; Medicare education reimbursements; state reimbursements for education; payments from drug companies to pursue research; grant funds for research; and disproportionate share payments. For purposes of this definition, the term "costs" shall be calculated by applying the cost to charge ratios derived in accordance with generally accepted accounting principles for hospitals to billed charges. The calculation of the cost to charge ratios shall be based on the most recently completed and audited prior fiscal year of the hospital or hospital system. Prior to January 1, 1996, for purposes of this definition, charitable contributions and grants to a hospital, including transfers from endowment or other funds controlled by the hospital or its nonprofit supporting entities, shall not be subtracted from the costs of providing services for purposes of determining unreimbursed costs. After January 1, 1996, for purposes of this definition, charitable contributions and grants to a hospital, including transfers from endowment or other funds controlled by the hospital or its nonprofit supporting entities, shall not be subtracted from the costs of providing services for purposes of determining the unreimbursed costs of charity care and government-sponsored indigent health care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 360, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 705, Sec. 6.01, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 781, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0840, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(69), eff. April 2, 2015.

Sec. 311.032. DEPARTMENT ADMINISTRATION OF HOSPITAL REPORTING AND COLLECTION SYSTEM. (a) The department shall establish a uniform reporting and collection system for hospital financial and utilization data.

(b) The executive commissioner shall adopt necessary rules consistent with this subchapter to govern the reporting and collection of data.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 726, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0841, eff. April 2, 2015.

Sec. 311.033. FINANCIAL AND UTILIZATION DATA REQUIRED. (a) A hospital shall submit to the department financial and utilization data for that hospital, including data relating to the hospital's:

(1) total gross revenue, including:
  (A) Medicare gross revenue;
  (B) Medicaid gross revenue;
  (C) other revenue from state programs;
  (D) revenue from local government programs;
  (E) local tax support;
  (F) charitable contributions;
  (G) other third party payments;
  (H) gross inpatient revenue; and
  (I) gross outpatient revenue;
(2) total deductions from gross revenue, including:
  (A) contractual allowance; and

(B) any other deductions;

(3) charity care;

(4) bad debt expense;

(5) total admissions, including:

(A) Medicare admissions;

(B) Medicaid admissions;

(C) admissions under a local government program;

(D) charity care admissions; and

(E) any other type of admission;

(6) total discharges;

(7) total patient days;

(8) average length of stay;

(9) total outpatient visits;

(10) total assets;

(11) total liabilities;

(12) estimates of unreimbursed costs of subsidized health services reported separately in the following categories:

(A) emergency care and trauma care;

(B) neonatal intensive care;

(C) free-standing community clinics;

(D) collaborative efforts with local government or private agencies in preventive medicine, such as immunization programs; and

(E) other services that satisfy the definition of "subsidized health services" contained in Section 311.031(15);

(13) donations;

(14) total cost of reimbursed and unreimbursed research;

(15) total cost of reimbursed and unreimbursed education separated into the following categories:

(A) education of physicians, nurses, technicians, and other medical professionals and health care providers;

(B) scholarships and funding to medical schools, colleges, and universities for health professions education;

(C) education of patients concerning diseases and home care in response to community needs;

(D) community health education through informational programs, publications, and outreach activities in response to community needs; and

(E) other educational services that satisfy the definition of "education-related costs" under Section 311.031(6).

(b) The data must be based on the hospital's most recent audited financial records.

(c) The data must be submitted in the form prescribed by the department and at the time established by department rule.

(d) Repealed by Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Sec. 11(3), eff. September 1, 2025.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 360, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 11, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0842, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 636 (H.B. 3801), Sec. 11(3), eff. September 1, 2025.

Sec. 311.0335. MENTAL HEALTH AND CHEMICAL DEPENDENCY DATA. (a) A hospital that provides mental health or chemical dependency services shall submit to the department financial and utilization data relating to the mental health and chemical dependency services provided by the hospital, including data for inpatient and outpatient services relating to:

(1) patient demographics, including race, ethnicity, age, gender, and county of residence;

(2) admissions;

(3) discharges, including length of inpatient treatment;

(4) specific diagnoses and procedures according to criteria prescribed by the Diagnostic and Statistical Manual of Mental Disorders, 3rd Edition, Revised, or a later version prescribed by department rule;

(5) total charges and the components of the charges;

(6) payor sources; and

(7) use of mechanical restraints.

(b) The data must be submitted in the form prescribed by the department and at the time established by department rule.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 6.02, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0843, eff. April 2, 2015.

Sec. 311.035. USE OF DATA. (a) The department shall use the data collected under this subchapter to publish an annual report regarding:

(1) the amount of charity care, bad debt, and other uncompensated care hospitals provide;

(2) the use of hospital services by indigent patients; and

(3) the effect of indigent care services on hospitals.

(b) Repealed by Acts 1995, 74th Leg., ch. 726, Sec. 5(1), eff. Sept. 1, 1995.

(c) The department shall enter into an interagency agreement with the Texas Department of Insurance relating to the mental health and chemical dependency data collected under Section 311.0335. The agreement shall address the collection, analysis, and sharing of the data by the agencies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 6.03, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 726, Sec. 3, 5(1), eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0844, eff. April 2, 2015.

Sec. 311.036. DATA VERIFICATION. (a) Before the department may publish the report required by Section 311.035 or provide data to the public in any other manner, the department shall give each hospital a copy of the preliminary report or provide the hospital an opportunity in some other manner to verify the data relating to that hospital.

(b) If a hospital does not submit corrected data before the 31st day after the date on which the hospital receives the preliminary report or other data, the department shall presume that the data is correct.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 311.037. CONFIDENTIAL DATA; CRIMINAL PENALTY. (a) The following data reported or submitted to the department under this subchapter is confidential:

(1) data regarding a specific patient; or

(2) financial data regarding a provider or facility submitted to the department before September 1, 1987. All financial data regarding a provider or facility submitted after September 1, 1987, are no longer confidential.

(b) Before the department may disclose confidential data under this subchapter, the department must remove any information that identifies a specific patient.

(c) A person commits an offense if the person:

(1) discloses, distributes, or sells confidential data obtained under this subchapter; or

(2) violates Subsection (b).

(d) An offense under Subsection (c) is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 360, Sec. 3, eff. Sept. 1, 1993.

Sec. 311.039. EXEMPTION. A hospital may, but is not required to, provide the data required by Section 311.033 if the hospital:

(1) is exempt from state franchise, sales, ad valorem, or other state or local taxes; and

(2) does not seek or receive reimbursement for providing health care services to patients from any source, including:

(A) the patient or any person legally obligated to support the patient;

(B) a third party payor; or

(C) Medicaid, Medicare, or any other federal, state, or local program for indigent health care.

Added by Acts 1997, 75th Leg., ch. 261, Sec. 15, eff. Sept. 1, 1997.

SUBCHAPTER D. COMMUNITY BENEFITS AND CHARITY CARE

Sec. 311.041. POLICY STATEMENT. It is the purpose of this subchapter to clarify and set forth the duties, responsibilities, and benefits that apply to hospitals for providing community benefits that include charity care.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 204, Sec. 22.01, eff. Sept. 1, 2003.

Sec. 311.042. DEFINITIONS. In this subchapter:

(1) "Charity care" means those amounts defined as charity care in Section 311.031(2).

(2) "Community benefits" means the unreimbursed cost to a hospital of providing charity care, government-sponsored indigent health care, donations, education, government-sponsored program services, research, and subsidized health services. Community benefits does not include the cost to the hospital of paying any taxes or other governmental assessments.

(3) "Contributions" means the dollar value of cash donations and the fair market value at the time of donation of in-kind donations to the hospital from individuals, organizations, or other entities. Contributions does not include the value of a donation designated or otherwise restricted by the donor for purposes other than charity care.

(3-a) "Department" means the Department of State Health Services.

(4) "Donations" means those amounts defined as donations in Section 311.031(5).

(5) "Education-related costs" means those amounts defined as education-related costs in Section 311.031(6).

(6) "Government-sponsored indigent health care" means those amounts defined as government-sponsored indigent health care in Section 311.031(8).

(7) "Government-sponsored program unreimbursed costs" means the unreimbursed cost to the hospital of providing health care services to the beneficiaries of Medicare, the TRICARE program of the United States Department of Defense, and other federal, state, or local government health care programs.

(8) "Net patient revenue" is an accounting term and shall be calculated in accordance with generally accepted accounting principles for hospitals.

(9)(A) "Nonprofit hospital" means a hospital that is:

(i) eligible for tax-exempt bond financing; or

(ii) exempt from state franchise, sales, ad

valorem, or other state or local taxes; and

(iii) organized as a nonprofit corporation or a charitable trust under the laws of this state or any other state or country.

(B) For purposes of this subchapter, a "nonprofit hospital" shall not include a hospital that:

(i) is exempt from state franchise, sales, ad valorem, or other state or local taxes;

(ii) does not receive payment for providing health care services to any inpatients or outpatients from any source including but not limited to the patient or any person legally obligated to support the patient, third-party payors, Medicare, Medicaid, or any other federal, state, or local indigent care program; payment for providing health care services does not include charitable donations, legacies, bequests, or grants or payments for research; and

(iii) does not discriminate on the basis of inability to pay, race, color, creed, religion, or gender in its provision of services; or

(iv) is located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a Health Professionals Shortage Area.

(10) "Nonprofit supporting entities" means nonprofit entities created by the hospital or its parent entity to further the charitable purposes of the hospital and that are owned or controlled by the hospital or its parent entity.

(11) "Research-related costs" means those amounts defined as research-related costs in Section 311.031(14).

(12) "Tax-exempt benefits" means all of the following, calculated in accordance with standard accounting principles for hospitals for tax purposes using the applicable statutes, rules, and regulations regarding the calculation of these taxes:

(A) the dollar amount of federal, state, and local taxes foregone by a nonprofit hospital and its nonprofit supporting entities. For purposes of this definition federal, state, and local taxes include income, franchise, ad valorem, and sales taxes;

(B) the dollar amount of contributions received by a nonprofit hospital and its nonprofit supporting entities; and

(C) the value of tax-exempt bond financing received by a nonprofit hospital and its nonprofit supporting entities.

(13) "Subsidized health services" means those amounts defined as subsidized health services in Section 311.031(15).

(14) "Unreimbursed costs" means costs as defined in Section 311.031(16).

(15) "Hospital system" means a system of local nonprofit hospitals under the common governance of a single corporate parent that are located within a radius of not more than 125 linear miles of the corporate parent.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 781, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0845, eff. April 2, 2015.

Sec. 311.043. DUTY OF NONPROFIT HOSPITALS TO PROVIDE COMMUNITY BENEFITS. (a) A nonprofit hospital shall provide health care services to the community and shall comply with all federal, state, and local government requirements for tax exemption in order to maintain such exemption. These health care services to the community shall include charity care and government-sponsored indigent health care and may include other components of community benefits as both terms are defined in Sections 311.031 and 311.042.

(b) In order to qualify as a charitable organization under Sections 11.18(d)(1), 151.310(a)(2) and (e), and 171.063(a)(1), Tax Code, and to satisfy the requirements of this subchapter, a nonprofit hospital shall provide community benefits, which include charity care and government-sponsored indigent health care, in an amount that satisfies the requirements of Section 311.045. A determination of the amount of charity care and government-sponsored indigent health care provided by a hospital shall be based on the most recently completed and audited prior fiscal year of the hospital.

(c) Reductions in the amount of community benefits, which includes charity care and government-sponsored indigent health care, provided by a nonprofit hospital shall be considered reasonable when the financial reserves of the hospital are reduced to such a level that the hospital would be in violation of any applicable bond covenants, when necessary to prevent the hospital from endangering its ability to continue operations, or if the hospital, as a result

of a natural or other disaster, is required substantially to curtail its operations.

(d) A hospital's admissions policy must provide for the admission of financially indigent and medically indigent persons pursuant to its charity care requirements as set forth in this subchapter.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993.

Sec. 311.044. COMMUNITY BENEFITS PLANNING BY NONPROFIT HOSPITALS. (a) A nonprofit hospital shall develop:

(1) an organizational mission statement that identifies the hospital's commitment to serving the health care needs of the community; and

(2) a community benefits plan defined as an operational plan for serving the community's health care needs that sets out goals and objectives for providing community benefits that include charity care and government-sponsored indigent health care, as the terms community benefits, charity care, and government-sponsored indigent health care are defined by Sections 311.031 and 311.042, and that identifies the populations and communities served by the hospital.

(b) When developing the community benefits plan, the hospital shall consider the health care needs of the community as determined by community-wide needs assessments. For purposes of this subsection, "community" means the primary geographic area and patient categories for which the hospital provides health care services; provided, however, that the primary geographic area shall at least encompass the entire county in which the hospital is located.

(c) The hospital shall include at least the following elements in the community benefits plan:

(1) mechanisms to evaluate the plan's effectiveness, including but not limited to a method for soliciting the views of the communities served by the hospital;

(2) measurable objectives to be achieved within a specified time frame; and

(3) a budget for the plan.

(d) In determining the community-wide needs assessment required by Subsection (b), a nonprofit hospital shall consider consulting

with and seeking input from representatives of the following entities or organizations located in the community as defined by Subsection (b):

(1) the local health department;

(2) the public health region under Chapter 121;

(3) the public health district;

(4) health-related organizations, including a health professional association or hospital association;

(5) health science centers;

(6) private business;

(7) consumers;

(8) local governments; and

(9) insurance companies and managed care organizations with an active market presence in the community.

(e) Representatives of a nonprofit hospital shall consider meeting with representatives of the entities and organizations listed in Subsection (d) to assess the health care needs of the community and population served by the nonprofit hospital.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1101, Sec. 1, eff. Sept. 1, 1997.

Sec. 311.045. COMMUNITY BENEFITS AND CHARITY CARE REQUIREMENTS. (a) A nonprofit hospital or hospital system shall annually satisfy the requirements of this subchapter and of Sections 11.18(d)(1), 151.310(a)(2) and (e), and 171.063(a)(1), Tax Code, to provide community benefits which include charity care and government-sponsored indigent health care by complying with one or more of the standards set forth in Subsection (b). The hospital or hospital system shall file a statement with the Center for Health Statistics at the department and the chief appraiser of the local appraisal district no later than the 120th day after the hospital's or hospital system's fiscal year ends, stating which of the standards in Subsection (b) have been satisfied, provided, however, that the first report shall be filed no later than the 120th day after the end of the hospital's or hospital system's fiscal year ending during 1994. For hospitals in a hospital system, the corporate parent may elect to satisfy the charity care requirements of this subchapter for each of

the hospitals within the system on a consolidated basis.

(b)(1) A nonprofit hospital or hospital system may elect to provide community benefits, which include charity care and government-sponsored indigent health care, according to any of the following standards:

(A) charity care and government-sponsored indigent health care are provided at a level which is reasonable in relation to the community needs, as determined through the community needs assessment, the available resources of the hospital or hospital system, and the tax-exempt benefits received by the hospital or hospital system;

(B) charity care and government-sponsored indigent health care are provided in an amount equal to at least 100 percent of the hospital's or hospital system's tax-exempt benefits, excluding federal income tax; or

(C) charity care and community benefits are provided in a combined amount equal to at least five percent of the hospital's or hospital system's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of net patient revenue.

(2) For purposes of satisfying Subdivision (1)(C), a hospital or hospital system may not change its existing fiscal year unless the hospital or hospital system changes its ownership or corporate structure as a result of a sale or merger.

(3) A nonprofit hospital that has been designated as a disproportionate share hospital under the state Medicaid program in the current fiscal year or in either of the previous two fiscal years shall be considered to have provided a reasonable amount of charity care and government-sponsored indigent health care and shall be deemed in compliance with the standards in this subsection.

(c) The providing of charity care and government-sponsored indigent health care in accordance with Subsection (b)(1)(A) shall be guided by the prudent business judgment of the hospital which will ultimately determine the appropriate level of charity care and government-sponsored indigent health care based on the community needs, the available resources of the hospital, the tax-exempt benefits received by the hospital, and other factors that may be unique to the hospital, such as the hospital's volume of Medicare and Medicaid patients. These criteria shall not be determinative factors, but shall be guidelines contributing to the hospital's

decision, along with other factors which may be unique to the hospital. The standards set forth in Subsections (b)(1)(B) and (b)(1)(C) shall also not be considered determinative of the amount of charity care and government-sponsored indigent health care that will be considered reasonable under Subsection (b)(1)(A).

(d) For purposes of this section, a hospital that satisfies Subsection (b)(1)(A) or (b)(3) shall be excluded in determining a hospital system's compliance with the standards provided by Subsection (b)(1)(B) or (b)(1)(C).

(e) In any fiscal year that a hospital or hospital system, through unintended miscalculation, fails to meet any of the standards in Subsection (b), the hospital or hospital system shall not lose its tax-exempt status without the opportunity to cure the miscalculation in the fiscal year following the fiscal year the failure is discovered by both meeting one of the standards and providing an additional amount of charity care and government-sponsored indigent health care that is equal to the shortfall from the previous fiscal year. A hospital or hospital system may apply this provision only once every five years.

(f) A nonprofit hospital or hospital system under contract with a local county to provide indigent health care services under Chapter 61 may credit unreimbursed costs from direct care provided to an eligible county resident toward meeting the nonprofit hospital's or system's charity care and government-sponsored indigent health care requirement.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 781, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 260, Sec. 1, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 654, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1263, Sec. 78, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0846, eff. April 2, 2015.

Sec. 311.0455. ANNUAL REPORT BY THE DEPARTMENT. (a) The department shall submit to the attorney general and comptroller not later than July 1 of each year a report listing each nonprofit hospital or hospital system that did not meet the requirements of

Section 311.045 during the preceding fiscal year.

(b) The department shall submit to the attorney general and the comptroller not later than November 1 of each year a report containing the following information for each nonprofit hospital or hospital system during the preceding fiscal year:

(1) the amount of charity care, as defined by Section 311.031, provided;

(2) the amount of government-sponsored indigent health care, as defined by Section 311.031, provided;

(3) the amount of community benefits, as defined by Section 311.042, provided;

(4) the amount of net patient revenue, as defined by Section 311.042, and the amount constituting four percent of net patient revenue;

(5) the dollar amount of the hospital's or hospital system's charity care and community benefits requirements met;

(6) a computation of the percentage by which the amount described by Subdivision (5) is above or below the dollar amount of the hospital's or hospital system's charity care and community benefits requirements;

(7) the amount of tax-exempt benefits, as defined by Section 311.042, provided, if the hospital is required to report tax-exempt benefits under Section 311.045(b)(1)(A) or (b)(1)(B); and

(8) the amount of charity care expenses reported in the hospital's or hospital system's audited financial statement.

(c) The department shall make the report required by Subsection (b) available to the public and shall issue a press release concerning the availability of the report.

(d) For purposes of Subsection (b), "nonprofit hospital" includes the following if the hospital is not located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a Health Professionals Shortage Area:

(1) a Medicaid disproportionate share hospital; or

(2) a public hospital that is owned or operated by a political subdivision or municipal corporation of the state, including a hospital district or authority.

Added by Acts 1997, 75th Leg., ch. 260, Sec. 2, eff. Jan. 1, 1998.

Sec. 311.0456. ELIGIBILITY AND CERTIFICATION FOR LIMITED LIABILITY. (a) In this section, "nonprofit hospital" has the meaning assigned by Section 311.042(9)(A).

(b) This section applies only to a nonprofit hospital or hospital system that is certified by the department under Subsection (d).

(c) To be eligible for certification under Subsection (d), a nonprofit hospital or hospital system must provide:

(1) charity care in an amount equal to at least eight percent of the net patient revenue of the hospital or hospital system during the most recent fiscal year of the hospital or system; and

(2) at least 40 percent of the charity care provided in the county in which the hospital is located.

(d) To be certified under this subsection, a nonprofit hospital or hospital system must submit a written request for certification to the department not later than May 31 of each year stating that the hospital or system is eligible for certification. The department must determine eligibility for certification not later than December 31 of the year in which the department receives the request by checking the report submitted by the hospital or system under Section 311.033 and the statement of community benefits and charity care submitted by the nonprofit hospital or hospital system under Section 311.045. If a report under Section 311.033 is not available for all hospitals in a county in which a nonprofit hospital meeting the requirement of Subsection (c)(1) is requesting certification, the department shall determine the eligibility of the hospital or hospital system using other sources of verified charity care information available at the time of certification. The department shall certify that the hospital or hospital system has met the requirements for certification. The certification issued under this subsection to a nonprofit hospital or hospital system takes effect on December 31 of that year and expires on the anniversary of that date.

(e) For the purposes of Subsection (b), a corporation certified by the Texas Medical Board as a nonprofit organization under Section 162.001, Occupations Code, whose sole member is a qualifying hospital or hospital system is considered a nonprofit hospital or hospital system.

(f) Notwithstanding any other law, the liability of a nonprofit hospital or hospital system for noneconomic damages as defined by Section 41.001, Civil Practice and Remedies Code, for a cause of

action that accrues during the period that the hospital or system is certified under this section is subject to the limitations specified by Section 101.023(b), Civil Practice and Remedies Code, and Subsection (c) of that section does not apply. This subsection establishes the total combined limit of liability of the nonprofit hospital or hospital system and any employee, officer, or director of the hospital or system for noneconomic damages for each person and each single occurrence, as described by Section 101.023(b), Civil Practice and Remedies Code.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 22.02, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 376 (S.B. 1378), Sec. 1, eff. June 17, 2005.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0847, eff. April 2, 2015.

Sec. 311.046. ANNUAL REPORT OF COMMUNITY BENEFITS PLAN. (a) A nonprofit hospital shall prepare an annual report of the community benefits plan and shall include in the report at least the following information:

(1) the hospital's mission statement;

(2) a disclosure of the health care needs of the community that were considered in developing the hospital's community benefits plan pursuant to Section 311.044(b);

(3) a disclosure of the amount and types of community benefits, including charity care, actually provided. Charity care shall be reported as a separate item from other community benefits;

(4) a statement of its total operating expenses computed in accordance with generally accepted accounting principles for hospitals from the most recent completed and audited prior fiscal year of the hospital; and

(5) a completed worksheet that computes the ratio of cost to charge for the fiscal year referred to in Subdivision (4) and that includes the same requirements as Worksheet 1-A adopted by the department in August 1994 for the 1994 "Annual Statement of Community Benefits Standards".

(b) A nonprofit hospital shall file the annual report of the

community benefits plan with the Center for Health Statistics at the department. The report shall be filed no later than April 30 of each year. In addition to the annual report, a completed worksheet as required by Subsection (a)(5) shall be filed no later than 10 working days after the date the hospital files its Medicare cost report.

(c) A nonprofit hospital shall prepare a statement that notifies the public that the annual report of the community benefits plan is public information; that it is filed with the department; and that it is available to the public on request from the department. The statement shall be posted in prominent places throughout the hospital, including but not limited to the emergency room waiting area and the admissions office waiting area. The statement shall also be printed in the hospital patient guide or other material that provides the patient with information about the admissions criteria of the hospital.

(d) Each hospital shall provide, to each person who seeks any health care service at the hospital, notice, in appropriate languages, if possible, about the charity care program, including the charity care and eligibility policies of the program, and how to apply for charity care. Such notice shall also be conspicuously posted in the general waiting area, in the waiting area for emergency services, in the business office, and in such other locations as the hospital deems likely to give notice of the charity care program and policies. Each hospital shall annually publish notice of the hospital's charity care program and policies in a local newspaper of general circulation in the county. Each notice under this subsection must be written in language readily understandable to the average reader.

(e) For purposes of this section, "nonprofit hospital" includes the following if the hospital is not located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a Health Professionals Shortage Area:

(1) a Medicaid disproportionate share hospital; or

(2) a public hospital that is owned or operated by a political subdivision or municipal corporation of the state, including a hospital district or authority.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 260, Sec. 3, eff. Jan. 1, 1998;

Acts 2001, 77th Leg., ch. 654, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0848, eff. April 2, 2015.

Sec. 311.0461. INFORMATIONAL MANUAL. The department shall annually publish a manual that lists each nonprofit hospital in this state with a brief summary of the charity care policies and community benefits that the nonprofit hospital provides.

Added by Acts 2001, 77th Leg., ch. 654, Sec. 3, eff. Sept. 1, 2001.

Sec. 311.047. PENALTIES. The department may assess a civil penalty against a nonprofit hospital that fails to make a report of the community benefits plan as required under this subchapter. The penalty may not exceed $1,000 for each day a report is delinquent after the date on which the report is due. No penalty may be assessed against a hospital under this subsection until 10 business days have elapsed after written notification to the hospital of its failure to file a report.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993.

Sec. 311.048. RIGHTS AND REMEDIES. The rights and remedies provided for in this subchapter shall not limit, affect, change, or repeal any other statutory or common-law rights or remedies available to the state or a nonprofit hospital.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993.

SUBCHAPTER E. EMPLOYMENT OF PHYSICIANS BY CERTAIN HOSPITALS ASSOCIATED WITH NONPROFIT FRATERNAL ORGANIZATIONS

Sec. 311.061. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a hospital that employs or seeks to employ a physician, that primarily provides medical care to children younger than 18 years of age, and that:

(1) is owned or operated by a nonprofit fraternal

organization; or

(2) has a governing body the majority of members of which belong to a nonprofit fraternal organization.

Added by Acts 2011, 82nd Leg., R.S., Ch. 901 (S.B. 761), Sec. 1, eff. June 17, 2011.

Sec. 311.062. EMPLOYMENT OF PHYSICIANS PERMITTED. (a) A hospital may employ a physician and retain all or part of the professional income generated by the physician for medical services provided at the hospital if the hospital satisfies the requirements of this subchapter.

(b) The billing and receipt of third-party reimbursement for medical care at a hospital does not affect the authority granted to the hospital under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 901 (S.B. 761), Sec. 1, eff. June 17, 2011.

Sec. 311.063. DUTIES AND HOSPITAL POLICIES. (a) A hospital that employs physicians under this subchapter shall:

(1) appoint a chief medical officer, who may be a member of the hospital's medical staff;

(2) adopt, maintain, and enforce policies to ensure that a physician employed by the hospital exercises the physician's independent medical judgment in providing care to patients at the hospital; and

(3) designate the chief medical officer as the contact for the Texas Medical Board for all matters relating to complaints regarding interference or attempted interference with a physician's independent medical judgment or any other matter under this section.

(b) The person appointed as chief medical officer shall report the person's appointment to the Texas Medical Board.

(c) The policies adopted under this section must include:

(1) policies relating to:

(A) credentialing;

(B) quality assurance;

(C) utilization review;

(D) peer review; and

(E) medical decision-making; and

(2) the implementation of a complaint mechanism to process and resolve complaints regarding interference or attempted interference with a physician's independent medical judgment.

(d) The policies adopted under this section must be approved by the chief medical officer.

(e) In the event of a conflict between a policy approved by the chief medical officer and any other policy of the hospital, a conflict management process shall be jointly developed and implemented to resolve the conflict.

(f) For all matters relating to the practice of medicine, each physician employed by a hospital under this subchapter shall ultimately report to the chief medical officer.

(g) The chief medical officer shall immediately report to the Texas Medical Board any action or event that the chief medical officer reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

Added by Acts 2011, 82nd Leg., R.S., Ch. 901 (S.B. 761), Sec. 1, eff. June 17, 2011.

Sec. 311.064. CONSTRUCTION OF SUBCHAPTER. This subchapter may not be construed as authorizing the governing body of a hospital to supervise or control the practice of medicine as prohibited under Subtitle B, Title 3, Occupations Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 901 (S.B. 761), Sec. 1, eff. June 17, 2011.

SUBCHAPTER F. EMPLOYMENT OF PHYSICIANS BY CERTAIN HOSPITALS

Sec. 311.081. APPLICABILITY AND CONSTRUCTION OF SUBCHAPTER. (a) This subchapter applies only to a hospital that employs or seeks to employ a physician and that:

(1) is designated as a critical access hospital under the authority of and in compliance with 42 U.S.C. Section 1395i-4;

(2) is a sole community hospital, as that term is defined by 42 U.S.C. Section 1395ww(d)(5)(D)(iii); or

(3) is located in a county with a population of 50,000 or

less.

(b) This subchapter may not be construed as authorizing the governing body of a hospital to supervise or control the practice of medicine, as prohibited under Subtitle B, Title 3, Occupations Code.

(c) This subchapter applies to medical services provided by a physician at the hospital and other health care facilities owned or operated by the hospital.

Added by Acts 2011, 82nd Leg., R.S., Ch. 55 (S.B. 894), Sec. 1, eff. May 12, 2011.
Redesignated from Health and Safety Code, Section 311.061 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(27), eff. September 1, 2013.

Sec. 311.082. EMPLOYMENT OF PHYSICIANS PERMITTED. A hospital may employ a physician and retain all or part of the professional income generated by the physician for medical services provided at the hospital and other health care facilities owned or operated by the hospital if the hospital satisfies the requirements of this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 55 (S.B. 894), Sec. 1, eff. May 12, 2011.
Redesignated from Health and Safety Code, Section 311.062 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(27), eff. September 1, 2013.

Sec. 311.083. HOSPITAL DUTIES AND POLICIES. (a) A hospital that employs physicians under this subchapter shall:

(1) appoint a chief medical officer who has been recommended by the medical staff of the hospital and approved by the governing board of the hospital; and

(2) adopt, maintain, and enforce policies to ensure that a physician employed by the hospital exercises the physician's independent medical judgment in providing care to patients at the hospital and other health care facilities owned or operated by the hospital.

(b) The policies adopted under this section must include:

(1) policies relating to:

(A) credentialing and privileges;
(B) quality assurance;
(C) utilization review;
(D) peer review and due process; and
(E) medical decision-making; and

(2) the implementation of a complaint mechanism to process and resolve complaints regarding interference or attempted interference with a physician's independent medical judgment.

(c) The policies adopted under this section must be approved by the medical staff of the hospital.

(d) For all matters relating to the practice of medicine, each physician employed by a hospital under this subchapter shall ultimately report to the chief medical officer of the hospital. The policies adopted under this section must be approved by the medical staff of the hospital. In the event of a conflict between a policy adopted by the medical staff and a policy of the hospital, a conflict management process shall be jointly developed and implemented to resolve any such conflict.

(e) The chief medical officer shall notify the Texas Medical Board that the hospital is employing physicians under this subchapter and that the chief medical officer will be the hospital's designated contact with the Texas Medical Board. The chief medical officer shall immediately report to the Texas Medical Board any action or event that the chief medical officer reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(f) The hospital shall give equal consideration regarding the issuance of medical staff membership and privileges to physicians employed by the hospital and physicians not employed by the hospital.

(g) A physician employed by a hospital shall retain independent medical judgment in providing care to patients at the hospital and other health care facilities owned or operated by the hospital and may not be disciplined for reasonably advocating for patient care.

(h) If a hospital provides professional liability coverage for a physician employed by a hospital, the physician may participate in the selection of the professional liability coverage, has the right to an independent defense if the physician pays for that independent defense, and shall retain the right to consent to the settlement of any action or proceeding brought against the physician.

(i) If a physician employed by a hospital enters into an

employment agreement that includes a covenant not to compete, the agreement shall be subject to Section 15.50, Business & Commerce Code, and any other applicable provisions.

Added by Acts 2011, 82nd Leg., R.S., Ch. 55 (S.B. 894), Sec. 1, eff. May 12, 2011.
Redesignated from Health and Safety Code, Section 311.063 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(27), eff. September 1, 2013.

CHAPTER 312. MEDICAL AND DENTAL CLINICAL EDUCATION IN PUBLIC HOSPITALS

Sec. 312.001. FINDING; PURPOSE. (a) The legislature finds that the clinical education of medical and dental students, interns, residents, and fellows attending a medical and dental unit or a supported medical or dental school and the provision of patient care to public hospitals can be more effectively and economically undertaken if those institutions and hospitals coordinate and cooperate, rather than compete, in their common endeavors.

(b) The purpose of this chapter is to authorize coordination and cooperation between medical and dental units, supported medical or dental schools, and public hospitals and to remove impediments to that coordination and cooperation in order to:

(1) enhance the education of students, interns, residents, and fellows attending a medical and dental unit or a supported medical or dental school;

(2) enhance patient care; and

(3) avoid any waste of public money.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 312.002. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(70), eff. April 2, 2015.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(70), eff. April 2, 2015.

(3) "Coordinating entity" means a nonprofit corporation under the Texas Nonprofit Corporation Law as described by Section 1.008(d), Business Organizations Code, that is a health organization

approved and certified by the Texas Medical Board under Chapter 162, Occupations Code.

(3-a) "Department" means the Department of State Health Services.

(4) "Medical and dental unit" has the meaning assigned by Section 61.003, Education Code.

(5) "Public hospital" means a hospital, clinic, or other facility for the provision of health care or dental care that is owned or operated by the federal government, the state, or a political subdivision or municipal corporation of the state, including a hospital district or authority.

(6) "Supported medical or dental school" means a medical school or dental school organized as a nonprofit corporation that is under contract with the Texas Higher Education Coordinating Board to provide educational services under Subchapter D, Chapter 61, Education Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.791, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0849, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(70), eff. April 2, 2015.

Sec. 312.003. AGREEMENT REQUIRED. This chapter applies only if the medical and dental unit or supported medical or dental school agrees, either directly or through a coordinating entity, to provide or cause to be provided medical, dental, or other patient care or services or to perform or cause to be performed medical, dental, or clinical education, training, or research activities in a coordinated or cooperative manner in a public or nonprofit hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 726 (S.B. 1066), Sec. 2, eff. June 12, 2017.

Sec. 312.004. CONTRACTS FOR COORDINATION OR COOPERATION. (a)

Medical and dental units, supported medical or dental schools, coordinating entities, and public hospitals may make and perform contracts among each other for the coordinated or cooperative clinical education of the students, interns, residents, and fellows enrolled at the units or schools.

(b) Medical and dental units and supported medical or dental schools may undertake coordination or cooperation of clinical education directly or through a coordinating entity.

(c) A medical and dental unit, a supported medical or dental school, and a coordinating entity may contract with the owner or operator of a public hospital for the clinical education of students, interns, residents, and fellows enrolled at the unit or school.

(d) The contracting parties may determine the terms of and the consideration for a contract authorized under this section.

(e) The contract may provide for the coordinated, cooperative, or exclusive assignment of the interns, residents, fellows, faculty, and associated health care professionals of the participating medical and dental units and supported medical or dental schools to provide or perform health or dental services or research at a public hospital.

(f) Coordinated or cooperative activities authorized under this section may be performed by or on behalf of one or more of the units, schools, or entities involved.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 312.005. APPROVAL OF CONTRACTS. (a) To be effective, a contract under Section 312.004 must be submitted to the department.

(b) The department shall approve the contract if the contract furthers the purposes of this chapter.

(c) The department may disapprove a contract only after notice to all parties and a hearing.

(d) The department may not modify a contract.

(e) The contract takes effect:

(1) when it is approved by the department; or

(2) on the 31st day after the date on which the contract is filed with the department by a medical and dental unit, supported medical or dental school, or coordinating entity that is a party to the contract, if the department does not approve or disapprove the

contract within 30 days after the date on which the contract is filed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0850, eff. April 2, 2015.

Sec. 312.006. LIMITATION ON LIABILITY. (a) A medical and dental unit, supported medical or dental school, or coordinating entity engaged in coordinated or cooperative medical or dental clinical education under Section 312.004, including patient care and the provision or performance of health or dental services or research at a public hospital, is not liable for its acts and omissions in connection with those activities except to the extent and up to the maximum amount of liability of state government under Section 101.023(a), Civil Practice and Remedies Code, for the acts and omissions of a governmental unit of state government under Chapter 101, Civil Practice and Remedies Code.

(b) The limitation on liability provided by this section applies regardless of whether the medical and dental unit, supported medical or dental school, or coordinating entity is a "governmental unit" as defined by Section 101.001, Civil Practice and Remedies Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 312.007. INDIVIDUAL LIABILITY. (a) A medical and dental unit, supported medical or dental school, or coordinating entity is a state agency, and a director, trustee, officer, intern, resident, fellow, faculty member, or other associated health care professional or employee of a medical and dental unit, supported medical or dental school, or coordinating entity is an employee of a state agency for purposes of Chapter 104, Civil Practice and Remedies Code, and for purposes of determining the liability, if any, of the person for the person's acts or omissions while engaged in the coordinated or cooperative activities of the unit, school, or entity.

(b) A judgment in an action or settlement of a claim against a medical and dental unit, supported medical or dental school, or

coordinating entity under Chapter 101, Civil Practice and Remedies Code, bars any action involving the same subject matter by the claimant against a director, trustee, officer, intern, resident, fellow, faculty member, or other associated health care professional or employee of the unit, school, or entity whose act or omission gave rise to the claim as if the person were an employee of a governmental unit against which the claim was asserted as provided under Section 101.106, Civil Practice and Remedies Code.

(c) A resident engaged in graduate medical education in a public or nonprofit hospital in association with a medical and dental unit is an employee of a state agency regardless of whether the resident receives a stipend or other payment from the medical and dental unit for services performed as a resident.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 726 (S.B. 1066), Sec. 3, eff. June 12, 2017.

CHAPTER 313. CONSENT TO MEDICAL TREATMENT ACT

Sec. 313.001. SHORT TITLE. This chapter may be cited as the Consent to Medical Treatment Act.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.

Sec. 313.002. DEFINITIONS. In this chapter:

(1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.

(2) "Attending physician" means the physician with primary responsibility for a patient's treatment and care.

(3) "Decision-making capacity" means the ability to understand and appreciate the nature and consequences of a decision regarding medical treatment and the ability to reach an informed decision in the matter.

(3-a) "Home and community support services agency" means a facility licensed under Chapter 142.

(4) "Hospital" means a facility licensed under Chapter 241.

(5) "Incapacitated" means lacking the ability, based on

reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to any proposed treatment decision.

(6) "Medical treatment" means a health care treatment, service, or procedure designed to maintain or treat a patient's physical or mental condition, as well as preventative care.

(7) "Nursing home" means a facility licensed under Chapter 242.

(8) "Patient" means a person who:

(A) is admitted to a hospital;

(B) is residing in a nursing home;

(C) is receiving services from a home and community support services agency; or

(D) is an inmate of a county or municipal jail.

(9) "Physician" means:

(A) a physician licensed by the Texas State Board of Medical Examiners; or

(B) a physician with proper credentials who holds a commission in a branch of the armed services of the United States and who is serving on active duty in this state.

(10) "Surrogate decision-maker" means an individual with decision-making capacity who is identified as the person who has authority to consent to medical treatment on behalf of an incapacitated patient in need of medical treatment.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1271 (H.B. 3473), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 253 (H.B. 1128), Sec. 1, eff. September 1, 2011.

Sec. 313.003. EXCEPTIONS AND APPLICATION. (a) This chapter does not apply to:

(1) a decision to withhold or withdraw life-sustaining treatment from qualified terminal or irreversible patients under Subchapter B, Chapter 166;

(2) a health care decision made under a medical power of

attorney under Subchapter D, Chapter 166, or under Subtitle P, Title 2, Estates Code;

(3) consent to medical treatment of minors under Chapter 32, Family Code;

(4) consent for emergency care under Chapter 773;

(5) hospital patient transfers under Chapter 241; or

(6) a patient's legal guardian who has the authority to make a decision regarding the patient's medical treatment.

(b) This chapter does not authorize a decision to withhold or withdraw life-sustaining treatment.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 450, Sec. 2.01, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.045, eff. September 1, 2017.

Sec. 313.004. CONSENT FOR MEDICAL TREATMENT. (a) If an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, is comatose, incapacitated, or otherwise mentally or physically incapable of communication and does not have a legal guardian or an agent under a medical power of attorney who is reasonably available after a reasonably diligent inquiry, an adult surrogate from the following list, in order of priority, who has decision-making capacity, is reasonably available after a reasonably diligent inquiry, and is willing to consent to medical treatment on behalf of the patient may consent to medical treatment on behalf of the patient:

(1) the patient's spouse;

(2) the patient's adult children;

(3) the patient's parents; or

(4) the patient's nearest living relative.

(a-1) If the patient does not have a legal guardian, an agent under a medical power of attorney, or a person listed in Subsection (a) who is reasonably available after a reasonably diligent inquiry, another physician who is not involved in the medical treatment of the patient may concur with the treatment.

(b) Any dispute as to the right of a party to act as a surrogate decision-maker may be resolved only by a court of record having jurisdiction of proceedings under Title 3, Estates Code.

(c) Any medical treatment consented to under Subsection (a) or concurred with under Subsection (a-1) must be based on knowledge of what the patient would desire, if known.

(d) Notwithstanding any other provision of this chapter, a surrogate decision-maker may not consent to:

(1) voluntary inpatient mental health services;

(2) electro-convulsive treatment; or

(3) the appointment of another surrogate decision-maker.

(e) Notwithstanding any other provision of this chapter, if the patient is an adult inmate of a county or municipal jail, a surrogate decision-maker may not also consent to:

(1) psychotropic medication;

(2) involuntary inpatient mental health services; or

(3) psychiatric services calculated to restore competency to stand trial.

(f) A person who is an available adult surrogate, as described by Subsection (a), may consent to medical treatment on behalf of a patient who is an adult inmate of a county or municipal jail only for a period that expires on the earlier of the 120th day after the date the person agrees to act as an adult surrogate for the patient or the date the inmate is released from jail. At the conclusion of the period, a successor surrogate may not be appointed and only the patient or the patient's appointed guardian of the person, if the patient is a ward under Title 3, Estates Code, may consent to medical treatment.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1271 (H.B. 3473), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 253 (H.B. 1128), Sec. 2, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.046, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 846 (H.B. 2780), Sec. 7, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 12, eff.

September 1, 2023.

Sec. 313.005. PREREQUISITES FOR CONSENT. (a) If an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, is comatose, incapacitated, or otherwise mentally or physically incapable of communication and, according to reasonable medical judgment, is in need of medical treatment, the attending physician shall describe the:

(1) patient's comatose state, incapacity, or other mental or physical inability to communicate in the patient's medical record; and

(2) proposed medical treatment in the patient's medical record.

(b) The attending physician shall make a reasonably diligent effort to contact or cause to be contacted the persons eligible to serve as surrogate decision-makers. Efforts to contact those persons shall be recorded in detail in the patient's medical record.

(c) If a surrogate decision-maker consents to medical treatment on behalf of the patient, the attending physician shall record the date and time of the consent and sign the patient's medical record. The surrogate decision-maker shall countersign the patient's medical record or execute an informed consent form.

(d) A surrogate decision-maker's consent to medical treatment that is not made in person shall be reduced to writing in the patient's medical record, signed by the home and community support services agency, hospital, or nursing home staff member receiving the consent, and countersigned in the patient's medical record or on an informed consent form by the surrogate decision-maker as soon as possible.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1271 (H.B. 3473), Sec. 3, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 253 (H.B. 1128), Sec. 3, eff. September 1, 2011.

Sec. 313.006. LIABILITY FOR MEDICAL TREATMENT COSTS. Liability for the cost of medical treatment provided as a result of consent to medical treatment by a surrogate decision-maker is the same as the liability for that cost if the medical treatment were provided as a result of the patient's own consent to the treatment.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.

Sec. 313.007. LIMITATION ON LIABILITY. (a) A surrogate decision-maker is not subject to criminal or civil liability for consenting to medical care under this chapter if the consent is made in good faith.

(b) An attending physician, home and community support services agency, hospital, or nursing home or a person acting as an agent for or under the control of the physician, home and community support services agency, hospital, or nursing home is not subject to criminal or civil liability and has not engaged in unprofessional conduct if the medical treatment consented to under this chapter:

(1) is done in good faith under the consent to medical treatment; and

(2) does not constitute a failure to exercise due care in the provision of the medical treatment.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1271 (H.B. 3473), Sec. 4, eff. September 1, 2007.

CHAPTER 314. COOPERATIVE AGREEMENTS AMONG HOSPITALS

Sec. 314.001. DEFINITIONS. In this chapter:

(1) "Attorney general" means the attorney general of Texas or any assistant attorney general acting under the direction of the attorney general of Texas.

(2) "Cooperative agreement" means an agreement among two or more hospitals for the allocation or sharing of health care equipment, facilities, personnel, or services.

(3) "Department" means the Department of State Health Services.

(3-a) "Executive commissioner" means the executive

commissioner of the Health and Human Services Commission.

(4) "Hospital" means a general or special hospital licensed under Chapter 241 or a private mental hospital licensed under Chapter 577.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 313.001 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0851, eff. April 2, 2015.

Sec. 314.002. REVIEW AND CERTIFICATION OF COOPERATIVE AGREEMENTS. (a) A hospital may negotiate and enter into cooperative agreements with other hospitals in the state if the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreements. Acting through their boards of directors, a group of hospitals may conduct discussions or negotiations concerning cooperative agreements, provided that the discussions or negotiations do not involve price fixing or predatory pricing.

(b) Parties to a cooperative agreement may apply to the department for a certification of public advantage governing the cooperative agreement. The application must include a written copy of the cooperative agreement and describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. A copy of the application and copies of all additional related materials must be submitted to the attorney general and to the department at the same time. The department shall charge an application fee in an amount not to exceed $10,000 per application.

(c) The department shall review the application in accordance with the standards set forth in Subsections (e) and (f) and shall, if requested, hold a public hearing in accordance with rules adopted by the executive commissioner. The department shall grant or deny the application within 120 days of the date of filing of the application and that decision must be in writing and set forth the basis for the decision. The department shall furnish a copy of the decision to the applicants, the attorney general, and any intervenor within 10 days

of its issuance.

(d) The department shall issue a certificate of public advantage for a cooperative agreement if it determines that the applicants have demonstrated by clear and convincing evidence that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement.

(e) In evaluating the potential benefits of a cooperative agreement, the department shall consider whether one or more of the following benefits may result from the cooperative agreement:

(1) enhancement of the quality of hospital and hospital-related care provided to Texas citizens;

(2) preservation of hospital facilities in geographical proximity to the communities traditionally served by those facilities;

(3) gains in the cost efficiency of services provided by the hospitals involved;

(4) improvements in the utilization of hospital resources and equipment; and

(5) avoidance of duplication of hospital resources.

(f) The department's evaluation of any disadvantages attributable to any reduction in competition likely to result from the agreement may include, but need not be limited to, the following factors:

(1) the extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, or other health care payors to negotiate optimal payment and service arrangements with hospitals, physicians, allied health care professionals, or other health care providers;

(2) the extent of any reduction in competition among physicians, allied health professionals, other health care providers, or other persons furnishing goods or services to, or in competition with, hospitals;

(3) the extent of any adverse impact on patients in the quality, availability, and price of health care services; and

(4) the availability of arrangements that are less restrictive to competition and achieve similar benefits.

(g) The department shall consult with the attorney general regarding any potential reduction in competition that may result from a cooperative agreement. The attorney general shall review the

application and all supporting documents provided by the applicants, any documents or other information provided by any intervenors, and any documents or testimony provided at a public hearing, if any, on the application and shall advise the department whether the proposed cooperative agreement would have inappropriate impact on competition. If the attorney general advises the department to deny an application, the attorney general shall state the basis and reasons for the recommended denial.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 313.002 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0852, eff. April 2, 2015.

Sec. 314.003. ATTORNEY GENERAL AUTHORITY. (a) The attorney general, at any time after an application is filed under Section 314.002(b), may require by civil investigative demand the attendance and testimony of witnesses and the production of documents in Travis County or the county in which the applicants are located for the purpose of investigating whether the cooperative agreement satisfies the standards set forth in Section 314.002. All nonpublic documents produced and testimony given to the attorney general are subject to the prohibitions on disclosure and use of Section 15.10(i), Business & Commerce Code. The attorney general may seek an order from the district court compelling compliance with a civil investigative demand issued under this section.

(b) The attorney general may seek to enjoin the operation of a cooperative agreement for which an application for certificate of public advantage has been filed by filing suit against the parties to the cooperative agreement in district court. The attorney general may file an action before or after the department acts on the application for a certificate but, except as provided in Subsection (e), the action must be brought not later than 20 days following the attorney general's receipt of a copy of the final and appealable decision of the department.

(c) Upon the filing of the complaint in an action under Subsection (b), the department's certification, if previously issued,

must be stayed and the cooperative agreement is of no further force unless the court orders otherwise or until the action is concluded. The attorney general may apply to the court for any ancillary temporary or preliminary relief necessary to stay the cooperative agreement pending final disposition of the case.

(d) In any action brought under Subsection (b), the applicants for a certificate bear the burden of establishing by clear and convincing evidence that in accordance with Sections 314.002(e) and (f), the likely benefits resulting from the cooperative agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement. In assessing disadvantages attributable to a reduction in competition likely to result from the agreement, the court may draw upon the determinations of federal and Texas courts concerning unreasonable restraint of trade under 15 U.S.C. Sections 1 and 2, and Chapter 15, Business & Commerce Code.

(e) If, at any time following the 20-day period specified in Subsection (b), the attorney general determines that as a result of changed circumstances the benefits resulting from a certified agreement no longer outweigh any disadvantages attributable to a reduction in competition resulting from the agreement, the attorney general may file suit in the district court seeking to cancel the certificate of public advantage. The standard for adjudication for an action brought under this subsection is as follows:

(1) except as provided in Subdivision (2), in any action brought under this subsection the attorney general has the burden of establishing by a preponderance of the evidence that as a result of changed circumstances the benefits resulting from the agreement and the unavoidable costs of canceling the agreement are outweighed by disadvantages attributable to a reduction in competition resulting from the agreement;

(2) in any action under this subsection, if the attorney general first establishes by a preponderance of evidence that the department's certification was obtained as a result of material misrepresentation to the department or the attorney general or as the result of coercion, threats, or intimidation toward any party to the cooperative agreement, then the parties to the agreement bear the burden of establishing by clear and convincing evidence that the benefits resulting from the agreement and the unavoidable costs of canceling the agreement are outweighed by disadvantages attributable to any reduction in competition resulting from the agreement.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 313.003 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.003, eff. September 1, 2011.

Sec. 314.004. MONITORING OF APPROVED COOPERATIVE AGREEMENTS. (a) If, at any time following the approval of a cooperative agreement by the department, the department determines that as a result of changed circumstances the benefits resulting from an approved agreement no longer outweigh any disadvantages attributable to a reduction in competition resulting from the agreement, the department may initiate proceedings to terminate the certificate of public advantage.

(b) The department may request documents from the parties to the cooperative agreement regarding the current status of the agreement, including information relative to the continued benefits and any disadvantages of the agreement and shall, if requested, hold a public hearing to solicit additional information concerning the effects of the cooperative agreement.

(c) If the department determines that the likely benefits resulting from an approved cooperative agreement no longer outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the department may terminate the certificate of public advantage.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 313.004 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.

Sec. 314.005. JUDICIAL REVIEW OF DEPARTMENT ACTION. Any party aggrieved by a decision of the department in granting or denying an application, refusing to act on an application, or terminating a certificate is entitled to judicial review of the decision in accordance with Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1,

1995. Renumbered by Health & Safety Code Sec. 313.005 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.

Sec. 314.006. VALIDITY OF CERTIFIED COOPERATIVE AGREEMENTS. (a) Notwithstanding Section 15.05(a), Business & Commerce Code, or any other provision of law, a cooperative agreement for which a certificate of public advantage has been issued is a lawful agreement. Notwithstanding Section 15.05(a), Business & Commerce Code, or any other provision of law, if the parties to a cooperative agreement file an application for a certificate of public advantage governing the agreement with the department, the conduct of the parties in negotiating and entering into a cooperative agreement is lawful conduct.

(b) If the department, or in any action by the attorney general the district court, determines that the applicants have not established by clear and convincing evidence that the likely benefits resulting from a cooperative agreement outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the agreement is invalid and has no further force or effect.

(c) Nothing in this chapter exempts hospitals from compliance with the requirements of Chapters 241 or 577 of this code.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 313.006 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.

Sec. 314.007. MERGERS AND CONSOLIDATIONS INVOLVING HOSPITALS. The provisions of this chapter do not apply to any agreement among hospitals by which ownership or control over substantially all of the stock, assets of activities of one or more previously licensed and operating hospitals is placed under the control of another licensed hospital or hospitals.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 313.007 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.

Sec. 314.008. EXCLUSIONS; AUTHORITY TO ADOPT RULES. (a) This chapter specifically excludes ground and/or air ambulance services.

(b) The executive commissioner shall have the authority to adopt rules to implement the requirements of this chapter.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 313.008 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0853, eff. April 2, 2015.

CHAPTER 314A. MERGER AGREEMENTS AMONG CERTAIN HOSPITALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 314A.001. DEFINITIONS. In this chapter:

(1) "Attorney general" means the attorney general of Texas or any assistant attorney general acting under the direction of the attorney general of Texas.

(2) "Designated agency" means the state agency designated by the governor under Section 314A.004.

(3) "Hospital" means a nonpublic general hospital that is licensed under Chapter 241 and is not maintained or operated by a political subdivision of this state.

(4) "Merger agreement" or "merger" means an agreement among two or more hospitals for the consolidation by merger or other acquisition or transfer of assets by which ownership or control over substantially all of the stock, assets, or activities of one or more previously licensed and operating hospitals is placed under the control of another licensed hospital or hospitals or another entity that controls the hospitals.

(5) "State agency" means a department, commission, board, office, or other agency in the executive branch of state government that is created by the constitution or a statute of this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.002. APPLICABILITY. This chapter applies only to a merger agreement among hospitals each of which is located within a

county that:

(1) contains two or more hospitals; and

(2) has a population of:

(A) less than 100,000 and is not adjacent to a county with a population of 250,000 or more; or

(B) more than 100,000 and less than 150,000 and is not adjacent to a county with a population of 100,000 or more.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.003. LEGISLATIVE FINDINGS AND PURPOSES; GRANT OF ANTITRUST IMMUNITY. (a) The legislature finds that:

(1) a merger among hospitals may benefit the public by maintaining or improving the quality, efficiency, and accessibility of health care services offered to the public; and

(2) the benefits described by Subdivision (1) resulting from the merger may outweigh any anticompetitive effects of joining together competitors to address unique challenges in providing health care services in rural areas.

(b) The legislature believes it is in the state's best interest to supplant state and federal antitrust laws with a process for regulatory approval and active supervision by the designated agency as provided by this chapter. It is the intent of the legislature that this chapter immunize from all federal and state antitrust laws the execution of merger agreements approved under this chapter and post-merger activities supervised under this chapter.

(c) Nothing in this chapter affects antitrust immunity that may be provided through another provision of state law.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.004. DESIGNATION OF SUPERVISING STATE AGENCY. (a) The governor shall designate an appropriate state agency, other than the office of the attorney general, to:

(1) review and approve or deny applications submitted under this chapter for certificates of public advantage; and

(2) supervise as provided by Subchapter C the activities

for which a certificate of public advantage is issued.

(b) After the governor designates a state agency under Subsection (a), the governor may designate another appropriate state agency under that subsection at any time.

(c) A change in the designation of a state agency made under this section does not affect the validity of any action taken under this chapter by a predecessor designated agency.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.005. RULEMAKING. The designated agency shall adopt rules for the administration and implementation of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

SUBCHAPTER B. CERTIFICATE OF PUBLIC ADVANTAGE

Sec. 314A.051. REVIEW AND CERTIFICATION OF MERGER AGREEMENTS REQUIRED. (a) Two or more hospitals may negotiate and enter into a merger agreement, subject to approval by the designated agency as provided by this subchapter.

(b) No merger agreement shall receive immunity under this chapter unless the designated agency issues a certificate of public advantage governing the merger agreement.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.052. APPLICATION. (a) One or more parties to a merger agreement may submit an application to the designated agency for a certificate of public advantage governing the merger agreement. The application must include a written copy of the merger agreement and describe the nature and scope of the merger.

(b) If an applicant believes the documents or other information required to be submitted with an application under Subsection (a) contains proprietary information that is required to remain confidential, the applicant shall:

(1) clearly identify the information; and

(2) submit duplicate applications, one application that has complete information for the designated agency's use and one redacted application that will be made available for public release.

(c) A copy of the application and copies of all additional related materials must be submitted to the attorney general and to the designated agency at the same time.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.053. APPLICATION FEE. (a) The designated agency may assess a fee for filing an application under Section 314A.052 in an amount not to exceed $75,000. The amount of the fee must be sufficient to cover the reasonable costs of the designated agency and attorney general in reviewing and approving or denying applications under this subchapter.

(b) Fees collected under this section may be appropriated to the designated agency for purposes of covering costs relating to the implementation and administration of this chapter, including the supervision of hospitals under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.054. REVIEW OF APPLICATION BY DESIGNATED AGENCY; GRANT OR DENIAL OF APPLICATION. (a) The designated agency shall review an application for a certificate of public advantage in accordance with the standard prescribed by Section 314A.056(a)(1).

(b) The designated agency shall grant or deny the application not later than the 120th day after the date of the filing of the application. The designated agency's decision must:

(1) be in writing;

(2) specify the basis for the decision; and

(3) provide a copy of the decision to the applicants on the date of the decision.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.055. REVIEW OF APPLICATION BY ATTORNEY GENERAL. (a) The attorney general shall review an application for a certificate of public advantage and all supporting documents and information provided by the applicants. On completion of the review and subject to Subsection (b), the attorney general shall advise the designated agency whether:

(1) the proposed merger agreement would likely benefit the public by maintaining or improving the quality, efficiency, and accessibility of health care services offered to the public; and

(2) the likely benefits resulting from the proposed merger agreement outweigh any disadvantages attributable to a reduction in competition that may result from the proposed merger.

(b) The attorney general shall review an application for a certificate of public advantage as soon as practicable, taking into consideration the deadline prescribed by Section 314A.054.

(c) If the attorney general advises the designated agency to deny an application, the attorney general shall state the basis and reasons for the recommended denial.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.056. ISSUANCE OF CERTIFICATE OF PUBLIC ADVANTAGE. (a) The designated agency, after reviewing the application and consulting with the attorney general in accordance with Section 314A.055, shall issue a certificate of public advantage for a merger agreement if:

(1) the designated agency determines under the totality of the circumstances that:

(A) the proposed merger would likely benefit the public by maintaining or improving the quality, efficiency, and accessibility of health care services offered to the public; and

(B) the likely benefits resulting from the proposed merger agreement described by Paragraph (A) outweigh any disadvantages attributable to a reduction in competition that may result from the proposed merger; and

(2) the application:

(A) provides specific evidence showing that the proposed merger would likely benefit the public as described by Subdivision (1)(A);

(B) explains in detail how the likely benefits resulting from the proposed merger agreement outweigh any disadvantages attributable to a reduction in competition as described by Subdivision (1)(B); and

(C) sufficiently addresses the factors listed in Subsection (b) and any other factor the designated agency may require based on the circumstances specific to the application.

(b) In making the determination under Subsection (a)(1), the designated agency shall consider the effect of the merger agreement on the following nonexclusive list of factors:

(1) the quality and price of hospital and health care services provided to citizens of this state;

(2) the preservation of sufficient hospitals within a geographic area to ensure public access to acute care;

(3) the cost efficiency of services, resources, and equipment provided or used by the hospitals that are a party to the merger agreement;

(4) the ability of health care payors to negotiate payment and service arrangements with hospitals proposed to be merged under the agreement; and

(5) the extent of any reduction in competition among physicians, allied health professionals, other health care providers, or other persons providing goods or services to, or in competition with, hospitals.

(c) The designated agency may include terms or conditions of compliance in connection with a certificate of public advantage issued under this subchapter if necessary to ensure that the proposed merger likely benefits the public as specified in Subsection (a)(1).

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.057. RECORDS. The designated agency shall maintain records of all merger agreements the designated agency has approved under this chapter, including any terms or conditions of issuing a certificate of public advantage that are imposed by the designated

agency.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.058. TERMINATION OF CERTIFICATE OF PUBLIC ADVANTAGE BY HOSPITAL. A hospital resulting from a merger agreement approved under this chapter may voluntarily terminate its certificate of public advantage by giving the designated agency notice at least 30 days before the date of the termination.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.059. ANNUAL REVIEW OF CERTIFICATE. (a) The designated agency shall annually review an approved certificate of public advantage.

(b) The attorney general may annually review an approved certificate of public advantage.

(c) The designated agency may not complete its annual review of an approved certificate of public advantage under this section until:

(1) the attorney general informs the designated agency whether the attorney general intends to conduct any review of the certificate of public advantage as authorized under this section; and

(2) if the attorney general informs the designated agency of the attorney general's intent to conduct a review of an entity's approved certificate of public advantage, the attorney general has had the opportunity to conduct the review.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

SUBCHAPTER C. SUPERVISION OF MERGED HOSPITALS UNDER APPROVED MERGER AGREEMENT

Sec. 314A.101. SUPERVISION OF MERGED HOSPITALS. The designated agency shall supervise in the manner provided by this subchapter each hospital operating under a certificate of public advantage issued under this chapter to ensure that the immunized conduct of a merged

entity furthers the purposes of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.102. RATE REVIEW. (a) A change in rates for hospital services by a hospital operating under a certificate of public advantage issued under this chapter may not take effect without prior approval of the designated agency as provided by this section.

(b) At least 90 days before the implementation of any proposed change in rates for inpatient or outpatient hospital services and, if applicable, at least 60 days before the execution of a reimbursement agreement with a third party payor, a hospital operating under a certificate of public advantage shall submit to the designated agency:

(1) any proposed change in rates for inpatient and outpatient hospital services;

(2) if applicable, any change in reimbursement rates under a reimbursement agreement with a third party payor;

(3) for an agreement with a third party payor, other than an agreement described by Subdivision (4) or in which rates are set under the Medicare or Medicaid program, information showing:

(A) that the hospital and the third party payor have agreed to the proposed rates;

(B) whether the proposed rates are less than the corresponding amounts in the producer price index published by the Bureau of Labor Statistics of the United States Department of Labor relating to the hospital services for which the rates are proposed or a comparable price index chosen by the designated agency if the producer price index described by this paragraph is abolished; and

(C) if the proposed rates are above the corresponding amounts in the producer price index as described by Paragraph (B), a justification for proposing rates above the corresponding amounts in the producer price index;

(4) to the extent allowed by federal law, for an agreement with a managed care organization that provides or arranges for the provision of health care services under the Medicare or Medicaid program, information showing:

(A) whether the proposed rates are different from rates under an agreement that was in effect before the date the applicable merger agreement took effect;

(B) whether the proposed rates are different from the rates most recently approved by the designated agency for the applicable hospital, if the designated agency has previously approved rates for the applicable hospital following the issuance of the certificate of public advantage under this chapter that governs the hospital; and

(C) if the proposed rates exceed rates described by Paragraph (A) or (B), a justification for proposing rates in excess of those rates; and

(5) any information concerning costs, patient volume, acuity, payor mix, and other information requested by the designated agency.

(c) After reviewing the proposed change in rates submitted under Subsection (b), the designated agency shall approve or deny the proposed rate change. The designated agency shall approve the proposed rate change if the designated agency determines that:

(1) the proposed rate change likely benefits the public by maintaining or improving the quality, efficiency, and accessibility of health care services offered to the public; and

(2) the proposed rate does not inappropriately exceed competitive rates for comparable services in the hospital's market area.

(d) If the designated agency determines that the proposed rate change does not satisfy Subsection (c)(1) or (2), the designated agency shall deny or modify the proposed rate change.

(e) The designated agency shall notify the hospital in writing of the agency's decision to approve, deny, or modify the proposed rate change not later than the 30th day before the implementation date of the proposed change.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.103. ANNUAL REPORT. Each hospital operating under a certificate of public advantage shall submit an annual report to the designated agency. The report must include:

(1) information about the extent of the benefits attributable to the issuance of the certificate of public advantage;

(2) if applicable, information about the hospital's actions taken:

(A) in furtherance of any commitments made by the parties to the merger; or

(B) to comply with terms imposed by the designated agency as a condition for approval of the merger agreement;

(3) a description of the activities conducted by the hospital under the merger agreement;

(4) information relating to the price, cost, and quality of and access to health care for the population served by the hospital; and

(5) any other information required by the designated agency to ensure compliance with this chapter, including information relating to compliance with any terms or conditions for issuance of the certificate of public advantage.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.104. CORRECTIVE ACTION PLAN. (a) The designated agency shall require a hospital operating under a certificate of public advantage to adopt a plan to correct a deficiency in the hospital's activities if the designated agency determines that an activity of the hospital:

(1) does not benefit the public as described by Section 314A.056(a)(1)(A); or

(2) no longer meets the standard prescribed by Section 314A.056(a)(1).

(b) The corrective action plan must include each provision required by the designated agency and must be submitted at the agency's direction.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.105. SUPERVISION FEE. (a) The designated agency may assess an annual supervision fee in an amount that is at least

$75,000 but not more than $200,000 against each hospital operating under a certificate of public advantage under this chapter. The amount of the fee imposed on hospitals under this subsection must be based on the assessment by the designated agency of the amount needed to cover the reasonable costs incurred by the designated agency in supervising hospitals under this subchapter and in implementing and administering this chapter.

(b) Fees collected under this section may be appropriated to the designated agency for purposes of covering costs relating to the implementation and administration of this chapter, including the supervision of hospitals under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

SUBCHAPTER D. ENFORCEMENT AUTHORITY BY DESIGNATED AGENCY

Sec. 314A.151. INVESTIGATION; REVOCATION OF CERTIFICATE. With respect to each hospital resulting from a merger agreement for which the designated agency issued a certificate of public advantage under this chapter, and to ensure that the hospital's activities continue to benefit the public under the standard prescribed by Section 314A.056(a)(1) and the purposes of this chapter, the designated agency may:

(1) investigate the hospital's activities; and

(2) require the hospital to perform a certain action or refrain from a certain action or revoke the hospital's certificate of public advantage, if the designated agency determines that:

(A) the hospital is not complying with this chapter or a term or condition of compliance with the certificate of public advantage governing the hospital's immunized activities;

(B) the designated agency's approval and issuance of the certificate of public advantage was obtained as a result of material misrepresentation;

(C) the hospital has failed to pay any fee required under this chapter; or

(D) the benefits resulting from the approved merger no longer outweigh the disadvantages attributable to the reduction in competition resulting from the approved merger.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1,

eff. September 1, 2019.

Sec. 314A.152. JUDICIAL REVIEW OF DESIGNATED AGENCY ACTION. (a) A person aggrieved by a decision of the designated agency in granting, denying, or refusing to act on an application for a certificate of public advantage submitted under Subchapter B or revoking a certificate of public advantage issued under this chapter may appeal the final order by filing a petition for judicial review in a district court of Travis County.

(b) The filing of a petition for judicial review of a decision by the designated agency to revoke a certificate of public advantage stays enforcement of the agency's decision.

(c) Not later than the 45th day after the date a person files a petition for judicial review under this section, the designated agency shall submit to the district court the original copy or a certified copy of the entirety of the agency's record regarding the decision under review. By stipulation of all parties, the record may be shortened. The district court may require or permit later corrections or additions to the record. The district court may extend the period prescribed by this subsection for submitting the agency's record to the court.

(d) The district court shall conduct the review sitting without a jury.

(e) The district court may reverse a decision by the designated agency regarding revocation of a certificate of public advantage if the court finds that the decision is:

(1) in violation of a constitutional or statutory provision;

(2) in excess of the agency's statutory authority;

(3) made through unlawful procedure;

(4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(5) unsupported by substantial and material evidence in light of the record as a whole.

(f) Under Subsection (e)(5), in determining the substantiality of the evidence, the district court:

(1) shall consider other evidence that detracts from the substantiality; and

(2) may not substitute its judgment for the judgment of the

designated agency on the weight of the evidence as to a question of fact.

(g) The district court shall issue a written decision setting forth the court's findings of fact and conclusions of law. The designated agency shall add the court's decision to the agency's record.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

SUBCHAPTER E. ATTORNEY GENERAL INVESTIGATION AND ENFORCEMENT AUTHORITY

Sec. 314A.201. CIVIL INVESTIGATIVE DEMAND. (a) The attorney general, at any time after an application is filed under Section 314A.052 and before the designated agency makes a determination on the application, or in connection with the agency's annual review of a certificate of public advantage under Section 314A.059, may require by civil investigative demand the attendance and testimony of witnesses and the production of documents in Travis County or the county in which the applicants are located for the purpose of investigating whether the merger agreement satisfies or, after issuance of the certificate of public advantage, continues to satisfy the standard prescribed by Section 314A.056(a)(1).

(b) All nonpublic documents produced for and testimony given to the attorney general under Subsection (a) are subject to the prohibitions on disclosure and use under Section 15.10(i), Business & Commerce Code.

(c) The attorney general may seek an order from the district court compelling compliance with a civil investigative demand issued under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.202. ACTION TO REVOKE CERTIFICATE OF PUBLIC ADVANTAGE FOLLOWING CHANGED CIRCUMSTANCES. (a) If, following an annual review of a certificate of public advantage, the attorney general determines that as a result of changed circumstances the benefits resulting from a certified merger agreement as described by Section

314A.056(a)(1)(A) no longer outweigh any disadvantages attributable to a reduction in competition resulting from the merger agreement, the attorney general may bring an action in a district court in Travis County seeking to revoke the certificate of public advantage in accordance with the procedures prescribed by this section.

(b) Except as provided by Subsection (c), in an action brought under this section, the attorney general has the burden of establishing by clear and convincing evidence that as a result of changed circumstances the benefits resulting from the certified merger agreement and the unavoidable costs of revoking the certificate of public advantage are outweighed by disadvantages attributable to a reduction in competition resulting from the merger agreement.

(c) In any action brought under this section, if the attorney general first establishes by clear and convincing evidence that the designated agency's certification was obtained as a result of material misrepresentation to the designated agency or the attorney general or as the result of coercion, threats, or intimidation directed toward any party to the merger agreement, then the parties to the merger agreement bear the burden of establishing by clear and convincing evidence that despite changed circumstances the benefits resulting from the certified merger agreement and the unavoidable costs of revoking the certificate of public advantage are not outweighed by disadvantages attributable to a reduction in competition resulting from the merger agreement.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

CHAPTER 315. AUTHORITY TO BORROW MONEY FOR PUBLIC HOSPITALS

Sec. 315.001. DEFINITION. In this chapter, "local governmental entity" includes:

(1) a hospital district created under general or special law;

(2) a municipal hospital authority;

(3) a county hospital authority;

(4) a municipality; or

(5) a county.

Added by Acts 2011, 82nd Leg., R.S., Ch. 611 (S.B. 494), Sec. 1, eff.

September 1, 2011.

Sec. 315.002. AUTHORITY TO BORROW MONEY FOR PUBLIC HOSPITAL; SECURITY. (a) A local governmental entity may borrow money for purposes of a hospital owned or operated by the entity at a rate not to exceed the maximum annual percentage rate allowed by the law at the time the loan is made for similar obligations of the entity.

(b) To secure a loan under this section, a local governmental entity may pledge:

(1) revenue from the hospital owned or operated by the entity that is not pledged to pay the entity's bonded indebtedness; or

(2) tax revenue to be collected by the local governmental entity during the 12-month period following the date of the pledge that is not pledged to pay the principal of or interest on bonds.

(c) A loan authorized by this section must mature:

(1) not later than the first anniversary of the date the loan is made, if taxes are pledged to repay the loan; and

(2) not later than the fifth anniversary of the date the loan is made, if hospital revenue is pledged to repay the loan.

Added by Acts 2011, 82nd Leg., R.S., Ch. 611 (S.B. 494), Sec. 1, eff. September 1, 2011.

CHAPTER 316. ESTABLISHMENT OF HEALTH CARE COLLABORATIVES

Sec. 316.001. AUTHORITY TO ESTABLISH HEALTH CARE COLLABORATIVE. A public hospital created under Subtitle C or D or a hospital district created under general or special law may form and sponsor a nonprofit health care collaborative that is certified under Chapter 848, Insurance Code.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.04, eff. September 28, 2011.

CHAPTER 317. DESIGNATION OF CAREGIVER FOR RECEIPT OF AFTERCARE INSTRUCTION

Sec. 317.001. DEFINITIONS. In this chapter:

(1) "Aftercare" means assistance provided by a designated

caregiver to a person after that person's discharge from a hospital, as described by this chapter. The term includes assistance with tasks that are related to the person's condition at the time of that person's discharge from a hospital but does not include those tasks required to be performed by a licensed health care professional.

(2) "Designated caregiver" means an individual designated by a patient, including a relative, partner, friend, or neighbor, who:

(A) is at least 18 years of age;

(B) has a significant relationship with the patient; and

(C) will provide aftercare to the patient.

(3) "Discharge" means a patient's release from a hospital following an inpatient admission.

(4) "Hospital" means a general or special hospital licensed under Chapter 241 or exempt from licensure under Section 241.004(3).

(5) "Patient" means a person that is receiving or has received health care services at a hospital.

(6) "Surrogate decision-maker" has the meaning assigned by Section 313.002.

Added by Acts 2017, 85th Leg., R.S., Ch. 163 (H.B. 2425), Sec. 1, eff. May 26, 2017.

Sec. 317.0015. APPLICABILITY. This chapter applies only to a patient who is:

(1) 18 years of age or older; or

(2) younger than 18 years of age who has had the disabilities of minority removed.

Added by Acts 2017, 85th Leg., R.S., Ch. 163 (H.B. 2425), Sec. 1, eff. May 26, 2017.

Sec. 317.002. DESIGNATION OF CAREGIVER. (a) On admission to a hospital or before the patient is discharged or transferred to another facility, the hospital shall provide the patient, the patient's legal guardian, or the patient's surrogate decision-maker the opportunity to designate a caregiver.

(b) If a patient, a patient's legal guardian, or a patient's

surrogate decision-maker designates a caregiver, a hospital shall:

(1) document in the patient's medical record:

(A) the name, telephone number, and address of the patient's designated caregiver; and

(B) the relationship of the designated caregiver to the patient; and

(2) request written authorization from the patient, the patient's legal guardian, or the patient's surrogate decision-maker to disclose health care information to the patient's designated caregiver.

(c) If a patient, a patient's legal guardian, or a patient's surrogate decision-maker declines to designate a caregiver, the hospital shall promptly record in the patient's medical record that the patient, the patient's legal guardian, or the patient's surrogate decision-maker did not wish to designate a caregiver.

(d) If a patient, a patient's legal guardian, or a patient's surrogate decision-maker declines to give authorization to a hospital to disclose health care information to the designated caregiver, a hospital is not required to comply with Sections 317.003 and 317.004.

(e) A patient, a patient's legal guardian, or a patient's surrogate decision-maker may change the patient's designated caregiver at any time, and the hospital must document the change in the patient's medical record.

(f) The designation of a person as the patient's caregiver does not obligate the person to serve as the patient's designated caregiver or to provide aftercare to the patient.

Added by Acts 2017, 85th Leg., R.S., Ch. 163 (H.B. 2425), Sec. 1, eff. May 26, 2017.

Sec. 317.003. NOTICE TO DESIGNATED CAREGIVER. (a) Except as provided by Section 317.002(d), as soon as possible before a patient's discharge or transfer to another facility but not later than the time the patient's attending physician issues a discharge order, a hospital shall notify the designated caregiver of the patient's discharge or transfer. The inability of the hospital to contact the designated caregiver may not interfere with, delay, or otherwise affect any medical care provided to the patient or the discharge of the patient.

(b) If the hospital is unable to contact the designated caregiver, the hospital shall promptly record in the patient's medical record that the hospital attempted to contact the designated caregiver.

Added by Acts 2017, 85th Leg., R.S., Ch. 163 (H.B. 2425), Sec. 1, eff. May 26, 2017.

Sec. 317.004. DISCHARGE PLAN. (a) Except as provided by Section 317.002(d), before a patient's discharge from a hospital, the hospital shall provide to the patient and designated caregiver a written discharge plan that describes the patient's aftercare needs.

(b) A discharge plan must include:

(1) the name and contact information of the designated caregiver and the designated caregiver's relationship to the patient;

(2) a description of the aftercare tasks that the patient requires written in a manner that is culturally competent; and

(3) the contact information for any health care resources necessary to meet the patient's aftercare needs.

Added by Acts 2017, 85th Leg., R.S., Ch. 163 (H.B. 2425), Sec. 1, eff. May 26, 2017.

Sec. 317.005. INSTRUCTION IN AFTERCARE TASKS. Before a patient's discharge from the hospital to any setting in which health care services are not regularly provided to others, the hospital shall provide the designated caregiver instruction and training as necessary for the caregiver to perform aftercare tasks.

Added by Acts 2017, 85th Leg., R.S., Ch. 163 (H.B. 2425), Sec. 1, eff. May 26, 2017.

Sec. 317.006. RULES. The executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 163 (H.B. 2425), Sec. 1, eff. May 26, 2017.

Sec. 317.007. RIGHTS AND REMEDIES. (a) This chapter may not be construed to:

(1) interfere with the rights of an agent operating under a valid advance directive in accordance with Chapter 166; or

(2) alter, amend, revoke, or supersede any existing right or remedy granted under any other provision of law.

(b) This chapter does not create a private right of action against:

(1) a hospital, a hospital employee, or a person in a contractual relationship with a hospital; or

(2) a designated caregiver.

(c) A hospital, a hospital employee, or a person in a contractual relationship with a hospital may not be held liable in any way for services rendered or not rendered by a patient's designated caregiver to the patient.

(d) A designated caregiver may not be reimbursed by a government or commercial payer for aftercare assistance provided under this chapter.

(e) Nothing in this chapter may be construed:

(1) to alter the obligation of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or other entity issuing health benefit plans to provide coverage required under a health benefit plan;

(2) to affect, impede, or otherwise disrupt or reduce the reimbursement obligations of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or other entity issuing health benefit plans; or

(3) to affect the time at which a patient may be discharged or transferred from a hospital to another facility.

Added by Acts 2017, 85th Leg., R.S., Ch. 163 (H.B. 2425), Sec. 1, eff. May 26, 2017.

SUBTITLE G. PROVISION OF SERVICES IN CERTAIN FACILITIES

CHAPTER 321. PROVISION OF MENTAL HEALTH, CHEMICAL DEPENDENCY, AND

REHABILITATION SERVICES

Sec. 321.001. DEFINITIONS. In this chapter:

(1) "Comprehensive medical rehabilitation" means the provision of rehabilitation services that are designed to improve or minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share the responsibility to achieve team treatment goals for the person.

(1-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(2) "Hospital" has the meaning assigned by Section 241.003.

(3) "License" means a state agency permit, certificate, approval, registration, or other form of permission required by state law.

(4) "Mental health facility" has the meaning assigned by Section 571.003.

(5) "State health care regulatory agency" means a state agency that licenses a health care professional.

(6) "Treatment facility" has the meaning assigned by Section 464.001.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 1.01, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0854, eff. April 2, 2015.

Sec. 321.002. BILL OF RIGHTS. (a) The executive commissioner by rule shall adopt a "patient's bill of rights" that includes the applicable rights included in this chapter, Subtitle C of Title 7, Chapters 241, 462, 464, and 466, and any other provisions the executive commissioner considers necessary to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services in an inpatient facility. In addition, the executive commissioner shall adopt rules that:

(1) provide standards to prevent the admission of a minor to a facility for treatment of a condition that is not generally

recognized as responsive to treatment in an inpatient treatment setting; and

(2) prescribe the procedure for presenting the applicable bill of rights and obtaining each necessary signature if:

(A) the patient cannot comprehend the information because of illness, age, or other factors; or

(B) an emergency exists that precludes immediate presentation of the information.

(b) The executive commissioner by rule shall adopt a "children's bill of rights" for a minor receiving treatment in a child-care facility for an emotional, mental health, or chemical dependency problem.

(c) A "bill of rights" adopted under this section must specifically address the rights of minors and provide that a minor is entitled to:

(1) appropriate treatment in the least restrictive setting available;

(2) not receive unnecessary or excessive medication;

(3) an individualized treatment plan and to participate in the development of the plan; and

(4) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs.

(d) Rules adopted under this section shall provide for:

(1) treatment of minors by persons who have specialized education and training in the emotional, mental health, and chemical dependency problems and treatment of minors;

(2) separation of minor patients from adult patients; and

(3) regular communication between a minor patient and the patient's family, subject only to a restriction in accordance with Section 576.006.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(71), eff. April 2, 2015.

(f) Before a facility may admit a patient for inpatient mental health, chemical dependency, or comprehensive medical rehabilitation services, or before a child-care facility may accept a minor for treatment, the facility shall provide to the person and, if appropriate, to the person's parent, managing conservator, or guardian, a written copy of the applicable "bill of rights" adopted under this section. The facility shall provide the written copies in the person's primary language, if possible. In addition, the

facility shall ensure that, within 24 hours after the person is admitted to the facility, the rights specified in the written copy are explained to the person and, if appropriate, to the person's parent, managing conservator, or guardian:

(1) orally, in simple, nontechnical terms in the person's primary language, if possible; or

(2) through a means reasonably calculated to communicate with a person who has an impairment of vision or hearing, if applicable.

(g) The facility shall ensure that:

(1) each patient admitted for inpatient mental health, chemical dependency, or comprehensive rehabilitation services and each minor admitted for treatment in a child-care facility and, if appropriate, the person's parent, managing conservator, or guardian signs a copy of the document stating that the person has read the document and understands the rights specified in the document; and

(2) the signed copy is made a part of the person's clinical record.

(h) A facility shall prominently and conspicuously post a copy of the "bill of rights" for display in a public area of the facility that is readily available to patients, residents, employees, and visitors. The "bill of rights" must be in English and in a second language.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 1.01, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0855, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(71), eff. April 2, 2015.

Sec. 321.003. SUIT FOR HARM RESULTING FROM VIOLATION. (a) A treatment facility or mental health facility that violates a provision of, or a rule adopted under, this chapter, Subtitle C of Title 7, or Chapter 241, 462, 464, or 466 is liable to a person receiving care or treatment in or from the facility who is harmed as a result of the violation.

(b) A person who has been harmed by a violation may sue for

injunctive relief, damages, or both.

(c) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(d) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(e) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff received care or treatment; or

(2) the defendant conducts business.

(f) A person harmed by a violation must bring suit not later than the second anniversary of the date on which the person's injury is discovered, except that a minor whose injury is discovered before the minor's 18th birthday may bring suit at any time before the minor's 20th birthday.

(g) This section does not supersede or abrogate any other remedy existing in law.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 1.01, eff. Sept. 1, 1993.

Sec. 321.004. PENALTIES. In addition to the penalties prescribed by this chapter, a violation of a provision of this chapter by an individual or facility that is licensed by a state health care regulatory agency is subject to the same consequence as a violation of the licensing law applicable to the individual or facility or of a rule adopted under that licensing law.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 1.01, eff. Sept. 1, 1993.

CHAPTER 322. USE OF RESTRAINT AND SECLUSION IN CERTAIN HEALTH CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 322.001. DEFINITIONS. In this chapter:

(1) "Facility" means:

(A) a general residential operation, as defined by Section 42.002, Human Resources Code, including a state-operated

facility, serving children with an intellectual disability;

(B) an ICF-IID licensed by the Department of Aging and Disability Services under Chapter 252 or operated by that department and exempt under Section 252.003 from the licensing requirements of that chapter;

(C) a mental hospital or mental health facility, as defined by Section 571.003;

(D) an institution, as defined by Section 242.002;

(E) an assisted living facility, as defined by Section 247.002; or

(F) a treatment facility, as defined by Section 464.001.

(2) "Health and human services agency" means an agency listed in Section 521.0001, Government Code.

(3) "Seclusion" means the involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0856, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.49, eff. April 1, 2025.

SUBCHAPTER B. RESTRAINTS AND SECLUSION

Sec. 322.051. CERTAIN RESTRAINTS PROHIBITED. (a) A person may not administer to a resident of a facility a restraint that:

(1) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(2) impairs the resident's breathing by putting pressure on the torso; or

(3) interferes with the resident's ability to communicate.

(b) A person may use a prone or supine hold on the resident of a facility only if the person:

(1) limits the hold to no longer than the period specified by rules adopted under Section 322.052;

(2) uses the hold only as a last resort when other less

restrictive interventions have proven to be ineffective; and

(3) uses the hold only when an observer, who is trained to identify the risks associated with positional, compression, or restraint asphyxiation and with prone and supine holds and who is not involved in the restraint, is ensuring the resident's breathing is not impaired.

(c) Small residential facilities and small residential service providers are exempt from Subsection (b)(3).

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 1, eff. September 1, 2005.

Sec. 322.0515. AUTHORIZATION FOR USE OF WHEELCHAIR SELF-RELEASE SEAT BELT; EXCEPTION. (a) Except as provided by Subsection (b) and notwithstanding Section 322.051, a facility shall allow a resident to use a wheelchair self-release seat belt while the resident is in the resident's wheelchair if:

(1) the resident demonstrates the ability to release and fasten the seat belt without assistance;

(2) the use of the wheelchair self-release seat belt complies with the resident's plan of care; and

(3) the facility receives written authorization signed by the resident or the resident's legal guardian for the resident to use the wheelchair self-release seat belt.

(b) A facility that advertises as a restraint-free facility is not required to comply with Subsection (a) if the facility:

(1) provides to current and prospective residents a written disclosure stating the facility is restraint-free and is not required to comply with a request under Subsection (a); and

(2) makes all reasonable efforts to accommodate the concerns of a resident who requests a seat belt under Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 1138 (H.B. 284), Sec. 1, eff. September 1, 2017.

Sec. 322.052. ADOPTION OF RESTRAINT AND SECLUSION PROCEDURES. (a) For each health and human services agency that regulates the care or treatment of a resident at a facility, the executive commissioner of the Health and Human Services Commission shall adopt

rules to:

(1) define acceptable restraint holds that minimize the risk of harm to a facility resident in accordance with this subchapter;

(2) govern the use of seclusion of facility residents; and

(3) develop practices to decrease the frequency of the use of restraint and seclusion.

(b) The rules must permit prone and supine holds only as transitional holds for use on a resident of a facility.

(b-1) The rules must:

(1) authorize a registered nurse, other than the nurse who initiated the use of restraint or seclusion, who is trained to assess medical and psychiatric stability with demonstrated competence as required by rule to conduct a face-to-face evaluation of a patient in a hospital or facility licensed under Chapter 241 or 577 or in a state mental hospital, as defined by Section 571.003, not later than one hour after the time the use of restraint or seclusion is initiated; and

(2) require a physician to conduct a face-to-face evaluation of a patient in a hospital or facility licensed under Chapter 241 or 577 or in a state mental hospital, as defined by Section 571.003, and document clinical justification for continuing the restraint or seclusion before issuing or renewing an order that continues the use of the restraint or seclusion.

(c) A facility may adopt procedures for the facility's use of restraint and seclusion on a resident that regulate, more restrictively than is required by a rule of the regulating health and human services agency, the use of restraint and seclusion.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1240 (S.B. 1842), Sec. 1, eff. June 14, 2013.

Sec. 322.053. NOTIFICATION. The executive commissioner of the Health and Human Services Commission by rule shall ensure that each resident at a facility regulated by a health and human services agency and the resident's legally authorized representative are

notified of the rules and policies related to restraints and seclusion.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 1, eff. September 1, 2005.

Sec. 322.054. RETALIATION PROHIBITED. (a) A facility may not discharge or otherwise retaliate against:

(1) an employee, client, resident, or other person because the employee, client, resident, or other person files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility; or

(2) a client or resident of the facility because someone on behalf of the client or resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility.

(b) A health and human services agency that registers or otherwise licenses or certifies a facility may:

(1) revoke, suspend, or refuse to renew the license, registration, or certification of a facility that violates Subsection (a); or

(2) place on probation a facility that violates Subsection (a).

(c) A health and human services agency that regulates a facility and that is authorized to impose an administrative penalty against the facility under other law may impose an administrative penalty against the facility for violating Subsection (a). Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The amount of the penalty may not exceed the maximum amount that the agency may impose against the facility under the other law. The agency must follow the procedures it would follow in imposing an administrative penalty against the facility under the other law.

(d) A facility may contest and appeal the imposition of an administrative penalty under Subsection (c) by following the same procedures the facility would follow in contesting or appealing an administrative penalty imposed against the facility by the agency under the other law.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 1, eff.

September 1, 2005.

Sec. 322.055. MEDICAID WAIVER PROGRAM. A Medicaid waiver program provider, when providing supervised living or residential support, shall comply with this chapter and rules adopted under this chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 1, eff. September 1, 2005.

Sec. 322.056. REPORTING REQUIREMENT. A facility shall file with the Department of State Health Services a quarterly report regarding hospital-based inpatient psychiatric services measures related to the use of restraint and seclusion that is required by the federal Centers for Medicare and Medicaid Services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1240 (S.B. 1842), Sec. 2, eff. June 14, 2013.

CHAPTER 323. EMERGENCY SERVICES AND FORENSIC EXAMINATION PROGRAMS FOR SURVIVORS OF SEXUAL ASSAULT

SUBCHAPTER A. EMERGENCY SERVICES FOR SURVIVORS OF SEXUAL ASSAULT

Sec. 323.001. DEFINITIONS. In this subchapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Department" means the Department of State Health Services.

(3) "Health care facility" means a general or special hospital licensed under Chapter 241, a general or special hospital owned by this state, or a freestanding emergency medical care facility licensed under Chapter 254.

(3-a) "SAFE-ready facility" means a health care facility designated as a sexual assault forensic exam-ready facility under Section 323.0015. The term includes a SAFE program designated as a SAFE-ready facility under Section 323.052.

(3-b) "SAFE program" has the meaning assigned by Section 323.051.

(4) "Sexual assault" means any act as described by Section 22.011 or 22.021, Penal Code.

(4-a) "Sexual assault forensic examiner" means a certified sexual assault nurse examiner or a physician with specialized training on conducting a forensic medical examination.

(5) "Sexual assault survivor" means an individual who is a victim of a sexual assault, regardless of whether a report is made or a conviction is obtained in the incident.

Added by Acts 2005, 79th Leg., Ch. 934 (H.B. 677), Sec. 1, eff. September 1, 2005.
Renumbered from Health and Safety Code, Section 322.001 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(47), eff. September 1, 2007.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1063 (H.B. 3152), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1063 (H.B. 3152), Sec. 7, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 11, eff. September 1, 2021.

Sec. 323.0015. SAFE-READY FACILITIES. The department shall designate a health care facility as a sexual assault forensic exam-ready facility, or SAFE-ready facility, if the facility notifies the department that the facility employs or contracts with a sexual assault forensic examiner or uses a telemedicine system of sexual assault forensic examiners to provide consultation to a licensed nurse or physician when conducting a sexual assault forensic medical examination.

Added by Acts 2017, 85th Leg., R.S., Ch. 1063 (H.B. 3152), Sec. 2, eff. September 1, 2017.

Sec. 323.002. PLAN FOR EMERGENCY SERVICES. (a) Each health care facility that has an emergency department shall comply with Sections 323.004 and 323.0044. At the request of the department, a health care facility that has an emergency department shall submit to the department for approval a plan for providing the services

required by Section 323.004 to sexual assault survivors who arrive for treatment at the emergency department of the health care facility.

(b) The executive commissioner of the Health and Human Services Commission shall adopt procedures for submission, approval, and modification of a plan required under this section.

(c) A health care facility shall submit the plan required by this section not later than the 60th day after the date the department requests the plan.

(d) The department shall approve or reject the plan not later than the 120th day after the date the plan is submitted.

Added by Acts 2005, 79th Leg., Ch. 934 (H.B. 677), Sec. 1, eff. September 1, 2005.
Renumbered from Health and Safety Code, Section 322.002 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(47), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.002(10), eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 162 (S.B. 1191), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0857, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 12, eff. September 1, 2021.

Sec. 323.003. REJECTION OF PLAN. (a) If a plan required under Section 323.002 is not approved, the department shall:

(1) return the plan to the health care facility; and

(2) identify the specific provisions under Section 323.004 with which the plan conflicts or does not comply.

(b) Not later than the 90th day after the date the department returns a plan to a health care facility under Subsection (a), the facility shall correct and resubmit the plan to the department for approval.

Added by Acts 2005, 79th Leg., Ch. 934 (H.B. 677), Sec. 1, eff. September 1, 2005.
Renumbered from Health and Safety Code, Section 322.003 by Acts 2007,

80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(47), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.002(11), eff. September 1, 2007.

Sec. 323.004. MINIMUM STANDARDS FOR EMERGENCY SERVICES. (a) Except as otherwise provided by Subsection (a-2), after a sexual assault survivor arrives at a health care facility following a sexual assault, the facility shall provide care to the survivor in accordance with Subsection (b).

(a-1) A facility that is not a SAFE-ready facility shall inform the sexual assault survivor that:

(1) the facility is not a SAFE-ready facility and provide to the survivor the name and location of nearby SAFE-ready facilities and the information form required by Section 323.0051; and

(2) the survivor is entitled, at the survivor's option:

(A) to receive the care described by Subsection (b) at that facility, subject to Subsection (b-1); or

(B) to be stabilized and to be referred or transferred to and receive the care described by Subsection (b) at a SAFE-ready facility.

(a-2) If a sexual assault survivor chooses to be transferred under Subsection (a-1)(2)(B), after obtaining the survivor's written, signed consent to the transfer, the facility shall stabilize and transfer the survivor to a SAFE-ready facility, which shall provide care to the survivor in accordance with Subsection (b).

(a-3) Before transferring a sexual assault survivor, a health care facility that is not a SAFE-ready facility shall contact the SAFE-ready facility to which the survivor will be transferred to confirm a sexual assault forensic examiner is available at that facility.

(b) A health care facility providing care to a sexual assault survivor shall provide the survivor with:

(1) subject to Subsection (b-1), a forensic medical examination in accordance with Subchapter B, Chapter 420, Government Code, and Subchapter G, Chapter 56A, Code of Criminal Procedure;

(2) a private area, if available, to wait or speak with the appropriate medical, legal, or sexual assault crisis center staff or

volunteer until a physician, nurse, or physician assistant is able to treat the survivor;

(3) access to a sexual assault program advocate, if available, as provided by Subchapter H, Chapter 56A, Code of Criminal Procedure;

(4) the information form required by Section 323.005;

(5) a private treatment room, if available;

(6) if indicated by the history of contact, access to appropriate prophylaxis for exposure to sexually transmitted infections;

(7) the name and telephone number of the nearest sexual assault crisis center; and

(8) if the health care facility has shower facilities, access to a shower at no cost to the survivor after the examination described by Subdivision (1).

(b-1) A person may not perform a forensic examination on a sexual assault survivor unless the person has the basic training described by Section 323.0045 or the equivalent education and training.

(c) A health care facility must obtain documented consent before providing the forensic medical examination and treatment. The facility shall presume that an adult sexual assault survivor requesting a forensic medical examination and treatment is competent.

(d) This section does not affect the duty of a health care facility to comply with the requirements of the federal Emergency Medical Treatment and Active Labor Act of 1986 (42 U.S.C. Section 1395dd) that are applicable to the facility.

Added by Acts 2005, 79th Leg., Ch. 934 (H.B. 677), Sec. 1, eff. September 1, 2005.
Renumbered from Health and Safety Code, Section 322.004 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(47), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.002(12), eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1140 (H.B. 2626), Sec. 4, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 162 (S.B. 1191), Sec. 2, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 1063 (H.B. 3152), Sec. 3, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 469 (H.B. 4173), Sec. 2.54, eff. January 1, 2021.

Acts 2019, 86th Leg., R.S., Ch. 1329 (H.B. 4531), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 13, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 206 (S.B. 1401), Sec. 19, eff. September 1, 2023.

Sec. 323.0044. PROVISION OF EMERGENCY SERVICES TO CERTAIN ADULT SEXUAL ASSAULT SURVIVORS. (a) A health care facility shall provide a forensic medical examination and treatment to an adult sexual assault survivor for whom a guardian is appointed under Title 3, Estates Code, without the consent of the survivor's guardian, guardian ad litem, or other legal agent if:

(1) the health care facility determines the survivor understands the nature of the forensic medical examination and treatment; and

(2) the survivor agrees to receive the forensic medical examination and treatment.

(b) Subject to Subsection (c), if an adult sexual assault survivor requests a forensic medical examination and treatment and a health care facility determines the survivor potentially is incapable of consenting to the forensic medical examination and treatment, the health care facility may:

(1) obtain consent from a relative or caretaker of the survivor on the survivor's behalf;

(2) obtain consent from the survivor's guardian, guardian ad litem, or other legal agent; or

(3) petition a court with probate jurisdiction in the county in which the facility is located for an emergency order authorizing the forensic medical examination and treatment, in the manner provided by Section 48.208, Human Resources Code.

(c) If personnel of a health care facility know or have reason to believe that the survivor's relative, caretaker, guardian, guardian ad litem, or other legal agent is a suspect or accomplice in the sexual assault of the survivor, the health care facility may not

contact the survivor's relative, caretaker, guardian, guardian ad litem, or other legal agent.

(d) A health care facility may not provide a forensic medical examination to an adult sexual assault survivor for whom a guardian is appointed under Title 3, Estates Code, if the survivor refuses the examination, regardless of whether the survivor's guardian requests or consents to the examination.

Added by Acts 2019, 86th Leg., R.S., Ch. 1329 (H.B. 4531), Sec. 2, eff. September 1, 2019.

Sec. 323.0045. BASIC SEXUAL ASSAULT FORENSIC EVIDENCE COLLECTION TRAINING. (a) A person who performs a forensic medical examination on a sexual assault survivor must complete at least two hours of basic forensic evidence collection training or the equivalent education that conforms to the evidence collection protocol developed by the attorney general under Section 420.031, Government Code.

(b) A person who completes a continuing medical or nursing education course in forensic evidence collection described by Section 156.057 or 301.306, Occupations Code, that is approved or recognized by the appropriate licensing board is considered to have completed basic forensic evidence collection training for purposes of this chapter.

(c) Each health care facility that has an emergency department and that is not a SAFE-ready facility shall develop a written policy to ensure that a person described by Subsection (a) completes training on basic forensic evidence collection in accordance with this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 162 (S.B. 1191), Sec. 3, eff. September 1, 2013.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1063 (H.B. 3152), Sec. 4, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 460 (S.B. 1402), Sec. 2, eff. September 1, 2023.

Sec. 323.0046. BASIC SEXUAL ASSAULT RESPONSE POLICY AND

TRAINING FOR CERTAIN HEALTH CARE FACILITY PERSONNEL. (a) A health care facility that has an emergency department shall provide at least one hour of basic sexual assault response training to facility employees and contractors who provide patient admission functions, patient-related administrative support functions, or direct patient care. The training must include instruction on:

(1) the provision of survivor-centered, trauma-informed care to sexual assault survivors; and

(2) the rights of sexual assault survivors under Chapter 56A, Code of Criminal Procedure, including:

(A) the availability of a forensic medical examination, including an examination that is available when a sexual assault survivor does not report the assault to a law enforcement agency; and

(B) the role of an advocate as defined by Section 420.003, Government Code, in responding to a sexual assault survivor.

(b) An employee or contractor described by Subsection (a) who completes a continuing medical or nursing education course in forensic evidence collection described by Section 156.057 or 301.306, Occupations Code, that is approved or recognized by the appropriate licensing board is considered to have completed basic sexual assault response training for purposes of this section.

(c) Each health care facility that has an emergency department and that is not a SAFE-ready facility shall develop a written policy to ensure that all appropriate facility personnel complete the basic sexual assault response training required by Subsection (a).

Added by Acts 2023, 88th Leg., R.S., Ch. 460 (S.B. 1402), Sec. 3, eff. September 1, 2023.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 365 (H.B. 47), Sec. 10, eff. September 1, 2025.

Sec. 323.005. INFORMATION FORM. (a) The commission shall develop a standard information form for sexual assault survivors that must include:

(1) a detailed explanation of the forensic medical examination required to be provided by law, including a statement that photographs may be taken of the genitalia;

(2) information regarding treatment of sexually transmitted

infections and pregnancy, including:

(A) generally accepted medical procedures;

(B) appropriate medications; and

(C) any contraindications of the medications prescribed for treating sexually transmitted infections and preventing pregnancy;

(3) information regarding drug-facilitated sexual assault, including the necessity for an immediate urine test for sexual assault survivors who may have been involuntarily drugged;

(4) information regarding crime victims compensation and regarding the payment of costs and the reimbursements available for care to be provided as described by Subchapter G, Chapter 56A, Code of Criminal Procedure;

(5) an explanation that consent for the forensic medical examination may be withdrawn at any time during the examination;

(6) the name and telephone number of sexual assault crisis centers statewide;

(7) the names and contact information of legal aid services providers statewide;

(8) information regarding postexposure prophylaxis for HIV infection;

(9) information regarding the period for which biological evidence collected from the forensic medical examination will be retained and preserved under Article 38.43, Code of Criminal Procedure; and

(10) a statement that the survivor has the right to access a shower for free after the forensic medical examination, if shower facilities are available at the health care facility.

(b) A health care facility shall use the standard form developed under this section.

(c) An individual employed by or under contract with a health care facility may refuse to provide the information form required by this section for ethical or religious reasons. If an individual employed by or under contract with a health care facility refuses to provide the survivor with the information form, the health care facility must ensure that the information form is provided without delay to the survivor by another individual employed by or under contract with the facility.

(d) Repealed by Acts 2025, 89th Leg., R.S., Ch. 365 (H.B. 47), Sec. 21, eff. September 1, 2025.

Added by Acts 2005, 79th Leg., Ch. 934 (H.B. 677), Sec. 1, eff. September 1, 2005.
Renumbered from Health and Safety Code, Section 322.005 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(47), eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1140 (H.B. 2626), Sec. 5, eff. June 19, 2009.

Acts 2019, 86th Leg., R.S., Ch. 408 (H.B. 8), Sec. 10, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 469 (H.B. 4173), Sec. 2.55, eff. January 1, 2021.

Acts 2019, 86th Leg., R.S., Ch. 1037 (H.B. 616), Sec. 6, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 14, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.005, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 206 (S.B. 1401), Sec. 20, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 365 (H.B. 47), Sec. 11, eff. September 1, 2025.

Acts 2025, 89th Leg., R.S., Ch. 365 (H.B. 47), Sec. 21, eff. September 1, 2025.

Sec. 323.0051. INFORMATION FORM FOR SEXUAL ASSAULT SURVIVORS AT CERTAIN FACILITIES. (a) The commission shall develop a standard information form for sexual assault survivors who arrive at a health care facility that is not a SAFE-ready facility. The information form must include:

(1) information regarding the benefits of a forensic medical examination conducted by a sexual assault forensic examiner;

(2) the Internet website address to the commission's list of SAFE-ready facilities that includes the facilities' physical addresses as required by Section 323.008;

(3) the following statements:

(A) "As a survivor of sexual assault, you have the right to receive a forensic medical examination for sexual assault at this hospital emergency room if you are requesting the examination

not later than 120 hours after the assault. For parents or guardians of a minor child, your child has the right to receive the forensic medical examination at any time, regardless of when the assault occurred."; and

(B) "Call 1-800-656-HOPE to be connected to a sexual assault crisis center for free and confidential assistance.";

(4) the names and contact information of legal aid services providers statewide; and

(5) information on the procedure for submitting a complaint against the health care facility.

(b) A health care facility that is not a SAFE-ready facility shall provide the standard information form developed under this section to each sexual assault survivor who arrives at the facility.

Added by Acts 2017, 85th Leg., R.S., Ch. 1063 (H.B. 3152), Sec. 5, eff. September 1, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1037 (H.B. 616), Sec. 7, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 15, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 206 (S.B. 1401), Sec. 21, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 365 (H.B. 47), Sec. 12, eff. September 1, 2025.

Sec. 323.0052. INFORMATION FORM FOR SEXUAL ASSAULT SURVIVORS WHO HAVE NOT REPORTED ASSAULT. (a) The commission shall develop a standard information form that, as described by Subsection (b), is to be provided to sexual assault survivors who have not given signed, written consent to a health care facility to release the evidence as provided by Section 420.0735, Government Code. The form must include the following information:

(1) the Department of Public Safety's policy regarding storage of evidence of a sexual assault or other sex offense that is collected under Subchapter G, Chapter 56A, Code of Criminal Procedure, including:

(A) a statement that the evidence will be stored until the fifth anniversary of the date on which the evidence was collected

before the evidence becomes eligible for destruction; and

(B) the department's procedures regarding the notification of the survivor through the statewide electronic tracking system before a planned destruction of the evidence;

(2) a statement that the survivor may request the release of the evidence to a law enforcement agency and report a sexual assault or other sex offense to the agency at any time;

(3) the name, phone number, and e-mail address of the law enforcement agency with jurisdiction over the offense;

(4) the name and phone number of a local sexual assault crisis center; and

(5) the names and contact information of legal aid services providers statewide.

(b) A health care facility that provides care to a sexual assault survivor who has not given consent as described by Subsection (a) shall provide the standard form developed under Subsection (a) to the survivor before the survivor is released from the facility.

Added by Acts 2019, 86th Leg., R.S., Ch. 408 (H.B. 8), Sec. 11, eff. September 1, 2019.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 16, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.006, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 206 (S.B. 1401), Sec. 22, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 365 (H.B. 47), Sec. 13, eff. September 1, 2025.

Sec. 323.006. INSPECTION. The department may conduct an inspection of a health care facility to ensure compliance with this chapter.

Added by Acts 2005, 79th Leg., Ch. 934 (H.B. 677), Sec. 1, eff. September 1, 2005.
Renumbered from Health and Safety Code, Section 322.006 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(47), eff. September 1, 2007.

Sec. 323.007. SEXUAL ASSAULT SURVIVORS WHO ARE MINORS. This chapter does not affect participating entities of children's advocacy centers under Subchapter E, Chapter 264, Family Code, or the working protocols set forth by their multidisciplinary teams to ensure access to specialized medical assessments for sexual assault survivors who are minors. To the extent of a conflict with Subchapter E, Chapter 264, Family Code, that subchapter controls.

Added by Acts 2013, 83rd Leg., R.S., Ch. 162 (S.B. 1191), Sec. 4, eff. September 1, 2013.

Sec. 323.008. DATA PUBLICATION. The commission shall post on the commission's Internet website a list of all hospitals and other health facilities that are designated as SAFE-ready facilities under this chapter and the facilities' physical addresses. The commission shall update the list quarterly. To the extent possible, the commission shall collect the data required by this section as part of a survey required by the commission under other law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 162 (S.B. 1191), Sec. 4, eff. September 1, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1063 (H.B. 3152), Sec. 6, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 17, eff. September 1, 2021.

SUBCHAPTER B. SEXUAL ASSAULT FORENSIC EXAMINATION PROGRAMS

Sec. 323.051. DEFINITIONS. In this subchapter:

(1) "SAFE program" means a program that meets the requirements prescribed by Section 323.052. The term does not include a program operated by a health care facility, as defined by Section 323.001.

(2) "Sexual assault examiner," "sexual assault nurse examiner," and "sexual assault program" have the meanings assigned by Section 420.003, Government Code.

(3) "Sexual assault forensic examiner" means a certified sexual assault nurse examiner or a physician licensed under Subtitle B, Title 3, Occupations Code, with specialized training on conducting

a forensic medical examination.

Added by Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 18, eff. September 1, 2021.

Sec. 323.052. OPERATION OF SAFE PROGRAM; DESIGNATION OF SAFE PROGRAM AS SAFE-READY FACILITY. (a) A person may operate a SAFE program only if:

(1) the program meets the minimum standards established under Section 323.053; and

(2) the program provides forensic medical examinations to sexual assault survivors in accordance with Section 323.054.

(b) The Health and Human Services Commission shall designate a SAFE program described by Subsection (a) as a SAFE-ready facility under Section 323.0015 if the program notifies the commission that the program employs or contracts with a sexual assault forensic examiner or uses a telemedicine system of sexual assault forensic examiners to provide consultation during a sexual assault forensic medical examination to a nurse or physician licensed to practice in this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 18, eff. September 1, 2021.

Sec. 323.053. MINIMUM STANDARDS FOR SAFE PROGRAMS. A SAFE program must:

(1) operate under the active oversight of a medical director who is a physician licensed by and in good standing with the Texas Medical Board;

(2) provide medical treatment under a physician's order, standing medical order, standing delegation order, or other order or protocol as defined by Texas Medical Board rules;

(3) employ or contract with a sexual assault examiner or a sexual assault nurse examiner;

(4) provide access to a sexual assault program advocate, as required by Subchapter H, Chapter 56A, Code of Criminal Procedure;

(5) ensure a sexual assault survivor has access to a private treatment room;

(6) if indicated by a survivor's history or on a survivor's

request, provide:

(A) HIV testing and prophylactic medication to the survivor or a referral for the testing and medication; and

(B) counseling and prophylactic medications for exposure to sexually transmitted infections and pregnancy;

(7) provide to survivors the name and telephone number of a nearby sexual assault program that provides to survivors the minimum services described by Subchapter A, Chapter 420, Government Code;

(8) provide to survivors the information form required by Section 323.005, 323.0051, or 323.0052, as applicable;

(9) collaborate with any sexual assault program, as defined by Section 420.003, Government Code, that provides services to survivors in the county;

(10) engage in efforts to improve the quality of the program;

(11) maintain capacity for appropriate triage or have agreements with other health facilities to assure that a survivor receives the appropriate level of care indicated for the survivor's medical and mental health needs;

(12) prioritize the safety and well-being of survivors;

(13) provide a trauma-informed approach in the forensic medical care provided to survivors; and

(14) collaborate with:

(A) law enforcement agencies and attorneys representing the state with jurisdiction in the county;

(B) any available local sexual assault response team; and

(C) other interested persons in the community.

Added by Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 18, eff. September 1, 2021.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 365 (H.B. 47), Sec. 14, eff. September 1, 2025.

Sec. 323.054. FORENSIC MEDICAL EXAMINATION BY SAFE PROGRAM; INFORMED CONSENT. (a) A SAFE program shall provide to a sexual assault survivor under the care of the program a forensic medical examination in accordance with Subchapter B, Chapter 420, Government

Code, and Subchapter G, Chapter 56A, Code of Criminal Procedure.

(b) Only a sexual assault examiner or a sexual assault nurse examiner may perform a forensic medical examination under a SAFE program.

(c) A sexual assault examiner or sexual assault nurse examiner employed by or under contract with a SAFE program must obtain the consent described by Article 56A.303, Code of Criminal Procedure, before performing a forensic medical examination or providing medical treatment to the survivor.

(d) A sexual assault survivor who receives a forensic medical examination from a sexual assault examiner or sexual assault nurse examiner employed by or under contract with a SAFE program may not be required to:

(1) participate in the investigation or prosecution of an offense as a prerequisite to receiving the forensic medical examination or medical treatment; or

(2) pay for any costs described by Article 56A.304(a), Code of Criminal Procedure.

Added by Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 18, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 206 (S.B. 1401), Sec. 23, eff. September 1, 2023.

CHAPTER 324. CONSUMER ACCESS TO HEALTH CARE INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 324.001. DEFINITIONS. In this chapter:

(1) "Average charge" means the mathematical average of facility charges for an inpatient admission or outpatient surgical procedure. The term does not include charges for a particular inpatient admission or outpatient surgical procedure that exceed the average by more than two standard deviations.

(2) "Billed charge" means the amount a facility charges for an inpatient admission, outpatient surgical procedure, or health care service or supply.

(3) "Costs" means the fixed and variable expenses incurred by a facility in the provision of a health care service.

(4) "Consumer" means any person who is considering

receiving, is receiving, or has received a health care service or supply as a patient from a facility. The term includes the personal representative of the patient.

(5) "Department" means the Department of State Health Services.

(5-a) "Estimate" means a written statement outlining a consumer's total expected billed charges for a nonemergency elective medical service or procedure.

(6) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(7) "Facility" means:

(A) an ambulatory surgical center licensed under Chapter 243;

(B) a birthing center licensed under Chapter 244;

(C) a hospital licensed under Chapter 241; or

(D) a freestanding emergency medical care facility, as defined in Section 254.001, including a freestanding emergency medical care facility that is exempt from the licensing requirements of Chapter 254 under Section 254.052(8).

(8) "Facility-based physician" means a radiologist, an anesthesiologist, a pathologist, an emergency department physician, a neonatologist, or an assistant surgeon.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 4, eff. June 19, 2009.
Acts 2015, 84th Leg., R.S., Ch. 185 (S.B. 425), Sec. 4, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 467 (S.B. 481), Sec. 1, eff. September 1, 2015.
Acts 2025, 89th Leg., R.S., Ch. 935 (H.B. 1314), Sec. 1, eff. September 1, 2025.

Sec. 324.002. RULES. The executive commissioner shall adopt and enforce rules to further the purposes of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 1, eff. September 1, 2007.

SUBCHAPTER C. BILLING OF FACILITY SERVICES AND SUPPLIES

Sec. 324.101. FACILITY POLICIES. (a) Each facility shall develop, implement, and enforce written policies for the billing of facility health care services and supplies. The policies must address:

(1) any discounting of facility charges to an uninsured consumer, subject to Chapter 552, Insurance Code;

(2) any discounting of facility charges provided to a financially or medically indigent consumer who qualifies for indigent services based on a sliding fee scale or a written charity care policy established by the facility and the documented income and other resources of the consumer;

(3) the providing of an itemized statement required by Subsection (e);

(4) whether interest will be applied to any billed service not covered by a third-party payor and the rate of any interest charged;

(5) the procedure for handling complaints;

(6) the providing of a conspicuous written disclosure to a consumer at the time the consumer is first admitted to the facility or first receives services at the facility that:

(A) provides confirmation whether the facility is a participating provider under the consumer's third-party payor coverage on the date services are to be rendered based on the information received from the consumer at the time the confirmation is provided;

(B) informs consumers that a facility-based physician who may provide services to the consumer while the consumer is in the facility may not be a participating provider with the same third-party payors as the facility;

(C) informs consumers that the consumer may receive a bill for medical services from a facility-based physician for the amount unpaid by the consumer's health benefit plan;

(D) informs consumers that the consumer may request a listing of facility-based physicians who have been granted medical staff privileges to provide medical services at the facility; and

(E) informs consumers that the consumer may request information from a facility-based physician on whether the physician

has a contract with the consumer's health benefit plan and under what circumstances the consumer may be responsible for payment of any amounts not paid by the consumer's health benefit plan;

(7) the requirement that a facility provide a list, on request, to a consumer to be admitted to, or who is expected to receive services from, the facility, that contains the name and contact information for each facility-based physician or facility-based physician group that has been granted medical staff privileges to provide medical services at the facility; and

(8) if the facility operates a website that includes a listing of physicians who have been granted medical staff privileges to provide medical services at the facility, the posting on the facility's website of a list that contains the name and contact information for each facility-based physician or facility-based physician group that has been granted medical staff privileges to provide medical services at the facility and the updating of the list in any calendar quarter in which there are any changes to the list.

(b) For services provided in an emergency department of a hospital or as a result of an emergent direct admission, the hospital shall provide the written disclosure required by Subsection (a)(6) before discharging the patient from the emergency department or hospital, as appropriate.

(c) Each facility shall post in the general waiting area and in the waiting areas of any off-site or on-site registration, admission, or business office a clear and conspicuous notice of the availability of the policies required by Subsection (a).

(d) A consumer is entitled to receive and a facility shall provide to a consumer an estimate of the facility's billed charges for any elective inpatient admission or nonemergency outpatient surgical procedure or other service on the consumer's request and before the scheduling of the admission, procedure, or service. Not later than five business days after receiving a request for an estimate under this subsection, the facility shall provide the estimate to the requesting consumer by e-mail. The facility must advise the consumer that:

(1) the request for an estimate of billed charges may result in a delay in the scheduling and provision of the inpatient admission, outpatient surgical procedure, or other service;

(2) the actual charges for an inpatient admission, outpatient surgical procedure, or other service will vary based on

the person's medical condition and other factors associated with performance of the procedure or service;

(3) the actual charges for an inpatient admission, outpatient surgical procedure, or other service may differ from the amount to be paid by the consumer or the consumer's third-party payor;

(4) the consumer may be personally liable for payment for the inpatient admission, outpatient surgical procedure, or other service depending on the consumer's health benefit plan coverage; and

(5) the consumer should contact the consumer's health benefit plan for accurate information regarding the plan structure, benefit coverage, deductibles, copayments, coinsurance, and other plan provisions that may impact the consumer's liability for payment for the inpatient admission, outpatient surgical procedure, or other service.

(d-1) A facility shall include in the estimate provided under Subsection (d) information regarding the manner in which an eligible consumer may dispute final billed charges that exceed the amount specified in the estimate by $400 or more, as provided by 45 C.F.R. Section 149.620.

(e) A facility shall provide to the consumer at the consumer's request an itemized statement of the billed services if the consumer requests the statement not later than the first anniversary of the date the person is discharged from the facility. The facility shall provide the statement to the consumer not later than the 10th business day after the date on which the statement is requested.

(f) A facility shall provide an itemized statement of billed services to a third-party payor who is actually or potentially responsible for paying all or part of the billed services provided to a patient and who has received a claim for payment of those services. To be entitled to receive a statement, the third-party payor must request the statement from the facility and must have received a claim for payment. The request must be made not later than one year after the date on which the payor received the claim for payment. The facility shall provide the statement to the payor not later than the 30th day after the date on which the payor requests the statement. If a third-party payor receives a claim for payment of part but not all of the billed services, the third-party payor may request an itemized statement of only the billed services for which payment is claimed or to which any deduction or copayment applies.

(g) A facility that violates this section:

(1) may not:

(A) take or facilitate the taking of any third-party collection action against a consumer;

(B) report the consumer to a credit bureau; or

(C) pursue an action against the consumer; and

(2) is subject to an enforcement action by the appropriate licensing agency.

(h) If a consumer or a third-party payor requests more than two copies of the statement, the facility may charge a reasonable fee for the third and subsequent copies provided. The fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed $30;

(2) a charge for each page of:

(A) $1 for the 11th through the 60th page of the provided copies;

(B) 50 cents for the 61st through the 400th page of the provided copies; and

(C) 25 cents for any remaining pages of the provided copies; and

(3) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

(i) If a consumer overpays a facility, the facility must refund the amount of the overpayment not later than the 30th day after the date the facility determines that an overpayment has been made. This subsection does not apply to an overpayment subject to Section 1301.132 or 843.350, Insurance Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 5, eff. June 19, 2009.

Acts 2025, 89th Leg., R.S., Ch. 935 (H.B. 1314), Sec. 2, eff. September 1, 2025.

Sec. 324.102. COMPLAINT PROCESS. A facility shall establish

and implement a procedure for handling consumer complaints, and must make a good faith effort to resolve the complaint in an informal manner based on its complaint procedures. If the complaint cannot be resolved informally, the facility shall advise the consumer that a complaint may be filed with the department and shall provide the consumer with the mailing address and telephone number of the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 1, eff. September 1, 2007.

Sec. 324.103. CONSUMER WAIVER PROHIBITED. The provisions of this chapter may not be waived, voided, or nullified by a contract or an agreement between a facility and a consumer.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 1, eff. September 1, 2007.

CHAPTER 325. NOTICE OF SEX OFFENDER STATUS TO RESIDENTS OF GROUP HOME

Sec. 325.001. DEFINITIONS. In this chapter:

(1) "Director" means the administrator primarily responsible for the operation of a group home.

(2) "Group home" includes:

(A) an assisted living facility, as defined by Section 247.002;

(B) a boarding home facility, as defined by Section 260.001;

(C) a facility as defined by Section 246.002;

(D) a supportive housing facility operated by the state, a local government, or a private agency that provides supportive services to persons with mental illness, substance use conditions, or physical disabilities who require access to rehabilitative services and a stable living arrangement to maintain consistent treatment regimens; and

(E) a transitional housing facility designed to facilitate the transition from inpatient to outpatient care or, within a reasonable time, the transition from homelessness to permanent housing for persons with serious mental illnesses,

substance use conditions, or physical disabilities and who may require intensive case management and assistance with long-term goal planning and independent living skills.

(3) "Resident" means a person who resides and receives services at a group home.

Added by Acts 2013, 83rd Leg., R.S., Ch. 246 (H.B. 424), Sec. 1, eff. September 1, 2013.

Sec. 325.002. APPLICABILITY OF CHAPTER. This chapter does not apply to a group home that accepts or is assigned only residents who are sex offenders required to register under Chapter 62, Code of Criminal Procedure, if the residents receive treatment at the group home from a sex offender treatment provider who is licensed under Chapter 110, Occupations Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 246 (H.B. 424), Sec. 1, eff. September 1, 2013.

Sec. 325.003. SEX OFFENDER STATUS CHECK. Except as provided by Section 325.002, as soon as practicable after a person requests to live at a group home or is assigned to live at a group home as a condition of community supervision or as a condition of release on parole or to mandatory supervision, the director of the group home shall ascertain whether the person is registered under Chapter 62, Code of Criminal Procedure, by consulting the Internet website maintained by the Department of Public Safety that contains the sex offender database.

Added by Acts 2013, 83rd Leg., R.S., Ch. 246 (H.B. 424), Sec. 1, eff. September 1, 2013.

Sec. 325.004. NOTICE TO OTHER RESIDENTS REQUIRED. If based on information obtained under Section 325.003 the director ascertains that a person is a registered sex offender, not later than the third day after the date the person becomes a resident of the group home, the director shall provide notice that the person is a sex offender to the legal guardian of each current resident who has a legal

guardian and directly to each other resident. The notice must contain all of the information about the person that is available on the website described by Section 325.003.

Added by Acts 2013, 83rd Leg., R.S., Ch. 246 (H.B. 424), Sec. 1, eff. September 1, 2013.

Sec. 325.005. IMMUNITY FOR RELEASE OF PUBLIC INFORMATION. A group home or its director is not liable under any law for damages arising from conduct required under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 246 (H.B. 424), Sec. 1, eff. September 1, 2013.

CHAPTER 326. STAFFING REQUIREMENTS FOR FACILITIES PROVIDING CARE TO PERSONS WITH ALZHEIMER'S DISEASE OR RELATED DISORDERS

Sec. 326.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Facility" means:

(A) a nursing facility licensed under Chapter 242;

(B) a continuing care facility regulated under Chapter 246;

(C) an assisted living facility licensed under Chapter 247;

(D) a day activity and health services facility licensed under Chapter 103, Human Resources Code;

(E) an establishment subject to Chapter 105, Human Resources Code;

(F) a community home qualified under Chapter 123, Human Resources Code; and

(G) an adult foster care provider that contracts with the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 16, eff. September 1, 2017.

Sec. 326.002. WRITTEN POLICY REQUIRED. A facility shall adopt,

implement, and enforce a written policy that:

(1) requires a facility employee who provides direct care to a person with Alzheimer's disease or a related disorder to successfully complete training in the provision of care to persons with Alzheimer's disease and related disorders; and

(2) ensures the care and services provided by a facility employee to a person with Alzheimer's disease or a related disorder meet the specific identified needs of the person relating to the person's diagnosis of Alzheimer's disease or a related disorder.

Added by Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 16, eff. September 1, 2017.

Sec. 326.003. ENFORCEMENT. (a) The commission may assess an administrative penalty against a facility for a violation of Section 326.002.

(b) The commission is not required to provide a facility an opportunity to correct a second or subsequent violation of Section 326.002 that occurs before the second anniversary of the date of the first violation.

(c) A violation of Section 326.002 constitutes a violation of the law regulating a facility, and the commission may initiate for the violation any other enforcement action authorized by that law against the facility, including an adult foster care facility with three or fewer beds.

Added by Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 16, eff. September 1, 2017.

Sec. 326.004. RULES. The executive commissioner shall adopt rules related to the administration and implementation of this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 16, eff. September 1, 2017.

CHAPTER 327. DISCLOSURE OF PRICES

Sec. 327.001. DEFINITIONS. In this chapter:

(1) "Ancillary service" means a facility item or service that a facility customarily provides as part of a shoppable service.

(2) "Chargemaster" means the list of all facility items or services maintained by a facility for which the facility has established a charge.

(3) "Commission" means the Health and Human Services Commission.

(4) "De-identified maximum negotiated charge" means the highest charge that a facility has negotiated with all third party payors for a facility item or service.

(5) "De-identified minimum negotiated charge" means the lowest charge that a facility has negotiated with all third party payors for a facility item or service.

(6) "Discounted cash price" means the charge that applies to an individual who pays cash, or a cash equivalent, for a facility item or service.

(7) "Facility" means:

(A) a hospital, including:

(i) a general hospital;

(ii) a special hospital;

(iii) a mental hospital;

(iv) a hospital that operates a crisis stabilization unit;

(v) a limited services rural hospital; or

(vi) a hospital operating under a certificate of public advantage under Chapter 314 or 314A;

(B) an abortion facility;

(C) an ambulatory surgical center;

(D) a birthing center;

(E) a chemical dependency treatment facility;

(F) an end stage renal disease facility;

(G) a freestanding emergency medical care facility;

(H) a narcotic drug treatment program; or

(I) a special care facility.

(8) "Facility items or services" means all items and services, including individual items and services and service packages, that may be provided by a facility to a patient in connection with an inpatient admission or an outpatient department visit, as applicable, for which the facility has established a standard charge, including:

(A) supplies and procedures;

(B) room and board;

(C) use of the facility and other areas, the charges for which are generally referred to as facility fees;

(D) services of physicians and non-physician practitioners, employed by the facility, the charges for which are generally referred to as professional charges; and

(E) any other item or service for which a facility has established a standard charge.

(9) "Gross charge" means the charge for a facility item or service that is reflected on a facility's chargemaster, absent any discounts.

(10) "Machine-readable format" means a digital representation of information in a file that can be imported or read into a computer system for further processing. The term includes.XML,.JSON, and.CSV formats.

(11) "Payor-specific negotiated charge" means the charge that a facility has negotiated with a third party payor for a facility item or service.

(12) "Service package" means an aggregation of individual facility items or services into a single service with a single charge.

(13) "Shoppable service" means a service that may be scheduled by a health care consumer in advance.

(14) "Standard charge" means the regular rate established by the facility for a facility item or service provided to a specific group of paying patients. The term includes all of the following, as defined under this section:

(A) the gross charge;

(B) the payor-specific negotiated charge;

(C) the de-identified minimum negotiated charge;

(D) the de-identified maximum negotiated charge; and

(E) the discounted cash price.

(15) "Third party payor" means an entity that is, by statute, contract, or agreement, legally responsible for payment of a claim for a facility item or service.

Added by Acts 2021, 87th Leg., R.S., Ch. 1044 (S.B. 1137), Sec. 1, eff. September 1, 2021.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 1131 (S.B. 331), Sec. 1, eff. June 20, 2025.

Sec. 327.0015. APPLICABILITY. This chapter applies only to a facility with a total gross revenue of $10 million or more.

Added by Acts 2025, 89th Leg., R.S., Ch. 1131 (S.B. 331), Sec. 2, eff. June 20, 2025.

Sec. 327.002. PUBLIC AVAILABILITY OF PRICE INFORMATION REQUIRED. Notwithstanding any other law, a facility must make public:

(1) a digital file in a machine-readable format that contains a list of all standard charges for all facility items or services as described by Section 327.003; and

(2) a consumer-friendly list of standard charges for a limited set of shoppable services as provided in Section 327.004.

Added by Acts 2021, 87th Leg., R.S., Ch. 1044 (S.B. 1137), Sec. 1, eff. September 1, 2021.

Sec. 327.003. LIST OF STANDARD CHARGES REQUIRED. (a) A facility shall:

(1) maintain a list of all standard charges for all facility items or services in accordance with this section; and

(2) ensure the list required under Subdivision (1) is available at all times to the public, including by posting the list electronically in the manner provided by this section.

(b) The standard charges contained in the list required to be maintained by a facility under Subsection (a) must reflect the standard charges applicable to that location of the facility, regardless of whether the facility operates in more than one location or operates under the same license as another facility.

(c) The list required under Subsection (a) must include the following items, as applicable:

(1) a description of each facility item or service provided by the facility;

(2) the following charges for each individual facility item

or service when provided in either an inpatient setting or an outpatient department setting, as applicable:

(A) the gross charge;

(B) the de-identified minimum negotiated charge;

(C) the de-identified maximum negotiated charge;

(D) the discounted cash price; and

(E) the payor-specific negotiated charge, listed by the name of the third party payor and plan associated with the charge and displayed in a manner that clearly associates the charge with each third party payor and plan; and

(3) any code used by the facility for purposes of accounting or billing for the facility item or service, including the Current Procedural Terminology (CPT) code, the Healthcare Common Procedure Coding System (HCPCS) code, the Diagnosis Related Group (DRG) code, the National Drug Code (NDC), or other common identifier.

(d) The information contained in the list required under Subsection (a) must be published in a single digital file that is in a machine-readable format.

(e) The list required under Subsection (a) must be displayed in a prominent location on the home page of the facility's publicly accessible Internet website or accessible by selecting a dedicated link that is prominently displayed on the home page of the facility's publicly accessible Internet website. If the facility operates multiple locations and maintains a single Internet website, the list required under Subsection (a) must be posted for each location the facility operates in a manner that clearly associates the list with the applicable location of the facility.

(f) The list required under Subsection (a) must:

(1) be available:

(A) free of charge;

(B) without having to establish a user account or password;

(C) without having to submit personal identifying information; and

(D) without having to overcome any other impediment, including entering a code to access the list;

(2) be accessible to a common commercial operator of an Internet search engine to the extent necessary for the search engine to index the list and display the list as a result in response to a search query of a user of the search engine;

(3) be formatted in a manner prescribed by the commission;

(4) be digitally searchable; and

(5) use the following naming convention specified by the Centers for Medicare and Medicaid Services, specifically:

<ein>_<facility-name>_standardcharges.[json|xml|csv]

(g) In prescribing the format of the list under Subsection (f)(3), the commission shall:

(1) develop a template that each facility must use in formatting the list; and

(2) in developing the template under Subdivision (1):

(A) consider any applicable federal guidelines for formatting similar lists required by federal law or rule and ensure that the design of the template enables health care researchers to compare the charges contained in the lists maintained by each facility; and

(B) design the template to be substantially similar to the template used by the Centers for Medicare and Medicaid Services for purposes similar to those of this chapter, if the commission determines that designing the template in that manner serves the purposes of Paragraph (A) and that the commission benefits from developing and requiring that substantially similar design.

(h) The facility must update the list required under Subsection (a) at least once each year. The facility must clearly indicate the date on which the list was most recently updated, either on the list or in a manner that is clearly associated with the list.

Added by Acts 2021, 87th Leg., R.S., Ch. 1044 (S.B. 1137), Sec. 1, eff. September 1, 2021.

Sec. 327.004. CONSUMER-FRIENDLY LIST OF SHOPPABLE SERVICES. (a) Except as provided by Subsection (c), a facility shall maintain and make publicly available a list of the standard charges described by Sections 327.003(c)(2)(B), (C), (D), and (E) for each of at least 300 shoppable services provided by the facility. The facility may select the shoppable services to be included in the list, except that the list must include:

(1) the 70 services specified as shoppable services by the Centers for Medicare and Medicaid Services; or

(2) if the facility does not provide all of the shoppable

services described by Subdivision (1), as many of those shoppable services the facility does provide.

(b) In selecting a shoppable service for purposes of inclusion in the list required under Subsection (a), a facility must:

(1) consider how frequently the facility provides the service and the facility's billing rate for that service; and

(2) prioritize the selection of services that are among the services most frequently provided by the facility.

(c) If a facility does not provide 300 shoppable services, the facility must maintain a list of the total number of shoppable services that the facility provides in a manner that otherwise complies with the requirements of Subsection (a).

(d) The list required under Subsection (a) or (c), as applicable, must:

(1) include:

(A) a plain-language description of each shoppable service included on the list;

(B) the payor-specific negotiated charge that applies to each shoppable service included on the list and any ancillary service, listed by the name of the third party payor and plan associated with the charge and displayed in a manner that clearly associates the charge with the third party payor and plan;

(C) the discounted cash price that applies to each shoppable service included on the list and any ancillary service or, if the facility does not offer a discounted cash price for one or more of the shoppable or ancillary services on the list, the gross charge for the shoppable service or ancillary service, as applicable;

(D) the de-identified minimum negotiated charge that applies to each shoppable service included on the list and any ancillary service;

(E) the de-identified maximum negotiated charge that applies to each shoppable service included on the list and any ancillary service; and

(F) any code used by the facility for purposes of accounting or billing for each shoppable service included on the list and any ancillary service, including the Current Procedural Terminology (CPT) code, the Healthcare Common Procedure Coding System (HCPCS) code, the Diagnosis Related Group (DRG) code, the National Drug Code (NDC), or other common identifier; and

(2) if applicable:

(A) state each location at which the facility provides the shoppable service and whether the standard charges included in the list apply at that location to the provision of that shoppable service in an inpatient setting, an outpatient department setting, or in both of those settings, as applicable; and

(B) indicate if one or more of the shoppable services specified by the Centers for Medicare and Medicaid Services is not provided by the facility.

(e) The list required under Subsection (a) or (c), as applicable, must be:

(1) displayed in the manner prescribed by Section 327.003(e) for the list required under that section;

(2) available:

(A) free of charge;

(B) without having to register or establish a user account or password;

(C) without having to submit personal identifying information; and

(D) without having to overcome any other impediment, including entering a code to access the list;

(3) searchable by service description, billing code, and payor;

(4) updated in the manner prescribed by Section 327.003(h) for the list required under that section;

(5) accessible to a common commercial operator of an Internet search engine to the extent necessary for the search engine to index the list and display the list as a result in response to a search query of a user of the search engine; and

(6) formatted in a manner that is consistent with the format prescribed by the commission under Section 327.003(f)(3).

(f) Notwithstanding any other provision of this section, a facility is considered to meet the requirements of this section if the facility maintains, as determined by the commission, an Internet-based price estimator tool that:

(1) provides a cost estimate for each shoppable service and any ancillary service included on the list maintained by the facility under Subsection (a);

(2) allows a person to obtain an estimate of the amount the person will be obligated to pay the facility if the person elects to use the facility to provide the service; and

(3) is:

(A) prominently displayed on the facility's publicly accessible Internet website; and

(B) accessible to the public:

(i) without charge; and

(ii) without having to register or establish a user account or password.

Added by Acts 2021, 87th Leg., R.S., Ch. 1044 (S.B. 1137), Sec. 1, eff. September 1, 2021.

Sec. 327.005. REPORTING REQUIREMENT. Each time a facility updates a list as required under Sections 327.003(h) and 327.004(e)(4), the facility shall submit the updated list to the commission. The commission may prescribe the form in which the updated list must be submitted to the commission.

Added by Acts 2021, 87th Leg., R.S., Ch. 1044 (S.B. 1137), Sec. 1, eff. September 1, 2021.

Sec. 327.006. MONITORING AND ENFORCEMENT. (a) The commission shall monitor each facility's compliance with the requirements of this chapter using any of the following methods:

(1) evaluating complaints made by persons to the commission regarding noncompliance with this chapter;

(2) reviewing any analysis prepared regarding noncompliance with this chapter;

(3) auditing the Internet websites of facilities for compliance with this chapter; and

(4) confirming that each facility submitted the lists required under Section 327.005.

(b) If the commission determines that a facility is not in compliance with a provision of this chapter, the commission may take any of the following actions, without regard to the order of the actions:

(1) provide a written notice to the facility that clearly explains the manner in which the facility is not in compliance with this chapter;

(2) request a corrective action plan from the facility if

the facility has materially violated a provision of this chapter, as determined under Section 327.007; and

(3) impose an administrative penalty on the facility and publicize the penalty on the commission's Internet website if the facility fails to:

(A) respond to the commission's request to submit a corrective action plan; or

(B) comply with the requirements of a corrective action plan submitted to the commission.

Added by Acts 2021, 87th Leg., R.S., Ch. 1044 (S.B. 1137), Sec. 1, eff. September 1, 2021.

Sec. 327.007. MATERIAL VIOLATION; CORRECTIVE ACTION PLAN. (a) A facility materially violates this chapter if the facility fails to:

(1) comply with the requirements of Section 327.002; or

(2) publicize the facility's standard charges in the form and manner required by Sections 327.003 and 327.004.

(b) If the commission determines that a facility has materially violated this chapter, the commission may issue a notice of material violation to the facility and request that the facility submit a corrective action plan. The notice must indicate the form and manner in which the corrective action plan must be submitted to the commission, and clearly state the date by which the facility must submit the plan.

(c) A facility that receives a notice under Subsection (b) must:

(1) submit a corrective action plan in the form and manner, and by the specified date, prescribed by the notice of violation; and

(2) as soon as practicable after submission of a corrective action plan to the commission, act to comply with the plan.

(d) A corrective action plan submitted to the commission must:

(1) describe in detail the corrective action the facility will take to address any violation identified by the commission in the notice provided under Subsection (b); and

(2) provide a date by which the facility will complete the corrective action described by Subdivision (1).

(e) A corrective action plan is subject to review and approval by the commission. After the commission reviews and approves a

facility's corrective action plan, the commission may monitor and evaluate the facility's compliance with the plan.

(f) A facility is considered to have failed to respond to the commission's request to submit a corrective action plan if the facility fails to submit a corrective action plan:

(1) in the form and manner specified in the notice provided under Subsection (b); or

(2) by the date specified in the notice provided under Subsection (b).

(g) A facility is considered to have failed to comply with a corrective action plan if the facility fails to address a violation within the specified period of time contained in the plan.

Added by Acts 2021, 87th Leg., R.S., Ch. 1044 (S.B. 1137), Sec. 1, eff. September 1, 2021.

Sec. 327.008. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty on a facility if the facility fails to:

(1) respond to the commission's request to submit a corrective action plan; or

(2) comply with the requirements of a corrective action plan submitted to the commission.

(b) The commission may impose an administrative penalty on a facility for a violation of each requirement of this chapter. The commission shall set the penalty in an amount sufficient to ensure compliance by facilities with the provisions of this chapter subject to the limitations prescribed by Subsection (c).

(c) For a facility with one of the following total gross revenues, the penalty imposed by the commission may not exceed:

(1) $100 for each violation of this chapter, if the facility's total gross revenue is $10,000,000 or more and less than $100,000,000; and

(2) $1,000 for each day the facility violated this chapter, if the facility's total gross revenue is $100,000,000 or more.

(d) Each day a violation continues is considered a separate violation.

(e) In determining the amount of the penalty, the commission shall consider:

(1) previous violations by the facility's operator;

(2) the seriousness of the violation;

(3) the demonstrated good faith of the facility's operator; and

(4) any other matters as justice may require.

(f) An administrative penalty collected under this chapter shall be deposited to the credit of an account in the general revenue fund administered by the commission. Money in the account may be appropriated only to the commission.

Added by Acts 2021, 87th Leg., R.S., Ch. 1044 (S.B. 1137), Sec. 1, eff. September 1, 2021.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 1131 (S.B. 331), Sec. 3, eff. June 20, 2025.

Sec. 327.009. LEGISLATIVE RECOMMENDATIONS. The commission may propose to the legislature recommendations for amending this chapter, including recommendations in response to amendments by the Centers for Medicare and Medicaid Services to 45 C.F.R. Part 180.

Added by Acts 2021, 87th Leg., R.S., Ch. 1044 (S.B. 1137), Sec. 1, eff. September 1, 2021.

Chapter 328, consisting of Secs. 328.001 to 328.004, was added by Acts 2025, 89th Leg., R.S., Ch. 210 (H.B. 37), Sec. 2.

For another Chapter 328, consisting of Secs. 328.001 to 328.003, added by Acts 2025, 89th Leg., R.S., Ch. 376 (H.B. 754), Sec. 1, see Sec. 328.001 et seq., post.

CHAPTER 328. PERINATAL BEREAVEMENT CARE SERVICES

Sec. 328.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of State Health Services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Hospital" means a hospital licensed under Chapter 241 or a teaching hospital, as defined by Section 58A.001, Education Code.

(4) "Initiative" means the perinatal bereavement care initiative established under Section 328.003.

(5) "Perinatal bereavement care" means the provision of supportive care for a prenatal diagnosis of a life-limiting fetal condition.

(6) "Perinatal bereavement device" means a device with technology capable of delaying for bereavement purposes the deterioration of human tissue for up to 72 hours following an intrauterine fetal demise, neonatal death, or stillbirth.

(7) "Recognition program" means the hospital recognition program established under Section 328.004.

Added by Acts 2025, 89th Leg., R.S., Ch. 210 (H.B. 37), Sec. 2, eff. September 1, 2025.

Sec. 328.002. PERINATAL BEREAVEMENT CARE SERVICES REQUIRED IN CERTAIN HOSPITALS. A hospital assigned a maternal level of care designation under Section 241.182 shall, following an intrauterine fetal demise, neonatal death, or stillbirth, make available to the expectant parents and family members for a period equal to the length of stay recommended by a medical professional for a birth:

(1) perinatal bereavement care counseling options; and

(2) any available perinatal bereavement device.

Added by Acts 2025, 89th Leg., R.S., Ch. 210 (H.B. 37), Sec. 2, eff. September 1, 2025.

Sec. 328.003. PERINATAL BEREAVEMENT CARE INITIATIVE. (a) The department shall establish and administer a perinatal bereavement care initiative to improve access to and quality of perinatal bereavement care in this state.

(b) Under the initiative, the department may provide to hospitals assigned a maternal level of care designation under Section 241.182 the following resources for the hospital's provision of perinatal bereavement care:

(1) for hospital personnel who provide maternal care, training on interacting with parents and family members in a considerate and respectful manner following an intrauterine fetal demise, neonatal death, or stillbirth;

(2) a perinatal bereavement device, including:

(A) training for personnel on the use of the device; and

(B) support to maintain the device; and

(3) any other resources necessary for providing perinatal bereavement care.

(c) In providing resources to hospitals under the initiative, the department shall prioritize hospitals that:

(1) lack access to a perinatal bereavement device;

(2) treat a greater number of high-risk maternal patients; and

(3) deliver a greater number of babies.

(d) The department, as appropriate and using money appropriated or otherwise available for that purpose, may award grants under the initiative to hospitals assigned a maternal level of care designation under Section 241.182 to increase access to perinatal bereavement care resources.

(e) The department may accept gifts, grants, and donations from any source for the purposes of the initiative.

Added by Acts 2025, 89th Leg., R.S., Ch. 210 (H.B. 37), Sec. 2, eff. September 1, 2025.

Sec. 328.004. HOSPITAL RECOGNITION PROGRAM. The executive commissioner, in collaboration with the Perinatal Advisory Council established under Section 241.187, shall:

(1) develop and implement a program to recognize hospitals assigned a maternal level of care designation under Section 241.182 that provide perinatal bereavement care training to hospital personnel; and

(2) adopt criteria for awarding recognition to a hospital under the recognition program.

Added by Acts 2025, 89th Leg., R.S., Ch. 210 (H.B. 37), Sec. 2, eff. September 1, 2025.

Chapter 328, consisting of Secs. 328.001 to 328.003, was added by Acts 2025, 89th Leg., R.S., Ch. 376 (H.B. 754), Sec. 1.

For another Chapter 328, consisting of Secs. 328.001 to 328.004, added by Acts 2025, 89th Leg., R.S., Ch. 210 (H.B. 37), Sec. 2, see Sec. 328.001 et seq., post.

CHAPTER 328. HUMAN TRAFFICKING PREVENTION IN CERTAIN FACILITIES

Sec. 328.001. DEFINITIONS. In this chapter:

(1) "Facility" has the meaning assigned by Section 31.002.

(2) "Medical assistant" has the meaning assigned by Section 763.001.

Added by Acts 2025, 89th Leg., R.S., Ch. 376 (H.B. 754), Sec. 1, eff. September 1, 2025.

Sec. 328.002. HUMAN TRAFFICKING SIGNS REQUIRED. (a) A facility shall display a sign, at least 11 inches by 17 inches in size, written in at least a 16-point font and in the form prescribed by the attorney general, that includes:

(1) the following statements:

(A) "All health care practitioners and medical assistants are required to receive human trafficking prevention training."; and

(B) "An employee may not be disciplined, retaliated against, or otherwise discriminated against for reporting in good faith a suspected act of human trafficking.";

(2) information on recognizing and reporting human trafficking and a list of human trafficking indicators;

(3) a phone number the attorney general designates for reporting a suspected act of human trafficking or a violation of this chapter; and

(4) contact information for reporting suspicious activity to the Department of Public Safety.

(b) The sign described by Subsection (a) must be posted:

(1) in a location easily visible to all facility employees; and

(2) separately in English, Spanish, and any other primary language spoken by 10 percent or more of the facility's employees.

Added by Acts 2025, 89th Leg., R.S., Ch. 376 (H.B. 754), Sec. 1, eff. September 1, 2025.

Sec. 328.003. DISCRIMINATION AND RETALIATION PROHIBITED. A facility may not discipline, retaliate against, or otherwise discriminate against a facility employee who in good faith reports a suspected act of human trafficking to the facility, a law enforcement agency, the National Human Trafficking Resource Center, the attorney general, or another appropriate authority.

Added by Acts 2025, 89th Leg., R.S., Ch. 376 (H.B. 754), Sec. 1, eff. September 1, 2025.

SUBTITLE H. HEALTH FACILITY EMPLOYEES

CHAPTER 331. WORKPLACE VIOLENCE PREVENTION

Sec. 331.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Committee" means the workplace violence prevention committee or other committee responsible for developing a facility's workplace violence prevention plan under Section 331.002.

(3) "Facility" means:

(A) a home and community support services agency licensed or licensed and certified under Chapter 142 that employs at least two registered nurses;

(B) a hospital licensed under Chapter 241 and a hospital maintained or operated by an agency of this state that is exempt from licensing under that chapter;

(C) a nursing facility licensed under Chapter 242 that employs at least two registered nurses;

(D) an ambulatory surgical center licensed under Chapter 243;

(E) a freestanding emergency medical care facility as defined by Section 254.001;

(F) a mental hospital licensed under Chapter 577;

(G) an intermediate care facility for individuals with an intellectual disability licensed under Chapter 252; and

(H) a state supported living center as defined by Section 531.002.

Added by Acts 2023, 88th Leg., R.S., Ch. 31 (S.B. 240), Sec. 1, eff. September 1, 2023.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 85 (S.B. 463), Sec. 1, eff. September 1, 2025.

Sec. 331.002. WORKPLACE VIOLENCE PREVENTION COMMITTEE. (a) Each facility shall establish a workplace violence prevention committee or authorize an existing facility committee to develop the workplace violence prevention plan required under Section 331.004.

(b) A committee must include at least:

(1) one registered nurse who provides direct care to patients of the facility;

(2) except as provided by Subsection (c), one physician licensed to practice medicine in this state who provides direct care to patients of the facility; and

(3) one facility employee who provides security services for the facility if any and if practicable.

(c) If a facility described by Section 331.001(3)(A) does not have on staff at least one physician described by Subsection (b)(2), the facility is not required to include a physician on the committee.

(d) A health care system that owns or operates more than one facility may establish a single committee for all of the system's facilities if:

(1) the committee develops a violence prevention plan for implementation at each facility in the system; and

(2) data related to violence prevention remains distinctly identifiable for each facility in the system.

Added by Acts 2023, 88th Leg., R.S., Ch. 31 (S.B. 240), Sec. 1, eff. September 1, 2023.

Sec. 331.003. WORKPLACE VIOLENCE PREVENTION POLICY. (a) A facility shall adopt, implement, and enforce a written workplace violence prevention policy in accordance with this section to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the facility.

(b) The workplace violence prevention policy must:

(1) require the facility to:

(A) provide significant consideration of the violence prevention plan recommended by the facility's committee; and

(B) evaluate any existing facility violence prevention plan;

(2) encourage health care providers and employees of the facility to provide confidential information on workplace violence to the committee;

(3) include a process to protect from retaliation facility health care providers or employees who provide information to the committee; and

(4) comply with commission rules relating to workplace violence.

Added by Acts 2023, 88th Leg., R.S., Ch. 31 (S.B. 240), Sec. 1, eff. September 1, 2023.

Sec. 331.004. WORKPLACE VIOLENCE PREVENTION PLAN. (a) A facility shall adopt, implement, and enforce a written workplace violence prevention plan in accordance with this section to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the facility.

(b) A facility's workplace violence prevention plan must:

(1) be based on the practice setting;

(2) adopt a definition of "workplace violence" that includes:

(A) an act or threat of physical force against a health care provider or employee that results in, or is likely to result in, physical injury or psychological trauma; and

(B) an incident involving the use of a firearm or other dangerous weapon, regardless of whether a health care provider or employee is injured by the weapon;

(3) require the facility to provide at least annually workplace violence prevention training or education that may be included in other required training or education provided to the facility's health care providers and employees who provide direct patient care;

(4) prescribe a system for responding to and investigating violent incidents or potentially violent incidents at the facility;

(5) address physical security and safety;

(6) require the facility to solicit information from health care providers and employees when developing and implementing a

workplace violence prevention plan;

(7) allow health care providers and employees to report incidents of workplace violence through the facility's existing occurrence reporting systems; and

(8) require the facility to adjust patient care assignments, to the extent practicable, to prevent a health care provider or employee of the facility from treating or providing services to a patient who has intentionally physically abused or threatened the provider or employee.

(c) The written workplace violence prevention plan may satisfy the requirements of Subsection (b) by referencing other internal facility policies and documents.

(d) A committee at least annually shall:

(1) review and evaluate the workplace violence prevention plan; and

(2) report the results of the evaluation to the governing body of the facility.

(e) Each facility shall make available on request an electronic or printed copy of the facility's workplace violence prevention plan to each health care provider or employee of the facility. If the committee determines the plan contains information that would pose a security threat if made public, the committee may redact that information before providing the plan.

Added by Acts 2023, 88th Leg., R.S., Ch. 31 (S.B. 240), Sec. 1, eff. September 1, 2023.

Sec. 331.005. RESPONDING TO INCIDENT OF WORKPLACE VIOLENCE. (a) Following an incident of workplace violence, a facility shall at a minimum offer immediate post-incident services, including any necessary acute medical treatment for each health care provider or employee of the facility who is directly involved in the incident.

(b) A facility may not discourage a health care provider or employee from exercising the provider's or employee's right to contact or file a report with law enforcement regarding an incident of workplace violence.

(c) A person may not discipline, including by suspension or termination of employment, discriminate against, or retaliate against another person who:

(1) in good faith reports an incident of workplace violence; or

(2) advises a health care provider or employee of the provider's or employee's right to report an incident of workplace violence.

Added by Acts 2023, 88th Leg., R.S., Ch. 31 (S.B. 240), Sec. 1, eff. September 1, 2023.

Sec. 331.006. ENFORCEMENT. An appropriate licensing agency may take disciplinary action against a person who violates this chapter as if the person violated an applicable licensing law.

Added by Acts 2023, 88th Leg., R.S., Ch. 31 (S.B. 240), Sec. 1, eff. September 1, 2023.

TITLE 5. SANITATION AND ENVIRONMENTAL QUALITY
SUBTITLE A. SANITATION
CHAPTER 341. MINIMUM STANDARDS OF SANITATION AND HEALTH PROTECTION MEASURES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 341.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(72), eff. April 2, 2015.

(2) "Department" means the Department of State Health Services.

(3) "Drinking water" means water distributed by an individual or public or private agency for human consumption, for use in preparing food or beverages, or for use in cleaning a utensil or article used in preparing food or beverages for, or consuming food or beverages by, human beings. The term includes water supplied for human consumption or used by an institution catering to the public.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Human excreta" means the urinary and bowel discharges of a human.

(5) "Person" means an individual, corporation, organization, government, business trust, partnership, association, or any other legal entity.

(6) "Privy" means a facility for the disposal of human excreta.

(7) "Sanitary" means a condition of good order and cleanliness that precludes the probability of disease transmission.

(8) "Septic tank" means a covered water-tight tank designed for sewage treatment.

(9) "Toilet" means the hopper device for the deposit and discharge of human excreta into a water carriage system.

(10) "Tourist court" means a camping place or group of two or more mobile or permanent housing units operated as rental property for the use of transient trade or trailer units housing humans.

(11) "Water supply" means a source or reservoir of water distributed and used for human consumption.

(12) "Water supply system operator" means a person who:

(A) is trained in the purification or distribution of a public water supply;

(B) has a practical working knowledge of the chemistry and bacteriology essential to the practical mechanics of water purification; and

(C) is capable of conducting and maintaining the purification processes in an efficient manner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0858, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(72), eff. April 2, 2015.

Sec. 341.002. RULES FOR SANITATION AND HEALTH PROTECTION. The executive commissioner may:

(1) adopt rules consistent with the purposes of this chapter; and

(2) establish standards and procedures for the management and control of sanitation and for health protection measures.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0859, eff. April 2, 2015.

SUBCHAPTER B. NUISANCES AND GENERAL SANITATION

Sec. 341.011. NUISANCE. Each of the following is a public health nuisance:

(1) a condition or place that is a breeding place for flies and that is in a populous area;

(2) spoiled or diseased meats intended for human consumption;

(3) a restaurant, food market, bakery, other place of business, or vehicle in which food is prepared, packed, stored, transported, sold, or served to the public and that is not constantly maintained in a sanitary condition;

(4) a place, condition, or building controlled or operated by a state or local government agency that is not maintained in a sanitary condition;

(5) sewage, human excreta, wastewater, garbage, or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons;

(6) a vehicle or container that is used to transport garbage, human excreta, or other organic material and that is defective and allows leakage or spilling of contents;

(7) a collection of water in which mosquitoes are breeding in the limits of a municipality or a collection of water that is a breeding area for mosquitoes that can transmit diseases regardless of the collection's location other than a location or property where activities meeting the definition of Section 11.002(12)(A), Water Code, occur;

(8) a condition that may be proven to injuriously affect the public health and that may directly or indirectly result from the operations of a bone boiling or fat rendering plant, tallow or soap works, or other similar establishment;

(9) a place or condition harboring rats in a populous area;

(10) the presence of ectoparasites, including bedbugs, lice, and mites, suspected to be disease carriers in a place in which sleeping accommodations are offered to the public;

(11) the maintenance of an open surface privy or an overflowing septic tank so that the contents may be accessible to flies; and

(12) an object, place, or condition that is a possible and probable medium of disease transmission to or between humans.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 130, Sec. 1, eff. May 27, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 346 (H.B. 819), Sec. 1, eff. June 9, 2015.

Sec. 341.012. ABATEMENT OF NUISANCE. (a) A person shall abate a public health nuisance existing in or on a place the person possesses as soon as the person knows that the nuisance exists.

(b) A local health authority who receives information and proof that a public health nuisance exists in the local health authority's jurisdiction shall issue a written notice ordering the abatement of the nuisance to any person responsible for the nuisance. The local health authority shall at the same time send a copy of the notice to the local municipal, county, or district attorney.

(c) The notice must specify the nature of the public health nuisance and designate a reasonable time within which the nuisance must be abated.

(d) If the public health nuisance is not abated within the time specified by the notice, the local health authority shall notify the prosecuting attorney who received the copy of the original notice. The prosecuting attorney:

(1) shall immediately institute proceedings to abate the public health nuisance; or

(2) request the attorney general to institute the proceedings or provide assistance in the prosecution of the proceedings, including participation as an assistant prosecutor when appointed by the prosecuting attorney.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 648, Sec. 1, eff. Sept. 1, 1993.

Sec. 341.013. GARBAGE, REFUSE, AND OTHER WASTE. (a) Premises occupied or used as residences or for business or pleasure shall be kept in a sanitary condition.

(b) Kitchen waste, laundry waste, or sewage may not be allowed

to accumulate in, discharge into, or flow into a public place, gutter, street, or highway.

(c) Waste products, offal, polluting material, spent chemicals, liquors, brines, garbage, rubbish, refuse, used tires, or other waste of any kind may not be stored, deposited, or disposed of in a manner that may cause the pollution of the surrounding land, the contamination of groundwater or surface water, or the breeding of insects or rodents.

(d) A person using or permitting the use of land as a public dump shall provide for the covering or incineration of all animal or vegetable matter deposited on the land and for the disposition of other waste materials and rubbish to eliminate the possibility that those materials and rubbish might be a breeding place for insects or rodents.

(e) A person may not permit vacant or abandoned property owned or controlled by the person to be in a condition that will create a public health nuisance or other condition prejudicial to the public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.014. DISPOSAL OF HUMAN EXCRETA. (a) Human excreta in a populous area shall be disposed of through properly managed sewers, treatment tanks, chemical toilets, or privies constructed and maintained in conformity with the department's specifications, or by other methods approved by the department. The disposal system shall be sufficient to prevent the pollution of surface soil, the contamination of a drinking water supply, the infection of flies or cockroaches, or the creation of any other public health nuisance.

(b) Effluent from septic tanks constructed after September 4, 1945, shall be disposed of through:

(1) a subsurface drainage field designed in accordance with good public health engineering practices; or

(2) any other method that does not create a public health nuisance.

(c) A privy may not be constructed within 75 feet of a drinking water well or of a human habitation, other than a habitation to which the privy is appurtenant, without approval by the local health authority or the department. A privy may not be constructed or

maintained over an abandoned well or over a stream.

(d) The superstructure and floor surrounding the seat riser and hopper device of a privy constructed and maintained in conformity with the department's specifications shall be kept in a sanitary condition at all times and must have adequate lighting and ventilation.

(e) Material and human excreta removed from a privy vault or from any other place shall be handled in a manner that does not create a public health nuisance. The material and human excreta may not be deposited within 300 feet of a highway unless buried or treated in accordance with the instructions of the local health authority or the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0860, eff. April 2, 2015.

Sec. 341.015. SANITATION OF ICE PLANTS. (a) A person may not go on the platform covering the tanks in which ice is frozen in an ice factory unless the person is an officer, employee, or other person whose duties require that action.

(b) An employee whose services are required on tanks shall be provided with clean shoes or boots that may not be used for any other purpose.

(c) Ice contaminated with sand, dirt, cinders, lint, or other foreign substance may not be sold or offered for sale for human consumption.

(d) Water used in the manufacturing of ice must be from an approved source and be of a safe quality.

(e) An ice plant operator shall provide sanitary handwashing and toilet facilities for the employees of the plant.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.016. SANITATION OF BUSINESSES; OCCUPATIONAL HEALTH AND SAFETY. (a) A person may not use or permit to be used in a business, manufacturing establishment, or other place of employment a process, material, or condition known to have a possible adverse

effect on the health of the person's employees unless arrangements have been made to maintain the occupational environment in a manner that such injury will not occur.

(b) An industrial establishment shall be continually maintained in a sanitary condition.

(c) The department shall make available to the state's citizens:

(1) current information concerning minimum allowable concentrations of toxic gases; and

(2) environmental standards that relate to the health and safety of the employees of industrial establishments in this state.

(d) The department shall survey industrial establishments to study industrial health and sanitation issues, including water supplies and distribution, waste disposal, and adverse conditions caused by processes that may cause ill health of industrial workers.

(e) The department shall give each surveyed establishment a summary of the studies and findings under Subsection (d) and make necessary recommendations for the adequate protection of the health, safety, and well-being of the workers.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.017. SANITATION FACILITIES FOR RAILROAD MAINTENANCE-OF-WAY EMPLOYEES. (a) The executive commissioner shall adopt reasonable rules to require railroads to provide adequate sanitation facilities for railroad maintenance-of-way employees.

(b) The department may sue in a court of competent jurisdiction to compel compliance with a rule adopted under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0861, eff. April 2, 2015.

Sec. 341.018. RODENT CONTROL. (a) A person who possesses an enclosed structure used or operated for public trade and who knows that the structure is infested with rodents shall:

(1) attempt to exterminate the rodents by poisoning, trapping, fumigating, or other appropriate means; and

(2) provide every practical means of eliminating rats in the structure.

(b) A public building that is constructed after September 4, 1945, must incorporate rat-proofing features.

(c) The department shall promote rodent control programs in rat-infested areas and in localities in which typhus fever has appeared.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0862, eff. April 2, 2015.

Sec. 341.019. MOSQUITO CONTROL ON UNINHABITED RESIDENTIAL PROPERTY. (a) Notwithstanding any other law, a municipality, county, or other local health authority may abate, without notice, a public health nuisance under Section 341.011(7) that:

(1) is located on residential property that is reasonably presumed to be abandoned or that is uninhabited due to foreclosure; and

(2) is an immediate danger to the health, life, or safety of any person.

(b) A public official, agent, or employee charged with the enforcement of health, environmental, or safety laws may enter the premises described by Subsection (a) at a reasonable time to inspect, investigate, or abate the nuisance.

(c) In this section, abatement is limited to the treatment with a mosquito larvicide of stagnant water in which mosquitoes are breeding.

(d) The public official, agent, or employee shall post on the front door of the residence a notice stating:

(1) the identity of the treating authority;

(2) the purpose and date of the treatment;

(3) a description of the areas of the property treated with larvicide;

(4) the type of larvicide used; and

(5) any known risks of the larvicide to humans or animals.

Added by Acts 2013, 83rd Leg., R.S., Ch. 16 (S.B. 186), Sec. 1, eff. May 10, 2013.

SUBCHAPTER C. SANITARY STANDARDS OF DRINKING WATER; PROTECTION OF PUBLIC WATER SUPPLIES AND BODIES OF WATER

Sec. 341.031. PUBLIC DRINKING WATER. (a) Public drinking water must be free from deleterious matter and must comply with the standards established by the commission or the United States Environmental Protection Agency. The commission may adopt and enforce rules to implement the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.).

(b) In a public place or an establishment catering to the public, a common drinking cup may not be used.

(c) Drinking water may not be served except in sanitary containers or through other sanitary mediums.

(d) In this section, "common drinking cup" means a water or other beverage receptacle used for serving more than one person. The term does not include a water or other beverage receptacle that is properly washed and sterilized after each use.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 353, Sec. 3, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1010, Sec. 6.18, eff. Sept. 1, 1997.

Sec. 341.0315. PUBLIC DRINKING WATER SUPPLY SYSTEM REQUIREMENTS. (a) To preserve the public health, safety, and welfare, the commission shall ensure that public drinking water supply systems:

(1) supply safe drinking water in adequate quantities;

(2) are financially stable; and

(3) are technically sound.

(b) The commission shall encourage and promote the development and use of regional and areawide drinking water supply systems.

(c) Each public drinking water supply system shall provide an adequate and safe drinking water supply. The supply must:

(1) meet the requirements of Section 341.031 and commission rules; and

(2) provide a quantity of water or capacity of water sufficient to serve the number of connections served by the public drinking water supply system.

(c-1) Notwithstanding any other law, the commission by rule shall establish connection equivalency values for each meter size used to serve a recreational vehicle park, as defined by Section 13.087, Water Code, for use in determining the number of connections served by a public drinking water supply system that provides service through meters. When determining the number of connections, the commission may only consider service for which a meter has been installed that conforms with industry standards. The rules must:

(1) establish that eight recreational vehicle or cabin sites at a recreational vehicle park, whether occupied or not, are equivalent to one residential metered connection; and

(2) provide a variance from a connection equivalency value established under this subsection for a public drinking water supply system if actual system usage is more than 10 percent below the equivalency value.

(d) The commission shall consider compliance history in determining issuance of new permits, renewal permits, and permit amendments for a public drinking water system.

(e) The commission shall establish a system to provide automatic reminders to public drinking water supply systems about regular reporting requirements applicable to the systems under the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) and this chapter that relate to commission rules adopted under those laws. An automatic reminder provided under this subsection is a courtesy. A public drinking water supply system is responsible for complying with applicable regular reporting requirements regardless of whether the commission provides automatic reminders.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.19, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 383 (H.B. 3142), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 340 (S.B. 594), Sec. 1, eff. September 1, 2023.

Sec. 341.0316. DESALINATION OF MARINE SEAWATER FOR DRINKING WATER. (a) This section applies only to a desalination facility that is intended to treat marine seawater for the purpose of

producing water for the public drinking water supply. This section does not apply to a desalination facility used to produce nonpotable water.

(b) The commission shall adopt rules to:

(1) allow water treated by a desalination facility to be used as public drinking water; and

(2) ensure that water treated by a desalination facility meets the requirements of Section 341.031 and rules adopted under that section.

(c) A person may not begin construction of a desalination facility that treats marine seawater for the purpose of removing primary or secondary drinking water contaminants unless the commission approves the construction of the facility.

Added by Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 12, eff. June 17, 2015.

Sec. 341.0317. NOTICE OF WATER QUALITY TESTING. The commission may provide notice not more than 24 hours in advance to a public drinking water supply system that obtains its water supply from underground sources of the commission's intent to perform water quality testing to investigate a complaint related to the public drinking water supply system's water quality.

Added by Acts 2025, 89th Leg., R.S., Ch. 320 (S.B. 1662), Sec. 1, eff. September 1, 2025.

Sec. 341.032. DRINKING WATER PROVIDED BY COMMON CARRIER. (a) Drinking water provided by a common carrier or the common carrier's agent shall be taken only from supplies certified as meeting the standards established by the commission. The drinking water shall be kept and dispensed in a sanitary manner.

(b) A watering point must meet the standards of sanitation and water-handling practices established for those purposes by the commission. The commission shall certify each watering point that meets those standards.

(c) If a sanitary defect exists at the watering point, the commission shall issue a supplemental certification showing that the watering point is only provisionally approved. If a sanitary defect

continues after the expiration of a reasonable time provided to correct the defect, the commission shall notify the common carrier not to receive drinking water at the watering point involved.

(d) In this section:

(1) "Common carrier" means a licensed firm, corporation, or establishment that solicits and operates public freight or passenger transportation service, including a vehicle employed in that transportation service.

(2) "Watering point" means a place where drinking water is placed aboard a vehicle operated as a common carrier.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.12, eff. Sept. 1, 1995.

Sec. 341.033. PROTECTION OF PUBLIC WATER SUPPLIES. (a) A person may not furnish drinking water to the public for a charge unless the production, processing, treatment, and distribution are at all times under the supervision of a water supply system operator holding a license issued by the commission under Chapter 37, Water Code.

(a-1) The licensed operator of a water supply system may be a volunteer. The owner or manager of a water supply system that is operated by a volunteer shall maintain a record of each volunteer operator showing the name of the volunteer, contact information for the volunteer, and the time period for which the volunteer is responsible for operating the water supply system.

(b) An owner, agent, manager, operator, or other person in charge of a water supply system that furnishes water for public or private use may not knowingly furnish contaminated drinking water to a person or allow the appliances of the water supply system to become unsanitary.

(c) The owner or manager of a water supply system furnishing drinking water to at least 25,000 persons shall have the water tested at least once daily to determine its sanitary quality and shall submit monthly reports of the tests to the commission.

(d) The owner or manager of a water supply system furnishing drinking water to less than 25,000 persons shall submit to the commission during each monthly period of the system's operation at least one specimen of water taken from the supply for bacteriological

analysis. The population under this subsection shall be determined according to the most recent federal census or other population-determining methods if a federal census is not taken for the area served by the water supply system.

(e) The distribution system of a public drinking water supply and that of any other water supply may not be physically connected unless the other water is of a safe and sanitary quality and the commission approves the connection.

(f) A public drinking water supply may not be connected to a sprinkling, condensing, cooling, plumbing, or other system unless the connection is designed to ensure against a backflow or siphonage of sewage or contaminated water into the drinking water supply.

(g) On discovery of a connection in violation of Subsection (e) or (f), the local health authority shall give written notice to the owner or agent maintaining the condition. The owner or agent shall make the necessary corrections to eliminate the condition.

(h) Subsections (a)-(d) do not apply to the production, distribution, or sale of raw, untreated surface water.

(i) An owner, agent, manager, operator, or other person in charge of a public water supply system that furnishes water for public or private use or a wastewater system that provides wastewater services for public or private use shall maintain internal procedures to notify the commission immediately of the following events, if the event may negatively impact the production or delivery of safe and adequate drinking water:

(1) an unusual or unexplained unauthorized entry at property of the public water supply or wastewater system;

(2) an act of terrorism against the public water supply or wastewater system;

(3) an unauthorized attempt to probe for or gain access to proprietary information that supports the key activities of the public water supply or wastewater system;

(4) a theft of property that supports the key activities of the public water supply or wastewater system;

(5) a natural disaster, accident, or act that results in damage to the public water supply or wastewater system; or

(6) for a nonindustrial public water supply system, an unplanned condition that has caused a public water supply outage or the public water supply system to issue a do-not-use advisory, do-not-consume advisory, or boil water notice.

(i-1) The commission may collaborate with the Texas Division of Emergency Management in administering the notification requirement in Subsection (i)(6), including determining the method by which the notifications are provided. Subsection (i)(6) does not require an owner, agent, manager, operator, or other person in charge of a nonindustrial public water supply system to provide notice of a weather or emergency alert, warning, or watch issued by the National Weather Service, the National Oceanic and Atmospheric Administration, or the Texas Division of Emergency Management or a successor federal or state agency.

(j) An owner, agent, manager, operator, or other person in charge of a public water supply system that furnishes for public or private use drinking water containing added fluoride may not permanently terminate the fluoridation of the water unless the owner, agent, manager, operator, or person provides written notice to the customers of the system and the commission of the termination at least 60 days before the termination.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.13, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 880, Sec. 18, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1337 (S.B. 9), Sec. 18, eff. June 18, 2005.

Acts 2015, 84th Leg., R.S., Ch. 392 (H.B. 1146), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 386 (H.B. 3552), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 747 (H.B. 3810), Sec. 1, eff. September 1, 2023.

Sec. 341.034. LICENSING AND REGISTRATION OF PERSONS WHO PERFORM DUTIES RELATING TO PUBLIC WATER SUPPLIES. (a) A person who operates a public water supply on a contract or volunteer basis must hold a registration issued by the commission under Chapter 37, Water Code.

(b) A person who performs process control duties in production or distribution of drinking water for a public water system must hold a license issued by the commission under Chapter 37, Water Code, unless:

(1) the duties are provided to a transient, noncommunity water system; and

(2) the water system uses groundwater that is not under the influence of surface water.

(c) A person who repairs or tests the installation or operation of backflow prevention assemblies must hold a license issued by the commission under Chapter 37, Water Code.

(d) A person who inspects homes and businesses to identify potential or actual cross-connections or other contaminant hazards in public water systems must hold a license issued by the commission under Chapter 37, Water Code, unless the person is licensed by the Texas State Board of Plumbing Examiners as a plumbing inspector or water supply protection specialist.

(e) Unless the person is licensed by the Texas State Board of Plumbing Examiners, a person must hold a license issued by the commission under Chapter 37, Water Code, if, under a contract, the person:

(1) installs, exchanges, connects, maintains, or services potable water treatment equipment and appliances in public or private water systems; or

(2) analyzes water to determine how to treat influent or effluent water, alter or purify water, or add or remove a mineral, chemical, or bacterial content or substance as part of the complete installation, exchange, connection, maintenance, or service of potable water treatment equipment and appliances.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 33, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 880, Sec. 19, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 392 (H.B. 1146), Sec. 2, eff. September 1, 2015.

Sec. 341.035. APPROVED PLANS REQUIRED FOR PUBLIC WATER SUPPLIES. (a) Except as provided by Subsection (d), a person may not begin construction of a public drinking water supply system unless the executive director of the commission approves:

(1) a business plan for the system; and

(2) the plans and specifications for the system.

(b) The prospective owner or operator of the system must submit to the executive director a business plan that demonstrates that the owner or operator of the proposed system has available the financial, managerial, and technical capability to ensure future operation of the system in accordance with applicable laws and rules. The executive director:

(1) shall review the business plan; and

(2) may order the prospective owner or operator of the system to provide adequate financial assurance of ability to operate the system in accordance with applicable laws and rules, in the form of a bond or as specified by the commission, unless the executive director finds that the business plan demonstrates adequate financial capability.

(c) The prospective owner or operator of the proposed system shall provide to the commission completed plans and specifications for review and approval in accordance with commission rules.

(d) A person is not required to file a business plan under Subsection (a)(1) or (b) if the person:

(1) is a county;

(2) is a retail public utility as defined by Section 13.002, Water Code, unless that person is a utility as defined by that section;

(3) has executed an agreement with a political subdivision to transfer the ownership and operation of the water supply system to the political subdivision;

(4) is a Class A utility, as defined by Section 13.002, Water Code, that has applied for or been granted an amendment of a certificate of convenience and necessity under Section 13.258, Water Code, for the area in which the construction of the public drinking water supply system will operate; or

(5) is a noncommunity nontransient water system and the person has demonstrated financial assurance under Chapter 361 or 382 of this code or Chapter 26, Water Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 948 (S.B. 1842), Sec. 5, eff. September 1, 2017.

Sec. 341.0351. NOTIFICATION OF SYSTEM CHANGES. Any person, including a municipality, supplying a drinking water service to the public that intends to make a material or major change in a water supply system that may affect the sanitary features of that utility must give written notice of that intention to the commission before making the change.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 341.035(b) and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0352. ADVERTISED QUALITY OF WATER SUPPLY. A water supply system owner, manager, or operator or an agent of a water supply system owner, manager, or operator may not advertise or announce a water supply as being of a quality other than the quality that is disclosed by the commission's latest rating.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 341.035(c) by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0353. DRINKING WATER SUPPLY COMPARATIVE RATING INFORMATION. The commission shall assemble and tabulate all necessary information relating to public drinking water supplies at least once each year and as often during the year as conditions demand or justify. The information forms the basis of an official comparative rating of public drinking water supply systems.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995.

Renumbered from Health and Safety Code Sec. 341.035(d) and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0354. HIGHWAY SIGNS FOR APPROVED SYSTEM RATING. A water supply system that attains an approved rating is entitled to erect signs of a design approved by the commission on highways approaching the municipality in which the water supply system is located. The signs shall be immediately removed on notice from the commission if the water supply system does not continue to meet the specified standards.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 341.035(e) by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0355. FINANCIAL ASSURANCE FOR CERTAIN SYSTEMS. (a) The commission may require the owner or operator of a public drinking water supply system that was constructed without the approval required by Section 341.035, that has a history of noncompliance with this subchapter or commission rules, or that is subject to a commission enforcement action to:

(1) provide the executive director of the commission with a business plan that demonstrates that the system has available the financial, managerial, and technical resources adequate to ensure future operation of the system in accordance with applicable laws and rules; and

(2) provide adequate financial assurance of the ability to operate the system in accordance with applicable laws and rules in the form of a bond or as specified by the commission.

(b) If the commission relies on rate increases or customer surcharges as the form of financial assurance, such funds shall be deposited in an escrow account and released only with the approval of the commission.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0356. ORDER TO STOP OPERATIONS. (a) A public water supply system shall stop operations on receipt of a written notification of the executive director of the commission or an order of the commission issued under this section.

(b) The executive director or the commission may order a public water supply system to stop operations if:

(1) the system was constructed without the approval required by Section 341.035; or

(2) the executive director determines that the system presents an imminent health hazard.

(c) A notification or order issued under this section may be delivered by facsimile, by personal service, or by mail.

(d) A water supply system subject to notification or an order under this section, on written request, is entitled to an opportunity to be heard by the commissioners at a commission meeting.

(e) The public water supply system may not resume operations until the commission, the executive director, or a court authorizes the resumption.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0357. IDENTIFICATION REQUIREMENT FOR DEVICE WITH APPEARANCE OF FIRE HYDRANT THAT IS NONFUNCTIONING OR UNAVAILABLE FOR USE IN FIRE EMERGENCY. (a) The owner of any device having the appearance of a fire hydrant that is located in a place that an entity responsible for providing fire suppression services in a fire emergency would expect a fire hydrant to typically be located shall paint the device black if the device is nonfunctioning or otherwise unavailable for use by the entity providing fire suppression services in a fire emergency. The owner may place a black tarp over the device instead of painting the device black as required under this section if the device is temporarily nonfunctioning, or temporarily unavailable for use in a fire emergency, for a period not to exceed seven days.

(b) For purposes of this section, a device is considered to be nonfunctioning if the device pumps less than 250 gallons of water per minute.

(c) This section does not apply within the jurisdiction of a

governmental entity that maintains its own system for labeling a device having the appearance of a fire hydrant that is nonfunctioning or otherwise unavailable for use in a fire emergency.

(d) This section does not apply within the jurisdiction of a governmental entity described by Section 341.03571(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 684 (H.B. 1717), Sec. 1, eff. June 15, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 951 (H.B. 1768), Sec. 1, eff. June 14, 2013.

Sec. 341.03571. IDENTIFICATION REQUIREMENT FOR CERTAIN FIRE HYDRANTS AND FLUSH VALVES IN CERTAIN MUNICIPALITIES. (a) In this section, "hydrant" means:

(1) a fire hydrant; or

(2) a metal flush valve that:

(A) has the appearance of a fire hydrant; and

(B) is located in a place that an entity responsible for providing fire suppression services in a fire emergency would expect a fire hydrant to typically be located.

(b) This section applies only to a county, or a municipality in a county, that:

(1) borders the United Mexican States or is adjacent to a county that borders the United Mexican States;

(2) has a population of at least 400,000 or has a population of at least 20,000 and is adjacent to a county that has a population of at least 400,000; and

(3) is within 200 miles of the Gulf of Mexico.

(c) Each public water system responsible for any hydrant shall:

(1) paint all or the cap of the hydrant white if the hydrant is available to be used only to fill a water tank on a fire truck used for fire suppression services; and

(2) paint all or the cap of the hydrant black if the hydrant is unavailable for use by the entity providing fire suppression services in a fire emergency.

(d) For purposes of Subsection (c)(2), a hydrant is unavailable for use in a fire emergency if it is unavailable for pumping directly from the hydrant or is unavailable for use in filling a water tank on

a fire truck used for fire suppression services.

(e) A public water system may place a black tarp over the hydrant or use another means to conceal the hydrant instead of painting all or the cap of the hydrant black as required under Subsection (c)(2) if the hydrant is temporarily unavailable for use in a fire emergency for a period not to exceed 45 days. Not later than the 45th day after the date a hydrant is concealed as provided by this subsection, the public water system responsible for the hydrant shall:

(1) if the hydrant is available for the provision of fire suppression services, remove the tarp or other means of concealment; or

(2) if the hydrant continues to be unavailable for use in a fire emergency, paint all or the cap of the hydrant black as required by Subsection (c)(2).

(f) A public water system that paints all or the cap of a hydrant black as required by Subsection (c)(2) may also ensure by any reasonable means that the hydrant is identifiable in low-light conditions, including by installing reflectors.

(g) This section does not apply:

(1) within the jurisdiction of a governmental entity that maintains its own system for labeling or color coding its hydrants; or

(2) to any public water system that has entered into a contract with a municipality or volunteer fire department to provide a water supply for fire suppression services if the contract specifies a different system for labeling or color coding hydrants.

(h) For purposes of Subsection (g), a system for labeling or color coding hydrants may include the assignment of different colors to identify hydrants that are available for direct pumping, hydrants that are available for filling a water tank on a fire truck used for fire suppression services, and hydrants that are unavailable for use by an entity providing fire suppression services in a fire emergency.

(i) The fact that all or the cap of a hydrant for which a public water system is responsible under this section is not painted black as described by Subsection (c)(2) or concealed in the manner described by Subsection (e) does not constitute a guarantee by the public water system that the hydrant will deliver a certain amount of water flow at all times. Notwithstanding any provision of Chapter 101, Civil Practice and Remedies Code, to the contrary, a public

water system is not liable for a hydrant's inability to provide adequate water supply in a fire emergency.

Added by Acts 2013, 83rd Leg., R.S., Ch. 951 (H.B. 1768), Sec. 2, eff. June 14, 2013.

Sec. 341.0358. PUBLIC SAFETY STANDARDS. (a) In this section:

(1) "Industrial district" has the meaning assigned by Section 42.044, Local Government Code, and includes an area that is designated by the governing body of a municipality as a zoned industrial area.

(1-a) "Public utility" has the meaning assigned by Section 13.002, Water Code.

(2) "Regulatory authority" has the meaning assigned by Section 13.002, Water Code.

(3) "Residential area" means:

(A) an area designated as a residential zoning district by a governing ordinance or code or an area in which the principal land use is for private residences;

(B) a subdivision for which a plat is recorded in the real property records of the county and that contains or is bounded by public streets or parts of public streets that are abutted by residential property occupying at least 75 percent of the front footage along the block face; or

(C) a subdivision a majority of the lots of which are subject to deed restrictions limiting the lots to residential use.

(b) The regulatory authority for a public utility shall by rule or ordinance adopt standards for installing fire hydrants and maintaining sufficient water pressure for service to fire hydrants adequate to protect public safety in residential areas in a municipality with a population of 1,000,000 or more.

(c) The commission shall assess residential areas in a municipality with a population of 1,000,000 or more to ensure that:

(1) the regulatory authority for the area has adopted the standards required by this section; and

(2) all public utilities serving the residential area are complying with the standards required by this section.

(d) The commission shall require a municipality with a population of 1,000,000 or more and acting as a regulatory authority

to make appropriate revisions to standards the commission considers to be inadequate within a reasonable time established by the commission.

(e) The commission shall require a public utility in violation of a standard required under this section and established by the commission or by a municipality with a population of 1,000,000 or more and acting as a regulatory authority to comply with the standard within a reasonable time established by the commission.

(f) This section does not limit the authority of a municipality with a population of 1,000,000 or more and acting as a regulatory authority to prohibit a public utility in violation of a standard established by the municipality from recovering through the public utility's rates a penalty or fine incurred for a violation of a standard.

(g) This section also applies to:

(1) a municipality with a population of more than 42,500 and less than 48,000 located in two counties, one of which is a county with a population of more than 2.1 million;

(2) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 15,000 and less than 45,700 located in a county with a population of more than 235,000 and less than 255,000; and

(3) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 32,000 and less than 35,000 located in two counties.

Added by Acts 2007, 80th Leg., R.S., Ch. 861 (H.B. 1391), Sec. 1, eff. September 1, 2007.
Renumbered from Health and Safety Code, Section 341.0357 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(54), eff. September 1, 2009.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 122 (H.B. 3661), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 290 (H.B. 1814), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 606 (S.B. 1086), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 606 (S.B. 1086), Sec. 2, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 94, eff. September 1, 2023.

Sec. 341.03585. FIRE HYDRANT FLOW AND PRESSURE STANDARDS IN CERTAIN MUNICIPALITIES. (a) In this section:

(1) "Industrial district" has the meaning assigned by Section 42.044, Local Government Code, and includes an area that is designated by the governing body of a municipality as a zoned industrial area.

(2) "Municipal utility" means a retail public utility, as defined by Section 13.002, Water Code, that is owned by a municipality.

(3) "Residential area" has the meaning assigned by Section 341.0358.

(4) "Utility" includes a "public utility" and "water supply or sewer service corporation" as defined by Section 13.002, Water Code.

(b) This section applies only to:

(1) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 15,000 and less than 45,700 located in a county with a population of more than 235,000 and less than 255,000; and

(2) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 32,000 and less than 35,000 located in two counties.

(c) The governing body of a municipality by ordinance shall adopt standards requiring a utility to maintain a sufficient water flow and pressure to fire hydrants in a residential area or an industrial district located in the municipality or the municipality's extraterritorial jurisdiction. The standards:

(1) in addition to a utility's maximum daily demand, must provide, for purposes of emergency fire suppression, for:

(A) a sufficient water flow not in excess of 250 gallons per minute for at least two hours; and

(B) a sufficient water pressure not in excess of 20

pounds per square inch;

(2) must require a utility to maintain at least the sufficient water flow and pressure described by Subdivision (1) in fire hydrants in a residential area or an industrial district located within the municipality or the municipality's extraterritorial jurisdiction; and

(3) notwithstanding Subdivisions (1) and (2), if the municipality owns a municipal utility, may not require another utility located in the municipality or the municipality's extraterritorial jurisdiction to provide water flow and pressure in a fire hydrant greater than that provided by the municipal utility.

(d) Except as provided by this subsection, an ordinance under Subsection (c) may not require a utility to build, retrofit, or improve fire hydrants and related infrastructure in existence at the time the ordinance is adopted. An ordinance under Subsection (c) may apply to a utility's fire hydrants and related infrastructure that the utility:

(1) installs after the effective date of the ordinance; or

(2) acquires after the effective date of the ordinance if the hydrants and infrastructure comply with the standards adopted by the ordinance at the time the hydrants and infrastructure are acquired.

(e) After adoption of an ordinance under Subsection (c), the municipality shall encourage any responsible emergency services district, as described by Chapter 775, to enter into a written memorandum of understanding with the utility to provide for:

(1) the necessary testing of fire hydrants; and

(2) other relevant issues pertaining to the use of the water and maintenance of the fire hydrants to ensure compliance with this section.

(f) After adoption of an ordinance under Subsection (c), the utility shall paint all fire hydrants in accordance with the ordinance or a memorandum of understanding under Subsection (e) that are located in a residential area or an industrial district within the municipality or the municipality's extraterritorial jurisdiction.

(g) Notwithstanding any provision of Chapter 101, Civil Practice and Remedies Code, to the contrary, a utility is not liable for a hydrant's or metal flush valve's inability to provide adequate water supply in a fire emergency. This subsection does not waive a municipality's immunity under Subchapter I, Chapter 271, Local

Government Code, or any other law and does not create any liability on the part of a municipality or utility under a joint enterprise theory of liability.

Added by Acts 2013, 83rd Leg., R.S., Ch. 606 (S.B. 1086), Sec. 3, eff. September 1, 2013.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 95, eff. September 1, 2023.

Sec. 341.0359. FIRE HYDRANT FLOW STANDARDS. (a) In this section:

(1) "Municipal utility" means a retail public utility, as defined by Section 13.002, Water Code, that is owned by a municipality.

(2) "Residential area" means an area used principally for private residences that is improved with at least 100 single-family homes and has an average density of one home per half acre.

(3) "Utility" includes a "public utility" and "water supply or sewer service corporation" as defined by Section 13.002, Water Code.

(b) The governing body of a municipality by ordinance may adopt standards set by the commission under Subsection (c) requiring a utility to maintain a minimum sufficient water flow and pressure to fire hydrants in a residential area located in the municipality or the municipality's extraterritorial jurisdiction.

(c) The commission by rule shall establish standards for adoption by a municipality under Subsection (b). The standards:

(1) in addition to a utility's maximum daily demand, must provide, for purposes of emergency fire suppression, for:

(A) a minimum sufficient water flow of at least 250 gallons per minute for at least two hours; and

(B) a minimum sufficient water pressure of at least 20 pounds per square inch;

(2) must require a utility to maintain at least the minimum sufficient water flow and pressure described by Subdivision (1) in fire hydrants in a residential area located within the municipality or the municipality's extraterritorial jurisdiction;

(3) must be based on the density of connections, service

demands, and other relevant factors;

(4) notwithstanding Subdivisions (1) and (2), if the municipality owns a municipal utility, may not require another utility located in the municipality or the municipality's extraterritorial jurisdiction to provide water flow and pressure in a fire hydrant greater than that provided by the municipal utility as determined by the commission; and

(5) if the municipality does not own a municipal utility, may not require a utility located in the municipality or the municipality's extraterritorial jurisdiction to provide a minimum sufficient water flow and pressure greater than the standard established under Subdivision (1).

(d) An ordinance under Subsection (b) may not require a utility to build, retrofit, or improve infrastructure in existence at the time the ordinance is adopted.

(e) A municipality with a population of less than 1.9 million that adopts standards under Subsection (b) or that seeks to use a utility's water for fire suppression shall enter into a written memorandum of understanding with the utility to provide for:

(1) the necessary testing of fire hydrants; and

(2) other relevant issues pertaining to the use of the water and maintenance of the fire hydrants to ensure compliance with this section.

(f) A municipality may notify the commission of a utility's failure to comply with a standard adopted under Subsection (b).

(g) On receiving the notice described by Subsection (f), the commission shall require a utility in violation of a standard adopted under this section to comply within a reasonable time established by the commission. The commission may approve infrastructure improvements and make corresponding changes to the tariff or rate schedule of a utility that is a public utility as needed to permit compliance with this section.

(h) Notwithstanding any provision of Chapter 101, Civil Practice and Remedies Code, to the contrary, a utility is not liable for a hydrant's or metal flush valve's inability to provide adequate water supply in a fire emergency. This subsection does not waive a municipality's immunity under Subchapter I, Chapter 271, Local Government Code, or any other law and does not create any liability on the part of a municipality under a joint enterprise theory of liability.

Added by Acts 2013, 83rd Leg., R.S., Ch. 332 (H.B. 1973), Sec. 1, eff. September 1, 2013.

Sec. 341.036. SANITARY DEFECTS AT PUBLIC DRINKING WATER SUPPLY SYSTEMS. (a) A sanitary defect at a public drinking water supply system that obtains its water supply from underground sources shall be immediately corrected.

(b) A public drinking water supply system furnishing drinking water from underground sources may not be established in a place subject to possible pollution by floodwaters unless the system is adequately protected against flooding.

(c) Suction wells or suction pipes used in a public drinking water supply system must be constantly protected by practical safeguards against surface and subsurface pollution.

(d) Livestock may not be permitted to enter or remain in the wellhouse enclosure of a public drinking water supply system.

(e) Public drinking water distribution lines must be constructed of impervious materials with tight joints and must be a reasonably safe distance from sewer lines.

(f) Water from a surface public drinking water supply may not be made accessible or delivered to a consumer for drinking purposes unless the water has been treated to make it safe for human consumption. Water treatment plants, including aeration, coagulation, mixing, settling, filtration, and chlorinating units, shall be of a size and type prescribed by good public health engineering practices.

(g) A clear water reservoir shall be covered and be of a type and construction that prevents the entrance of dust, insects, and surface seepage.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.037. PROTECTION OF BODIES OF WATER FROM SEWAGE. The commission shall enforce state laws and take other necessary action to protect a spring, well, pond, lake, reservoir, or other stream in this state from any condition or pollution that results from sewage and that may endanger the public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 11.15, eff. Sept. 1, 1995.

Sec. 341.038. PROTECTION OF IMPOUNDED WATER FROM DISEASE-BEARING MOSQUITOES. A person that impounds water for public use shall cooperate with the commission and local departments of health to control disease-bearing mosquitoes on the impounded area.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.15, eff. Sept. 1, 1995.

Sec. 341.039. STANDARDS FOR GRAYWATER AND ALTERNATIVE ONSITE WATER. (a) The commission by rule shall adopt and implement minimum standards for the indoor and outdoor use and reuse of treated graywater and alternative onsite water for:

(1) irrigation and other agricultural purposes;

(2) domestic use, to the extent consistent with Subsection (c);

(3) commercial purposes; and

(4) industrial purposes.

(a-1) The standards adopted by the commission under Subsection (a)(2) must allow the use of graywater and alternative onsite water for toilet and urinal flushing.

(b) The standards adopted by the commission under Subsection (a) must assure that the use of graywater or alternative onsite water is not a nuisance and does not threaten human health or damage the quality of surface water and groundwater in this state.

(b-1) The commission by rule may adopt and implement rules providing for the inspection and annual testing of a graywater or alternative onsite water system by the commission.

(b-2) The commission shall develop and make available to the public a regulatory guidance manual to explain the rules adopted under this section.

(c) The commission may not require a permit for the domestic use of less than 400 gallons of graywater or alternative onsite water each day if the water:

(1) originates from a private residence;

(2) is used by the occupants of that residence for gardening, composting, landscaping, or indoor use as allowed by rule,

including toilet or urinal flushing, at the residence;

(3) is collected using a system that may be diverted into a sewage collection or on-site wastewater treatment and disposal system;

(4) is, if required by rule, stored in surge tanks that:

(A) are clearly labeled as nonpotable water;

(B) restrict access, especially to children; and

(C) eliminate habitat for mosquitoes and other vectors;

(5) uses piping clearly identified as a nonpotable water conduit, including identification through the use of purple pipe, purple tape, or similar markings;

(6) is generated without the formation of ponds or pools of graywater or alternative onsite water;

(7) does not create runoff across the property lines or onto any paved surface; and

(8) is distributed by a surface or subsurface system that does not spray into the air.

(d) Each builder is encouraged to:

(1) install plumbing in new housing in a manner that provides the capacity to collect graywater or alternative onsite water from all allowable sources; and

(2) design and install a subsurface graywater or alternative onsite water system around the foundation of new housing in a way that minimizes foundation movement or cracking.

(e) In this section:

(1) "Alternative onsite water" means rainwater, air-conditioner condensate, foundation drain water, storm water, cooling tower blowdown, swimming pool backwash and drain water, reverse osmosis reject water, or any other source of water considered appropriate by the commission.

(2) "Graywater" means wastewater from clothes-washing machines, showers, bathtubs, hand-washing lavatories, and sinks that are not used for disposal of hazardous or toxic ingredients. The term does not include wastewater:

(A) that has come in contact with toilet waste;

(B) from the washing of material, including diapers, soiled with human excreta; or

(C) from sinks used for food preparation or disposal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 233, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.16, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 689, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 545 (H.B. 1902), Sec. 1, eff. June 16, 2015.

Sec. 341.0391. DIRECT POTABLE REUSE GUIDANCE. (a) In this section, "direct potable reuse" means the introduction of treated reclaimed municipal wastewater either:

(1) directly into a public water system; or

(2) into a raw water supply immediately before the water enters a drinking water treatment plant.

(b) The commission shall develop and make available to the public a regulatory guidance manual to explain commission rules that apply to direct potable reuse.

Added by Acts 2021, 87th Leg., R.S., Ch. 304 (S.B. 905), Sec. 1, eff. September 1, 2021.

Sec. 341.040. DEFINITION. In this subchapter, "commission" means the Texas Commission on Environmental Quality.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.024, eff. Aug. 12, 1991. Amended by Acts 1993, 73rd Leg., ch. 353, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.17, eff. Sept. 1, 1995.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 861 (H.B. 1391), Sec. 2, eff. September 1, 2007.

Sec. 341.041. FEES. (a) The commission by rule may charge fees to a person who owns, operates, or maintains a public drinking water supply system. The commission may establish a schedule of fees. The amount of the fees must be sufficient to cover the reasonable costs of administering the programs and services in this subchapter or the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). Among other factors, the commission shall consider equity

among persons required to pay the fees as a factor in determining the amount of the fees. The commission may also use the fees to cover any other costs incurred to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Section 5.701(q), Water Code.

(b) The commission by rule may assess penalties and interest for late payment of fees owed by persons who own, operate, or maintain public drinking water supply systems. Penalties and interest established under this section may not exceed the rates established for delinquent taxes under Sections 111.060 and 111.061, Tax Code.

(c) Revenues collected by the commission under this subchapter shall be deposited to the credit of the water resource management account.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 333, Sec. 34, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 3.07, eff. Sept. 1, 2001.

Sec. 341.042. STANDARDS FOR HARVESTED RAINWATER. (a) The commission shall establish recommended standards relating to the domestic use of harvested rainwater, including health and safety standards for treatment and collection methods for harvested rainwater intended for drinking, cooking, or bathing.

(b) The commission by rule shall provide that if a structure has a rainwater harvesting system and uses a public water supply for an auxiliary water source, the structure must have appropriate cross-connection safeguards.

(b-1) A privately owned rainwater harvesting system with a capacity of more than 500 gallons that has an auxiliary water supply shall have a backflow prevention assembly or an air gap installed at the storage facility for the harvested rainwater to ensure physical separation between the rainwater harvesting system and the auxiliary water supply. A rainwater harvesting system that meets the requirements of this subsection is considered connected to a public water supply system only for purposes of compliance with minimum water system capacity requirements as determined by commission rule.

(b-2) A person who installs and maintains rainwater harvesting

systems that are connected to a public water supply system and are used for potable purposes must be licensed by the Texas State Board of Plumbing Examiners as a master plumber or journeyman plumber and hold an endorsement issued by the board as a water supply protection specialist.

(b-3) A person who intends to use a public water supply system as an auxiliary water source must give written notice of that intention to the municipality in which the rainwater harvesting system is located or the owner or operator of the public water supply system. The public water supply system used as an auxiliary water source may be connected only to the water storage tank and may not be connected to the plumbing of a structure.

(b-4) A municipally owned water or wastewater utility, a municipality, or the owner or operator of a public water supply system may not be held liable for any adverse health effects allegedly caused by the consumption of water collected by a rainwater harvesting system that is connected to a public water supply system and is used for potable purposes if the municipally owned water or wastewater utility, municipality, or public water supply system is in compliance with the sanitary standards for drinking water applicable to the municipally owned water or wastewater utility, municipality, or public water supply system.

(b-5) A municipality or the owner or operator of a public water supply system may not be held liable for any adverse health effects allegedly caused by the consumption of water collected by a rainwater harvesting system that uses a public water supply system or an auxiliary water source and is used for potable purposes if the municipality or the public water supply system is in compliance with the sanitary standards for drinking water adopted by the commission and applicable to the municipality or public water supply system.

(c) Standards and rules adopted by the commission under this chapter governing public drinking water supply systems do not apply to a person:

(1) who harvests rainwater for domestic use; and

(2) whose property is not connected to a public drinking water supply system.

Added by Acts 2005, 79th Leg., Ch. 627 (H.B. 2430), Sec. 2, eff. June 17, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 11, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.28, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 349 (H.B. 3372), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1240 (S.B. 1073), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1311 (H.B. 3391), Sec. 3, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 695 (H.B. 2781), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 695 (H.B. 2781), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 695 (H.B. 2781), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 695 (H.B. 2781), Sec. 8, eff. September 1, 2013.

Sec. 341.046. NONAPPLICABILITY OF SUBCHAPTER F. Subchapter F does not apply to this subchapter.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993.

Sec. 341.047. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) violates a provision of Section 341.031;

(2) violates a provision of Section 341.032(a) or (b);

(3) violates a provision of Section 341.033(a)-(f);

(4) constructs a drinking water supply system without submitting completed plans and specifications as required by Section 341.035(c);

(5) begins construction of a drinking water supply system without the commission's approval as required by Section 341.035(a);

(6) violates a provision of Section 341.0351 or 341.0352;

(7) fails to remove a sign as required by Section 341.0354; or

(8) violates a provision of Section 341.036.

(b) An offense under Subsection (a) is a Class C misdemeanor.

(c) If it is shown on a trial of the defendant that the defendant has been convicted of an offense under Subsection (a) within a year before the date on which the offense being tried occurred, the subsequent offense under Subsection (a) is a Class B misdemeanor.

(d) Each day of a continuing violation is a separate offense.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.21, eff. Sept. 1, 1997.

Sec. 341.048. CIVIL ENFORCEMENT. (a) A person may not cause, suffer, allow, or permit a violation of this subchapter or a rule or order adopted under this subchapter.

(b) A person who causes, suffers, allows, or permits a violation under this subchapter shall be assessed a civil penalty of not less than $50 and not more than $5,000 for each violation. Each day of a continuing violation is a separate violation.

(c) If it appears that a person has violated, is violating, or threatens to violate a provision under this subchapter, the commission, a county, or a municipality may institute a civil suit in a district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment and recovery of a civil penalty; or

(3) both injunctive relief and a civil penalty.

(d) The commission is a necessary and indispensable party in a suit brought by a county or municipality under this section.

(e) On the commission's request, the attorney general shall institute a suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and civil penalty.

(f) The suit may be brought in:

(1) Travis County;

(2) the county in which the defendant resides; or

(3) the county in which the violation or threat of violation occurs.

(g) In a suit under this section to enjoin a violation or

threat of violation of this subchapter, the court shall grant the state, county, or municipality, without bond or other undertaking, any injunction that the facts may warrant including temporary restraining orders, temporary injunctions after notice and hearing, and permanent injunctions.

(h) Civil penalties recovered in a suit brought under this section by a county or municipality shall be equally divided between:

(1) the state; and

(2) the county or municipality that first brought the suit.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.22, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 519 (S.B. 530), Sec. 1, eff. September 1, 2019.

Sec. 341.0485. WATER UTILITY IMPROVEMENT ACCOUNT. (a) The water utility improvement account is created outside of the state treasury.

(b) A civil or administrative penalty payable to the state that is collected from a utility for a violation of this subchapter shall be deposited in the account.

(c) The comptroller shall manage the account for the benefit of the commission and shall invest the money and deposit interest and other investment proceeds in the account. The comptroller shall release money from the account in the manner provided by the commission. Money in the account may be used only for:

(1) capital improvements to the water or sewer system of a utility that has paid fines or penalties under this chapter or under Chapter 13, Water Code, that have been deposited in the account; or

(2) capital improvements and operating and maintenance expenses for a utility placed in receivership or under a temporary manager under Section 13.4132, Water Code.

(d) Money used under Subsection (c)(1) for a utility's system may not exceed the amount of the civil or administrative penalties the utility has paid. Capital improvements made with money from the account may not be considered as invested capital of the utility for any purpose. If the utility is sold to another owner, a portion of

the sales price equivalent to the percentage of the used and useful facilities that were constructed with money under Subsection (c)(1) shall be immediately distributed equally to the current customers of the utility.

(e) Money used under Subsection (c)(2) may not be considered as invested capital of the utility for any purpose.

(f) In this section, "utility" has the meaning assigned by Section 13.002, Water Code.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.32, eff. Sept. 1, 1997.

Sec. 341.049. ADMINISTRATIVE PENALTY. (a) If a person causes, suffers, allows, or permits a violation of this subchapter or a rule or order adopted under this subchapter, the commission may assess a penalty against that person as provided by this section. The penalty shall not be less than $50 and not more than $5,000 for each violation. Each day of a continuing violation may be considered a separate violation.

(b) In determining the amount of the penalty, the commission shall consider:

(1) the nature of the circumstances and the extent, duration, and gravity of the prohibited acts or omissions;

(2) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the person's demonstrated good faith, including actions taken by the person to correct the cause of the violation;

(D) any economic benefit gained through the violation; and

(E) the amount necessary to deter future violation; and

(3) any other matters that justice requires.

(c) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director of the commission concludes that a violation has occurred, the executive

director may issue a preliminary report stating the facts on which that conclusion is based, recommending that a penalty under this section be imposed on the person, and recommending the amount of that proposed penalty. The executive director shall base the recommended amount of the proposed penalty on the factors provided by Subsection (b) and shall consider each factor for the benefit of the commission.

(d) Not later than the 10th day after the date on which the preliminary report is issued, the executive director of the commission shall give written notice of the report to the person charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(e) Not later than the 20th day after the date on which notice is received, the person charged may give the commission written consent to the executive director's report including the recommended penalty or may make a written request for a hearing.

(f) If the person charged with the violation consents to the penalty recommended by the executive director of the commission or fails to timely respond to the notice, the commission by order shall assess that penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses a penalty, the commission shall give written notice of its decision to the person charged.

(g) If the person charged requests or the commission orders a hearing, the commission shall call a hearing and give notice of the hearing. As a result of the hearing, the commission by order may find that a violation has occurred and may assess a civil penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to Chapter 2001, Government Code. In making any penalty decision, the commission shall consider each of the factors provided by Subsection (b).

(h) The commission shall give notice of its decision to the person charged, and if the commission finds that a violation has occurred and the commission has assessed a penalty, the commission shall give written notice to the person charged of its findings, of the amount of the penalty, and of the person's right to judicial review of the commission's order. If the commission is required to give notice of a penalty under this subsection or Subsection (f), the

commission shall file notice of its decision with the Texas Register not later than the 10th day after the date on which the decision is adopted.

(i) Within a 30-day period immediately following the day on which the commission's order is final, as provided by Subchapter F, Chapter 2001, Government Code, the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of the fact of the violation, the amount of the penalty, or both:

(A) forward the amount of the penalty to the commission for placement in an escrow account; or

(B) post with the commission a supersedeas bond in a form approved by the commission for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(j) If the person charged fails to forward the money for escrow or post the bond as provided by Subsection (i), the commission or the executive director of the commission may refer the matter to the attorney general for enforcement.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (59), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1010, Sec. 6.23, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 519 (S.B. 530), Sec. 2, eff. September 1, 2019.

Sec. 341.050. PENALTIES CUMULATIVE. All penalties accruing under this subchapter are cumulative of all other remedies, and a suit for recovery of any penalty does not bar or affect the recovery of any other penalty or bar any criminal prosecution against a person or any officer, director, agent, or employee of that person.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993.

SUBCHAPTER D. SANITATION AND SAFETY OF FACILITIES USED BY PUBLIC

Sec. 341.061. TOILET FACILITIES. An operator, manager, or

superintendent of a public building, schoolhouse, theater, filling station, tourist court, bus station, or tavern shall provide and maintain sanitary toilet accommodations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.062. PUBLIC BUILDINGS. A public building constructed after September 4, 1945, shall incorporate the heating, ventilation, plumbing, and screening features necessary to protect the public health and safety.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.063. SANITATION OF BUS LINE, AIRLINE, AND COASTWISE VESSEL. A person managing or operating a bus line or airline in this state, or a person operating a coastwise vessel along the shores of this state, shall maintain sanitary conditions in its equipment and at all terminals or docking points.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.064. SWIMMING POOLS, ARTIFICIAL SWIMMING LAGOONS, AND BATHHOUSES. (a) An owner, manager, operator, or other attendant in charge of a public swimming pool or an artificial swimming lagoon shall maintain the public swimming pool or artificial swimming lagoon in a sanitary condition.

(b) The bacterial content of the water in a public swimming pool or in an artificial swimming lagoon may not exceed the safe limits prescribed by department standards. A minimum free residual chlorine of 2.0 parts for each one million units of water in a public spa and a minimum free residual chlorine of 1.0 part for each one million units of water in other public swimming pools or in artificial swimming lagoons, or any other method of disinfectant approved by the department, must be maintained in a public swimming pool in use or in an artificial swimming lagoon in use.

(b-1) The department shall approve or reject a request to use another method of disinfectant under Subsection (b) not later than the 90th day after the date the request was made. If the department

does not approve or reject the method in accordance with this subsection, the person who made the request may file an action to compel the department to approve or reject the method or to show good cause for an extension of time to make a determination. Venue for an action brought under this subsection is Travis County.

(c) Water in a public swimming pool or in an artificial swimming lagoon may not show an acid reaction to a standard pH test.

(d) A public bathhouse and its surroundings shall be kept in a sanitary condition at all times.

(e) Facilities shall be provided in a public swimming pool or in an artificial swimming lagoon for adequate protection of bathers against sputum contamination.

(f) A person known to be or suspected of being infected with a transmissible condition of a communicable disease shall be excluded from a public swimming pool and from an artificial swimming lagoon.

(g) The construction and appliances of a public swimming pool and of an artificial swimming lagoon must be such as to reduce to a practical minimum the possibility of drowning or of injury to bathers. The construction after September 4, 1945, of a public swimming pool or the construction after September 1, 2017, of an artificial swimming lagoon must conform to good public health engineering practices.

(h) Bathing suits and towels furnished to bathers shall be thoroughly washed with soap and hot water and thoroughly rinsed and dried after each use.

(i) Dressing rooms of a public swimming pool or of an artificial swimming lagoon shall contain shower facilities.

(j) A comb or hairbrush used by two or more persons may not be permitted or distributed in a bathhouse of a public swimming pool or of an artificial swimming lagoon.

(k) The operator or manager of a public swimming pool or of an artificial swimming lagoon shall provide adequate and proper approved facilities for the disposal of human excreta by the bathers.

(l) In adopting rules governing lifesaving equipment to be maintained by a public swimming pool, the executive commissioner may not require a separate throwing line longer than two-thirds the maximum width of the pool.

(l-1) Rules adopted under this chapter may not prohibit the consumption of food or beverages in a public swimming pool or artificial swimming lagoon that is privately owned and operated.

(m) Repealed by Acts 2017, 85th Leg., R.S., Ch. 821 (H.B. 1468), Sec. 5, eff. June 15, 2017.

(n) A county or municipality may:

(1) require that the owner or operator of a public swimming pool or of an artificial swimming lagoon within the jurisdiction of the county or municipality obtain a permit for operation of the public swimming pool or artificial swimming lagoon;

(2) inspect a public swimming pool or an artificial swimming lagoon within the jurisdiction of the county or municipality for compliance with this section; and

(3) impose and collect a reasonable fee in connection with a permit or inspection required under this subsection provided the following are met:

(A) the auditor for the county shall review the program every two years to ensure that the fees imposed do not exceed the cost of the program; and

(B) the county refunds the permit holders any revenue determined by the auditor to exceed the cost of the program.

(o) A county or municipality may by order close, for the period specified in the order, a public swimming pool or an artificial swimming lagoon within the jurisdiction of the county or municipality if the operation of the public swimming pool or artificial swimming lagoon violates this section or a permitting or inspection requirement imposed by the county or municipality under Subsection (n).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 339, Sec. 1, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 618, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0863, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 563 (H.B. 2430), Sec. 1, eff. June 16, 2015.

Acts 2017, 85th Leg., R.S., Ch. 821 (H.B. 1468), Sec. 2, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 821 (H.B. 1468), Sec. 3, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 821 (H.B. 1468), Sec. 5, eff. June 15, 2017.

Sec. 341.0645. POOL SAFETY. (a) An owner, manager, operator, or other attendant in charge of a public swimming pool, wading pool, baby pool, hot tub, in-ground spa, water park, spray fountain, or other artificial body of water typically used for recreational swimming, bathing, or play shall comply with relevant pool safety standards adopted under this section.

(b) The executive commissioner shall adopt by rule pool safety standards necessary to prevent drowning. The standards must:

(1) be at least as stringent as those imposed under the federal Virginia Graeme Baker Pool and Spa Safety Act (15 U.S.C. Section 8001 et seq.); and

(2) comply with and adopt by reference a version of the International Swimming Pool and Spa Code, as defined by Section 214.103, Local Government Code, that is not older than the version in effect on May 1, 2019, regarding all construction, alteration, renovation, enlargement, and repair of commercial swimming pools and spas.

(c) Notwithstanding Subsection (b), the department is not required to adopt Chapter 1 of the International Swimming Pool and Spa Code.

(d) Subsection (b) does not affect requirements for pool yard enclosure imposed under Chapter 757.

(e) The executive commissioner by rule shall authorize a minor addition, alteration, renovation, or repair to an existing pool or spa and related mechanical, electrical, and plumbing systems in the same manner and arrangement as the executive commissioner authorized the construction of the pool or spa and related mechanical, electrical, and plumbing systems.

(f) A person may use, maintain, and repair a pool or spa that was in compliance with the laws of this state on August 31, 2021, and related mechanical, electrical, and plumbing systems in accordance with the laws applicable to the pool or system on that date.

(g) Notwithstanding Subsection (b)(2), this section does not affect the authority of the executive commissioner to adopt rules regarding pool operation and management, water quality, safety standards unrelated to design and construction, signage, and enclosures.

Added by Acts 2009, 81st Leg., R.S., Ch. 828 (S.B. 1732), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0864, eff. April 2, 2015.
Acts 2017, 85th Leg., R.S., Ch. 821 (H.B. 1468), Sec. 4, eff. June 15, 2017.
Acts 2021, 87th Leg., R.S., Ch. 1013 (H.B. 2205), Sec. 1, eff. September 1, 2021.

Sec. 341.0646. CHILD WATER SAFETY REQUIREMENTS FOR CERTAIN ORGANIZATIONS. (a) In this section:

(1) "Body of water" means an artificial or natural body of water, including a swimming pool, lake, or river, typically used for recreational swimming, bathing, or play. The term does not include a wading pool.

(2) "Child" means an individual younger than 12 years of age.

(3) "Organized water activity" means an activity an organization conducts in which a participant will enter or travel on a body of water as part of the activity.

(4) "Wading pool" means a pool, including a pool that contains a public interactive water feature and fountain as defined by department rule, with a maximum water depth of not more than 18 inches.

(b) This section does not apply to:

(1) a youth camp licensed under Chapter 141;

(2) a residential child-care facility as defined by Section 42.002, Human Resources Code; or

(3) a residential boarding school that allows an employee, a family member of an employee, or a guest of an employee to use a body of water at the school for recreational purposes.

(c) An organization, including a day camp, youth camp, school, preschool, kindergarten, nursery school, child-care facility as defined by Section 42.002, Human Resources Code, or any other facility providing child-care services licensed by the Health and Human Services Commission that authorizes a child to engage in an organized water activity shall:

(1) require the child's parent or legal guardian to affirm

in writing whether the child is able to swim or is at risk of injury or death when swimming or otherwise accessing a body of water; and

(2) except as provided by Subsection (d):

(A) provide to each child who is unable to swim or is at risk of injury or death when swimming or otherwise entering a body of water a properly fitted and fastened Type I, II, or III United States Coast Guard approved personal flotation device or a device the executive commissioner determines is equivalent; and

(B) ensure the child is wearing the personal flotation device and the device is properly fitted and fastened for the child.

(d) The organization is not required to provide a child with a flotation device or ensure the child is wearing the device under Subsection (c)(2) if:

(1) the child is actively participating in swim instruction or a competition; and

(2) the organization ensures each child participating in the instruction or a competition is closely supervised during the instruction or competition.

(e) An organization licensed or otherwise regulated by this state that violates this section or rules adopted under this section is subject to disciplinary action, including the imposition of an administrative penalty, by any state regulatory agency with the power to impose disciplinary action on that organization as if the organization violated the agency's licensing or other regulatory laws or rules.

(f) The executive commissioner may adopt rules necessary to implement this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 301 (H.B. 59), Sec. 2, eff. September 1, 2023.

Sec. 341.065. SCHOOL BUILDINGS AND GROUNDS. (a) A school building must be located on grounds that are well drained and maintained in a sanitary condition.

(b) A school building must be properly ventilated and provided with an adequate supply of drinking water, an approved sewage disposal system, hand-washing facilities, a heating system, and lighting facilities that conform to established standards of good public health engineering practices.

(c) A public school lunchroom must comply with the state food and drug rules.

(d) A public school building and its appurtenances shall be maintained in a sanitary manner.

(e) A building custodian or janitor employed full-time shall know the fundamentals of safety and school sanitation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.066. TOURIST COURTS, HOTELS, INNS, AND ROOMING HOUSES. (a) A person operating a tourist court, hotel, inn, or rooming house in this state shall:

(1) provide a safe and ample water supply for the general conduct of the tourist court, hotel, inn, or rooming house; and

(2) submit samples of the water at least once a year before May 1 to the department for bacteriological analysis.

(b) A tourist court, hotel, inn, and rooming house must be equipped with an approved system of sewage disposal maintained in a sanitary condition.

(c) An owner or operator of a tourist court, hotel, inn, or rooming house shall keep the premises sanitary and shall provide every practical facility essential for that purpose.

(d) An owner or operator of a tourist court, hotel, inn, or rooming house who provides a gas stove for the heating of a unit in the facility shall determine that the stove is properly installed and maintained in a properly ventilated room.

(e) An owner, operator, or manager of a tourist court, hotel, inn, or rooming house shall maintain sanitary appliances located in the facility in good repair.

(f) Food offered for sale at a tourist court, hotel, inn, or rooming house shall be:

(1) adequately protected from flies, dust, vermin, and spoilage; and

(2) kept in a sanitary condition.

(g) An owner, manager, or agent of a tourist court, hotel, inn, or rooming house may not rent or furnish a unit to a person succeeding a previous occupant before:

(1) thoroughly cleaning the unit; and

(2) providing clean and sanitary sheets, towels, and

pillowcases.

(h) An owner, operator, or manager of a tourist court, hotel, inn, or rooming house shall maintain the facility in a sanitary condition.

(i) A tourist court, hotel, inn, or rooming house that does not conform to this chapter is a public health nuisance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.067. FAIRGROUNDS, PUBLIC PARKS, AND AMUSEMENT CENTERS. (a) A fairground, public park, or amusement center of any kind shall be maintained in a sanitary condition.

(b) Food and beverages sold in a fairground, public park, or amusement center shall be:

(1) adequately protected from flies, dust, vermin, and spoilage; and

(2) kept in a sanitary condition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.068. RESTROOM AVAILABILITY WHERE THE PUBLIC CONGREGATES. (a) Publicly and privately owned facilities where the public congregates shall be equipped with sufficient temporary or permanent restrooms to meet the needs of the public at peak hours.

(b) The executive commissioner shall adopt rules to implement Subsection (a), including a rule that in providing sufficient restrooms a ratio of not less than 2:1 women's-to-men's restrooms or other minimum standards established in consultation with the Texas State Board of Plumbing Examiners shall be maintained if the use of the restrooms is designated by gender. The rules shall apply to facilities where the public congregates and on which construction is started on or after January 1, 1994, or on which structural alterations, repairs, or improvements exceeding 50 percent of the entire facility are undertaken on or after January 1, 1994.

(c) In this section:

(1) "Facilities where the public congregates" means sports and entertainment arenas, stadiums, community and convention halls, specialty event centers, and amusement facilities. The term does not include hotels, churches, restaurants, bowling centers, public or

private elementary or secondary schools, or historic buildings.

(2) "Restroom" means toilet, chemical toilet, or water closet.

(d) The executive commissioner may adopt rules consistent with Subsection (c)(1) to define "facilities where the public congregates."

Added by Acts 1993, 73rd Leg., ch. 624, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0865, eff. April 2, 2015.

Sec. 341.069. ACCESS TO RESTROOM FACILITIES. (a) In this section:

(1) "Customer" means an individual who is lawfully on the premises of a retail establishment.

(2) "Eligible medical condition" means Crohn's disease, ulcerative colitis, irritable bowel syndrome, or any other permanent or temporary medical condition that requires immediate access to a toilet facility.

(3) "Physician" has the meaning assigned by Section 151.002, Occupations Code.

(4) "Retail establishment" means a place of business open to the general public for the sale of goods or services.

(b) A retail establishment that has a toilet facility for its employees shall allow a customer to use the toilet facility during normal business hours if:

(1) the retail establishment does not have a public restroom that is immediately accessible to the customer;

(2) the employee toilet facility is not located in an area where providing access would create an obvious health or safety risk to the customer or an obvious security risk to the retail establishment;

(3) the customer requesting use of the employee toilet facility provides the retail establishment with evidence of the customer's eligible medical condition including:

(A) a copy of a statement signed by a physician, a registered nurse, a physician's assistant, or a person acting under the delegation and supervision of a licensed physician in conformance

with Subchapter A, Chapter 157, Occupations Code, that indicates the customer suffers from an eligible medical condition or uses an ostomy device; or

(B) an identification card that is issued by a nationally recognized health organization or a local health department and that indicates the customer suffers from an eligible medical condition or uses an ostomy device; and

(4) three or more employees of the retail establishment are working and physically present on the premises of the retail establishment at the time the customer requests to use the employee toilet facility.

(c) A customer who uses a toilet facility as authorized by this section shall leave the toilet facility in the same condition as it was before the customer used the toilet facility.

(d) In providing access to an employee toilet facility under this section, the retail establishment or employee does not owe the customer to whom access is provided a greater degree of care than is owed to a licensee on the premises.

(e) An employee of a retail establishment who refuses to provide a customer with access to an employee toilet facility as required by this section commits an offense. An offense under this section is a misdemeanor punishable by a fine of not more than $100.

(f) A retail establishment is not required to make any physical changes to an employee toilet facility under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 613 (H.B. 416), Sec. 2, eff. September 1, 2007.

Sec. 341.0695. INTERACTIVE WATER FEATURES AND FOUNTAINS. (a) In this section, "interactive water feature or fountain" means an installation that includes water sprays, dancing water jets, waterfalls, dumping buckets, or shooting water cannons and that is maintained for public recreation.

(b) An owner, manager, operator, or other attendant in charge of an interactive water feature or fountain shall maintain the water feature or fountain in a sanitary condition.

(c) The bacterial content of the water in an interactive water feature or fountain may not exceed the safe limits prescribed by the standards adopted under this chapter.

(d) Except as provided by Subsection (f), a minimum free residual chlorine of 1.0 part for each one million units of water used in an interactive water feature or fountain must be maintained.

(e) Water in an interactive water feature or fountain may not show an acid reaction to a standard pH test.

(f) The executive commissioner may by rule adopt methods other than chlorination for the purpose of disinfecting interactive water features and fountains.

(g) An interactive water feature or fountain that is supplied entirely by drinking water that is not recirculated is not subject to Subsections (d) and (e).

(h) A person known to be or suspected of being infected with a transmissible condition of a communicable disease shall be excluded from an interactive water feature or fountain.

(i) A county, a municipality, or the department may:

(1) require that the owner or operator of an interactive water feature or fountain obtain a permit for operation of the water feature or fountain;

(2) inspect an interactive water feature or fountain for compliance with this section; and

(3) impose and collect a reasonable fee in connection with a permit or inspection required under this subsection provided, if the requirement is imposed by a county or municipality, the following are met:

(A) the auditor for the county or municipality shall review the program every two years to ensure that the fees imposed do not exceed the cost of the program; and

(B) the county or municipality refunds the permit holders any revenue determined by the auditor to exceed the cost of the program.

(i-1) The executive commissioner by rule shall prescribe the amount of the fee the department may collect under Subsection (i).

(j) A county, a municipality, or the department may by order close, for the period specified in the order, an interactive water feature or fountain if the operation of the fountain or water feature violates this section or a permitting or inspection requirement imposed under Subsection (i).

(k) This section does not apply to a recreational water park that uses freshwater originating from a natural watercourse for recreational purposes and releases the freshwater back into the same

natural watercourse.

Added by Acts 2009, 81st Leg., R.S., Ch. 1375 (S.B. 968), Sec. 1, eff. June 19, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0866, eff. April 2, 2015.

SUBCHAPTER E. AUTHORITY OF HOME-RULE MUNICIPALITIES

Sec. 341.081. AUTHORITY OF HOME-RULE MUNICIPALITIES NOT AFFECTED. This chapter prescribes the minimum requirements of sanitation and health protection in this state and does not affect a home-rule municipality's authority to enact:

(1) more stringent ordinances in matters relating to this chapter; or

(2) an ordinance under:

(A) Section 5, Article XI, Texas Constitution; or

(B) Section 51.072 or 590.0001, Local Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 18.002(b), eff. September 1, 2019.

Sec. 341.082. APPOINTMENT OF ENVIRONMENTAL HEALTH OFFICER IN CERTAIN HOME-RULE MUNICIPALITIES. (a) In a home-rule municipality, an environmental health officer may be appointed to enforce this chapter.

(b) The environmental health officer must be a registered professional engineer. The officer must file a copy of the officer's oath and appointment with the department.

(c) The environmental health officer shall assist the department in enforcing this chapter and is subject to:

(1) the authority of the department; and

(2) removal from office in the same manner as a municipal health authority.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 76, eff. Sept. 1, 1991; Acts

1997, 75th Leg., ch. 742, Sec. 1, eff. June 17, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0867, eff. April 2, 2015.

SUBCHAPTER F. PENALTIES

Sec. 341.091. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter or a rule adopted under this chapter. A person commits an offense if the person violates a permitting or inspection requirement imposed under Section 341.064(n) or a closure order issued under Section 341.064(o). An offense under this section is a misdemeanor punishable by a fine of not less than $10 or more than $200.

(b) If it is shown on the trial of the defendant that the defendant has been convicted of an offense under this chapter within a year before the date on which the offense being tried occurred, the defendant shall be punished by a fine of not less than $10 or more than $1,000, confinement in jail for not more than 30 days, or both.

(c) Each day of a continuing violation is a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 618, Sec. 2, eff. June 20, 2003.

Sec. 341.092. CIVIL ENFORCEMENT. (a) A person may not cause, suffer, allow, or permit a violation of this chapter or a rule adopted under this chapter.

(b) A person who violates this chapter or a rule adopted under this chapter shall be assessed a civil penalty. A person who violates a permitting or inspection requirement imposed under Section 341.064(n) or a closure order issued under Section 341.064(o) shall be assessed a civil penalty. A civil penalty under this section may not be less than $10 or more than $200 for each violation and for each day of a continuing violation.

(c) If it is shown on the trial of the defendant that the defendant has previously violated this section, the defendant shall be assessed a civil penalty of not less than $10 or more than $1,000 for each violation and for each day of a continuing violation.

(d) If it appears that a person has violated, is violating, or

is threatening to violate this chapter, a rule adopted under this chapter, a permitting or inspection requirement imposed under Section 341.064(n), or a closure order issued under Section 341.064(o), the department, a county, a municipality, or the attorney general on request by the district attorney, criminal district attorney, county attorney, or, with the approval of the governing body of the municipality, the attorney for the municipality may institute a civil suit in a district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment and recovery of a civil penalty; or

(3) both injunctive relief and a civil penalty.

(e) The department is a necessary and indispensable party in a suit brought by a county or municipality under this section.

(f) On the department's request, or as otherwise provided by this chapter, the attorney general shall institute and conduct a suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and civil penalty.

(g) The suit may be brought in Travis County, in the county in which the defendant resides, or in the county in which the violation or threat of violation occurs.

(h) In a suit under this section to enjoin a violation or threat of violation of this chapter, a rule adopted under this chapter, a permitting or inspection requirement imposed under Section 341.064(n), or a closure order issued under Section 341.064(o), the court shall grant the state, county, or municipality, without bond or other undertaking, any injunction that the facts may warrant, including temporary restraining orders, temporary injunctions after notice and hearing, and permanent injunctions.

(i) Civil penalties recovered in a suit brought under this section by a county or municipality through its own attorney shall be equally divided between:

(1) the state; and

(2) the county or municipality that first brought the suit.

(j) The state is entitled to civil penalties recovered in a suit instituted by the attorney general.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 648, Sec. 2, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 618, Sec. 3, eff. June 20, 2003.

CHAPTER 342. LOCAL REGULATION OF SANITATION
SUBCHAPTER A. MUNICIPAL REGULATION OF SANITATION

Sec. 342.001. MUNICIPAL POWER CONCERNING STAGNANT WATER AND OTHER UNSANITARY CONDITIONS. (a) The governing body of a municipality may require the filling, draining, and regulating of any place in the municipality that is unwholesome, contains stagnant water, or is in any other condition that may produce disease.

(b) The governing body of a municipality may require the inspection of all premises.

(c) The governing body of a municipality may impose fines on the owner of premises on which stagnant water is found.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 342.002. MUNICIPAL POWER CONCERNING SEWERS AND PRIVIES. The governing body of a municipality may:

(1) regulate the making, filling, altering, or repairing of sewers and privies;

(2) direct the mode and material for constructing sewers and privies; and

(3) regulate the cleaning and disinfecting of sewers and privies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 342.003. MUNICIPAL POWER CONCERNING FILTH, CARRION, AND OTHER UNWHOLESOME MATTER. The governing body of a municipality may regulate the cleaning of a building, establishment, or ground from filth, carrion, or other impure or unwholesome matter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 342.004. MUNICIPAL POWER CONCERNING WEEDS OR CERTAIN PUBLIC NUISANCES. The governing body of a municipality may require the owner of real property in the municipality to keep the property free from weeds, brush, and a condition constituting a public

nuisance as defined by Section 343.011(c)(1), (2), or (3).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 580 (S.B. 837), Sec. 1, eff. June 14, 2013.

Sec. 342.005. VIOLATION OF ORDINANCE. The governing body of a municipality may punish an owner or occupant of property in the municipality who violates an ordinance adopted under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 342.006. WORK OR IMPROVEMENTS BY MUNICIPALITY; NOTICE. (a) If the owner of property in the municipality does not comply with a municipal ordinance or requirement under this chapter within seven days of notice of a violation, the municipality may:

(1) do the work or make the improvements required; and

(2) pay for the work done or improvements made and charge the expenses to the owner of the property.

(b) The notice must be given:

(1) personally to the owner in writing;

(2) by letter addressed to the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located; or

(3) if personal service cannot be obtained:

(A) by publication at least once;

(B) by posting the notice on or near the front door of each building on the property to which the violation relates; or

(C) by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.

(c) If a municipality mails a notice to a property owner in accordance with Subsection (b), and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered as delivered.

(d) In a notice provided under this section, a municipality may inform the owner by regular mail and a posting on the property, or by personally delivering the notice, that if the owner commits another

violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the municipality without further notice may correct the violation at the owner's expense and assess the expense against the property. If a violation covered by a notice under this subsection occurs within the one-year period, and the municipality has not been informed in writing by the owner of an ownership change, then the municipality without notice may take any action permitted by Subsections (a)(1) and (2) and assess its expenses as provided by Section 342.007.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 252, Sec. 1, eff. June 5, 1991; Acts 1993, 73rd Leg., ch. 921, Sec. 1, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 209, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 413, Sec. 2, eff. Sept. 1, 2001.

Sec. 342.007. ASSESSMENT OF EXPENSES; LIEN. (a) The governing body of a municipality may assess expenses incurred under Section 342.006 against the real estate on which the work is done or improvements made.

(b) To obtain a lien against the property, the mayor, municipal health authority, or municipal official designated by the mayor must file a statement of expenses with the county clerk of the county in which the municipality is located. The lien statement must state the name of the owner, if known, and the legal description of the property. A signature on a lien statement may be a facsimile signature as defined by Section 618.002, Government Code. The lien attaches upon the filing of the lien statement with the county clerk.

(c) The lien obtained by the municipality's governing body is security for the expenditures made and interest accruing at the rate of 10 percent on the amount due from the date of payment by the municipality.

(d) The lien is inferior only to:

(1) tax liens; and

(2) liens for street improvements.

(e) The governing body of the municipality may bring a suit for foreclosure in the name of the municipality to recover the expenditures and interest due.

(f) The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the municipality in doing the work or making the improvements.

(g) The remedy provided by this section is in addition to the remedy provided by Section 342.005.

(h) The governing body of a municipality may foreclose a lien on property under this subchapter in a proceeding relating to the property brought under Subchapter E, Chapter 33, Tax Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 921, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 1017, Sec. 4, eff. Aug. 28, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1226 (S.B. 577), Sec. 2, eff. June 17, 2011.

Sec. 342.008. ADDITIONAL AUTHORITY TO ABATE DANGEROUS WEEDS. (a) A municipality may abate, without notice, weeds that:

(1) have grown higher than 48 inches; and

(2) are an immediate danger to the health, life, or safety of any person.

(b) Not later than the 10th day after the date the municipality abates weeds under this section, the municipality shall give notice to the property owner in the manner required by Section 342.006.

(c) The notice shall contain:

(1) an identification, which is not required to be a legal description, of the property;

(2) a description of the violations of the ordinance that occurred on the property;

(3) a statement that the municipality abated the weeds; and

(4) an explanation of the property owner's right to request an administrative hearing about the municipality's abatement of the weeds.

(d) The municipality shall conduct an administrative hearing on the abatement of weeds under this section if, not later than the 30th day after the date of the abatement of the weeds, the property owner files with the municipality a written request for a hearing.

(e) An administrative hearing conducted under this section

shall be conducted not later than the 20th day after the date a request for a hearing is filed. The owner may testify or present any witnesses or written information relating to the municipality's abatement of the weeds.

(f) A municipality may assess expenses and create liens under this section as it assesses expenses and creates liens under Section 342.007. A lien created under this section is subject to the same conditions as a lien created under Section 342.007.

(g) The authority granted a municipality by this section is in addition to the authority granted by Section 342.006.

Added by Acts 1995, 74th Leg., ch. 359, Sec. 3, eff. Aug. 28, 1995.

SUBCHAPTER B. REGULATION OF SANITATION BY CERTAIN TYPES OF MUNICIPALITIES

Sec. 342.021. POWER OF TYPE A GENERAL-LAW MUNICIPALITY CONCERNING CARCASSES OR OTHER UNWHOLESOME MATTER. (a) The governing body of a Type A general-law municipality may:

(1) prevent a person from bringing, depositing, or having in the municipal limits a carcass or other offensive or unwholesome substance or matter; and

(2) require a person to remove or destroy any offensive or unwholesome substance or matter, filth, putrid or unsound beef, pork, or fish, or hides or skins of any kind that the person is responsible for placing in the municipality.

(b) If the person does not comply with a provision adopted under Subsection (a), the municipality's governing body may:

(1) authorize a municipal officer to remove or destroy the offending material; or

(2) require the owner of a dead animal to remove the dead animal to a place designated by the municipality's governing body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 342.022. JOINT SANITARY REGULATIONS OF TYPE A GENERAL-LAW MUNICIPALITY AND COUNTY. The governing body of a Type A general-law municipality may cooperate with the commissioner's court of the county in which the municipality is located in making improvements considered necessary by those entities to:

(1) improve the public health and promote efficient sanitary regulations; and

(2) arrange for the construction of and payment for those improvements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 343. ABATEMENT OF PUBLIC NUISANCES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 343.002. DEFINITIONS. In this chapter:

(1) "Abate" means to eliminate or remedy:

(A) by removal, repair, rehabilitation, or demolition;

(B) in the case of a nuisance under Section 343.011(c)(1), (9), or (10), by prohibition or control of access; and

(C) in the case of a nuisance under Section 343.011(c)(12), by removal, remediation, storage, transportation, disposal, or other means of waste management authorized by Chapter 361.

(2) "Building" means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.

(3) "Garbage" means decayable waste from a public or private establishment or restaurant. The term includes vegetable, animal, and fish offal and animal and fish carcasses, but does not include sewage, body waste, or an industrial by-product.

(4) "Neighborhood" means:

(A) a platted subdivision; or

(B) property contiguous to and within 300 feet of a platted subdivision.

(5) "Platted subdivision" means a subdivision that has its approved or unapproved plat recorded with the county clerk of the county in which the subdivision is located.

(6) "Premises" means all privately owned property, including vacant land or a building designed or used for residential, commercial, business, industrial, or religious purposes. The term includes a yard, ground, walk, driveway, fence, porch, steps, or other structure appurtenant to the property.

(7) "Public street" means the entire width between property lines of a road, street, way, thoroughfare, or bridge if any part of

the road, street, way, thoroughfare, or bridge is open to the public for vehicular or pedestrian traffic.

(8) "Receptacle" means a container that is composed of durable material and designed to prevent the discharge of its contents and to make its contents inaccessible to animals, vermin, or other pests.

(9) "Refuse" means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.

(10) "Rubbish" means nondecayable waste from a public or private establishment or residence.

(10-a) "Undeveloped land" means land in a natural, primitive state that lacks improvements, infrastructure, or utilities and that is located in an unincorporated area at least 5,000 feet outside the boundaries of a home-rule municipality.

(11) "Weeds" means all rank and uncultivated vegetable growth or matter that:

(A) has grown to more than 36 inches in height; or

(B) creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds.

(12) "Flea market" means an outdoor or indoor market, conducted on non-residential premises, for selling secondhand articles or antiques, unless conducted by a religious, educational, fraternal, or charitable organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 2, eff. Sept. 1, 1991. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1366 (H.B. 3581), Sec. 1, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.004, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 441 (H.B. 1643), Sec. 1, eff. June 15, 2015.

Sec. 343.003. EFFECT OF CHAPTER ON OTHER STATE LAW. This chapter does not affect a right, remedy, or penalty under other state law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. PUBLIC NUISANCE PROHIBITED

Sec. 343.011. PUBLIC NUISANCE. (a) This section applies only to the unincorporated area of a county.

(b) A person may not cause, permit, or allow a public nuisance under this section.

(c) A public nuisance is:

(1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;

(2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;

(3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests;

(4) allowing weeds to grow on premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment;

(5) maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard;

(6) maintaining on abandoned and unoccupied property in a neighborhood a swimming pool that is not protected with:

(A) a fence that is at least four feet high and that has a latched and locked gate; and

(B) a cover over the entire swimming pool that cannot be removed by a child;

(7) maintaining on any property in a neighborhood in a county with a population of more than 1.3 million a swimming pool that is not protected with:

(A) a fence that is at least four feet high and that has a latched gate that cannot be opened by a child; or

(B) a cover over the entire swimming pool that cannot be removed by a child;

(8) maintaining a flea market in a manner that constitutes a fire hazard;

(9) discarding refuse or creating a hazardous visual obstruction on:

(A) county-owned land; or

(B) land or easements owned or held by a special district that has the commissioners court of the county as its governing body;

(10) discarding refuse on the smaller of:

(A) the area that spans 20 feet on each side of a utility line; or

(B) the actual span of the utility easement;

(11) filling or blocking a drainage easement, failing to maintain a drainage easement, maintaining a drainage easement in a manner that allows the easement to be clogged with debris, sediment, or vegetation, or violating an agreement with the county to improve or maintain a drainage easement;

(12) discarding refuse on property that is not authorized for that activity; or

(13) surface discharge from an on-site sewage disposal system as defined by Section 366.002.

(d) This section does not apply to:

(1) a site or facility that is:

(A) permitted and regulated by a state agency for the activity described by Subsection (c); or

(B) licensed or permitted under Chapter 361 for the activity described by Subsection (c); or

(2) agricultural land.

(d-1) This subsection applies only to a county with a population of 3.3 million or more and only in an unincorporated area in the county that is at least 5,000 feet outside the boundaries of a home-rule municipality. Subsections (c)(3) and (4) apply only to undeveloped land in the county for which:

(1) a condition on that land has been found to cause a public nuisance under those provisions in the preceding year; and

(2) a finding of public nuisance could have been applied to that condition when the condition first occurred.

(e) In Subsection (d), "agricultural land" means land that

qualifies for tax appraisal under Subchapter C or D, Chapter 23, Tax Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 3, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, Sec. 2, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 752, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 523, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 355 (S.B. 1238), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 12, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 388 (S.B. 680), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1366 (H.B. 3581), Sec. 2, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.005, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 438 (S.B. 634), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 441 (H.B. 1643), Sec. 2, eff. June 15, 2015.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 96, eff. September 1, 2023.

Sec. 343.0111. SPECIAL EXCEPTION OR VARIANCE TO PUBLIC NUISANCE CLASSIFICATION. (a) The commissioners court of a county by order may:

(1) describe the circumstances in which a special exception to the application of Section 343.011 is available to a person and may grant the special exception in a specific case if the commissioners court finds that the specific case fits within the special exception, that the grant of the exception promotes justice, that the grant of the exception is not contrary to the public interest, and that the grant of the exception is consistent with the general purpose of Section 343.011; and

(2) authorize in a specific case not covered by a special exception a variance from the terms of Section 343.011 if the

commissioners court makes the same findings in connection with the specific case that it makes in connection with a special exception under Subdivision (1) and finds that due to special conditions a literal enforcement of Section 343.011 would result in an unnecessary hardship.

(b) The commissioners court shall keep a record of its proceedings under this section and must include in the record a showing of the reasons for each decision made under this section.

Added by Acts 1995, 74th Leg., ch. 771, Sec. 3, eff. Aug. 28, 1995. Amended by Acts 1999, 76th Leg., ch. 752, Sec. 2, eff. Sept. 1, 1999.

Sec. 343.012. CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person violates Section 343.011(b); and

(2) the nuisance remains unabated after the 30th day after the date on which the person receives notice from a county official, agent, or employee to abate the nuisance.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $50 or more than $200.

(c) If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the defendant is punishable by a fine of not less than $200 or more than $1,000, confinement in jail for not more than six months, or both.

(d) Each day a violation occurs is a separate offense.

(e) The court shall order abatement of the nuisance if the defendant is convicted of an offense under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 4, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, Sec. 4, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 752, Sec. 3, eff. Sept. 1, 1999.

Sec. 343.013. INJUNCTION. (a) A county or district court may by injunction prevent, restrain, abate, or otherwise remedy a violation of this chapter in the unincorporated area of the county.

(b) A county or a person affected or to be affected by a violation under this chapter, including a property owner, resident of

a neighborhood, or organization of property owners or residents of a neighborhood, may bring suit under Subsection (a). If the court grants the injunction, the court may award the plaintiff reasonable attorney's fees and court costs.

(c) A county may bring suit under this section to prohibit or control access to the premises to prevent a continued or future violation of Section 343.011(c)(1), (6), (9), or (10). The court may grant relief under this subsection only if the county demonstrates that:

(1) the person responsible for causing the public nuisance has not responded sufficiently to previous attempts to abate a nuisance on the premises, if the relief sought prohibits or controls access of a person other than the owner; or

(2) the owner of the premises knew about the nuisance and has not responded sufficiently to previous attempts to abate a nuisance on the premises, if the relief sought controls access of the owner.

(d) In granting relief under Subsection (c), the court:

(1) may not, in a suit brought under Section 343.011(c)(10), prohibit or control access by the owner or operator of a utility line or utility easement to that utility line or utility easement; and

(2) may not prohibit the owner of the premises from accessing the property but may prohibit a continued or future violation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 1050 (H.B. 1287), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 388 (S.B. 680), Sec. 2, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1366 (H.B. 3581), Sec. 3, eff. June 15, 2007.

SUBCHAPTER C. COUNTY AUTHORITY RELATING TO NUISANCE

Sec. 343.021. AUTHORITY TO ABATE NUISANCE. (a) If a county adopts abatement procedures that are consistent with the general purpose of this chapter and that conform to this chapter, the county

may abate a nuisance under this chapter:

(1) by demolition or removal, except as provided by Subsection (b);

(2) in the case of a nuisance under Section 343.011(c)(1), (9), or (10), by prohibiting or controlling access to the premises;

(3) in the case of a nuisance under Section 343.011(c)(6), by:

(A) prohibiting or controlling access to the premises and installing a cover that cannot be opened by a child over the entire swimming pool; or

(B) draining and filling the swimming pool; or

(4) in the case of a nuisance under Section 343.011(c)(12), by removal, remediation, storage, transportation, disposal, or other means of waste management authorized under Chapter 361.

(b) In the case of a nuisance under Section 343.011(c)(13), the county may use any means of abatement reasonably necessary to bring the system into compliance with Chapter 366 only after the defendant fails to abate the nuisance as ordered by the court under Section 343.012(e).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 1050 (H.B. 1287), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 388 (S.B. 680), Sec. 3, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1366 (H.B. 3581), Sec. 4, eff. June 15, 2007.

Reenacted and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.006, eff. September 1, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 438 (S.B. 634), Sec. 2, eff. September 1, 2013.

Sec. 343.022. ABATEMENT PROCEDURES. (a) The abatement procedures adopted by the commissioners court must be administered by a regularly salaried, full-time county employee. A person authorized by the person administering the abatement program may administer:

(1) the prohibition or control of access to the premises to

prevent a violation of Section 343.011(c)(1), (6), (9), or (10);

(2) the removal or demolition of the nuisance; and

(3) the abatement of a nuisance described by Section 343.011(c)(12).

(b) The abatement procedures must require that written notice be given to:

(1) the owner, lessee, occupant, agent, or person in charge of the premises; and

(2) the person responsible for causing a public nuisance on the premises when:

(A) that person is not the owner, lessee, occupant, agent, or person in charge of the premises; and

(B) the person responsible can be identified.

(c) The notice must state:

(1) the specific condition that constitutes a nuisance;

(2) that the person receiving notice shall abate the nuisance before the:

(A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or

(B) 10th business day after the date on which the notice is served, if the person has previously received a notice regarding a nuisance on the premises;

(3) that failure to abate the nuisance may result in:

(A) abatement by the county;

(B) assessment of costs to the person responsible for causing the nuisance when that person can be identified; and

(C) a lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property;

(4) that the county may prohibit or control access to the premises to prevent a continued or future nuisance described by Section 343.011(c)(1), (6), (9), or (10); and

(5) that the person receiving notice is entitled to submit a written request for a hearing before the:

(A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or

(B) 10th business day after the date on which the notice is served, if the person has previously received a notice

regarding a nuisance on the premises.

(d) The notice must be given:

(1) by service in person or by registered or certified mail, return receipt requested; or

(2) if personal service cannot be obtained or the address of the person to be notified is unknown, by posting a copy of the notice on the premises on which the nuisance exists and by publishing the notice in a newspaper with general circulation in the county two times within 10 consecutive days.

(e) Except as provided in Subsection (f), the abatement procedures must require a hearing before the county abates the nuisance if a hearing is requested. The hearing may be conducted before the commissioners court or any board, commission, or official designated by the commissioners court. The commissioners court may designate a board, commission, or official to conduct each hearing.

(f) A county may, before conducting a hearing, abate a nuisance under Section 343.011(c)(6) by prohibiting or controlling access to the premises on which the nuisance is located and installing a cover that cannot be opened by a child over the entire swimming pool, but only if the county conducts a hearing otherwise in accordance with Subsection (e) after the nuisance is abated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 123, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, Sec. 5, eff. Aug. 28, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 1050 (H.B. 1287), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 388 (S.B. 680), Sec. 4, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1366 (H.B. 3581), Sec. 5, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.007, eff. September 1, 2009.

Sec. 343.023. ASSESSMENT OF COSTS; LIEN. (a) A county may:

(1) assess:

(A) the cost of abating the nuisance, including management, remediation, storage, transportation, and disposal costs,

and damages and other expenses incurred by the county;

(B) the cost of legal notification by publication; and

(C) an administrative fee of not more than $100 on the person receiving notice under Section 343.022; or

(2) by resolution or order, assess:

(A) the cost of abating the nuisance;

(B) the cost of legal notification by publication; and

(C) an administrative fee of not more than $100 against the property on which the nuisance exists.

(b) The county may not make an assessment against property unless the owner or owner's agent receives notice of the nuisance in accordance with Section 343.022.

(c) To obtain a lien against the property to secure an assessment, the commissioners court of the county must file a notice that contains a statement of costs, a legal description of the property sufficient to identify the property, and the name of the property owner, if known, with the county clerk of the county in which the property is located.

(d) The county's lien to secure an assessment attaches when the notice of lien is filed and is inferior to a previously recorded bona fide mortgage lien attached to the real property to which the county's lien attaches, if the mortgage was filed for record in the office of the county clerk of the county in which the real property is located before the date on which the county files the notice of lien with the county clerk.

(e) The county is entitled to accrued interest beginning on the 31st day after the date of the assessment against the property at the rate of 10 percent a year.

(f) The statement of costs or a certified copy of the statement of costs is prima facie proof of the costs incurred to abate the nuisance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 5, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, Sec. 6, eff. Aug. 28, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1366 (H.B. 3581), Sec. 6, eff. June 15, 2007.

Sec. 343.0235. USE OF COUNTY FUNDS. A county is entitled to use any money available under other law for a cleanup or remediation of private property to abate a nuisance described by Section 343.011(c)(1), (9), or (10).

Added by Acts 2005, 79th Leg., Ch. 1050 (H.B. 1287), Sec. 4, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 388 (S.B. 680), Sec. 5, eff. June 15, 2007.

Sec. 343.024. AUTHORITY TO ENTER PREMISES. (a) A county official, agent, or employee charged with the enforcement of health, environmental, safety, or fire laws may enter any premises in the unincorporated area of the county at a reasonable time to inspect, investigate, or abate a nuisance or to enforce this chapter.

(b) Before entering the premises, the official, agent, or employee must exhibit proper identification to the occupant, manager, or other appropriate person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 6, eff. Sept. 1, 1991.

Sec. 343.025. ENFORCEMENT. A court of competent jurisdiction in the county may issue any order necessary to enforce this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 344. MOSQUITO CONTROL DISTRICTS

Sec. 344.001. ELECTION ON ESTABLISHMENT AND TAX LEVY. The county judge on being petitioned by at least 200 qualified voters of the county may order an election to determine if the qualified voters of the county desire the:

(1) establishment of a mosquito control district in all or a portion of the county for the purpose of eradicating mosquitoes in the area; and

(2) levy of a tax not to exceed 25 cents on each $100 of the taxable value of property taxable by the district to finance the

program provided by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 344.002. BALLOT PROPOSITIONS. The ballot for an election under this chapter shall be printed to provide for voting for or against the propositions:

(1) "The establishment of a mosquito control district in _____ County."; and

(2) "The levy of a tax of _____ cents on each $100 of the taxable value of property taxable by the district to finance the mosquito control district within _____ County."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 344.003. LEVY AND COLLECTION OF TAX. (a) If the election results are in favor of the establishment of a mosquito control district and the levy of a tax, the commissioners court may levy a tax not to exceed the amount fixed by the election.

(b) The commissioners court may lower the tax to any designated sum it may determine if the anticipated revenue exceeds the revenue needed to carry out this chapter.

(c) The taxes levied under this section shall be:

(1) collected by the county tax assessor-collector;

(2) deposited in a separate fund; and

(3) used only to carry out this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 344.004. ADVISORY COMMISSION. (a) The commissioners court in each county in which a mosquito control district is established shall appoint an advisory commission composed of five members who are qualified property taxpaying voters of the county. The commissioners of the commissioners court and the county judge shall each appoint one member of the advisory commission.

(b) Members of the advisory commission serve without compensation.

(c) The advisory commission shall make recommendations to the

commissioners court that it considers necessary to carry out this chapter and shall perform any other duties as the commissioners court may determine.

(d) Each advisory commission member must take an oath of office prescribed by the commissioners court. The commissioners court may remove any member of the advisory commission at any time it considers necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 344.005. MOSQUITO CONTROL ENGINEER. (a) The commissioners court in each county that has established a mosquito control district may appoint a mosquito control engineer who must be well qualified in the field of mosquito control. The mosquito control engineer serves at a salary determined by the commissioners court.

(b) The commissioners court shall supervise the powers and duties of the engineer.

(c) The engineer shall make recommendations to the commissioners court relating to the number of assistants and employees that may be needed, and the commissioners court shall appoint the assistants and employees it considers necessary for mosquito eradication in the district.

(d) The engineer shall make semiannual reports to the commissioners court or as many reports as are requested by the court concerning the work of mosquito eradication and of the expenses needed for the ensuing year.

(e) The first report shall be made not later than June 30 following the establishment of the mosquito control district, and the second report shall be made not later than December 31 following the first report.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 344.006. MERGER OF DISTRICTS. (a) The commissioners courts of two or more counties operating under this chapter may enter into an agreement to merge their separate districts into a single mosquito control district composed of those counties.

(b) The commissioners courts shall enter into an agreement that

complies with this chapter, except that the advisory commission and mosquito control engineer may be appointed for the entire district rather than for each county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 344.007. ELECTION ON DISSOLUTION OF DISTRICT. Each commissioners court that has established a mosquito control district under this chapter shall order an election to dissolve the mosquito control district on a petition of not less than 10 percent of the qualified voters of the county, as determined by the number of votes cast for all candidates for governor in the most recent gubernatorial general election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBTITLE B. SOLID WASTE, TOXIC CHEMICALS, SEWAGE, LITTER, AND WATER

CHAPTER 361. SOLID WASTE DISPOSAL ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 361.001. SHORT TITLE. This chapter may be cited as the Solid Waste Disposal Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.002. POLICY; FINDINGS. (a) It is this state's policy and the purpose of this chapter to safeguard the health, welfare, and physical property of the people and to protect the environment by controlling the management of solid waste, including accounting for hazardous waste that is generated.

(b) The storage, processing, and disposal of hazardous waste at municipal solid waste facilities pose a risk to public health and the environment, and in order to protect the environment and to provide measures for adequate protection of public health, it is in the public interest to require hazardous waste to be stored, processed, and disposed of only at permitted hazardous industrial solid waste facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 1, eff. Sept. 6, 1990.

Sec. 361.003. DEFINITIONS. Unless the context requires a different definition, in this chapter:

(1) "Advanced recycling facility" means a manufacturing facility that receives, stores, and converts post-use polymers and recoverable feedstocks using advanced recycling technologies and processes including pyrolysis, gasification, solvolysis, and depolymerization. For purposes of this chapter and rules adopted by the commission under this chapter, an advanced recycling facility is not a solid waste facility, final disposal facility, waste-to-energy facility, or incinerator.

(1-a) "Apparent recharge zone" means that recharge zone designated on maps prepared or compiled by, and located in the offices of, the commission.

(2) "Class I industrial solid waste" means an industrial solid waste or mixture of industrial solid waste, including hazardous industrial waste, that because of its concentration or physical or chemical characteristics:

(A) is toxic, corrosive, flammable, a strong sensitizer or irritant, or a generator of sudden pressure by decomposition, heat, or other means; and

(B) poses or may pose a substantial present or potential danger to human health or the environment if improperly processed, stored, transported, or otherwise managed.

(3) "Class I nonhazardous industrial solid waste" means any Class I industrial solid waste that has not been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

(4) "Commercial hazardous waste management facility" means any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed,

or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(5) "Commission" means the Texas Commission on Environmental Quality.

(6) "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

(6-a) "Depolymerization" means a manufacturing process through which post-use polymers are broken down into:

(A) smaller molecules, including monomers and oligomers; or

(B) raw materials or intermediate or final products, including plastics and chemical feedstocks, basic and unfinished chemicals, waxes, lubricants, or coatings.

(7) "Disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, or placing of solid waste or hazardous waste, whether containerized or uncontainerized, into or on land or water so that the solid waste or hazardous waste or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner.

(8) "Environmental response law" means the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 through 9675, as amended by the Superfund Amendments and Reauthorization Act of 1986.

(9) "Executive director" means the executive director of the commission.

(10) "Garbage" means solid waste that is putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

(10-a) "Gasification" means a process through which recoverable feedstocks are heated and converted into a fuel-gas mixture in an oxygen-deficient atmosphere and the mixture is converted into valuable raw materials or valuable intermediate or final products, including plastic monomers, chemicals, waxes, lubricants, or chemical feedstocks. The term does not include incineration.

(10-b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 237

(H.B. 3060), Sec. 8, eff. May 27, 2023.

(11) "Hazardous substance":

(A) means:

(i) a substance designated under Section 311(b)(2)(A) of the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1321);

(ii) an element, compound, mixture, solution, or substance designated under Section 102 of the environmental response law;

(iii) a hazardous waste having the characteristics identified under or listed under Section 3001 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. Section 6921), excluding waste, the regulation of which under the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.) has been suspended by Act of Congress;

(iv) a toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act (33 U.S.C. Section 1317);

(v) a hazardous air pollutant listed under Section 112 of the federal Clean Air Act, as amended (42 U.S.C. Section 7412); and

(vi) any imminently hazardous chemical substance or mixture with respect to which the administrator of the Environmental Protection Agency has taken action under Section 7 of the Toxic Substances Control Act (15 U.S.C. Section 2606); but

(B) does not include:

(i) petroleum, which means crude oil or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under Paragraphs (i) through (vi) of Subdivision (A);

(ii) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel mixtures of natural gas and synthetic gas; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources or any other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code.

(12) "Hazardous waste" means solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste

Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(13) "Hazardous waste management facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(14) "Hazardous waste management unit" means a landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(14-a) "Health care-related facility" means a facility listed under 25 T.A.C. Section 1.134. The term does not include:

(A) a single-family or multifamily dwelling; or

(B) a hotel, motel, or other establishment that provides lodging and related services for the public.

(15) "Industrial furnace" includes cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping liquor recovery furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and other devices the commission may list.

(16) "Industrial solid waste" means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

(17) "Local government" means:

(A) a county;

(B) a municipality; or

(C) a political subdivision exercising the authority granted under Section 361.165.

(18) "Management" means the systematic control of the activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.

(18-a) "Medical waste" means treated and untreated special waste from health care-related facilities composed of animal waste, bulk blood, bulk human blood, bulk human body fluids, microbiological waste, pathological waste, and sharps, as those terms are defined by 25 T.A.C. Section 1.132, as well as regulated medical waste, as that term is defined by 49 C.F.R. Section 173.134. The term does not include:

(A) waste produced on a farm or ranch as defined by 34 T.A.C. Section 3.296(f); or

(B) artificial, nonhuman materials removed from a patient and requested by the patient, including orthopedic devices and breast implants.

(19) "Motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(20) "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

(21) "Notice of intent to file an application" means the notice filed under Section 361.063.

(22) "PCBs" or "polychlorinated biphenyl compounds" means compounds subject to Title 40, Code of Federal Regulations, Part 761.

(23) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(24) "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent or contiguous to the county, in which a solid waste facility is to be located; or

(B) is doing business or owns land in the county or adjacent or contiguous county.

(24-a) "Post-use polymers" means plastics that:

(A) are derived from any industrial, commercial,

agricultural, or domestic activity, including preconsumer recovered materials and postconsumer materials;

(B) are sorted from solid waste and other regulated waste and may contain residual amounts of organic material and incidental contaminants or impurities such as paper labels or metal rings;

(C) are not mixed with solid waste or hazardous waste onsite or during processing at an advanced recycling facility;

(D) are used or intended for use as a feedstock or for the production of feedstocks, raw materials, or other intermediate or final products using advanced recycling; and

(E) are processed or held prior to processing at an advanced recycling facility.

(25) "Processing" means the extraction of materials from or the transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal. The term includes the treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of a hazardous waste so as to neutralize the waste, recover energy or material from the waste, render the waste nonhazardous or less hazardous, make it safer to transport, store, or dispose of, or render it amenable for recovery or storage, or reduce its volume. The term does not include:

(A) pyrolysis, gasification, solvolysis, or depolymerization; or

(B) activities concerning those materials exempted by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), unless the commission determines that regulation of the activity under this chapter is necessary to protect human health or the environment.

(25-a) "Pyrolysis" means a manufacturing process through which post-use polymers are heated in an oxygen-deficient atmosphere and the pyrolysis product is converted into valuable raw materials or valuable intermediate or final products, including plastic monomers, chemicals, naphtha, waxes, polymers, or plastic and chemical feedstocks. The term does not include incineration.

(25-b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 237 (H.B. 3060), Sec. 8, eff. May 27, 2023.

(26) "Radioactive waste" means waste that requires specific licensing under Chapter 401 and the rules adopted by the commission under that law.

(26-a) "Recoverable feedstock" means one or more of the following materials, derived from recoverable waste other than coal refuse, that has been processed so that it may be used as feedstock in an advanced recycling facility or through gasification:

(A) post-use polymers; and

(B) material, including municipal solid waste and other post-industrial waste:

(i) for which the commission or the United States Environmental Protection Agency has made a non-waste determination under 40 C.F.R. Section 241.3(c); or

(ii) that the commission or the United States Environmental Protection Agency has otherwise determined are feedstocks and not solid waste.

(27) "Recycling" has the meaning assigned by Section 361.421.

(28) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The term does not include:

(A) a release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person's employer;

(B) an emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) a release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2011 et seq.), if the release is subject to requirements concerning financial protection established by the Nuclear Regulatory Commission under Section 170 of that Act;

(D) for the purposes of Section 104 of the environmental response law, or other response action, a release of source, by-product, or special nuclear material from a processing site designated under Section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Sections 7912 and 7942); and

(E) the normal application of fertilizer.

(29) "Remedial action" means an action consistent with a permanent remedy taken instead of or in addition to a removal action in the event of a release or threatened release of a hazardous waste into the environment to prevent or minimize the release of hazardous waste so that the hazardous waste does not migrate to cause an imminent and substantial danger to present or future public health and safety or the environment. The term includes:

(A) actions at the location of the release, including storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous waste or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive waste, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those actions protect the public health and safety or the environment; and

(B) the costs of permanent relocation of residents, businesses, and community facilities if the administrator of the United States Environmental Protection Agency or the executive director determines that, alone or in combination with other measures, the relocation:

(i) is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off-site of hazardous waste; or

(ii) may otherwise be necessary to protect the public health or safety.

(30) "Removal" includes:

(A) cleaning up or removing released hazardous waste from the environment;

(B) taking necessary action in the event of the threat of release of hazardous waste into the environment;

(C) taking necessary action to monitor, assess, and evaluate the release or threat of release of hazardous waste;

(D) disposing of removed material;

(E) erecting a security fence or other measure to limit access;

(F) providing alternate water supplies, temporary evacuation, and housing for threatened individuals not otherwise

provided for;

(G) acting under Section 104(b) of the environmental response law;

(H) providing emergency assistance under the federal Disaster Relief Act of 1974 (42 U.S.C. Section 5121 et seq.); or

(I) taking any other necessary action to prevent, minimize, or mitigate damage to the public health and welfare or the environment that may otherwise result from a release or threat of release.

(31) "Rubbish" means nonputrescible solid waste, excluding ashes, that consists of:

(A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and

(B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

(32) "Sanitary landfill" means a controlled area of land on which solid waste is disposed of in accordance with standards, rules, or orders established by the commission.

(33) "Sludge" means solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, excluding the treated effluent from a wastewater treatment plant.

(34) This subdivision expires on delegation of the Resource Conservation and Recovery Act of 1976 authority to the Railroad Commission of Texas. Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under

Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements;

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.); or

(iv) post-use polymers or recoverable feedstocks processed through pyrolysis, gasification, solvolysis, or depolymerization that do not qualify as hazardous waste under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.); and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277 and 361.343 through 361.345.

(35) This subdivision is effective on delegation of the Resource Conservation and Recovery Act of 1976 authority to the Railroad Commission of Texas. Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or

man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements;

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code; or

(iv) post-use polymers or recoverable feedstocks processed through pyrolysis, gasification, solvolysis, or depolymerization that do not qualify as hazardous waste under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.); and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277 and 361.343 through 361.345.

(36) "Solid waste facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units. The term does not include an advanced recycling facility.

(37) "Solid waste technician" means an individual who is trained in the practical aspects of the design, operation, and maintenance of a solid waste facility in accordance with standards, rules, or orders established by the commission.

(37-a) "Solvolysis" means a manufacturing process through which post-use polymers are purified with the aid of solvents while heated at low temperatures, pressurized, or both heated at low temperatures and pressurized, to remove additives and contaminants and make useful products, including monomers, intermediates, valuable chemicals, plastic and chemical feedstocks, and raw materials. The process includes hydrolysis, aminolysis, ammonolysis, methanolysis, and glycolysis.

(38) "Storage" means the temporary holding of solid waste, after which the solid waste is processed, disposed of, or stored elsewhere.

(39) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of,

any land or surface or subsurface water in the state that renders the land or water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare or impairs the usefulness or the public enjoyment of the land or water for any lawful or reasonable purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 2, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, Sec. 1.01, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 703, Sec. 1, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.025, eff. Aug. 12, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.01, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.18, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.204, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0888, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 407 (H.B. 2244), Sec. 1, eff. June 10, 2015.

Acts 2019, 86th Leg., R.S., Ch. 48 (H.B. 1953), Sec. 1, eff. May 17, 2019.

Acts 2023, 88th Leg., R.S., Ch. 237 (H.B. 3060), Sec. 1, eff. May 27, 2023.

Acts 2023, 88th Leg., R.S., Ch. 237 (H.B. 3060), Sec. 8, eff. May 27, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

Sec. 361.011. COMMISSION'S JURISDICTION: MUNICIPAL SOLID WASTE. (a) The commission is responsible under this section for the management of municipal solid waste, excluding hazardous municipal waste, and shall coordinate municipal solid waste activities, excluding activities concerning hazardous municipal waste.

(b) The commission shall accomplish the purposes of this chapter by controlling all aspects of the management of municipal solid waste, excluding management of hazardous municipal waste, by all practical and economically feasible methods consistent with its powers and duties under this chapter and other law.

(c) The commission has the powers and duties specifically

prescribed by this chapter relating to municipal solid waste management, excluding management of hazardous municipal waste, and all other powers necessary or convenient to carry out those responsibilities under this chapter.

(d) In matters relating to municipal solid waste management, excluding management of hazardous municipal waste, the commission shall consider water pollution control and water quality aspects and air pollution control and ambient air quality aspects.

(e) Repealed by Acts 1997, 75th Leg., ch. 1072, Sec. 60(b)(1), eff. Sept. 1, 1997.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.02, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.20, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 28, 60(b)(1), eff. Sept. 1, 1997.

Sec. 361.013. SOLID WASTE DISPOSAL AND TRANSPORTATION FEES. (a) Except as provided by Subsections (e) through (i), the commission shall charge a fee on all solid waste that is disposed of within this state. The fee is 94 cents per ton received for disposal at a municipal solid waste landfill if the solid waste is measured by weight. If the solid waste is measured by volume, the fee for compacted solid waste is 30 cents per cubic yard and the fee for uncompacted solid waste is 19 cents per cubic yard received for disposal at a municipal solid waste landfill. The commission shall set the fee for sludge or similar waste applied to the land for beneficial use on a dry weight basis and for solid waste received at an incinerator or a shredding and composting facility at half the fee set for solid waste received for disposal at a landfill. The commission may charge comparable fees for other means of solid waste disposal that are used.

(b) The commission may raise or lower the fees established under Subsection (a) in accordance with commission spending levels established by the legislature.

(c) The commission shall charge an annual registration fee to a transporter of municipal solid waste who is required to register with the commission under rules adopted by the commission. The commission by rule shall adopt a fee schedule. The fee shall be reasonably

related to the volume, the type, or both the volume and type of waste transported. The registration fee charged under this subsection may not be less than $25 or more than $500.

(d) The operator of each municipal solid waste facility shall maintain records and report to the commission annually on the amount of solid waste that the facility transfers, processes, stores, treats, or disposes of. Each transporter required to register with the commission shall maintain records and report to the commission annually on the amount of solid waste that the transporter transports. The commission by rule shall establish procedures for recordkeeping and reporting required under this subsection.

(e) The commission may not charge a fee under Subsection (a) for scrap tires that are deposited in a designated recycling collection area at a landfill permitted by the commission or licensed by a county or by a political subdivision exercising the authority granted by Section 361.165 and that are temporarily stored for eventual recycling, reuse, or energy recovery.

(f) The commission may not charge a fee under Subsection (a) for source separated materials that are processed at a composting and mulch processing facility, including a composting and mulch processing facility located at a permitted landfill site. The commission shall credit any fee payment due under Subsection (a) for any material received and processed to compost or mulch product at the facility. Any compost or mulch product that is produced at a composting and mulch processing facility that is used in the operation of the facility or is disposed of in a landfill is not exempt from the fee.

(g) The commission shall allow a home-rule municipality that has enacted an ordinance imposing a local environmental protection fee for disposal services as of January 1, 1993, to offer disposal or environmental programs or services to persons within its jurisdiction, from the revenues generated by said fee, as such services are required by state or federal mandates. If such services or programs are offered, the home-rule municipality may require their use by those persons within its jurisdiction.

(h) The commission may not charge a fee under Subsection (a) on solid waste resulting from a public entity's effort to protect the public health and safety of the community from the effects of a natural or man-made disaster or from structures that have been contributing to drug trafficking or other crimes if the disposal

facility at which that solid waste is offered for disposal has donated to a municipality, county, or other political subdivision the cost of disposing of that waste.

(i) The commission may not charge a fee under Subsection (a) for the disposal of:

(1) Class I industrial solid waste or hazardous waste subject to the assessment of fees under Section 361.136;

(2) an industrial solid waste for which no permit may be required under Section 361.090; or

(3) sewage sludge that:

(A) has been treated to reduce the density of pathogens to the lowest level provided by commission rules; and

(B) complies with commission rules regarding:

(i) metal concentration limits;

(ii) pathogen reduction; and

(iii) vector attraction reduction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 3, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 303, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 370, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 9.13, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 899, Sec. 1.08, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.20, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 956, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 376, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 3, eff. June 14, 2013.

Sec. 361.0135. COMPOSTING REFUND. (a) The operator of a public or privately owned municipal solid waste facility is entitled to a refund of 15 percent of the solid waste fees collected by the facility under Section 361.013(a) if:

(1) the refunds are used to lease or purchase and operate equipment necessary to compost yard waste;

(2) composting operations are actually performed; and

(3) the finished compost material produced by the facility is returned to beneficial reuse.

(b) The amount of the refund authorized by this section increases to 20 percent of the solid waste fees collected by the facility if, in addition to composting the yard waste, the operator of the facility voluntarily bans the disposal of yard waste at the facility.

(c) In order to receive a refund authorized by this section, the operator of the facility must submit a composting plan to the commission. The commission by rule may set a fee for reviewing a composting plan in an amount not to exceed the costs of review.

(d) The operator is entitled to a refund of fees collected by the facility under Section 361.013(a) on or after the date on which the commission approves the composting plan. The refund is collectable beginning on the date that the first composting operations occur in accordance with the approved plan. The commission may allow the refund to be applied as a credit against fees required to be collected by the facility under Section 361.013(a).

(e) In this section, the terms "compost," "composting," and "yard waste" have the meanings assigned by Section 361.421.

(f) This section expires September 1, 1999, if the commission on or before that date determines that a market in composting materials has developed sufficiently to ensure that composting activities will continue without the incentives provided by this section.

Added by Acts 1993, 73rd Leg., ch. 899, Sec. 1.09, eff. Aug. 30, 1993.

Sec. 361.014. USE OF SOLID WASTE FEE REVENUE. (a) Revenue received by the commission under Section 361.013 shall be deposited in the state treasury to the credit of the commission. Of that revenue, 66.7 percent is dedicated to the commission's municipal solid waste permitting programs, enforcement programs, and site remediation programs, and to pay for activities that will enhance the state's solid waste management program. The commission shall issue a biennial report to the legislature describing in detail how the money was spent. The activities to enhance the state's solid waste management program may include:

(1) provision of funds for the municipal solid waste

management planning fund and the municipal solid waste resource recovery applied research and technical assistance fund established by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363);

(2) conduct of demonstration projects and studies to help local governments of various populations and the private sector to convert to accounting systems and set rates that reflect the full costs of providing waste management services and are proportionate to the amount of waste generated;

(3) provision of technical assistance to local governments concerning solid waste management;

(4) establishment of a solid waste resource center in the commission and an office of waste minimization and recycling;

(5) provision of supplemental funding to local governments for the enforcement of this chapter, the Texas Litter Abatement Act (Chapter 365), and Chapters 391 and 683, Transportation Code;

(6) conduct of a statewide public awareness program concerning solid waste management;

(7) provision of supplemental funds for other state agencies with responsibilities concerning solid waste management, recycling, and other initiatives with the purpose of diverting recyclable waste from landfills;

(8) conduct of research to promote the development and stimulation of markets for recycled waste products;

(9) creation of a state municipal solid waste superfund, from funds appropriated, for:

(A) the cleanup of unauthorized tire dumps and solid waste dumps for which a responsible party cannot be located or is not immediately financially able to provide the cleanup;

(B) the cleanup or proper closure of abandoned or contaminated municipal solid waste sites for which a responsible party is not immediately financially able to provide the cleanup; and

(C) remediation, cleanup, and proper closure of unauthorized recycling sites for which a responsible party is not immediately financially able to perform the remediation, cleanup, and closure;

(10) provision of funds to mitigate the economic and environmental impacts of lead-acid battery recycling activities on local governments;

(11) provision of funds for the conduct of research by a

public or private entity to assist the state in developing new technologies and methods to reduce the amount of municipal waste disposed of in landfills; and

(12) provision of funds for grants to encourage entities located in an affected county or a nonattainment area, as defined by Section 386.001, to convert heavy-duty vehicles used for municipal solid waste collection into vehicles powered by natural gas engines.

(b) Of the revenue received by the commission under Section 361.013, 33.3 percent is dedicated to local and regional solid waste projects consistent with regional plans approved by the commission in accordance with this chapter and to update and maintain those plans. Those revenues shall be allocated to municipal solid waste geographic planning regions for use by local governments and regional planning commissions according to a formula established by the commission that takes into account population, area, solid waste fee generation, and public health needs. Each planning region shall issue a biennial report to the legislature detailing how the revenue is spent. A project or service funded under this subsection must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services.

(c) Revenue derived from fees charged under Section 361.013(c) to a transporter of whole used or scrap tires or shredded tire pieces shall be deposited to the credit of the waste tire recycling account.

(d) Revenues allocated to the commission for the purposes authorized by Subsection (a) or (b) shall be deposited to the credit of the waste management account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 3, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 303, Sec. 4, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 899, Sec. 1.10, 3.10, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.21, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 838, Sec. 1, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.205, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 333, Sec. 35, eff; Sept. 1, 1997; Acts 2003, 78th Leg., ch. 340, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 4, eff. June

14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 19, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 858 (H.B. 3461), Sec. 16, eff. September 1, 2023.

Sec. 361.0145. RESPONSE TO OR REMEDIATION OF FIRE OR EMERGENCY. (a) The commission may make an immediate response to or remediation of a fire or other emergency that involves solid waste, including processed or unprocessed material suitable for recycling or composting, as the commission determines necessary to protect the public health or safety.

(b) Notwithstanding Section 361.014(b), revenue otherwise dedicated under that section may be used for an action authorized by Subsection (a).

(c) The commission may recover from a person who is responsible for the solid waste as provided by Section 361.271 the reasonable expenses incurred by the commission during an immediate response and remediation action under Subsection (a). The state may bring an action to recover those reasonable expenses.

(d) If the commission used for an action under Subsection (a) money otherwise dedicated under Section 361.014(b), money recovered under Subsection (c) shall be deposited in the state treasury to the credit of the commission until the amount deposited equals the amount of the dedicated money used. Money credited under this subsection may be used only as provided by Section 361.014(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 1362 (H.B. 2541), Sec. 1, eff. September 1, 2007.

Sec. 361.015. JURISDICTION: RADIOACTIVE WASTE. (a) The commission is the state agency under Chapter 401 that licenses and regulates radioactive waste storage, processing, and disposal activities not preemptively regulated by the federal government.

(b) Except as provided by Subsection (a), the Health and Human Services Commission, acting through the Department of State Health Services or other department as designated by the executive commissioner of the Health and Human Services Commission, is the

state agency under Chapter 401 that regulates radioactive waste activities not preemptively regulated by the federal government.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.22, eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 31, eff. June 15, 2007.

Sec. 361.0151. RECYCLING. (a) The commission shall establish and administer a waste minimization and recycling office within the commission that provides technical assistance to local governments concerning waste minimization and recycling.

(b) The commission shall work in conjunction with the Texas Department of Commerce to pursue the development of markets for recycled materials, including composting products.

(c) Notwithstanding any other law, the commission or a political subdivision of this state that establishes goals or requirements for recycling or the use of recycled material must base those goals or requirements on the definitions and principles established by Subchapter N. This subsection does not apply to a program described by Subchapter Y or Z.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 4, eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.22, eff. Sept. 1, 1995.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 237 (H.B. 3060), Sec. 2, eff. May 27, 2023.

Sec. 361.0152. STIMULATE USE OF RECYCLABLE MATERIAL. (a) In this section:

(1) "Manufacturer" means a facility that uses postconsumer or postindustrial derived recyclable material to create a finished product for sale or trade.

(2) "Principal processor" means a facility that receives recyclable materials from generators or collection programs and sorts, cleans, screens, bales, densifies, cures, or creates product that is ready for beneficial reuse immediately after processing or is

ready to be used as a feedstock by a subsequent processor or manufacturer.

(3) "Recyclable material" includes paper, plastic, metal, glass, vegetative waste, compost, mulch, tires, electronic waste, construction and demolition debris, batteries, and paint.

(b) This section does not apply to ferrous or nonferrous metals recycled by a metal recycling entity as defined by Section 1956.001, Occupations Code.

(c) In cooperation with the Texas Economic Development and Tourism Office, the commission shall produce a plan to stimulate the use of recyclable materials as feedstock in processing and manufacturing.

(d) The plan must:

(1) identify the quantity and type of recyclable materials that are being recycled from municipal and industrial sources;

(2) identify and estimate the quantity and type of recyclable materials that are generated but not being recycled;

(3) identify and estimate the current economic benefits of recycling materials and the potential economic benefits to be gained by recycling materials identified under Subdivision (2);

(4) identify the location, processing capacity, and consumption capacity of existing principal processors and manufacturers;

(5) identify the barriers to increasing the use of recyclable materials as feedstock for principal processors and manufacturers and means to eliminate those barriers;

(6) identify and estimate the need and type of principal processing and manufacturing facilities necessary to consume the existing and potential volumes of recyclable materials; and

(7) recommend institutional, financial, administrative, and physical methods, means, and processes that could be applied by this state and by local governments to:

(A) increase the use of recyclable materials;

(B) stimulate the use of recyclable materials by principal processors and manufacturers; and

(C) encourage the expansion of existing principal processors and manufacturers and the development of new principal processors and manufacturers that use recyclable materials.

(e) The plan may not require a generator, collector, or processor of recyclable materials to ship to or use a particular

processing or manufacturing facility.

(f) To the extent practicable in preparing the plan, the commission shall use methodologies and information derived from other recycling economic studies already performed.

(g) The commission shall update the plan every four years, and in a year in which the plan is updated, the plan shall be included in the annual summary of municipal solid waste management produced by the municipal solid waste permits section of the commission and delivered to the governor and legislature.

(h) In cooperation with other state agencies, including the governor's office, the commission shall develop an education program intended for the public that must include:

(1) the economic benefits of recycling, including job creation, economic impact, percent of total municipal and industrial solid waste recycled, weight and volume of municipal and industrial solid waste recycled, and taxes and fees paid by the recycling industry;

(2) a spotlight of collectors and processors of recyclable materials and manufacturers based in this state that are using recyclable materials as feedstock; and

(3) the detrimental effects of contamination in the recyclable materials stream and the need to reduce those effects.

(i) The commission shall update the education program required by Subsection (h) at least every four years.

(j) The commission may enter into contracts with public, private, and nonprofit organizations to produce the plan required by Subsection (c) and the education program required by Subsection (h).

Added by Acts 2019, 86th Leg., R.S., Ch. 61 (S.B. 649), Sec. 1, eff. September 1, 2019.

Sec. 361.016. MEMORANDUM OF UNDERSTANDING BY COMMISSION. The commission by rule shall adopt:

(1) any memorandum of understanding between the commission and any other state agency; and

(2) any revision of a memorandum of understanding.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.22, eff. Sept. 1, 1995.

Sec. 361.017. COMMISSION'S JURISDICTION: INDUSTRIAL SOLID WASTE AND HAZARDOUS MUNICIPAL WASTE. (a) The commission is responsible for the management of industrial solid waste and hazardous municipal waste and shall coordinate industrial solid waste activities and hazardous municipal waste activities.

(b) The commission shall accomplish the purposes of this chapter by controlling all aspects of the management of industrial solid waste and hazardous municipal waste by all practical and economically feasible methods consistent with its powers and duties under this chapter and other law.

(c) The commission has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities under this chapter.

(d) In matters relating to industrial solid waste and hazardous municipal waste, the commission shall:

(1) consider the public health aspects and the air pollution control and ambient air quality aspects; and

(2) consult with the attorney general's office for assistance in determining whether referral to the attorney general for enforcement is mandatory under Section 361.224 or whether referral is appropriate, in the commission's discretion, for the disposition of enforcement matters under this chapter.

(e) If referral is determined to be mandatory or appropriate, the commission shall consult with the attorney general's office for assistance in determining whether criminal or civil enforcement action should be taken. The commission shall use all available enforcement options.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.03, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.23, eff. Sept. 1, 1995.

Sec. 361.018. COMMISSION'S JURISDICTION OVER HAZARDOUS WASTE COMPONENTS OF RADIOACTIVE WASTE. (a) The commission has the powers under this chapter necessary or convenient to carry out its responsibilities concerning the regulation of the management of hazardous waste components of radioactive waste under the jurisdiction of the Department of State Health Services.

(b) The commission shall consult with the Department of State

Health Services concerning regulation and management under this section, except for activities solely under the commission's jurisdiction.

(c) The commission may not adopt rules or engage in management activities under this section that conflict with state or federal laws and rules concerning the regulation of radioactive waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.24, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0889, eff. April 2, 2015.

Sec. 361.019. APPROVAL OF INDUSTRIAL SOLID WASTE MANAGEMENT IN MUNICIPAL SOLID WASTE FACILITY. (a) Except as provided by Subsection (b), Class I nonhazardous industrial solid waste and small quantities of hazardous waste generated by conditionally exempt small quantity generators, as defined by the commission, may be accepted in a municipal solid waste facility if:

(1) authorized in writing by, or by rule of, the commission; and

(2) the generator of the Class I nonhazardous waste certifies on an appropriate commission form that the waste is not a hazardous waste.

(b) Except as otherwise prohibited by this chapter, nonhazardous industrial solid waste generated by the mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals shall be accepted, without authorization by the commission under Subsection (a), in a municipal solid waste facility that has previously been authorized to accept and has accepted Class I nonhazardous industrial solid wastes or Class II industrial solid wastes if the waste contains no free liquids, is not a hazardous waste as defined in Section 361.003, and satisfies other criteria that may be established by commission rule. Until the commission adopts rules establishing additional criteria, generators of this type of waste shall satisfy the two criteria described in this subsection when these wastes are disposed of in municipal solid waste facilities.

(c) Municipal solid waste may be accepted in an industrial

solid waste facility if authorized in writing by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 5, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 703, Sec. 2, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.24, eff. Sept. 1, 1995.

Sec. 361.0202. DEVELOPMENT OF EDUCATION PROGRAMS. (a) The commission shall develop a public awareness program to increase awareness of individual responsibility for properly reducing and disposing of municipal solid waste and to encourage participation in waste source reduction, composting, reuse, and recycling. The program shall include:

(1) a media campaign to develop and disseminate educational materials designed to establish broad public understanding and compliance with the state's waste reduction and recycling goals; and

(2) a curriculum, developed in cooperation with the commissioner of education and suitable for use in programs from kindergarten through high school, that promotes waste reduction and recycling.

(b) As part of the program, the commission may:

(1) advise and consult with individuals, businesses, and manufacturers on source reduction techniques and recycling; and

(2) sponsor or cosponsor with public and private organizations technical workshops and seminars on source reduction and recycling.

Added by Acts 1993, 73rd Leg., ch. 899, Sec. 2.04, eff. Aug. 30, 1993 and Acts 1993, 73rd Leg., ch. 1045, Sec. 5, eff. Sept. 1, 1993.

Sec. 361.0215. POLLUTION PREVENTION ADVISORY COMMITTEE. (a) The pollution prevention advisory committee is composed of nine members with a balanced representation of environmental and public interest groups and the regulated community.

(b) The committee shall advise the commission and interagency coordination council on:

(1) the appropriate organization of state agencies and the financial and technical resources required to aid the state in its efforts to promote waste reduction and minimization;

(2) the development of public awareness programs to educate citizens about hazardous waste and the appropriate disposal of hazardous waste and hazardous materials that are used and collected by households;

(3) the provision of technical assistance to local governments for the development of waste management strategies designed to assist small quantity generators of hazardous waste; and

(4) other possible programs to more effectively implement the state's hierarchy of preferred waste management technologies as set forth in Section 361.023(a).

(c) The committee shall advise the commission on the creation and implementation of the strategically directed regulatory structure developed under Section 5.755, Water Code.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(3), eff. September 1, 2019.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 7, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 2.04, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 590, Sec. 4, eff. June 16, 1991; Acts 1997, 75th Leg., ch. 965, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 4.04, eff. Sept. 1, 2001. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(3), eff. September 1, 2019.

Sec. 361.0216. OFFICE OF POLLUTION PREVENTION. The office of pollution prevention is created in the executive office of the commission to direct and coordinate all source reduction and waste minimization activities of the commission.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 7, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 2.05, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 590, Sec. 5, eff. June 16, 1991.

Sec. 361.0219. OFFICE OF WASTE EXCHANGE. (a) The office of waste exchange is an office of the commission.

(b) The office shall facilitate the exchange of solid waste, recyclable or compostable materials, and other secondary materials

among persons that generate, recycle, compost, or reuse those materials, in order to foster greater recycling, composting, and reuse in the state. At least one party to such an exchange must be in the state. The office shall provide information to interested persons on arranging exchanges of these materials in order to allow greater recycling, composting, and reuse of the materials, and may act as broker for exchanges of the materials if private brokers are not available.

(c) The office of waste exchange shall adopt a plan for providing to interested persons information on waste exchange. Biennially the office of waste exchange shall report to the commission on progress in implementing this section, including the plan to provide information on waste exchange, the state's participation in any national or regional waste exchange program, and information on the movement and exchange of materials and the effect on recycling, composting, and reuse rates in the state. The commission shall submit the report by December 1 of each even-numbered year as required by Section 5.178(b), Water Code.

Added by Acts 1993, 73rd Leg., ch. 899, Sec. 2.05, eff. Aug. 30, 1993 and Acts 1993, 73rd Leg., ch. 1045, Sec. 6, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1082, Sec. 5, eff. Sept. 1, 1997.

Sec. 361.022. PUBLIC POLICY CONCERNING MUNICIPAL SOLID WASTE AND SLUDGE. (a) To protect the public health and environment, it is the state's goal, through source reduction, to eliminate the generation of municipal solid waste and municipal sludge to the maximum extent that is technologically and economically feasible. Therefore, it is the state's public policy that, in generating, treating, storing, and disposing of municipal solid waste or municipal sludge, the methods listed under Subsections (b) and (c) are preferred to the extent economically and technologically feasible and considering the appropriateness of the method to the type of solid waste material or sludge generated, treated, disposed of, or stored.

(b) For municipal solid waste, not including sludge, the following methods are preferred, in the order listed:

(1) source reduction and waste minimization;

(2) reuse or recycling of waste;

(3) treatment to destroy or reprocess waste to recover energy or other beneficial resources if the treatment does not threaten public health, safety, or the environment; or

(4) land disposal.

(c) For municipal sludge, the following methods are preferred, in the order listed:

(1) source reduction and minimization of sludge production and concentrations of heavy metals and other toxins in sludge;

(2) treatment of sludge to reduce pathogens and recover energy, produce beneficial by-products, or reduce the quantity of sludge;

(3) marketing and distribution of sludge and sludge products if the marketing and distribution do not threaten public health, safety, or the environment;

(4) applying sludge to land for beneficial use;

(5) land treatment; or

(6) landfilling.

(d) In adopting rules to implement public policy concerning municipal solid waste management, the commission shall consider the preference of municipal solid waste management methods under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 231, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.27, eff. Sept. 1, 1995.

Sec. 361.023. PUBLIC POLICY CONCERNING HAZARDOUS WASTE. (a) To protect the public health and environment, it is the state's goal, through source reduction, to eliminate the generation of hazardous waste to the maximum extent that is technologically and economically feasible. Therefore, it is the state's public policy that, in generating, treating, storing, and disposing of hazardous waste, the following methods are preferred to the extent economically and technologically feasible, in the order listed:

(1) source reduction;

(2) reuse or recycling of waste, or both;

(3) treatment to destroy hazardous characteristics;

(4) treatment to reduce hazardous characteristics;

(5) underground injection; and

(6) land disposal.

(b) Under Subsection (a)(3), on-site destruction is preferred, but it shall be evaluated in the context of other relevant factors such as transportation hazard, distribution of risk, quality of destruction, operator capability, and site suitability.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 231, Sec. 2, eff. Sept. 1, 1991.

Sec. 361.0231. PUBLIC POLICY CONCERNING ADEQUATE CAPACITY FOR INDUSTRIAL AND HAZARDOUS WASTE. (a) To protect the public health and environment taking into consideration the economic development of the state, and assure the continuation of the federal funding for abandoned facility response actions, it is the state public policy that adequate capacity should exist for the proper management of industrial and hazardous waste generated in this state.

(b) "Adequate capacity" is the capacity necessary to manage the industrial and hazardous waste that remains after application, to the maximum extent economically and technologically feasible, of waste reduction techniques.

(c) It is further the state's policy that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 8, eff. Sept. 6, 1990. Amended by Acts 2001, 77th Leg., ch. 965, Sec. 1.25, eff. Sept. 1, 2001.

Sec. 361.0235. HAZARDOUS WASTE GENERATED IN FOREIGN COUNTRY. (a) Except as otherwise provided by this section, a person may not receive, transport, or cause to be transported into this state, for the purpose of treatment, storage, or disposal in this state, hazardous waste generated in a country other than the United States.

(b) This section may not be construed or applied in a manner that interferes with the authority of the federal government to regulate commerce with foreign nations and among the several states provided by Article I, Section 8, Clause 3, of the United States Constitution.

(c) This section does not apply to a person who transports or receives material from a country other than the United States for:

(1) recycling or reuse of the material; or

(2) use of the material as a feedstock or ingredient in the production of a new product.

(d) This section does not apply to waste transported or received for treatment, storage, or disposal at a hazardous waste management facility that is owned by the generator of the waste or by a parent, subsidiary, or affiliated corporation of the generator.

(e) This section does not apply to waste received by:

(1) a producer of the product or material from which the waste is generated; or

(2) a parent, subsidiary, or affiliated corporation of such producer.

(f) This section does not apply to waste generated in Mexico at an approved maquiladora facility to the extent that such waste:

(1) was generated as a result of the processing or fabrication of materials imported into Mexico from Texas on a temporary basis; and

(2) is required to be re-exported to the United States under Mexican law.

Added by Acts 1991, 72nd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1991. Renumbered from Health & Safety Code Sec. 361.0232 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(27), eff. Sept. 1, 1995.

Sec. 361.024. RULES AND STANDARDS. (a) The commission may adopt rules consistent with this chapter and establish minimum standards of operation for the management and control of solid waste under this chapter.

(b) In developing rules concerning hazardous waste, the commission shall consult with the State Soil and Water Conservation Board, the Bureau of Economic Geology of The University of Texas at Austin, and other appropriate state sources.

(c) The minimum standards set by the commission for on-site storage of hazardous waste must be at least the minimum standards set by the manufacturer of the chemical.

(d) Rules adopted by the commission under Section 361.036 and Sections 361.097-361.108 for solid waste facilities may differ

according to the type or hazard of hazardous waste managed and the type of waste management method used.

(e) Rules shall be adopted as provided by Chapter 2001, Government Code. As provided by that Act, the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency. The commission shall follow its own rules as adopted until it changes them in accordance with that Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 2.06, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 8, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.30, eff. Sept. 1, 1995.

Sec. 361.025. EXEMPT ACTIVITIES. (a) The commission and the Railroad Commission of Texas shall jointly prepare an exclusive list of activities that are associated with oil and gas exploration, development, and production and are therefore exempt from regulation under this chapter.

(b) The list shall be adopted by rule and amended as necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.026. ASSISTANCE PROVIDED BY COMMISSION. The commission may:

(1) provide educational, advisory, and technical services concerning solid waste management to other state agencies, regional planning agencies, local governments, special districts, institutions, and individuals; and

(2) assist other state agencies, regional planning agencies, local governments, special districts, and institutions in acquiring federal grants for:

(A) the development of solid waste facilities and management programs; and

(B) research to improve solid waste management.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.31, eff. Sept. 1, 1995.

Sec. 361.027. LICENSURE OF SOLID WASTE FACILITY SUPERVISORS. The commission may implement a program under Chapter 37, Water Code, to license persons who supervise the operation or maintenance of solid waste facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.32, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 36, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 880, Sec. 20, eff. Sept. 1, 2001.

Sec. 361.028. INDUSTRIAL SOLID AND HAZARDOUS WASTE MATERIALS EXCHANGE. (a) The commission shall establish an industrial solid and hazardous waste materials exchange that provides for the exchange, between interested persons, of information concerning:

(1) particular quantities of industrial solid or hazardous waste available in this state for recovery;

(2) persons interested in acquiring certain types of industrial solid or hazardous waste for purposes of recovery; and

(3) methods for the treatment and recovery of industrial solid or hazardous waste.

(b) The industrial solid and hazardous waste materials exchange may be operated under one or more reciprocity agreements providing for the exchange of information described by Subsection (a) for similar information from a program operated in another state.

(c) The commission may contract for a private person or public entity to establish or operate the industrial solid and hazardous waste materials exchange.

(d) The commission may prescribe rules concerning the establishment and operation of the industrial solid and hazardous waste exchange, including the setting of a necessary subscription fee to offset the cost of participation in the program.

(e) The commission may seek grants and contract support from federal and other sources to the extent possible and may accept gifts to support its purposes and programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.029. COLLECTION AND DISPOSAL OF HOUSEHOLD MATERIALS THAT COULD BE CLASSIFIED AS HAZARDOUS WASTE. (a) The commission shall provide by rule for interested persons to engage in activities that involve the collection and disposal of household materials that could be classified as hazardous waste.

(b) The rules must specify the necessary requirements concerning the training of persons involved in the collection and disposal of those household materials.

(c) A person is not liable for damages as a result of any act or omission in the course of advertising, promoting, or distributing educational materials concerning the collection or disposal of those household materials in accordance with the rules. This subsection does not preclude liability for damages as a result of gross negligence of or intentional misconduct by the person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.33, eff. Sept. 1, 1995.

Sec. 361.030. FEDERAL FUNDS. The commission may accept funds from the federal government for purposes concerning solid waste management and spend money received from the federal government for those purposes in the manner prescribed by law and in accordance with agreements as are necessary and appropriate between the federal government and the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.34, eff. Sept. 1, 1995.

Sec. 361.031. FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS. (a) The commission may administer and spend state funds provided to the commission by legislative appropriations, or otherwise, to make grants to local governments for:

(1) solid waste planning;

(2) installation of solid waste facilities; and

(3) administration of solid waste programs.

(b) The grants made under this chapter shall be distributed in a manner determined by the commission.

(c) The amount of financial assistance granted by the state through the commission to a local government under this chapter must

be matched by local government funds at least in equal amounts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.34, eff. Sept. 1, 1995.

Sec. 361.032. INSPECTIONS; RIGHT OF ENTRY. (a) The commission may inspect and approve solid waste facilities used or proposed to be used to store, process, or dispose of solid waste.

(b) Agents or employees of the commission or local governments have the right to enter at any reasonable time public or private property in the governmental entity's jurisdiction, including a municipality's extraterritorial jurisdiction, to inspect and investigate conditions concerning solid waste management and control.

(c) Agents or employees of the commission or commission contractors have the right to enter at any reasonable time public or private property to investigate or monitor the release or threatened release of a hazardous substance.

(d) Agents or employees of the commission or commission contractors may not enter private property with management in residence without notifying the management, or the person in charge at the time, of their presence and presenting proper credentials.

(e) Agents or employees of the commission or commission contractors acting under this section shall observe the establishment's rules on safety, internal security, and fire protection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.35, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 883, Sec. 3, eff. Aug. 28, 1995.

Sec. 361.033. INSPECTIONS REQUIRED BY ENVIRONMENTAL PROTECTION AGENCY. (a) The commission shall inspect regulated hazardous waste management and disposal facilities periodically as required by the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(b) In supplementing the inspections under Subsection (a), the commission shall give priority to inspecting and reinspecting those facilities, including generators, considered most likely to be in

noncompliance or most likely to pose an environmental or public health threat, regardless of whether the facilities are characterized as major or non-major facilities.

(c) The commission may randomly perform less comprehensive checks of facilities to supplement the more comprehensive inspections required by the United States Environmental Protection Agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.035. RECORDS AND REPORTS; DISPOSAL OF HAZARDOUS WASTE. (a) The commission by rule shall require operators of solid waste facilities for disposal of hazardous waste to maintain records and to submit to the commission reports necessary for the commission to determine the amount of hazardous waste disposal.

(b) The commission by rule shall establish the date on which a report required by this section is to be submitted.

(c) A penalty collected under Subchapter C or D, Chapter 7, Water Code, for the late filing of a report required by this section shall be deposited to the credit of the hazardous and solid waste remediation fee account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1072, Sec. 29, eff. Sept. 1, 1997. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.008, eff. September 1, 2009.

Sec. 361.036. RECORDS AND MANIFESTS REQUIRED; CLASS I INDUSTRIAL SOLID WASTE OR HAZARDOUS WASTE. The commission by rule shall require a person who generates, transports, processes, stores, or disposes of Class I industrial solid waste or hazardous waste to provide recordkeeping and use a manifest or other appropriate system to assure that the waste is transported to a processing, storage, or disposal facility permitted or otherwise authorized for that purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.037. ACCESS TO HAZARDOUS WASTE RECORDS. (a)

Authorized agents or employees of the commission have access to and may examine and copy during regular business hours any records pertaining to hazardous waste management and control.

(b) Except as provided by this subsection, records copied under Subsection (a) are public records. If the owner of the records shows to the satisfaction of the executive director that the records would divulge trade secrets if made public, the commission shall consider the copied records confidential.

(c) Subsection (b) does not require the commission to consider the composition or characteristics of solid waste being processed, stored, disposed of, or otherwise handled to be held confidential.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.039. CONSTRUCTION OF OTHER LAWS. Except as specifically provided by this chapter, this chapter does not diminish or limit the authority of the commission, the Department of State Health Services, or a local government in performing the powers, functions, and duties vested in those governmental entities by other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.36, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0890, eff. April 2, 2015.

Sec. 361.040. TREATMENT OF STEEL SLAG AS SOLID WASTE. The commission may not consider steel slag as solid waste if the steel slag is:

(1) an intended output or result of the use of an electric arc furnace to make steel;

(2) introduced into the stream of commerce; and

(3) managed as an item of commercial value, including through a controlled use in a manner constituting disposal, and not as discarded material.

Added by Acts 2015, 84th Leg., R.S., Ch. 786 (H.B. 2598), Sec. 1, eff. September 1, 2015.

Sec. 361.041. TREATMENT OF POST-USE POLYMERS AND RECOVERABLE FEEDSTOCKS AS SOLID WASTE. (a) The commission may not consider post-use polymers or recoverable feedstock to be solid waste if they are converted using pyrolysis, gasification, solvolysis, or depolymerization into valuable raw materials or valuable intermediate or final products, including plastic monomers, chemicals, waxes, lubricants, or chemical feedstocks.

(b) The recycling and reuse of post-use polymers and recoverable feedstocks classified as hazardous waste under federal law are subject to the federal hazardous waste recycling requirements.

Added by Acts 2019, 86th Leg., R.S., Ch. 48 (H.B. 1953), Sec. 2, eff. May 17, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 237 (H.B. 3060), Sec. 3, eff. May 27, 2023.

SUBCHAPTER C. PERMITS

Sec. 361.061. PERMITS; SOLID WASTE FACILITY. Except as provided by Section 361.090 with respect to certain industrial solid waste, the commission may require and issue permits authorizing and governing the construction, operation, and maintenance of the solid waste facilities used to store, process, or dispose of solid waste under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.37, eff. Sept. 1, 1995.

Sec. 361.062. COMPATIBILITY WITH COUNTY'S PLAN. (a) Before the commission issues a permit to construct, operate, or maintain a solid waste facility to process, store, or dispose of solid waste in a county that has a local solid waste management plan approved by the commission under Chapter 363 (Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act), the commission must consider whether the solid waste facility and the proposed site for the facility are compatible with the county's approved local

solid waste management plan.

(b) Until a local solid waste management plan is approved by the commission and adopted by rule, the commission may not consider the plan and its contents in the review of an application for a solid waste facility permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.37, eff. Sept. 1, 1995.

Sec. 361.063. PREAPPLICATION LOCAL REVIEW COMMITTEE PROCESS. (a) The commission shall encourage applicants for solid waste facilities or for hazardous waste management facilities to enter into agreements with affected persons to resolve issues of concern. During this process, persons are encouraged to identify issues of concern and work with the applicant to resolve those issues.

(b) The agreement shall be made through participation in a local review committee process that includes a good faith effort to identify issues of concern, describe them to the applicant, and attempt to resolve those issues before the hearing on the permit application begins. A person is not required to be a local review committee member to participate in a local review committee process.

(c) If an applicant decides to participate in a local review committee process, the applicant must file with the commission a notice of intent to file an application, setting forth the proposed location and type of hazardous waste management facility. A copy of the notice shall be delivered to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall be delivered to the mayor of the municipality. The filing of the notice with the commission initiates the preapplication review process.

(d) Not later than the 15th day after the date the notice of intent is filed under Subsection (c), the local review committee shall be appointed. The commission shall adopt rules concerning the composition and appointment of a local review committee.

(e) The local review committee shall meet not later than the 21st day after the date the notice of intent is filed under Subsection (c). The preapplication review process must continue for 90 days unless the process is shortened or lengthened by agreement

between the applicant and the local review committee.

(f) The commission, as appropriate, may award to a person, other than the applicant, who has participated in the local review committee process under this section concerning an application for a hazardous waste management facility all or a part of the person's reasonable costs for technical studies and reports and expert witnesses associated with the presentation of evidence at the public hearing concerning issues that are raised by the person in the local review committee process and that are unresolved at the beginning of the hearing on the permit application. The total amount of awards granted to all persons under this subsection concerning an application may not exceed $25,000. In determining the appropriateness of the award, the commission shall consider whether:

(1) the evidence or analysis provided by the studies, reports, and witnesses is significant to the evaluation of the application;

(2) the evidence or analysis would otherwise not have been provided in the proceeding; and

(3) the local review committee was established in accordance with commission rules.

(g) Except as provided by Subsection (k), if an applicant has not entered into a local review committee process, the commission, in determining the appropriateness of an award of costs under Subsection (f), shall waive any requirement that the person affected has participated in a local review committee process.

(h) Except as provided by Subsection (k), costs awarded by the commission under Subsection (f) are assessed against the applicant. Rules shall be adopted for the award of those costs. Judicial review of an award of costs is under the substantial evidence rule as provided by Chapter 2001, Government Code.

(i) A local review committee shall:

(1) interact with the applicant in a structured manner during the preapplication review stage of the permitting process and, if necessary, during the technical review stage of the permitting process to raise and attempt to resolve both technical and nontechnical issues of concern; and

(2) produce a fact-finding report documenting resolved and unresolved issues and unanswered questions.

(j) The applicant must submit the report required under Subsection (i)(2) to the commission with its permit application.

(k) If an applicant, after reasonable efforts to determine if local opposition exists to its proposed facility, including discussing the proposed facility with the county judge and other elected officials, does not enter into a local review committee process because of no apparent opposition or because a local review committee is not established despite the applicant's good faith efforts, costs may not be assessed against the applicant under Subsection (f).

(l) This section does not apply to:

(1) a solid waste or hazardous waste management facility for which an application was filed, or that was authorized to operate, as of September 1, 1985;

(2) amendments to applications that were pending on September 1, 1987; or

(3) changes in waste storage or processing operations at existing sites at which waste management activities were being conducted on September 1, 1987.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.38, eff. Sept. 1, 1995.

Sec. 361.0635. PREAPPLICATION MEETING. (a) If requested by a person who intends to file a permit application, the commission shall provide the person an opportunity to meet with one or more staff members of the commission to discuss the permit application that the person intends to file.

(b) The person must make the request in writing to the commission.

(c) A meeting under this section must be held before the person files the permit application with the commission.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 10, eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.39, eff. Sept. 1, 1995.

Sec. 361.064. PERMIT APPLICATION FORM AND PROCEDURES. (a) If the commission exercises the power to issue permits for solid waste facilities under this subchapter, the commission, to the extent not

otherwise provided by this subchapter, shall prescribe:

(1) the form of and reasonable requirements for the permit application; and

(2) the procedures for processing the application.

(b) The commission shall provide a thorough and timely review of and a timely issuance or denial of any permit application for a solid waste management facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 11, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.39, eff. Sept. 1, 1995.

Sec. 361.0641. NOTICE TO STATE SENATOR AND REPRESENTATIVE. On receiving an application for, or notice of intent to file an application for, a permit to construct, operate, or maintain a facility to store, process, or dispose of solid waste or hazardous waste, the commission shall send notice of the application or the notice of intent to the state senator and representative who represent the area in which the facility is or will be located.

Added by Acts 1991, 72nd Leg., ch. 236, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.39, eff. Sept. 1, 1995.

Sec. 361.066. SUBMISSION OF ADMINISTRATIVELY COMPLETE PERMIT APPLICATION. (a) An applicant must submit any portion of an application that the commission determines is necessary to make the application administratively complete not later than the deadline set by the commission under Subsection (c).

(b) If an applicant does not submit an administratively complete application as required by this section, the application is considered withdrawn, unless there are extenuating circumstances.

(c) The commission by rule shall establish a deadline for the submission of additional information or material after the applicant receives notice from the commission that the information or material is needed to make the application administratively complete.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 11.40, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 570, Sec. 1, eff. Sept. 1, 1999.

Sec. 361.0665. NOTICE OF INTENT TO OBTAIN MUNICIPAL SOLID WASTE PERMIT. (a) A person who applies for a municipal solid waste permit shall publish notice of intent to obtain a permit under this chapter at least once in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located.

(b) Notice must include:

(1) a description of the location or proposed location of the facility;

(2) a statement that a person who may be affected by the facility or proposed facility is entitled to request a hearing from the commission;

(3) the manner in which the commission may be contacted for further information; and

(4) any other information that the commission by rule requires.

(c) If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located as defined by commission rule.

(d) In addition, the commission shall publish notice in the Texas Register.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 13(a), eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.41, eff. Sept. 1, 1995.

Sec. 361.0666. PUBLIC MEETING AND NOTICE FOR SOLID WASTE FACILITIES. (a) An applicant for a permit under this chapter for a new facility that accepts municipal solid wastes may hold a public meeting in the county in which the proposed facility is to be located.

(b) The applicant shall publish notice of the public meeting at

least once each week during the three weeks preceding the meeting. The notice must be published in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county.

(c) The applicant shall present to the commission an affidavit certifying that the notice was published as required by Subsection (b). The commission's acceptance of the affidavit raises a presumption that the applicant has complied with Subsection (b).

(d) The published notice may not be smaller than 96.8 square centimeters or 15 square inches, with the shortest dimension not less than 7.5 centimeters or 3 inches. The notice must contain at least the following information:

(1) the permit application number;

(2) the applicant's name;

(3) the proposed location of the facility; and

(4) the location and availability of copies of the application.

(e) The applicant shall pay the cost of the notice required under this section. The commission by rule may establish a procedure for payment of those costs.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 2.01, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 582 (H.B. 1609), Sec. 1, eff. September 1, 2005.

Sec. 361.067. REVIEW OF PERMIT APPLICATION BY OTHER GOVERNMENTAL ENTITIES. (a) If the commission determines that a permit application submitted to it is administratively complete, it shall mail a copy of the application or a summary of its contents to:

(1) the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located; and

(2) the county judge and the health authority of the county in which the facility is located.

(b) A governmental entity to whom the information is mailed

shall have a reasonable time, as prescribed by the commission, to present comments and recommendations on the permit application before the commission acts on the application.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.42, eff. Sept. 1, 1995.

Sec. 361.0675. APPLICATION FEE FOR PERMIT FOR MUNICIPAL SOLID WASTE FACILITY. The commission shall charge an applicant for a permit for a municipal solid waste facility an application fee of $2,000.

Added by Acts 2019, 86th Leg., R.S., Ch. 175 (H.B. 1331), Sec. 1, eff. September 1, 2019.

Sec. 361.068. ADMINISTRATIVELY COMPLETE APPLICATION. (a) A permit application is administratively complete when:

(1) a complete permit application form and the report and fees required to be submitted with a permit application have been submitted to the commission; and

(2) the permit application is ready for technical review in accordance with the rules of the commission.

(b) Once a determination that an application is administratively and technically complete has been made and the permit application has become the subject of a contested case under Section 2001.003, Government Code:

(1) the commission may not revoke the determination that an application is administratively or technically complete;

(2) the commission may request additional information from the applicant only if the information is necessary to clarify, modify, or supplement previously submitted material provided that all parties may engage in discovery against all other parties, as provided by applicable law; and

(3) a request for additional information does not render the application incomplete.

(c) Subsection (b) does not:

(1) preclude an informal disposition of a contested case by stipulation, agreed settlement, consent order, or default; or

(2) restrict the right of any party to conduct discovery

against any applicable party under other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 1044, Sec. 1, eff. June 20, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(62), 11.43, eff. Sept. 1, 1995.

Sec. 361.069. DETERMINATION OF LAND USE COMPATIBILITY. The commission in its discretion may, in processing a permit application, make a separate determination on the question of land use compatibility, and, if the site location is acceptable, may at another time consider other technical matters concerning the application. A public hearing may be held for each determination in accordance with Section 361.088. In making a determination on the question of land use compatibility, the commission shall not consider the position of a state or federal agency unless the position is fully supported by credible evidence from that agency during the public hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 802, Sec. 6, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.44, eff. Sept. 1, 1995.

Sec. 361.078. MAINTENANCE OF STATE PROGRAM AUTHORIZATION UNDER FEDERAL LAW. This subchapter does not abridge, modify, or restrict the authority of the commission to adopt rules under Subchapters B and C, to issue permits and to enforce the terms and conditions of the permits, concerning hazardous waste management to the extent necessary for the commission to receive and maintain state program authorization under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.079. NOTICE CONCERNING RECEIPT OF PERMIT APPLICATION; HEARING PROCEDURES. (a) Except as provided by Sections 361.080(b) and 361.081(c), the commission by rule shall establish procedures for public notice and a public hearing under Section 361.080 or 361.081.

(b) The hearings shall be conducted in accordance with the hearing rules and the applicable provisions of Chapter 2001, Government Code.

(c) To improve the timeliness of notice to the public of a public hearing under Section 361.080 or 361.081, public notice of receipt of the permit application shall be provided at the time a permit application is submitted to the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 13(b), eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, Sec. 1.03, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.45, eff. Sept. 1, 1995.

Sec. 361.0791. PUBLIC MEETING AND NOTICE REQUIREMENT. (a) Notwithstanding other law, the commission may hold a public meeting on an application for a new hazardous waste management facility in the county in which the proposed hazardous waste management facility is to be located. The commission may hold a public meeting on an application for a Class 3 modification or a major amendment to an existing facility's hazardous waste permit.

(b) Notwithstanding other law, the commission may hold a public meeting on an application for a new municipal solid waste management facility in the county in which the proposed municipal solid waste management facility is to be located.

(c) A public meeting held as part of a local review process under Section 361.063 meets the requirement of Subsection (a) or (b) if notice is provided as required by this section.

(d) A public meeting under this section is not a contested case hearing under Chapter 2001, Government Code.

(e) If a meeting is required under Subsection (a), not less than once each week during the three weeks preceding a public meeting, the applicant shall publish notice of the meeting in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The applicant shall provide the commission an affidavit certifying that the notice was given as required by this section. Acceptance of the affidavit creates a

rebuttable presumption that the applicant has complied with this section.

(f) The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches and shall contain, at a minimum, the following information:

(1) the permit application number;

(2) the applicant's name;

(3) the proposed location of the facility; and

(4) the location and availability of copies of the permit application.

(g) The applicant shall pay the cost of notice required to be provided under this section. The commission by rule may establish procedures for payment of those costs.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.04, eff. June 7, 1991. Amended by Acts 1993, 73rd Leg., ch. 802, Sec. 3, eff. June 18, 1993; Acts 1993, 73rd Leg., ch. 1044, Sec. 3, eff. June 20, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.46, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 582 (H.B. 1609), Sec. 2, eff. September 1, 2005.

Sec. 361.080. HEARING CONCERNING PERMIT APPLICATION FOR HAZARDOUS INDUSTRIAL SOLID WASTE FACILITY. (a) A hearing on an application for a permit concerning a hazardous industrial solid waste facility must include one session held in the county in which the facility is located.

(b) Notice for a hearing session held under this section shall be provided in accordance with Section 361.0791.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.05, eff. June 7, 1991.

Sec. 361.081. NOTICE OF HEARING CONCERNING APPLICATION FOR A SOLID WASTE FACILITY. (a) The commission shall require the applicant to mail notice to each residential or business address located within one-half mile of a new solid waste management facility and to each owner of real property located within one-half mile of a

new solid waste management facility listed in the real property appraisal records of the appraisal district in which the solid waste management facility is sought to be permitted as of the date the commission determines the permit application is administratively complete. The notice must be sent by mail and must be deposited with the United States postal service not more than 45 days or less than 30 days before the date of the hearing.

(b) The applicant must certify to the commission that the mailings were deposited as required by Subsection (a). Acceptance of the certification creates a rebuttable presumption that the applicant has complied with this section. Substantial compliance with the notice requirements of Subsection (a) is sufficient for the commission to exercise jurisdiction over an application for a solid waste facility.

(c) In addition to the requirements of Subsection (a), the commission shall hold a public meeting and the applicant shall give notice concerning the application for a permit for a new hazardous waste management facility as provided by Section 361.0791.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 13(c), eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, Sec. 1.06, eff. June 7, 1991; Acts 1993, 73rd Leg., ch. 802, Sec. 4, eff. June 18, 1993; Acts 1993, 73rd Leg., ch. 1044, Sec. 4, eff. June 20, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.47, eff. Sept. 1, 1995.

Sec. 361.082. APPLICATION FOR HAZARDOUS WASTE PERMIT; NOTICE AND HEARING. (a) A person may not process, store, or dispose of hazardous waste without having first obtained a hazardous waste permit issued by the commission.

(b) On its own motion or the request of a person affected, the commission may hold a public hearing on an application for a hazardous waste permit in accordance with this subchapter.

(c) The commission by rule shall establish procedures for public notice and public hearing. At a minimum, the rules shall include the public notice requirements set forth in Section 361.081.

(d) In addition to the hearing held under this section, the commission may hold a public meeting and the applicant shall give notice as provided by Section 361.0791.

(e) The commission may include any requirement in the permit for remedial action by the applicant that the commission determines is necessary to protect the public health and safety and the environment.

(f) An owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application in accordance with commission rules may continue to process, store, or dispose of hazardous waste until the commission approves or denies the application, except as provided by Section 361.110 or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by United States Environmental Protection Agency or commission rules relative to termination of interim status.

(g) On request under Section 361.082 by a person affected for a hearing on the permit application, the applicant for a permit for a new hazardous waste management facility shall furnish a bond or other financial assurance authorized by the commission to guarantee payment of the costs of a person affected who provides information to the commission on the question of the issuance of the permit and who is entitled to those costs under an order made as provided by Section 361.0833. For applications involving commercial hazardous waste management facilities, the bond or other financial assurance must be in the amount of $100,000. For applications that do not involve commercial hazardous waste management facilities, the bond or other financial assurance must be in the amount of $20,000.

(h) Nothing in this section limits the authority of the commission, consistent with federal law, to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.07, eff. June 7, 1991; Acts 2001, 77th Leg., ch. 965, Sec. 5.06, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 582 (H.B. 1609), Sec. 3, eff. September 1, 2005.

Sec. 361.083. EVIDENCE OF NOTICE OF HEARING. (a) Before the commission may hear testimony in a contested case, evidence must be placed in the record to show that proper notice of the hearing was given to affected persons.

(b) If mailed notice to an affected person is required, the commission or other party to the hearing shall place evidence in the record that notice was mailed to the affected person's address as shown by the appropriate appraisal district real property appraisal records at the time of the mailing.

(c) The affidavit of the commission employee responsible for the mailing of the notice, attesting that the notice was mailed to the address shown by the appraisal district real property appraisal records at the time of mailing, is prima facie evidence of proper mailing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 14, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.47, eff. Sept. 1, 1995.

Sec. 361.0831. EX PARTE CONTACTS PROHIBITED. (a) Unless required for the disposition of ex parte matters authorized by law, or unless permitted by Section 2001.061, Government Code, a hearings examiner may not communicate, directly or indirectly, with any employee of the commission, any commissioner, or any party to a hearing conducted by the commission in connection with any issue of fact or law pertaining to a contested case in which the commission or party is involved.

(b) Except for communications allowed under Subsection (a), an employee of the commission, a commissioner, or a party to a hearing conducted by the commission may not attempt to influence the finding of facts or the application of law or rules by a hearings examiner except by proper evidence, pleadings, and legal argument with notice and opportunity for all parties to participate.

(c) If a prohibited contact is made, the hearings examiner shall notify all parties with a summary of that contact and notice of their opportunity to respond and shall give all parties an

opportunity to respond.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.08, eff. June 7, 1991. Amended by Acts 1993, 73rd Leg., ch. 177, Sec. 1, eff. May 17, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(56), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 106, Sec. 6, eff. Sept. 1, 1995.

Sec. 361.0832. PROPOSAL FOR DECISION; CERTIFIED ISSUES; REVERSAL BY COMMISSION. (a) After hearing evidence and receiving legal arguments, a hearings examiner shall make findings of fact, conclusions of law, and any ultimate findings required by statute, all of which shall be separately stated. The hearings examiner shall make a proposal for decision to the commission and shall serve the proposal for decision on all parties. The commission shall consider and act on the proposal for decision.

(b) If a contested case involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law, a hearings examiner, on joint motion of all parties or sua sponte, may certify those policy issues to the commission. A certification request must contain a statement of the policy issue to be determined and a statement of all relevant facts sufficient to show fully the nature of the controversy. The commission may receive written or oral statements from parties to the hearing or the hearings examiner on the policy issue certified. The commission must answer policy issues not later than the 60th day after the date of certification or, in its discretion, may decline to answer. If the commission fails to answer a policy issue within that period, the commission shall be deemed to have declined to answer. The hearings examiner shall proceed with the contested case and make a proposal for decision as required by Subsection (a).

(c) The commission may overturn an underlying finding of fact that serves as the basis for a decision in a contested case only if the commission finds that the finding was not supported by the great weight of the evidence.

(d) The commission may overturn a conclusion of law in a contested case only on the grounds that the conclusion was clearly erroneous in light of precedent and applicable rules.

(e) If a decision in a contested case involves an ultimate

finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law, the commission may reject a proposal for decision as to the ultimate finding for reasons of policy only.

(f) The commission shall issue written rulings, orders, or decisions in all contested cases and shall fully explain in a ruling, order, or decision the reasoning and grounds for overturning each finding of fact or conclusion of law or for rejecting any proposal for decision on an ultimate finding.

(g) To the extent of a conflict between this section and Section 2001.058(e), Government Code, this section controls.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.08, eff. June 7, 1991. Amended by Acts 1995, 74th Leg., ch. 106, Sec. 7, eff. Sept. 1, 1995.

Sec. 361.0833. COSTS FOR INFORMATION PROVIDED BY A PERSON AFFECTED REGARDING HAZARDOUS WASTE PERMIT. (a) After considering the factors in Subsection (e), the commission may order the applicant for a permit for a new hazardous waste management facility to pay reasonable costs incurred by a person affected in presenting information set out in Subsection (b) to the commission on the question of the issuance of the permit.

(b) Information for which an award of costs under Subsection (a) may be made includes:

(1) technical studies of the area in which the new hazardous waste facility is proposed to be located;

(2) expert testimony given at a hearing on the permit application; and

(3) surveys of land use and potential use in the hazardous waste facility area.

(c) The commission may order the applicant for a permit for a new hazardous waste management facility to pay reasonable costs incurred by a person affected who presented information to the commission at a hearing showing that the applicant:

(1) knowingly made false or misleading statements in the application;

(2) knowingly made false or misleading statements during the hearing; or

(3) failed to present information that the applicant had in

its possession that would have materially affected the issues of fact and law on which the decision of the commission was based.

(d) The total costs awarded to all persons affected under Subsection (a) may not exceed $100,000 for a new commercial hazardous waste management facility or $20,000 for a new noncommercial hazardous waste management facility. The total costs awarded to all persons affected under Subsection (c) may not exceed $150,000 for a new commercial hazardous waste management facility or $30,000 for a new noncommercial hazardous waste management facility.

(e) In determining the appropriateness of an award under Subsection (a) or (c), the commission shall consider:

(1) whether the information provided is material to the commission's determination to deny the permit or to require the applicant to make significant changes in the facility's design or operation; and

(2) whether the information would otherwise not have been presented to the commission while the commission is considering its decision.

(f) If the applicant fails or refuses to pay the amount of costs ordered not later than the 30th day after the date of entry of the final order granting payment of costs, the commission shall order the applicant's bond or other financial assurance forfeited in the amount of the costs ordered reimbursed under Subsection (a) or (c) up to and including the full amount of the bond or other financial assurance. The commission shall forward the forfeited amount to the person affected.

(g) If no request is made for an award of costs under this section or if a person affected is determined by the commission not to be entitled to an award of costs, the commission shall release the bond or other financial assurance of the applicant subject to an appeal of the denial of costs under this section. The commission shall also release the bond or other financial assurance on presentation of proof that the costs awarded have been paid.

(h) An order issued under this section is enforceable as a debt.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.09, eff. June 7, 1991.

Sec. 361.084. COMPLIANCE SUMMARIES. (a) The commission by

rule shall establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities in accordance with the method for evaluating compliance history developed by the commission under Section 5.754, Water Code. A compliance summary shall include as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the authorization is sought. In this subsection, "environmental management system" has the meaning assigned by Section 5.127, Water Code.

(b) The compliance summaries shall be made available to the applicant and any interested person after the commission has completed its technical review of the permit application and before the issuance of the public notice concerning an opportunity for a hearing on the permit application.

(c) Evidence of compliance or noncompliance by an applicant for a solid waste management facility permit with agency rules, permits, other orders, or evidence of a final determination of noncompliance with federal statutes or statutes of any state concerning solid waste management may be:

(1) offered by a party at a hearing concerning the application; and

(2) admitted into evidence subject to applicable rules of evidence.

(d) The commission shall consider all evidence admitted, including compliance history, in determining whether to issue, amend, extend, or renew a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.10, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.48, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1161, Sec. 5, eff. Sept. 1, 2001.

Sec. 361.085. FINANCIAL ASSURANCE AND DISCLOSURE BY PERMIT APPLICANT. (a) Before a permit may be issued, amended, transferred, extended, or renewed for a hazardous waste management facility, the commission shall require as a part of each application information it deems necessary to demonstrate that an applicant has sufficient

financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including how an applicant intends to obtain financing for construction of the facility, and to close the facility in accordance with applicable rules. That information may include balance sheets, financial statements, and disclosure of relevant information regarding investors and stockholders, or information required by Title 40, Code of Federal Regulations, Part 264, Subpart H. If the information would be considered confidential under applicable law, the commission shall protect the information accordingly. During hearings on contested applications, the commission may allow disclosure of confidential information only under an appropriate protective order.

(b) The commission may order a party in a contested case permit hearing to provide:

(1) the identity of any known competitor of the applicant that has provided funding to the party for its participation in the hearing; and

(2) the amount of that funding.

(c) Before a permit may be issued, amended, extended, or renewed for a solid waste facility to store, process, or dispose of hazardous waste, the commission shall determine the type or types of financial assurance that may be given by the applicant to comply with rules adopted by the commission requiring financial assurance.

(d) Before hazardous waste may be received for storage, processing, or disposal at a solid waste facility for which a permit is issued, amended, extended, or renewed, the commission shall require the permit holder to execute the required financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

(e) The commission may condition issuance, amendment, extension, or renewal of a permit for a solid waste facility, other than a solid waste facility for disposal of hazardous waste, on the permit holder's executing a bond or giving other financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

(f) The commission shall require an assurance of financial responsibility as may be necessary or desirable consistent with the degree and duration of risks associated with the processing, storage, or disposal of specified solid waste.

(g) Financial requirements established by the commission must

at a minimum be consistent with the federal requirements established under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(h) The commission may:

(1) receive funds as the beneficiary of a financial assurance arrangement established under this section for the proper closure of a solid waste management facility; and

(2) spend the funds from the financial assurance arrangement to close the facility.

(i) If liability insurance is required of an applicant, the applicant may not use a claims made policy as security unless the applicant places in escrow, as provided by the commission, an amount sufficient to pay an additional year of premiums for renewal of the policy by the state on notice of termination of coverage.

(j) In addition to other forms of financial assurance authorized by rules of the commission, the commission may authorize the applicant to use a letter of credit if the issuing institution or another institution that guarantees payment under the letter is:

(1) a bank chartered by the state or the federal government; and

(2) federally insured and its financial practices are regulated by the state or the federal government.

(k) The commission may require financial assurance as a condition of issuing a permit or registration for the collection, transportation, or processing of grit trap waste or grease trap waste. The amount of financial assurance required must be consistent with the degree and duration of risk associated with the type of waste authorized to be collected, transported, or processed.

(l) If the commission requires financial assurance as a condition of a permit or registration under Subsection (k), provision of that financial assurance also satisfies any requirement for financial assurance under Chapter 368.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.12, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.49, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 591, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.0855. DEMONSTRATION OF FINANCIAL ASSURANCE. (a) In this section:

(1) "Bonds" means financial obligations issued by a local government, including general obligation bonds, revenue bonds, and certificates of obligation.

(2) "Local government" includes:

(A) a local government corporation created under Chapter 431, Transportation Code, to act on behalf of a local government; and

(B) a conservation and reclamation district created under Section 59, Article XVI, Texas Constitution.

(b) Notwithstanding any requirement of the commission for the demonstration of financial assurance, a local government that owns or operates a municipal solid waste landfill facility regulated by this chapter is considered to have satisfied all requirements of the commission for the demonstration of financial assurance in relation to closure, post closure, or corrective action, if the local government:

(1) establishes and passes a financial test in accordance with commission rules; and

(2) demonstrates that the outstanding bonds of the local government that are not secured by insurance, a letter of credit, or any other collateral or guarantee have a current rating of AAA, AA, A, or BBB as determined by Standard and Poor's or Aaa, Aa, A, or Baa as determined by Moody's.

(c) A local government must demonstrate financial assurance under this section:

(1) before the date of the initial receipt of waste at the facility; or

(2) as soon as practicable if, on the effective date of this section, the facility was in operation and had received waste.

Added by Acts 2005, 79th Leg., Ch. 154 (H.B. 2131), Sec. 1, eff. May 24, 2005.

Sec. 361.086. SEPARATE PERMIT FOR EACH FACILITY. (a) Except as provided by Subsection (d), a separate permit is required for each solid waste facility.

(b) A permit under this subchapter may be issued only to the

person in whose name the application is made and only for the facility described by the permit.

(c) A permit may not be transferred without first giving written notice to and receiving written approval of the agency that issued the permit.

(d) A separate permit is not required for activities authorized by a general permit issued under Section 27.025, Water Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 901 (H.B. 2654), Sec. 5, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.002(10), eff. September 1, 2009.

Sec. 361.0861. SEPARATE RECYCLING OR RECOVERY PERMIT NOT REQUIRED. (a) A permit holder or a municipal solid waste management facility that has or plans to have a recycling, waste separation, energy and material recovery, or gas recovery or transfer facility established in conjunction with the permitted municipal solid waste management facility is not required to obtain for that recycling, waste separation, energy and material recovery, or gas recovery or transfer facility a separate permit from the commission or to apply for an amendment to an existing permit issued by the commission.

(b) A facility to which this section applies must register with the commission in accordance with commission rules and comply with commission rules adopted under this chapter.

(c) If a permit is otherwise required, the commission shall expedite the permit proceeding if the applicant is seeking a permit for a solid waste management facility that employs an innovative, high technology method of waste disposition and recycling.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 15, eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.50, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 987, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.087. CONTENTS OF PERMIT. A permit issued under this subchapter must include:

(1) the name and address of each person who owns the land on which the solid waste facility is located and the person who is or will be the operator or person in charge of the facility;

(2) a legal description of the land on which the facility is located; and

(3) the terms and conditions on which the permit is issued, including the duration of the permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.0871. EVALUATION OF WASTE STREAM; LAND USE AND NEED. (a) Before a permit may be issued for a new hazardous waste management facility or amended to provide for capacity expansion, the applicant shall identify the nature of any known specific and potential sources, types, and volumes of waste to be stored, processed, or disposed of by the facility and shall identify any other related information the commission may require.

(b) In evaluating a permit for a new hazardous waste management facility, the commission shall assess the impact of the proposed facility on local land use in the area, including any relevant land use plans in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed. In determining whether a new hazardous waste management facility is compatible with local land use, the commission shall consider, at a minimum, the location of industrial and other waste-generating facilities in the area, the amounts of hazardous waste generated by those facilities, and the risks associated with the transportation of hazardous waste to the facility. If the commission determines that a proposed application is not compatible with local land use, it may deny the permit. The commission shall adopt rules to implement this subsection.

(c) Repealed by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.04(a).

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.13, eff. June 7, 1991. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.04(a), eff. Jan. 11, 2004.

Sec. 361.088. PERMIT ISSUANCE, AMENDMENT, EXTENSION AND RENEWAL; NOTICE AND HEARING. (a) The commission may amend, extend, or renew a permit it issues in accordance with reasonable procedures prescribed by the commission.

(b) The procedures prescribed by Section 361.067 for a permit application apply to an application to amend, extend, or renew a permit.

(c) Except as provided by Subsection (e), before a permit is issued, amended, extended, or renewed, the commission shall provide an opportunity for a hearing to the applicant and persons affected. The commission may also hold a hearing on its own motion.

(d) In addition to providing an opportunity for a hearing held under this section, the commission shall hold a public meeting and give notice as provided by Section 361.0791.

(e) After complying with Sections 5.552-5.555, Water Code, the commission, without providing an opportunity for a contested case hearing, may act on an application to renew a permit for:

(1) storage of hazardous waste in containers, tanks, or other closed vessels if the waste:

(A) was generated on-site; and

(B) does not include waste generated from other waste transported to the site; and

(2) processing of hazardous waste if:

(A) the waste was generated on-site;

(B) the waste does not include waste generated from other waste transported to the site; and

(C) the processing does not include thermal processing.

(f) Notwithstanding Subsection (e), if the commission determines that an applicant's compliance history under the method for evaluating compliance history developed by the commission under Section 5.754, Water Code, raises an issue regarding the applicant's ability to comply with a material term of its permit, the commission shall provide an opportunity to request a contested case hearing.

(g) The commission shall review a permit issued under this chapter every five years to assess the permit holder's compliance history.

(h) Before a permit for a proposed municipal solid waste management facility is issued, amended, extended, or renewed, the commission shall inspect the facility or site used or proposed to be used to store, process, or dispose of municipal solid waste to

confirm information included in the permit application. The commission by rule shall prescribe the kinds of information in a permit application that require confirmation under this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.14, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.51, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1350, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 4.05, 16.11, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 369 (H.B. 1435), Sec. 1, eff. September 1, 2019.

Sec. 361.0885. DENIAL OF APPLICATION; INVOLVEMENT OF FORMER EMPLOYEE. (a) After providing an opportunity for a hearing to an applicant, the state agency shall deny an application for the issuance, amendment, renewal, or transfer of a permit within its jurisdiction and may not issue, amend, renew, or transfer the permit if the state agency determines that a former employee:

(1) participated personally and substantially as a former employee in the state agency's review, evaluation, or processing of that application before leaving employment with the state agency; and

(2) after leaving employment with the state agency, provided assistance on the same application for the issuance, amendment, renewal, or transfer of a permit, including assistance with preparation or presentation of the application or legal representation of the applicant.

(b) Action taken under this section does not prejudice any application in which the former employee did not provide assistance.

(c) In this section, "former employee" means a person:

(1) who was previously employed by the state agency as a supervisory or exempt employee; and

(2) whose duties during employment with that state agency included involvement in or supervision of that state agency's review, evaluation, or processing of applications.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 16, eff. Sept. 6, 1990.

Sec. 361.089. PERMIT DENIAL OR AMENDMENT; NOTICE AND HEARING. (a) The commission may, for good cause, deny or amend a permit it issues or has authority to issue for reasons pertaining to public health, air or water pollution, or land use, or for having a compliance history that is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections.

(b) Except as provided by Section 361.110, the commission shall notify each governmental entity listed under Section 361.067 and provide an opportunity for a hearing to the permit holder or applicant and persons affected. The commission may also hold a hearing on its own motion.

(c) The commission by rule shall establish procedures for public notice and any public hearing under this section.

(d) Hearings under this section shall be conducted in accordance with the hearing rules adopted by the commission and the applicable provisions of Chapter 2001, Government Code.

(e) The commission may deny an original or renewal permit if it is found, after notice and hearing, that:

(1) the applicant or permit holder has a compliance history that is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections;

(2) the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees;

(3) the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the commission; or

(4) the permit holder or applicant is unable to ensure that the management of the hazardous waste management facility conforms or will conform to this title and the rules of the commission.

(f) Before denying a permit under this section, the commission must find:

(1) that the applicant or permit holder has a compliance history that is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections; or

(2) that the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the commission.

(g) For purposes of this section, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20 percent of the permit holder or applicant and at least 20 percent of another business which operates a solid waste management facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.11, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.52, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 30, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 16.12, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.24, eff. September 1, 2011.

Sec. 361.0895. FACILITIES REQUIRED TO OBTAIN FEDERAL APPROVAL. For a commercial hazardous waste disposal well facility originally permitted by the commission after June 7, 1991, and which is required to obtain from the United States Environmental Protection Agency a variance from the federal land disposal restrictions before injecting permitted hazardous wastes:

(1) a permit or other authorization issued to the facility under this chapter is not subject to cancellation, amendment, modification, revocation, or denial of renewal because the permit holder has not commenced construction or operation of the facility; and

(2) the fixed term of each permit or other authorization issued to the facility under this chapter shall commence on the date physical construction of the authorized waste management facility begins.

Added by Acts 1997, 75th Leg., ch. 1211, Sec. 2, eff. Sept. 1, 1997.

Sec. 361.090. REGULATION AND PERMITTING OF CERTAIN INDUSTRIAL

SOLID WASTE DISPOSAL. (a) The commission may not require a permit under this chapter for the collection, handling, storage, processing, and disposal of industrial solid waste that is disposed of within the boundaries of a tract of land that is:

(1) owned or otherwise effectively controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; and

(2) located within 50 miles from the plant or operation that is the source of the industrial solid waste.

(b) This section does not apply to:

(1) waste collected, handled, stored, processed, or disposed of with solid waste from any other source or sources; or

(2) hazardous waste.

(c) This section does not change or limit any authority the commission may have concerning:

(1) the requirement of permits and the control of water quality, or otherwise, under Chapter 26, Water Code; or

(2) the authority under Section 361.303.

(d) The commission may adopt rules under Section 361.024 to control the collection, handling, storage, processing, and disposal of the industrial solid waste to which this section applies to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

(e) The commission may require a person who disposes or plans to dispose of industrial solid waste and claims to be exempt under this section to submit to the commission information that is reasonably required to enable the commission to determine if this section applies to the waste disposal activity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.0901. REGULATION AND PERMITTING OF CERTAIN COMMERCIAL INDUSTRIAL SOLID WASTE FACILITIES. (a) In this section:

(1) "Captured facility" has the meaning assigned by Section 361.131.

(2) "Commercial industrial solid waste facility" means any industrial solid waste facility that accepts industrial solid waste for a charge, but does not include a municipal solid waste facility,

a captured facility, or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(3) "Publicly owned treatment works" means any device or system used in the treatment, recycling, or reclamation of municipal sewage or industrial waste of a liquid nature that is owned by a state or by a municipality as defined by Section 502(4), Federal Water Pollution Control Act (33 U.S.C. Section 1362). The term includes a sewer, pipe, or other conveyance only if the sewer, pipe, or conveyance conveys wastewater to a publicly owned treatment works providing treatment.

(b) A commercial industrial solid waste facility may not receive industrial solid waste for discharge into a publicly owned treatment works facility without first obtaining from the commission a permit under this chapter or a permit under Chapter 26, Water Code.

(c) This section does not require a commercial industrial solid waste facility to obtain a permit for discharge into a publicly owned treatment works facility liquid wastes that are incidental to the handling, processing, storage, or disposal of solid wastes at a municipal solid waste facility or commercial industrial solid waste landfill facility.

Added by Acts 2005, 79th Leg., Ch. 362 (S.B. 1281), Sec. 1, eff. September 1, 2005.

Sec. 361.0905. REGULATION OF MEDICAL WASTE. (a) The commission is responsible under this section for the regulation of the handling, transportation, storage, and disposal of medical waste.

(b) The commission shall accomplish the purposes of this chapter by requiring a permit, registration, or other authorization for and otherwise regulating the handling, storage, disposal, and transportation of medical waste. The commission shall adopt rules as necessary to accomplish the purposes of this subchapter.

(c) The commission has the powers and duties specifically prescribed by this chapter relating to medical waste regulation and all other powers necessary or convenient to carry out those responsibilities under this chapter.

(d) In matters relating to medical waste regulation, the commission shall consider water pollution control and water quality aspects, air pollution control and ambient air quality aspects, and

the protection of human health and safety.

(e) Rules adopted to regulate the operation of municipal solid waste storage and processing units apply in the same manner to medical waste only to the extent that the rules address:

(1) permit and registration requirements that can be made applicable to a facility that handles medical waste, including requirements related to:

(A) applications;

(B) site development;

(C) notice; and

(D) permit or registration duration and limits;

(2) minor modifications to permits and registrations, including changes in operating hours and buffer zones;

(3) the reconciliation of conflicting site operation plan provisions for a site that conducts activities that require a separate permit or authorization;

(4) waste acceptance and analysis;

(5) facility-generated waste, including wastewater and sludge;

(6) contaminated water management;

(7) on-site storage areas for source-separated or recyclable materials;

(8) the storage of waste:

(A) to prevent the waste from becoming a hazard, including a fire hazard, to human health or safety;

(B) to ensure the use of sufficient containers between collections; and

(C) to prevent the waste from becoming litter;

(9) closure requirements for storage and processing units;

(10) recordkeeping and reporting requirements, except for rules regarding the recordkeeping provisions required to justify the levels of recovered recycled products;

(11) fire protection;

(12) access control;

(13) unloading waste;

(14) spill prevention and control;

(15) operating hours;

(16) facility signage;

(17) control of litter, including windblown material;

(18) noise pollution and visual screening;

(19) capacity overloading and mechanical breakdown;

(20) sanitation, including employee sanitation facilities;

(21) ventilation and air pollution control, except as those rules apply to:

(A) process areas where putrescible waste is processed;

(B) the minimal air exposure for liquid waste; and

(C) the cleaning and maintenance of mobile waste processing unit equipment; and

(22) facility health and safety plans, including employee training in health and safety.

(f) Medical waste facilities, on-site treatment services and mobile treatment units that send treated medical waste and treated medical waste including sharps or residuals of sharps to a solid waste landfill must include a statement to the solid waste landfill that the shipment has been treated by an approved method in accordance with 25 T.A.C. Section 1.136 (relating to Approved Methods of Treatment and Disposition). Home generated wastes are exempted from this requirement.

(g) In a facility that handles medical waste processing or storage, the commission shall not require a minimum separating distance greater than 25 feet between the processing equipment or storage area, and the facility boundary owned or controlled by the owner or operator. A medical waste storage unit is not subject to this subsection, provided that medical waste contained in transport vehicles is refrigerated below 45 degrees if the waste is in the vehicle longer than 72 hours. The commission may consider alternatives to the buffer zone requirements of this subsection for permitted, registered, or otherwise authorized medical waste processing and storage facilities.

Added by Acts 2015, 84th Leg., R.S., Ch. 407 (H.B. 2244), Sec. 2, eff. June 10, 2015.

Sec. 361.091. ENCLOSED CONTAINERS OR VEHICLES; PERMITS; INSPECTIONS. (a) A municipal solid waste site or operation permitted as a Type IV landfill may not accept solid waste that is in a completely enclosed container or enclosed vehicle unless:

(1) the solid waste is transported on a route approved by the commission and designed to eliminate putrescible, hazardous, or

infectious waste;

(2) the solid waste is delivered to the site or operation on a date and time designated and approved by the commission to eliminate putrescible, hazardous, or infectious waste;

(3) the transporter possesses a special permit issued by the commission that includes the approved route, date, and time; and

(4) a commission inspector is present to verify that the solid waste is free of putrescible, hazardous, or infectious waste.

(b) The commission may issue the special permit under this section and charge a reasonable fee to cover the costs of the permit. The commission may adopt rules of procedure necessary to carry out the permit program.

(c) The commission may employ one or more inspectors and other employees necessary to inspect and determine if Type IV landfills are free of putrescible, hazardous, or infectious waste. The commission shall pay the compensation and expenses of inspectors and other necessary employees employed under this subsection, but the holders of Type IV landfill permits shall reimburse the commission for the compensation and expenses as provided by this section.

(d) The commission shall notify each holder of a Type IV landfill permit of the compensation and expenses that are required annually for the inspection of the landfills.

(e) The commission shall hold a public hearing to determine the apportionment of the administration costs of the inspection program among the holders of Type IV landfill permits. After the hearing, the commission shall equitably apportion the costs of the inspection program and issue an order assessing the annual costs against each permit holder. The commission may provide for payments in installments and shall specify the date by which each payment must be made to the commission.

(f) A holder of a permit issued under this section may not accept solid waste if the permit holder is delinquent in the payment of costs assessed under Subsection (e).

(g) The commission's order assessing costs is effective until the commission:

(1) modifies, revokes, or supersedes an order assessing costs with a subsequent order; or

(2) issues supplementary orders applicable to new Type IV landfill permits.

(h) The commission may adopt rules necessary to carry out this

section.

(i) This section does not apply to:

(1) a stationary compactor that is at a specific location and that has an annual permit under this section issued by the commission, on certification to the commission by the generator that the contents of the compactor are free of putrescible, hazardous, or infectious waste; or

(2) an enclosed vehicle of a municipality if the vehicle has a permit issued by the commission to transport brush or construction-demolition waste and rubbish on designated dates, on certification by the municipality to the commission that the contents of the vehicle are free of putrescible, hazardous, or infectious waste.

(j) In this section, "putrescible waste" means organic waste, such as garbage, wastewater treatment plant sludge, and grease trap waste, that may:

(1) be decomposed by microorganisms with sufficient rapidity as to cause odors or gases; or

(2) provide food for or attract birds, animals, or disease vectors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.53, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 31, eff. Sept. 1, 1997.

Sec. 361.092. REGISTRATION FOR EXTRACTING MATERIALS FROM CERTAIN SOLID WASTE FACILITIES. (a) The commission may require a registration to extract materials for energy and material recovery and for gas recovery from closed or inactive portions of a solid waste facility that has been used for disposal of municipal or industrial solid waste.

(b) The commission shall adopt standards necessary to ensure that the integrity of a solid waste facility is maintained.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.54, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 987, Sec. 2, eff. Sept. 1, 1995.

Sec. 361.093. REGULATION AND PERMITTING OF RENDERING PLANTS.

(a) A manufacturing or processing establishment, commonly known as a rendering plant, that processes waste materials originating from animals and from materials of vegetable origin, including animal parts and scraps, offal, paunch manure, and waste cooking grease of animal and vegetable origin, is subject to regulation under the industrial solid waste provisions of this chapter and may be regulated under Chapter 26, Water Code.

(b) If a rendering plant is owned by a person who operates the plant as an integral part of an establishment that manufactures or processes for animal or human consumption food derived wholly or partly from dead, slaughtered, or processed animals, the combined business may operate under a single permit issued under Chapter 26, Water Code.

(c) This section does not apply to a rendering plant in operation and production on or before August 27, 1973.

(d) In this section, "animals" includes only animals, poultry, and fish.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.094. PERMIT HOLDER EXEMPT FROM LOCAL LICENSE REQUIREMENTS. If a permit is issued, amended, renewed, or extended by the commission in accordance with this subchapter, the solid waste facility owner or operator does not need to obtain a license for the same facility from a political subdivision under Section 361.165 or from a county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.54, eff. Sept. 1, 1995.

Sec. 361.095. LOCAL PERMITS FOR HAZARDOUS WASTE MANAGEMENT AND MUNICIPAL SOLID WASTE FACILITIES. (a) An applicant for a permit under this subchapter is not:

(1) required to obtain a permit for the siting, construction, or operation of a hazardous waste management facility from a local government or other political subdivision of the state; or

(2) required to obtain a permit for the siting, construction, or operation of a municipal solid waste facility from a

local government or other political subdivision of the state as a prerequisite to a permit being issued by the commission.

(b) A local government or other political subdivision of the state may not adopt a rule, order, or ordinance that conflicts with or is inconsistent with:

(1) the requirements for hazardous waste management or municipal solid waste facilities as specified by:

(A) the rules of the commission; or

(B) a permit issued by the commission; or

(2) the requirements for municipal solid waste facilities under Section 361.011.

(c) In an action to enforce a rule, order, or ordinance of a local government or other political subdivision, the burden is on the facility owner or operator or on the applicant to demonstrate conflict or inconsistency with state requirements.

(d) The validity or applicability of a rule, order, or ordinance of a local government or other political subdivision may be determined in an action for declaratory judgment under Chapter 37, Civil Practice and Remedies Code, if it is alleged that the rule, order, or ordinance, or its threatened application, interferes with, impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff concerning an issued permit, an application for a permit, or the issuance of a permit for the siting, construction, or operation of a hazardous waste management or municipal solid waste facility.

(e) The local government or other political subdivision whose rule, order, or ordinance is being questioned shall be made a party to the action. The commission shall be given written notice by certified mail of the pendency of the action, and the commission may become a party to the action.

(f) A declaratory judgment may be rendered even if the plaintiff has requested the commission, the local government or political subdivision, or another court to determine the validity or applicability of the rule, order, or ordinance in question.

(g) This section may not be construed to prevent or limit the right of:

(1) a county or municipality to exercise the authority granted under Section 363.112 to prohibit the processing or disposal of municipal solid waste;

(2) a county to exercise the authority granted under

Section 364.012 to prohibit the disposal of municipal solid waste; or

(3) a local government or other political subdivision to adopt or enforce a rule, order, or ordinance under the authority of the National Flood Insurance Program governing permits or other approvals for the development of land in areas prone to floods or mudslides.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1005 (H.B. 1598), Sec. 1, eff. June 18, 2023.

Sec. 361.096. EFFECT ON AUTHORITY OF LOCAL GOVERNMENT OR OTHER POLITICAL SUBDIVISION. (a) Except as specifically provided by this chapter, this subchapter does not limit the powers and duties of a local government or other political subdivision of the state as conferred by this or other law.

(b) Sections 361.094 and 361.095 do not affect the power of a local government or other political subdivision to adopt or enforce building codes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.0961. RESTRICTIONS ON AUTHORITY OF LOCAL GOVERNMENT OR OTHER POLITICAL SUBDIVISION. (a) A local government or other political subdivision may not adopt an ordinance, rule, or regulation to:

(1) prohibit or restrict, for solid waste management purposes, the sale or use of a container or package in a manner not authorized by state law;

(2) prohibit or restrict the processing of solid waste by a solid waste facility, except for a solid waste facility owned by the local government, permitted by the commission for that purpose in a manner not authorized by state law; or

(3) assess a fee or deposit on the sale or use of a container or package.

(b) This section does not prevent a local government or other political subdivision from complying with federal or state law or regulation. A local government or other political subdivision may

take any action otherwise prohibited by this section in order to comply with federal requirements or to avoid federal or state penalties or fines.

(c) This section does not limit the authority of a local government to enact zoning ordinances.

Added by Acts 1993, 73rd Leg., ch. 1045, Sec. 12, eff. Sept. 1, 1993.

Sec. 361.097. CONDITION ON ISSUANCE OF PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITY. The commission by rule shall condition the issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on the selection of a facility site that reasonably minimizes possible contamination of surface water and groundwater.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.098. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE LANDFILL IN 100-YEAR FLOODPLAIN. (a) Except as provided by Subsections (b) and (c), the commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or an areal expansion of such a landfill if the landfill is to be located in the 100-year floodplain existing before site development, unless the landfill is to be located in an area with a flood depth of less than three feet.

(b) The commission by rule may allow an areal expansion of a landfill in a 100-year floodplain if it can be demonstrated to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(c) The commission by rule shall prohibit the issuance of a permit for a new commercial hazardous waste land disposal unit if the unit is to be located in a 100-year floodplain, unless the applicant can demonstrate to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(d) The commission by rule shall require an applicant to provide sufficient information to assure that a proposed hazardous

waste landfill, areal expansion of such landfill, or new commercial hazardous waste land disposal unit is not subject to inundation of a 100-year flood event. An applicant or any other party may not rely solely on floodplain maps prepared by the Federal Emergency Management Agency or a successor agency to determine whether a hazardous waste landfill, areal expansion of such landfill, or commercial hazardous waste land disposal unit is subject to such an inundation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.15, eff. June 7, 1991.

Sec. 361.099. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE MANAGEMENT UNIT IN WETLANDS. (a) The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management unit or an areal expansion of an existing hazardous waste management unit if the unit is to be located in wetlands, as defined by the commission.

(b) In this section and Section 361.100, "hazardous waste management unit" means a landfill, surface impoundment, land treatment facility, waste pile, or storage or processing facility used to manage hazardous waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.100. PROHIBITION ON PERMIT FOR CERTAIN HAZARDOUS WASTE MANAGEMENT UNITS. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management unit if the landfill:

(1) is in a floodplain of a perennial stream subject to not less than one percent chance of flooding in any year, delineated on a flood map adopted by the Federal Emergency Management Agency after September 1, 1985, as zone A1-99, V0, or V1-30; and

(2) receives hazardous waste for a fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.101. PROHIBITION ON PERMIT FOR FACILITY ON RECHARGE

ZONE OF SOLE SOURCE AQUIFER. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill, land treatment facility, surface impoundment, or waste pile, or areal expansion of such a facility, if the facility is to be located on the recharge zone of a sole source aquifer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.1011. PROHIBITION ON PERMIT FOR FACILITY AFFECTED BY FAULT. If a fault exists within two and one-half miles from the proposed or existing wellbore of a Class I injection well or the area within the cone of influence, whichever is greater, or if a fault exists within 3,000 feet of a proposed hazardous waste management facility other than a Class I injection well or of a capacity expansion of an existing hazardous waste management facility, the burden is on the applicant, unless previously demonstrated to the commission or to the United States Environmental Protection Agency, to show:

(1) in the case of Class I injection wells, that the fault is not sufficiently transmissive or vertically extensive to allow migration of hazardous constituents out of the injection zone; or

(2) in the case of a proposed hazardous waste management facility other than a Class I injection well or for a capacity expansion of an existing hazardous waste management facility, that:

(A) the fault has not had displacement within Holocene time, or if faults have had displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(B) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.16, eff. June 7, 1991.

Sec. 361.102. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITIES WITHIN A CERTAIN DISTANCE OF RESIDENCE, CHURCH, SCHOOL, DAY CARE CENTER, PARK, OR PUBLIC DRINKING WATER SUPPLY. (a) Except as provided by Subsections (b) and (c), the commission by rule

shall prohibit the issuance of a permit for a new hazardous waste landfill or land treatment facility or the areal expansion of such a facility if the boundary of the landfill or land treatment facility is to be located within 1,000 feet of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(b) The commission by rule shall prohibit the issuance of a permit for a new commercial hazardous waste management facility or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within one-half of a mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(c) For a subsequent areal expansion of a new commercial hazardous waste management facility that was required to comply with Subsection (b), distances shall be measured from a residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park only if such structure, water supply, or park was in place at the time the distance was certified for the original permit.

(d) The commission by rule shall prohibit the issuance of a permit for a new commercial hazardous waste management facility that is proposed to be located at a distance greater than one-half mile (2,640 feet) from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated park, unless the applicant demonstrates that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment, at any distance beyond the facility's property boundaries, consistent with the purposes of this chapter.

(e) The measurement of distances required by Subsections (a), (b), (c), and (d) shall be taken toward an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated park that is in use when the notice of intent to file a permit application is filed with the commission or, if no notice of intent is filed, when the permit application is filed with the commission. The restrictions imposed by Subsections (a), (b), (c), and (d) do not apply to a residence, church, school, day care center, surface water body used for a public drinking water supply, a dedicated park located within the boundaries

of a commercial hazardous waste management facility, or property owned by the permit applicant.

(f) The measurement of distances required by Subsections (a), (b), (c), and (d) shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be not more than 75 feet from the edge of the proposed hazardous waste management unit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.17, eff. June 7, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.55, eff. Sept. 1, 1995.

Sec. 361.103. OTHER AREAS UNSUITABLE FOR HAZARDOUS WASTE MANAGEMENT FACILITY. The commission by rule shall define the characteristics that make other areas unsuitable for a hazardous waste management facility, including consideration of:

(1) flood hazards;

(2) discharge from or recharge to a groundwater aquifer;

(3) soil conditions;

(4) areas of direct drainage within one mile of a lake used to supply public drinking water;

(5) active geological processes;

(6) coastal high hazard areas, such as areas subject to hurricane storm surge and shoreline erosion; or

(7) critical habitat of endangered species.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.104. PROHIBITION ON PERMIT FOR FACILITY IN UNSUITABLE AREA. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management facility or an areal expansion of an existing hazardous waste management facility if the facility is to be located in an area determined to be unsuitable under rules adopted by the commission under Section 361.103 unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.105. PETITION BY LOCAL GOVERNMENT FOR RULE ON HAZARDOUS WASTE FACILITY IN UNSUITABLE AREA. (a) The commission by rule shall allow a local government to petition the commission for a rule that restricts or prohibits the siting of a new hazardous waste disposal facility or other new hazardous waste management facility in an area including an area meeting one or more of the characteristics described by Section 361.103.

(b) A rule adopted under this section may not affect the siting of a new hazardous waste disposal facility or other new hazardous waste management facility if an application or a notice of intent to file an application concerning the facility is filed with the commission before the filing of a petition under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.106. PROHIBITION ON PERMIT FOR LANDFILL IF ALTERNATIVE EXISTS. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or the areal expansion of an existing hazardous waste landfill if there is a practical, economic, and feasible alternative to the landfill that is reasonably available to manage the types and classes of hazardous waste that might be disposed of at the landfill.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.107. HYDROGEOLOGIC REPORT FOR CERTAIN HAZARDOUS WASTE FACILITIES. The commission by rule shall require an applicant for a new hazardous waste landfill, land treatment facility, or surface impoundment that is to be located in the apparent recharge zone of a regional aquifer to prepare and file a hydrogeologic report documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.108. ENGINEERING REPORT FOR HAZARDOUS WASTE LANDFILL.

The commission by rule shall require an applicant for a new hazardous waste landfill filed after January 1, 1986, to provide an engineering report evaluating:

(1) the benefits, if any, associated with constructing the landfill above existing grade at the proposed site;

(2) the costs associated with the above grade construction; and

(3) the potential adverse effects, if any, that would be associated with the above grade construction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.109. GRANT OF PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITY. (a) The commission may grant an application for a permit in whole or in part for a hazardous waste management facility if it finds that:

(1) the applicant has provided for the proper operation of the proposed hazardous waste management facility;

(2) the applicant for a proposed hazardous waste management facility has made a reasonable effort to ensure that the burden, if any, imposed by the proposed hazardous waste management facility on local law enforcement, emergency medical or fire-fighting personnel, or public roadways, will be minimized or mitigated; and

(3) the applicant, other than an applicant who is not an owner of the facility, owns or has made a good faith claim to, or has an option to acquire, or the authority to acquire by eminent domain, the property or portion of the property on which the hazardous waste management facility will be constructed.

(b) If the commission determines that a burden on public roadways will be imposed by a new commercial hazardous waste management facility, the commission shall require the applicant to pay the cost of the improvements necessary to minimize or mitigate the burden. The applicant shall bear the costs associated with any required roadway improvements. The failure of a county or municipality to accept the funds and make the improvements shall not be the basis for denial or suspension of a permit.

(c) The commission shall not process an application for a permit for a new commercial hazardous waste management facility unless the applicant:

(1) has provided sufficient evidence that emergency response capabilities are available or will be available before the facility first receives waste in the area in which the facility is located or proposed to be located to manage a reasonable worst-case emergency condition associated with the operation of the facility; or

(2) has secured bonding of sufficient financial assurance to fund the emergency response personnel and equipment determined to be necessary by the commission to manage a reasonable worst-case emergency condition associated with the facility.

(d) If the applicant intends to use emergency response facilities that are not provided by the county or municipality in which the facility is located to satisfy the requirements of Subsection (c), the applicant must provide its own facilities or contract for emergency response facilities with an adjoining county, municipality, mutual aid association, or other appropriate entity. If financial assurance is required, the financial assurance must be for the benefit of the county government or municipal government in the county in which the facility is located or proposed to be located, or both, and must provide payment of the amount of the bond or other instrument to the governmental body or governmental bodies before the facility first receives waste, with a limitation that the money can only be spent for emergency response personnel and equipment. The commission shall adopt rules to ensure that the county or municipal government or other entity has sufficient emergency response capabilities before the facility first receives waste.

(e) A permit for a new commercial hazardous waste management facility shall not be granted unless the applicant provides a summary of its experience in hazardous waste management and in the particular hazardous waste management technology proposed for the application location. Any applicant without experience in the particular hazardous waste management technology shall conspicuously state that lack of experience in the application or a permit shall not be granted pursuant to the application. A permit may not be denied solely on the basis of lack of experience of the applicant.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.18, eff. June 7, 1991.

Sec. 361.110. TERMINATION OF AUTHORIZATION OR PERMIT. Authorization to store, process, or dispose of hazardous waste under Section 361.082 or under a solid waste permit issued under this subchapter that has not been reissued in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), terminates as follows:

(1) in the case of each land disposal facility, on November 8, 1985, unless the facility owner or operator applied for a final determination concerning the issuance of a permit before that date and certified that the facility was in compliance with all applicable groundwater monitoring and financial responsibility requirements;

(2) in the case of each incinerator facility, on November 8, 1989, unless the facility owner or operator applied for a final determination concerning the issuance of a permit by November 8, 1986; or

(3) in the case of any other solid waste facility, on November 8, 1992, unless the facility owner or operator applied for a final determination concerning the issuance of a permit by November 8, 1988.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.111. COMMISSION SHALL EXEMPT CERTAIN MUNICIPAL SOLID WASTE MANAGEMENT FACILITIES. (a) The commission shall exempt from permit requirements a municipal solid waste management facility that is used in the transfer of municipal solid waste to a solid waste processing or disposal facility from:

(1) a municipality with a population of less than 50,000;

(2) a county with a population of less than 85,000;

Text of subd. (3) as added by Acts 1993, 73rd Leg., ch. 802, Sec. 5

(3) a facility used in the transfer of municipal solid waste that will transfer 125 tons per day or less; and

Text of subd. (3) as added by Acts 1993, 73rd Leg., ch. 899, Sec. 2.08 and Acts 1993, 73rd Leg., ch. 1045, Sec. 10

(3) a facility used in the transfer of municipal solid waste that transfers or will transfer 125 tons a day or less; or

Text of subd. (4) as added by Acts 1993, 73rd Leg., ch. 802, Sec. 5 and Acts 1993, 73rd Leg., ch. 1045, Sec. 10

(4) a materials recovery facility that recycles for reuse more than 10 percent of its incoming nonsegregated waste stream if the remaining nonrecyclable waste is transferred to a permitted landfill not more than 50 miles from the materials recovery facility.

Text of subd. (4) as added by Acts 1993, 73rd Leg., ch. 899, Sec. 2.08

(4) a materials recovery facility that recycles for reuse more than 10 percent of its incoming nonsegregated waste stream if the remaining nonrecyclable waste is transferred to a permitted Type I landfill not farther than 50 miles from the materials recovery facility.

(b) The facility must comply with design and operational requirements established by commission rule that are necessary to protect the public's health and the environment.

Text of subsec. (c) as added by Acts 1993, 73rd Leg., ch. 802, Sec. 5

(c) To qualify for this exemption, the applicant must hold a public meeting on the siting of the facility in the municipality or county where the facility is to be located.

Text of subsec. (c) as added by Acts 1993, 73rd Leg., ch. 899, Sec. 2.08 and Acts 1993, 73rd Leg., ch. 1045, Sec. 10

(c) To qualify for an exemption under this section, an applicant must hold a public meeting about the siting of the facility in the municipality or county in which the facility is or will be located.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 17, eff. Sept. 6, 1990. Amended by Acts 1993, 73rd Leg., ch. 802, Sec. 5, eff. June 18, 1993; Acts 1993, 73rd Leg., ch. 899, Sec. 2.08, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 10, eff. Sept. 1, 1993.

Sec. 361.112. STORAGE, TRANSPORTATION, AND DISPOSAL OF USED OR SCRAP TIRES. (a) A person may not store more than 500 used or scrap tires for any period on any publicly or privately owned property unless the person registers the storage site with the commission. This subsection does not apply to the storage, protection, or

production of agricultural commodities.

(b) The commission may register a site to store more than 500 used or scrap tires.

(c) A person may not dispose of used or scrap tires in a facility that is not permitted by the commission for that purpose.

(d) The commission may issue a permit for a facility for the disposal of used or scrap tires.

(e) The commission by rule shall adopt application forms and procedures for the registration and permitting processes authorized under this section.

(f) A person may not store more than 500 used or scrap tires or dispose of any quantity of used or scrap tires unless the tires are shredded, split, or quartered as provided by commission rule. The commission may grant an exception to this requirement if the commission finds that circumstances warrant the exception. The prohibition provided by this subsection regarding storage does not apply to a registered waste tire energy recovery facility or a waste tire energy recovery facility storage site. The prohibition provided by this subsection does not apply to a person who, for eventual recycling, reuse, or energy recovery, temporarily stores scrap tires in a designated recycling collection area at a landfill permitted by the commission or licensed by a county or by a political subdivision exercising the authority granted by Section 361.165.

(g) The commission shall require a person who transports used or scrap tires for storage or disposal to maintain records and use a manifest or other appropriate system to assure that those tires are transported to a storage site that is registered or to a disposal facility that is permitted under this section for that purpose.

(h) The commission may amend, extend, transfer, or renew a permit issued under this section as provided by this chapter and commission rule.

(i) The notice and hearing procedures provided by this subchapter apply to a permit issued, amended, extended, or renewed under this section.

(j) The commission may, for good cause, revoke or amend a permit it issues under this section for reasons concerning public health, air or water pollution, land use, or violation of this section as provided by Section 361.089.

(k) The commission may not register or issue a permit to a facility required by Section 361.479 to provide evidence of financial

responsibility unless the facility has complied with that section.

(l) In this section, "scrap tire" means a tire that can no longer be used for its original intended purpose.

(m) The commission may adopt rules to regulate the storage of scrap or shredded tires that are stored at a marine dock, rail yard, or trucking facility for more than 30 days.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 18, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 303, Sec. 3, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 370, Sec. 3, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 899, Sec. 3.11, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.56, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 317, Sec. 26, eff. Sept. 1, 1995.

Sec. 361.1125. IMMEDIATE REMEDIATION OR REMOVAL OF HAZARDOUS SUBSTANCE AT SCRAP TIRE SITE. (a) In this section:

(1) "Scrap tire" has the meaning assigned by Section 361.112.

(2) "Scrap tire site" includes any site at which more than 500 scrap tires are located.

(b) If the executive director after investigation finds that there exists a release or threat of release of a hazardous substance at a scrap tire site and immediate action is appropriate to protect human health and the environment, the commission may, with money available from money appropriated to the commission, undertake immediate remedial or removal action at the scrap tire site to achieve the necessary protection.

(c) The reasonable expenses of immediate remedial or removal action by the commission under this section are recoverable from the persons described in Section 361.271, and the state may bring an action to recover the commission's reasonable expenses.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.01, eff. Sept. 1, 2001.

Sec. 361.113. PERMIT CONDITIONS FOR THE OPERATION OF HAZARDOUS WASTE MANAGEMENT FACILITIES. (a) The commission by rule shall establish requirements for commercial hazardous waste management facilities that will provide the opportunity for periodic monitoring

of the operation of those facilities in order to assure that the facilities are in compliance with the terms of their respective permits.

(b) In proposing and adopting rules to implement this section, the commission shall consider, at a minimum, a requirement that the facility owner or operator fund an independent inspector for the facility, a requirement for an independent annual environmental audit of the facility, a procedure for considering comments from affected parties on the selection of the independent inspector, a requirement that operational personnel at the permitted facility be certified by the state as competent to operate the size and type of hazardous waste management facility for which the permit has been issued, and a requirement that the facility provide for fence line and ambient air quality monitoring.

(c) A requirement that is established by commission rule to implement this section shall be incorporated as appropriate into the conditions of a permit for a new hazardous waste management facility when the permit is issued and shall be incorporated into the conditions of a permit for an existing hazardous waste management facility when the permit is renewed.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.19, eff. June 7, 1991.

Sec. 361.114. PROHIBITION OF DISPOSAL OF HAZARDOUS WASTE INTO CERTAIN GEOLOGICAL FORMATIONS. The commission by rule shall prohibit the storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.20, eff. June 7, 1991. Amended by Acts 2001, 77th Leg., ch. 965, Sec. 9.02, eff. Sept. 1, 2001.

Sec. 361.115. CERTIFICATION OF LANDFILL CAPACITY TO MUNICIPALITY; RESTRICTIONS ON CONTRACT. (a) The owner or operator of a solid waste landfill facility permitted by the commission or licensed by a county, before entering into a contract with a municipality for the disposal of the municipality's solid waste, must certify to the municipality that the facility has the capacity to dispose of the volume of waste proposed in the contract for the

duration of the contract, if requested in writing by the municipality.

(b) The owner or operator of a solid waste landfill facility permitted by the commission or licensed by a county who has a contract with a municipality to dispose of the municipality's solid waste may not enter into a contract to accept solid waste generated from outside the municipality's extraterritorial jurisdiction for disposal at the facility in an amount that would reduce the projected life of the facility to less than the remaining duration of the contract for the disposal of the municipality's waste unless alternative disposal is provided.

(c) The owner or operator of a solid waste landfill facility permitted by the commission or licensed by a county who has a contract with a municipality for the disposal of the municipality's solid waste shall, if requested in writing by the municipality, certify and report to the municipality annually that the owner or operator has the capacity to fulfill its contractual obligations to the municipality for solid waste disposal. The certification if requested must include a statement:

(1) of the remaining permitted solid waste disposal capacity of the facility;

(2) of the contractually committed volumes or tonnages of waste accepted at the facility; and

(3) from the owner or operator that the facility possesses the capacity to fulfill the disposal commitments in the contract with the municipality.

Added by Acts 1993, 73rd Leg., ch. 400, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.116. DISPOSAL OF INCIDENTAL INJECTION WELL WASTE. Notwithstanding Chapter 2001, Government Code, and any other provision of this chapter, the commission shall grant to the owner or operator of a commercial hazardous waste disposal well facility originally permitted after June 7, 1991, a permit modification that authorizes the construction and operation of an on-site or adjoining landfill for the disposal of hazardous and nonhazardous solid waste generated by the operation of the facility if the proposed landfill meets all applicable state and federal design requirements and the commission follows a public notice and comment procedure that is

consistent with 40 C.F.R. Section 270.42.

Added by Acts 1997, 75th Leg., ch. 1211, Sec. 1, eff. Sept. 1, 1997.

Sec. 361.117. DISPOSAL OF CARCASSES OF ANIMALS KILLED ON ROADWAYS. (a) Notwithstanding any other provision of this chapter, counties and municipalities may dispose of the carcasses of animals killed on county or municipal roadways by burying the carcasses on property owned by the entity that is responsible for road maintenance. No permit shall be required to dispose of animal carcasses on county or municipal property. Disposal shall be conducted in a manner consistent with public health.

(b) Notwithstanding any other provision of this chapter, the Texas Department of Transportation may dispose of the carcasses of animals killed on the state highway system by burying the carcasses on state highway right-of-way. No permit shall be required to dispose of animal carcasses on state highway right-of-way. Disposal shall be conducted in a manner consistent with public health.

Added by Acts 1997, 75th Leg., ch. 276, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 361.116 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(67), eff. Sept. 1, 1999.

Sec. 361.118. REMEDIAL ACTION REGARDING INDUSTRIAL SOLID WASTE DISPOSED OF IN MUNICIPAL SOLID WASTE LANDFILL FACILITY. (a) This section applies only to a municipal solid waste landfill facility:

(1) for which the commission has issued a permit; and

(2) a portion of which:

(A) has been used for the disposal of more than 15,000 barrels of industrial solid waste;

(B) is closed; and

(C) is the subject of a notice regarding the former use of the property recorded in the real property records of the county in which the facility is located.

(b) If the commission determines that there is a release or that a release is imminent into the environment of industrial solid waste disposed of in the portion of the facility that has been closed, the commission shall require the owner of the facility to remediate as necessary and to the extent practicable to prevent or

minimize the release of the waste so that the waste does not migrate or have the potential to migrate.

(c) If the commission requires the owner of the facility to remediate under Subsection (b), the owner shall develop a remedial action plan and must obtain a major amendment to the permit for the facility approving the plan.

(d) This section does not limit the applicability of Section 26.121, Water Code.

Added by Acts 1999, 76th Leg., ch. 570, Sec. 2, eff. Sept. 1, 1999.

Sec. 361.119. REGULATION OF CERTAIN FACILITIES AS SOLID WASTE FACILITIES. (a) The commission by rule shall ensure that a solid waste processing facility is regulated as a solid waste facility under this chapter and is not allowed to operate unregulated as a recycling facility.

(b) The commission shall adopt rules, including recordkeeping and reporting requirements and limitations on the storage of recyclable material, to ensure that:

(1) recyclable material is reused and not abandoned or disposed of; and

(2) recyclable material does not create a nuisance or threaten or impair the environment or public health and safety.

(c) A facility that reuses or smelts recyclable materials or metals and the operations conducted and materials handled at the facility are not subject to regulation under rules adopted under this section if the owner or operator of the facility demonstrates that:

(1) the primary function of the facility is to process materials that have a resale value greater than the cost of processing the materials for subsequent beneficial use; and

(2) all the solid waste generated from processing the materials is disposed of in a solid waste facility authorized under this chapter, with the exception of small amounts of solid waste that may be inadvertently and unintentionally disposed of in another manner.

(c-1) A facility that reuses or converts recyclable materials through pyrolysis, gasification, solvolysis, or depolymerization, and the operations conducted and materials handled at the facility, are not subject to regulation under rules adopted under this section if

the owner or operator of the facility demonstrates that:

(1) the primary function of the facility is to convert materials into products for subsequent beneficial use; and

(2) all the solid waste generated from converting the materials is disposed of in a hazardous solid waste management facility or a solid waste facility authorized under this chapter, as appropriate, with the exception of small amounts of solid waste that may be inadvertently and unintentionally disposed of in another manner.

(d) A facility that is owned, operated, or affiliated with a person that has a permit to dispose of municipal solid waste is not subject to regulation or requirements for financial assurance under rules adopted under this section.

(e) A solid waste processing facility that is owned or operated by a local government is not subject to rules adopted under this section.

(f) The commission shall adopt rules to ensure that the owner or operator of a recycling facility, including a composting or mulching facility, has in place sufficient financial assurance conditioned on satisfactorily operating and closing the facility and consistent with the requirements of Section 361.085 for a solid waste facility other than a facility for the disposal of hazardous waste. This subsection applies only to an owner or operator of a recycling facility:

(1) at which combustible material is stored outdoors; or

(2) that poses a significant risk to public health and safety as determined by the commission.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.03, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 600, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 48 (H.B. 1953), Sec. 3, eff. May 17, 2019.

Acts 2023, 88th Leg., R.S., Ch. 237 (H.B. 3060), Sec. 4, eff. May 27, 2023.

Sec. 361.1191. REGULATION OF CERTAIN RECYCLING FACILITIES IN CERTAIN COUNTIES. (a) This section applies only to a municipal

solid waste recycling facility that does not hold a permit or registration issued by the commission that stores combustible materials to produce mulch or compost and is located in a county that:

(1) has a population of more than 1.3 million; and

(2) includes areas designated as a recharge or transition zone of an aquifer as defined under the commission's Edwards Aquifer Protection Program that is the sole or principal source of drinking water for an area designated under Section 1424(e), Safe Drinking Water Act of 1974 (42 U.S.C. Section 300h-3(e)) and by the Environmental Protection Agency as the Edwards Underground Reservoir under 40 Federal Register 58344.

(b) The commission by rule shall:

(1) prescribe time limits for processing and removing materials from a facility;

(2) limit the amount of combustible material that may be stored at a recycling facility;

(3) limit the size of a pile of combustible recyclable or recycled materials, including composting materials or mulch, at a recycling facility;

(4) impose different standards for a recycling facility appropriate to the size and number of piles of combustible materials to be stored or processed at the facility;

(5) require a recycling facility to establish fire lanes between piles of combustible materials;

(6) require buffer zones between a recycling facility and a residence, school, or church; and

(7) for a recycling facility that is located on a recharge or transition zone referenced in Subsection 361.1191(a)(2):

(A) impose more stringent standards; and

(B) require groundwater protection features, such as liners and monitor wells.

(c) A rule adopted by the commission under this section does not become effective until the first anniversary of the date on which the rule was adopted.

Added by Acts 2007, 80th Leg., R.S., Ch. 1362 (H.B. 2541), Sec. 2, eff. September 1, 2007.

Sec. 361.120. NOTICE OF HEARING AND REQUIREMENTS FOR REOPENING OF CLOSED OR INACTIVE LANDFILLS. (a) This section applies to any municipal solid waste landfill facility permitted by the commission or any of its predecessor or successor agencies that have either stopped accepting waste, or only accepted waste pursuant to an emergency authorization, for a period of five years or longer. This section shall not apply to any solid waste landfill facility that has received a permit but never received waste.

(b) The commission or its successor agencies shall allow any municipal solid waste landfill facility covered by this section to be reopened and to accept waste again only if the permittee demonstrates compliance with all current state, federal, and local requirements, including but not limited to the requirements of Subtitle D of the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) and the implementing Texas State regulations.

(c) Except as provided in Subsections (d) and (e), the reopening of any such facility shall be considered a major amendment as such is defined by commission rules and shall subject the permittee to all of the procedural and substantive obligations imposed by the rules applicable to major amendments.

(d) This section shall not apply to any municipal solid waste landfill facility that has received an approved modification to its permit as of the effective date of this section.

(e) For any facility which is subject to a contract of sale as of January 1, 2001, the scope of the public hearing is to be limited to land use, as provided by Section 361.069.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.04, eff. Sept. 1, 2001.

Sec. 361.1201. CANCELLATION OF CERTAIN LANDFILL PERMITS. (a) This section applies only to a facility that is located in:

(1) a county with a population of more than 2.1 million; and

(2) the extraterritorial jurisdiction of the county's principal municipality with a population of more than 900,000.

(b) The commission shall cancel a permit issued for a municipal solid waste landfill facility if the facility has not accepted waste for a period of 25 consecutive years.

Added by Acts 2025, 89th Leg., R.S., Ch. 1042 (H.B. 3071), Sec. 1, eff. June 20, 2025.

Sec. 361.121. LAND APPLICATION OF CERTAIN SLUDGE; PERMIT REQUIRED. (a) In this section:

(1) "Class B sludge" is sewage sludge that meets one of the pathogen reduction requirements of 30 T.A.C. 312.82(b).

(2) "Land application unit" means an area where wastes are applied onto or incorporated into the soil surface for agricultural purposes or for treatment and disposal. The term does not include manure spreading operations.

(3) "Responsible person" means the person with ultimate responsibility for the land application of the Class B sludge at a land application unit. The responsible person is:

(A) the owner of the land application unit if the sludge being land applied was generated outside this state; or

(B) the person who is land applying the sludge if the sludge being land applied was generated in this state.

(b) Except as provided by Subsection (m), a responsible person may not apply Class B sludge on a land application unit unless the responsible person has obtained a permit for that land application unit issued by the commission under this section on or after September 1, 2003.

(c) The notice and hearing provisions of Subchapter M, Chapter 5, Water Code, as added by Chapter 1350, Acts of the 76th Legislature, Regular Session, 1999, apply to an application under this section for a permit, a permit amendment, or a permit renewal. In addition, at the time published notice of intent to obtain a permit is required under Section 5.552, Water Code, an applicant for a permit, permit amendment, or permit renewal under this section must notify by registered or certified mail each owner of land located within one-quarter mile of the proposed land application unit who lives on that land of the intent to obtain the permit, amendment, or renewal. Notice to landowners must include the information required by Section 5.552(c), Water Code, and information regarding the anticipated date of the first application of the sludge to the proposed land application unit. An owner of land located within one-quarter mile of the proposed land application unit who lives on that land is an affected person for purposes of Section 5.115, Water Code.

(d) In each permit, the commission shall prescribe the conditions under which it is issued, including:

(1) the duration of the permit;

(2) the location of the land application unit;

(3) the maximum quantity of Class B sludge that may be applied or disposed of under the permit;

(4) a requirement that the permit holder submit quarterly to the commission a computer-generated report that includes, at a minimum, information regarding:

(A) the source, quality, and quantity of sludge applied to the land application unit;

(B) the location of the land application unit, either in terms of longitude and latitude or by physical address, including the county;

(C) the date of delivery of Class B sludge;

(D) the date of application of Class B sludge;

(E) the cumulative amount of metals applied to the land application unit through the application of Class B sludge;

(F) crops grown at the land application unit site; and

(G) the suggested agronomic application rate for the Class B sludge;

(5) a requirement that the permit holder submit annually to the commission evidence that the permit holder is complying with the nutrient management plan and the practice standards described by Subsection (h)(4);

(6) a requirement that the permit holder post a sign that is visible from a road or sidewalk that is adjacent to the premises on which the land application unit is located stating that a beneficial application site is located on the premises;

(7) any other monitoring and reporting requirements prescribed by the commission for the permit holder; and

(8) a requirement that the permit holder must report to the commission any noncompliance by the permit holder with the permit conditions or applicable commission rules.

(e) A permit does not become a vested right in the permit holder.

(f) A permit may be issued under this section for a term set by the board not to exceed six years from the date of issuance.

(g) The commission shall charge a fee for the issuance of a permit under this section in an amount not less than $1,000 and not

more than $5,000. In determining the fee under this subsection, the commission shall consider the amount of sludge to be applied under the permit.

(h) The commission by rule shall require an applicant for a permit under this section to submit with the application, at a minimum:

(1) information regarding:

(A) the applicant;

(B) the source, quality, and quantity of sludge to be applied; and

(C) the hydrologic characteristics of the surface water and groundwater at and within one-quarter of a mile of the land application unit;

(2) proof evidencing that the applicant has a commercial liability insurance policy that:

(A) is issued by an insurance company authorized to do business in this state that has a rating by the A. M. Best Company of A- or better;

(B) designates the commission as an additional insured; and

(C) is in an amount of not less than $3 million;

(3) proof evidencing that the applicant has an environmental impairment insurance policy or similar insurance policy that:

(A) is issued by an insurance company authorized to do business in this state that has a rating by the A. M. Best Company of A- or better;

(B) designates the commission as an additional insured; and

(C) is in an amount of not less than $3 million; and

(4) proof that the applicant has minimized the risk of water quality impairment caused by nitrogen applied to the land application unit through the application of Class B sludge by having had a nutrient management plan prepared by a certified nutrient management specialist in accordance with the practice standards of the Natural Resources Conservation Service of the United States Department of Agriculture.

(i) The commission may expand the definition of Class B sludge only by expanding the definition to include sludge that meets more stringent pathogen reduction requirements.

(j) A permit holder must maintain an insurance policy required by Subsection (h) in effect for the duration of the permit.

(k) The commission shall create and operate a tracking system for the land application of Class B sludge. The commission shall require a permit holder to report deliveries and applications of Class B sludge using the tracking system and shall post the reported information on its website. The tracking system must allow a permit holder to report electronically:

(1) the date of delivery of Class B sludge to a land application unit; and

(2) for each application of Class B sludge to a land application unit:

(A) the date of the application; and

(B) the source, quality, and quantity of the sludge applied.

(l) A permit holder may not accept Class B sludge unless the sludge has been transported to the land application unit in a covered container with the covering firmly secured at the front and back.

(m) A person who holds a registration for the application of Class B sludge for a beneficial use approved by the commission and who, on or before September 1, 2002, has submitted to the commission an administratively complete application for a permit under this section may apply Class B sludge in accordance with the terms of the registration until the commission issues a final decision to issue or deny the permit for which the person has applied.

(n) The insurance requirements under Subsections (h)(2) and (3) do not apply to an applicant that is a political subdivision.

(o) The commission may not issue a permit under this section for a land application unit that is located both:

(1) in a county that borders the Gulf of Mexico; and

(2) 500 feet or less from any water well or surface water.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.05(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 681, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.1215. PERMISSIVE LAND APPLICATION OF DAIRY WASTE. (a) In this section, "dairy waste" means milk, milk by-products, or milk processing waste that is spilled, spoiled, adulterated, unmarketable,

stranded, or otherwise unfit for human consumption produced by a dairy operation.

(b) Notwithstanding any other law, the commission shall issue an authorization by rule for land application of dairy waste.

(c) The commission shall adopt rules governing the land application of dairy waste authorized under this section.

(d) Rules adopted under Subsection (c) must:

(1) minimize the risk of water quality impairment caused by the land application; and

(2) prescribe the conditions under which an authorization is issued, including:

(A) the duration of the authorization;

(B) the location of the land application unit;

(C) the maximum quantity or application rate of dairy waste that may be applied or disposed of under the authorization;

(D) the suggested agronomic application rate for the dairy waste or other beneficial uses of the dairy waste; and

(E) best management practices for the handling and disposal of dairy waste.

Added by Acts 2023, 88th Leg., R.S., Ch. 175 (H.B. 692), Sec. 1, eff. September 1, 2023.

Sec. 361.122. DENIAL OF CERTAIN LANDFILL PERMITS. The commission may not issue a permit for a Type IV landfill if:

(1) the proposed site is located within 100 feet of a canal that is used as a public drinking water source or for irrigation of crops used for human or animal consumption;

(2) the proposed site is located in a county with a population of more than 225,000 that is located adjacent to the Gulf of Mexico; and

(3) prior to final consideration of the application by the commission, the commissioners of the county in which the facility is located have adopted a resolution recommending denial of the application.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.08, eff. Sept. 1, 2001.

Sec. 361.123. LIMITATION ON LOCATION OF MUNICIPAL SOLID WASTE LANDFILLS. (a) This section applies to an application for a permit for a new Type I or new Type IV municipal solid waste landfill or for a permit or permit amendment authorizing the conversion of a Type IV municipal solid waste landfill to a Type I municipal solid waste landfill only if the landfill or proposed site for the new landfill is located in a county that is adjacent to a county with a population of more than 3.3 million and inside the boundaries of a national forest, as designated by the United States Forest Service, on public or private land.

(b) The commission may not issue a permit for a new Type I or new Type IV municipal solid waste landfill to be located as described by Subsection (a).

(c) The commission may not issue a permit or permit amendment authorizing the conversion of a Type IV municipal solid waste landfill located as described by Subsection (a) to a Type I municipal solid waste landfill.

(d) This section does not apply to an application for a permit or permit amendment authorizing an areal expansion of an existing Type I municipal solid waste landfill.

Added by Acts 2005, 79th Leg., Ch. 1027 (H.B. 1053), Sec. 1, eff. June 18, 2005.

Sec. 361.1231. LIMITATION ON EXPANSION OF CERTAIN LANDFILLS. (a) This section applies only to a municipally owned Type I municipal solid waste landfill permitted by the state before 1980 that:

(1) is located wholly inside the boundaries of a municipality; and

(2) is owned by a municipality other than the municipality in which it is located.

(b) Notwithstanding any other provision of this subchapter, the commission may not approve an application for the issuance, amendment, or renewal of a permit that seeks to expand the area or capacity of a landfill unless the governing body of the municipality in which the landfill is located first approves by resolution or order the issuance, amendment, or renewal of the permit.

(c) The commission shall provide the members of the legislature who represent the district containing the landfill described in the

permit with an opportunity to comment on the application and shall consider those comments in evaluating an application under this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 861 (H.B. 281), Sec. 1, eff. June 18, 2015.

Sec. 361.124. ALLOWED WASTES AND EXEMPTIONS FOR CERTAIN SMALL MUNICIPAL SOLID WASTE LANDFILLS IN ARID AREAS. (a) In this section:

(1) "Construction or demolition waste" means any material waste that is the byproduct of a construction or demolition project, including paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.

(2) "Small municipal solid waste landfill unit" means a discrete area of land or an excavation that:

(A) receives municipal solid waste or other solid wastes allowed by law; and

(B) disposes of less than 20 tons of municipal solid waste daily based on an annual average.

(b) This section applies only to a small municipal solid waste landfill unit that is permitted as an arid exempt landfill under commission rules.

(c) A small municipal solid waste landfill unit daily may dispose of less than 20 tons of construction or demolition waste in addition to the municipal solid waste the unit normally receives.

(d) The commission, in accordance with state and federal solid wastes laws, may, under rules adopted by the commission, grant a small municipal solid waste landfill unit an exemption from the requirements for groundwater protection design and operation and groundwater monitoring and corrective action if there is no evidence of groundwater contamination from the unit.

(e) The commission shall adopt rules as are necessary to implement this section in a manner that maintains compliance with and state program authorization under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

Added by Acts 2005, 79th Leg., Ch. 582 (H.B. 1609), Sec. 4, eff. September 1, 2005.
Renumbered from Health and Safety Code, Section 361.123 by Acts 2007,

80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(48), eff. September 1, 2007.

Sec. 361.126. DISPOSAL OF DEMOLITION WASTE FROM ABANDONED OR NUISANCE BUILDING. (a) This section applies only to a building that has been:

(1) abandoned or found to be a nuisance;

(2) acquired by the county or municipality by means of:

(A) bankruptcy;

(B) tax delinquency; or

(C) condemnation; and

(3) previously owned by a person not financially capable of paying the costs of the disposal of demolition waste at a permitted solid waste disposal facility, including transportation of the waste to the facility.

(b) The commission may issue a permit by rule to authorize the governing body of a county or municipality with a population of 12,000 or less to dispose of demolition waste from a building if the disposal occurs on land that:

(1) the county or municipality owns or controls; and

(2) would qualify for an arid exemption under commission rules.

(c) The commission shall adopt rules under Section 361.024 to control the collection, handling, storage, processing, and disposal of demolition waste under this section to protect public and private property, rights-of-way, groundwater, and any other right that requires protection.

Added by Acts 2011, 82nd Leg., R.S., Ch. 71 (S.B. 1258), Sec. 1, eff. May 17, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 449 (S.B. 819), Sec. 1, eff. June 14, 2013.

SUBCHAPTER D. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE GENERATION, FACILITY, AND MANAGEMENT; FEES AND FUNDS

Sec. 361.131. DEFINITIONS. In this subchapter:

(1) "Captured facility" means a manufacturing or production

facility which generates an industrial solid waste or hazardous waste which is routinely stored, processed, or disposed, on a shared basis, in an integrated waste management unit owned and operated by and located within a contiguous manufacturing facility.

(2) "Commercial waste storage, processing, or disposal facility" includes any facility that accepts an industrial solid waste or a hazardous waste for storage, processing, including incineration, or disposal for a charge.

(3) "Dry weight" means the weight of constituents other than water.

(4) "Generator" means a person whose act or process produces industrial solid waste or hazardous waste or whose act first causes an industrial solid waste or a hazardous waste to be regulated by the commission.

(5) "Hazardous waste" means solid waste not otherwise exempt that is identified or listed as hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended (42 U.S.C. Section 6901 et seq.).

(6) "Land disposal" does not include the normal application of agricultural chemicals or fertilizers.

(7) "Land disposal facility" includes:

(A) a landfill;

(B) a surface impoundment, excluding an impoundment treating or storing waste that is disposed of under Chapter 26 or 27, Water Code;

(C) a waste pile;

(D) a facility at which land treatment, land farming, or a land application process is used; and

(E) an injection well.

(8) "Noncommercial waste storage, processing, or disposal facility" includes any facility that accepts an industrial solid waste or a hazardous waste for storage, processing, including incineration, or disposal for no charge or that stores, processes, or disposes of waste generated on site.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 19, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 692, Sec. 1, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991;

Acts 1993, 73rd Leg., ch. 379, Sec. 1, eff. Aug. 30, 1993.

Sec. 361.132. HAZARDOUS AND SOLID WASTE FEES; WASTE MANAGEMENT ACCOUNT. (a) The waste management account is an account in the general revenue fund.

(b) The account consists of money:

(1) collected by the commission under this subchapter as:

(A) fees imposed on generators of industrial solid waste or hazardous waste under Section 361.134;

(B) fees imposed on owners or operators of permitted industrial solid waste or hazardous waste facilities, or owners or operators of industrial solid waste or hazardous waste facilities subject to the requirement of permit authorization, under Section 361.135;

(C) fees imposed on the owner or operator of an industrial solid waste or hazardous waste facility for noncommercial and commercial management or disposal of hazardous waste or commercial disposal of industrial solid waste under Section 361.136;

(D) fees imposed on applicants for industrial solid waste and hazardous waste permits under Section 361.137; and

(E) interest and penalties imposed under Section 361.140 for late payment of industrial solid waste and hazardous waste fees authorized under this subchapter; or

(2) deposited to the account as otherwise provided by law.

(c) Except as provided by Section 361.136(l)(1), the commission may use the money collected under this subchapter only for regulation of industrial solid and hazardous waste under this chapter, including payment to other state agencies for services provided under contract concerning enforcement of this chapter.

(d) Any unobligated balance in the account at the end of the state fiscal year may, at the discretion of the commission, be transferred to the hazardous and solid waste remediation fee account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 20, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 379, Sec. 2, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 37, eff. Sept. 1, 1997.

Sec. 361.133. HAZARDOUS AND SOLID WASTE REMEDIATION FEE ACCOUNT. (a) The hazardous and solid waste remediation fee account is an account in the general revenue fund.

(b) The account consists of money collected by the commission from:

(1) fees imposed on the owner or operator of an industrial solid waste or hazardous waste facility for commercial and noncommercial management or disposal of hazardous waste or commercial disposal of industrial solid waste under Section 361.136 and fees imposed under Section 361.138;

(2) interest and penalties imposed under Section 361.140 for late payment of a fee or late filing of a report;

(3) money paid by a person liable for facility cleanup and maintenance under Section 361.197;

(4) the interest received from the investment of this account, in accounts under the charge of the treasurer, to be credited pro rata to the hazardous and solid waste remediation fee account;

(5) monies transferred from other agencies under provisions of this code or grants or other payments from any person made for the purpose of remediation of facilities under this chapter or the investigation, cleanup, or removal of a spill or release of a hazardous substance;

(6) fees imposed under Section 361.604; and

(7) federal grants received for the implementation or administration of state voluntary cleanup programs or federal brownfields initiatives.

(c) The commission may use the money collected and deposited to the credit of the account under this section, including interest credited under Subsection (b)(4), only for:

(1) necessary and appropriate removal and remedial action at sites at which solid waste or hazardous substances have been disposed if funds from a liable person, independent third person, or the federal government are not sufficient for the removal or remedial action;

(2) necessary and appropriate maintenance of removal and remedial actions for the expected life of those actions if:

(A) funds from a liable person have been collected and deposited to the credit of the account for that purpose; or

(B) funds from a liable person, independent third

person, or the federal government are not sufficient for the maintenance;

(3) expenses concerning compliance with:

(A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) as amended;

(B) the federal Superfund Amendments and Reauthorization Act of 1986 (10 U.S.C. Section 2701 et seq.); and

(C) Subchapters F and I;

(4) expenses concerning the regulation and management of household hazardous substances and the prevention of pollution of the water resources of the state from the uncontrolled release of hazardous substances;

(5) expenses concerning the cleanup or removal of a spill, release, or potential threat of release of a hazardous substance where immediate action is appropriate to protect human health and the environment;

(6) expenses concerning implementation of the voluntary cleanup program under Subchapter S or federal brownfields initiatives; and

(7) expenses, not to exceed 10 percent of the annually appropriated amount of the fees on batteries collected under Section 361.138, related to lead-acid battery recycling activities, including expenses for programs:

(A) for remediation; and

(B) to create incentives for the adoption of innovative technology in lead-acid battery recycling to increase the efficiency and effectiveness of the recycling process or reduce the negative environmental impacts of the recycling process.

(c-1) Notwithstanding Subsection (c), money in the account attributable to fees imposed under Section 361.138 may be used for reimbursement of environmental remediation at the site of a former battery recycling facility located in the municipal boundaries of a municipality with a population of more than 115,000 and less than 250,000 if a community development corporation serving the municipality is issued an industrial hazardous waste permit by the commission for the site and is paying or has paid for part of the costs of the environmental remediation of the site pursuant to the permit. This subsection expires September 1, 2027.

(d) The commission shall establish the fee rates for waste

management under Section 361.136 and revise them as necessary. The amount collected each year shall not exceed $16 million after making payments to counties under Section 361.136(l)(1).

(e) The commission shall monitor the unobligated balance in the hazardous and solid waste remediation fee account and all sources of revenue to the account and may adjust the amount of fees collected under Subsection (d) and Section 361.138, within prescribed limits, to maintain an unobligated balance of no more than $25 million at the end of each fiscal year.

(f) For the purpose of Subsection (e), the unobligated balance in the hazardous and solid waste remediation fee account shall be determined by subtracting from the cash balance of the account at the end of each quarter:

(1) the total of all operating expenses encumbered by the commission from the account;

(2) the sum of the total balances remaining on all contracts entered into by the commission to be paid from the account; and

(3) the estimated total cost of investigation and remedial action at any site eligible for funding under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, or Subchapter F or I and not currently under contract.

(g) Notwithstanding Subsection (c), the executive director may use money in the account, including interest credited under Subsection (b)(4), for expenses concerning a cleanup or removal of a spill, release, or potential threat of release of a hazardous substance if the site is eligible for listing under Subchapter F, proposed for listing under Subchapter F, or listed under the state registry before September 1, 1989, and:

(1) immediate action is appropriate to protect human health or the environment and there is a substantial likelihood that the cleanup or removal will prevent the site from needing to be listed under Subchapter F; or

(2) a cleanup or removal:

(A) can be completed without extensive investigation and planning; and

(B) will achieve a significant cost reduction for the site.

(h) If the commission collects a fee that is deposited in a dedicated fund established for the purpose of cleaning up a facility,

tank, or site described by this subsection, the commission may not use money in the hazardous and solid waste remediation fee account to clean up a:

(1) waste tire recycling facility;

(2) municipal solid waste facility;

(3) petroleum storage tank; or

(4) used oil collection and recycling site that received used oil after August 31, 1995.

(i) Not later than the 31st day before the date the commission begins a cleanup or removal under Subsection (g), the commission must publish notice of its intent to perform the cleanup or removal in the Texas Register.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 21, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 379, Sec. 3, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 986, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 38, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 793, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 855, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 10.05, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.009, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 123 (H.B. 3765), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 5, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 20, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 823 (H.B. 2708), Sec. 1, eff. June 16, 2021.

Sec. 361.134. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE GENERATION FEE. (a) The annual generation fee prescribed by this section is imposed on each generator who generates Class I industrial solid waste or hazardous waste during any part of the year.

(b) The commission shall:

(1) require each generator of industrial solid waste or hazardous waste to register its activities; and

(2) collect the annual generation fee imposed under this section.

(c) The commission by rule shall adopt a generation fee schedule for use in determining the amount of fees to be charged. The annual generation fee may not be less than $50 and may not be more than $50,000 for generation of hazardous waste or more than $10,000 for generation of nonhazardous waste.

(d) The commission by rule may exempt generators of small quantities of Class I industrial solid waste or hazardous waste from the payment of a generation fee under this section.

(e) Wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee account shall be exempt from any generation fee assessed under this section.

(f) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 Code of Federal Regulations, Part 261, Subpart C, relating to characteristics of hazardous waste, and are rendered nonhazardous by neutralization or other treatment on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under this chapter are exempt from the assessment of hazardous waste generation fees. By rule, the commission may authorize additional exemptions if consistent with state waste management policy. An exemption from fee assessment does not limit a generator's obligation to report waste generation or waste management activity under any applicable regulation of the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 379, Sec. 4, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 39, eff. Sept. 1, 1997.

Sec. 361.135. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE FACILITY FEE. (a) The annual facility fee prescribed by this section is imposed on each person who holds one or more permits for the management of Class I industrial solid waste or hazardous waste

or is operating a waste management unit subject to the requirement for permit authorization to process, store, or dispose of Class I industrial solid waste or hazardous waste during any part of the year.

(b) The commission by rule shall adopt a facility fee schedule for determining the amount of each annual fee to be charged.

(c) The annual facility fee may not be less than $250. The maximum fee for a facility may not exceed $25,000. The annual fee to be charged each Class I industrial solid waste or hazardous waste facility must be that set by the fee schedule adopted by the commission.

(d) The commission shall collect the facility fee imposed under this section.

(e) During a year in which a facility subject to interim status hazardous waste management requirements receives a final permit, the facility fee under this section may be imposed only on one of those classifications.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991.

Sec. 361.136. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE MANAGEMENT FEE. (a) Except as provided by Subsections (e) through (i), a fee shall be imposed on the owner or operator of a waste storage, processing, or disposal facility for industrial solid waste and hazardous waste that is managed on site. This fee is in addition to any other fee that may be imposed under this chapter.

(b) The commission by rule shall establish fee rates for management of hazardous waste and commercial disposal of industrial solid waste, as well as the manner of collection, and shall revise the fee amounts as necessary.

(1) Fees under this section may apply only to the following:

(A) commercial and noncommercial storage, processing, or disposal of hazardous waste; or

(B) commercial disposal of Class I nonhazardous industrial solid waste.

(2) A fee established for the commercial disposal of a nonhazardous industrial solid waste shall not exceed 20 percent of

the fee established for the disposal of a hazardous waste by the same method of disposal.

(3) A fee under this section shall not be assessed for the disposal of a waste subject to an assessment under Section 361.013.

(c) The waste management fee shall be based on the total weight or volume of a waste other than wastes that are disposed of in an underground injection well. The fee for those wastes shall be based on the dry weight of the waste.

(d) The waste management fee for wastes generated in this state may not exceed $40 per ton for wastes that are landfilled. The commission by rule shall establish the amount of the fee for all other waste management methods at a lesser amount and shall base the amount on the factors specified in Section 361.139.

(e) A fee, which must be the same for wastes generated both in state and out of state and consistent with fees assessed for the management of other hazardous wastes, shall be established by the commission for the storage, processing, incineration, and disposal of hazardous waste fuels that the commission by rule shall define considering:

(1) Btu content;

(2) metals content;

(3) chlorinated hydrocarbon content; and

(4) the degree to which the waste fuel is used for energy recovery.

(f) A fee imposed on the owner or operator of a commercial industrial solid waste or hazardous waste storage, processing, or disposal facility, for wastes that are generated in this state and received from an affiliate or wholly-owned subsidiary of the commercial facility, or from a captured facility, shall be the same fee imposed on a noncommercial facility. For the purpose of this subsection, an affiliate of a commercial industrial solid waste or hazardous waste facility must have a controlling interest in common with that facility.

(g) A fee may not be imposed on the owner or operator of a waste storage, processing, or disposal facility for the storage of hazardous wastes for fewer than 90 days.

(h) A fee may not be imposed under this section on the operation of a facility permitted under Chapter 26, Water Code, or the federal National Pollutant Discharge Elimination System program for wastes treated, processed, or disposed of in a wastewater

treatment system that discharges into surface water of the state.

(i) The storage, processing, or disposal of industrial solid wastes or hazardous wastes generated in a removal or remedial action accomplished through the expenditure of money from the hazardous and solid waste remediation fee account or generated in a removal or remedial action in this state conducted by the United States Environmental Protection Agency shall be exempt from the assessment of a waste management fee under this section.

(j) The owner or operator of a waste storage, processing, or disposal facility receiving industrial solid waste or hazardous waste from out-of-state generators shall be assessed a fee amount required on wastes generated in state plus an additional increment that the commission by rule shall establish. In establishing an incremental fee for out-of-state wastes, the commission shall consider:

(1) factors specified by Section 361.139;

(2) added costs to the state of regulating the interstate transport and subsequent management and disposal of imported industrial solid wastes and hazardous wastes and their associated risks;

(3) similar fees that may be imposed in a generator's state of origin for the storage, processing, or disposal of hazardous waste; and

(4) contributions in both fees and taxes paid by generators in this state to the support of the state's industrial solid waste and hazardous waste regulatory programs.

(k) A fee for industrial solid wastes or hazardous wastes that are legitimately reclaimed, reused, or recycled at a waste storage, processing, or disposal facility must be the same for wastes generated in state and out of state.

(l) Fees collected under this section shall be credited as follows:

(1) 25 percent of the waste management fees collected from each commercial waste storage, processing, or disposal facility under this section shall be credited to the waste management account to be distributed to the county in which the facility is located to assist that county in defraying the costs associated with commercial industrial solid waste and hazardous waste management facilities; and

(2) of the remaining amount of the commercial waste management fees and of the total amount of the noncommercial waste

management fees collected from each waste storage, processing, or disposal facility:

(A) 50 percent of each amount shall be credited to the hazardous and solid waste remediation fee account; and

(B) 50 percent of each amount shall be credited to the waste management account.

(m) Funds due an affected county under Subsection (l)(1) shall be paid by the commission not later than the 60th day after the receipt and verification of the payments from commercial facilities in the county.

(n) The commission by rule shall provide:

(1) for methods of computing the dry weight of industrial solid waste and hazardous waste; and

(2) for a method to determine or estimate the dry weight of small volumes of waste delivered to waste disposal facilities for which the costs of a dry weight analysis are disproportionate to the costs of disposal.

(o) A generator of industrial solid waste or hazardous waste shall provide to the operator of a land disposal facility certification of the computation of the dry weight of a waste to be disposed.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 24, eff. Sept. 6, 1990. Renumbered from Sec. 361.138 and amended by Acts 1991, 72nd Leg., ch. 710, Sec. 6, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 379, Sec. 5, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 40, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 793, Sec. 2, eff. Sept. 1, 1997.

Sec. 361.137. PERMIT APPLICATION FEE. (a) A permit application fee is imposed on each applicant for an industrial solid waste or hazardous waste permit.

(b) The commission by rule shall establish the fee for permit applications at an amount that is reasonable to recover the demonstrable costs of processing an application and developing a draft permit, but that is not less than $2,000 nor more than $50,000. An additional fee may not be assessed for a draft permit returned for further processing unless the application is withdrawn.

(c) The commission may also establish a fee rate for approval

of applications or petitions other than new permits, including but not limited to minor amendments, modifications, and closure plans, which fee may be less than $2,000.

(d) Application fees collected under this section shall be deposited to the credit of the waste management account.

Added by Acts 1991, 72nd Leg., ch. 710, Sec. 9, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 1044, Sec. 2, eff. June 20, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 41, eff. Sept. 1, 1997.

Sec. 361.138. FEE ON THE SALE OF BATTERIES. (a) In this section:

(1) "Engaged in business in this state" has the meaning provided under Sections 151.107(a) and (b), Tax Code.

(2) "Lead-acid battery" means any battery which contains lead and sulfuric acid.

(2-a) "Marketplace provider" has the meaning assigned by Section 151.0242(a), Tax Code.

(3) "Purchased for resale" means acquired by means of a sale for resale as defined in Section 151.006, Tax Code.

(4) "Storage" and "use" have the meanings assigned those terms by Section 151.011, Tax Code.

(b) A wholesale or retail battery dealer who sells or offers to sell, or a marketplace provider who processes sales of or payments for, lead-acid batteries not for resale shall collect at the time and place of sale a fee for each nonexempt lead-acid battery sold, according to the following schedule:

(1) for a lead-acid battery with a capacity of less than 12 volts, a fee of $2;

(2) for a lead-acid battery with a capacity of 12 or more volts, a fee of $3.

(c) A dealer or marketplace provider required to collect a fee under this section:

(1) shall list as a separate item on an invoice a fee due under this section; and

(2) except as provided by Subsection (d), on or before the 20th day of the month following the end of each calendar month and on a form and in the manner prescribed by the comptroller, shall file a report with and shall remit to the comptroller the amount of fees

collected during the preceding calendar month.

(d) A person required to collect a fee under this section who collects less than $50 for a calendar month or less than $150 for a calendar quarter is not required to file a monthly report but shall file a quarterly report with and make a quarterly remittance to the comptroller. The quarterly report and remittance shall include fees collected during the preceding calendar quarter. The report and remittance are due not later than the 20th day following the end of the calendar quarter.

(e) An invoice or other record required by this section or rules of the comptroller must be maintained for at least four years after the date on which the invoice or record is prepared and be available for inspection by the comptroller at all reasonable times.

(f) The comptroller shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this section.

(g) A person who does not file a report as provided by this section or who possesses a fee collected or payable under this section and who does not remit the fee to the comptroller at the time and in the manner required by this section and the rules of the comptroller shall pay a penalty of five percent of the amount of the fee due and payable. If the person does not file the report or pay the fee before the 30th day after the date on which the fee or report is due, the person shall pay a penalty of an additional five percent of the amount of the fee due and payable.

(h) Except as provided in this section, the provisions of Chapters 101 and 111-113, Tax Code, apply to the administration, payment, collection and enforcement of fees under this section in the same manner that these provisions apply to the administration, payment, collection, and enforcement of taxes under Title 2, Tax Code.

(i) A dealer or marketplace provider required to collect a fee under this section may retain 2-1/2 cents from each fee the person collects. A dealer or marketplace provider shall account for amounts retained under this subsection in the manner prescribed by the comptroller.

(j) The comptroller may deduct a percentage of the fees collected under this section, not to exceed four percent of receipts, to pay the reasonable and necessary costs of administering and enforcing this section. The comptroller shall credit the amount

deducted to the general revenue fund. The balance of the fees, penalties, and interest collected by the comptroller under this section shall be deposited to the hazardous and solid waste remediation fee account.

(k) A battery is exempt from this section if it meets all of the following criteria:

(1) the ampere-hour rating of the battery is less than 10 ampere-hours;

(2) the sum of the dimensions of the battery (height, width, and length) is less than 15 inches; and

(3) the battery is sealed so that no access to the interior of the battery is possible without destroying the battery.

(l) A fee is imposed on the storage, use, or other consumption in this state of a lead-acid battery, unless purchased for resale, at the same rate as provided by Subsection (b).

(m) A person storing, using, or consuming a lead-acid battery in this state is liable for the fee imposed by Subsection (l) and is responsible for reporting and paying it to the comptroller in the same manner as a person required to collect the fee provided for in Subsections (c)(2) and (d).

(n) A person storing, using, or consuming a lead-acid battery in this state is not liable for the fee if the person pays the fee to a wholesaler or retailer engaged in business in this state or other person authorized by the comptroller to collect the fee and receives from the person a receipt showing that the fee has been paid.

Added by Acts 1991, 72nd Leg., ch. 710, Sec. 11, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 379, Sec. 6, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 1000, Sec. 64, eff. Oct. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 42, eff. Sept. 1, 1997.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 569 (S.B. 477), Sec. 1, eff. July 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 569 (S.B. 477), Sec. 2, eff. July 1, 2022.

Sec. 361.139. FACTORS TO BE CONSIDERED IN SETTING FEES. (a) To promote the public policy of preferred waste management methods under Section 361.023 and to provide for an equitable fee rate

structure, the commission shall consider the following in establishing the fees authorized under this subchapter:

(1) the variation in risks to the public associated with different waste management methods, including storage, specifically:

(A) promoting the establishment and maintenance of industrial solid waste and hazardous waste reclamation, reuse, and recycling facilities;

(B) promoting the public policy of preferred waste management methods for waste streams that are amenable to multiple waste management methods; and

(C) considering whether the waste is ultimately disposed of in the state;

(2) the funding needed to adequately and equitably support the regulation of industrial solid waste and hazardous waste generation, storage, processing, and disposal activities and the remediation of contaminated disposal sites, considering:

(A) the nature and extent of regulated activities and the variation in the cost of regulating different types of facilities;

(B) the cost to the state of operating an effective program for the regulation of industrial solid waste and hazardous waste which protects human health and the environment and is consistent with state and federal authority;

(C) the higher costs of regulation and oversight that may be required for commercial waste management facilities;

(D) the sources and causes of contamination at sites in need of remediation; and

(E) the benefits and beneficiaries of the regulatory programs and activities supported through fees assessed under this subchapter;

(3) promoting the efficient and effective use of existing industrial solid waste and hazardous waste storage, processing, and disposal facilities within the state;

(4) whether a volume of waste received by a facility has been or will be assessed a waste management fee at other facilities under Section 361.136; and

(5) the prevailing rates of similar fees for industrial solid waste and hazardous waste activities charged in other states to which wastes from this state may be exported or from which wastes may be imported for storage, processing, or disposal.

(b) In addition to the factors prescribed in Subsection (a), the commission, in establishing fees for the management of hazardous waste under Section 361.136, shall also consider:

(1) the amount of state matching funds necessary for remedial actions under the Comprehensive Environmental Response, Compensation and Liability Act; and

(2) the costs of state-funded remedial actions under Subchapter F.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 24, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 710, Sec. 7, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 379, Sec. 7, eff. Aug. 30, 1993.

Sec. 361.140. INTEREST AND PENALTIES. (a) The commission by rule shall establish requirements for the assessment of penalties and interest for late payment of fees owed the state under Sections 361.134 through 361.137. Penalties and interest established under this section shall not exceed rates established for delinquent taxes under Sections 111.060 and 111.061, Tax Code.

(b) Interest collected under this section for late payment of a fee shall be deposited in the state treasury to the credit of the respective fund to which the late fee is credited.

(c) Relettered as subsec. (b) by Acts 1997, 75th Leg., ch. 1072, Sec. 32, eff. Sept. 1, 1997.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 23, eff. Sept. 6, 1990. Renumbered from Sec. 361.137 and amended by Acts 1991, 72nd Leg., ch. 710, Sec. 8, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 379, Sec. 8, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 43, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1072, Sec. 32, eff. Sept. 1, 1997.

SUBCHAPTER E. POWERS AND DUTIES OF LOCAL GOVERNMENTS

Sec. 361.151. RELATIONSHIP OF COUNTY AUTHORITY TO STATE AUTHORITY. (a) Each county has the solid waste management powers prescribed under this subchapter.

(b) The exercise of the licensing authority and other powers

granted to a county by this chapter does not preclude the commission from exercising the powers vested in the commission under other provisions of this chapter, including the provisions authorizing the commission to issue a permit to construct, operate, and maintain a facility to process, store, or dispose of solid waste.

(c) The commission, by specific action or directive, may supersede any authority granted to or exercised by a county under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.57, eff. Sept. 1, 1995.

Sec. 361.152. LIMITATION ON COUNTY POWERS CONCERNING INDUSTRIAL SOLID WASTE. The powers specified by Sections 361.154-361.162 and Section 364.011 (County Solid Waste Control Act) may not be exercised by a county with respect to the industrial solid waste disposal practices and areas to which Section 361.090 applies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 570, Sec. 3, eff. Sept. 1, 1999.

Sec. 361.153. COUNTY SOLID WASTE PLANS AND PROGRAMS; FEES. (a) A county may appropriate and spend money from its general revenues to manage solid waste and to administer a solid waste program and may charge reasonable fees for those services.

(b) As sufficient funds are made available by the commission, a county shall develop county solid waste plans and coordinate those plans with the plans of:

(1) local governments, regional planning agencies, and other governmental entities, as prescribed by Subchapter D, Chapter 363; and

(2) the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 25, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.58, eff. Sept. 1, 1995.

Sec. 361.154. COUNTY LICENSING AUTHORITY. (a) Except as provided by Sections 361.151 and 361.152, a county may require and issue licenses authorizing and governing the operation and maintenance of facilities used to process, store, or dispose of solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(b) If a county exercises licensing authority, it shall adopt and enforce rules for the management of solid waste. The rules must be:

(1) compatible with and not less stringent than those of the commission; and

(2) approved by the commission.

(c) Sections 361.155-361.161 apply if a county exercises licensing authority under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.59, eff. Sept. 1, 1995.

Sec. 361.155. COUNTY NOTIFICATION OF LICENSE APPLICATION TO COMMISSION. The county shall mail a copy of each license application with pertinent supporting data to the commission. The commission has at least 60 days to submit comments and recommendations on the license application before the county may act on the application unless that privilege is waived by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.60, eff. Sept. 1, 1995.

Sec. 361.156. SEPARATE LICENSE FOR EACH FACILITY. (a) A county shall issue a separate license for each solid waste facility.

(b) A license under this subchapter may be issued only to the person in whose name the application is made and only for the facility described in the license.

(c) A license may not be transferred without prior notice to and approval by the county that issued it.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.157. CONTENTS OF LICENSE. A license for a solid waste facility issued by a county must include:

(1) the name and address of each person who owns the land on which the solid waste facility is located and the person who is or will be the operator or person in charge of the facility;

(2) a legal description of the land on which the facility is located; and

(3) the terms and conditions on which the license is issued, including the duration of the license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.158. LICENSE FEE. (a) A county may charge a license fee not to exceed $100, as set by the commissioners court of the county.

(b) The fees shall be deposited to the credit of the county's general fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.159. LICENSE ISSUANCE; AMENDMENT, EXTENSION, AND RENEWAL. (a) A county may amend, extend, or renew a license it issues in accordance with county rules.

(b) The procedures prescribed by Section 361.155 apply to an application to amend, extend, or renew a license.

(c) A license for the use of a facility to process, store, or dispose of solid waste may not be issued, amended, renewed, or extended without the prior approval of the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.61, eff. Sept. 1, 1995.

Sec. 361.160. LICENSE AMENDMENT. (a) A county may, for good cause, after hearing with notice to the license holder and to the commission, amend a license it issues for reasons concerning:

(1) public health;

(2) air or water pollution;

(3) land use; or

(4) a violation of this chapter or of other applicable laws or rules controlling the processing, storage, or disposal of solid waste.

(b) For similar reasons, the commission may for good cause amend a license issued by a county, after hearing with notice to:

(1) the license holder; and

(2) the county that issued the license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.62, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 33, eff. Sept. 1, 1997.

Sec. 361.161. PERMIT FROM COMMISSION NOT REQUIRED. If a county issues, amends, renews, or extends a license in accordance with Sections 361.154-361.160, the owner or operator of the facility is not required to obtain a permit from the commission for the same facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.62, eff. Sept. 1, 1995.

Sec. 361.162. DESIGNATION OF AREAS SUITABLE FOR FACILITIES. (a) Subject to the limitation under Sections 361.151 and 361.152, a county may designate land areas not in the territorial limits or extraterritorial jurisdiction of a municipality as suitable for use as solid waste facilities.

(b) The county shall base a designation on the principles of public health, safety, and welfare, including proper land use, compliance with state statutes, and other pertinent factors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.163. COOPERATIVE AGREEMENTS WITH LOCAL GOVERNMENTS. A county may enter into cooperative agreements with local governments and other governmental entities to jointly operate solid waste management activities and to charge reasonable fees for the services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.165. POLITICAL SUBDIVISIONS WITH JURISDICTION IN TWO OR MORE COUNTIES. (a) This section applies to a political subdivision of the state that:

(1) has jurisdiction of territory in more than one county; and

(2) has been granted the power by the legislature to regulate solid waste handling or disposal practices or activities in its jurisdiction.

(b) The governing body of the political subdivision may, by resolution, assume for the political subdivision the exclusive authority to exercise, in the area subject to its jurisdiction, the powers granted by this chapter to a county, to the exclusion of the exercise of the same powers by the counties otherwise having jurisdiction over the area.

(c) In the exercise of those powers, the political subdivision is subject to the same duties, limitations, and restrictions applicable to a county under this chapter.

(d) A political subdivision that assumes the authority granted under this section:

(1) serves as the coordinator of all solid waste management practices and activities for municipalities, counties, and other governmental entities in its jurisdiction that have solid waste management regulatory powers or engage in solid waste management practices or activities; and

(2) shall exercise the authority as long as the resolution of the political subdivision is effective.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.166. MUNICIPAL RESTRICTIONS. A municipality may not abolish or restrict the use or operation of a solid waste facility in its limits or extraterritorial jurisdiction if the solid waste facility:

(1) was in existence when the municipality was incorporated or was in existence when the municipality annexed the area in which it is located; and

(2) is operated in substantial compliance with applicable

state and county regulations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.167. OPERATION OF FACILITY BY POLITICAL SUBDIVISION. A municipality or other political subdivision operating a solid waste facility may not be prevented from operating the solid waste facility on the ground that the facility is located in the limits or extraterritorial jurisdiction of another municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER F. REGISTRY AND CLEANUP OF CERTAIN HAZARDOUS WASTE FACILITIES

Sec. 361.181. STATE REGISTRY: ANNUAL PUBLICATION. (a) The commission shall annually publish an updated state registry identifying, to the extent feasible, each facility that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

(b) The registry shall identify the relative priority for action at each listed facility. The relative priority for action at facilities listed on the registry shall be periodically reviewed and revised by the commission as necessary to accurately reflect the need for action at the facilities.

(c) In this subchapter:

(1) "Facility" means any building, structure, installation, equipment, pipe, or pipeline (including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft), or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed or otherwise come to be located. The term does not include any consumer product in consumer use or any vessel.

(2) "Homestead" has the meaning designated by Section 51, Article XVI, Texas Constitution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff.

Sept. 6, 1990; Acts 2003, 78th Leg., ch. 661, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.182. INVESTIGATIONS. (a) The executive director may conduct investigations of facilities that are listed on the state registry, or that the executive director has reason to believe should be included on the state registry, in accordance with Sections 361.032, 361.033, and 361.037.

(b) If there is a reasonable basis to believe there may be a release or threatened release of a hazardous substance at a facility, the executive director may submit requests for information and requests for the production of documents to any person who has or may have information or documents relevant to:

(1) the identification, nature, or quantity of materials that have been generated, treated, stored, or disposed of at a facility or transported to a facility;

(2) the identification of soils, groundwater, or surface water at a facility that have been or may be affected by an actual or threatened release of a hazardous substance;

(3) the nature or extent of a release or threatened release of a hazardous substance at or from a facility; or

(4) the ability of a person to pay for or to perform a remedial action.

(c) If the requested information or documents are not produced in a timely manner, the commission may issue an order directing compliance with the requests for information or production of documents. Information or documents requested under Subsection (b) or this subsection are public records, except that the commission shall consider the copied records as confidential if a showing satisfactory to the commission is made by the owner of the records that the records would divulge trade secrets if made public. This subsection does not require the commission to consider the composition or characteristics of hazardous substances being processed, stored, disposed of, or otherwise handled to be held confidential.

(d) The commission shall adopt rules regarding the provision of notice and an opportunity for a hearing before the commission on whether the requested information or documents should be produced.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.183. REGISTRY LISTING PROCEDURE: DETERMINATION OF ELIGIBILITY. (a) Before listing a facility on the state registry, the executive director shall determine whether the potential endangerment to public health and safety or the environment at the facility can be resolved by:

(1) the present owner or operator under the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901);

(2) some or all of the potentially responsible parties identified in Subchapter I, under an agreed administrative order issued by the commission; or

(3) an agreement under Subchapter S, as added by Chapter 986, Acts of the 74th Legislature, Regular Session, 1995.

(b) If the potential endangerment to public health and safety or the environment can be resolved in such a manner, the facility may not be listed on the state registry. Notice of the approach selected to resolve the apparent endangerment to public health and safety or the environment and the fact that this action is being taken in lieu of listing the facility on the state registry shall be published in the Texas Register.

(c) If after reasonable efforts the executive director determines that the potential endangerment to public health and safety or the environment cannot be resolved by either of the approaches under Subsection (a), the executive director shall evaluate the facility to determine whether the site exceeds the commission's minimum criteria for listing on the state registry. The commission by rule shall adopt the minimum criteria. The executive director shall also evaluate the facility to determine whether it is eligible for listing on the federal National Priorities List.

(d) The commission shall proceed under this subchapter only if, based on information available to the executive director, the facility is eligible for listing on the state registry but not eligible for the federal National Priorities List.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 3, eff. Sept. 1, 1997.

Sec. 361.184. REGISTRY LISTING PROCEDURE: NOTICES AND HEARING. (a) If the executive director determines that a facility is eligible for listing on the state registry, the commission shall publish in the Texas Register and in a newspaper of general circulation in the county in which the facility is located a notice of intent to list the facility on the state registry. The notice shall at least specify the name and location of the facility, the general nature of the potential endangerment to public health and safety or the environment as determined by information available to the executive director at that time, and the duties and restrictions imposed by Subsection (c). The notice also shall provide that interested parties may do either or both of the following:

(1) submit written comments to the commission relative to the proposed listing of the facility; or

(2) request a public meeting to discuss the proposed listing by submitting a request not later than the 30th day after the date on which the notice is issued.

(b) If the facility is determined to be eligible for listing on the state registry, the executive director shall make all reasonable efforts to identify all potentially responsible parties for remediation of the facility. Concurrent with the publication of general notice under Subsection (a), the executive director shall provide to each identified potentially responsible party direct, written notification of the proposed listing of the facility on the state registry and of the procedures for requesting a public meeting to discuss the listing and the information included in the general notice as required by Subsection (a). Written notifications under this subsection shall be by certified mail, return receipt requested, to each named responsible party at the party's last known address.

(c) If a public meeting is requested regarding the proposed listing of a facility on the state registry, the commission shall publish general notice of the date, time, and location of the public meeting in the Texas Register and in the same newspaper in which the notice of the opportunity to request the public meeting was published. The public meeting notice shall be provided not later

than the 31st day before the date of the meeting. Notice of the meeting also shall be provided by certified mail, return receipt requested, to each identified potentially responsible party at the party's last known address.

(d) Nonreceipt of any notice mailed to a potentially responsible party under Subsection (b) or this subsection does not affect the responsibilities, duties, or liabilities imposed on the party. Contemporaneously with issuing the notice of the public meeting, the executive director shall make available to all interested parties the public records the executive director has regarding the facility. For the purposes of providing this information, the executive director shall provide a brief summary of those public records and make those public records available for inspection and copying during regular business hours.

(e) A public meeting is legislative in nature and not a contested case hearing under Chapter 2001, Government Code. The meeting shall be held for the purpose of obtaining additional information regarding the facility relative to the eligibility of the facility for listing on the state registry and the identification of potentially responsible parties.

(f) After the public meeting or after opportunity to request a public meeting has passed, the commission shall file or cause to be filed an affidavit or notice in the real property records of the county in which the facility is located identifying the facility as one proposed for listing on the state registry unless the executive director determines, based on information presented at the public meeting, that efforts to list the facility on the state registry should not be pursued.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 361.185. INVESTIGATION/FEASIBILITY STUDY. (a) After the public meeting or after opportunity to request a public meeting has passed, but before any listing of the facility on the state registry, the commission shall allow all identified potentially responsible parties the opportunity to fund or conduct, if appropriate, a

remedial investigation/feasibility study, or a similar study as approved by the executive director, for the facility. Not later than the 90th day after notice under Section 361.184(a) is issued, the potentially responsible parties may make a good faith offer to conduct the study. If a good faith offer from all or some of the potentially responsible parties is received by the commission within that period, those making the offer have an additional 60 days within which to negotiate an agreed administrative order from the commission, which must include a scope of work. In the agreed administrative order the commission may not require the participating potentially responsible parties to agree to perform the remedial action or admit liability for the facility remediation.

(b) If no potentially responsible party makes a good faith offer to conduct the remedial investigation/feasibility study or similar study as approved by the executive director or if the participating potentially responsible parties fail to conduct or complete an approved study, the commission may conduct or complete the study using funds from the hazardous waste disposal fee fund.

(c) To encourage potentially responsible parties to perform the remedial investigation/feasibility study or other similar study as approved by the executive director, costs for commission oversight of the study may not be assessed against those parties who fund or perform the study. Nonparticipating potentially responsible parties who are ultimately determined to be liable for remediation of the facility under this chapter or who subsequently enter into an agreed order relative to the remediation of the facility may be assessed up to the full costs for commission oversight of the study process. If all potentially responsible parties participate or agree to fund the remedial investigation/feasibility study or other similar study, all commission oversight costs shall be paid from the hazardous waste disposal fee fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.1855. PROPOSAL OF LAND USE OTHER THAN RESIDENTIAL. (a) The executive director shall hold a public meeting to obtain public input and information regarding the appropriate use of land on

which a facility is located that is the subject of a remedial investigation/feasibility study if:

(1) a land use other than residential is proposed as appropriate for the land by:

(A) the executive director; or

(B) a potentially responsible party who has entered into an agreed order with the commission;

(2) the proposal is made before the study is completed; and

(3) a local government has not zoned the land as residential only.

(b) Any interested person may comment at the meeting.

(c) The meeting is legislative in nature and not a contested case hearing under Chapter 2001, Government Code.

(d) Not later than the 31st day before the date of the meeting, the commission shall:

(1) publish notice of the meeting in the Texas Register and in a newspaper of general circulation in the county in which the facility is located;

(2) mail notice of the meeting to each potentially responsible party by certified mail, return receipt requested, at the party's most recent address as shown on the records of the commission; and

(3) make the commission's records regarding the facility available to any interested person.

(e) The notice shall:

(1) state the date, time, and place of the meeting; and

(2) provide information regarding the proposed land use.

(f) The failure of a potentially responsible party to receive a notice under this section does not affect the responsibilities, duties, or liabilities of the party.

(g) After the meeting, the executive director shall select the appropriate land use for purposes of selecting a proposed remedial action.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 4, eff. Sept. 1, 1997.

Sec. 361.186. FACILITY ELIGIBLE FOR LISTING: ACTIVITIES AND CHANGE OF USE. (a) If the executive director determines that a

facility is eligible for listing on the state registry, a person may not perform at the facility any partial or total removal activities except as authorized by the executive director in appropriate circumstances after notice and opportunity for comment to all other potentially responsible parties. The commission may adopt rules determining what constitutes an appropriate circumstance to take removal action under this subsection. Authorization by the executive director to conduct a partial or total removal action does not constitute:

(1) a final determination of the party's ultimate liability for remediation of the facility; or

(2) a determination of divisibility.

(b) If the facility is determined to be eligible for listing on the state registry, the owner or operator of the facility must provide the executive director with written notice of any substantial change in use of the facility before the 60th day before the date on which the change in use is made. Notice of a proposed substantial change in use must be in writing, addressed to the executive director, sent by certified mail, return receipt requested, and include a brief description of the proposed change in use. A substantial change in use shall be defined by rule and must include actions such as the erection of a building or other structure at the facility, the use of the facility for agricultural production, the paving of the facility for use as a roadway or parking lot, and the creation of a park or other public or private recreational use on the facility.

(c) If, within 30 days after the date of the notice, the executive director determines that the proposed substantial change in use will interfere significantly with a proposed or ongoing remedial investigation/feasibility study or similar study approved by the executive director or expose the public health and safety or the environment to a significantly increased threat of harm, the executive director shall notify the owner or operator of the determination. After the determination is made and notification given, the owner or operator may not proceed with the proposed substantial change in use. The owner or operator may request a hearing before the commission on whether the determination should be modified or set aside by submitting a request not later than the 30th day after the receipt of the executive director's determination. If a hearing is requested, the commission shall initiate the hearing not

later than the 45th day after the receipt of the request. The hearing shall be conducted in accordance with Chapter 2001, Government Code. The executive director's determination becomes unappealable on the 31st day after issuance if a hearing is not requested.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 361.187. PROPOSED REMEDIAL ACTION. (a) Within a reasonable time after the completion of the remedial investigation/feasibility study or other similar study, if required, the executive director shall select a proposed remedial action. After the selection of a proposed remedial action, the commission shall hold a public meeting to discuss the proposed action.

(b) The commission shall publish notice of the meeting in the Texas Register and in a newspaper of general circulation in the county in which the facility is located at least 30 days before the date of the public meeting. The notice shall provide information regarding the proposed remedial action and the date, time, and place of the meeting. The commission shall also mail the same information to each potentially responsible party by certified mail, return receipt requested, at the party's last known address at least 30 days before the public meeting. Contemporaneously with the issuance of notice of the public meeting, the executive director shall make available to all interested parties the public records the executive director has regarding the facility. For purposes of providing this information, the executive director shall provide a brief summary of those public records and make those public records available for inspection and copying during regular business hours. Nonreceipt of any notice mailed to a potentially responsible party under this section does not affect the responsibilities, duties, or liabilities imposed on the party.

(c) The public meeting is legislative in nature and not a contested case hearing under Chapter 2001, Government Code. The meeting shall be held for the purpose of obtaining additional information regarding the facility and the identification of

additional potentially responsible parties. Those in attendance may comment on the proposed remedial action, and the executive director may revise the proposed remedial action in light of the presentations.

(d) After the public meeting on the proposed remedial action, the commission shall provide all identified potentially responsible parties an opportunity to fund or perform the proposed remedial action. Not later than the 60th day after the date of the public meeting, the potentially responsible parties may make a good faith offer to fund or perform the proposed remedial action. If a good faith offer is made by all or some of the potentially responsible parties within this period, those parties have an additional 60 days to negotiate an agreed administrative order from the commission, which shall include a scope of work. The commission may not require an admission of liability in the agreed administrative order.

(e) To encourage potentially responsible parties to perform the remedial action, costs for commission oversight of the remedial action may not be assessed against those parties who fund or perform the remedial action. Nonparticipating potentially responsible parties who are ultimately determined to be liable for remediation of the facility may be assessed up to the full costs for commission oversight of the remedial action. If all potentially responsible parties conduct or fund the remedial action, all commission oversight costs shall be paid from the hazardous waste disposal fee fund. Participation in the remedial action does not relieve those who did not conduct or fund the remedial investigation/feasibility study or other similar study approved by the executive director from paying their portion of the oversight costs of that phase of the remediation.

(f) The executive director may authorize a potentially responsible party to conduct a partial remedial action at a portion of the facility if after notice and opportunity for comment to all other potentially responsible parties the executive director determines that the release or threatened release is divisible. In this subchapter, "divisible" means that the hazardous substance released or threatened to be released is capable of being managed separately under the remedial action plan. A determination of divisibility by the executive director does not have res judicata or collateral estoppel effect on a potentially responsible party's ultimate liability for remediation of the facility under Subchapter G

or I.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 793, Sec. 5, eff. Sept. 1, 1997.

Sec. 361.1875. EXCLUSION OF CERTAIN POTENTIALLY RESPONSIBLE PARTIES. (a) The commission may not name a person as a responsible party for an enforcement action or require a person to reimburse remediation costs for a site if the commission has conducted an investigation of a site owned or operated by the person and as a result of the investigation has determined that:

(1) the contaminants that are the subject of investigation under this subchapter appear to originate from an up-gradient, off-site source that is not owned or operated by the person;

(2) additional corrective action is not required at the site owned or operated by the person; and

(3) the commission will not undertake a formal enforcement action in the matter.

(b) The commission may not name a land bank established under Chapter 379C, Local Government Code, as a responsible party for an enforcement action or require the land bank to reimburse remediation costs for a site if the commission has conducted an investigation of a site owned or operated by the land bank and as a result of the investigation has determined that:

(1) the contaminants that are the subject of investigation under this subchapter:

(A) appear to originate from an up-gradient, off-site source that is not owned or operated by the land bank; or

(B) appear to have been present on the site before the land bank purchased the site; and

(2) the land bank could not have reasonably known about the contaminants at the time the land bank purchased the site.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 11.01, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 1, eff.

September 1, 2007.

Sec. 361.188. FINAL ADMINISTRATIVE ORDER. (a) After consideration of all good faith offers to perform a remedial action, the commission shall issue a final administrative order that must:

(1) list the facility on the state registry, thus determining that the facility poses an imminent and substantial endangerment to public health and safety or the environment;

(2) specify the appropriate land use for purposes of selecting the appropriate remedial action;

(3) specify the selected remedial action;

(4) list the parties determined to be responsible for remediating the facility;

(5) make findings of fact describing actions voluntarily undertaken by responsible parties;

(6) order the responsible parties to remediate the facility and, if appropriate, reimburse the hazardous waste disposal fee fund for remedial investigation/feasibility study and remediation costs;

(7) establish a schedule for completion of the remedial action;

(8) state any determination of divisibility of responsible party liability; and

(9) give notice of the duties and restrictions imposed by Section 361.190.

(b) The provisions in Subchapters I, K, and L relating to administrative orders apply to orders issued under this section.

(c) If a potentially responsible party is newly identified after a final administrative order under Subsection (a) has been issued by the commission, that party has 60 days to negotiate an amendment to the existing order. The commission is not prohibited from issuing a separate order for the newly identified potentially responsible party if the commission determines that the circumstances warrant a separate order. The responsible parties identified in the order issued under Subsection (a) shall be allowed to comment on the issuance of a separate order for the newly identified potentially responsible party.

(d) Within a reasonable period after a determination has been made, the commission shall file or cause to be filed in the real property records of the county in which the facility is located an

affidavit or notice stating that the facility has been listed on or deleted from the state registry or is no longer proposed for listing on the state registry.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 6, eff. Sept. 1, 1997.

Sec. 361.189. DELETIONS FROM REGISTRY. (a) The executive director or an owner or operator or other named responsible party of a facility listed or to be listed on the state registry may request the commission to delete the facility from the state registry, modify the facility's priority within the state registry, or modify any information regarding the facility by submitting a written statement setting forth the grounds of the request in the form the commission may by rule require.

(b) The commission by rule shall establish procedures, including public meetings, for review of requests submitted under this section.

(c) If the commission deletes a facility from the state registry because the cleanup of the facility is being addressed under Subchapter S, as added by Chapter 986, Acts of the 74th Legislature, Regular Session, 1995, the facility automatically reverts to the status the facility had immediately before the facility was deleted from the registry on the date of the executive director's determination that the cleanup of the facility is not being addressed adequately. A public meeting is not required for an action under this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 7, eff. Sept. 1, 1997.

Sec. 361.190. CHANGE IN USE OF LISTED FACILITY. (a) After the listing of a facility on the state registry, a person may not substantially change the manner in which the facility is used without notifying the executive director and receiving written approval of

the executive director for the change.

(b) A substantial change in use shall be defined by rule and shall include actions such as the erection of a building or other structure at the facility, the use of the facility for agricultural production, the paving of the facility for use as a roadway or parking lot, and the creation of a park or other public or private recreational use on the facility.

(c) The notice must be in writing, addressed to the executive director, sent by certified mail, return receipt requested, and include a brief description of the proposed change in use.

(d) The executive director shall approve or disapprove the proposed action within 60 days after the date of receipt of the notice of proposed change in use. The executive director may not approve the proposed change in use if the new use will significantly interfere with a proposed, ongoing, or completed remedial action program at a facility or expose the public health and safety or the environment to a significantly increased threat of harm.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.191. IMMEDIATE REMOVAL. (a) If the commission, after investigation, finds that there exists a release or threatened release of a hazardous substance at a facility that is causing irreversible or irreparable harm to the public health and safety or the environment and that the immediacy of the situation makes it prejudicial to the public interest to delay action until an administrative order can be issued to potentially responsible parties or until a judgment can be entered in an appeal of an administrative order, the commission may, with the funds available to the commission from the hazardous waste disposal fee fund, undertake immediate removal action at the facility to alleviate the harm.

(b) After the immediate danger of irreversible or irreparable harm has been alleviated, the commission shall proceed under this subchapter.

(c) Findings required under this section must be in writing and may be made ex parte by the commission subject to judicial review under the substantial evidence rule as provided by Chapter 2001,

Government Code.

(d) The reasonable expenses of any immediate removal action taken by the commission may be recoverable from the persons described in Subchapter G or I, and the state may seek to recover the reasonable expenses in any court of appropriate jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 361.192. REMEDIAL ACTION BY COMMISSION. (a) If a person ordered to eliminate an imminent and substantial endangerment to the public health and safety or the environment has failed to do so within the time limits specified in the order or any extension of time approved by the commission, the commission may implement the remedial action program for the facility.

(b) The reasonable expenses of implementing the remedial action program by the commission shall be paid by the persons to whom the order was issued and shall be recoverable under Section 361.197.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.193. GOAL OF REMEDIAL ACTION. (a) The goal of any remedial action is the elimination of the imminent and substantial endangerment to the public health and safety or the environment posed by a release or threatened release of a hazardous substance at a facility. The appropriate extent of the remedial action at any particular facility shall be determined by the commission's selection of the remedial alternative that the commission determines is the lowest cost alternative that is technologically feasible and reliable and that effectively mitigates and minimizes damage to and provides adequate protection of the public health and safety or the environment.

(b) In considering the appropriate remedial action program at a particular facility, the commission may approve a program that does not attain a level or standard of control at least equivalent to a

legally applicable or relevant and appropriate standard, requirement, criterion, or limitation, as required by state or local law, if the commission finds that:

(1) the remedial action selected is only part of a total remedial action that will attain that level or standard of control when completed;

(2) compliance with the requirement at that facility will result in greater risk to public health and safety or the environment than alternative options;

(3) compliance with the requirement is technically impracticable from an engineering perspective;

(4) the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, criterion, or limitation through use of another method or approach;

(5) with respect to a local standard, requirement, criterion, or limitation, the locality has not consistently applied or demonstrated the intention to consistently apply the standard, requirement, criterion, or limitation in similar circumstances of other remedial actions within the locality; or

(6) with respect to an action using solely state funds, selection of a remedial action that attains those levels or standards of control will not provide a balance between the need for protection of public health and safety or the environment at the facility and the availability of state funds to respond to other sites that present a threat to public health and safety or the environment, taking into consideration the relative immediacy of the threats.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.194. LIEN. (a) In addition to all other remedies available to the state under this chapter or other law, all remediation costs for which a person is liable to the state constitute a lien in favor of the state on the real property and the rights to the real property that are subject to or affected by a remedial action. This provision is cumulative of other remedies available to the state under this chapter.

(b) The lien imposed by this section arises and attaches to the real property subject to or affected by a remedial action at the time an affidavit is recorded and indexed in accordance with this section in the county in which the real property is located. For the purpose of determining rights of all affected parties, the lien does not relate back to a time before the date on which the affidavit is recorded, which date is the lien inception date. The lien continues until the liability for the costs is satisfied or becomes unenforceable through operation of law. The executive director shall determine whether to prepare an affidavit. In determining whether to prepare an affidavit or whether a lien is satisfied, the executive director:

(1) shall proceed in the manner that the executive director determines will most likely result in the least overall costs to the state after any cost recovery action; and

(2) may take into account a landowner's financial ability to satisfy the lien, including consideration of whether the landowner received financial compensation for the disposal of any substance addressed by the remedial action and whether the real property that is the subject of the lien:

(A) is a homestead and is being occupied as a home by the landowner; and

(B) has a fair market value of $250,000 or less.

(c) An authorized representative of the commission must execute the affidavit. The affidavit must show:

(1) the names and addresses of the persons liable for the costs;

(2) a description of the real property that is subject to or affected by the remediation action for the costs or claims; and

(3) the amount of the costs and the balance due.

(d) The county clerk shall record the affidavit in records kept for that purpose and shall index the affidavit under the names of the persons liable for the costs.

(e) The commission shall record a relinquishment or satisfaction of the lien when the lien is paid or satisfied.

(f) The lien may be foreclosed only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien.

(g) The lien imposed by this section is not valid or enforceable if real property, an interest in real property, or a

mortgage, lien, or other encumbrance on or against real property is acquired before the affidavit is recorded, unless the person acquiring the real property, an interest in the property, or the mortgage, lien, or other encumbrance on the property had or reasonably should have had actual notice or knowledge that the real property is subject to or affected by a clean-up action or has knowledge that the state has incurred clean-up costs.

(h) If a lien is fixed or attempted to be fixed as provided by this section, the owner of the real property affected by the lien may file a bond to indemnify against the lien. The bond must be filed with the county clerk of the county in which the real property subject to the lien is located. An action to establish, enforce, or foreclose any lien or claim of lien covered by the bond must be brought not later than the 30th day after the date of service of notice of the bond. The bond must:

(1) describe the real property on which the lien is claimed;

(2) refer to the lien claimed in a manner sufficient to identify it;

(3) be in an amount double the amount of the lien referred to;

(4) be payable to the commission;

(5) be executed by the party filing the bond as principal and a corporate surety authorized under the law of this state to execute the bond as surety; and

(6) be conditioned substantially that the principal and sureties will pay to the commission the amount of the lien claimed, plus costs, if the claim is proved to be a lien on the real property.

(i) After the bond is filed, the county clerk shall issue notice of the bond to the named obligee. A copy of the bond must be attached to the notice. The notice may be served on each obligee by having a copy delivered to the obligee by any person competent to make oath of the delivery. The original notice shall be returned to the office of the county clerk, and the person making service of copy shall make an oath on the back of the copies showing on whom and on what date the copies were served. The county clerk shall record the bond notice and return in records kept for that purpose. In acquiring an interest in real property, a purchaser or lender may rely on and is absolutely protected by the record of the bond, notice, and return.

(j) The commission may sue on the bond after the 30th day after the date on which the notice is served but may not sue on the bond later than one year after the date on which the notice is served. The commission is entitled to recover reasonable attorney's fees if the commission recovers in a suit on the lien or on the bond.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 8, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 661, Sec. 2, eff. Sept. 1, 2003.

Sec. 361.195. PAYMENTS FROM HAZARDOUS AND SOLID WASTE REMEDIATION FEE ACCOUNT. (a) Money for actions taken or to be taken by the commission in connection with the elimination of an imminent and substantial endangerment to the public health and safety or the environment under this subchapter is payable directly to the commission from the hazardous and solid waste remediation fee account. These payments include any costs of inspection or sampling and laboratory analysis of wastes, soils, air, surface water, and groundwater done on behalf of a state agency and the costs of investigations to identify and locate potentially responsible parties.

(b) The commission shall seek remediation of facilities by potentially responsible parties before expenditure of federal or state funds for the remediations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 333, Sec. 44, eff. Sept. 1, 1997.

Sec. 361.196. REMEDIATION: PERMITS NOT REQUIRED; LIABILITY. (a) Potentially responsible parties shall coordinate with ongoing federal and state hazardous waste programs although a state or local permit may not be required for any removal or remedial action conducted on site.

(b) Subject to Section 361.193, the state may enforce any federal or state standard, requirement, criterion, or limitation to which the remedial action would otherwise be required to conform if a

permit were required.

(c) An action taken by the person to contain or remove a release or threatened release in accordance with an approved remedial action plan may not be construed as an admission of liability for the release or threatened release.

(d) A person who renders assistance in containing or removing a release or threatened release in accordance with an approved remedial action plan is not liable for any additional remediation costs at the facility resulting solely from acts or omissions of the person in rendering the assistance in compliance with the approvals required by this section, unless the remediation costs were caused by the person's gross negligence or wilful misconduct.

(e) Except as specifically provided by this section, these provisions do not expand or diminish the common law tort liability, if any, of private parties participating in a remediation action for civil damages to third parties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.197. COST RECOVERY. (a) The commission shall file a cost recovery action against all responsible parties who have not complied with the terms of an administrative order issued under Section 361.188. The commission shall file the cost recovery action no later than one year after all remedial action has been completed.

(b) The state may seek a judgment against the noncompliant parties for the total amount of the cost of the remedial investigation and feasibility study, the remedial design, and the remedial action, including costs of any necessary studies and oversight costs, minus the amount agreed to be paid or expended by any other responsible parties under an order issued under Section 361.185 or 361.188.

(c) The action may also include a plea seeking civil penalties for noncompliance with the commission's administrative order and a claim for up to triple the state's costs if the responsible party's defenses are determined by the court to be unreasonable, frivolous, or without foundation.

(d) The commission shall file a cost recovery action against

each responsible party for the total costs of an action taken under Section 361.133(c)(1), (2), (3), (5), or (6) or Section 361.133(g).

(e) The commission may not file a cost recovery action under this section against an individual if the individual's only significant asset is a homestead that:

(1) includes the facility subject to or affected by a remedial action;

(2) is occupied by the individual as a home; and

(3) has a fair market value of $250,000 or less.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 552, Sec. 1, eff. June 8, 1993; Acts 1995, 74th Leg., ch. 883, Sec. 4, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 793, Sec. 9, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 661, Sec. 3, eff. Sept. 1, 2003.

Sec. 361.199. MIXED FUNDING PROGRAM. The commission by rule shall adopt a mixed funding program in which available money from potentially responsible parties is combined with state or federal funds to clean up a facility in a timely manner. Use of the state or federal funds in a mixed funding approach does not preclude the state or federal government from seeking recovery of its costs from nonparticipating potentially responsible parties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.200. SETTLEMENT. The commission shall assess and by rule may develop and implement a settlement program. Under the program, the commission shall consider the advantages of developing a final settlement with potentially responsible parties that are responsible for response costs at a facility because of hazardous substances. The settlement program may include:

(1) de minimis settlements;

(2) covenants not to sue;

(3) mixed funding; and

(4) partial settlements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 10, eff. Sept. 1, 1997.

Sec. 361.201. FINANCIAL CAPABILITY AND FUNDING PRIORITY. (a) The commission may determine whether a potentially responsible party is financially capable of conducting any necessary remediation studies or remedial action. The commission by rule shall adopt the criteria for determination of financial capability.

(b) If no financially capable, potentially responsible parties exist for a facility, the commission shall issue an administrative order stating its determination that the facility constitutes an imminent and substantial endangerment and that there are no financially capable, potentially responsible parties. The commission shall then conduct its own remediation study and remedial action, using federal funds if available, or, if federal funds are not available, using state funds from the hazardous and solid waste remediation fee account.

(c) Generally, the remediation of listed facilities shall be achieved first by private party funding, second with the aid of federal funds, and third, if necessary, with state funds from the hazardous and solid waste remediation fee account.

(d) The commission shall determine whether a potentially responsible party is financially capable of conducting any necessary remediation studies or remedial action if the responsible party is an individual whose homestead includes the facility subject to or affected by a remedial action.

(e) The commission by rule shall adopt criteria for determining the financial capability of an individual under Subsection (d). The rules must provide that the value of the individual's homestead may not be included in the total amount of the individual's assets if:

(1) the individual is occupying the homestead as a home; and

(2) the fair market value of the homestead is $250,000 or less.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff.

Sept. 6, 1990; Acts 1997, 75th Leg., ch. 333, Sec. 45, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 661, Sec. 4, eff. Sept. 1, 2003.

Sec. 361.202. DEADLINE EXTENSIONS. The executive director or the commission may extend any period specified in this section if considered appropriate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

SUBCHAPTER I. ENFORCEMENT; ADMINISTRATIVE ORDERS CONCERNING IMMINENT AND SUBSTANTIAL ENDANGERMENT

Sec. 361.271. PERSONS RESPONSIBLE FOR SOLID WASTE. (a) Unless otherwise defined in applicable statutes and rules, a person is responsible for solid waste if the person:

(1) is any owner or operator of a solid waste facility;

(2) owned or operated a solid waste facility at the time of processing, storage, or disposal of any solid waste;

(3) by contract, agreement, or otherwise, arranged to process, store, or dispose of, or arranged with a transporter for transport to process, store, or dispose of, solid waste owned or possessed by the person, by any other person or entity at:

(A) the solid waste facility owned or operated by another person or entity that contains the solid waste; or

(B) the site to which the solid waste was transported that contains the solid waste; or

(4) accepts or accepted any solid waste for transport to a solid waste facility or site selected by the person.

(b) A political subdivision, a land bank established under Chapter 379C, Local Government Code, or an officer or employee of the political subdivision or land bank is not a person responsible for solid waste released or threatened to be released from a facility or at a site if:

(1) the political subdivision or land bank acquired ownership or control of the facility or site through a tax delinquency or if the subdivision acquired ownership or control of the facility or site through bankruptcy, abandonment, or other

circumstances in which the subdivision involuntarily acquired title to the facility or site by virtue of the subdivision's function as sovereign; and

(2) the political subdivision, land bank, officer, or employee did not cause or contribute to the release or threatened release of solid waste at the facility or site.

(c) A political subdivision that is in a county with a population of 3.3 million or more or is in a county adjacent to a county with a population of 3.3 million or more and that builds or installs a drainage project on a site of a solid waste facility is not a person responsible for solid waste released or threatened to be released from the facility or at a site of the facility if:

(1) the political subdivision acquired ownership or control of the facility or site through bankruptcy, tax delinquency, abandonment, or other circumstances in which the subdivision involuntarily acquired title to the facility or site by virtue of the subdivision's function as sovereign; and

(2) the plans for the drainage project have been submitted to and reviewed by the commission.

(d) A political subdivision that builds or installs a drainage project under Subsection (c) is not subject to civil or criminal liability arising from the building or installation of the drainage project. This subsection does not apply to an injury or property damage claim that results from an act or omission of the political subdivision constituting gross negligence, recklessness, or intentional misconduct.

(e) A fiduciary's responsibility for solid waste is subject to Subchapter T.

(f) A lender's responsibility for solid waste is subject to Subchapter U.

(g) A port authority or navigation district created under Section 59, Article XVI, or Section 52, Article III, Texas Constitution, is not a person responsible under this chapter for the release or threatened release of hazardous waste from a facility or at a site solely for its activities related to construction or maintenance of waterways to facilitate navigation if, in performing those activities:

(1) the port authority or navigation district is acting by virtue of the authority's or district's function as sovereign;

(2) the port authority or navigation district requires that

dredged materials be sampled and analyzed before placement or storage of those materials on land or submerged land; and

(3) the port authority or navigation district, after exercising due diligence, does not accept dredged materials that are hazardous waste.

(h) Subsection (g) may not be construed to relieve a port authority or navigation district of liability if the port authority or navigation district causes or contributes to the generation of hazardous waste.

(i) As used in Subsection (g), activities related to construction or maintenance of waterways to facilitate navigation include:

(1) the dredging of materials from navigable waters or the banks of navigable waters;

(2) the placement or storage of dredged materials on land or submerged land; and

(3) the construction, operation, or maintenance of a placement area for dredged material.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 159, Sec. 1, eff. May 16, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.67, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 793, Sec. 11, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1072, Sec. 34, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 589 (H.B. 1705), Sec. 1, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 44, eff. September 1, 2011.

Sec. 361.272. ADMINISTRATIVE ORDERS CONCERNING IMMINENT AND SUBSTANTIAL ENDANGERMENT. (a) The commission may issue an administrative order to a person responsible for solid waste if it appears that there is an actual or threatened release of solid waste that presents an imminent and substantial endangerment to the public health and safety or the environment:

(1) from a solid waste facility at which solid waste is

stored, processed, or disposed of; or

(2) at any site at which one or more of those activities concerning solid waste have been conducted in the past, regardless of whether the activity was lawful at the time.

(b) An administrative order may be issued under this section to:

(1) restrain the person from allowing or continuing the release or threatened release; and

(2) require the person to take any action necessary to provide and implement a cost effective and environmentally sound remedial action plan designed to eliminate the release or threatened release.

(c) An administrative order issued under this section shall:

(1) be delivered to the persons identified by the order by certified mail, return receipt requested;

(2) be delivered by hand delivery to the person identified by the order; or

(3) on failure of delivery of the order by certified mail or hand delivery, be served on the persons by publication:

(A) once in the Texas Register; and

(B) once in a newspaper of general circulation in each county in which a person identified by the order had the person's last known address.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.68, eff. Sept. 1, 1995.

Sec. 361.273. INJUNCTION AS ALTERNATIVE TO ADMINISTRATIVE ORDER. The commission may cause a civil suit for injunctive relief to be brought in a district court in the county in which the actual release is occurring or threatened release may occur to:

(1) restrain a person responsible for solid waste under Section 361.271 from allowing or continuing the release or threatened release; and

(2) require the person to take actions necessary to provide and implement a cost effective and environmentally sound remedial action plan designed to eliminate the release or threatened release.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.69, eff. Sept. 1, 1995.

Sec. 361.274. NO PRIOR NOTICE CONCERNING ADMINISTRATIVE ORDER. An administrative order under Section 361.272 does not require prior notice or an adjudicative hearing before the commission. An emergency administrative order may be issued under Subchapter L, Chapter 5, Water Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.69, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 35, eff. Sept. 1, 1997.

Sec. 361.275. DEFENSES. (a) Except as provided by Section 361.2755, a person responsible for solid waste under Section 361.271 is liable under Section 361.272 or 361.273 unless the person can establish by a preponderance of the evidence that the release or threatened release was caused solely by:

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third person; or

(4) any combination of Subdivisions (1), (2), and (3).

(b) In a defense under Subsection (a)(3), the defendant must establish by a preponderance of the evidence that the defendant:

(1) exercised due care concerning the solid waste, considering the characteristics of the solid waste, in light of all relevant facts and circumstances; and

(2) took precautions against foreseeable acts or omissions of the third person and the consequences that could foreseeably result from those acts or omissions.

(c) The defense under Subsection (a)(3) does not apply if the third person:

(1) is an employee or agent of the defendant; or

(2) has a direct or indirect contractual relationship with the defendant and the act or omission of the third person occurred in connection with the contractual relationship.

(d) In Subsection (c)(2), "contractual relationship" includes land contracts, deeds, or other instruments transferring title or possession of real property.

(e) A defendant who enters into a contractual relationship as

provided by Subsection (c)(2) is not liable under this subchapter if:

(1) the sole contractual relationship is acceptance for rail carriage by a common carrier under a published tariff; or

(2) the defendant acquired the real property on which the facility requiring the remedial action is located, after the disposal or placement of the hazardous substance on, in, or at the facility and the defendant establishes by a preponderance of the evidence that:

(A) the defendant has satisfied Subsection (b);

(B) at the time the defendant acquired the facility the defendant did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(C) the defendant is a governmental entity that acquired the facility by escheat, by other involuntary transfer or acquisition, or by the exercise of the power of eminent domain; or

(D) the defendant acquired the facility by inheritance or bequest.

(f) To demonstrate the condition under Subsection (e)(2)(B), the defendant must have made, at the time of acquisition, appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. In deciding whether the defendant meets this condition, the court shall consider:

(1) any specialized knowledge or experience of the defendant;

(2) the relationship of the purchase price to the value of the property if the property were uncontaminated;

(3) commonly known or reasonably ascertainable information about the property;

(4) the obvious presence or likely presence of contamination of the property; and

(5) the defendant's ability to detect the contamination by appropriate inspection.

(g) This section does not decrease the liability of a previous owner or operator of a facility who is liable under this chapter. If the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at a facility at the time the defendant owned the real property on which the facility is located and subsequently transferred ownership of the property to another

person without disclosing that knowledge, the defendant is liable and a defense under this section is not available to the defendant.

(h) Subsections (e)-(g) do not affect the liability under this chapter of a defendant who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action concerning the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 190 (S.B. 1818), Sec. 1, eff. September 1, 2021.

Sec. 361.2755. SCRAP METAL RECYCLING TRANSACTIONS; DEFENSE. (a) In this section:

(1) "Consuming facility" means the facility where the scrap metal was handled, processed, reclaimed, stored, transported, or otherwise managed by a person other than the person who arranged for recycling of the scrap metal.

(2) "Scrap metal" means bits and pieces of metal parts, such as bars, turnings, rods, sheets, or wire, or metal pieces that may be combined together with bolts or soldering, such as radiators, scrap automobiles, or railroad boxcars, which when worn or superfluous can be recycled. The term does not include:

(A) a shipping container, whether intact or not, that:

(i) has a capacity of not less than 30 liters and not more than 3,000 liters; and

(ii) has any hazardous substance contained in or adhering to the container, other than metal bits and pieces or a hazardous substance that forms an integral part of the container;

(B) any item of material that contained polychlorinated biphenyls at a concentration in excess of 50 parts per million or any new standard adopted pursuant to applicable federal laws;

(C) any material excluded from this definition by commission rule; or

(D) any material excluded from the definition of scrap metal under 42 U.S.C. Section 9627(d) by a federal regulation.

(b) This section:

(1) applies only to a scrap metal transaction that occurs on or after November 29, 1999; and

(2) does not apply to any material that is not scrap metal.

(c) A person who arranges for recycling of scrap metal, other than a person described by Subsection (f), is not responsible for the scrap metal under Section 361.271(a)(3) or (4) if the person can establish by a preponderance of the evidence that the following criteria were met at the time of the recycling transaction:

(1) the scrap metal met a commercial specification grade;

(2) a market existed for the scrap metal;

(3) a substantial portion of the scrap metal was made available for use as feedstock for the manufacture of a new saleable product;

(4) the scrap metal could have been a replacement or substitute for a virgin raw material, or the product to be made from the scrap metal could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material;

(5) the person was in compliance with any applicable regulations or standards regarding the handling, processing, reclamation, storage, transport, or management of the scrap metal or other activities associated with the recycling of scrap metal;

(6) the person did not melt the scrap metal prior to the transaction; and

(7) the person exercised reasonable care to determine that the consuming facility was in compliance with the substantive provisions of any:

(A) federal, state, or local environmental law or regulation applicable to the handling, processing, reclamation, storage, or transport of scrap metal or other management activities associated with scrap metal; or

(B) compliance order or decree issued pursuant to a law or regulation described by Paragraph (A).

(d) For purposes of Subsection (c)(6), thermal separation of two or more materials due to differences in melting points of the materials does not constitute melting.

(e) For purposes of Subsection (c)(7), reasonable care shall be determined using criteria that include:

(1) the price paid for the scrap metal in the recycling transaction;

(2) the ability of the person to detect the nature of the consuming facility's operations concerning the facility's handling, processing, reclamation, storage, or transport of scrap metal or

other management activities associated with the scrap metal; and

(3) the result of inquiries made by the person to the appropriate federal, state, or local environmental agency regarding the consuming facility's past and current compliance with:

(A) substantive provisions of any law, regulation, order, or decree described by Subsection (c)(7); and

(B) any requirement to obtain a permit applicable to the handling, processing, reclamation, storage, or transport of scrap metal or other management activity associated with scrap metal.

(f) Subsection (c) does not apply to a person who arranges for the recycling of scrap metal if the person:

(1) had an objectively reasonable basis to believe at the time of the scrap metal transaction that:

(A) the scrap metal would not be recycled;

(B) the scrap metal would be burned as fuel or for energy recovery or incineration; or

(C) the consuming facility was not in compliance with:

(i) a substantive provision of any law, regulation, order, or decree described by Subsection (c)(7); or

(ii) a requirement to obtain a permit applicable to the handling, processing, reclamation, storage, or transport of the scrap metal or other management activity associated with the scrap metal;

(2) had reason to believe that hazardous substances had been added to the scrap metal for purposes other than processing for recycling; or

(3) failed to exercise reasonable care with respect to the handling, processing, reclamation, storage, transport, and management of the scrap metal, including adhering to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the scrap metal by hazardous substances.

(g) For purposes of Subsection (f)(1), an objectively reasonable basis for belief shall be determined using criteria that include:

(1) the size of the person's business;

(2) customary industry practices, including customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the scrap metal by hazardous substances;

(3) the price paid for the scrap metal in the recycling transaction; and

(4) the ability of the person to detect the nature of the consuming facility's operations concerning the facility's handling, processing, reclamation, storage, or transport of scrap metal or other management activities associated with scrap metal.

(h) The commission may adopt rules as necessary to administer this section.

(i) A person who commences an action for contribution against a person who is not responsible for the scrap metal under this section is liable to that person for all reasonable costs incurred in defending that action, including reasonable attorney's fees and expert witness fees.

(j) This section may not be construed to:

(1) affect any defenses or liabilities of any person to whom Subsection (c) does not apply;

(2) create any presumption of liability against any person to whom Subsection (c) does not apply; or

(3) affect the responsibility of a person for solid waste under Section 361.271(a)(1) or (2).

Added by Acts 2021, 87th Leg., R.S., Ch. 190 (S.B. 1818), Sec. 2, eff. September 1, 2021.

Sec. 361.276. APPORTIONMENT OF LIABILITY. (a) If the release or threatened release caused by a person's acts or omissions is proved by a preponderance of the evidence to be divisible, that person is liable only for the elimination of that release or threatened release attributable to the person. If the release or threatened release is not proved to be divisible, persons liable under Section 361.272 or 361.273 are jointly and severally liable for eliminating the release or threatened release.

(b) In this section, "divisible" means that the waste released or threatened to be released has been and is capable of being managed separately under the remedial action plan.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.277. EFFECT OF SETTLEMENT AGREEMENT WITH STATE. (a)

If fewer than all of the persons identified as liable under this subchapter agree with the state to take remedial action to abate an actual or threatened release of solid waste that is an imminent and substantial endangerment to the public health and safety or the environment under an administrative order issued under section 361.272 or an action filed by the state under this subchapter, the state may seek a judgment against a nonsettling person for the total amount of the cost of the remedial action minus that amount the settling persons agree to pay or spend.

(b) A person who enters a settlement agreement with the state that resolves all liability of the person to the state for a site subject to Subchapter F is released from liability to a person described by Section 361.344(a) for cost recovery, contribution, or indemnity under Section 361.344 regarding a matter addressed in the settlement agreement.

(c) A settlement agreement does not discharge the liability of a nonsettling person to the state unless the agreement provides otherwise.

(d) Notwithstanding Subsection (c), a settlement agreement reduces the potential liability to the state of the nonsettling persons by the amount of the settlement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 793, Sec. 12, eff. Sept. 1, 1997.

Sec. 361.278. LIABILITY OF ENGINEER OR CONTRACTOR. (a) An engineer or contractor performing a program of remedial action or cleanup of hazardous waste or solid waste under a contract with a state agency or political subdivision of the state is liable under this subchapter for any negligent act or omission or for wilful misconduct that results in an actual or threatened release of hazardous waste or solid waste after the abandonment or conclusion of the program only to the extent that the endangerment to public health and safety or the environment is aggravated as a result of the act, omission, or misconduct.

(b) In this section, "engineer or contractor" means a person, including the employee or subcontractor of the person, who performs a contract for evaluation, planning, designing, engineering, construction, equipment, or auxiliary services in connection with:

(1) identifying a hazardous or solid waste site;

(2) developing a plan to clean up the site; or

(3) supervising or implementing the plan to clean up the site.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.279. CONTRACTS WITH STATE. A state agency contracting for services or products shall consider whether the person proposing to contract with the state has been adjudicated during the preceding three-year period to have committed substantive, nonclerical violations resulting in an actual release of hazardous waste that presented an imminent and substantial danger to the public health and safety or the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER J. ENFORCEMENT; EMERGENCY ORDER; CORRECTIVE ACTION

Sec. 361.301. EMERGENCY ORDER. The commission may issue an emergency mandatory, permissive, or prohibitory order concerning an activity of solid waste management under its jurisdiction under Section 5.512, Water Code, even if the activity is not covered by a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.70, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 36, eff. Sept. 1, 1997.

SUBCHAPTER K. APPEALS; JOINDER OF PARTIES

Sec. 361.321. APPEALS. (a) A person affected by a ruling, order, decision, or other act of the commission may appeal the action by filing a petition in a district court of Travis County in the time required by Section 5.351, Water Code.

(b) A person affected by a ruling, order, decision, or other act of a county, or of a political subdivision exercising the authority granted by Section 361.165, may appeal by filing a petition in a district court with jurisdiction in the county or political subdivision.

(c) A petition described by Subsection (b) must be filed not later than the 30th day after the date of the ruling, order, decision, or other act of the governmental entity whose action is appealed. Service of citation of the petition must be accomplished not later than the 30th day after the date on which the petition is filed.

(d) The plaintiff shall pursue the action with reasonable diligence. The court shall presume that the action has been abandoned if the plaintiff does not prosecute the action within one year after it is filed and shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed unless the plaintiff, after receiving notice, can show good and sufficient cause for the delay.

(e) Except as provided by Section 361.322(e), in an appeal from an action of the commission, a county, or a political subdivision exercising the authority granted by Section 361.165, the issue is whether the action is invalid, arbitrary, or unreasonable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 28, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.71, eff. Sept. 1, 1995.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 174 (S.B. 211), Sec. 1, eff. September 1, 2021.

Sec. 361.322. APPEAL OF ADMINISTRATIVE ORDER ISSUED UNDER SECTION 361.272; JOINDER OF PARTIES. (a) Any person subject to an administrative order under Section 361.272 may appeal the order by filing a petition in the time required by Section 5.351, Water Code.

(b) The plaintiff shall pursue the action with reasonable diligence. The court shall presume that the action has been abandoned if the plaintiff does not prosecute the action within one year after it is filed and shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed unless the plaintiff, after receiving notice, can show good and sufficient cause for the delay.

(c) The filing of a motion for rehearing under Chapter 2001, Government Code is not a prerequisite for an appeal of the order.

(d) The person appealing the order must join the commission as a party and may join as parties any other person named as a responsible party in the administrative order and any other person who is or may be liable for the elimination of the actual or threatened release of solid waste or hazardous substances governed by the administrative order.

(e) The filing of the petition does not prevent the commission from proceeding with the remedial action program under Subchapter F unless the court enjoins the remedial action under its general equity jurisdiction.

(f) The administrative order is final as to a nonappealing party on the date by which the person is required to file a petition under Section 5.351, Water Code.

(g) The district court shall uphold the administrative order if the commission proves by a preponderance of the evidence that:

(1) there is an actual or threatened release of solid waste or hazardous substances that is an imminent and substantial endangerment to the public health and safety or the environment; and

(2) the person made subject to the administrative order is liable for the elimination of the release or threatened release, in whole or in part.

(h) If the appropriateness of the selected remedial action is contested in the appeal of the administrative order, the remedial action shall be upheld unless the court determines that the remedy is arbitrary or unreasonable.

(i) A person made a party to the appeal may join as a party any other person who is or may be liable for the elimination of the release or threatened release, but the failure by a party to file an action for contribution or indemnity does not waive any right under this chapter or other law.

(j) In an appeal under this section, the district court on establishing the validity of the order shall issue an injunction requiring any person named or joined against whom liability has been established by the commission or other party to comply with the order.

(k) As between parties determined to be liable under Subchapter I, the court may, as equity requires, apportion cleanup costs in accordance with Section 361.343 and grant any other appropriate relief.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 28, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.72, eff. Sept. 1, 1995.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 174 (S.B. 211), Sec. 2, eff. September 1, 2021.

Sec. 361.323. JOINDER OF PARTIES IN ACTION FILED BY STATE. (a) In an action brought by the attorney general under Section 361.273 seeking an injunction to eliminate a release or threatened release, the attorney general shall, and a party may, join as a party a person reasonably believed to be liable for the release or threatened release in accordance with Section 361.272.

(b) Failure of the attorney general or a party to name or join a person as a party is not a defense to an action against that person for contribution or indemnity.

(c) In an action brought by the attorney general under Section 361.273, the district court shall grant relief on the grounds provided by Section 361.322(d), and Sections 361.322(f) and (g) apply to the action.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER L. COST RECOVERY

Sec. 361.341. COST RECOVERY BY STATE. (a) The state is entitled to recover reasonable attorney's fees, reasonable costs to prepare and provide witnesses, and reasonable costs of investigating and assessing the facility or site if it prevails in:

(1) an appeal of an administrative order issued under Section 361.272 or Section 361.188;

(2) an action to enforce such an administrative order;

(3) a civil suit seeking injunctive relief under Section 361.273; or

(4) a cost recovery suit under Section 361.197.

(b) The court shall apportion the costs among liable parties as it determines is equitable and just.

(c) All such costs recovered by the state under Subchapter F

shall be remitted to the commission and deposited to the credit of a separate account of the hazardous waste disposal fee fund. All other costs recovered by the state under Sections 361.271 through 361.277 shall be remitted to the commission and deposited to the credit of a separate account of the hazardous waste generation and facility fees fund.

(d) If an appeal or third party claim is found by the court to be frivolous, unreasonable, or without foundation, the court may assess damages against the party bringing the appeal or third party claim in an amount not to exceed triple the costs incurred by the state or the third party defendant, including reasonable attorney's fees, reasonable costs of preparing and providing witnesses, and reasonable costs of studies, analyses, engineering reports, tests, or other projects the court finds were necessary for the preparation of the party's case.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 28, eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 552, Sec. 2, eff. June 8, 1993.

Sec. 361.342. COST RECOVERY BY APPEALING OR CONTESTING PARTY. If the court finds that an administrative order referred to by Section 361.341 is frivolous, unreasonable, or without foundation with respect to a party named by the order, the party appealing or contesting the order is entitled to recover from the state its reasonable:

(1) attorney's fees;

(2) costs to prepare and provide witnesses; and

(3) costs of studies, analyses, engineering reports, tests, or other projects the court finds were necessary to prepare the party's case.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.343. APPORTIONMENT OF COSTS. (a) Apportionment of costs for the elimination of the release or threatened release of solid waste among the persons responsible for solid waste under Section 361.271 shall be made according to:

(1) the relationship between the parties' actions in storing, processing, and disposing of solid waste and the remedy required to eliminate the release or threatened release;

(2) the volume of solid waste each party is responsible for at the solid waste facility or site to the extent that the costs of the remedy are based on the volume of solid waste present;

(3) consideration of toxicity or other waste characteristics if those characteristics affect the cost to eliminate the release or threatened release; and

(4) a party's cooperation with state agencies, its cooperation or noncooperation with the pending efforts to eliminate the release or threatened release, or a party's actions concerning storing, processing, or disposing of solid waste, as well as the degree of care that the party exercised.

(b) In apportioning costs under Subsection (a), the court shall credit against a responsible party's share of the costs of eliminating a release or threatened release of solid waste the party's expenditures related to the cleanup at issue if the commission or the executive director approves the cleanup. If the expenditures were made before the property was proposed to be listed on the state registry and the commission or the executive director approves the cleanup, the court shall also reduce in an equitable and just manner the party's proportionate share of the costs.

(c) The apportionment of costs only adjusts the rights of parties identified by Section 361.271 and does not affect a person's liability to the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 793, Sec. 13, eff. Sept. 1, 1997.

Sec. 361.344. COST RECOVERY BY LIABLE PARTY OR THIRD PARTY. (a) A person who conducts a removal or remedial action that is approved by the commission and is necessary to address a release or threatened release may bring suit in a district court to recover the reasonable and necessary costs of that action and other costs as the court, in its discretion, considers reasonable. This right is in addition to the right to file an action for contribution, indemnity, or both in an appeal proceeding or in an action brought by the attorney general.

(b) Venue for the suit is:

(1) in the county in which the release or threatened release is or was located; or

(2) in any other county in which venue is proper under Chapter 15, Civil Practice and Remedies Code.

(c) To recover costs under this section in a proceeding that is not an appeal proceeding or an action brought by the attorney general under this subchapter, the person seeking cost recovery must have made reasonable attempts to notify the person against whom cost recovery is sought:

(1) of the existence of the release or threatened release; and

(2) that the person seeking cost recovery intended to take steps to eliminate the release or threatened release.

(d) The court shall determine the amount of cost recovery according to the criteria prescribed by Section 361.343.

(e) A fact determination or ruling by a district court in an appeal of an administrative order under Section 361.322 is not res judicata or collateral estoppel as to an issue brought in a proceeding under this section concerning a party not joined in the appeal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 20.02, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 793, Sec. 14, eff. Sept. 1, 1997.

Sec. 361.345. CREATION OF RIGHTS. Subchapter I and Section 361.344 and the enforcement by the commission of that subchapter and section do not:

(1) create rights or causes of action on behalf of a person other than those expressly stated by this chapter; or

(2) change common law or a rule of decision except as limited by this chapter to actions by the commission to eliminate an actual release or threatened release of solid waste that is an imminent and substantial endangerment to the public health and safety or the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.73, eff. Sept. 1, 1995.

SUBCHAPTER M. REMOVAL AND REMEDIAL ACTION AGREEMENTS

Sec. 361.401. DEFINITIONS. In this subchapter:

(1) "Disposal facility" means a site or area at which a hazardous substance, pollutant, or contaminant has been deposited, stored, disposed of, or placed or otherwise come to be located that no longer receives hazardous substances, pollutants, and contaminants.

(2) "Fund" means the hazardous waste disposal fee fund.

(3) "Petroleum" means crude oil or any fraction of crude oil that is not otherwise listed or designated as a hazardous substance under Section 361.003.

(4) "Pollutant" or "contaminant" means any element, substance, compound, or mixture, including disease-causing agents, that after release into the environment and on exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in the organism or its offspring. The term does not include petroleum, natural gas, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

(5) "Removal" means:

(A) cleaning up or removing released hazardous substances, pollutants, or contaminants from the environment;

(B) taking necessary action in the event of the threat of release of hazardous substances, pollutants, or contaminants into the environment;

(C) taking necessary action to monitor, assess, and evaluate the release or threat of release of hazardous substances, pollutants, or contaminants;

(D) disposing of removed material;

(E) erecting security fencing or taking other measures to limit access;

(F) providing alternate water supplies;

(G) temporarily evacuating and housing threatened individuals not otherwise provided for;

(H) taking action under Section 104(b) of the environmental response law;

(I) providing any emergency assistance under the

Disaster Relief Act of 1974 (42 U.S.C. Section 5121 et seq.); and

(J) taking other action as may be necessary to prevent, minimize, or mitigate damage to the public health and safety or to the environment that may otherwise result from a release or threat of release.

(6) "Remedial action" means an action consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance, pollutant, or contaminant into the environment to prevent or minimize the release of hazardous substances, pollutants, or contaminants so that they do not migrate to cause substantial danger to present or future public health and safety or the environment. The term:

(A) includes:

(i) actions at the location of the release, including storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances, pollutants, contaminants, or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collections of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those reactions protect the public health and safety or the environment; and

(ii) the costs of permanent relocation of residents and businesses and community facilities where the president of the United States determines that alone or in combination with other measures this relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off site of hazardous substances, pollutants, or contaminants or may otherwise be necessary to protect the public health or safety; but

(B) does not include off-site transport of hazardous substances or the storage, treatment, destruction, or secure disposition off site of the hazardous substances, pollutants, contaminants, or contaminated materials unless the president of the United States determines that those actions:

(i) are more cost-effective than other remedial actions;

(ii) will create new capacity to manage, in

compliance with Subtitle C of the federal Solid Waste Disposal Act (42 U.S.C. Section 6921 et seq.), hazardous substances in addition to those located at the affected facility; or

(iii) are necessary to protect the public health and safety or the environment from a present or potential risk that may be created by further exposure to the continued presence of those substances, pollutants, contaminants, or materials.

(7) "Response" means removal and remedial action.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.21, eff. June 7, 1991.

Sec. 361.402. COMMISSION DUTIES AND POWERS. (a) The commission shall:

(1) administer this subchapter; and

(2) cooperate with municipalities and with agencies, departments, and political subdivisions of this state and the United States and its agencies in implementing this section and the environmental response law.

(b) The commission may:

(1) enter into contracts and cooperative agreements with the federal government to carry out removal and remedial action for a specific disposal facility as authorized by Section 104(c)(3) of the environmental response law or to carry out removal and remedial action with regard to a disposal facility under Section 104(d)(1) of the environmental response law;

(2) after notice and hearing, authorize the executive director to enter into contracts and cooperative agreements on behalf of the commission under Subdivision (1) under terms and conditions stated in the commission's order; and

(3) when acting under a cooperative agreement with the federal government under Subdivision (1), undertake the enforcement and remedial actions authorized under the environmental response law as may be reasonably necessary, in lieu of or in conjunction with actions by the federal government.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990.

Sec. 361.403. TERMS AND CONDITIONS OF AGREEMENTS; COSTS. (a) If the commission enters into a contract or cooperative agreement under Section 104(c)(3) of the environmental response law, the commission shall include in the contract or agreement terms and conditions to:

(1) assure future maintenance of the removal and remedial actions provided for the expected life of those actions as determined by the federal government;

(2) assure the availability of a hazardous waste disposal facility acceptable to the federal government that complies with Subchapter III of the federal Solid Waste Disposal Act (42 U.S.C. Section 6921 et seq.) for any necessary off-site storage, destruction, treatment, or secure disposition of the hazardous substances, pollutants, or contaminants; and

(3) assure payment by the state of:

(A) 10 percent of the costs of the remedial actions, including future maintenance; or

(B) at least 50 percent or more of the costs as determined appropriate by the federal government, taking into account the degree of responsibility of the state for any amount spent in response to a release at a disposal facility that was owned by the state at the time of disposal of hazardous substances at the disposal facility.

(b) A contract entered into with the federal government under Section 104(d)(1) of the environmental response law is subject to the same cost-sharing requirements provided for contracts in Subsection (a)(3).

(c) The state's share of reasonable response costs shall be paid from the fund.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990.

Sec. 361.404. COOPERATION WITH FEDERAL GOVERNMENT. (a) Before entering into a contract or cooperative agreement under Section 361.402, the commission shall consult and work with the federal government in determining the response that will be necessary under the contract or cooperative agreement with regard to the particular disposal facility.

(b) The commission shall collect and shall file with the federal government any information required by the environmental response law and rules adopted under that law.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990.

Sec. 361.405. INDEMNIFICATION OF ENGINEER OR CONTRACTOR. (a) Notwithstanding any other law or rule, the commission may agree in a contract retaining an engineer or contractor to perform a program of removal, remedial action, or cleanup of a hazardous substance in connection with a contract or cooperative agreement under Section 361.402 to indemnify the engineer or contractor against any claim or liability arising from an actual or threatened release of a hazardous substance that occurs during the performance of any work, including:

(1) damages arising from economic loss, personal injury, property damages, or death;

(2) costs and expenses, including the cost of defense of a lawsuit brought against the engineer or contractor; and

(3) claims by third parties for indemnification, contribution, or damages for economic loss, personal injury, property damages, or death.

(b) In determining whether to contract to indemnify an engineer or contractor under this section, the commission shall consider the availability of insurance to the engineer or contractor for the claims and liabilities against which the commission may indemnify the engineer or contractor under this section on the date the engineer or contractor enters into a contract to perform services covered by this section. The commission may not contract to indemnify an engineer or contractor under this section if the engineer or contractor cannot demonstrate that insurance is unavailable at a reasonable cost or if another engineer or contractor submitting a comparable proposal demonstrates that insurance is available at a reasonable cost.

(c) The commission is not obligated to award a contract if it determines that adequate liability insurance is not available to an engineer or contractor and that the award of the contract is not in the public interest.

(d) The commission may not contract to indemnify an engineer or contractor under this section unless the federal government agrees in

a contract or cooperative agreement to indemnify in turn the commission under Section 119 of the environmental response law. The commission's decision to contract or not to contract to indemnify an engineer or contractor may be made as an executive act without an adjudicative public hearing and is not subject to judicial review.

(e) An engineer or contractor performing a program of removal, remedial action, or cleanup of a hazardous substance under a contract entered into in connection with a contract or cooperative agreement under Section 361.402 that results in an actual or threatened release of hazardous substance is not liable under Section 361.221, 361.223 through 361.229, or 361.252 for an act or a failure to act during the performance of the contract. This subsection does not in any way limit or otherwise affect the liability of an engineer or contractor in any other action.

(f) Subsections (a) and (e) do not apply to a grossly negligent act or omission or to wilful misconduct of an engineer or contractor during the performance of a contract. Notwithstanding any other law, an engineer or contractor performing a program of removal, remedial action, or cleanup of a hazardous substance under a contract entered into in connection with a contract or cooperative agreement under Section 361.402 is liable for a grossly negligent act or omission or for wilful misconduct that results in an actual or threatened release of a hazardous substance in violation of Subchapter G or I, or Section 361.252, only to the extent that the act, omission, or misconduct caused the violation.

(g) In this section, "engineer or contractor" means a person, including the employee or subcontractor of the person, who performs a contract for evaluation, planning, designing, engineering, construction, equipment, or auxiliary services in connection with the identification of a site containing a hazardous substance, the development of a plan of response to the site, or the supervision or performance of the response to the site.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990.

SUBCHAPTER N. WASTE REDUCTION PROGRAMS; DISPOSAL FEES

Sec. 361.421. DEFINITIONS. In this subchapter:

(1) "Compost" is the disinfected and stabilized product of

the decomposition process that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

(2) "Composting" means the controlled biological decomposition of organic materials through microbial activity. Depending on the specific application, composting can serve as both a volume reduction and a waste treatment measure. A beneficial organic composting activity is an appropriate waste management solution that shall divert compatible materials from the solid waste stream that cannot be recycled into higher grade uses and convert these materials into a useful product that is put to beneficial reuse as a soil amendment or mulch.

(3) "Life-cycle cost benefit analysis" means a method of determining the total equivalent costs and benefits of using products over their lifetimes or over any other period of time. These costs and benefits are all associated costs and all associated benefits of each product over the time under consideration and include initial costs, annual operating costs, annual savings, future costs, and residual (salvage) values. The use of this method permits exact comparisons of these total costs and benefits to determine the most cost-effective product.

(4) "Postconsumer waste" means a material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purpose of this subchapter, the term does not include industrial or hazardous waste.

(5) "Recyclable material" means material that can be or has been recovered or diverted from the waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced using raw or virgin materials. The term includes any waste stream, including post-use polymers and recoverable feedstocks that are converted through pyrolysis, gasification, solvolysis, or depolymerization into valuable raw materials or valuable intermediate and final products. Recyclable material is not solid waste unless the material is deemed to be hazardous solid waste by the Administrator of the United States Environmental Protection Agency, whereupon it shall be regulated accordingly unless it is otherwise exempted in whole or in part from regulation under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), by

Environmental Protection Agency regulation. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(6) "Recycled material" means materials, goods, or products that consist of recovered recyclable material or materials derived from recoverable feedstocks, post-use polymers, postconsumer waste, industrial waste, or hazardous waste which may be used in place of a raw or virgin material in manufacturing a new product or that are certified under a third-party certification system for mass balance attribution identified by the commission under Section 361.4215. The term includes recycled plastics.

(6-a) "Recycled plastics" means products that are produced from:

(A) mechanical recycling of post-use polymers; or

(B) nonmechanical recycling of recoverable feedstocks or post-use polymers that are certified under a third-party certification system for mass balance attribution identified by the commission under Section 361.4215.

(7) "Recycled product" means a product that is eligible to be considered a recycled product under the rules established by the commission under Section 361.427. The term does not include a product sold as fuel.

(8) "Recycling" means a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials or feedstocks used in the manufacture of new products. The term does not include incineration of plastics or waste-to-energy processes. Recycling includes:

(A) the composting process if the compost material is put to beneficial reuse as defined by the commission;

(B) the application to land, as organic fertilizer, of processed sludge or biosolids from municipal wastewater treatment plants and other organic matter resulting from poultry, dairy, livestock, or other agricultural operations; and

(C) the conversion of post-use polymers and recoverable feedstocks through pyrolysis, gasification, solvolysis, or depolymerization.

(8-a) "Renewable biomass" means:

(A) materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands, as that term is defined by 43 U.S.C. Section 1702, that:

(i) are byproducts of preventive treatments that are removed:

(a) to reduce hazardous fuels;

(b) to reduce or contain disease or insect infestation; or

(c) to restore ecosystem health;

(ii) would not otherwise be used for higher value products; and

(iii) are harvested in accordance with:

(a) applicable law and land management plans; and

(b) requirements for old growth stand maintenance, restoration, and management direction and large tree retention under Sections 102(e) and (f), Healthy Forests Restoration Act of 2003 (16 U.S.C. Sections 6512(e) and (f)); or

(B) any organic matter that is available on a renewable or recurring basis from nonfederal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) renewable plant material, including:

(a) feed grains and other agricultural commodities;

(b) plants and trees;

(c) algae; and

(d) microorganisms; and

(ii) waste material, including:

(a) crop residue;

(b) vegetative waste material, including wood waste and wood residue;

(c) animal waste and byproducts, including fats, oils, greases, and manure;

(d) food waste and yard waste;

(e) plant-derived waste oils;

(f) municipal solid waste; and

(g) waste derived from a wastewater treatment

facility.

(8-b) "Renewable chemical" means a monomer, polymer, plastic, formulated product, or chemical substance produced from renewable biomass feedstocks or certified under a third-party certification system for mass balance attribution identified by the commission under Section 361.4215.

(9) "Source reduction" means an activity or process that avoids the creation of municipal solid waste in the state by reducing waste at the source and includes:

(A) redesigning a product or packaging so that less material is ultimately disposed of;

(B) changing a process for producing a good or providing a service so that less material is disposed of; or

(C) changing the way a material is used so that the amount of waste generated is reduced.

(10) "State agency" means a department, commission, board, office, council, or other agency in the executive branch of government that is created by the constitution or a statute of this state and has authority not limited to a geographical portion of the state. The term does not include a university system or institution of higher education as defined by Section 61.003, Education Code.

(11) "Virgin material" means a raw material used in manufacturing that has not yet become a product.

(12) "Yard waste" means leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.0301, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 899, Sec. 1.11, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 899, Sec. 4.01, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.74, eff. Sept. 1, 1995. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 48 (H.B. 1953), Sec. 4, eff. May 17, 2019.

Acts 2023, 88th Leg., R.S., Ch. 237 (H.B. 3060), Sec. 5, eff. May 27, 2023.

Acts 2025, 89th Leg., R.S., Ch. 456 (H.B. 4413), Sec. 1, eff.

September 1, 2025.

Sec. 361.4215. MASS BALANCE ATTRIBUTION. The commission by rule shall identify third-party certification systems for mass balance attribution that may be used for the purposes of Sections 361.421(6), (6-a), and (8-b).

Added by Acts 2023, 88th Leg., R.S., Ch. 237 (H.B. 3060), Sec. 6, eff. May 27, 2023.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 456 (H.B. 4413), Sec. 2, eff. September 1, 2025.

Sec. 361.422. STATE SOURCE REDUCTION AND RECYCLING GOAL. (a) It is the state's goal to reduce by January 1, 1994, the amount of municipal solid waste disposed of in this state by at least 40 percent through source reduction and recycling.

(b) In this section, "total municipal solid waste stream" means the sum of the state's total municipal solid waste that is disposed of as solid waste, measured in tons, and the total number of tons of recyclable material that has been diverted or recovered from the total municipal solid waste and recycled.

(c) The commission shall establish rules and reporting requirements through which progress toward achieving the established source reduction and recycling goals can be measured. The rules may take into consideration those ongoing community source reduction and recycling programs where substantial progress has already been achieved. The commission may also establish a limit on the amount of credit that may be given to certain high-volume materials in measuring recycling progress.

(d) For the purpose of measuring progress toward the municipal solid waste reduction goal, the commission shall use the weight of the total municipal solid waste stream in 1991 as a baseline for comparison. To compute progress toward the municipal solid waste reduction goal for a year, the commission shall compare the total number of tons disposed in the year under comparison, either by landfilling or by other disposal methods, to the total number of tons disposed in the base year, adjusting for changes in population, tons

of solid waste imported and exported, and other relevant changes between the baseline year and the comparison year.

(e) Before January 1, 1994, the commission shall determine whether the goal established in Subsection (a) is being achieved. If the commission finds that the goal is not being achieved, it shall convene an advisory task force consisting of representatives of the commission, local governments, the Municipal Solid Waste Management and Resource Recovery Advisory Council, and the commercial solid waste disposal industry and may recommend to the legislature a phased-in ban on the disposal of yard waste in a landfill. The task force may recommend a plan to the legislature for implementing the ban after considering how the ban will:

(1) affect the state's disposal capacity;

(2) affect the economy of the state;

(3) affect local governments; and

(4) be accepted and adhered to by the citizens of the state.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 4.02, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.75, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 80, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.423. RECYCLING MARKET DEVELOPMENT IMPLEMENTATION PROGRAM. (a) The commission, the comptroller, and other consenting state agencies as appropriate shall regularly coordinate the recycling activities of state agencies and shall each pursue an economic development strategy that focuses on the state's waste management priorities established by Section 361.022 and that includes development of recycling industries and markets as an integrated component.

(b) The commission and the comptroller, on an ongoing basis, shall jointly:

(1) identify existing economic and regulatory incentives and disincentives for creating an optimal market development strategy;

(2) analyze or take into consideration the market development implications of:

(A) the state's waste management policies and

regulations;

(B) existing and potential markets for plastic, glass, paper, lead-acid batteries, tires, compost, scrap gypsum, coal combustion by-products, and other recyclable materials; and

(C) the state's tax structure and overall economic base;

(3) examine and make policy recommendations regarding the need for changes in or the development of:

(A) economic policies that affect transportation, such as those embodied in freight rate schedules;

(B) tax incentives and disincentives;

(C) the availability of financial capital including grants, loans, and venture capital;

(D) enterprise zones;

(E) managerial and technical assistance;

(F) job-training programs;

(G) strategies for matching market supply and market demand for recyclable materials, including intrastate and interstate coordination;

(H) the state recycling goal;

(I) public-private partnerships;

(J) research and development;

(K) government procurement policies;

(L) educational programs for the public, corporate and regulated communities, and government entities; and

(M) public health and safety regulatory policies;

(4) establish a comprehensive statewide strategy to expand markets for recycled products in Texas;

(5) provide information and technical assistance to small and disadvantaged businesses, business development centers, chambers of commerce, educational institutions, and nonprofit associations on market opportunities in the area of recycling; and

(6) with the cooperation of the Office of State-Federal Relations, assist communities and private entities in identifying state and federal grants pertaining to recycling and solid waste management.

(c) In carrying out this section, the commission and the comptroller may obtain research and development and technical assistance from the Hazardous Waste Research Center at Lamar University at Beaumont or other similar institutions.

(d) In carrying out this section, the commission and the comptroller shall utilize the pollution prevention advisory committee as set out in Section 361.0215 of the Health and Safety Code.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 1.12, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.76, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 80, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 80, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1122 (H.B. 2466), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.91, eff. September 1, 2007.

Sec. 361.425. GOVERNMENTAL ENTITY RECYCLING. (a) A state agency, state court or judicial agency, a university system or institution of higher education, a county, municipality, school district, or special district shall:

(1) in cooperation with the comptroller or the commission establish a program for the separation and collection of all recyclable materials generated by the entity's operations, including, at a minimum, aluminum, steel containers, aseptic packaging and polycoated paperboard cartons, high-grade office paper, and corrugated cardboard;

(2) provide procedures for collecting and storing recyclable materials, containers for recyclable materials, and procedures for making contractual or other arrangements with buyers of recyclable materials;

(3) evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled; and

(4) establish educational and incentive programs to encourage maximum employee participation.

(b) The commission:

(1) by order shall exempt from compliance with this section:

(A) a municipality with a population of less than 5,000 if the commission finds that compliance would work a hardship on the

municipality;

(B) a school district with a student enrollment of fewer than 10,000 students; and

(C) an entity described by Subsection (a) if:

(i) the entity petitions the commission for an exemption; and

(ii) the commission finds that compliance would work a hardship on the entity; and

(2) shall adopt rules for administering this subsection.

(c) Expired.

(d) In this section, "recyclable materials" includes materials in the entity's possession that have been abandoned or disposed of by the entity's officers or employees or by any other person.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 4.03, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.77, eff. Sept. 1, 1995. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.92, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 439 (S.B. 1376), Sec. 2.02, eff. June 4, 2019.

Sec. 361.426. GOVERNMENTAL ENTITY PREFERENCE FOR RECYCLED PRODUCTS. (a) A state agency, state court, or judicial agency not subject to Subtitle D, Title 10, Government Code, a county, municipality, school district, junior or community college district, or special district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality.

(b) An entity subject to this section regularly shall review and revise its procurement procedures and specifications for the purchase of goods, supplies, equipment, and materials in order to:

(1) eliminate procedures and specifications that explicitly discriminate against products made of recycled materials;

(2) encourage the use of products made of recycled materials; and

(3) ensure to the maximum extent economically feasible that the entity purchases products that may be recycled when they have

served their intended use.

(c) In developing new procedures and specifications, the entity shall encourage the use of recycled products and products that may be recycled or reused.

(d) The commission:

(1) by order shall exempt from compliance with this section:

(A) a municipality with a population of less than 5,000 if the commission finds that compliance would work a hardship on the municipality;

(B) a school district with a student enrollment of fewer than 10,000 students; and

(C) an entity described by Subsection (a) if:

(i) the entity petitions the commission for an exemption; and

(ii) the commission finds that compliance would work a hardship on the entity; and

(2) shall adopt rules for administering this subsection.

(e) Expired.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.78, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 17.19, eff. Sept. 1, 1997. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 439 (S.B. 1376), Sec. 2.03, eff. June 4, 2019.

Sec. 361.427. SPECIFICATIONS FOR RECYCLED PRODUCTS. (a) The commission, in consultation with the comptroller, shall promulgate rules to establish guidelines by which a product is eligible to be considered a recycled product based on:

(1) the percent of the total content of a product that consists of recycled material; or

(2) the portion of the total content of a product that is determined to consist of recycled material according to a third-party certification system for mass balance attribution identified by the commission under Section 361.4215.

(b) The guidelines established under this section shall specify a minimum percent of the recycled material in a product which must be

postconsumer waste or post-use polymers.

(c) The guidelines established under this section shall be classified by types of products.

(d) The commission's guidelines shall be established taking into consideration the guidelines promulgated by the Environmental Protection Agency for federal procurement of recycled products as authorized by the Solid Waste Disposal Act (42 U.S.C. Sec. 3259 et seq.).

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.79, eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.93, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 237 (H.B. 3060), Sec. 7, eff. May 27, 2023.

Sec. 361.428. COMPOSTING PROGRAM. (a) The commission shall put in place incentives for a composting program that is capable of achieving at least a 15 percent reduction in the amount of the municipal solid waste stream that is disposed of in landfills by January 1, 1994.

(b) The commission shall adopt rules establishing minimum standards and guidelines for the issuance of permits for processes or facilities that produce compost that is the product of material from the typical mixed solid waste stream generated by residential, institutional, commercial, or industrial sources. A reduction in the mixed solid waste stream that occurs as a result of the beneficial reuse of compost produced by a facility permitted under this subsection shall be used in achieving the goal established under Section 361.422. The minimum standards must include end-product standards and a definition of beneficial reuse. The commission shall consider regulations issued by the United States Environmental Protection Agency in developing minimum standards. Beneficial reuse does not include landfilling or the use of compost as daily landfill cover.

(c) A composting facility may not accept mixed municipal solid waste from a governmental unit for composting purposes at that

facility unless residents have reasonable access to household hazardous waste collection and source-separated recycling programs in the area. The commission shall establish standards for household hazardous waste collection programs and source-separated recycling programs that qualify under this section.

(d) A person may not commercially compost grease trap waste, as defined by the commission, unless the person has first obtained a permit for composting grease trap waste issued by the commission under this section on or after September 1, 2003.

(e) The permit to compost grease trap waste must meet the minimum standards of a permit issued under rules adopted under Subsection (b).

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 1.13, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 596, Sec. 1, eff. June 20, 2003.

Sec. 361.429. HOUSEHOLD HAZARDOUS WASTE. The commission shall develop standards for household hazardous waste diversion programs such as collection facilities or waste collection days for municipalities, counties, or regions. The commission's waste management financial assistance program described in Section 363.092 shall be expanded to include matching grants for costs of planning and implementing approved household hazardous waste diversion programs, excluding costs of disposal.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.80, eff. Sept. 1, 1995.

Sec. 361.430. NEWSPRINT RECYCLING PROGRAM. (a) It is the policy of this state that recycling of all paper products including old newspapers is vital to our economy and the preservation of our environment. It is the purpose of this section to promote the state's policy by encouraging newspaper publishers to promote recycling through purchase of recycled products and by cooperating with local community organizations to establish and promote community collection efforts for all paper products.

(b)(1) In order to observe and promote this policy the newspaper

publishers of Texas will work with state officials and state agencies to identify potential sites and offer economic incentives in order to attract additional de-inking facilities and recycled newsprint mills to Texas.

(2) The newspaper publishers of Texas will also assist and participate in the market development study and implementation program established by Section 361.423.

(c) The commission shall promulgate rules and regulations which establish a newsprint recycling program for the state.

(d) The program shall include guidelines which set goals for the use of recycled newsprint by newspaper publishers, using the following target percentages of recycled newsprint in the total newsprint consumption of each newspaper publisher:

(1) 10 percent by the end of the calendar year 1993;

(2) 20 percent by the end of the calendar year 1997; and

(3) 30 percent by the end of the calendar year 2000.

(e) Smaller newspapers may find it difficult to implement use of recycled newsprint. Therefore, larger newspapers will be responsible for the necessary consumption to allow the percentages specified in Subsection (d) to represent total consumption of recycled newsprint by all Texas newspapers.

(f) In this section:

(1) "Newspaper" means a publication that is sold and that is printed on newsprint and published, printed, and distributed in the state, both daily and non-daily, to disseminate current news and information of general interest to the public.

(2) "Recycled newsprint" means newsprint which meets the specified guidelines under Section 361.427 to be classified as a recycled product.

(g)(1) Publishers of newspapers subject to regulation under the newsprint recycling program shall submit annually, on or before January 31, a report to the executive director which states the percentage of recycled newsprint used by the publisher in the preceding year, and, if the target percentage is not met, the publisher must include in the report:

(A) whether the publisher is able to obtain sufficient quantities of recycled newsprint at competitive prices and of satisfactory quality;

(B) whether the publisher has attempted to obtain recycled newsprint from every producer of recycled newsprint that

offered to sell recycled newsprint to the publisher during the preceding calendar year; and

(C) the publisher's efforts to obtain recycled newsprint, including the name and address of each producer of recycled newsprint that the publisher contacted and the name and telephone number of the contact person at each of the producers.

(2) The executive director shall develop forms for and regulations governing the submission of the reports required by this subsection.

(h) If the executive director determines that newspaper publishers are not voluntarily meeting the target percentages prescribed by this section for the program, the commission may adopt mandatory enforcement measures.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.81, eff. Sept. 1, 1995.

Sec. 361.431. PRIORITIZATION OF NEW TECHNOLOGY. (a) A political subdivision or solid waste producer shall give preference in contracting for the disposal of solid waste to license or permit holders who use processes and technologies that reduce the volume of sludge and hazardous waste that is being disposed of through beneficial use land application, landfill disposal, and other methods.

(b) Technology that reduces the volume of solid waste, destroys the solid waste, or renders the solid waste inert is preferred to methods referred to under Subsection (a), to minimize the possibility of hazardous materials entering the state's air, waterways, and water sources.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.06, eff. Sept. 1, 2001.

SUBCHAPTER O. LEAD-ACID BATTERIES

Sec. 361.451. LAND DISPOSAL PROHIBITED. (a) No person may place a used lead-acid battery in mixed municipal solid waste nor discard or otherwise dispose of a lead-acid battery except by delivery to:

(1) a battery retailer or wholesaler;

(2) a secondary lead smelter; or

(3) a collection or recycling facility authorized under the laws of this state or by the United States Environmental Protection Agency.

(b) No battery retailer shall dispose of a used lead-acid battery except by delivery to:

(1) a battery wholesaler or a secondary lead smelter, or an agent thereof;

(2) a battery manufacturer for delivery to a secondary lead smelter; or

(3) a collection or recycling facility authorized under the laws of this state or by the United States Environmental Protection Agency.

(c) Repealed by Acts 1997, 75th Leg., ch. 1072, Sec. 60(b)(3), eff. Sept. 1, 1997.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 1072, Sec. 60(b)(3), eff. Sept. 1, 1997.

Sec. 361.452. COLLECTION FOR RECYCLING. A person selling lead-acid batteries at retail or offering lead-acid batteries for retail sale in this state shall:

(1) accept from each customer, if offered, at least one but not more than three lead-acid batteries for recycling; and

(2) post written notice, which must be at least 8-1/2 inches by 11 inches in size, containing the universal recycling symbol and the following language:

(A) "It is illegal to discard or improperly dispose of a motor-vehicle battery or other lead-acid battery.";

(B) "Recycle your used batteries."; and

(C) "State law requires us to accept used motor-vehicle batteries or other lead-acid batteries for recycling."

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 1.14, eff. Aug. 30, 1993.

Sec. 361.453. INSPECTION OF BATTERY RETAILERS. The commission shall produce, print, and distribute the notices required by Section 361.452 to all places where lead-acid batteries are offered for sale at retail. In performing its duties under this section the commission may inspect any place, building, or premises governed by Section 361.452. Failure to post the required notice within three days following warning shall subject the establishment to an administrative or a civil penalty under Chapter 7, Water Code.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.82, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 37, eff. Sept. 1, 1997.

Sec. 361.454. LEAD-ACID BATTERY WHOLESALERS. Any person selling new lead-acid batteries at wholesale shall accept from customers, at the point of transfer, used lead-acid batteries for recycling, if offered by customers. A person accepting batteries in transfer from a battery retailer shall remove batteries from the retail point of collection within 90 days after acceptance.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 1.15, eff. Aug. 30, 1993.

SUBCHAPTER Q. POLLUTION PREVENTION

Sec. 361.501. DEFINITIONS. In this subchapter:

(1) "Acute hazardous waste" means hazardous waste listed by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), because the waste meets the criteria for listing hazardous waste identified in 40 C.F.R. Section 261.11(a)(2).

(2) Repealed by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.029, eff. Aug. 12, 1991.

(3) "Conditionally exempt small-quantity generator" means a generator that does not accumulate more than 1,000 kilograms of hazardous waste at any one time on his facility and who generates less than 100 kilograms of hazardous waste in any given month.

(4) "Committee" means the waste reduction advisory

committee established by Section 361.0215.

(5) "Environment" means water, air, and land and the interrelationship that exists among and between water, air, land, and all living things.

(6) "Facility" means all buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites that are owned or operated by a person who is subject to this subchapter or by a person who controls, is controlled by, or is under common control with a person subject to this subchapter.

(7) "Generator" and "generator of hazardous waste" have the meaning assigned by Section 361.131.

(8) "Large-quantity generator" means a generator that generates, through ongoing processes and operations at a facility:

(A) more than 1,000 kilograms of hazardous waste in a month; or

(B) more than one kilogram of acute hazardous waste in a month.

(9) "Media" and "medium" mean air, water, and land into which waste is emitted, released, discharged, or disposed.

(10) "Pollutant" or "contaminant" includes any element, substance, compound, disease-causing agent, or mixture that after release into the environment and on exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in the organism or its offspring. The term does not include petroleum, crude oil, or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under Sections 101(14)(A) through (F) of the environmental response law, nor does it include natural gas, natural gas liquids, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

(11) "Source reduction" has the meaning assigned by the federal Pollution Prevention Act of 1990, Pub.L. 101-508, Section 6603, 104 Stat. 1388.

(12) "Waste minimization" means a practice that reduces the environmental or health hazards associated with hazardous wastes,

pollutants, or contaminants. Examples may include reuse, recycling, neutralization, and detoxification.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.431 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.029, eff. Aug. 12, 1991.

Sec. 361.502. POLICY AND GOALS FOR SOURCE REDUCTION AND WASTE MINIMIZATION. (a) It is the policy of the state to reduce pollution at its source and to minimize the impact of pollution in order to reduce risk to public health and the environment and continue to enhance the quality of air, land, and waters of the state where feasible.

(b) Source reduction is the primary goal of the state in implementing this policy because hazardous wastes, pollutants, and contaminants that are not generated or produced pose no threat to the environment and eliminate societal management and disposal costs.

(c) To further promote this policy, hazardous wastes, pollutants, and contaminants that cannot be reduced at the source should be minimized wherever possible. Waste minimization, while secondary in preference to source reduction, is an important means for achieving more effective protection of public health and the environment while moving toward source reduction.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.432 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991.

Sec. 361.503. COMMISSION PLANS. (a) Consistent with state and federal regulations, to achieve the policies stated in Section 361.502, the commission by rule shall, to the maximum extent that is technologically and economically feasible:

(1) develop plans to reduce the release of pollutants or contaminants into the air;

(2) develop plans to reduce the release of pollutants or contaminants into water; and

(3) establish reasonable goals for the reduction of the volume of hazardous waste generated in the state and the amount of

pollutants and contaminants using source reduction and waste minimization.

(b) The commission by rule shall develop a list of pollutants or contaminants and the level of releases of those pollutants or contaminants subject to source reduction and waste minimization planning.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.433 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.84, eff. Sept. 1, 1995.

Sec. 361.504. APPLICATION. (a) Except as provided by Subsection (b), this subchapter applies to the following persons:

(1) all large-quantity generators of hazardous waste;

(2) all generators other than large-quantity generators and conditionally exempt small-quantity generators; and

(3) persons subject to Section 313, Title III, Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Section 11023) whose releases exceed the levels established under Section 361.503(b).

(b) The commission by rule shall establish one or more schedules for the application of the requirements of this subchapter to designated classes of persons described by Subsection (a). The schedule shall provide for the inclusion of all persons described by Subsection (a) on a date to be determined by the commission, and until that date this subchapter applies only to those persons designated by rule of the commission.

(c) This subchapter does not apply to a facility regulated by the Railroad Commission of Texas under Section 91.101 or 141.012, Natural Resources Code.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.434 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.85, eff. Sept. 1, 1995.

Sec. 361.505. SOURCE REDUCTION AND WASTE MINIMIZATION PLANS. (a) Persons identified under Section 361.504(a)(1) or (a)(3) shall

prepare a source reduction and waste minimization plan. Plans developed under this section shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities. The plan shall include, at a minimum:

(1) an initial survey that identifies:

(A) for facilities subject to Section 361.504(a)(1), activities that generate hazardous waste; and

(B) for facilities subject to Section 361.504(a)(3), activities that result in the release of pollutants or contaminants designated under Section 361.503(b);

(2) based on the initial survey, a prioritized list of economically and technologically feasible source reduction and waste minimization projects;

(3) an explanation of source reduction or waste minimization projects to be undertaken, with a discussion of technical and economic considerations, and environmental and human health risks considered in selecting each project to be undertaken;

(4) an estimate of the type and amount of reduction anticipated;

(5) a schedule for the implementation of each source reduction and waste minimization project;

(6) source reduction and waste minimization goals for the entire facility, including incremental goals to aid in evaluating progress;

(7) an explanation of employee awareness and training programs to aid in accomplishing source reduction and waste minimization goals;

(8) certification by the owner of the facility, or, if the facility is owned by a corporation, by an officer of the corporation that owns the facility who has the authority to commit the corporation's resources to implement the plan, that the plan is complete and correct;

(9) an executive summary of the plan; and

(10) identification of cases in which the implementation of a source reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium.

(b) The source reduction and waste minimization plan may

include:

(1) a discussion of the person's previous efforts at the facility to reduce risk to human health and the environment or to reduce the generation of hazardous waste or the release of pollutants or contaminants;

(2) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(3) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals;

(4) a description of projects that have reduced the generation of hazardous waste or the release of pollutants or contaminants; and

(5) a discussion of the operational decisions made at the facility that have affected the achievement of the source reduction or waste minimization goals or other risk reduction efforts.

(c) The commission shall adopt rules for the development of simplified, as appropriate, source reduction and waste minimization plans and reports for persons identified under Section 361.504(a)(2).

(d) The commission shall provide information to aid in the preparation of source reduction and waste minimization plans to be prepared by a person under this section.

(e) Repealed by Acts 1995, 74th Leg., ch. 76, Sec. 11.334(c), eff. Sept. 1, 1995.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.435 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.86, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 76, Sec. 11.334(c), eff. Sept. 1, 1995.

Sec. 361.506. SOURCE REDUCTION AND WASTE MINIMIZATION ANNUAL REPORT. (a) A person required to develop a source reduction and waste minimization plan for a facility under this subchapter shall submit to the commission an annual report and a current executive summary according to any schedule developed under Section 361.504.

(b) The annual report shall comply with rules adopted by the commission. The report shall detail the facility's progress in

implementing the source reduction and waste minimization plan and include:

(1) an assessment of the progress toward the achievement of the facility source reduction goal and the facility waste minimization goal;

(2) a statement to include, for facilities subject to Section 361.504(a)(1), the amount of hazardous waste generated and, for facilities subject to Section 361.504(a)(3), the amount of the release of pollutants or contaminants designated under Section 361.503(b) in the year preceding the report, and a comparison of those amounts with the amounts generated or released in a base year selected by the commission; and

(3) any modification to the plan.

(c) The annual report may include:

(1) a discussion of the person's previous effort at the facility to reduce hazardous waste or the release of pollutants or contaminants through source reduction or waste minimization;

(2) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(3) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals; and

(4) a discussion of the operational decisions the person has made that have affected the achievement of the source reduction and waste minimization goals.

(d) The annual report shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.436 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.87, eff. Sept. 1, 1995.

Sec. 361.5061. PLANNING AND REPORTING REQUIREMENTS: INSTITUTIONS OF HIGHER EDUCATION. An institution of higher education that is required to develop a source reduction and waste minimization plan under this subchapter for more than one facility may:

(1) develop and submit one plan that covers all of the facilities; and

(2) submit one annual report and one executive summary under Section 361.506 that covers all of the facilities.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 67, eff. September 1, 2013.

Sec. 361.507. ADMINISTRATIVE COMPLETENESS. (a) The commission may review a source reduction and waste minimization plan or annual report to determine whether the plan or report complies with this subchapter and rules adopted under Section 361.504, 361.505, or 361.506, as appropriate.

(b) Failure to have a source reduction and waste minimization plan in accordance with Sections 361.504 and 361.505 or failure to submit a source reduction and waste minimization annual report in accordance with Section 361.506 is a violation of this chapter.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.437 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.88, eff. Sept. 1, 1995.

Sec. 361.508. CONFIDENTIALITY. (a) A source reduction and waste minimization plan shall be maintained at each facility owned or operated by a person who is subject to this subchapter and shall be available to commission personnel for inspection. The source reduction and waste minimization plan is not a public record for the purposes of Chapter 552, Government Code.

(b) The executive summary and the annual report are public records. On request, the person shall make available to the public a copy of the executive summary or annual report.

(c) If an owner or operator of a facility for which a source reduction and waste minimization plan has been prepared shows to the satisfaction of the commission that an executive summary, annual report, or portion of a summary or report prepared under this subchapter would divulge a trade secret if made public, the commission shall classify as confidential the summary, report, or portion of the summary or report.

(d) To the extent that a plan, executive summary, annual report, or portion of a plan, summary, or annual report would otherwise qualify as a trade secret, an action by the commission or an employee of the commission does not affect its status as a trade secret.

(e) Information classified by the commission as confidential under this section is not a public record for purposes of Chapter 552, Government Code, and may not be used in a public hearing or disclosed to a person outside the commission unless a court decides that the information is necessary for the determination of an issue being decided at the public hearing.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.438 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), 11.89, eff. Sept. 1, 1995.

Sec. 361.509. SOURCE REDUCTION AND WASTE MINIMIZATION ASSISTANCE. (a) The office of pollution prevention established under Section 361.0216 shall assist generators of hazardous waste and owners or operators of facilities that release pollutants or contaminants in reducing the volume, toxicity, and adverse public health and environmental effects of hazardous waste generated or pollutants or contaminants released in the state. To provide the assistance, the office may:

(1) compile, organize, and make available for distribution information on source reduction and waste minimization technologies and procedures;

(2) compile and make available for distribution to business and industry a list of consultants on source reduction and waste minimization technologies and procedures and a list of researchers at state universities who can assist in source reduction and waste minimization activities;

(3) sponsor and conduct conferences and individualized workshops on source reduction and waste minimization for specific classes of business or industry;

(4) facilitate and promote the transfer of source reduction and waste minimization technologies and procedures among businesses and industries;

(5) if appropriate, develop and distribute model source reduction and waste minimization plans for the major classes of business or industry, as identified by the office, that generate and subsequently treat, store, or dispose of hazardous waste or that release a pollutant or contaminant in the state;

(6) develop and make available for distribution recommended source reduction and waste minimization audit procedures for use by business or industry in conducting internal source reduction and waste minimization audits;

(7) provide to business and industry, as resources allow, on-site assistance in identifying potential source reduction and waste minimization techniques and practices and in conducting internal source reduction and waste minimization audits;

(8) compile and make available for distribution information on tax benefits available to business or industry for implementing source reduction and waste minimization technologies and practices;

(9) establish procedures for setting priorities among key industries and businesses for receiving assistance from the office;

(10) develop the information base and data collection programs necessary to set program priorities and to evaluate progress in source reduction and waste minimization;

(11) develop training programs and materials for state and local regulatory personnel and private business and industry regarding the nature and applicability of source reduction and waste minimization practices;

(12) produce a biennial report on source reduction and waste minimization activities, achievements, problems, and goals, including a biennial work plan;

(13) participate in existing state, federal, and industrial networks of individuals and groups involved in source reduction and waste minimization; and

(14) publicize to business and industry, and participate in and support, waste exchange programs.

(b) The commission shall provide education and training to river authorities, municipalities, and public groups on source reduction and waste minimization technologies and practices.

(c) The commission shall develop incentives to promote the implementation of source reduction and waste minimization, including:

(1) commission recommendations to the governor for awards in recognition of source reduction and waste minimization efforts;

(2) an opportunity by rules of the commission for an owner or operator of a facility to be exempted from the requirements of this subchapter on meeting appropriate criteria for practical economic and technical completion of the source reduction and waste minimization plan for the facility; and

(3) expedited review of a permit amendment application if the amendment is necessary to implement a source reduction and waste minimization project, considering only the directly affected parts of the permit.

(d) The commission shall work closely with the Gulf Coast Hazardous Substance Research Center to identify areas in which the center could perform research in the development of alternative technologies or conduct related projects to promote source reduction and waste minimization.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.439 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.90, eff. Sept. 1, 1995.

SUBCHAPTER R. USE OF LAND OVER MUNICIPAL SOLID WASTE LANDFILLS

Sec. 361.531. DEFINITIONS. In this subchapter:

(1) "Develop" or "development" means an activity on or related to real property that is intended to lead to the construction or alteration of an enclosed structure for the use or occupation of people for a commercial or public purpose or to the construction of residences for three or more families.

(2) "Municipal solid waste landfill unit" means a discrete area of land or an excavation that receives municipal solid waste or other solid wastes approved under this chapter and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined by 40 C.F.R. Section 257.2.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.532. PERMIT REQUIRED FOR DEVELOPMENT OF CERTAIN LAND. (a) The owner or lessee of land located over any part of a closed municipal solid waste landfill unit may not develop the land unless the owner or lessee holds a permit for the development issued under

this subchapter.

(b) This subchapter does not apply to an activity associated with solid waste disposal that is approved by the commission.

(c) The commission shall charge any applicant for a permit under this subchapter the actual cost of reviewing any application prior to the issuance of a permit.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.92, eff. Sept. 1, 1995.

Sec. 361.533. APPLICATION FOR DEVELOPMENT PERMIT. (a) The owner or lessee of land located over any part of a closed municipal solid waste landfill facility may apply for a permit to develop the land. The owner or lessee shall submit to the executive director an application for a permit on forms prescribed by the commission not later than 45 days before the development begins. The application must include a registered professional engineer's verified certification that the proposed development is necessary to reduce a potential threat to public health or the environment or that the proposed development will not increase or create a potential threat to public health or the environment. The certification must indicate the registered professional engineer's determination of whether the proposed development will damage the integrity or function of any component of the landfill's:

(1) final cover;

(2) containment systems;

(3) monitoring systems; or

(4) liners.

(b) The engineer's certification required under Subsection (a) must include documentation of all studies or data on which the engineer relied.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.534. PERMIT PUBLIC MEETING. (a) The commission may hold a public meeting on an application under this subchapter.

(b) The commission shall hold a public meeting on an application under this subchapter:

(1) on the request of a member of the legislature who represents the general area in which the development is proposed to be located; or

(2) if the executive director determines that there is substantial public interest in the proposed development.

(c) The commission by mail shall notify the applicant of the date, time, and place of the public meeting. The commission shall require the applicant to publish notice of the public meeting in a newspaper that is generally circulated in each county in which the property proposed for development is located. The published notice must appear at least once a week for the two weeks before the date of the public meeting.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 582 (H.B. 1609), Sec. 5, eff. September 1, 2005.

Sec. 361.535. ISSUANCE OF PERMIT; PERMIT CONDITIONS. (a) The commission may issue a permit for the development of land over a closed municipal solid waste landfill facility only if the commission finds that the proposed development will not increase or create a potential threat to public health or the environment.

(b) The commission may impose conditions on a permit that are designed to prevent a threat to public health or the environment. Conditions may include:

(1) restrictions on building types, construction methods, pilings, boring, or digging;

(2) requiring ventilation, emissions or water quality monitoring devices, soil testing, warnings to subsequent owners or lessees, maintenance of structures or landfill containment, or the placement of additional soil layers or building pads; or

(3) any other conditions the commission finds to be reasonable and necessary to protect the public health or the environment or to ensure compliance with rules or conditions adopted or imposed under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.536. REQUIREMENTS FOR STRUCTURES ON CLOSED MUNICIPAL SOLID WASTE LANDFILL FACILITY. (a) The owner or lessee of an existing or new structure that overlies a closed municipal solid waste landfill facility shall install automatic methane gas sensors approved by the commission and designed to trigger an audible alarm if the volumetric concentration of methane in the sampled air is greater than one percent.

(b) In the development of land that overlies a closed municipal solid waste landfill facility, a person may not, unless approved by the commission:

(1) drive piling into or through the final cover or a liner;

(2) bore through or otherwise penetrate the final cover or a liner; or

(3) construct an enclosed area under the natural grade of the land or under the grade of the final cover of the closed landfill.

(c) The owner or lessee of a structure built over a closed municipal solid waste landfill facility shall modify the structure as is necessary to comply with commission rules for a new structure that overlies a landfill to minimize the effects of, or to prevent, gas accumulation. The commission shall adopt rules to allow the owner or lessee of a structure a reasonable amount of time to make required modifications.

(d) The commission by rule shall require plans for a new structure over a closed municipal solid waste landfill facility to prevent or minimize the effects of harmful gas accumulation. At a minimum, the commission shall require:

(1) ventilation or active gas collection systems;

(2) a low gas-permeable membrane and a vented, permeable layer of an open-graded, clean aggregate material installed between the area below the slab for the structure and the soil of the final cover; and

(3) automatic methane gas sensors that will sound an audible alarm if the sensor detects a methane gas volumetric concentration of greater than one percent installed:

(A) within the venting pipe or permeable layer; and

(B) inside the structure.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.537. LEASE RESTRICTION; NOTICE TO LESSEE. A person may not lease or offer for lease land that overlies a closed municipal solid waste landfill facility unless:

(1) existing development on the land is in compliance with this subchapter; or

(2) the person gives notice to the prospective lessee of what is required to bring the land and any development on the land into compliance with this subchapter and the prohibitions or requirements for future development imposed by this subchapter and by any permit issued for the land under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.538. SOIL TEST REQUIRED BEFORE DEVELOPMENT OF CERTAIN LAND. (a) A person may not undertake the development of a tract of land that is greater than one acre in area unless the person has conducted soil tests, in accordance with commission rules, to determine whether any part of the tract overlies a closed municipal solid waste landfill facility.

(b) Tests under this section must be conducted by a registered professional engineer.

(c) If an engineer who conducts a test under this section determines that part of the tract overlies a closed municipal solid waste landfill facility, the engineer shall notify the following persons of the determination:

(1) each owner and each lessee of the tract;

(2) the commission; and

(3) any local governmental official with the authority to disapprove an application for development.

(d) A local government official who receives a notice under this section shall prepare a written notice stating the legal description of the portion of the tract that overlies a closed municipal solid waste landfill facility, the current owner of the tract, notice of the tract's former use, and notice of the restrictions on the development or lease of the land imposed by this subchapter. The official shall file for record the notice in the real property records in the county where the tract is located.

(e) The owner or lessee of land for which a test is done under this section shall send the test results to the executive director not later than the 30th day before the development begins.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.539. NOTICE TO BUYERS, LESSEES, AND OCCUPANTS. (a) An owner of land that overlies a closed municipal solid waste landfill facility shall prepare a written notice stating the former use of the facility, the legal description of the pertinent part of the land, notice of the restrictions on the development or lease of the land imposed by this subchapter, and the name of the owner. The owner shall file for record the notice in the real property records in the county where the land is located.

(b) An owner of land that overlies a closed municipal solid waste landfill facility shall notify each lessee and each occupant of a structure that overlies the site of:

(1) the land's former use as a landfill; and

(2) the structural controls in place to minimize potential future danger posed by the landfill.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Subchapter S, Medical Waste; Criminal Penalties, consisting of Secs. 361.560 to 361.567, was added by Acts 1995, 74th Leg., ch. 448, Sec. 1.

For another Subchapter S, Voluntary Cleanup Program, added by Acts 1995, 74th Leg., ch. 986, Sec. 1, see Sec. 361.601 et seq., post.

SUBCHAPTER S. MEDICAL WASTE; CRIMINAL PENALTIES

Sec. 361.561. RADIOACTIVE MEDICAL WASTE. Disposal of radioactive medical waste is governed by Chapter 401.

Added by Acts 1995, 74th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1995.

Subchapter S, Voluntary Cleanup Program, consisting of Secs. 361.601 to 361.613, was added by Acts

1995, 74th Leg., ch. 986, Sec. 1.

For another Subchapter S, Medical Waste; Criminal Penalties, added by Acts 1995, 74th Leg., ch. 448, Sec. 1, see Sec. 361.560 et seq., ante.

SUBCHAPTER S. VOLUNTARY CLEANUP PROGRAM

Sec. 361.601. DEFINITIONS. In this subchapter:

(1) "Contaminant" includes:

(A) solid waste;

(B) hazardous waste;

(C) a hazardous waste constituent listed in 40 C.F.R. Part 261, Subpart D, or Table 1, 40 C.F.R. Section 261.24;

(D) a pollutant as defined in Section 26.001, Water Code; and

(E) a hazardous substance:

(i) as defined in Section 361.003; or

(ii) subject to Sections 26.261-26.268, Water Code.

(2) "Environmental assessment" means the assessment described by Section 361.604.

(3) "Response action" means the cleanup or removal of a hazardous substance or contaminant from the environment, excluding a waste, pollutant, or substance regulated by or that results from an activity under the jurisdiction of the Railroad Commission of Texas under Chapter 91 or 141, Natural Resources Code, or Chapter 27, Water Code.

(4) "Voluntary cleanup" means a response action taken under and in compliance with this subchapter.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.602. PURPOSE. The purpose of the voluntary cleanup program is to provide incentive to remediate property by removing liability of lenders and future landowners. The program does not replace other voluntary actions and is restricted to voluntary actions.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.603. ELIGIBILITY FOR VOLUNTARY CLEANUP PROGRAM. (a)

Any site is eligible for participation in the voluntary cleanup program except the portion of a site that is subject to a commission permit or order.

(b) A person electing to participate in the voluntary cleanup program must:

(1) enter into a voluntary cleanup agreement as provided by Section 361.606; and

(2) pay all costs of commission oversight of the voluntary cleanup.

Text of subsec. (c) effective upon agreement with United States Environmental Protection Agency

(c) Notwithstanding Subsection (a), a site or portion of a site that is subject to a commission permit or order is eligible for participation in the voluntary cleanup program on dismissal of the permit or order. An administrative penalty paid to the general revenue fund under the permit or order is nonrefundable.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 855, Sec. 2; Acts 1997, 75th Leg., ch. 1418, Sec. 1.

Text of section effective upon agreement with United States Environmental Protection Agency

Sec. 361.6035. ELIGIBILITY OF CERTAIN PERSONS FOR RELEASE FROM LIABILITY.

(a) A person who purchased a site before September 1, 1995, is released, on certification under Section 361.609, from all liability to the state for cleanup of contamination that was released at the site covered by the certificate before the purchase date, except for releases or consequences that the person contributed to or caused, if:

(1) the person did not operate the site, or any portion of the site, before the purchase date; and

(2) another person that is a responsible party under Section 361.271 or 361.275(g) successfully completes a voluntary cleanup of the site under this subchapter.

(b) A person described by Subsection (a)(2):

(1) remains liable to the state for any contamination that

was released at the site before the date the certificate is issued; and

(2) is not liable to the state for any contamination that was released at the site after the date the certificate is issued unless the person:

(A) contributes to or causes the release of contamination; or

(B) changes the land use from the use specified in the certificate of completion if the new use may result in increased risks to human health or the environment.

Added by Acts 1997, 75th Leg., ch. 855, Sec. 3; Acts 1997, 75th Leg., ch. 1418, Sec. 2.

Sec. 361.604. APPLICATION TO PARTICIPATE IN VOLUNTARY CLEANUP PROGRAM. (a) A person who desires to participate in the voluntary cleanup program under this subchapter must submit to the commission an application and an application fee as prescribed by this section.

Text of subsec. (b) effective until agreement with United States Environmental Protection Agency

(b) An application submitted under this section must:

(1) be on a form provided by the executive director;

(2) contain:

(A) general information concerning:

(i) the person and the person's capability, including the person's financial capability, to perform the voluntary cleanup; and

(ii) the site;

(B) other background information requested by the executive director; and

(C) an environmental assessment of the actual or threatened release of the hazardous substance or contaminant at the site;

(3) be accompanied by an application fee of $1,000; and

(4) be submitted according to schedules set by commission rule.

Text of subsec. (b) effective upon agreement with United States Environmental Protection Agency

(b) An application submitted under this section must:

(1) be on a form provided by the executive director;

(2) contain:

(A) general information concerning:

(i) the person and the person's capability, including the person's financial capability, to perform the voluntary cleanup;

(ii) the site; and

(iii) whether the voluntary cleanup is subject to Section 361.6035;

(B) other background information requested by the executive director; and

(C) an environmental assessment of the actual or threatened release of the hazardous substance or contaminant at the site;

(3) be accompanied by an application fee of $1,000; and

(4) be submitted according to schedules set by commission rule.

(c) The environmental assessment required by Subsection (b) must include:

(1) a legal description of the site;

(2) a description of the physical characteristics of the site;

(3) the operational history of the site to the extent that history is known by the applicant;

(4) information of which the applicant is aware concerning the nature and extent of any relevant contamination or release at the site and immediately contiguous to the site, or wherever the contamination came to be located; and

(5) relevant information of which the applicant is aware concerning the potential for human exposure to contamination at the site.

(d) An application shall be processed in the order in which it is received.

(e) Fees collected under this section shall be deposited to the credit of the waste management account.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 333, Sec. 57, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 855, Sec. 4; Acts 1997, 75th Leg., ch. 1418, Sec. 3.

Sec. 361.605. REJECTION OF APPLICATION. (a) The executive director may reject an application submitted under Section 361.604 if:

(1) an administrative, state, or federal enforcement action is pending that concerns the remediation of the hazardous substance or contaminant described in the application;

(2) a federal grant requires an enforcement action at the site;

(3) the application is not complete or accurate; or

(4) the site is ineligible under Section 361.603.

(b) If an application is rejected because it is not complete or accurate, the executive director, not later than the 45th day after receipt of the application, shall provide the person with a list of all information needed to make the application complete or accurate. A person may resubmit an application once without submitting an additional application fee if the person resubmits the application not later than the 45th day after the date the executive director issues notice that the application has been rejected.

(c) If the executive director rejects the application, the executive director shall:

(1) notify the person that the application has been rejected;

(2) explain the reasons for rejection of the application; and

(3) inform the person that the commission will refund half the person's application fee unless the person indicates a desire to resubmit an application.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 855, Sec. 5, eff. Sept. 1, 1997.

Sec. 361.606. VOLUNTARY CLEANUP AGREEMENT. (a) Before the executive director evaluates any plan or report detailing the remediation goals and proposed methods of remediation, the person desiring to participate in the voluntary cleanup program must enter into a voluntary cleanup agreement that sets forth the terms and conditions of the evaluation of the reports and the implementation of

work plans.

(b) A voluntary cleanup agreement must provide for:

(1) recovery by the commission of all reasonable costs:

(A) incurred by the commission in review and oversight of the person's work plan and reports and as a result of the commission's field activities;

(B) attributable to the voluntary cleanup agreement; and

(C) in excess of the amount of fees submitted by the applicant under Section 361.604;

(2) a schedule of payments to the commission to be made by the person for recovery of all commission costs fairly attributable to the voluntary cleanup program, including direct and indirect costs of overhead, salaries, equipment, and utilities, and legal, management, and support costs; and

(3) appropriate tasks, deliverables, and schedules.

(c) The voluntary cleanup agreement shall:

(1) identify all statutes and rules that must be complied with;

(2) describe any work plan or report to be submitted for review by the executive director, including a final report that provides all information necessary to verify that all work contemplated by the voluntary cleanup agreement has been completed;

(3) include a schedule for submitting the information required by Subdivision (2); and

(4) state the technical standards to be applied in evaluating the work plans and reports, with reference to the proposed future land use to be achieved.

(d) If an agreement is not reached between a person desiring to participate in the voluntary cleanup program and the executive director on or before the 30th day after good faith negotiations have begun:

(1) the person or the executive director may withdraw from the negotiations; and

(2) the commission retains the person's application fee.

(e) The commission may not initiate an enforcement action against a person who is in compliance with this section for the contamination or release that is the subject of the voluntary cleanup agreement or for the activity that resulted in the contamination or release.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.607. TERMINATION OF AGREEMENT; COST RECOVERY. (a) The executive director or the person in its sole discretion may terminate the agreement by giving 15 days' advance written notice to the other. Only those costs incurred or obligated by the executive director before notice of termination of the agreement are recoverable under the agreement if the agreement is terminated.

(b) Termination of the agreement does not affect any right the executive director has under other law to recover costs.

(c) If the person does not pay to the commission the state's costs associated with the voluntary cleanup before the 31st day after the date the person receives notice that the costs are due and owing, the attorney general, at the request of the executive director, shall bring an action in the name of the state in Travis County to recover the amount owed and reasonable legal expenses, including attorney's fees, witness costs, court costs, and deposition costs.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.608. VOLUNTARY CLEANUP WORK PLANS AND REPORTS. (a) After signing a voluntary cleanup agreement, the person shall prepare and submit the appropriate work plans and reports to the executive director.

(b) The executive director shall review and evaluate the work plans and reports for accuracy, quality, and completeness. The executive director may approve a voluntary cleanup work plan or report or, if a work plan or report is not approved, notify the person concerning additional information or commitments needed to obtain approval.

(c) At any time during the evaluation of a work plan or report, the executive director may request the person to submit additional or corrected information.

(d) After considering future land use, the executive director may approve work plans and reports submitted under this section that do not require removal or remedy of all discharges, releases, and threatened releases at a site if the partial response actions for the property:

(1) will be completed in a manner that protects human health and the environment;

(2) will not cause, contribute, or exacerbate discharges, releases, or threatened releases that are not required to be removed or remedied under the work plan; and

(3) will not interfere with or substantially increase the cost of response actions to address the remaining discharges, releases, or threatened releases.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.609. CERTIFICATE OF COMPLETION. (a) If the executive director determines that a person has successfully completed a voluntary cleanup approved under this subchapter, the executive director shall certify that the action has been completed by issuing the person a certificate of completion.

(b) The certificate of completion shall:

(1) acknowledge the protection from liability provided by Section 361.610;

(2) indicate the proposed future land use; and

(3) include a legal description of the site and the name of the site's owner at the time the application to participate in the voluntary cleanup program was filed.

(c) If the executive director determines that the person has not successfully completed a voluntary cleanup approved under this subchapter, the executive director shall notify the person who undertook the voluntary cleanup and the current owner of the site that is the subject of the cleanup of this determination.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 855, Sec. 6, eff. Sept. 1, 1997.

Sec. 361.610. PERSONS RELEASED FROM LIABILITY. (a) A person who is not a responsible party under Section 361.271 or 361.275(g) at the time the person applies to perform a voluntary cleanup:

(1) does not become a responsible party solely because the person signs the application; and

(2) is released, on certification under Section 361.609, from all liability to the state for cleanup of areas of the site

covered by the certificate, except for releases and consequences that the person causes.

(b) A person who is not a responsible party under Section 361.271 or 361.275(g) at the time the commission issues a certificate of completion under Section 361.609 is released, on issuance of the certificate, from all liability to the state for cleanup of areas of the site covered by the certificate, except for releases and consequences that the person causes.

(c) The release from liability provided by this section does not apply to a person who:

(1) acquires a certificate of completion by fraud, misrepresentation, or knowing failure to disclose material information;

(2) knows at the time the person acquires an interest in the site for which the certificate of completion was issued that the certificate was acquired in a manner provided by Subdivision (1); or

(3) changes land use from the use specified in the certificate of completion if the new use may result in increased risks to human health or the environment.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 855, Sec. 7, eff. Sept. 1, 1997.

Sec. 361.611. PERMIT NOT REQUIRED. (a) A state or local permit is not required for removal or remedial action conducted on a site as part of a voluntary cleanup under this subchapter. A person shall coordinate a voluntary cleanup with ongoing federal and state hazardous waste programs.

(b) The commission by rule shall require that the person conducting the voluntary cleanup comply with any federal or state standard, requirement, criterion, or limitation to which the remedial action would otherwise be subject if a permit were required.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.612. PUBLIC PARTICIPATION. The commission may adopt rules pertaining to public participation in voluntary cleanup decisions.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.613. COST REPORT; BUDGET ALLOCATION. (a) The executive director annually shall calculate the commission's costs to administer the voluntary cleanup program under this subchapter and shall publish in the Texas Register the rates established for the purposes of identifying the costs recoverable by the commission under this subchapter.

(b) Costs recovered under this subchapter and appropriated to the commission shall be budgeted and distributed to each organizational unit of the commission solely on the basis of costs fairly attributable to the voluntary cleanup program.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER T. FIDUCIARY LIABILITY

Sec. 361.651. DEFINITIONS. In this subchapter:

(1) "Fiduciary":

(A) means a person acting for the benefit of another party as a bona fide:

(i) trustee;

(ii) executor;

(iii) administrator;

(iv) custodian;

(v) guardian of an estate or guardian ad litem;

(vi) receiver;

(vii) conservator;

(viii) committee of the estate of an incapacitated person;

(ix) personal representative;

(x) trustee, including a successor to a trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or

(xi) representative in any other capacity that the commission, after providing public notice, determines to be similar

to the capacities described in Subparagraphs (i)-(x); and

(B) does not include:

(i) a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person; or

(ii) a person that acquires ownership or control of a solid waste facility with the objective purpose of avoiding liability of the person or of any other person.

(2) "Fiduciary capacity" means the capacity of a person in holding title to a solid waste facility or otherwise having control of or an interest in the solid waste facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

(3) "Solid waste facility":

(A) means:

(i) all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste, including a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units; and

(ii) any building, structure, installation, equipment, pipe, or pipeline, including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be located; and

(B) does not include a:

(i) consumer product in consumer use; or

(ii) vessel.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

Sec. 361.652. LIABILITY OF FIDUCIARIES. (a) Except as otherwise provided by Subchapter I, Chapter 26, Water Code, or rules

adopted under that subchapter, the liability of a fiduciary under this code or the Water Code for the release or threatened release of solid waste at, from, or in connection with a solid waste facility held in a fiduciary capacity does not exceed the assets held in the fiduciary capacity.

(b) Subsection (a) does not apply to the extent that a person is liable independently of the person's ownership of a solid waste facility as a fiduciary or actions taken in a fiduciary capacity.

(c) Subsections (a) and (d) do not limit the liability pertaining to a release or threatened release of solid waste if negligence, gross negligence, or wilful misconduct of a fiduciary causes or contributes to the release or threatened release.

(d) Except as otherwise provided by Subchapter I, Chapter 26, Water Code, or rules adopted under that subchapter, a fiduciary is not liable in the fiduciary's personal capacity under this code or the Water Code for:

(1) undertaking or directing another person to undertake a response action under the national contingency plan adopted under 42 U.S.C. Section 9605, under a commission-approved cleanup plan, or under the direction of an on-scene coordinator designated under the national contingency plan or a commission-approved cleanup plan;

(2) undertaking or directing another person to undertake any other lawful means of addressing solid waste in connection with the solid waste facility;

(3) terminating the fiduciary relationship;

(4) including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law or monitoring or enforcing the term or condition;

(5) monitoring or undertaking one or more inspections of the solid waste facility;

(6) providing financial or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary;

(7) restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship;

(8) administering, as a fiduciary, a solid waste facility that was contaminated before the fiduciary relationship began; or

(9) declining to take an action described by Subdivisions (2)-(8).

(e) This section does not:

(1) affect a right, immunity, or defense available under this code or the Water Code that is applicable to a person subject to this section;

(2) create any liability for a person; or

(3) create a private right of action against a fiduciary or any other person.

(f) This section does not apply to a person if the person:

(1) acts in a capacity other than that of a fiduciary or in a beneficiary capacity and, in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

(2) is a beneficiary and a fiduciary with respect to the same fiduciary estate and, as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable law.

(g) This section does not preclude a claim under this code or the Water Code against:

(1) the assets of the estate or trust administered by the fiduciary; or

(2) a nonemployee agent or independent contractor retained by a fiduciary.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

SUBCHAPTER U. LENDER LIABILITY

Sec. 361.701. DEFINITIONS. In this subchapter:

(1) "Extension of credit" includes a lease finance transaction:

(A) in which the lessor does not initially select the leased solid waste facility and does not during the lease term control the daily operations or maintenance of the solid waste facility; or

(B) that conforms with, as appropriate, regulations issued by:

(i) the appropriate federal banking agency or the appropriate state bank supervisor, as those terms are defined by Section 3, Federal Deposit Insurance Act (12 U.S.C. Section 1813); or

(ii) the National Credit Union Administration

Board.

(2) "Financial or administrative function" includes a function such as a function of a credit manager, accounts payable officer, accounts receivable officer, personnel manager, comptroller, or chief financial officer, or a similar function.

(3) "Foreclosure" and "foreclose" mean, respectively, acquiring, and to acquire, a solid waste facility through:

(A) purchase at sale under a judgment or decree, power of sale, or nonjudicial foreclosure sale;

(B) a deed in lieu of foreclosure, or similar conveyance from a trustee;

(C) repossession, if the solid waste facility was security for an extension of credit previously contracted;

(D) conveyance under an extension of credit previously contracted, including the termination of a lease agreement; or

(E) any other formal or informal manner by which the person acquires, for subsequent disposition, title to or possession of a solid waste facility in order to protect the security interest of the person.

(4) "Lender" means:

(A) an insured depository institution, as that term is defined by Section 3, Federal Deposit Insurance Act (12 U.S.C. Section 1813);

(B) an insured credit union, as that term is defined by Section 101, Federal Credit Union Act (12 U.S.C. Section 1752);

(C) a bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. Section 2001 et seq.);

(D) a leasing or trust company that is an affiliate of an insured depository institution;

(E) any person, including a successor or assignee of any such person, that makes a bona fide extension of credit to or takes or acquires a security interest from a nonaffiliated person;

(F) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or any other entity that in a bona fide manner buys or sells loans or interests in loans;

(G) a person that insures or guarantees against a default in the repayment of an extension of credit, or acts as a surety with respect to an extension of credit, to a nonaffiliated person;

(H) a person that provides title insurance and that acquires a solid waste facility as a result of assignment or conveyance in the course of underwriting claims and claims settlement; and

(I) an agency of this state that makes an extension of credit to or acquires a security interest from:

(i) a federal or state agency;

(ii) a county, municipality, or other body politic or corporate of this state, including:

(a) a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution;

(b) an interstate compact commission to which this state is a party; or

(c) a nonprofit water supply corporation created and operating under Chapter 67, Water Code; or

(iii) another person.

(5) "Operational function" includes a function such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer.

(6) "Security interest" includes a right under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, or lease and any other right accruing to a person to secure the repayment of money, the performance of a duty, or any other obligation by a nonaffiliated person.

(7) "Solid waste facility":

(A) means:

(i) all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste, including a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units; and

(ii) any building, structure, installation, equipment, pipe, or pipeline, including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be

located; and

(B) does not include a:

(i) consumer product in consumer use; or

(ii) vessel.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.30, eff. Sept. 1, 1999.

Sec. 361.702. EXCLUSION OF LENDERS NOT PARTICIPANTS IN MANAGEMENT. (a) In Section 361.271, the term "owner or operator" does not include a person that is a lender that:

(1) without participating in the management of a solid waste facility, holds a security interest in or with regard to the solid waste facility; or

(2) did not participate in management of a solid waste facility before foreclosure, notwithstanding the fact that the person:

(A) forecloses on the solid waste facility; and

(B) after foreclosure, sells, re-leases, in the case of a lease finance transaction, or liquidates the solid waste facility, maintains business activities, winds up operations, undertakes a response action with respect to the solid waste facility under the national contingency plan adopted under 42 U.S.C. Section 9605, under a commission-approved cleanup plan, or under the direction of an on-scene coordinator appointed under the national contingency plan or a commission-approved cleanup plan, or takes any other measure to preserve, protect, or prepare the solid waste facility before sale or disposition, if the person seeks to sell, re-lease, in the case of a finance transaction, or otherwise divest the person of the facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

(b) For purposes of Subsection (a)(2)(B), a lender is presumed to divest the lender of the solid waste facility at the earliest practicable, commercially reasonable time if, within 12 months after foreclosure, the lender:

(1) lists the solid waste facility with a broker, dealer, or agent who deals in that type of property; or

(2) advertises the solid waste facility for sale or other disposition at least monthly in:

(A) a real estate publication;

(B) a trade or other publication appropriate for the solid waste facility being advertised; or

(C) a newspaper of general circulation in the area in which the solid waste facility is located.

(c) For purposes of Subsection (b), the 12-month period begins:

(1) when the lender acquires marketable title if the lender, after the expiration of any redemption period or other waiting period required by law, was acting diligently to acquire marketable title; or

(2) on the date of foreclosure or its equivalent if the lender does not act diligently to acquire marketable title.

(d) Except as otherwise provided by Subchapter I, Chapter 26, Water Code, or rules adopted under that subchapter, a lender is not liable under this code or the Water Code to undertake a removal or remedial action or to pay a fine or penalty arising from the release or threatened release of solid waste at, from, or in connection with the solid waste facility in which the lender maintains a security interest or that the lender has acquired through foreclosure if:

(1) the lender has not participated in management before foreclosure;

(2) the conditions giving rise to the release or threat of release existed before foreclosure; and

(3) the lender seeks to divest the lender of the property under Subsections (a)(2)(B) and (b).

(e) Notwithstanding Subsection (d), if a lender after foreclosure operates, directs the operation of, or maintains the operation of business activities, this section does not exempt or excuse the lender from compliance with legal requirements applicable to the operation of that business. Those operational requirements include permitting, reporting, monitoring, compliance with emission limitations, financial responsibility and assurance requirements, payment of fees, and payment of fines and penalties for noncompliance with those requirements.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

Sec. 361.703. PARTICIPATION IN MANAGEMENT. (a) For purposes of Section 361.702, the term "participate in management":

(1) means actually participating in the management or operational affairs of a solid waste facility; and

(2) does not include merely having the capacity to influence, or the unexercised right to control, a solid waste facility or facility operations.

(b) A person that is a lender that holds a security interest in or with regard to a solid waste facility is considered to participate in management only if, while the borrower is still in possession of the solid waste facility encumbered by the security interest, the person:

(1) exercises decision-making control over the environmental compliance related to the solid waste facility such that the person has undertaken responsibility for the solid waste handling or disposal practices related to the solid waste facility; or

(2) exercises control at a level comparable to that of a manager of the solid waste facility such that the person has assumed or manifested responsibility:

(A) for the overall management of the solid waste facility encompassing day-to-day decisionmaking with respect to environmental compliance; or

(B) over all or substantially all of the operational functions, as distinguished from financial or administrative functions, of the solid waste facility other than the function of environmental compliance.

(c) The term "participate in management" does not include:

(1) performing an act or failing to act before the time at which a security interest is created in a solid waste facility;

(2) holding a security interest or abandoning or releasing a security interest;

(3) including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, warranty, or other term or condition that relates to environmental compliance;

(4) monitoring or enforcing the terms and conditions of the extension of credit or security interest;

(5) monitoring or undertaking one or more inspections of the solid waste facility;

(6) requiring a response action or other lawful means of addressing the release or threatened release of solid waste in connection with the solid waste facility before, during, or on the expiration of the term of the extension of credit;

(7) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the solid waste facility;

(8) restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance;

(9) exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement; or

(10) conducting a response action under the national contingency plan adopted under 42 U.S.C. Section 9605, under a commission-approved cleanup plan, or under the direction of an on-scene coordinator appointed under the national contingency plan or a commission-approved cleanup plan, if the actions do not rise to the level of participating in management within the meaning of Subsections (a) and (b).

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

SUBCHAPTER V. IMMUNITY FROM LIABILITY OF INNOCENT OWNER OR OPERATOR

Sec. 361.751. DEFINITIONS. In this subchapter:

(1) "Contaminant" has the meaning assigned by Section 361.601.

(2) "Innocent owner or operator" means a person that:

(A) is an owner or operator of property that has become contaminated as a result of a release or migration of contaminants from a source or sources not located on or at the property; and

(B) did not cause or contribute to the source or sources of the contamination referred to in Paragraph (A).

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

Sec. 361.752. IMMUNITY FROM LIABILITY; ACCESS TO PROPERTY. (a) An innocent owner or operator of property is not liable under this code or the Water Code for investigation, monitoring,

remediation, or corrective or other response action regarding the conditions attributable to a release or migration of a contaminant or otherwise liable regarding those conditions.

(b) A person that acquires a portion of the tract on which the source of a release of contaminants is located from the person that caused the release is eligible for immunity under Subsection (a) only if, after appropriate inquiry consistent with good commercial or customary practice, the person did not know or have reason to know of the contamination at the time the person acquired the property.

(c) To be eligible for immunity under Subsection (a), an owner or operator must grant reasonable access to the property for purposes of investigation or remediation to a person designated by the executive director. An agreement for reasonable access may provide:

(1) that the designated person may not unreasonably interfere with the use of the property;

(2) for payment of reasonable compensation for access to the property; or

(3) that the owner or operator is indemnified from liability for an intentional or negligent act of the designated person arising from the person's access to and use of the property.

(d) This section does not limit any right of the commission under another provision of this code or the Water Code to obtain access to the property.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

Sec. 361.753. CERTIFICATION. (a) A person may apply to the commission for a certificate confirming that the person is an innocent owner or operator. The application must include a complete site investigation report that demonstrates that:

(1) the property has become contaminated as a result of a release or migration of contaminants from a source or sources not located on or at the property;

(2) the owner or operator has not caused or contributed to the source or sources of the contamination referred to in Subdivision (1); and

(3) the owner or operator is eligible for immunity under Section 361.752(b).

(b) The commission may charge an application fee in an amount

not to exceed the cost of reviewing the application. The commission shall deposit a fee collected under this subsection to the credit of the hazardous and solid waste remediation fee account.

(c) Not later than the 45th day after the date the commission receives the application, the commission shall notify the applicant whether the application is complete.

(d) Not later than the 90th day after the date the commission receives the application, the commission shall:

(1) issue or deny the certificate; or

(2) notify the applicant of any additional information needed to review the application.

(e) Not later than the 45th day after the date the commission receives the additional information requested under Subsection (d)(2), the commission shall issue or deny the certificate.

(f) The certificate evidences the immunity from liability of the applicant as provided by Section 361.752.

(g) The commission may condition the issuance of the certificate on the placement of restrictions on the use of the property that are reasonably necessary to protect the public health, including:

(1) institutional controls such as deed restrictions or municipal zoning restrictions; or

(2) at the owner's or operator's option, other control measures.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.010, eff. September 1, 2009.

Sec. 361.754. RIGHTS OF INNOCENT OWNER OR OPERATOR REGARDING CONTAMINATION FROM SOURCE NOT LOCATED ON OR AT PROPERTY. This subchapter does not limit the right of an innocent owner or operator to pursue any remedy available at law or in equity for conditions attributable to the release or migration of contaminants from a source or sources that are not located on or at the property.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

SUBCHAPTER W. MUNICIPAL SETTING DESIGNATIONS

Sec. 361.801. DEFINITIONS. In this subchapter:

(1) "Contaminant" includes:

(A) solid waste;

(B) hazardous waste;

(C) a hazardous waste constituent listed in 40 C.F.R. Part 261, Subpart D, or Table 1, 40 C.F.R. Section 261.24;

(D) a pollutant as defined in Section 26.001, Water Code; and

(E) a hazardous substance:

(i) as defined in Section 361.003; or

(ii) subject to Subchapter G, Chapter 26, Water Code.

(2) "Potable water" means water that is used for irrigating crops intended for human consumption, drinking, showering, bathing, or cooking purposes.

(3) "Response action" means the cleanup or removal from the environment of a hazardous substance or contaminant, excluding a waste, pollutant, or substance regulated by or that results from an activity under the jurisdiction of the Railroad Commission of Texas under Chapter 91 or 141, Natural Resources Code, or Chapter 27, Water Code.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.8015. LEGISLATIVE FINDINGS. (a) The legislature finds that access to and the use of groundwater may need to be restricted to protect public health and welfare where the quality of groundwater presents an actual or potential threat to human health.

(b) The legislature finds that an action by a municipality to restrict access to or the use of groundwater in support of or to facilitate a municipal setting designation advances a substantial and legitimate state interest where the quality of the groundwater subject to the designation is an actual or potential threat to human health.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.802. PURPOSE. The purpose of this subchapter is to

provide authorization to the executive director to certify municipal setting designations for municipal properties in order to limit the scope of or eliminate the need for investigation of or response actions addressing contaminant impacts to groundwater that has been restricted from use as potable water by ordinance or restrictive covenant.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.803. ELIGIBILITY FOR A MUNICIPAL SETTING DESIGNATION. A person, including a local government, may submit a request to the executive director for a municipal setting designation for property if:

(1) the property is within the corporate limits or extraterritorial jurisdiction of a municipality authorized by statute; and

(2) a public drinking water supply system exists that satisfies the requirements of Chapter 341 and that supplies or is capable of supplying drinking water to:

(A) the property for which designation is sought; and

(B) property within one-half mile of the property for which designation is sought.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 240 (H.B. 2018), Sec. 1, eff. May 25, 2007.

Sec. 361.804. APPLICATION FOR A MUNICIPAL SETTING DESIGNATION. (a) A person seeking to obtain a municipal setting designation under this subchapter must submit an application to the executive director as prescribed by this section.

(b) An application submitted under this section must:

(1) be on a form provided by the executive director;

(2) contain the following:

(A) the applicant's name and address;

(B) a legal description of the outer boundaries of the proposed municipal setting designation and a specific description of the designated groundwater that will be restricted under the

ordinance or restrictive covenant described by Section 361.8065(a)(2) or (c)(2), as applicable;

(C) a statement as to whether the municipalities or the retail public utilities entitled to notice under Section 361.805 support the proposed designation;

(D) an affidavit that affirmatively states that:

(i) the municipal setting designation eligibility criteria contained in Section 361.803 are satisfied;

(ii) true and accurate copies of all documents demonstrating that the municipal setting designation eligibility criteria provided by Section 361.803 have been satisfied are included with the application;

(iii) a true and accurate copy of a legal description of the property for which the municipal setting designation is sought is included with the application; and

(iv) notice was provided in accordance with Section 361.805;

(E) a statement regarding the type of known contamination in the groundwater beneath the property proposed for a municipal setting designation;

(F) proof of notice, as required by Section 361.805(c); and

(G) if available at the time of the application, a copy of the ordinance or restrictive covenant and any required resolutions or other documentation satisfying the requirements described in Section 361.8065, or a statement that the applicant will provide a copy of the ordinance or restrictive covenant and any required resolutions or other documentation satisfying the requirements described in Section 361.8065 before the executive director certifies the municipal setting designation in accordance with Section 361.807; and

(3) be accompanied by an application fee of $1,000.

(c) Not later than 90 days after receiving an application submitted as provided by Subsection (b), the executive director shall:

(1) issue a municipal setting designation certificate in accordance with Section 361.807;

(2) deny the application in accordance with Section 361.806; or

(3) request additional information for the municipal

setting designation application.

(d) Not later than the 45th day after the date the executive director receives any additional information requested under Subsection (c)(3), the executive director shall certify or deny the application.

(e) Fees collected under this section shall be deposited to the credit of the waste management account.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 550 (H.B. 2826), Sec. 1, eff. September 1, 2011.

Sec. 361.805. NOTICE. (a) On or before the date of submission of an application to the executive director, a person seeking a municipal setting designation must provide notice to:

(1) each municipality:

(A) in which the property for which the designation is sought is located;

(B) with a boundary located not more than one-half mile from the property for which the designation is sought; or

(C) that owns or operates a groundwater supply well located not more than five miles from the property for which the designation is sought;

(2) each owner of a private water well registered with the commission that is located not more than five miles from a boundary of the property for which the designation is sought; and

(3) each retail public utility, as defined by Section 13.002, Water Code, that owns or operates a groundwater supply well located not more than five miles from the property for which the designation is sought.

(b) The notice must include, at a minimum:

(1) the purpose of the municipal setting designation;

(2) the eligibility criteria for a municipal setting designation;

(3) the location and description of the property for which the designation is sought;

(4) a statement that a municipality described by Subsection (a)(1) or retail public utility described by Subsection (a)(3) may

provide written comments on any information relevant to the executive director's consideration of the municipal setting designation;

(5) a statement that the executive director will certify or deny the application or request additional information from the applicant not later than 90 days after receiving the application;

(6) the type of contamination on the property for which the designation is sought;

(7) identification of the party responsible for the contamination of the property, if known; and

(8) if the property for which the municipal setting designation is sought is located in a municipality that has a population of two million or more and the applicant intends to comply with the requirements of Section 361.8065 for issuance of a municipal setting designation certificate under Section 361.807 by complying with the requirements of Section 361.8065(c), a statement that a municipality described by Subsection (a)(1)(B) or (C) of this section or a public utility described by Subsection (a)(3) of this section has 120 days from the date of receipt of the notice required by this section to pass a resolution opposing the application for a municipal setting designation.

(c) The applicant must submit copies of the notice letters delivered in accordance with Subsection (a) and the signed delivery receipts to the executive director with the application.

(d) For the purpose of this section, notice to a municipality must be provided to the city secretary for the municipality and notice to a retail public utility must be to the registered agent, the owner, or the manager.

(e) A municipality, retail public utility, or private well owner entitled to notice under this section may file comments with the executive director not later than the 60th day after the date the municipality, retail public utility, or private well owner receives the notice under this section.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 550 (H.B. 2826), Sec. 2, eff. September 1, 2011.

Sec. 361.806. DENIAL OF APPLICATION. (a) The executive

director shall deny an application submitted under Section 361.804 if:

(1) any of the eligibility criteria described in Section 361.803 have not been met for the property for which the municipal setting designation is sought;

(2) the application is incomplete or inaccurate; or

(3) after the 60-day comment period described by Section 361.805(e), the executive director determines that the municipal setting designation would negatively impact the current and future regional water resource needs or obligations of a municipality, a retail public utility, or a private well owner described by Section 361.805(a).

(b) If the executive director determines that an application is incomplete or inaccurate, the executive director, not later than the 90th day after receipt of the application, shall provide the applicant with a list of all information needed to make the application complete or accurate.

(c) If the executive director denies the application, the executive director shall:

(1) notify the applicant that the application has been denied; and

(2) explain the reasons for the denial of the application.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.8065. PRECERTIFICATION REQUIREMENTS. (a) Except as provided by Subsection (c), before the executive director may issue a municipal setting designation certificate under Section 361.807, the applicant must provide documentation of the following:

(1) that the application is supported by a resolution adopted by:

(A) the city council of each municipality described by Section 361.805(a)(1)(B) or (C); and

(B) the governing body of each retail public utility described by Section 361.805(a)(3); and

(2) that the property for which designation is sought is:

(A) subject to an ordinance that prohibits the use of designated groundwater from beneath the property as potable water and that appropriately restricts other uses of and contact with that

groundwater; or

(B) subject to a restrictive covenant enforceable by the municipality in which the property for which the designation is sought is located that prohibits the use of designated groundwater from beneath the property as potable water and appropriately restricts other uses of and contact with that groundwater.

(b) A designation described by Subsection (a)(2)(B) must be supported by a resolution passed by the city council of the municipality.

(c) If the property for which the municipal setting designation is sought is located in a municipality that has a population of two million or more and the applicant has complied with the requirements of Section 361.805(b)(8), the applicant is considered to have complied with the requirements of Subsection (a) of this section for eligibility for a municipal setting designation certificate under Section 361.807 if the applicant provides documentation of the following:

(1) that no resolution opposing the application has been adopted within 120 days of receipt of the notice provided under Section 361.805 by:

(A) the city council of any municipality described by Section 361.805(a)(1)(B) or (C); or

(B) the governing body of any retail public utility described by Section 361.805(a)(3); and

(2) that the property for which designation is sought:

(A) is currently or has previously been under the oversight of the commission or the United States Environmental Protection Agency; and

(B) is subject to:

(i) an ordinance that prohibits the use of designated groundwater from beneath the property as potable water and that appropriately restricts other uses of and contact with that groundwater; or

(ii) a restrictive covenant enforceable by the municipality in which the property for which the designation is sought is located that prohibits the use of designated groundwater from beneath the property as potable water and appropriately restricts other uses of and contact with that groundwater.

(d) The documentation required under Subsection (c)(1) may be in the form of an affidavit of the applicant or the applicant's

representative.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 550 (H.B. 2826), Sec. 3, eff. September 1, 2011.

Sec. 361.807. CERTIFICATION. (a) If the executive director determines that an applicant has complied with Section 361.8065 and submitted a complete application, the executive director shall issue a copy of the municipal setting designation certificate to:

(1) the applicant for the municipal setting designation;

(2) each municipality, retail public utility, and private well owner described by Section 361.805(a); and

(3) each person who submitted comments on the application for the municipal setting designation and anyone else who requested a copy during the review period.

(b) The municipal setting designation certificate shall:

(1) indicate that the municipal setting designation eligibility criteria described in Section 361.803 are satisfied and that the executive director has certified the municipal setting designation;

(2) indicate that any person addressing environmental impacts for a property located in the certified municipal setting designation shall complete any necessary investigation and response action requirements in accordance with Section 361.808; and

(3) include a legal description of the outer boundaries of the municipal setting designation.

(c) If the executive director determines that an applicant has submitted a complete application except that an ordinance or restrictive covenant and any required documentation satisfying the requirements described in Section 361.8065 have not been submitted, the executive director shall issue a letter to the applicant listed in Subsection (a) stating that a municipal setting designation will be certified on submission of a copy of the ordinance or restrictive covenant and any required documentation satisfying the requirements described in Section 361.8065. On submission of the ordinance or restrictive covenant and any required documentation satisfying the requirements described in Section 361.8065, the executive director

shall issue a municipal setting designation certificate in accordance with Subsections (a) and (b).

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 550 (H.B. 2826), Sec. 4, eff. September 1, 2011.

Sec. 361.808. INVESTIGATION AND RESPONSE ACTION REQUIREMENTS. (a) If no potable water wells are located within one-half mile beyond the boundary of a municipal setting designation, the executive director shall not require a person addressing environmental impacts for a property located in the municipal setting designation to:

(1) investigate the nature and extent of contamination in groundwater except to satisfy the requirements of Subsection (b); or

(2) conduct response actions to remove, decontaminate, or control environmental impacts to groundwater based solely on potential potable water use.

(b) Notwithstanding Subsection (a), the executive director shall require a responsible person to complete a response action to address environmental impacts to groundwater in a certified municipal setting designation if action is necessary to ensure:

(1) the protection of humans from exposures to environmental impacts to groundwater that are not related to a potable water use, including exposures from nonconsumptive uses and exposures resulting from inadvertent contact with contaminated groundwater; or

(2) the protection of ecological resources.

(c) If potable water wells are located within one-half mile beyond the boundary of a municipal setting designation, the executive director shall require a person addressing environmental impacts for a property located in the municipal setting designation to complete an investigation to determine whether groundwater contamination emanating from the property has caused or is reasonably anticipated to cause applicable human health or ecological standards to be exceeded in the area located within one-half mile beyond the boundary of the certified municipal setting designation.

(d) If an investigation described in Subsection (c) confirms that groundwater emanating from the property has not caused and is

not reasonably anticipated to cause applicable human health or ecological standards to be exceeded in the area located within one-half mile beyond the boundary of the certified municipal setting designation, the executive director shall approve the completion of groundwater response actions at the property except to the extent that response actions are necessary to satisfy Subsection (b).

(e) If an investigation described in Subsection (c) confirms that groundwater emanating from the property has caused or is reasonably anticipated to cause applicable human health or ecological standards to be exceeded in the area located within one-half mile beyond the boundary of the certified municipal setting designation, the executive director shall approve the completion of groundwater response action at the source property if the person addressing environmental impacts:

(1) completes response actions at the source property to remove, decontaminate, or control environmental impacts to groundwater to meet applicable human health or ecological standards; or

(2) completes response actions at the source property to remove, decontaminate, or control environmental impacts to groundwater that are not related to a potable water use, including actions to protect humans from exposures from nonconsumptive uses and exposures resulting from inadvertent contact with contaminated groundwater and actions to protect ecological resources, and:

(A) provides to owners of impacted potable water wells described in Subsection (c) a reliable alternate water supply that will provide a volume of water sufficient for the intended use for a period not shorter than the period that the impacted wells exceed the human health or ecological standards and, after obtaining permission from such owners, files a restrictive covenant that prohibits the use of groundwater from those wells as potable water and restricts other uses of groundwater in a manner consistent with groundwater quality; or

(B) expands the municipal setting designation in accordance with the procedures under this subchapter relating to the initial application for a municipal setting designation to include the properties with impacted potable water wells described in Subsection (c).

(f) Notwithstanding any other provision of this section, the executive director may require a person responsible for property

within a certified municipal setting designation to complete a response action to address environmental impacts to groundwater emanating from the property that has caused or is reasonably anticipated to cause applicable human health or ecological standards to be exceeded in an area located more than one-half mile beyond the boundary of the certified municipal setting designation, provided such action is necessary to ensure:

(1) the protection of humans from exposures to environmental impacts to groundwater; or

(2) the protection of ecological resources.

(g) This subchapter relates to the scope of the response action that can be required by the executive director in municipal settings designated under this subchapter. Nothing in this subchapter shall be construed to alter or affect the private rights of action of any person under any statute or common law for personal injury or property damage caused by the release of contaminants. Nothing in this subchapter is meant to alter or supersede any requirement of a federally authorized environmental program administered by the State of Texas.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER X. COUNTY PROGRAMS FOR CLEANUP AND ECONOMIC REDEVELOPMENT OF BROWNFIELDS

Sec. 361.901. DEFINITIONS. In this subchapter:

(1) "Assessment" means an environmental assessment described by Section 361.904.

(2) "Brownfield" means real property the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of environmental contamination.

(3) "Brownfield program" means a county brownfield cleanup and economic redevelopment program described by Section 361.902.

(4) "Eligible owner" means the owner of a brownfield who demonstrates to the commissioners court of the county in which the brownfield is located that the owner:

(A) became the owner after the contamination occurred;

(B) did not contribute to the contamination as an owner responsible for contamination or through association with previous owners responsible for the contamination;

(C) exercises appropriate care at the brownfield by taking reasonable steps to stop continuing releases, prevent any threatened future releases, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance; and

(D) complies with local, state, and federal laws with respect to land use and requests for information.

(5) "Eligible site" means a property or facility that is owned by a county or, if not owned by a county, for which the owner applies to a county for brownfield assistance or certification and a county determines is a brownfield under the county's brownfield program.

(6) "Licensed professional engineer" means a person licensed as an engineer by the Texas Board of Professional Engineers and Land Surveyors.

(7) "Remediation" means an action included within the meanings of "remedial action" and "removal," as those terms are defined by Section 361.003.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 2.08, eff. September 1, 2019.

Sec. 361.902. COUNTY BROWNFIELD CLEANUP AND ECONOMIC REDEVELOPMENT PROGRAM. (a) The commissioners court of a county with a population of 250,000 or more may establish a program for the cleanup and economic redevelopment of brownfields located in the county, as authorized by Section 52-a, Article III, Texas Constitution.

(b) A brownfield program must include:

(1) procedures to:

(A) identify eligible sites;

(B) conduct assessments;

(C) prioritize the remediation of eligible sites, with consideration given to:

(i) the number of jobs related to the remediation; and

(ii) the resulting economic and environmental benefits to the county;

(D) conduct the remediation of an eligible site;

(E) conduct the inspection of a property or facility after remediation; and

(F) guide eligible owners in applying for county assistance under the program; and

(2) standards by which the county can determine:

(A) the eligibility of a person for a grant or loan under the program;

(B) the eligibility of a person to enter into a contract with the county to perform remediation or inspection; and

(C) the completeness of the remediation of a property or facility.

(c) The county shall make available to the public and to the commission a draft of the proposed program at least 60 days before a public hearing to receive comments on the proposed program.

(d) The county shall review comments received and make amendments to the draft as appropriate before adopting and implementing the program.

(e) The county shall submit a copy of the final draft of a program adopted under this section to the commission and shall make the final draft available to the public.

(f) The county may amend a program adopted under this section by applying the procedures described by Subsections (c), (d), and (e) to the proposed amendment.

(g) The county may assign current or employ additional staff to implement a program adopted under this section.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.903. BROWNFIELD CLEANUP AND ECONOMIC REDEVELOPMENT FUND. (a) The commissioners court of a county may establish a fund for a brownfield program and deposit to the credit of the fund any money the commissioners court considers appropriate, including revenue from property taxes, sales taxes, fees, gifts or grants, principal and interest payments made to repay loans from the fund, proceeds from the issuance of bonds, and contributions of other

resources.

(b) Money from a fund established under this section may be used only to provide for economic growth and development of the county by paying for all or part of:

(1) the cost of an assessment;

(2) the cost of remediating a brownfield;

(3) the cost of inspecting a property or facility after remediation;

(4) a loan to an eligible owner or licensed professional engineer to conduct assessment, eligible site remediation, or inspection of a property or facility after remediation; or

(5) administrative expenses associated with implementing the brownfield program.

(c) For the purposes of the county's brownfield program, a county may solicit and leverage money from other sources, including federal money that may be available for brownfield assessment and eligible site remediation.

(d) Before a county may issue bonds payable from ad valorem taxes to provide money for a fund, the bond issuance must be approved by a majority of the voters voting on the issue at an election held for that purpose.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.904. ENVIRONMENTAL ASSESSMENT. An assessment under this subchapter must include:

(1) a legal description of the property or facility;

(2) a description of the physical characteristics of the property or facility;

(3) the operational history of the property or facility to the extent that history is known by the owner;

(4) information of which the owner is aware concerning the nature and extent of any relevant contamination or release at the property or facility and immediately contiguous to the property or facility, or wherever the contamination came to be located; and

(5) relevant information of which the owner is aware concerning the potential for human exposure to contamination at the property or facility.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.905. TAX ABATEMENT AGREEMENT INCENTIVES. Subject to the requirements of Subchapter C, Chapter 312, Tax Code, a county may designate an area of the county that contains a brownfield as a reinvestment zone and enter into a tax abatement agreement based on the remediation of the brownfield with the eligible owner of the brownfield.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.906. CONTRACTS FOR SITE REMEDIATION OR INSPECTION. (a) A county may contract with a licensed professional engineer or contractor to:

(1) conduct remediation for an eligible site owned by the county; or

(2) inspect a property or facility after remediation to determine whether it meets county standards for completeness of the remediation.

(b) To be eligible to enter into a contract with a county under this section or to receive a loan under Section 361.907, a licensed professional engineer or contractor at a minimum must provide evidence to the county of previous success in conducting remediation or inspection, as applicable, of at least one brownfield or other property or facility contaminated by a hazardous substance.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.907. GRANTS AND LOANS. To help finance an assessment, eligible site remediation, or inspection, a county may provide money as a grant or a loan from a county fund established under Section 361.903 to:

(1) an eligible owner; or

(2) a licensed professional engineer or contractor who meets the requirements of Section 361.906.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.908. LIAISON TO ENVIRONMENTAL PROTECTION AGENCY. A county that establishes a brownfield program may act as a liaison between an eligible owner, licensed professional engineer, or contractor and the Environmental Protection Agency to assist in obtaining a federal grant for an assessment or eligible site remediation under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601 et seq.).

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.909. LIAISON TO COMMISSION. A county that establishes a brownfield program may act as a liaison between the commission and an eligible owner, licensed professional engineer, or contractor to assist in obtaining any available commission assistance for an assessment, eligible site remediation, or property or facility inspection after remediation.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.910. LIMITATIONS ON LIABILITY. (a) A person who is an eligible owner, licensed contractor, or licensed professional engineer engaged in an assessment, eligible site remediation, or property or facility inspection after remediation under a program adopted under this subchapter is not liable for damages or costs resulting from a release or threatened release of a hazardous substance that occurs during the assessment, remediation, or inspection unless the person:

(1) qualified as an eligible owner, licensed professional engineer, or contractor by fraud, misrepresentation, or knowing failure to disclose material information; or

(2) negligently or knowingly contributed to or caused the release or threatened release.

(b) The county shall inspect a property or facility after

remediation is completed to determine whether the remediation meets county standards for completeness under the brownfield program. On a finding that the remediation meets the standards, the county shall issue a certificate signifying the satisfactory remediation to the owner of the property or facility and shall file a copy of the certificate in the county property records. The owner or a subsequent owner of a remediated property or facility is not liable for the costs of any additional assessment or remediation for environmental contamination that occurred before the issuance of the certificate.

(c) This subchapter does not limit or impair any immunity or defense to liability or suit that may be available to a county under any other provision of law.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.911. FAILURE TO PASS INSPECTION. The owner of a property or facility who is denied a certificate under Section 361.910:

(1) is entitled to receive a detailed description of actions needed for the property or facility to meet county standards; and

(2) may apply for additional county assistance under the county's brownfield program.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.912. COMMISSION ASSISTANCE. The commission may provide:

(1) educational, advisory, and technical services concerning assessment, remediation, and inspection of brownfields to a county that establishes a brownfield program under this subchapter; and

(2) assistance to a county in obtaining federal grants for assessment and remediation of brownfields.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff.

September 1, 2005.

For expiration of this subchapter, see Section 361.966.

SUBCHAPTER Y. COMPUTER EQUIPMENT RECYCLING PROGRAM

Sec. 361.951. SHORT TITLE. This subchapter may be cited as the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.952. DEFINITIONS. In this subchapter:

(1) "Brand" means the name, symbol, logo, trademark, or other information that identifies a product rather than the components of the product.

(2) "Computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.

(3) "Consumer" means an individual who uses computer equipment that is purchased primarily for personal or home business use.

(4) "Manufacturer" means a person:

(A) who manufactures or manufactured computer equipment under a brand that:

(i) the person owns or owned; or

(ii) the person is or was licensed to use, other than under a license to manufacture computer equipment for delivery exclusively to or at the order of the licensor;

(B) who sells or sold computer equipment manufactured by others under a brand that:

(i) the person owns or owned; or

(ii) the person is or was licensed to use, other than under a license to manufacture computer equipment for delivery exclusively to or at the order of the licensor;

(C) who manufactures or manufactured computer equipment without affixing a brand;

(D) who manufactures or manufactured computer equipment to which the person affixes or affixed a brand that:

(i) the person does not or has not owned; or

(ii) the person is not or was not licensed to use; or

(E) who imports or imported computer equipment manufactured outside the United States into the United States unless at the time of importation the company or licensee that sells or sold the computer equipment to the importer has or had assets or a presence in the United States sufficient to be considered the manufacturer.

(5) "Television" means any telecommunication system device that can broadcast or receive moving pictures and sound over a distance and includes a television tuner or a display device peripheral to a computer that contains a television tuner.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.953. LEGISLATIVE FINDINGS AND PURPOSE. (a) Computers and related display devices are critical elements to the strength and growth of this state's economic prosperity and quality of life. Many of those products can be refurbished and reused, and many contain valuable components that can be recycled.

(b) The purpose of this subchapter is to establish a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of computer equipment that has reached the end of its useful life. The program is based on individual manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.954. APPLICABILITY. (a) The collection, recycling, and reuse provisions of this subchapter apply to computer equipment used and returned to the manufacturer by a consumer in this state and do not impose any obligation on an owner or operator of a solid waste facility.

(b) This subchapter does not apply to:

(1) a television, any part of a motor vehicle, a personal

digital assistant, or a telephone;

(2) a consumer's lease of computer equipment or a consumer's use of computer equipment under a lease agreement; or

(3) the sale or lease of computer equipment to an entity when the manufacturer and the entity enter into a contract that effectively addresses the collection, recycling, and reuse of computer equipment that has reached the end of its useful life.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.955. MANUFACTURER RESPONSIBILITIES. (a) Before a manufacturer may offer computer equipment for sale in this state, the manufacturer must:

(1) adopt and implement a recovery plan; and

(2) affix a permanent, readily visible label to the computer equipment with the manufacturer's brand.

(b) The recovery plan must enable a consumer to recycle computer equipment without paying a separate fee at the time of recycling and must include provisions for:

(1) the manufacturer's collection from a consumer of any computer equipment that has reached the end of its useful life and is labeled with the manufacturer's brand; and

(2) recycling or reuse of computer equipment collected under Subdivision (1).

(c) The collection of computer equipment provided under the recovery plan must be:

(1) reasonably convenient and available to consumers in this state; and

(2) designed to meet the collection needs of consumers in this state.

(d) Examples of collection methods that alone or combined meet the convenience requirements of this section include:

(1) a system by which the manufacturer or the manufacturer's designee offers the consumer a system for returning computer equipment by mail;

(2) a system using a physical collection site that the manufacturer or the manufacturer's designee keeps open and staffed and to which the consumer may return computer equipment; and

(3) a system using a collection event held by the manufacturer or the manufacturer's designee at which the consumer may return computer equipment.

(e) Collection services under this section may use existing collection and consolidation infrastructure for handling computer equipment and may include electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, and other suitable operations.

(f) The recovery plan must include information for the consumer on how and where to return the manufacturer's computer equipment. The manufacturer:

(1) shall include collection, recycling, and reuse information on the manufacturer's publicly available Internet site;

(2) shall provide collection, recycling, and reuse information to the commission; and

(3) may include collection, recycling, and reuse information in the packaging for or in other materials that accompany the manufacturer's computer equipment when the equipment is sold.

(g) Information about collection, recycling, and reuse on a manufacturer's publicly available Internet site does not constitute a determination by the commission that the manufacturer's recovery plan or actual practices are in compliance with this subchapter or other law.

(h) Each manufacturer shall submit a report to the commission not later than January 31 of each year that includes:

(1) the weight of computer equipment collected, recycled, and reused during the preceding calendar year; and

(2) documentation verifying the collection, recycling, and reuse of that computer equipment in a manner that complies with Section 361.964 regarding sound environmental management.

(i) If more than one person is a manufacturer of a certain brand of computer equipment as defined by Section 361.952, any of those persons may assume responsibility for and satisfy the obligations of a manufacturer under this subchapter for that brand. If none of those persons assumes responsibility or satisfies the obligations of a manufacturer for the computer equipment of that brand, the commission may consider any of those persons to be the responsible manufacturer for purposes of this subchapter.

(j) The obligations under this subchapter of a manufacturer who manufactures or manufactured computer equipment, or sells or sold

computer equipment manufactured by others, under a brand that was previously used by a different person in the manufacture of the computer equipment extends to all computer equipment bearing that brand regardless of its date of manufacture.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.956. RETAILER RESPONSIBILITY. (a) A person who is a retailer of computer equipment may not sell or offer to sell new computer equipment in this state unless the equipment is labeled with the manufacturer's label and the manufacturer is included on the commission's list of manufacturers that have recovery plans.

(b) Retailers can go to the commission's Internet site as outlined in Section 361.958 and view all manufacturers that are listed as having registered a compliant collection program. Covered electronic products from manufacturers on that list may be sold in or into the State of Texas.

(c) A retailer is not required to collect computer equipment for recycling or reuse under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.957. LIABILITY. (a) A manufacturer or retailer of computer equipment is not liable in any way for information in any form that a consumer leaves on computer equipment that is collected, recycled, or reused under this subchapter.

(b) This subchapter does not exempt a person from liability under other law.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.958. COMMISSION'S EDUCATION RESPONSIBILITIES. (a) The commission shall educate consumers regarding the collection, recycling, and reuse of computer equipment.

(b) The commission shall host or designate another person to

host an Internet site providing consumers with information about the recycling and reuse of computer equipment, including best management practices and information about and links to information on:

(1) manufacturers' collection, recycling, and reuse programs, including manufacturers' recovery plans; and

(2) computer equipment collection events, collection sites, and community computer equipment recycling and reuse programs.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.959. ENFORCEMENT. (a) The commission may conduct audits and inspections to determine compliance with this subchapter.

(b) The commission and the attorney general, as appropriate, shall enforce this subchapter and, except as provided by Subsections (d) and (e), take enforcement action against any manufacturer, retailer, or person who recycles or reuses computer equipment for failure to comply with this subchapter.

(c) The attorney general may file suit under Section 7.032, Water Code, to enjoin an activity related to the sale of computer equipment in violation of this subchapter.

(d) The commission shall issue a warning notice to a person on the person's first violation of this subchapter. The person must comply with this subchapter not later than the 60th day after the date the warning notice is issued.

(e) A retailer who receives a warning notice from the commission that the retailer's inventory violates this subchapter because it includes computer equipment from a manufacturer that has not submitted the recovery plan required by Section 361.955 must bring the inventory into compliance with this subchapter not later than the 60th day after the date the warning notice is issued.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.960. FINANCIAL AND PROPRIETARY INFORMATION. Financial or proprietary information submitted to the commission under this subchapter is exempt from public disclosure under Chapter 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.961. ANNUAL REPORT TO LEGISLATURE. The commission shall compile information from manufacturers and issue an electronic report to the committee in each house of the legislature having primary jurisdiction over environmental matters not later than March 1 of each year.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.962. FEES NOT AUTHORIZED. This subchapter does not authorize the commission to impose a fee, including a recycling fee or registration fee, on a consumer, manufacturer, retailer, or person who recycles or reuses computer equipment.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.963. CONSUMER RESPONSIBILITIES. (a) A consumer is responsible for any information in any form left on the consumer's computer equipment that is collected, recycled, or reused.

(b) A consumer is encouraged to learn about recommended methods for recycling and reuse of computer equipment that has reached the end of its useful life by visiting the commission's and manufacturers' Internet sites.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.964. SOUND ENVIRONMENTAL MANAGEMENT. (a) All computer equipment collected under this subchapter must be recycled or reused in a manner that complies with federal, state, and local law.

(b) The commission shall adopt as standards for recycling or reuse of computer equipment in this state the standards provided by

"Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries, Inc., April 25, 2006, or other standards from a comparable nationally recognized organization.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.965. STATE PROCUREMENT REQUIREMENTS. (a) In this section, "state agency" has the meaning assigned by Section 2052.101, Government Code.

(b) A person who submits a bid for a contract with a state agency for the purchase or lease of computer equipment must be in compliance with this subchapter.

(c) A state agency that purchases or leases computer equipment shall require each prospective bidder to certify the bidder's compliance with this subchapter. Failure to provide that certification renders the prospective bidder ineligible to participate in the bidding.

(d) In considering bids for a contract for computer equipment, in addition to any other preferences provided under other laws of this state, the state shall give special preference to a manufacturer that has a program to recycle the computer equipment of other manufacturers, including collection events and manufacturer initiatives to accept computer equipment labeled with another manufacturer's brand.

(e) The comptroller and the Department of Information Resources shall adopt rules to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 122, eff. September 1, 2019.

Sec. 361.966. FEDERAL PREEMPTION; EXPIRATION. (a) If federal law establishes a national program for the collection and recycling of computer equipment and the commission determines that the federal law substantially meets the purposes of this subchapter, the

commission may adopt an agency statement that interprets the federal law as preemptive of this subchapter.

(b) This subchapter expires on the date the commission issues a statement under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Text of subchapter effective until the date the Texas Commission on Environmental Quality issues a statement under Section 361.992.

SUBCHAPTER Z. TELEVISION EQUIPMENT RECYCLING PROGRAM

Sec. 361.971. DEFINITIONS. In this subchapter:

(1) "Brand" has the meaning assigned by Section 361.952.

(2) "Consumer" means an individual who uses covered television equipment that is purchased primarily for personal or home business use.

(3) "Covered television equipment" means the following equipment marketed to and intended for consumers:

(A) a direct view or projection television with a viewable screen of nine inches or larger whose display technology is based on cathode ray tube, plasma, liquid crystal, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light-emitting diode, or similar technology; or

(B) a display device that is peripheral to a computer that contains a television tuner.

(4) "Market share allocation" means the quantity of covered television equipment, by weight, that an individual television manufacturer submitting a recovery plan under Section 361.978 is responsible for collecting, reusing, and recycling, as computed by the commission under Section 361.984(g).

(5) "Recycling" means any process by which equipment that would otherwise become solid waste or hazardous waste is collected, separated, and refurbished for reuse or processed to be returned to use in the form of raw material or products. The term does not include incineration.

(6) "Retailer" means a person who owns or operates a business that sells new covered television equipment by any means directly to a consumer. The term does not include a person who, in the ordinary course of business, regularly leases, offers to lease,

or arranges for leasing of merchandise under a rental-purchase agreement.

(7) "Television" means an electronic device that contains a tuner that locks onto a selected carrier frequency and is capable of receiving and displaying video programming from a broadcast, cable, or satellite source.

(8) "Television manufacturer" means a person that:

(A) manufactures covered television equipment under a brand the person owns or is licensed to use;

(B) manufactures covered television equipment without affixing a brand;

(C) resells covered television equipment produced by other suppliers under a brand the person owns or is licensed to use;

(D) manufactures covered television equipment, supplies it to any person within a distribution network that includes a wholesaler or retailer, and benefits from the sale of the covered television equipment through that distribution network; or

(E) assumes the responsibilities of a television manufacturer under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.972. LEGISLATIVE FINDINGS AND PURPOSE. The purpose of this subchapter is to establish a comprehensive, convenient, and environmentally sound program for the collection and recycling of television equipment. The program is based on individual television manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.973. APPLICABILITY. (a) Except as provided by this section and Section 361.991, this subchapter applies only to covered television equipment that is:

(1) offered for sale or sold to a consumer in this state; or

(2) used by a consumer in this state and returned for

recycling.

(b) This subchapter does not apply to:

(1) computer equipment as that term is defined by Section 361.952;

(2) a manufacturer of a display device that is peripheral to a computer and contains a television tuner, if that manufacturer collects and recycles the device in accordance with Subchapter Y;

(3) any part of a motor vehicle, including a replacement part;

(4) a device that is functionally or physically part of or connected to another system or piece of equipment:

(A) designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting, including diagnostic monitoring or control equipment; or

(B) used for security, sensing, monitoring, antiterrorism, or emergency services purposes;

(5) a device that is contained in exercise equipment intended for home use or an appliance intended for home use including a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, and air purifier;

(6) a telephone of any type;

(7) a personal digital assistant;

(8) a global positioning system;

(9) a consumer's lease of covered television equipment or a consumer's use of covered television equipment under a lease agreement; or

(10) the sale or lease of covered television equipment to an entity when the television manufacturer and the entity enter into a contract that effectively addresses the recycling of equipment that has reached the end of its useful life.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.974. SALES PROHIBITION. A person may not offer for sale in this state new covered television equipment unless the equipment has been labeled in compliance with Section 361.975.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff.

September 1, 2011.

Sec. 361.975. MANUFACTURER'S LABELING REQUIREMENT. A television manufacturer may sell or offer for sale in this state only covered television equipment that is labeled with the television manufacturer's brand. The label must be permanently affixed and readily visible.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.976. MANUFACTURERS' REGISTRATION AND REPORTING. (a) A television manufacturer of covered television equipment shall register with the commission and, except as provided by Section 361.979, pay a registration fee of $2,500. A registered television manufacturer shall renew the registration and, except as provided by Section 361.979, pay the fee on or before January 31 of each year. The registration or registration renewal must include:

(1) a list of all brands the television manufacturer uses in this state on covered television equipment regardless of whether the television manufacturer owns or is licensed to use the brand; and

(2) contact information for the person the commission may contact regarding the television manufacturer's activities to comply with this subchapter.

(b) Except as provided by Section 361.979, not later than January 31 of each year, each registered television manufacturer of covered television equipment shall report to the commission:

(1) the total weight of covered television equipment for which the television manufacturer is responsible that was sold in this state during the preceding calendar year or, if the manufacturer does not track the weight of covered television equipment it sells by state, the television manufacturer may report the total amount of covered television equipment the television manufacturer sold nationally in the preceding calendar year; and

(2) the total weight of covered television equipment the television manufacturer collected and recycled in this state during the preceding calendar year.

(c) Fees collected under this section shall be deposited to the

credit of the television recycling account created under Section 361.977.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.977. TELEVISION RECYCLING ACCOUNT. (a) The television recycling account is an account in the general revenue fund that consists of the:

(1) fees collected under Section 361.976; and

(2) interest earned on the money in the account.

(b) Money in the account may be appropriated only to the commission to be used by the commission to maintain a public Internet website and toll-free telephone number that provide consumers with information about covered television equipment recycling opportunities in this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.978. MANUFACTURER'S RECOVERY PLAN AND RELATED RESPONSIBILITIES. (a) This section does not apply to a television manufacturer that participates in a recycling leadership program described by Section 361.979.

(b) Not later than the first January 31 that occurs after the date the television manufacturer first registers with the commission under Section 361.976, each television manufacturer of covered television equipment sold in this state shall, individually or as a member of a group of television manufacturers, submit to the commission a recovery plan to collect, reuse, and recycle covered television equipment.

(c) An individual television manufacturer that submits a recovery plan under Subsection (b) shall collect, reuse, and recycle covered television equipment. Beginning with the television manufacturer's second year of registration, the individual television manufacturer shall collect, reuse, and recycle the quantity of covered television equipment computed by the commission as the television manufacturer's market share allocation.

(d) A group of television manufacturers that submits a recovery

plan under Subsection (b) shall collect, reuse, and recycle covered television equipment. Beginning with the second year of registration for a group of television manufacturers, the group of television manufacturers shall collect, reuse, and recycle a quantity of covered television equipment equal to the sum of the combined market share allocations of the group's participants.

(e) A recovery plan under Subsection (b) must include at a minimum:

(1) a statement of whether the television manufacturer intends to collect and recycle its market share allocation through operation of its plan, individually or in partnership with other television manufacturers;

(2) beginning with the television manufacturer's second year of registration, the total weight of covered television equipment collected, reused, and recycled by or on behalf of the television manufacturer during the preceding year; and

(3) collection methods that allow a consumer to recycle covered television equipment without paying a separate fee at the time of recycling.

(f) The commission shall review the recovery plan for satisfaction of the requirements of this subchapter. If the registration and recovery plan are complete, the commission shall include the television manufacturer on the commission's Internet website listing as provided by Section 361.984(a). The commission may reject the recovery plan if it does not meet all requirements of this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.979. MANUFACTURER RECYCLING LEADERSHIP PROGRAM. (a) A group of television manufacturers may establish a recycling leadership program to provide collection, transportation, and recycling infrastructure for covered television equipment in this state.

(b) A recycling leadership program must provide at least 200 individual collection sites or programs in this state in a manner described by Subsection (d) where a consumer may return covered television equipment for reuse or recycling.

(c) A television manufacturer may not charge a separate fee at the time of recycling under this section unless at the time of recycling a financial incentive of equal or greater value to the fee charged is provided by the television manufacturer.

(d) Collection methods that may be used by a recycling leadership program under Subsection (b) for recycling of covered television equipment include:

(1) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer offers a consumer a physical collection site to return covered television equipment;

(2) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer offers the consumer a method for returning covered television equipment by mail; and

(3) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer holds a collection event where the consumer may return covered television equipment.

(e) A television manufacturer of covered television equipment sold in this state that is participating in a recycling leadership program for covered television equipment as of January 1 of any year is not subject during that year to:

(1) the registration fees and renewal fees required by Section 361.976(a); and

(2) the reporting requirements of Section 361.976(b).

(f) Not later than January 31 of each year, each recycling leadership program must provide to the commission a list of the television manufacturers participating in the program for that year.

(g) A television manufacturer of covered television equipment that is sold in this state that participates in a recycling leadership program shall individually or through the recycling leadership program establish and implement a public education program regarding collection, reuse, and recycling opportunities that exist in this state for covered television equipment. The public education program must:

(1) inform consumers about the collection, reuse, and

recycling opportunities for covered television equipment available in this state;

(2) work with the commission and other interested parties to develop educational materials that inform consumers about collection, reuse, and recycling opportunities available in this state;

(3) use television manufacturer-developed customer outreach materials, such as packaging inserts, television manufacturers' Internet websites, and other communication methods, to inform consumers about collection, reuse, and recycling opportunities for covered television equipment available in this state; and

(4) use television manufacturer-developed customer outreach materials to provide rural communities with a centralized Internet-based information center that provides information for those communities about:

(A) best practices for collection, reuse, and recycling of covered television equipment; and

(B) collection events and other recycling opportunities in those communities and surrounding areas.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.980. RECYCLING LEADERSHIP PROGRAM COLLECTION REPORT. (a) Not later than January 31 of every other year beginning with the television manufacturer's second year of registration, a television manufacturer of covered television equipment sold in this state that is participating in a recycling leadership program under Section 361.979 shall, individually or as a member of the recycling leadership program, submit to the commission a collection report regarding the television manufacturer's collection, reuse, and recycling of covered television equipment.

(b) The collection report must include:

(1) an inventory of covered television equipment collection, reuse, and recycling opportunities that are currently available to consumers through the individual television manufacturer or the recycling leadership program in this state;

(2) documentation of collection opportunities available to consumers in counties with populations of less than 50,000, including

an analysis of the number of collection sites available to consumers in those counties compared to the number of opportunities available to consumers in those counties to purchase new covered television equipment;

(3) the amount by weight of the covered television equipment that the individual television manufacturer or the recycling leadership program collected in the two preceding years; and

(4) documentation that the collection, reuse, and recycling of the collected covered television equipment complies with Section 361.990.

(c) The inventory of covered television equipment collection, reuse, and recycling opportunities required by Subsection (b)(1) may be submitted in the form of a map noting the location of the opportunities.

(d) The collection report may include a listing of other existing collection and recycling infrastructure for covered television equipment not associated with the recycling leadership program, including electronic recyclers and repair shops, recyclers of other appropriate commodities, reuse organizations, not-for-profit corporations, retailers, and other suitable operations, including local government collection events, if available.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.981. RETAILER RESPONSIBILITY. (a) A retailer may order and sell only products from a television manufacturer that is included on the list published under Section 361.984(a). A retailer shall consult that list before ordering covered television equipment in this state. A retailer is considered to have complied with this subsection and may sell a product in the retailer's inventory if, on the date the product was ordered from the television manufacturer, the television manufacturer was listed on the Internet website described by Section 361.984(a).

(b) A person who is a retailer of covered television equipment shall provide to consumers in writing the information published by the commission regarding the legal disposition and recycling of television equipment. The information may be included with the sales

receipt or as part of the packaging of the equipment. Alternatively, the retailer may provide the information required by this subsection through a toll-free telephone number and address of an Internet website provided to consumers.

(c) This subchapter does not require a retailer to collect covered television equipment for recycling.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.982. RECYCLER RESPONSIBILITIES. (a) This section does not apply to a television manufacturer.

(b) A person who is engaged in the business of recycling covered television equipment in this state shall:

(1) register with the commission and certify that the person is in compliance with the standards adopted under Section 361.990;

(2) on or before January 31 of each year renew the registration with the commission and certify the person's continued compliance with the standards adopted under Section 361.990;

(3) recycle all covered television equipment accepted for recycling in accordance with the standards adopted under Section 361.990;

(4) maintain a written log recording the weight of all covered television equipment received by the person and the disposition of that equipment; and

(5) annually report to the commission the total weight of covered television equipment received and recycled by the person in the preceding 12 months.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.983. LIABILITY. (a) A television manufacturer, retailer, or person who recycles covered television equipment is not liable in any way for information in any form that a consumer leaves on covered television equipment that is collected or recycled under this subchapter.

(b) This subchapter does not exempt a person from liability

under other law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.984. COMMISSION RESPONSIBILITIES. (a) The commission shall publish on a publicly accessible Internet website a list of television manufacturers:

(1) whose recovery plans have been approved by the commission;

(2) whose public education programs are in full compliance with this subchapter; and

(3) who are in compliance with the registration and fee requirements of this subchapter, if applicable.

(b) The commission shall remove television manufacturers no longer in compliance under Subsection (a) from the Internet website once each fiscal quarter.

(c) The commission shall educate consumers regarding the collection and recycling of covered television equipment.

(d) The commission shall host or designate another person to host an Internet website and shall provide a toll-free telephone number to provide consumers with information about the recycling of covered television equipment, including best management practices and information about or links to information about:

(1) television manufacturers' collection and recycling programs, including television manufacturers' recovery plans; and

(2) covered television equipment collection events, collection sites, and community television equipment recycling programs.

(e) Information about collection and recycling provided on a television manufacturer's publicly available Internet website and through a toll-free telephone number does not constitute a determination by the commission that the television manufacturer's recovery plan or actual practices are in compliance with this subchapter or other law.

(f) Not later than November 1 of each year, the commission shall establish the state recycling rate by computing the ratio of the weight of total returns of covered television equipment in this state by television manufacturers submitting a recovery plan under

Section 361.978 to the total weight of covered television equipment sold in this state by television manufacturers submitting a recovery plan under Section 361.978 during the preceding year.

(g) Not later than December 1 of each year, the commission shall compute and provide to each registered television manufacturer submitting a recovery plan under Section 361.978 the television manufacturer's market share allocation for collection, reuse, and recycling for that year. A television manufacturer's market share allocation equals the weight of the television manufacturer's covered television equipment sold in this state during the preceding calendar year multiplied by the state recycling rate determined under Subsection (f).

(h) In any year in which more than one recycling leadership program is implemented under Section 361.979, the commission shall review all active recycling leadership programs established under this subchapter to ensure the programs are operating in a manner consistent with the goals of this subchapter, including a balanced recycling effort. Based on the commission's review, the commission may make recommendations to the legislature on ways to improve the balance of the recycling effort.

(i) The commission shall provide to each county and municipality of this state information regarding the legal disposal and recycling of covered television equipment. The information must be provided in writing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.985. ENFORCEMENT. (a) The commission may conduct audits and inspections to ensure compliance with this subchapter and rules adopted under this subchapter.

(b) The commission and the attorney general, as appropriate, shall enforce this subchapter and, except as provided by Subsections (d) and (e), take enforcement action against a television manufacturer, a retailer, or a person who recycles covered television equipment.

(c) The executive director or the attorney general may institute a suit under Section 7.032, Water Code, to enjoin an activity related to the sale of covered television equipment in

violation of this subchapter.

(d) The commission shall issue a warning notice to a person on the person's first violation of this subchapter. The person must comply with this subchapter not later than the 60th day after the date the warning notice is issued.

(e) A retailer who receives a warning notice from the commission that the retailer's inventory violates this subchapter because it includes covered television equipment from a television manufacturer that is not in compliance with this subchapter must bring the inventory into compliance with this subchapter not later than the 60th day after the date the warning notice is issued.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.986. FINANCIAL AND PROPRIETARY INFORMATION. Financial or proprietary information submitted to the commission under this subchapter is exempt from public disclosure under Chapter 552, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.987. BIENNIAL REPORT TO LEGISLATURE. (a) The commission shall compile information from television manufacturers and issue an electronic report to the committee in each house of the legislature having primary jurisdiction over environmental matters not later than March 1 of each even-numbered year.

(b) The report must include:

(1) collection information provided to the commission by each television manufacturer's report required by Section 361.976(b) or 361.980(a), as applicable;

(2) a summary of comments that have been received from stakeholders such as television manufacturers, electronic equipment recyclers, local governments, and nonprofit organizations;

(3) any recommendations under Section 361.984(h); and

(4) any other information that would assist the legislature in evaluating the effectiveness of this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.988. FEES. (a) Except as provided by Section 361.976(a), this subchapter does not authorize the commission to impose a fee, including a recycling fee, on a consumer, television manufacturer, retailer, or person who recycles covered television equipment.

(b) Fees or costs collected under this subchapter may be used by the commission only to implement this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.989. CONSUMER RESPONSIBILITIES. (a) A consumer is responsible for any information in any form left on the consumer's covered television equipment that is collected or recycled.

(b) A consumer is encouraged to learn about recommended methods for recycling covered television equipment that has reached the end of its useful life by visiting the commission's and television manufacturers' Internet websites or calling their toll-free telephone numbers.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.990. MANAGEMENT OF COLLECTED TELEVISION EQUIPMENT. (a) Covered television equipment collected under this subchapter must be disposed of or recycled in a manner that complies with federal, state, and local law.

(b) The commission shall adopt as standards for recycling or reuse of covered television equipment in this state the standards provided by "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries, Incorporated, April 25, 2006, or other standards from a comparable nationally recognized organization.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff.

September 1, 2011.

Sec. 361.991. STATE PROCUREMENT REQUIREMENTS. (a) In this section, "state agency" has the meaning assigned by Section 2052.101, Government Code.

(b) A person who submits a bid for a contract with a state agency for the purchase or lease of covered television equipment must be in compliance with this subchapter.

(c) A state agency that purchases or leases covered television equipment shall require a prospective bidder to certify the bidder's compliance with this subchapter before the agency may accept the prospective bidder's bid.

(d) In considering bids for a contract for covered television equipment, in addition to any other preferences provided under other laws of this state, the state shall give special preference to a television manufacturer that:

(1) through its recovery plan collects more than its market share allocation; or

(2) provides collection sites or recycling events in any county located in a council of governments region in which there are fewer than six permanent collection sites open at least twice each month.

(e) The comptroller shall adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.992. FEDERAL PREEMPTION; EXPIRATION. (a) If federal law establishes a national program for the collection and recycling of covered television equipment and the commission determines that the federal law substantially meets the purposes of this subchapter, the commission may adopt an agency statement that interprets the federal law as preemptive of this subchapter.

(b) This subchapter expires on the date the commission issues a statement under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

CHAPTER 362. SOLID WASTE RESOURCE RECOVERY FINANCING ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 362.001. SHORT TITLE. This chapter may be cited as the Solid Waste Resource Recovery Financing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.002. POLICY AND PURPOSE. (a) The policy of the state is to safeguard the public health, general welfare, and physical property from solid waste pollution by encouraging the processing of solid waste for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(b) It is the policy of the state that the processing of solid waste for reuse is essential to the well-being and survival of state inhabitants and the protection of the environment. That processing will conserve and develop state natural resources, within the meaning of Article XVI, Section 59(a), of the Texas Constitution by preventing further damage to the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.003. DEFINITIONS. In this chapter:

(1) "Bond" includes a note or other evidence of indebtedness.

(2) "Cost" means expenses related or incidental to the acquisition, construction, or improvement of a system, including:

(A) real property acquired for a system;

(B) finance charges;

(C) interest before and during construction and for a period the issuer finds reasonable after completion of construction;

(D) expenses incurred for architectural, engineering, and legal services;

(E) license fees and royalties;

(F) expenses incurred for plans, specifications, surveys, and estimates;

(G) expenses incurred in placing the system in operation; and

(H) administration expenses.

(3) "Issuer" means a district or authority that:

(A) is created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution;

(B) is authorized by law to own a waste disposal system; and

(C) includes within its boundaries all of at least one county.

(4) "Public agency" means:

(A) an issuer;

(B) a municipality; or

(C) another political subdivision or agency of the state authorized to own and operate a solid waste collection, transportation, or disposal facility or system.

(5) "Real property" means land, a structure, a franchise or interest in land, air rights, or another thing or right pertaining to that property, including an easement, right-of-way, use, lease, license, or other incorporeal hereditament, or an estate, interest, or legal or equitable right, including a term for years or lien on that property because of a judgment, mortgage, or other reason.

(6) "Resolution" means the action, including an order or ordinance, that authorizes bonds and that is taken by the issuer's governing body.

(7) "Security agreement" means a trust indenture or other instrument securing bonds.

(8) "Solid waste" has the meaning assigned by Chapter 361 (Solid Waste Disposal Act).

(9) "System" means real property, plants, works, facilities, equipment, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful:

(A) in connection with processing solid waste to extract, recover, reclaim, salvage, reduce, or concentrate the solid waste, or convert it to energy or useful matter or resources including electricity, steam, or other form of energy, metal, fertilizer, glass, or other form of resource; or

(B) in the transportation, receipt, storage, transfer, and handling of solid waste, the preparation, separation, or processing of solid waste for reuse, the handling and transportation of recovered matter, resources, or energy, and the handling, transportation, and disposition of nonrecoverable solid waste

residue.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.004. EFFECT OF OTHER LAW. (a) This chapter does not limit the authority of the Texas Commission on Environmental Quality or a local government to:

(1) perform a power or duty provided by other law; or

(2) adopt and enforce rules to carry out duties under Chapter 361 (Solid Waste Disposal Act).

(b) Chapter 361 (Solid Waste Disposal Act) shall be enforced without regard to ownership of a system financed under this chapter.

(c) This chapter does not affect the right of a private person to pursue, against a person who contracts with an issuer under this chapter, a common-law remedy to abate, or recover damages for, a condition of pollution or other nuisance. A person purchasing or leasing a system under contract with an issuer may not assert the defense of sovereign immunity because of the issuer's ownership of the system.

(d) An issuer or public agency may use other law not in conflict with this chapter to the extent convenient or necessary to carry out any authority expressly or impliedly granted by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.031, eff. Aug. 12, 1991.

Amended by:

Acts 2025, 89th Leg., R.S., Ch. 986 (S.B. 766), Sec. 14, eff. September 1, 2025.

Sec. 362.005. EXCEPTION FOR CERTAIN MATERIAL PRESORTED TO BE RECYCLED. This chapter does not authorize a public agency to compel burning of material presorted to be recycled.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. OPERATION OF SYSTEM

Sec. 362.011. AUTHORITY TO ACQUIRE AND TRANSFER PROPERTY. (a) An issuer may acquire, construct, and improve a system for lease or sale as provided by this chapter and may acquire real property as the issuer considers appropriate for the system.

(b) An issuer may lease its system to another person.

(c) An issuer may sell a system, by installment payments or other method of payment, to any person on conditions the issuer considers desirable.

(d) A lease or sales contract entered into under this chapter may be for the term agreed to by the parties, and must provide that it continues in effect until the bonds specified in the lease or contract, or refunding bonds issued in place of those bonds, are fully paid.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.012. LOCATION OF SYSTEM. A system may be located on the property of any person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.013. CONTRACT TERMS AND PROCEDURES. (a) The provisions of Chapter 2253, Government Code, that relate to performance and payment bonds apply to a contract entered into by an issuer.

(b) An issuer may contract for the acquisition, construction, and improvement of a system on the terms and under the conditions that the governing body of the issuer considers appropriate, including a contract under which a person agrees to perform and supply all services and materials required in connection with the design, construction, and placing into operation of a system.

(c) The issuer shall publish notice of the time and place the contract will be let in a newspaper of general circulation within the boundaries of the issuer once a week for two consecutive weeks, with the first publication occurring not later than the 15th day before the date the contract will be let.

(d) The issuer shall analyze competitive proposals received in response to the notice and let the contract to the responsible party making the proposal that is most advantageous to the issuer and that

will result in the most economical completion of the system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.

Sec. 362.014. PUBLIC AGENCY CONTRACT. (a) A public agency, on terms it considers appropriate, may contract with an issuer or other person who finances, constructs, or improves a system to sell, lease, or dedicate the use of real property or all or part of a solid waste disposal facility for use as part of the system.

(b) A public agency may contract with any person for the supply, collection, or transportation of solid waste for disposal at a system. The public agency may agree in the contract to supply minimum amounts of solid waste and to pay minimum fees for the right to dispose of the solid waste at the system during the term of the contract. The contract may continue in effect for the term of years that the public agency's governing body determines to be desirable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.015. PAYMENT OF CONTRACT FROM SOURCES OTHER THAN TAXES. (a) A public agency may use any available revenue or resource for, or pledge the revenue or resource to, payment of all or part of the amount due under a contract under Section 362.014. The public agency may agree in the contract to assure availability of payment when required.

(b) The public agency may agree to make sufficient provision in its annual budget to make all payments under the contract.

(c) The public agency may fix, charge, and collect, from its inhabitants or other users or beneficiaries of a service or facility provided in connection with the contract, a fee, rate, charge, rental, or other amount for the service or facility, including a water charge, sewage charge, solid waste disposal fee or charge, garbage collection or handling fee, or other fee or charge. The public agency may use those amounts for, or pledge them to, payments required under the contract, and may agree in the contract to make that use or pledge in an amount sufficient to make all or part of the payments when due.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.016. PAYMENT OF CONTRACT FROM TAXES. (a) A public agency that has taxing power and that, when it enters into a contract under Section 362.014, is using its general funds, including tax revenue, to pay all or part of the cost of providing solid waste collection, transportation, and disposal services may agree that the payments under the contract are an obligation against the public agency's taxing power.

(b) Except as provided by Subsection (c), a person is not entitled to demand payment from taxes during any period unless the contracting person is willing and able to receive and dispose of solid waste during the period as provided by the contract.

(c) A public agency that has taxing power may hold an election substantially in accordance with Chapter 1251, Government Code, applicable to issuance of bonds by a municipality to determine whether a contract may be an obligation secured by the taxing power of the public agency to an extent not permitted by Subsection (b). If it is determined by a favorable vote at the election that the public agency is authorized to levy an ad valorem tax to make all or part of the payments under the contract, and that the payments are to be made unconditionally regardless of whether the contracting person is willing and able to receive and dispose of solid waste as provided by the contract, the contract is an obligation secured by the public agency's taxing power to the extent provided. The ballot proposition at the election must plainly state that ad valorem tax funds may be used to make contract payments if the contractor cannot receive or dispose of solid waste because of mechanical failure of the facility financed by the bonds or for other reasons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.269, eff. Sept. 1, 2001.

Sec. 362.017. INDUSTRIAL DEVELOPMENT CORPORATION. (a) A public agency that has entered into a contract under Section 362.014 may sponsor the creation of an industrial development corporation under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code).

(b) The corporation may issue bonds, notes, or other evidences of indebtedness under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) to finance the cost of a system under the contract regardless of whether the system is located within the boundaries of the public agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.15, eff. April 1, 2009.

Sec. 362.018. COST OF CERTAIN REQUIRED ALTERATIONS. The relocation, raising, lowering, rerouting, changing of grade, or altering of construction of a highway, railroad, electric transmission line, telegraph or telephone property or facility, or pipeline made necessary by the actions of an issuer shall be accomplished at the sole expense of the issuer, who shall pay the cost of the required activity as necessary to provide comparable replacement, minus the net salvage value of any replaced facility. The issuer shall pay that amount from the proceeds of bonds issued to finance a system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.019. TAXATION. (a) Bonds issued under this chapter, the transfer of the bonds, and income from the bonds are exempt from taxation in this state.

(b) A system purchased or leased under this chapter is subject to ad valorem taxation payable by the person contracting with the issuer according to state law. An item purchased or leased as part of a system is subject to all applicable state taxation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. BONDS

Sec. 362.031. AUTHORITY TO ISSUE BONDS AND BOND ANTICIPATION NOTES. (a) An issuer may issue bonds, payable from revenues of the issuer, to finance or refinance the cost of acquiring, constructing,

or improving a system.

(b) The bonds may be issued in more than one series and from time to time as required to carry out the purposes of this chapter.

(c) The issuer may declare an emergency because funds are not available to pay the principal of and interest on its bonds or to meet other needs of the issuer and may issue bond anticipation notes to borrow the needed money. The bond anticipation notes may bear interest at any fixed, floating, or other type of rate, and must mature within one year of their date. The bond anticipation notes shall be paid with the proceeds of bonds, or bonds may be issued and delivered in exchange for and in substitution of the notes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.032. FORM AND PROCEDURE. (a) Bonds under this chapter must be authorized by resolution. The bonds must:

(1) be signed by the presiding officer or assistant presiding officer of the issuer's governing body;

(2) be attested by the secretary of the issuer's governing body; and

(3) have the seal of the issuer impressed, printed, or lithographed on the bonds.

(b) The bonds may have the characteristics and bear the designation determined by the issuer's governing body, except that the designation must include:

(1) the name of each person guaranteeing the contractual obligation of each person leasing or purchasing the system; or

(2) a statement, if applicable, that a group of persons will be leasing or purchasing the system.

(c) The governing body may authorize a required signature to be printed or lithographed on the bonds. The issuer may adopt or use the signature of a person who has been an officer, regardless of whether the person is an officer when the bonds are delivered to a purchaser.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.033. TERMS. Bonds issued under this chapter must mature serially or in another manner not more than 40 years after

they are issued. The bonds may:

(1) bear interest at a fixed, floating, or other type of rate, and be sold at public or private sale at a price or under terms that the issuer's governing body determines to be the most advantageous reasonably obtainable;

(2) be made callable before maturity at times and prices prescribed by the issuer's governing body;

(3) be in coupon form; and

(4) be registrable as to principal or as to principal and interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.034. APPROVAL AND REGISTRATION. (a) An issuer shall submit bonds that have been authorized by its governing body, including refunding bonds and the record relating to the bond issuance, to the attorney general for examination as to their validity. If the bonds state that they are secured by a pledge of proceeds of a lease or contract of sale previously entered into by the issuer, the issuer may submit the contract with the bonds.

(b) If the bonds have been authorized in accordance with state law and any contract has been made in accordance with state law, the attorney general shall approve the bonds and contract and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds and contract are incontestable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.035. PLEDGE OF REVENUE AND OTHER AMOUNTS AS SECURITY. (a) Bonds are payable solely from and shall be secured by a pledge of:

(1) revenues of the issuer derived from the lease or sale of a system;

(2) amounts attributable to bond proceeds; or

(3) amounts obtained through the exercise of a remedy provided by the governing body's resolution or a security agreement securing the bonds in the manner specified in the resolution or security agreement.

(b) The governing body shall fix and periodically revise payments under a lease or contract for sale of a system so that the payments and other pledged revenue will be sufficient to pay the bonds and interest on the bonds as they mature and become due and to maintain reserve or other funds as provided by the resolution or security agreement.

(c) The governing body may direct the investment of money in the funds created by the resolution or security agreement, and may delegate this authority to its authorized agent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.036. SECURITY MAY APPLY TO ADDITIONAL BONDS. (a) A pledge under Section 362.035 may reserve the right, under conditions specified by the pledge, to issue additional bonds to be on a parity with or subordinate to the bonds secured by the pledge.

(b) Bonds issued under this chapter may be combined in the same issue with bonds issued for other purposes authorized by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.037. TRUST AS SECURITY. (a) The issuer's governing body may additionally secure bonds, including refunding bonds, by a trust indenture under which the trustee may be a bank that has trust powers and that is located inside or outside the state.

(b) Regardless of any mortgage, deed of trust lien, or security interest under Section 362.038, the trust indenture may:

(1) contain any provision that the governing body prescribes for the security of the bonds and the preservation of the trust estate;

(2) provide for amendment or modification of the trust indenture;

(3) condition the right to spend the issuer's money or sell an issuer's system as provided by the trust indenture;

(4) provide in other manners for protection and enforcement of bondholders' rights and remedies as is reasonable and proper; and

(5) provide for the issuance of replacement bonds for lost, stolen, or mutilated bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.038. OTHER SECURITY. (a) The bonds may be additionally secured by a mortgage, deed of trust lien, or security interest in a designated system of the issuer's governing body and all property and rights appurtenant to the system.

(b) The mortgage, deed of trust lien, or security interest may give the trustee the power to operate the system, sell the system to pay the debt, or take any other action to secure the bonds.

(c) A purchaser at a sale under a mortgage or deed of trust lien is the absolute owner of the system and rights purchased.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.039. ACTION BY BONDHOLDERS. (a) The resolution or a security agreement may provide that on default in the payment of principal of or interest on the bonds, or threatened default under conditions stated in the resolution or security agreement, and on petition of the holders of outstanding bonds, a court of competent jurisdiction may appoint a receiver to collect and receive pledged income.

(b) The resolution or security agreement may limit or qualify the rights of less than all of the holders of outstanding bonds payable from the same source to institute or prosecute litigation affecting the issuer's property or income.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.040. INVESTMENT AND USE OF PROCEEDS. (a) The governing body of the issuer may set aside amounts from the proceeds of the sale of bonds for payment into an interest and sinking fund and reserve funds and may provide for this in the resolution or a security agreement. All expenses of issuing and selling the bonds shall be paid from the proceeds of the sale of the bonds.

(b) Proceeds from the sale of bonds shall be invested in the manner provided by the resolution or security agreement.

(c) A bank or trust company with trust powers may be designated as depository for proceeds of bonds or of sales contract or lease

revenue. The bank or trust company shall furnish indemnifying bonds or pledge securities as required by the issuer to secure the deposits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.041. REFUNDING BONDS. (a) The governing body of an issuer may issue refunding bonds to refund the principal of, interest on, and any redemption premium applicable to outstanding bonds. The refunding bonds may:

(1) refund more than one series of outstanding bonds and combine the revenue pledged to the outstanding bonds for the security of the refunding bonds; and

(2) be secured by other or additional revenues and deed of trust liens.

(b) The provisions of this chapter relating to issuance of bonds, security for bonds, approval by the attorney general, and remedies of bondholders apply to refunding bonds.

(c) The comptroller shall register refunding bonds:

(1) on the surrender and cancellation of the original bonds; or

(2) without surrender and cancellation of the original bonds if:

(A) the resolution authorizing the refunding bonds provides that their proceeds be deposited in the bank where the original bonds are payable; and

(B) the refunding bonds are issued in an amount sufficient to pay the principal of, interest on, and any redemption premium applicable to the original bonds up to their option date or maturity date.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.042. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Bonds issued under this chapter are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;
(5) an insurance company;
(6) a fiduciary;
(7) a trustee; and
(8) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of the state.

(b) The bonds may secure the deposits of public funds of the state or a municipality, county, school district, or other political corporation or subdivision of the state. The bonds are lawful and sufficient security for those deposits in an amount up to their face value, if accompanied by all appurtenant unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.043. BONDS NOT GENERAL OBLIGATION. The bonds are special obligations payable solely from revenues pledged to their payment and are not general obligations of the governing body, the issuer, or the state. A bondholder may not demand payment from money obtained from a tax or other revenue of the issuer, excluding revenues pledged to the payment of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 363. MUNICIPAL SOLID WASTE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 363.001. SHORT TITLE. This chapter may be cited as the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.002. POLICY. It is this state's policy to safeguard the health, general welfare, and physical property of the people and to protect the environment by encouraging the reduction in solid waste generation and the proper management of solid waste, including disposal and processing to extract usable materials or energy. Encouraging a cooperative effort among federal, state, and local governments and private enterprise, to accomplish the purposes of

this chapter, will further that policy.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.003. FINDINGS. The legislature finds that:

(1) the growth of the state's economy and population has resulted in an increase in discarded materials;

(2) the improper management of solid waste creates hazards to the public health, can cause air and water pollution, creates public nuisances, and causes a blight on the landscape;

(3) there is increasing public opposition to the location of solid waste land disposal facilities;

(4) because some communities lack sufficient financial resources, municipal solid waste land disposal sites in the state are being improperly operated and maintained, causing potential health problems to nearby residents, attracting vectors, and creating conditions that destroy the beauty and quality of our environment;

(5) often, operational deficiencies occur at rural solid waste land disposal sites operated by local governments that do not have the funds, personnel, equipment, and technical expertise to properly operate a disposal system;

(6) many smaller communities and rural residents have no organized solid waste collection and disposal system, resulting in dumping of garbage and trash along the roadside, in roadside parks, and at illegal dump sites;

(7) combining two or more small, inefficient operations into local, regional, or countywide systems may provide a more economical, efficient, and safe means for the collection and disposal of solid waste and will offer greater opportunities for future resource recovery;

(8) there are private operators of municipal solid waste management systems with whom persons can contract or franchise their services, and many of those private operators possess the management expertise, qualified personnel, and specialized equipment for the safe collection, handling, and disposal of solid waste;

(9) technologies exist to separate usable material from solid waste and to convert solid waste to energy, and it will benefit this state to work in cooperation with private business, nonprofit organizations, and public agencies that have acquired knowledge,

expertise, and technology in the fields of energy production and recycling, reuse, reclamation, and collection of materials;

(10) the opportunity for resource recovery is diminished unless local governments can exercise control over solid waste and can enter long-term contracts to supply solid waste to resource recovery systems or to operate those systems;

(11) the control of solid waste collection and disposal should continue to be the responsibility of local governments and public agencies, but the problems of solid waste management have become a matter of state concern and require state financial assistance to plan and implement solid waste management practices that encourage the safe disposal of solid waste and the recovery of material and energy resources from solid waste; and

(12) local governments should be encouraged to contract with waste management firms to meet the requirements of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 1045, Sec. 11, eff. Sept. 1, 1993.

Sec. 363.004. DEFINITIONS. In this chapter:

(1) "Advisory council" means the Municipal Solid Waste Management and source Recovery Advisory Council.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Executive director" means the executive director of the Texas Commission on Environmental Quality.

(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of containerized or uncontainerized solid waste or hazardous waste into or on land or water so that the solid waste or hazardous waste or any constituent of solid waste or hazardous waste may enter the environment or be emitted into the air or discharged into surface water or groundwater.

(5) "Governing body" means the governing body of a municipality, the commissioners court, the board of directors, the trustees, or a similar body charged by law with governing a public agency.

(6) "Hazardous waste" means solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste

Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.).

(7) "Industrial solid waste" means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

(8) "Local government" means a county, municipality, or other political subdivision of the state exercising the authority granted under Section 361.165 (Solid Waste Disposal Act).

(9) "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

(10) "Planning fund" means the municipal solid waste management planning fund.

(11) "Planning region" means a region of this state identified by the governor as an appropriate region for municipal solid waste planning as provided by Section 4006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.).

(12) "Processing" means the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of hazardous waste so as to:

(A) neutralize hazardous waste;

(B) recover energy or material from hazardous waste; or

(C) render hazardous waste nonhazardous or less hazardous, safer to transport, store, or dispose of, amenable for recovery or storage, or reduced in volume.

(13) "Property" means land, structures, interest in land, air rights, water rights, and rights that accompany interest in land, structures, water rights, and air rights and includes easements, rights-of-way, uses, leases, incorporeal hereditaments, legal and equitable estates, interest, or rights such as terms for years and liens.

(14) "Public agency" means a municipality, county, or district or authority created and operating under Article III,

Section 52(b)(1) or (2), or Article XVI, Section 59, of the Texas Constitution, or a combination of two or more of those governmental entities acting under an interlocal agreement and having the authority under this chapter or other law to own and operate a solid waste management system.

(15) "Regional or local solid waste management plan" means a plan adopted by a planning region under Section 363.062 or a local government under Section 363.063.

(16) "Resolution" means the action, including an order or ordinance, that authorizes bonds and that is taken by the governing body.

(17) "Resource recovery" means recovering materials or energy from solid waste or otherwise converting solid waste to a useful purpose.

(18) "Resource recovery system" means real property, structures, plants, works, facilities, equipment, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in connection with processing solid waste to extract, recover, reclaim, salvage, reduce, or concentrate the solid waste or convert it to energy or useful matter or resources, including electricity, steam, or other forms of energy, metal, fertilizer, glass, or other forms of material and resources. The term includes real property, structures, plants, works, facilities, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in:

(A) transporting, receiving, storing, transferring, and handling solid waste;

(B) preparing, separating, or processing solid waste for reuse;

(C) handling and transporting recovered matter, resources, or energy; and

(D) handling, transporting, and disposing of nonrecoverable solid waste residue.

(19) "Solid waste" means garbage, rubbish, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities, but does not include:

(A) solid or dissolved material in domestic sewage or irrigation return flows or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for surface improvement construction; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas and are subject to control by the Railroad Commission of Texas.

(20) "Solid waste management" means the systematic control of any of the following activities:

(A) generation;

(B) source separation;

(C) collection;

(D) handling;

(E) storage;

(F) transportation;

(G) processing;

(H) treatment;

(I) resource recovery; or

(J) disposal of solid waste.

(21) "Solid waste management system" means a plant, composting process plant, incinerator, sanitary landfill, transfer station, or other works and equipment that is acquired, installed, or operated to collect, handle, store, process, recover material or energy from, or dispose of solid waste, and includes sites for those works and equipment.

(22) "State solid waste management plan" means the Solid Waste Management Plan for Texas, Volume 1, Municipal Solid Waste, adopted by the Texas Board of Health, including subsequent amendments by the commission.

(23) "Technical assistance fund" means the municipal solid waste resource recovery applied research and technical assistance fund.

(24) "Yard waste" means leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that result from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 303, Sec. 5, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.032, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.93, eff. Sept. 1, 1995. Amended by:

Acts 2025, 89th Leg., R.S., Ch. 986 (S.B. 766), Sec. 15, eff. September 1, 2025.

Sec. 363.005. APPLICATION OF CHAPTER. This chapter applies only to solid waste and hazardous waste as described by Sections 361.011 and 361.012.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.033, eff. Aug. 12, 1991.

Sec. 363.006. CONSTRUCTION OF CHAPTER; EXEMPTIONS. (a) This chapter does not prohibit or limit a person from extracting or using materials that the person generates or legally collects or acquires for recycling or resale.

(b) Materials that are separated or recovered from solid waste for reuse or recycling by the generator, by a private person under contract with the generator, or by a collector of solid waste or recovered materials are not subject to this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.007. STATUTES NOT AFFECTED BY CHAPTER. This chapter does not affect:

(1) Chapter 361 (Solid Waste Disposal Act);

(2) Chapter 364 (County Solid Waste Control Act); or

(3) Chapter 362 (Solid Waste Resource Recovery Financing Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. COMMISSION POWERS AND DUTIES

Sec. 363.021. COMMISSION RULEMAKING AUTHORITY. The commission may adopt rules necessary to implement this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.94, eff. Sept. 1, 1995.

Sec. 363.022. COMMISSION POWERS AND DUTIES. (a) The commission shall implement and enforce this chapter.

(b) The commission shall:

(1) provide technical assistance to public agencies and planning regions and cooperate with federal agencies and private organizations in carrying out this chapter;

(2) promote planning for and implementation of the recovery of materials and energy from solid waste;

(3) establish guidelines for regional and local municipal solid waste management plans;

(4) review and approve or disapprove regional and local municipal solid waste management plans;

(5) assist the advisory council in its duties;

(6) provide educational and informational programs to promote effective municipal solid waste management practices and to encourage resource recovery;

(7) provide procedures under which public agencies and planning regions may apply for financial assistance grants;

(8) evaluate applications and award financial assistance grants in accordance with commission rules; and

(9) coordinate programs under this chapter with other state agencies, including the Railroad Commission of Texas and any other state or federal agency having an interest in a program or project.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.94, eff. Sept. 1, 1995.

Sec. 363.023. APPLICATION FOR FEDERAL FUNDS; CONTRACTS AND AGREEMENTS WITH FEDERAL GOVERNMENT. The commission may apply for and accept federal funds and enter into contracts and agreements with the federal government relating to planning, developing, maintaining, and enforcing the municipal solid waste management program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.94, eff. Sept. 1, 1995.

Sec. 363.024. DISBURSEMENT OF FEDERAL FUNDS. (a) The commission may accept and disburse funds received from the federal government for purposes relating to solid waste management and resource recovery in the manner provided by this chapter and by agreement between the federal government and the commission.

(b) State funds provided to public agencies or planning regions under this chapter may be combined with local or regional funds to match federal funds on approved programs for municipal solid waste management.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.94, eff. Sept. 1, 1995.

SUBCHAPTER C. ADVISORY COUNCIL

Sec. 363.041. COMPOSITION OF ADVISORY COUNCIL. The Municipal Solid Waste Management and Resource Recovery Advisory Council is composed of the following 18 members appointed by the commission:

(1) an elected official from a municipality with a population of 750,000 or more;

(2) an elected official from a municipality with a population of 100,000 or more but less than 750,000;

(3) an elected official from a municipality with a population of 25,000 or more but less than 100,000;

(4) an elected official from a municipality with a population of less than 25,000;

(5) two elected officials of separate counties, one of whom is from a county with a population of less than 150,000;

(6) an official from a municipality or county solid waste agency;

(7) a representative from a private environmental conservation organization;

(8) a representative from a public solid waste district or authority;

(9) a representative from a planning region;

(10) a representative of the financial community;

(11) a representative from a solid waste management organization composed primarily of commercial operators;

(12) two persons representing the public who would not otherwise qualify as members under this section;

(13) a registered waste tire processor;

(14) a professional engineer from a private engineering firm with experience in the design and management of solid waste facilities;

(15) a solid waste professional with experience managing or operating a commercial solid waste landfill; and

(16) a person who is experienced in the management and operation of a composting or recycling facility or an educator with knowledge of the design and management of solid waste facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 3.12, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.95, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 408, Sec. 1, eff. Sept. 1, 1997.

Sec. 363.042. TERMS; VACANCIES. (a) Advisory council members serve for staggered six-year terms, with the terms of five members expiring August 31 of each odd-numbered year.

(b) The commission shall fill a vacancy on the advisory council for the unexpired term by appointing a person who has the same qualifications as required under Section 363.041 for the person who previously held the vacated position.

(c) A person who is appointed to a term on the advisory council or to fill a vacancy on the advisory council may continue to serve as a member only while the person continues to qualify for the category from which the person is appointed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.96, eff. Sept. 1, 1995.

Sec. 363.043. PRESIDENT. (a) The commission chairman shall appoint one member as advisory council president.

(b) The advisory council president serves for a term of two years expiring August 31 of each odd-numbered year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.97, eff. Sept. 1, 1995.

Sec. 363.044. PAYMENT OF AND REIMBURSEMENT FOR EXPENSES. (a) Each advisory council member is entitled to compensation and reimbursement of travel expenses incurred by the member while conducting the business of the advisory council, as provided in the General Appropriations Act.

(b) The expenses incurred by the advisory council are to be paid from the planning fund, the technical assistance fund, or other money available for that purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.98, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 408, Sec. 2, eff. Sept. 1, 1997.

Sec. 363.045. MEETINGS. (a) The advisory council shall adopt and may amend procedures for the conduct of advisory council business.

(b) The advisory council shall hold at least one meeting every three months.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.046. DUTIES. The advisory council shall:

(1) review and evaluate the effect of state policies and programs on municipal solid waste management;

(2) make recommendations to the executive director and the commission on matters relating to municipal solid waste management;

(3) recommend legislation to the commission to encourage the efficient management of municipal solid waste;

(4) recommend policies to the commission for the use, allocation, or distribution of the planning fund that include:

(A) identification of statewide priorities for use of funds;

(B) the manner and form of application for financial assistance; and

(C) criteria, in addition to those prescribed by

Section 363.093(d), to be evaluated in establishing priorities for providing financial assistance to applicants; and

(5) recommend to the executive director special studies and projects to further the effectiveness of municipal solid waste management and resource recovery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.99, eff. Sept. 1, 1995.

SUBCHAPTER D. REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANS

Sec. 363.061. COMMISSION RULES; APPROVAL OF REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANS. (a) The commission shall adopt rules relating to regional and local solid waste management plans, including procedures for review and criteria for approval of those plans.

(b) The commission by rule shall require as criteria for approval of a regional or local solid waste management plan that the plan reflect consideration of the preference of municipal solid waste management methods under Section 361.022 (Solid Waste Disposal Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.99, eff. Sept. 1, 1995.

Sec. 363.0615. RESPONSIBILITY FOR REGIONAL PLANNING. (a) A council of governments has primary responsibility for the regional planning process.

(b) A planning region may be divided into subregions as part of the regional planning process. If a planning region is divided into subregions, the council of governments with jurisdiction in the planning region may assist the local governments constituting a subregion to develop a joint local solid waste management plan that provides for solid waste services for solid waste generated within that subregion.

(c) A council of governments may:

(1) employ personnel necessary to carry out the regional planning process, including an administrator for each subregion if subregions are established; and

(2) adopt rules necessary to carry out responsibilities concerning the regional planning process.

(d) In this section, "council of governments" means a regional planning commission created under Chapter 391, Local Government Code.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(b), eff. Sept. 6, 1990.

Sec. 363.0616. PREPARATION OF REGIONAL PLAN BY OTHER PUBLIC AGENCY IN CERTAIN REGIONS. (a) In a 10-county region with a population of less than 300,000, a council of governments is not required to prepare a regional solid waste management plan for that region if a public agency other than a municipality or county has received state funds for that purpose and has prepared a plan that has been approved by the state agency that administered the state funds.

(b) In this section, "council of governments" means a regional planning commission created under Chapter 391, Local Government Code.

Added by Acts 1991, 72nd Leg., ch. 267, Sec. 1, eff. June 5, 1991.

Sec. 363.062. REGIONAL SOLID WASTE MANAGEMENT PLAN. (a) A planning region shall develop a regional solid waste management plan as provided by Section 363.0635 that must conform to the state solid waste management plan.

(b) A regional solid waste management plan shall be submitted to the commission for review.

(c) If the commission determines that a regional solid waste management plan conforms to the requirements adopted by the commission, the commission shall consider the regional solid waste management plan for approval.

(d) In each even-numbered year on the anniversary of the adoption of a municipal solid waste management plan, each planning region shall report to the commission on the progress of the region's municipal solid waste management program and recycling activities developed under this section. The commission may not require a planning region to submit to the commission information previously submitted to the commission by the planning region in an earlier plan or report.

(e) If the commission determines that a regional solid waste management plan does not conform to the requirements adopted by the

commission, the commission shall give written notice to the planning region of each aspect of the plan that must be changed to conform to commission requirements. After the changes have been made in the plan as provided by the commission, the commission shall consider the plan for approval.

(f) The commission by rule shall adopt an approved regional solid waste management plan.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(a), eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 899, Sec. 2.09, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 13, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.100, eff. Sept. 1, 1995.

Sec. 363.063. LOCAL SOLID WASTE MANAGEMENT PLAN. (a) A local government shall develop a local solid waste management plan as provided by Section 363.0635.

(b) A local solid waste management plan must conform to the adopted regional solid waste management plan that covers the area in the local government's jurisdiction.

(c) A local solid waste management plan shall be submitted to the commission for review. If the commission determines that the plan conforms to the requirements adopted by the commission, the commission shall consider the plan for approval.

(d) In each even-numbered year on the anniversary of the adoption of a municipal solid waste management plan, each local government shall report to the commission on the progress of its municipal solid waste management program and recycling activities implemented under this section. The commission may not require a local government to submit to the planning region or to the commission information previously submitted to the planning region or commission by the local government in an earlier plan or report.

(e) If the commission determines that a local solid waste management plan does not conform to the requirements adopted by the commission, the commission shall give written notice to the local government of each aspect of the plan that must be changed to conform to commission requirements. After changes are made in the plan as requested by the commission, the commission shall consider the plan for approval.

(f) The commission by rule shall adopt an approved local solid waste management plan.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(c), eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 899, Sec. 2.10, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 14, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.101, eff. Sept. 1, 1995.

Sec. 363.0635. SCHEDULE FOR ADOPTION OF PLANS. (a) The commission shall establish a time schedule by which each planning region existing on September 1, 1989, shall develop a regional solid waste management plan, and local governments located in those planning regions shall develop local solid waste management plans as required by this section.

(b) The time schedule shall be based on the availability of funds to provide financial assistance to planning regions and local governments as prescribed by Sections 363.091 through 363.093 for the development of those plans.

(c) Unless otherwise required by federal law or federal regulations, a planning region or local government is not required to develop a solid waste management plan until after the date on which funds are provided to that planning region or local government by the commission as prescribed by Sections 363.091 through 363.093 for the development of plans.

(d) Each planning region existing on September 1, 1989, shall develop a regional solid waste management plan, and local governments located in that planning region shall develop local solid waste management plans in accordance with the time schedule established by the commission and as provided by this subchapter.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(d), eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.102, eff. Sept. 1, 1995.

Sec. 363.064. CONTENTS OF REGIONAL OR LOCAL SOLID WASTE MANAGEMENT PLAN. (a) A regional or local solid waste management plan must:

(1) include a description and an assessment of current

efforts in the geographic area covered by the plan to minimize production of municipal solid waste, including sludge, and efforts to reuse or recycle waste;

(2) identify additional opportunities for waste minimization and waste reuse or recycling;

(3) include a description and assessment of existing or proposed community programs for the collection of household hazardous waste;

(4) make recommendations for encouraging and achieving a greater degree of waste minimization and waste reuse or recycling in the geographic area covered by the plan;

(5) encourage cooperative efforts between local governments in the siting of landfills for the disposal of solid waste;

(6) consider the need to transport waste between municipalities, from a municipality to an area in the jurisdiction of a county, or between counties, particularly if a technically suitable site for a landfill does not exist in a particular area;

(7) allow a local government to justify the need for a landfill in its jurisdiction to dispose of the solid waste generated in the jurisdiction of another local government that does not have a technically suitable site for a landfill in its jurisdiction;

(8) establish recycling rate goals appropriate to the area covered by the plan;

(9) recommend composting programs for yard waste and related organic wastes that may include:

(A) creation and use of community composting centers;

(B) adoption of the "Don't Bag It" program for lawn clippings developed by the Texas Agricultural Extension Service; and

(C) development and promotion of education programs on home composting, community composting, and the separation of yard waste for use as mulch;

(10) include an inventory of municipal solid waste landfill units, including:

(A) landfill units no longer in operation;

(B) the exact boundaries of each former landfill unit or, if the exact boundaries are not known, the best approximation of each unit's boundaries;

(C) a map showing the approximate boundaries of each former landfill unit, if the exact boundaries are not known;

(D) the current owners of the land on which the former

landfill units were located; and

(E) the current use of the land;

(11) assess the need for new waste disposal capacity; and

(12) include a public education program.

(b) If the boundaries of a municipal solid waste unit that is no longer operating are known to be wholly on an identifiable tract, the council of governments for the area in which the former landfill unit is located shall notify the owner of land that overlays the former landfill unit of the former use of the land and shall notify the county clerk of the county or counties in which the former landfill unit is located of the former use. The notice to the county clerk must include:

(1) a description of the exact boundaries of the former landfill unit or, if the exact boundaries are not known, the best approximation of each unit's boundaries;

(2) a legal description of the parcel or parcels of land in which the former landfill unit is located;

(3) notice of the former landfill unit's former use; and

(4) notice of the restrictions on the land imposed by this subchapter.

(c) The county clerk shall record the descriptions and notices submitted by a council of governments under Subsection (b). The county clerk may prescribe the method of arranging and indexing the descriptions and notices. The county clerk shall make the descriptions and notices available for public inspection.

(d) The municipalities and counties within each council of governments shall cooperate fully in compiling the inventory of landfill units.

(e) Each council of governments shall provide a copy of the inventory of municipal solid waste landfill units to the commission and to the chief planning official of each municipality and county in which a unit is located. The commission and the officials shall make the inventory available for public inspection.

(f) The commission may grant money from fees collected under Section 361.013 to a municipality or association of municipalities for the purpose of conducting the inventory required by this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(e), eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 238, Sec. 1, eff. Sept. 1,

1991; Acts 1991, 72nd Leg., ch. 303, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 770, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 899, Sec. 2.11, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 15, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.103, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1280, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.01, eff. Jan. 11, 2004.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1276 (H.B. 1435), Sec. 5, eff. September 1, 2013.

Sec. 363.065. PLANNING PROCESS; PLANNING AREA. (a) A regional or local solid waste management plan must result from a planning process that:

(1) is related to proper management of solid waste in the planning area under consideration; and

(2) identifies problems and collects and evaluates data necessary to provide a written public statement of goals, objectives, and recommended actions intended to accomplish those goals and objectives.

(b) A regional solid waste management plan must consider the entire area in an identified planning region.

(c) A local solid waste management plan must consider all the area in the jurisdiction of one or more local governments but may not include an entire planning region.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.066. CONFORMITY WITH REGIONAL OR LOCAL SOLID WASTE MANAGEMENT PLAN. (a) On the adoption of a regional or local solid waste management plan by commission rule, public and private solid waste management activities and state regulatory activities must conform to that plan.

(b) The commission may grant a variance from the adopted plan under procedures and criteria adopted by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(f), eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.104, eff. Sept.

1, 1995.

Sec. 363.067. STUDY REQUIRED FOR RESOURCE RECOVERY OR OTHER SOLID WASTE MANAGEMENT SYSTEMS. (a) To develop programs to implement regional or local solid waste management plans or other solid waste management alternatives that include resource recovery, a study must be made to determine feasibility and acceptance of the programs.

(b) The study shall be conducted in three phases:

(1) a screening study;

(2) a feasibility study; and

(3) an implementation study.

(c) Public agencies that conduct all or part of one or more phases may qualify for assistance to accomplish other phases or parts of phases.

(d) After each phase, the governing body shall determine whether to proceed to the next phase.

(e) A study may not include final design and working drawings of any request for proposals for project facilities or operations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.068. SCREENING STUDY. (a) A screening study must provide a survey and assessment of the various factors affecting the suitability of resource recovery or other solid waste management systems with the scope and detail needed to make an initial determination of whether those systems are potentially successful alternatives to existing systems.

(b) The survey and assessment must include:

(1) the amount and characteristics of available waste;

(2) the suitability and economics of existing solid waste management systems;

(3) institutional factors affecting potential alternatives;

(4) technologies available;

(5) identification of potential material and energy markets;

(6) economics of alternative systems; and

(7) interest of the local citizenry in available

alternatives.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.069. FEASIBILITY STUDY. A feasibility study must provide an evaluation of alternatives that:

(1) identifies current solid waste management practices and costs;

(2) analyzes the waste stream and its availability by composition and quantity;

(3) identifies potential markets and obtains statements of interest for recovered materials and energy;

(4) identifies and evaluates alternative solid waste management systems;

(5) provides an assessment of potential effects of alternatives in terms of their public health, physical, social, economic, fiscal, environmental, and aesthetic implications;

(6) conducts and evaluates results of public hearings or surveys of local citizens' opinions; and

(7) makes recommendations on alternatives for further consideration.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.070. IMPLEMENTATION STUDY. An implementation study must:

(1) provide a recommended course of action for a public agency;

(2) provide for the collection and analysis of data;

(3) identify and characterize solid waste problems and issues;

(4) determine waste stream composition and quantity;

(5) identify and analyze alternatives;

(6) evaluate risk elements of alternatives;

(7) identify and solidify markets;

(8) make site analyses;

(9) evaluate financing options and recommend preferred methods of financing;

(10) evaluate the application of resource recovery

technologies;

(11) identify and discuss potential effects of alternative systems;

(12) provide for public participation and recommend preferred alternatives; and

(13) provide for implementation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. PLANNING FUND AND TECHNICAL ASSISTANCE FUND

Sec. 363.091. MUNICIPAL SOLID WASTE MANAGEMENT PLANNING FUND. (a) The municipal solid waste management planning fund is in the state treasury.

(b) In addition to money appropriated by the legislature, money received from other sources, including money received under contracts or agreements entered into under Section 363.116, shall be deposited to the credit of the planning fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.092. PLANNING FUND USE; FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS AND PLANNING REGIONS. (a) The executive director shall administer the financial assistance program and the planning fund under the commission's direction.

(b) The commission shall adopt rules for the use and distribution to public agencies and planning regions of money in the planning fund.

(c) The commission shall use the planning fund to provide financial assistance to:

(1) local governments and planning regions to develop regional and local solid waste management plans;

(2) public agencies and planning regions to prepare screening, feasibility, and implementation studies; and

(3) local governments and planning regions for costs of developing and implementing approved household hazardous waste diversion programs, excluding costs of disposal.

(d) The commission shall use at least 90 percent of the money appropriated to it for the planning fund to provide financial assistance, and not more than 10 percent of the total funds

appropriated to the commission for the planning fund may be used to administer the financial assistance program and the planning fund and to pay the expenses of the advisory council.

(e) The planning fund may not be used for construction or to prepare final design and working drawings, acquire land or an interest in land, or pay for recovered resources.

(f) The commission by rule shall allocate a specific percentage of money provided under Subsection (c)(1) to be used to develop plans for community household hazardous waste collection programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 238, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 303, Sec. 7, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.105, eff. Sept. 1, 1995.

Sec. 363.093. APPLICATION FOR FINANCIAL ASSISTANCE. (a) An applicant for financial assistance from the planning fund must agree to comply with:

(1) the state solid waste management plan;

(2) the commission's municipal solid waste management rules; and

(3) other commission requirements.

(b) The commission may not authorize release of funds under a financial assistance application until the applicant furnishes to the commission a resolution adopted by the governing body of each public agency or planning region that is a party to the application certifying that:

(1) the applicant will comply with the financial assistance program's provisions and commission requirements;

(2) the funds will be used only for the purposes for which they are provided;

(3) regional or local solid waste management plans or studies developed with the financial assistance will be adopted by the governing body as its policy; and

(4) future municipal solid waste management activities will, to the extent reasonably feasible, conform to the regional or local solid waste management plan.

(c) Financial assistance provided by the commission to a public agency or planning region must be matched at least equally by funds

provided by the recipient, except that this matching requirement does not apply if the recipient is a council of governments created under Chapter 391, Local Government Code, or a municipality or county.

(d) The priority given to applicants in receiving financial assistance must be determined by:

(1) the need to initiate or improve the solid waste management program in the applicant's jurisdiction;

(2) the needs of the state;

(3) the applicant's financial need; and

(4) the degree to which the proposed program will result in improvements that meet the requirements of state, regional, and local solid waste management plans.

(e) The commission may approve an application for financial assistance if:

(1) the application is consistent with the rules adopted by the commission under Section 363.092(b); and

(2) the commission finds that the applicant requires state financial assistance and that it is in the public interest to provide the financial assistance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 737, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.106, eff. Sept. 1, 1995.

Sec. 363.094. MUNICIPAL SOLID WASTE RESOURCE RECOVERY APPLIED RESEARCH AND TECHNICAL ASSISTANCE FUND. (a) The municipal solid waste resource recovery applied research and technical assistance fund is in the state treasury.

(b) The technical assistance fund is composed of legislative appropriations.

(c) The technical assistance fund shall be used to:

(1) accomplish applied research and development studies; and

(2) provide technical assistance to public agencies to carry out investigations and to make studies relating to resource recovery and improved municipal solid waste management.

(d) The executive director shall administer the technical assistance fund under the commission's direction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 11.107, eff. Sept. 1, 1995.

Sec. 363.095. USE OF TECHNICAL ASSISTANCE FUND. (a) Studies, applied research, investigations, and other purposes accomplished with and technical assistance provided through use of money in the technical assistance fund must comply with:

(1) the state solid waste management plan;

(2) the commission's municipal solid waste management rules; and

(3) other commission policy requirements.

(b) Technical assistance, applied research, investigations, studies, and other purposes for which funds may be provided may include:

(1) an evaluation of the long-term statewide needs of public agencies in financing municipal solid waste systems and consideration of the nature and extent of financial support that the state should provide for those systems;

(2) an evaluation of state of the art waste reduction systems and waste-to-energy systems that include steam generation and electrical production;

(3) establishment and evaluation of a pilot source separation and recycling project;

(4) feasibility studies of appropriate technology that may be applicable to several local governments for the improvement of solid waste management systems;

(5) cost and economic comparisons of alternative solid waste management systems;

(6) an evaluation of available markets for energy and recovered materials;

(7) an evaluation of the availability of recovered materials and energy resources for new market opportunities; and

(8) a citizen involvement program to educate citizens in solid waste management issues and the improvement of solid waste management practices.

(c) The commission may hire personnel to be paid from the technical assistance fund and may use the technical assistance fund for obtaining consultant services and for entering into interagency agreements with other state agencies, public agencies, or planning regions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.108, eff. Sept. 1, 1995.

SUBCHAPTER F. LOCAL SOLID WASTE SERVICES AND REGULATION

Sec. 363.111. ADOPTION OF RULES BY PUBLIC AGENCY. (a) A governing body may adopt rules for regulating solid waste collection, handling, transportation, storage, processing, and disposal.

(b) The rules may not authorize any activity, method of operation, or procedure prohibited by Chapter 361 (Solid Waste Disposal Act) or by rules or regulations of the commission or other state or federal agencies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.109, eff. Sept. 1, 1995.

Sec. 363.112. PROHIBITION OF PROCESSING OR DISPOSAL OF SOLID WASTE IN CERTAIN AREAS. (a) To prohibit the processing or disposal of municipal or industrial solid waste in certain areas of a municipality or county, the governing body of the municipality or county must by ordinance or order specifically designate the area of the municipality or county, as appropriate, in which the disposal of municipal or industrial solid waste will not be prohibited.

(b) The ordinance or order must be published for two consecutive weeks in a newspaper of general circulation in the area of the municipality or county, as appropriate, before the date the proposed ordinance or order is adopted by the governing body.

(c) The governing body of a municipality or county may not prohibit the processing or disposal of municipal or industrial solid waste in an area of that municipality or county for which:

(1) an application for a permit or other authorization under Chapter 361 has been filed with and is pending before the commission; or

(2) a permit or other authorization under Chapter 361 has been issued by the commission.

(d) The commission may not grant an application for a permit to process or dispose of municipal or industrial solid waste in an area in which the processing or disposal of municipal or industrial solid waste is prohibited by an ordinance or order authorized by Subsection

(a), unless the governing body of the municipality or county violated Subsection (c) in passing the ordinance or order. The commission by rule may establish procedures for determining whether an application is for the processing or disposal of municipal or industrial solid waste in an area for which that processing or disposal is prohibited by an ordinance or order.

(e) The powers specified by this section may not be exercised by the governing body of a municipality or county with respect to areas to which Section 361.090 applies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.110, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 570, Sec. 4, eff. Sept. 1, 1999.

Sec. 363.113. ESTABLISHMENT OF SOLID WASTE MANAGEMENT SERVICES. Each county with a population of more than 30,000 and each municipality shall review the provision of solid waste management services in its jurisdiction and shall assure that those services are provided to all persons in its jurisdiction by a public agency or private person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.114. RESOURCE RECOVERY SERVICE; FEES. (a) A public agency may offer a resource recovery service to persons in its jurisdictional boundaries and may charge fees for that service.

(b) To aid in enforcing collection of fees for a resource recovery service, a public agency, after notice and hearing, may suspend service provided by any utility owned or operated by the public agency to a person who is delinquent in payment of those fees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.115. TAX EXEMPT STATUS OF CERTAIN RESOURCE RECOVERY SYSTEMS. A resource recovery system acquired by a public agency to reduce municipal solid waste by mechanical means or incineration is exempt from property taxes of any municipality, county, school district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.116. AUTHORITY TO ENTER CONTRACTS CONCERNING SOLID WASTE MANAGEMENT SERVICES. (a) A public agency may enter into contracts to enable it to furnish or receive solid waste management services on the terms considered appropriate by the public agency's governing body.

(b) A home-rule municipality's charter provision restricting the duration of a municipal contract does not apply to a municipal contract that relates to solid waste management services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.117. SOLID WASTE MANAGEMENT SERVICE CONTRACTS. Under a solid waste management service contract, a public agency may:

(1) acquire and operate all or any part of one or more solid waste management systems, including resource recovery systems;

(2) contract with a person or other public agency to manage solid waste for that person or agency;

(3) contract with a person to purchase or sell, by installments over a term considered desirable by the governing body or otherwise, all or any part of a solid waste management system, including a resource recovery system;

(4) contract with a person or other public agency for the operation of all or any part of a solid waste management system, including a resource recovery system;

(5) lease to or from a person or other public agency, for the term and on the conditions considered desirable by the governing body, all or any part of a solid waste management system, including a resource recovery system;

(6) contract to make all or any part of a solid waste management system available to other persons or public agencies and furnish solid waste management services through the public agency's system, provided the contract:

(A) includes provisions to assure equitable treatment of parties who contract with the public agency for solid waste management services from all or any part of the same solid waste management system;

(B) provides the method of determining the amounts to be paid by the parties;

(C) provides that the public agency shall either operate or contract with a person to operate for the public agency a solid waste management system or part of a solid waste management system;

(D) provides that the public agency is entitled to continued performance of the services after the amortization of the public agency's investment in the solid waste management system during the useful life of the system on payment of reasonable charges for the services, reduced to take into consideration the amortization; and

(E) includes any other provisions and requirements the public agency determines to be appropriate;

(7) contract with another public agency or other persons for solid waste management services, including contracts for the collection and transportation of solid waste and for processing or disposal at a permitted solid waste management facility, including a resource recovery facility, provided the contract may specify:

(A) the minimum quantity and quality of solid waste to be provided by the public agency; and

(B) the minimum fees and charges to be paid by the public agency for the right to have solid waste processed or disposed of at the solid waste management facility;

(8) contract with a person or other public agency to supply materials, fuel, or energy resulting from the operation of a resource recovery facility; and

(9) contract with a person or other public agency to receive or purchase solid waste, materials, fuel, or energy recovered from resource recovery facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.118. INDUSTRIAL DEVELOPMENT CORPORATIONS. (a) A public agency that enters into a contract under Section 363.116 may sponsor the creation of an industrial development corporation as provided by the Development Corporation Act (Subtitle C1, Title 12, Local Government Code).

(b) If the system is located in the public agency's boundaries,

the corporation may issue its bonds, notes, or other evidences of indebtedness to finance the costs of a solid waste management system, including a resource recovery system, contemplated under the contract.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.16, eff. April 1, 2009.

Sec. 363.119. FUNDING SOLID WASTE MANAGEMENT SERVICES. (a) A public agency may establish a solid waste management fund to make payments for solid waste management services covered by contracts entered into by the public agency.

(b) A public agency may agree to make sufficient provision in its annual budget to make payments under its contracts.

(c) Payments to be made by a public agency under a contract may also be made from revenues of the public agency's solid waste, water, sewer, electric, or gas system or any combination of utility systems.

(d) As a source of payment or as the sole source of payment, a public agency may use and pledge available revenues or resources for and to the payment of amounts due under contracts and may enter into covenants concerning those sources of payment to assure their availability if required.

(e) A public agency may establish, charge, and collect fees, rates, charges, rentals, and other amounts for services or facilities provided under or in connection with a contract. Those fees, rates, charges, rentals, and other amounts may be charged to and collected from the residents of the public agency, if any, or from users or beneficiaries of the services or facilities and may include water charges, sewage charges, and solid waste disposal fees and charges, including solid waste collection or handling fees. The public agency may use and pledge those fees, rates, charges, rentals, and other amounts to make payments required under a contract and may enter into a covenant to do so in amounts sufficient to make all or any part of the payments when due.

(f) A public agency that has taxing power, and that at the time of entering into a contract is using its general funds, including its tax revenues, to pay all or part of the costs of providing solid

waste collection, transportation, and disposal services, may agree and pledge that the contract is an obligation against the taxing power of the public agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.120. EXCLUSIVE SOLID WASTE MANAGEMENT SERVICE CONTRACTS. (a) In this section:

(1) "Exclusive contract" means a contract or franchise agreement between a public agency and a privately owned solid waste management service provider that grants to the service provider an exclusive right to provide certain solid waste management services in the public agency's jurisdiction.

(2) "Solid waste management services" means solid waste collection or transportation services.

(b) A public agency that enters into an exclusive contract, including by renewing or amending an existing contract in a manner that grants a privately owned solid waste management service provider an exclusive right to provide certain additional solid waste services that was not contained in the contract before the renewal or amendment, shall give notice containing:

(1) a summary of the purpose of the contract or amendment; and

(2) a description of the change made by the contract or amendment.

(c) A public agency required by Subsection (b) to give notice shall:

(1) publish the notice:

(A) in a newspaper of general circulation in the jurisdiction of the public agency; and

(B) on a publicly available Internet website maintained by the public agency, if the public agency maintains such a website; and

(2) if the public agency requires a privately owned solid waste management service provider to register or obtain approval to operate in the public agency's jurisdiction, give notice to each provider registered with or approved by the public agency to operate in the jurisdiction.

(d) A contract or amendment described by Subsection (b) may not

take effect before the date the notice required by that subsection is published in a newspaper as required by Subsection (c)(1)(A).

(e) A privately owned solid waste management service provider that has an existing contract with a person to provide certain solid waste management services for which a public agency enters into an exclusive contract with another service provider may continue to provide those services in the public agency's jurisdiction until the earlier of:

(1) the date the service provider's existing nonexclusive contract expires; or

(2) the first anniversary of the date the public agency publishes the notice required by Subsection (b) in a newspaper as required by Subsection (c)(1)(A).

(f) A privately owned solid waste management service provider that provides solid waste management services to a person in a public agency's jurisdiction and that does not have a contract to provide the services may, if the public agency enters into an exclusive contract with another service provider to provide those services, continue to provide the services in the jurisdiction until the 60th day after the date the public agency publishes the notice required by Subsection (b) in a newspaper as required by Subsection (c)(1)(A).

(g) This section does not apply to the provision of solid waste management services by a municipality to an annexed area as provided by Section 43.0661, Local Government Code.

Added by Acts 2025, 89th Leg., R.S., Ch. 471 (H.B. 5057), Sec. 1, eff. June 20, 2025.

SUBCHAPTER G. BONDS

Sec. 363.131. AUTHORITY TO ISSUE BONDS. (a) A public agency may issue bonds in the name of the public agency to acquire, construct, improve, enlarge, and repair all or part of a solid waste management system, including a resource recovery system.

(b) Pending the issuance of definitive bonds, a public agency may issue negotiable interim bonds eligible for exchange or substitution on issuance of definitive bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.132. TERMS; FORM. (a) A public agency may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 50 years after the date of issuance and shall bear interest at a rate permitted by state law.

(c) A public agency's bonds and interest coupons, if any, are investment securities under Chapter 8, Business & Commerce Code, and may be:

(1) issued registrable as to principal or as to principal and interest; and

(2) made redeemable before maturity, at the option of the public agency, or may contain a mandatory redemption provision.

(d) A public agency's bonds may be issued in the form, denominations, and manner, and under the terms, and shall be signed and executed, as provided by the governing body in the resolution or order authorizing the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.133. BOND PROVISIONS. (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the governing body may:

(1) provide for the flow of funds and the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds; and

(2) make additional covenants with respect to the bonds, the pledged revenues, and the operation and maintenance of the physical property of the solid waste management system, the revenue of which is pledged.

(b) In the orders or resolutions authorizing the issuance of bonds, the governing body may:

(1) prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued; and

(2) include other provisions as the governing body may determine.

(c) The governing body may adopt and have executed any other

proceedings or instruments necessary and convenient in the issuance of bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.134. APPROVAL AND REGISTRATION. (a) A public agency shall submit bonds issued by the public agency and records relating to their issuance to the attorney general for examination as to their validity. If the bonds are secured by a pledge of proceeds from a contract, the public agency shall submit to the attorney general for examination a copy of the contract and a copy of the records relating to the contract.

(b) If the attorney general finds that the bonds have been authorized and a contract entered into in accordance with law, the attorney general shall approve the bonds, and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds are incontestable and are binding obligations according to their terms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.135. BOND PAYMENT AND SECURITY. A public agency may pay the principal of and interest on bonds:

(1) from the levy and collection of taxes on all taxable property in the public agency's boundaries if the public agency is authorized by law to levy and collect property taxes;

(2) by pledging all or part of the designated revenues from the ownership or operation of physical property of a solid waste management system, including a resource recovery system, or from a contract entered into by a public agency under this chapter; or

(3) from other income of the public agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.136. BOND ELECTION. Bonds secured in whole or in part by taxes may not be issued by a public agency until authorized by a majority vote of the qualified voters of the public agency at an election ordered for that purpose. A bond election shall be held in

the manner provided by law for other bond elections of the public agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.137. OTHER SECURITY. (a) The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical property of a solid waste management system, including a resource recovery system, of the public agency and rights appurtenant to that property.

(b) The deed of trust or mortgage lien may give the trustee the power to operate the property, sell the property to pay the debt, or take any other action to secure the bonds. A purchaser at a sale under a deed of trust or mortgage lien is the absolute owner of the property and rights purchased.

(c) Regardless of any deed of trust or mortgage lien under Subsection (a), the trust indenture may:

(1) contain any provision that the governing body prescribes for the security of the bonds and the preservation of the trust estate;

(2) provide for amendment or modification of the trust indenture; and

(3) provide for investment of the public agency's funds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.138. BOND SALE AND EXCHANGE. (a) A public agency may sell bonds at a public or private sale at a price and on terms determined by the governing body.

(b) The public agency may exchange its bonds for property or an interest in property that its governing body considers necessary or convenient to carry out this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.139. INVESTMENT AND USE OF PROCEEDS. (a) Money may be set aside out of bond proceeds to provide for:

(1) interest to accrue on the bonds;

(2) administrative expenses up to the estimated date on which the solid waste management system will produce revenue; and

(3) reserve funds created by the resolution that authorized the bonds.

(b) Proceeds from the sale of bonds may be invested, pending their use, in the securities or time deposits specified by the resolution authorizing the issuance of the bonds or the trust indenture securing the bonds.

(c) The earnings on the investments may be applied as provided by the resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.140. REFUNDING BONDS. (a) A public agency may issue refunding bonds to refund all or part of its outstanding bonds, including matured but unpaid interest coupons.

(b) Refunding bonds:

(1) mature serially or otherwise not more than 50 years after the date of issuance and bear interest at a rate permitted by state law; and

(2) may be payable from the same source as the bonds being refunded or from other additional sources.

(c) Refunding bonds must be approved by the attorney general in the same manner as other bonds.

(d) The comptroller shall register refunding bonds:

(1) on the surrender and cancellation of the original bonds; or

(2) without surrender and cancellation of the original bonds if:

(A) the order or resolution authorizing the refunding bonds provides that their proceeds be deposited in the place where the original bonds are payable; and

(B) the refunding bonds are issued in an amount sufficient to pay the principal of and interest on the original bonds up to their maturity date or to their option date if the bonds are called for payment before maturity according to their terms.

(e) A public agency may refund bonds in one or several installments.

(f) Instead of the method provided by this section, a public

agency may refund bonds, notes, or other obligations as provided by general law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.141. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Public agency bonds are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company;

(6) a fiduciary;

(7) a trustee;

(8) a guardian; and

(9) a sinking fund of a municipality, county, school district, or other political subdivision of the state and other public funds of the state, including the permanent school fund.

(b) Public agency bonds may secure the deposits of public funds of the state or a municipality, county, school district, or other political subdivision of the state. The bonds are lawful and sufficient security for deposits to the extent of their value, if accompanied by all unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.142. TAX STATUS OF BONDS. Since a public agency is a public entity performing an essential public function, bonds issued by the public agency, any transaction relating to the bonds, and profits made in the sale of the bonds are exempt from taxation by the state or by a municipality, county, special district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.143. FEES FOR SERVICES. (a) While bonds are outstanding, the governing body may adopt and collect fees for services furnished or made available by the solid waste management

system, including a resource recovery system.

(b) The fees must be adequate to provide and maintain the funds created by the resolution authorizing the bonds and to pay:

(1) operational costs or expenses allocable to the solid waste management system, including a resource recovery system; and

(2) the principal of and interest on the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.144. ADJUSTMENT OF RATES FOR ADEQUATE REVENUE. A public agency shall adopt and adjust the rates charged for solid waste management services so that revenues, together with taxes levied to support the services, will be sufficient to pay:

(1) the expense of operating and maintaining the solid waste management system, including a resource recovery system;

(2) the public agency's obligations under a contract; and

(3) the public agency's obligations under and in connection with bonds issued that are secured by revenues from the solid waste management service or a solid waste management system, including a resource recovery system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.145. BOND ANTICIPATION NOTES. (a) A public agency may declare an emergency if funds are not available to pay the principal of or interest on the public agency's bonds issued under this chapter.

(b) The public agency may issue negotiable bond anticipation notes to borrow the money needed in an emergency, and the bond anticipation notes may bear interest at any rate authorized by state law and shall mature within one year of the date of issuance.

(c) The bond anticipation notes may be paid with the proceeds of bonds, or bonds may be issued and delivered in exchange for and in substitution of bond anticipation notes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 364. COUNTY SOLID WASTE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 364.001. SHORT TITLE. This chapter may be cited as the County Solid Waste Control Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.002. PURPOSE. The purpose of this chapter is to authorize a cooperative effort by counties, public agencies, and other persons for the safe and economical collection, transportation, and disposal of solid waste to control pollution in this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.003. DEFINITIONS. In this chapter:

(1) "Composting" has the meaning assigned by Chapter 361 (Solid Waste Disposal Act).

(2) "District" means a district or authority created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution.

(3) "Public agency" means a district, municipality, regional planning commission created under Chapter 391, Local Government Code, or other political subdivision or state agency authorized to own and operate a solid waste collection, transportation, or disposal facility or system.

(4) "Sanitary landfill" has the meaning assigned by Chapter 361 (Solid Waste Disposal Act).

(5) "Solid waste" has the meaning assigned by Chapter 361 (Solid Waste Disposal Act).

(6) "Solid waste disposal system" means a plant, composting process plant, incinerator, sanitary landfill, or other works and equipment that are acquired, installed, or operated to collect, handle, store, treat, neutralize, stabilize, or dispose of solid waste, and includes the sites.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 124, eff. Sept. 1, 1991.

SUBCHAPTER B. COUNTY SOLID WASTE MANAGEMENT

Sec. 364.011. COUNTY ADOPTION OF SOLID WASTE RULES. (a) Subject to the limitation provided by Sections 361.151 and 361.152 (Solid Waste Disposal Act), and subject to Subsection (a-1), a commissioners court by rule may regulate solid waste collection, handling, storage, and disposal in areas of the county not in a municipality or the extraterritorial jurisdiction of a municipality.

(a-1) A commissioners court by rule may regulate solid waste collection, handling, storage, and disposal by establishing a mandatory program under Section 364.034 in an area of the county located within the extraterritorial jurisdiction of a municipality if:

(1) the municipality does not provide solid waste disposal services in that area; and

(2) the county:

(A) is adjacent to the United Mexican States;

(B) has a population of less than 300,000; and

(C) contains a municipality with a population of 200,000 or more.

(a-2) Notwithstanding Subsection (a), a commissioners court may, through a competitive bidding process, contract for the provision of solid waste collection, handling, storage, and disposal in an area of the county located within the extraterritorial jurisdiction of a municipality if:

(1) the municipality does not provide solid waste disposal services in that area; and

(2) the county has a population of more than 1.5 million and at least 70 percent of the population resides in a single municipality.

(b) A county, in making any rules, including those under the licensing power granted by Chapter 361 (Solid Waste Disposal Act), may not impose an unreasonable requirement on the disposal of the solid waste in the county not warranted by the circumstances.

(c) A rule adopted under this section may not authorize an activity, method of operation, or procedure that is prohibited by Chapter 361 (Solid Waste Disposal Act) or by rules of the Texas Commission on Environmental Quality.

(d) A county may institute legal proceedings to enforce its rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.034, eff. Aug. 12, 1991.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 70 (S.B. 1229), Sec. 1, eff. May 22, 2017.
Acts 2017, 85th Leg., R.S., Ch. 143 (H.B. 1584), Sec. 1, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(37), eff. September 1, 2019.
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 97, eff. September 1, 2023.
Acts 2025, 89th Leg., R.S., Ch. 986 (S.B. 766), Sec. 16, eff. September 1, 2025.

Sec. 364.012. PROHIBITING SOLID WASTE DISPOSAL IN COUNTY. (a) The county may prohibit the disposal of municipal or industrial solid waste in the county if the disposal of the municipal or industrial solid waste is a threat to the public health, safety, and welfare.

(b) To prohibit the disposal of municipal or industrial solid waste in a county, the commissioners court must adopt an ordinance in the general form prescribed for municipal ordinances specifically designating the area of the county in which municipal or industrial solid waste disposal is not prohibited.

(c) An ordinance required by Subsection (b) may be passed on first reading, but the proposed ordinance must be published in a newspaper of general circulation in the county for two consecutive weeks before the commissioners court considers the proposed ordinance. The publication must contain:

(1) a statement of the time, place, and date that the commissioners court will consider the proposed ordinance; and

(2) notice that an interested citizen of the county may testify at the hearing.

(d) A public hearing must be held on a proposed ordinance before it is considered by the commissioners court, and any interested citizen of the county shall be allowed to testify.

(e) The commissioners court of a county may not prohibit the processing or disposal of municipal or industrial solid waste in an area of that county for which:

(1) an application for a permit or other authorization

under Chapter 361 has been filed with and is pending before the commission; or

(2) a permit or other authorization under Chapter 361 has been issued by the commission.

(f) The commission may not grant an application for a permit to process or dispose of municipal or industrial solid waste in an area in which the processing or disposal of municipal or industrial solid waste is prohibited by an ordinance, unless the county violated Subsection (e) in passing the ordinance. The commission by rule may specify the procedures for determining whether an application is for the processing or disposal of municipal or industrial solid waste in an area for which that processing or disposal is prohibited by an ordinance.

(g) The powers specified by this section may not be exercised by a county with respect to areas to which Section 361.090 applies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.035, eff. Aug. 12, 1991; Acts 1999, 76th Leg., ch. 570, Sec. 5, eff. Sept. 1, 1999.

Sec. 364.013. COUNTY AUTHORITY. A county may:

(1) acquire, construct, improve, enlarge, repair, operate, and maintain all or part of one or more solid waste disposal systems;

(2) contract with a person to collect, transport, handle, store, or dispose of solid waste for that person;

(3) contract with a person to purchase or sell, by installments for a term considered desirable, all or part of a solid waste disposal system;

(4) enter into an operating agreement with a person, for the terms and on the conditions considered desirable, for the operation of all or part of a solid waste disposal system by that person or by the county; and

(5) lease to or from a person, for the term and on the conditions considered desirable, all or part of a solid waste disposal system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.014. ACQUISITION OF PROPERTY. (a) A county may

acquire by purchase, lease, gift, condemnation, or any other manner and may own, maintain, use, and operate property or an interest in property necessary or convenient to the exercise of the powers and purposes provided by this chapter.

(b) The power of eminent domain is restricted to the county and may be exercised in the manner provided by law.

(c) A county may not exercise the power of eminent domain to acquire real property under this section if that power conflicts with a corporation's power of eminent domain as provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.015. DUMPING OR GARBAGE DISPOSAL GROUNDS. The commissioners court shall determine the consideration to be paid to acquire real property on which to locate dumping or garbage disposal grounds. In determining where to locate dumping or garbage disposal grounds, the commissioners court shall consider:

(1) the convenience of the people to be served; and

(2) the general health of, and the annoyance to, the community to be served by the dumping or garbage disposal grounds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.016. COST OF CERTAIN REQUIRED ALTERATIONS. The relocation, raising, rerouting, changing of grade, or altering of construction of a highway, railroad, electric transmission line, telegraph or telephone property or facility, or pipeline made necessary by the actions of a county shall be accomplished at the sole expense of the county, which shall pay the cost of the required activity as necessary to provide comparable replacement, minus the net salvage value of any replaced facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.020. DEPOSIT OF CERTAIN FOOD WASTE FOR COMPOSTING IN CERTAIN COUNTIES PROHIBITED. (a) In this section:

(1) "Commercial food waste composting ordinance" means a municipal ordinance that requires a multifamily residential property,

a business holding a food permit, or another business owner to divert food waste from disposal in a landfill.

(2) "Composting facility" means a facility that composts source-separated yard trimmings, clean wood material, vegetative material, paper, manure, meat, fish, dead animal carcasses, dairy materials, or meat and vegetable oils and greases from a municipal, commercial, or institutional source.

(b) Except as provided by Subsection (e), a person may not deposit at a composting facility located in a county that does not contain a municipality with a commercial food waste composting ordinance food waste that is:

(1) collected for composting in a municipality that has a commercial food waste composting ordinance; and

(2) subject to such an ordinance.

(c) A person is liable for a civil penalty of $1,000 for each violation of Subsection (b).

(d) The attorney general may bring an action in a court of competent jurisdiction to recover the civil penalty imposed under this section.

(e) This section does not apply to:

(1) an agricultural operation as defined by Section 251.002, Agriculture Code;

(2) a composting facility located in a county described by Subsection (b) if the commissioners court of the county by resolution or order authorizes the deposit of food waste subject to a commercial food waste composting ordinance at the facility; or

(3) a composting facility that:

(A) is authorized to operate under a valid notification issued by the commission on or before January 1, 2025; and

(B) accepted food waste described by Subsection (b) before January 1, 2025.

Added by Acts 2025, 89th Leg., R.S., Ch. 1173 (S.B. 2078), Sec. 1, eff. September 1, 2025.

SUBCHAPTER C. SOLID WASTE MANAGEMENT SYSTEMS AND SERVICES CONTRACTS

Sec. 364.031. PUBLIC AGENCY CONTRACTS. (a) A public agency may contract with another public agency or a private contractor for the other public agency or private contractor to:

(1) make all or part of a solid waste disposal system available to a public agency, a group of public agencies, or other persons; and

(2) furnish solid waste collection, transportation, handling, storage, or disposal services through the other public agency's or private contractor's system.

(b) The contract may:

(1) be for the duration agreed on by the parties;

(2) provide that the contract remains in effect until bonds issued or to be issued by either public agency and refunding bonds issued for those original bonds are paid;

(3) contain provisions to assure equitable treatment of parties who contract with the other public agency or private contractor for solid waste collection, transportation, handling, storage, or disposal services from the same solid waste disposal system;

(4) provide for the sale or lease to or use by the other public agency or private contractor of a solid waste disposal system owned or to be acquired by the public agency;

(5) provide that the other public agency or private contractor will operate a solid waste disposal system owned or to be acquired by the public agency;

(6) provide that the public agency is entitled to continued performance of services after the amortization of the other public agency's or private contractor's investment in the disposal system during the useful life of the system on payment of reasonable charges, reduced to take into consideration the amortization; and

(7) contain any other provisions and requirements the other public agency or private contractor and the public agency determine to be appropriate or necessary.

(c) The contract must provide the method to determine the amount the public agency will pay to the other public agency or private contractor.

(d) A municipality may provide in its contract that the other public agency or private contractor has the right to use the streets, alleys, and public ways and places in the municipality during the term of the contract.

(e) This section does not expand the authority granted to a county under Section 364.013.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 486, Sec. 1, eff. June 12, 1995.

Sec. 364.032. PUBLIC AGENCY PAYMENTS. (a) Public agency payments to a county for solid waste collection, transportation, handling, storage, or disposal services may be made from income of the public agency's solid waste disposal fund as provided by the contract between the county and the public agency. The payments are an operating expense of the fund, and the revenues of the fund are to be applied toward those payments.

(b) Public agency payments to be made under the contract may be made from revenues of the public agency's water, sewer, electric, or gas system or a combination of utility systems.

(c) Unless the ordinance or resolution authorizing the outstanding bonds of the public agency expressly reserves the right to accord contract payments a position of parity with, or a priority over, the public agency's bond requirements, the payments under a contract are subordinate to amounts required to be paid from the revenues of the utility system for principal of and interest on bonds of the public agency that are:

(1) outstanding at the time the contract is made; and

(2) payable from those revenues.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.033. ALTERNATIVE PAYMENT PROCEDURE USING TAX FUNDS. (a) A contract between a public agency and a county that is authorized by the public agency's governing body is an obligation against the public agency's taxing power to the extent provided by the contract if:

(1) the public agency holds an election according to applicable procedure provided by Chapter 1251, Government Code, relating to the issuance of bonds by a municipality; and

(2) at the election, it is determined that the public agency's governing body may levy an ad valorem tax to make any payments required of the public agency under the contract.

(b) Except for the levy of a tax under this section, an election is not required for the exercise of a power granted by this

chapter.

(c) Only qualified voters of the public agency are entitled to vote at an election held under this section, and except as otherwise provided by this section and by Chapter 1251, Government Code, the Election Code governs an election under this section.

(d) If the alternative procedure for payment provided by this section is followed, payments under the contract may be:

(1) payable from and are solely an obligation against the taxing power of the public agency; or

(2) payable both from taxes and from revenues as provided by the contract.

(e) If the alternative procedure of public agency payment to a county for disposal services provided by this section is not followed, the county or a holder of county bonds is not entitled to demand payment of the public agency's obligation from funds raised or to be raised by taxation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.270, eff. Sept. 1, 2001.

Sec. 364.034. SOLID WASTE DISPOSAL SERVICE; FEES. (a) A public agency or a county may:

(1) offer solid waste disposal service to persons in its territory, including, in the case of a county described by Section 364.011(a-2)(2), an area of the county located within the extraterritorial jurisdiction of a municipality if the municipality does not provide solid waste disposal services in that area;

(2) require the use of the service by those persons, except as provided by Subsection (a-1);

(3) charge fees for the service; and

(4) establish the service as a utility separate from other utilities in its territory.

(a-1) Notwithstanding Subsection (a)(2), a person is not required to use solid waste disposal services offered by a county to persons in an area of the county located within the extraterritorial jurisdiction of a municipality that does not provide solid waste disposal services in that area if:

(1) the person contracts for solid waste disposal services with a provider that meets rules adopted by the commission for the

regulation of solid waste disposal; or

(2) the person is a private entity that contracts to provide temporary solid waste disposal services to a construction site or project by furnishing a roll-off container used to transport construction waste or demolition debris to a facility for disposal or recycling.

(a-2) Subsection (a-1) does not affect the authority of a governmental entity to pursue actions under Subchapter B, Chapter 365, to address illegal dumping.

(b) A fee for a service provided under this section may be collected by:

(1) the county;

(2) a private or public entity that contracts with the county to provide the service; or

(3) another private or public entity that contracts with the county to collect the fees.

(c) A county may contract with a public or private utility to collect a fee for a service provided under this section. The contract may:

(1) require the billing of the fee within the bill for other utility services;

(2) allow a fee to be paid to the utility for billing and collecting the fee;

(3) require a system of accounting for fees collected by an entity other than the county; and

(4) contain other terms as agreed to by the parties.

(d) To aid enforcement of fee collection for the solid waste disposal service:

(1) a county or the public or private entity that has contracted with the county to provide the service may suspend service to a person who is delinquent in payment of solid waste disposal service fees until the delinquent claim is fully paid; and

(2) a public or private utility that bills and collects solid waste disposal service fees under this section may suspend service of that utility, in addition to the suspension of solid waste disposal service, to a person who is delinquent in the payment of the solid waste disposal service fee until the delinquent claim is fully paid.

(e) Except as provided by Subsections (f), (g), and (h), this section does not apply to a person who provides the public or private

entity, public agency, or county with written documentation that the person is receiving solid waste disposal services from another entity. Nothing in this section shall limit the authority of a public agency, including a county or a municipality, to enforce its grant of a franchise or contract for solid waste collection and transportation services within its territory. Except as provided by Subsection (f), the governing body of a municipality may provide that a franchise it grants or a contract it enters into for solid waste collection and transportation services under this subchapter or under other law supersedes inside of the municipality's boundaries any other franchise granted or contract entered into under this subchapter.

(f) Notwithstanding the other provisions of this section, a political subdivision, including a county or a municipality, may not restrict the right of an entity to contract with a licensed waste hauler for the collection and removal of domestic septage or of grease trap waste, grit trap waste, lint trap waste, or sand trap waste.

(g) Except as provided by this subsection, a person is exempt from the application of a requirement adopted by a public agency or county under Subsection (a) if the person, on the date the requirement is adopted, is receiving under a contract in effect on that date solid waste disposal services at a level that is the same as or higher than the level of services that otherwise would be required. The exception provided by this subsection does not apply to a requirement adopted under this section by a municipality. To qualify for the exemption provided by this subsection, the person must provide to the public agency or county written documentation acceptable to the public agency or county not later than the 30th day before the date the otherwise required services are scheduled to begin. The person who provides solid waste disposal services to a person who qualifies for the exemption shall notify the public agency or county that the services under the contract have stopped not later than the 15th day after the date those services are stopped for any reason.

(h) This section does not apply to a private entity that contracts to provide temporary solid waste disposal services to a construction project.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 2001, 77th Leg., ch. 1238, Sec. 1, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 271, Sec. 2, eff. June 18, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1394 (H.B. 1251), Sec. 1, eff. June 15, 2007.
Acts 2017, 85th Leg., R.S., Ch. 70 (S.B. 1229), Sec. 2, eff. May 22, 2017.
Acts 2017, 85th Leg., R.S., Ch. 143 (H.B. 1584), Sec. 2, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 9.001, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.002(11), eff. September 1, 2019.

Sec. 364.0341. SOLID WASTE DISPOSAL SERVICES IN EXTRATERRITORIAL JURISDICTION OF CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality wholly or partly located in a county with a population of more than 57,000 and less than 57,900.
(b) Notwithstanding Sections 364.011(a) and 364.034(a), a county may offer, require the use of, and charge a fee for solid waste disposal services in the extraterritorial jurisdiction of a municipality.
(c) A municipality may not provide solid waste disposal services or charge a fee for those services in the municipality's extraterritorial jurisdiction if the county provides those services under Subsection (b).

Added by Acts 2019, 86th Leg., R.S., Ch. 1240 (H.B. 3045), Sec. 1, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 98, eff. September 1, 2023.

Sec. 364.0345. PENALTIES FOR FAILURE TO USE REQUIRED SERVICE IN CERTAIN AREAS. The commissioners court of a county described by Section 364.011(a-2)(2) that requires the use of a county solid waste disposal service under Section 364.034 in the extraterritorial jurisdiction of a municipality may adopt orders to enforce the

requirement, including an order establishing a civil or administrative penalty in an amount reasonable and necessary to ensure compliance with the requirement.

Added by Acts 2017, 85th Leg., R.S., Ch. 70 (S.B. 1229), Sec. 3, eff. May 22, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.002(12), eff. September 1, 2019.

Sec. 364.035. PUBLIC AGENCY DUTY TO ADJUST RATES CHARGED. (a) A public agency shall establish, maintain, and adjust the rates charged by the public agency for solid waste disposal services if:

(1) the public agency executes a contract with a county under this chapter; and

(2) the payments under the contract are to be made either wholly or partly from the revenues of the public agency's solid waste disposal fund.

(b) The revenues of the public agency's solid waste disposal fund, and any taxes levied in support, must be sufficient to pay:

(1) the expense of operating and maintaining the solid waste disposal service or system; and

(2) the public agency's obligations to the county under the contract and in connection with bonds issued or that may be issued that are secured by revenues of the solid waste disposal service or system.

(c) A contract between a public agency and a county may require the use of consulting engineers and financial experts to advise the public agency whether and at what time rates are to be adjusted under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.036. AUTHORITY TO PROVIDE DISPOSAL SERVICES TO MORE THAN ONE PERSON. A contract or group of contracts under this chapter may provide that:

(1) a county may render concurrently to more than one person services relating to the construction or operation of all or part of a solid waste disposal system; and

(2) the cost of the services will be allocated among the several persons as determined by the contract or group of contracts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.037. AGREEMENTS WITH OTHER POLITICAL SUBDIVISIONS FOR COLLECTION OF PAST DUE UTILITY OR SOLID WASTE DISPOSAL SERVICES FEES. (a) A county or public agency that offers solid waste disposal services under this subchapter may enter an agreement for the collection of unpaid utility or solid waste disposal services fees with:

(1) another county or public agency that provides solid waste disposal services under this subchapter;

(2) a municipality that operates a utility system, as defined by Section 552.001, Local Government Code; or

(3) another political subdivision acting on behalf of a municipality, county, or public agency to assist in the collection of unpaid utility charges or solid waste disposal fees.

(b) The agreement may provide that a county or public agency:

(1) may refuse to provide solid waste disposal services to a person if the person is past due on utility charges or solid waste disposal services fees owed to another party to the agreement; or

(2) may collect an amount equal to the past due utility charges or solid waste disposal services fees owed to another party to the agreement plus a service charge and provide the solid waste disposal services the person requests.

(c) The agreement shall provide for:

(1) the confidentiality of a person's utility or solid waste disposal account information and the prevention of disclosure to a person or other entity that is not a party to the agreement; and

(2) the apportionment of any past due charges, fees, and service charges authorized by Subsection (b)(2) between the collecting entity and the entity to which the fees are owed.

Added by Acts 2003, 78th Leg., ch. 271, Sec. 3, eff. June 18, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(2), eff. April 1, 2009.

SUBCHAPTER D. BONDS

Sec. 364.051. AUTHORITY TO ISSUE BONDS. (a) To acquire, construct, improve, enlarge, and repair all or part of a solid waste disposal system, a county may issue bonds payable:

(1) from and secured by a pledge of all or part of the revenues to accrue under a contract entered into under this chapter; and

(2) from other income pledged by the county.

(b) Pending issuance of definitive bonds, a county may issue negotiable interim bonds or obligations eligible for exchange or substitution by use of the definitive bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.052. TERMS; FORM. (a) Bonds issued under this chapter must be in the form and denomination and bear the rate of interest prescribed by the commissioners court.

(b) The bonds may be:

(1) sold at a public or private sale at a price and on the terms determined by the commissioners court; or

(2) exchanged for property or an interest in property determined by the commissioners court to be necessary or convenient to the purposes authorized by this chapter.

(c) The bonds are investment securities under Chapter 8, Business & Commerce Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.053. APPROVAL AND REGISTRATION. (a) A county may submit bonds that have been authorized by the commissioners court and any record relating to their issuance to the attorney general for examination as to their validity. If the bonds state that they are secured by a pledge of proceeds of a contract between the county and a public agency, the county may submit to the attorney general a copy of the contract and the proceedings of the public agency authorizing the contract.

(b) If the attorney general finds that the bonds have been authorized and any contract has been made in accordance with state law, the attorney general shall approve the bonds and contract and

the comptroller shall register the bonds.

(c) Following approval and registration, the bonds and the contract are incontestable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.054. DISTRICT BOND VALIDATION BY SUIT. (a) As an alternative for, or in addition to, the procedure provided by Section 364.053, the board of directors of a district may validate its bonds by filing suit under Chapter 1205, Government Code.

(b) The interest rate and sale price of the bonds need not be fixed until after the termination of the validation proceedings or suit.

(c) If the proposed bonds recite that they are secured by the proceeds of a contract made by the district and one or more public agencies, the petition must allege that fact and the notice of the suit must mention that allegation and each public agency's fund or revenues from which the contract is payable.

(d) The suit is a proceeding in rem, and the judgment is res judicata as to the validity of the bonds and any contract and the pledge of revenues.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.271, eff. Sept. 1, 2001.

Sec. 364.055. INVESTMENT AND USE OF PROCEEDS. (a) The commissioners court may set aside from proceeds of a bond sale:

(1) interest to accrue on the bonds;

(2) administrative expenses to the estimated date when the solid waste disposal system will become revenue producing; and

(3) reserve funds created by the resolution authorizing the bonds.

(b) Proceeds from the sale of bonds may be invested, pending their use, in the securities or time deposits as specified by the resolution authorizing the issuance of the bonds or the trust indenture securing the bonds.

(c) The earnings on the investments may be applied as provided by the resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.056. REFUNDING OF BONDS. A county may refund bonds issued under this chapter on terms and conditions and bearing the rate of interest prescribed by the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.057. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Bonds issued under this chapter are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company;

(6) a fiduciary;

(7) a trustee; and

(8) a sinking fund of a municipality, school district, or any other political corporation or subdivision of the state.

(b) The bonds may secure the deposits of public funds of the state or of a political subdivision of the state. The bonds are lawful and sufficient security for those deposits in an amount up to their face value, if accompanied by all appurtenant unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.058. ADJUSTMENT OF RATES AND CHANGES TO MAINTAIN ADEQUATE REVENUE. If bonds are outstanding, the commissioners court shall establish, maintain, and collect rates and charges for services furnished or made available by the solid waste disposal system adequate to:

(1) pay maintenance and operation costs of and expenses allocable to the solid waste disposal system and the principal of and interest on the bonds; and

(2) provide and maintain funds created by the resolution authorizing the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 365. LITTER
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 365.001. SHORT TITLE. This chapter may be cited as the Texas Litter Abatement Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.002. WATER POLLUTION CONTROLLED BY WATER CODE. The pollution of water in the state is controlled by Chapter 26, Water Code, and other applicable law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.003. LITTER ON BEACHES CONTROLLED BY NATURAL RESOURCES CODE. The regulation of litter on public beaches is controlled by Subchapters C and D, Chapter 61, Natural Resources Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.004. DISPOSAL OF GARBAGE, REFUSE, AND SEWAGE IN CERTAIN AREAS UNDER CONTROL OF PARKS AND WILDLIFE DEPARTMENT. The Parks and Wildlife Commission may adopt rules to govern the disposal of garbage, refuse, and sewage in state parks, public water in state parks, historic sites, scientific areas, and forts under the control of the Parks and Wildlife Department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.005. VENUE AND RECOVERY OF COSTS. (a) Venue for the prosecution of a criminal offense under Subchapter B or Section 365.032 or 365.033 or for a suit for injunctive relief under any of those provisions is in the county in which the defendant resides, in the county in which the offense or the violation occurs, or in Travis County.

(b) If the attorney general or a local government brings a suit for injunctive relief under Subchapter B or Section 365.032 or 365.033, a prevailing party may recover its reasonable attorney fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 125, eff. Sept. 1, 1991.

SUBCHAPTER B. CERTAIN ACTIONS PROHIBITED

Sec. 365.011. DEFINITIONS. In this subchapter:

(1) "Approved solid waste site" means:

(A) a solid waste site permitted or registered by the Texas Commission on Environmental Quality;

(B) a solid waste site licensed by a county under Chapter 361; or

(C) a designated collection area for ultimate disposal at a permitted or licensed municipal solid waste site.

(2) "Boat" means a vehicle, including a barge, airboat, motorboat, or sailboat, used for transportation on water.

(3) "Commercial purpose" means the purpose of economic gain.

(4) "Commercial vehicle" means a vehicle that is operated by a person for a commercial purpose or that is owned by a business or commercial enterprise.

(5) "Dispose" and "dump" mean to discharge, deposit, inject, spill, leak, or place litter on or into land or water.

(6) "Litter" means:

(A) decayable waste from a public or private establishment, residence, or restaurant, including animal and vegetable waste material from a market or storage facility handling or storing produce or other food products, or the handling, preparation, cooking, or consumption of food, but not including sewage, body wastes, or industrial by-products; or

(B) nondecayable solid waste, except ashes, that consists of:

(i) combustible waste material, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials;

(ii) noncombustible waste material, including

glass, crockery, tin or aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures of 1800 degrees Fahrenheit or less; and

(iii) discarded or worn-out manufactured materials and machinery, including motor vehicles and parts of motor vehicles, tires, aircraft, farm implements, building or construction materials, appliances, and scrap metal.

(7) "Motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(8) "Public highway" means the entire width between property lines of a road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park:

(A) is opened to the public for vehicular traffic;

(B) is used as a public recreational area; or

(C) is under the state's legislative jurisdiction through its police power.

(9) "Solid waste" has the meaning assigned by Section 361.003.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 740, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.111, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.206, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 286, Sec. 1, eff. May 26, 1997.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 986 (S.B. 766), Sec. 17, eff. September 1, 2025.

Sec. 365.012. ILLEGAL DUMPING; DISCARDING LIGHTED MATERIALS; CRIMINAL PENALTIES. (a) A person commits an offense if the person disposes or allows or permits the disposal of litter or other solid waste at a place that is not an approved solid waste site, including a place on or within 300 feet of a public highway, on a right-of-way, on other public or private property, or into inland or coastal water of the state.

(a-1) A person commits an offense if:

(1) the person discards lighted litter, including a match,

cigarette, or cigar, onto open-space land, a private road or the right-of-way of a private road, a public highway or other public road or the right-of-way of a public highway or other public road, or a railroad right-of-way; and

(2) a fire is ignited as a result of the conduct described by Subdivision (1).

(b) A person commits an offense if the person receives litter or other solid waste for disposal at a place that is not an approved solid waste site, regardless of whether the litter or other solid waste or the land on which the litter or other solid waste is disposed is owned or controlled by the person.

(c) A person commits an offense if the person transports litter or other solid waste to a place that is not an approved solid waste site for disposal at the site.

(d) An offense under Subsection (a), (b), or (c) is a Class C misdemeanor if the litter or other solid waste to which the offense applies weighs five pounds or less or has a volume of five gallons or less.

(d-1) An offense under Subsection (a-1) is a misdemeanor under this subsection if the litter or other solid waste to which the offense applies weighs less than 500 pounds or has a volume of less than 100 cubic feet and is punishable by:

(1) a fine not to exceed $500;

(2) confinement in jail for a term not to exceed 30 days; or

(3) both such fine and confinement.

(e) An offense under Subsection (a), (b), or (c) is a Class B misdemeanor if the litter or other solid waste to which the offense applies weighs more than five pounds but less than 500 pounds or has a volume of more than five gallons but less than 100 cubic feet.

(f) An offense under this section is a Class A misdemeanor if:

(1) the litter or other solid waste to which the offense applies weighs 500 pounds or more but less than 1,000 pounds or has a volume of 100 cubic feet or more but less than 200 cubic feet; or

(2) the litter or other solid waste is disposed for a commercial purpose and weighs more than five pounds but less than 200 pounds or has a volume of more than five gallons but less than 200 cubic feet.

(g) An offense under this section is a state jail felony if the litter or solid waste to which the offense applies:

(1) weighs 1,000 pounds or more or has a volume of 200 cubic feet or more;

(2) is disposed of for a commercial purpose and weighs 200 pounds or more or has a volume of 200 cubic feet or more; or

(3) is contained in a closed barrel or drum.

(h) If it is shown on the trial of the defendant for an offense under this section that the defendant has previously been convicted of an offense under this section, the punishment for the offense is increased to the punishment for the next highest category.

(i) On conviction for an offense under this section, the court shall provide to the defendant written notice that a subsequent conviction for an offense under this section may result in the forfeiture under Chapter 59, Code of Criminal Procedure, of the vehicle used by the defendant in committing the offense.

(j) The offenses prescribed by this section include the unauthorized disposal of litter or other solid waste in a dumpster or similar receptacle.

(k) This section does not apply to the temporary storage for future disposal of litter or other solid waste by a person on land owned by that person, or by that person's agent. The commission by rule shall regulate temporary storage for future disposal of litter or other solid waste by a person on land owned by the person or the person's agent.

(l) This section does not apply to an individual's disposal of litter or other solid waste if:

(1) the litter or waste is generated on land the individual owns;

(2) the litter or waste is not generated as a result of an activity related to a commercial purpose;

(3) the disposal occurs on land the individual owns; and

(4) the disposal is not for a commercial purpose.

(m) A municipality or county may offer a reward of $50 for reporting a violation of this section that results in a prosecution under this section.

(n) An offense under this section may be prosecuted without alleging or proving any culpable mental state, unless the offense is a state jail felony.

(o) For purposes of a prosecution under Subsection (g), a generator creates a rebuttable presumption of lack of culpable mental state if the generator of the solid waste to be disposed of secures,

prior to the hauler's receipt of the solid waste, a signed statement from the hauler that the solid waste will be disposed of legally. The statement shall include the hauler's valid Texas driver's license number.

(p) It is an affirmative defense to prosecution under Subsection (a-1) that the person discarded the lighted litter in connection with controlled burning the person was conducting in the area into which the lighted litter was discarded.

(q) The operator of a public conveyance in which smoking tobacco is allowed shall post a sign stating the substance of Subsections (a-1) and (d-1) in a conspicuous place within any portion of the public conveyance in which smoking is allowed.

(r) If conduct that constitutes an offense under Subsection (a-1) also constitutes an offense under Subsection (a), the actor may be prosecuted only under Subsection (a-1). If conduct that constitutes an offense under Subsection (a-1) also constitutes an offense under Chapter 28, Penal Code, the actor may be prosecuted under Subsection (a-1) or Chapter 28, Penal Code, but not both.

(s) On conviction of an offense under this section, the court shall require the defendant, in addition to any fine or other penalty, to perform community service as provided by Article 42A.304(e), Code of Criminal Procedure.

(t) Chapter 15, Penal Code, applies to an offense under this section.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 740, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 828, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(28), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 286, Sec. 2, eff. May 26, 1997; Acts 2001, 77th Leg., ch. 995, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 430 (S.B. 1043), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 430 (S.B. 1043), Sec. 2, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 829 (H.B. 1884), Sec. 2, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 1099 (S.B. 1346), Sec. 1, eff. September 1, 2023.

Sec. 365.013. RULES AND STANDARDS; CRIMINAL PENALTY. (a) The Texas Commission on Environmental Quality shall adopt rules and standards regarding processing and treating litter disposed in violation of this subchapter.

(b) A person commits an offense if the person violates a rule adopted under this section.

(c) An offense under this section is a Class A misdemeanor.

(d) On conviction of an offense under this section, the court shall require the defendant, in addition to any fine or other penalty, to perform community service as provided by Article 42A.304(e), Code of Criminal Procedure.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.112, eff. Sept. 1, 1995.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 829 (H.B. 1884), Sec. 3, eff. September 1, 2017.

Acts 2025, 89th Leg., R.S., Ch. 986 (S.B. 766), Sec. 18, eff. September 1, 2025.

Sec. 365.014. APPLICATION OF SUBCHAPTER; DEFENSES; PRESUMPTIONS. (a) This subchapter does not apply to farmers:

(1) in handling anything necessary to grow, handle, and care for livestock; or

(2) in erecting, operating, and maintaining improvements necessary to handle, thresh, and prepare agricultural products or for conservation projects.

(b) A person who dumps more than five pounds or 13 gallons of litter or other solid waste from a commercial vehicle in violation of this subchapter is presumed to be dumping the litter or other solid waste for a commercial purpose.

(c) It is an affirmative defense to prosecution under Section 365.012 that:

(1) the storage, processing, or disposal took place on land owned or leased by the defendant;

(2) the defendant received the litter or other solid waste

from another person;

(3) the defendant, after exercising due diligence, did not know and reasonably could not have known that litter or other solid waste was involved; and

(4) the defendant did not receive, directly or indirectly, compensation for the receipt, storage, processing, or treatment.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 740, Sec. 3, eff. Sept. 1, 1993.

Sec. 365.015. INJUNCTION; VENUE; RECOVERY OF COSTS. (a) A district attorney, a county attorney, or the attorney general may bring a civil suit for an injunction to prevent or restrain a violation of this subchapter. A person affected or to be affected by a violation is entitled to seek injunctive relief to enjoin the violation.

(b) Venue for a prosecution of a criminal offense under this subchapter or for a civil suit for injunctive relief under this subchapter is in the county in which the defendant resides, the county in which the offense or violation occurred, or in Travis County.

(c) In a suit for relief under this section, the prevailing party may recover its reasonable attorney fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991.

Sec. 365.016. DISPOSAL OF LITTER IN A CAVE; CRIMINAL PENALTY. (a) A person commits an offense if the person disposes litter, a dead animal, sewage, or any chemical in a cave.

(b) An offense under this section is a Class C misdemeanor unless:

(1) it is shown on the trial of the defendant that the defendant previously has been convicted once of an offense under this section, in which event the offense is a Class A misdemeanor; or

(2) it is shown on the trial of the defendant that the

defendant previously has been convicted two or more times of an offense under this section, in which event the offense is a felony of the third degree.

(c) On conviction of an offense under this section, the court shall require the defendant, in addition to any fine or other penalty, to perform community service as provided by Article 42A.304(e), Code of Criminal Procedure.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 829 (H.B. 1884), Sec. 4, eff. September 1, 2017.

Sec. 365.017. REGULATION OF LITTER IN CERTAIN COUNTIES. (a) The commissioners court of a county may adopt regulations to control the disposal of litter and the removal of illegally dumped litter from private property in unincorporated areas of that county. The commissioners court may not adopt regulations under this section concerning the disposal of recyclable materials as defined in Chapter 361 of the Health and Safety Code.

(b) Prior to the adoption of regulations the commissioners court of a county must find that the proposed regulations are necessary to promote the public health, safety, and welfare of the residents of that county.

(c) The definitions of Section 365.011 apply in this Act. "Illegally dumped litter" means litter dumped anywhere other than in an approved solid waste site. "Litter" has the meaning assigned by Section 365.011, except that the term does not include equipment used for agricultural purposes.

(d) The regulations adopted by the commissioners court may require the record property owners to pay for the cost of removal after the commissioners court has given the record property owner 30 days written notice to remove the illegally dumped litter.

(e) Regulations adopted under this section are in addition to any other law regarding this issue and the stricter law shall apply.

(f) In addition to any other remedy provided by law, a district attorney, a county attorney, or the attorney general may bring a civil suit to enjoin violation of regulations adopted under this

section and to recover the costs of removal of illegally dumped litter. In such a suit the prevailing party may recover its reasonable attorney fees, court fees, and reasonable investigative costs incurred in relation to that proceeding.

Added by Acts 1993, 73rd Leg., ch. 828, Sec. 4, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 439, Sec. 1, eff. June 9, 1995.

SUBCHAPTER C. SPECIAL PROVISIONS

Sec. 365.031. LITTER, GARBAGE, REFUSE, AND RUBBISH IN LAKE SABINE. The governing body of Port Arthur by ordinance may prohibit the depositing or placing of litter, garbage, refuse, or rubbish into or on the waters of Lake Sabine within the municipal limits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.032. THROWING CERTAIN SUBSTANCES IN OR NEAR LAKE LAVON; CRIMINAL PENALTY. (a) The definitions provided by Section 365.011 apply to this section.

(b) A person commits an offense if the person throws, leaves, or causes to be thrown or left wastepaper, glass, metal, a tin can, refuse, garbage, waste, discarded or soiled personal property, or any other noxious or poisonous substance in the water of or near Lake Lavon in Collin County if the substance is detrimental to fish or to a person fishing in Lake Lavon.

(c) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.033. DISCARDING REFUSE IN CERTAIN COUNTY PARKS; CRIMINAL PENALTY. (a) The definitions provided by Section 365.011 apply to this section.

(b) In this section, "beach" means an area in which the public has acquired a right of use or an easement and that borders on the seaward shore of the Gulf of Mexico or extends from the line of mean

low tide to the line of vegetation bordering on the Gulf of Mexico.

(c) This section applies only to a county park located in a county that has the Gulf of Mexico as one boundary, but does not apply to a beach located in that park.

(d) A person commits an offense if the person discards in a county park any junk, garbage, rubbish, or other refuse in a place that is not an officially designated refuse container or disposal unit.

(e) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.034. COUNTY REGULATION OF LITTER NEAR PUBLIC HIGHWAY; CRIMINAL PENALTY. (a) The commissioners court of a county may:

(1) by order prohibit the accumulation of litter for more than 30 days on a person's property within 50 feet of a public highway in the county;

(2) provide for the removal and disposition of litter accumulated near a public highway in violation of an order adopted under this section; and

(3) provide for the assessment against a person who owns the property from which litter is removed under Subdivision (2) of the costs incurred by the county in removing and disposing of the litter.

(b) Before the commissioners court takes any action to remove or dispose of litter under this section, the court shall send a notice by certified mail to the record owners of the property on which the litter is accumulated in violation of an order adopted under this section. The court may not remove or dispose of the litter or assess the costs of the removal or disposition against a property owner before the 30th day after the date the notice is sent under this subsection.

(c) If a person assessed costs under this section does not pay the costs within 60 days after the date of assessment:

(1) a lien in favor of the county attaches to the property from which the litter was removed to secure the payment of the costs

and interest accruing at an annual rate of 10 percent on any unpaid part of the costs; and

(2) the commissioners court shall file a record of the lien in the office of the county clerk.

(d) The violation of an order adopted under this section is a Class C misdemeanor.

(e) In this section:

(1) "Litter" has the meaning assigned by Section 365.011 except that the term does not include equipment used for agricultural purposes.

(2) "Public highway" has the meaning assigned by Section 365.011.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 126, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.162, eff. Sept. 1, 1991.

Sec. 365.035. PROHIBITION ON POSSESSING GLASS CONTAINERS WITHIN BOUNDARY OF STATE-OWNED RIVERBED; PENALTIES. (a) In this section, "glass container" means a glass container designed to contain a beverage, including a bottle or jar.

(b) A person commits an offense if the person knowingly possesses a glass container within the boundaries of a state-owned riverbed in a county:

(1) that is located within 85 miles of an international border; and

(2) in which at least four rivers are located.

(c) An offense under this section is a Class C misdemeanor.

(d) It is a defense to prosecution under Subsection (b) that the person who possessed the glass container:

(1) did not transport the glass container into the boundaries of the riverbed;

(2) possessed the glass container only for the purpose of lawfully disposing of the glass container in a designated waste receptacle; or

(3) is the owner of property adjacent to the section of the riverbed in which the person possessed the glass container.

(e) It is an exception to the application of Subsection (b) that the person possessed the glass container only for the purpose of

water sampling or conducting scientific research as authorized by:

(1) a governmental entity;

(2) a utility as defined by Section 11.004, Utilities Code;

(3) a retail public utility as defined by Section 13.002, Water Code;

(4) a power generation company as defined by Section 31.002, Utilities Code;

(5) a surface coal mining and reclamation operation, as defined by Section 134.004, Natural Resources Code; or

(6) a school-sponsored or university-sponsored educational activity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1124 (H.B. 218), Sec. 1, eff. September 1, 2011.

CHAPTER 366. ON-SITE SEWAGE DISPOSAL SYSTEMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 366.001. POLICY AND PURPOSE. It is the public policy of this state and the purpose of this chapter to:

(1) eliminate and prevent health hazards by regulating and properly planning the location, design, construction, installation, operation, and maintenance of on-site sewage disposal systems;

(2) authorize the commission or authorized agent to impose and collect a permit fee for:

(A) construction, installation, alteration, repair, or extension of on-site sewage disposal systems; and

(B) tests, designs, and inspections of those systems;

(3) authorize the commission or authorized agent to impose a penalty for a violation of this chapter or a rule adopted under this chapter;

(4) authorize the commission to license or register certain persons; and

(5) allow the individual owner of a disposal system to install and repair the system in accordance with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 880, Sec. 21, eff. Sept. 1, 2001.

Sec. 366.002. DEFINITIONS. In this chapter:

(1) "Authorized agent" means a local governmental entity authorized by the commission to implement and enforce rules under this chapter.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3), (4) Repealed by Acts 2001, 77th Leg., ch. 880, Sec. 25(2), eff. Sept. 1, 2001.

(5) "Local governmental entity" means a municipality, county, river authority, or special district, including an underground water district, soil and water conservation district, or public health district.

(6) "Nuisance" means:

(A) sewage, human excreta, or other organic waste discharged or exposed in a manner that makes it a potential instrument or medium in the transmission of disease to or between persons; or

(B) an overflowing septic tank or similar device, including surface discharge from or groundwater contamination by a component of an on-site sewage disposal system, or a blatant discharge from an on-site sewage disposal system.

(7) "On-site sewage disposal system" means one or more systems of treatment devices and disposal facilities that:

(A) produce not more than 5,000 gallons of waste each day; and

(B) are used only for disposal of sewage produced on a site on which any part of the system is located.

(8) "Owner" means a person who owns a building or other property served by an on-site sewage disposal system.

(9) "Sewage" means waste that:

(A) is primarily organic and biodegradable or decomposable; and

(B) generally originates as human, animal, or plant waste from certain activities, including the use of toilet facilities, washing, bathing, and preparing food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.038, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 589, Sec. 1 to 3, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995;

Acts 1997, 75th Leg., ch. 1127, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 880, Sec. 25(2), eff. Sept. 1, 2001.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 986 (S.B. 766), Sec. 19, eff. September 1, 2025.

Sec. 366.003. IMMUNITY. The commission, an authorized agent, or a designated representative is not liable for damages resulting from the commission's or authorized agent's approval of the installation and operation of an on-site sewage disposal system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.004. COMPLIANCE REQUIRED. A person may not construct, alter, repair, or extend, or cause to be constructed, altered, repaired, or extended, an on-site sewage disposal system that does not comply with this chapter and applicable rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.005. NOTICE OF UTILITY SERVICE CONNECTIONS. (a) An electric utility shall compile a list weekly for each county in this state of the addresses located in an unincorporated area of the county at which the electric utility has made new electric service connections during the preceding week. The electric utility shall submit the list to the county judge of the county, or to a county officer or employee designated by the county judge, who shall forward the list to each authorized agent having jurisdiction over an area in which an address on the list is included. The authorized agent may use the list for the purpose of implementing and enforcing rules under this chapter. This section does not apply to a reconnection of service to a location previously served.

(b) An electric utility may not be held liable for a claim arising from the provision of information under this section.

(c) Information provided by a utility under this section is confidential and not subject to disclosure under Chapter 552,

Government Code, or otherwise, except as provided by this section.

(d) The county judge shall forward the list compiled under Subsection (a) to each appraisal district and each emergency communication district in the county.

(e) In this section:

(1) "Appraisal district" means a district established under Section 6.01, Tax Code.

(2) "Electric utility" means an investor-owned utility, electric cooperative corporation, river authority, or municipally owned utility that provides distribution service to retail customers of electricity.

(3) "Emergency communication district" means a district established under Chapter 772.

Added by Acts 1997, 75th Leg., ch. 1127, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 15, Sec. 1, eff. May 3, 1999; Acts 1999, 76th Leg., ch. 333, Sec. 1, eff. Sept. 1, 1999.

Sec. 366.006. CERTAIN LEASED LAND OWNED BY FEDERAL GOVERNMENT. (a) If a tract of land owned by the federal government contains separately leased individual parts, each leased part is considered a separate tract of land for purposes of this chapter or a rule adopted under this chapter.

(b) The commission may adopt rules as necessary to administer this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 258 (H.B. 1680), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF COMMISSION AND AUTHORIZED AGENTS

Sec. 366.011. GENERAL SUPERVISION AND AUTHORITY. The commission or authorized agents:

(1) have general authority over the location, design, construction, installation, and proper functioning of on-site sewage disposal systems; and

(2) shall administer this chapter and the rules adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.012. RULES CONCERNING ON-SITE SEWAGE DISPOSAL SYSTEMS. (a) To assure the effective and efficient administration of this chapter, the commission shall:

(1) adopt rules governing the installation of on-site sewage disposal systems, including rules concerning the:

(A) review and approval of on-site sewage disposal systems; and

(B) temporary waiver of a permit for an emergency repair; and

(2) adopt rules under this chapter that:

(A) encourage the use of economically feasible alternative techniques and technologies for on-site sewage disposal systems that can be used in soils not suitable for conventional on-site sewage disposal;

(B) address the separation of graywater, as defined by Section 341.039, in a residence served by an on-site sewage disposal system;

(C) allow for an adjustment in the size required of an on-site sewage disposal system if the system is used in conjunction with a graywater system that complies with the rules adopted under Section 341.039;

(D) require on-site sewage disposal systems, including risers and covers, installed after September 1, 2012, to be designed to prevent access to the system by anyone other than:

(i) the owner of the system; or

(ii) a person described by Section 366.071(a) or (b);

(E) for a county with a population of at least 350,000 and not more than 370,000 that is adjacent to the Gulf of Mexico and adjacent to a county with a population of at least 3.3 million, allow for the installation of aerobic drip emitter systems on subdivided or platted properties less than one-half acre in size serving single-family residences supplied by a public drinking water system if site-specific planning materials have been:

(i) submitted by a licensed engineer or registered sanitarian; and

(ii) approved by the appropriate authorized agent; and

(F) for a county with a population of more than 40,000 and less than 50,000 that borders the Red River along the Oklahoma state line and has a major interstate road running through it, allow for the installation of aerobic drip emitter systems on subdivided or platted properties less than one-half acre in size, serving single-family residences supplied by a public drinking water system if site-specific planning materials have been:

(i) submitted by a licensed engineer or registered sanitarian; and

(ii) approved by the appropriate authorized agent.

(b) In rules adopted under this chapter, the commission shall include definitions and detailed descriptions of good management practices and procedures for the construction of on-site sewage disposal systems that:

(1) justify variation in field size or in other standard requirements;

(2) promote the use of good management practices or procedures in the construction of on-site sewage disposal systems;

(3) require the use of one or more specific management practices or procedures as a condition of approval of a standard on-site sewage disposal system if, in the opinion of the commission or authorized agent, site conditions or other problems require the use of additional management practices or procedures to ensure the proper operation of an on-site sewage disposal system; and

(4) make available general, operational information to the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 880, Sec. 22, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 689, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 220 (H.B. 240), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 545 (H.B. 1902), Sec. 2, eff. June 16, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1018 (H.B. 4087), Sec. 1, eff. September 1, 2023.

Sec. 366.013. INSTALLATION AND USE OF WATER SOFTENERS AND REVERSE OSMOSIS SYSTEMS. (a) Except as provided by Subsection (b), an owner may install or use a water softener that discharges effluent into an on-site sewage disposal system only if the installed water softener:

(1) conserves water by design;

(2) regenerates using a demand-initiated regeneration control device, commonly known as a DIR device; and

(3) is clearly labeled as being equipped with a DIR device, with the label affixed to the outside of the system so that it may be inspected and easily read.

(b) An owner may use a water softener that discharges effluent into an on-site sewage disposal system and that does not meet the requirements of Subsection (a) if the water softener was installed before September 1, 2003. The owner must replace the water softener with a water softener that meets the requirements of Subsection (a) if the owner:

(1) replaces the water softener; or

(2) installs a new on-site sewage disposal system for the building or other property served by the existing system.

(c) An owner may install and use a point-of-use reverse osmosis system that discharges effluent into an on-site sewage disposal system.

(d) An owner may install and use a point-of-entry reverse osmosis system that discharges effluent into an on-site sewage disposal system if the calculated volume of effluent:

(1) does not cause hydraulic overloading; or

(2) has been adequately addressed in the design of the on-site sewage disposal system.

(e) This section does not apply to an aerobic, nonstandard, or proprietary on-site sewage treatment system unless the water softener drain line to the system bypasses the treatment system and flows into the pump tank or directly into the discharge method.

(f) The commission by rule shall adopt and implement standards for the use of water softeners and reverse osmosis systems in a building or other property served by an on-site sewage disposal system.

Added by Acts 2003, 78th Leg., ch. 966, Sec. 1, eff. Sept. 1, 2003.

Sec. 366.014. DESIGNATED PERSON. Subject to the requirements of Section 366.071(b), the commission or an authorized agent may designate a person to:

(1) review permit applications, site evaluations, or planning materials; or

(2) inspect on-site sewage disposal systems.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 589, Sec. 4, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 59, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 880, Sec. 23, eff. Sept. 1, 2001.

Sec. 366.016. EMERGENCY ORDERS. The commission or authorized agent may issue an emergency order concerning an on-site sewage disposal system under Section 5.513, Water Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 38, eff. Sept. 1, 1997. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.011, eff. September 1, 2009.

Sec. 366.017. REQUIRED REPAIRS; PENALTY. (a) The commission or authorized agent may require a property owner to repair a malfunctioning on-site sewage disposal system on the owner's property:

(1) not later than the 30th day after the date on which the owner is notified by the commission or authorized agent of the malfunctioning system if the owner has not been notified of the malfunctioning system during the preceding 12 months;

(2) not later than the 20th day after the date on which the owner is notified by the commission or authorized agent of the malfunctioning system if the owner has been notified of the malfunctioning system once during the preceding 12 months; or

(3) not later than the 10th day after the date on which the owner is notified by the commission or authorized agent of the malfunctioning system if the owner has been notified of the malfunctioning system at least twice during the preceding 12 months.

(b) The property owner must take adequate measures as soon as practicable to abate an immediate health hazard.

(c) The property owner may be assessed an administrative or a civil penalty under Chapter 7, Water Code, for each day that the on-site sewage disposal system remains unrepaired.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 39, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1127, Sec. 3, eff. Sept. 1, 1997.

SUBCHAPTER C. DESIGNATION OF LOCAL GOVERNMENTAL ENTITY AS AUTHORIZED AGENT

Sec. 366.031. DESIGNATION. (a) The commission shall designate a local governmental entity as an authorized agent if the governmental entity:

(1) notifies the commission that the entity wants to regulate the use of on-site sewage disposal systems in its jurisdiction;

(2) in accordance with commission procedures, holds a public hearing and adopts an order or resolution that complies with Section 366.032; and

(3) submits the order or resolution to the commission.

(b) The commission in writing may approve the local governmental entity's order or resolution, and the designation takes effect only when the order or resolution is approved.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.032. ORDER OR RESOLUTION; REQUIREMENTS. (a) The local governmental entity's order or resolution must:

(1) incorporate the commission's rules on abatement or prevention of pollution and the prevention of injury to the public health;

(2) meet the commission's minimum requirements for on-site sewage disposal systems; and

(3) include a written enforcement plan.

(b) If the order or resolution adopts more stringent standards for on-site sewage disposal systems than this chapter or the commission's standards and provides greater public health and safety protection, the authorized agent's order or resolution prevails over this chapter or the standards.

(c) An authorized agent must obtain commission approval of substantive amendments to the agent's order or resolution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.033. DELEGATION TO LOCAL GOVERNMENTAL ENTITIES. The commission shall delegate to local governmental entities responsibility for the implementation and enforcement of applicable rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.034. INVESTIGATION OF AUTHORIZED AGENTS. (a) The commission shall:

(1) conduct not more often than once a year an investigation of each authorized agent to determine the authorized agent's compliance with this chapter; and

(2) prepare an annual report concerning the status of the local governmental entity's regulatory program.

(b) If the commission determines that an authorized agent does not consistently enforce the commission's minimum requirements for on-site sewage disposal systems, the commission shall hold a hearing and determine whether to continue the designation as an authorized agent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.035. MANDATORY APPLICATION FOR AND MAINTENANCE OF DESIGNATION. A local governmental entity that applies to the Texas Water Development Board for financial assistance under a program for economically distressed areas must take all actions necessary to receive and maintain a designation as an authorized agent of the commission.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 127, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.036. COUNTY MAP. (a) If the commission designates a local governmental entity as its authorized agent and if the entity intends to apply to the Texas Water Development Board for financial assistance under a program for economically distressed areas, the commissioners court of the county in which the entity is located shall prepare a map of the county area outside the limits of municipalities. The entity shall give to the commissioners court a written notice of the entity's intention to apply for the assistance. The map must show the parts of the area in which the different types of on-site sewage disposal systems may be appropriately located and the parts in which the different types of systems may not be appropriately located.

(b) The commissioners court shall file the map in the office of the county clerk.

(c) The commissioners court, at least every five years, shall review the map and make changes to it as necessary to keep the map accurate.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 127, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

SUBCHAPTER D. PERMITS; FEES

Sec. 366.051. PERMITS. (a) A person must hold a permit and an approved plan to construct, alter, repair, extend, or operate an on-site sewage disposal system.

(b) If the on-site sewage disposal system is located in the jurisdiction of an authorized agent, the permit is issued by the

authorized agent; otherwise, the permit is issued by the commission.

(c) A person may not begin to construct, alter, repair, or extend an on-site sewage disposal system that is owned by another person unless the owner or owner's representative shows proof of a permit and approved plan from the commission or authorized agent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.0512. MULTIPLE TREATMENT SYSTEMS. A multiple system of treatment devices and disposal facilities may be permitted as an on-site disposal system under this chapter if the system:

(1) is located on a tract of land of at least 100 acres in size;

(2) produces not more than 5,000 gallons a day on an annual average basis;

(3) is used only on a seasonal or intermittent basis; and

(4) is used only for disposal of sewage produced on the tract of land on which any part of the system is located.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 20.03, eff. Sept. 1, 2001.

Sec. 366.0513. PERMITS FOR CERTAIN TEMPORARY SYSTEMS. (a) An authorized agent may issue a permit to authorize the use of a temporary on-site sewage disposal system that:

(1) operates in conjunction with the pumping and hauling of wastewater produced by the system; and

(2) serves a property that:

(A) has been subdivided for residential use; and

(B) is of insufficient size to accommodate on-site disposal of all wastewater in compliance with this chapter.

(b) A permit issued under this section:

(1) may authorize the use of a system and the associated pumping and hauling activities described by Subsection (a) for not more than six months from the date of issuance; and

(2) may not be renewed.

Added by Acts 2023, 88th Leg., R.S., Ch. 1018 (H.B. 4087), Sec. 2,

eff. September 1, 2023.

Sec. 366.0515. MAINTENANCE CONTRACT AND PERFORMANCE BOND. (a) Except as provided by Subsection (g), an authorized agent or the commission may not condition a permit or the approval of a permit for an on-site sewage disposal system using aerobic treatment for a single-family residence on the system's owner contracting for the maintenance of the system.

(b) Except as provided by Subsection (a), an authorized agent by order or resolution or the commission by rule may condition approval of a permit for an on-site sewage disposal system on the system's owner contracting for the maintenance of the system. If a maintenance contract is required, the owner of the on-site sewage disposal system must submit to the permitting authority:

(1) a signed contract for the maintenance of the on-site sewage disposal system; and

(2) if the on-site sewage disposal system is located in a county with a population of more than 2.8 million, a performance bond obtained from the person with whom the owner of the on-site sewage disposal system has contracted for maintenance of the system.

(c) A performance bond required by Subsection (b) must be:

(1) solely for the protection of the owner of the on-site sewage disposal system;

(2) conditioned on the faithful performance of the maintenance of the on-site sewage disposal system in accordance with plans, specifications, laws, regulations, and ordinances of the state and the authorized agent;

(3) in an amount reasonably related to the cost that the owner of the on-site sewage disposal system would incur if the maintenance company did not adhere to maintenance standards or comply with applicable statutes, rules, or ordinances;

(4) executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code);

(5) in a form approved by the permitting authority; and

(6) payable to the owner of the on-site sewage disposal system.

(d) If the owner of the on-site sewage disposal system enters into a new maintenance contract or revises the original maintenance

contract, the owner must submit a copy of the new or revised maintenance contract and a new performance bond to the permitting authority not later than the 30th day after the date on which the original contract terminates or is modified.

(e) The permitting authority may establish and collect a reasonable fee to cover the cost of administering the performance bond program.

(f) The installer of an on-site sewage disposal system shall provide the owner of the system with information regarding maintenance of the system at the time the system is installed.

(g) The owner of a single-family residence shall maintain the system directly or through a maintenance contract. If an authorized agent or the commission determines that an owner of a single-family residence located in a county with a population of at least 40,000 who maintains the owner's system directly has violated this chapter or a rule adopted or order or permit issued under this chapter, the owner, not later than the 10th day after the date of receipt of notification of the violation, shall correct the violation or enter into a contract for the maintenance of the system. If before the third anniversary of the date of the determination the owner is determined to have committed another violation of this chapter or a rule adopted under this chapter, the owner, not later than the 10th day after the date of receipt of notification of the subsequent violation, shall enter into a contract for the maintenance of the system. An owner of a single-family residence located in a county with a population of at least 40,000 who maintains the owner's system directly and who violates this chapter or a rule adopted or order or permit issued under this chapter is also subject to an administrative penalty. The commission may recover the penalty in a proceeding conducted as provided by Subchapter C, Chapter 7, Water Code, or the authorized agent may recover the penalty in a proceeding conducted under an order or resolution of the agent. Notwithstanding Section 7.052, Water Code, the amount of the penalty may not exceed $100.

(h) Repealed by Acts 2007, 80th Leg., R.S., Ch. 892, Sec. 3, eff. September 1, 2007.

(i) Repealed by Acts 2007, 80th Leg., R.S., Ch. 892, Sec. 3, eff. September 1, 2007.

(j) Repealed by Acts 2007, 80th Leg., R.S., Ch. 892, Sec. 3, eff. September 1, 2007.

(k) If, under Subsection (b), an authorized agent or the

commission conditions approval of a permit for an on-site sewage disposal system using aerobic treatment on the system's owner contracting for the maintenance of the system, the order, resolution, or rule may require the maintenance company to:

(1) inspect the system at specified intervals;

(2) submit a report on each inspection to the authorized agent or commission; and

(3) provide a copy of each report submitted under Subdivision (2) to the system's owner.

(l) A maintenance company that violates a provision of an order, resolution, or rule described by Subsection (k) is subject to an administrative penalty. The commission may recover the penalty in a proceeding conducted as provided by Subchapter C, Chapter 7, Water Code, or the authorized agent may recover the penalty in a proceeding conducted under an order or resolution of the agent. Notwithstanding Section 7.052, Water Code, the amount of the penalty for the first violation of that order, resolution, or rule is $200, and the amount of the penalty for each subsequent violation is $500.

(m) If a maintenance company violates an order, resolution, or rule described by Subsection (k) three or more times, the commission, in the manner provided by Subchapter G, Chapter 7, Water Code, may revoke the license or registration of the maintenance company or any person employed by the maintenance company issued under:

(1) Section 26.0301, Water Code;

(2) Chapter 37, Water Code; or

(3) Section 366.071 of this code.

(n) Repealed by Acts 2007, 80th Leg., R.S., Ch. 892, Sec. 3, eff. September 1, 2007.

(o) Repealed by Acts 2007, 80th Leg., R.S., Ch. 892, Sec. 3, eff. September 1, 2007.

Added by Acts 1997, 75th Leg., ch. 1127, Sec. 4, eff. Sept. 1, 1997. Amended by:

Acts 2005, 79th Leg., Ch. 1129 (H.B. 2510), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 892 (H.B. 2482), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 892 (H.B. 2482), Sec. 3, eff. September 1, 2007.

Sec. 366.052. PERMIT NOT REQUIRED FOR ON-SITE SEWAGE DISPOSAL ON CERTAIN SINGLE RESIDENCES. (a) Sections 366.051, 366.053, 366.054, and 366.057 do not apply to an on-site sewage disposal system of a single residence that is located on a land tract that is 10 acres or larger in which the field line or sewage disposal line is not closer than 100 feet of the property line.

(b) Effluent from the on-site sewage disposal system on a single residence:

(1) must be retained in the specified limits;

(2) may not create a nuisance; and

(3) may not pollute groundwater.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.053. PERMIT APPLICATION. (a) Application for a permit must:

(1) be made on a form provided by the commission or authorized agent; and

(2) include information required by the commission or authorized agent to establish that the individual sewage disposal system complies with this chapter and rules adopted under this chapter.

(b) The commission shall adopt rules and procedures for the submission, review, and approval or rejection of permit applications.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.054. NOTICE FROM INSTALLER. An installer may not begin construction, alteration, repair, or extension of an on-site sewage disposal system unless the installer notifies the commission or authorized agent of the date on which the installer plans to begin work on the system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.055. INSPECTIONS. (a) The commission or authorized agent shall review a proposal for an on-site sewage disposal system and make inspections of the system as necessary to ensure that the on-site sewage disposal system is in substantial compliance with this chapter and the rules adopted under this chapter.

(b) An on-site sewage disposal system may not be used unless it is inspected and approved by the commission or the authorized agent.

(c) A holder of a permit issued under this chapter shall notify the commission, the authorized agent, or a designated representative not later than the fifth working day before the proposed date of the operation of an installation that the installation is ready for inspection.

(d) The inspection shall be made on a date and time mutually agreed on by the holder of a permit and the commission, the authorized agent, or a designated representative.

(e) An installation inspection shall be made not later than the second working day, excluding holidays, after the date on which notification that the installation is completed and ready for inspection is given to the commission, the authorized agent, or a designated representative.

(f) The owner, owner's representative, or occupant of the property on which the installation is located shall give the commission, the authorized agent, or a designated representative reasonable access to the property at reasonable times to make necessary inspections.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.056. APPROVAL OF ON-SITE SEWAGE DISPOSAL SYSTEM. (a) The commission or authorized agent may approve or disapprove the on-site sewage disposal system depending on the results of the inspections under Section 366.055.

(b) If a system is not approved under this section, the on-site sewage disposal system may not be used until all deficiencies are corrected and the system is reinspected and approved by the commission or authorized agent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.057. PERMIT ISSUANCE. (a) The commission shall issue or authorize the issuance of permits and other documents.

(b) A permit and approved plan to construct, alter, repair, extend, or operate an on-site sewage disposal system must be issued in the name of the person who owns the system and must identify the specific property location or address for the specific construction, alteration, extension, repair, or operation proposed by the person.

(c) The commission may not issue a permit to construct, alter, repair, or extend an on-site sewage disposal system if the issuance of a permit conflicts with other applicable laws or public policy under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.058. PERMIT FEE. (a) The commission by rule shall establish and collect a reasonable permit fee to cover the cost of issuing permits under this chapter and administering the permitting system. The commission may also use the fee to cover any other costs incurred to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Section 5.701(q), Water Code.

(b) The commission at its discretion may provide variances to the uniform application of the permit fee.

(c) Fees collected under this section shall be deposited to the credit of the water resource management account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 60, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 3.08, eff. Sept. 1, 2001.

Sec. 366.059. PERMIT FEE PAID TO DEPARTMENT OR AUTHORIZED AGENT. (a) The permit fee shall be paid to the authorized agent or the commission, whichever performs the permitting function.

(b) The commission may assess a reasonable and appropriate

charge-back fee, not to exceed $500, to a local governmental entity for which the commission issues permits for administrative costs relating to the permitting function that are not covered by the permit fees collected. The commission shall base the amount of a charge-back fee under this subsection on the actual cost of issuing a permit under this section. The commission may assess a charge-back fee to a local governmental entity under this subsection if the local governmental entity is an authorized agent that:

(1) has repealed the order, ordinance, or resolution that established the entity as an authorized agent; or

(2) has had its authorization as an authorized agent revoked by the commission.

(c) Fees collected under this section shall be deposited to the credit of the water resource management account.

(d) The commission may not assess a charge-back fee to a local governmental entity if the local governmental entity has repealed the order, ordinance, or resolution that established the entity as an authorized agent or has lost its designation as an authorized agent due to material change in the commission's rules under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 61, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 3.09, eff. Sept. 1, 2001.

SUBCHAPTER E. REGISTRATION OF INSTALLERS

Sec. 366.071. OCCUPATIONAL LICENSING AND REGISTRATION. (a) A person who constructs, installs, alters, extends, services, maintains, or repairs an on-site sewage disposal system or any part of an on-site sewage disposal system for compensation must hold a license or registration issued by the commission under Chapter 37, Water Code.

(b) A person designated by an authorized agent under Section 366.014 must hold a license issued by the commission under Chapter 37, Water Code.

(c) A person who conducts preconstruction site evaluations, including visiting a site and performing a soil analysis, a site survey, or other activities necessary to determine the suitability of a site for an on-site sewage disposal system must hold a license

issued by the commission under Chapter 37, Water Code, unless the person is licensed by the Texas Board of Professional Engineers and Land Surveyors as an engineer.

(d) The commission may implement a program under Chapter 37, Water Code, to register persons who service or maintain on-site sewage disposal systems for compensation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 589, Sec. 5, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 880, Sec. 24.

Amended by:

Acts 2005, 79th Leg., Ch. 1129 (H.B. 2510), Sec. 2, eff. September 1, 2006.

Acts 2005, 79th Leg., Ch. 1129 (H.B. 2510), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 892 (H.B. 2482), Sec. 2, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 2.09, eff. September 1, 2019.

SUBCHAPTER F. PENALTIES

Sec. 366.092. INJUNCTION OR CIVIL SUIT. (a) If it appears that a person has violated, is violating, or is threatening to violate any provision of this chapter, or any rule, permit, or other order of the commission issued pursuant to this chapter, an authorized agent or, at the request of the commission, the attorney general may bring a civil suit for:

(1) mandatory or prohibitory injunctive relief, as warranted by the facts;

(2) a civil penalty as provided by this chapter; or

(3) both injunctive relief and civil penalty.

(b) Repealed by Acts 1997, 75th Leg., ch. 1072, Sec. 60(b)(4), eff. Sept. 1, 1997.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 589, Sec. 7, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 1127, Sec. 5, eff. Sept. 1, 1997.

Sec. 366.0922. COMMISSION ENFORCEMENT AT LOCAL GOVERNMENT REQUEST. A local government may request that the commission initiate an enforcement action under this chapter through a petition filed with the commission. If the commission chooses to initiate an enforcement action on behalf of a local government, civil penalties recovered shall be divided between the local government and the state based on the proportion of resources expended by each entity in the course of enforcement action.

Added by Acts 1993, 73rd Leg., ch. 589, Sec. 8, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 1127, Sec. 6, eff. Sept. 1, 1997.

Sec. 366.0923. FEES AND COSTS RECOVERABLE. If an authorized agent or the state prevails in a suit under this subchapter, it may recover reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Added by Acts 1993, 73rd Leg., ch. 589, Sec. 8, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 1127, Sec. 7, eff. Sept. 1, 1997.

CHAPTER 367. ON-SITE WASTEWATER TREATMENT RESEARCH

Sec. 367.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "On-site wastewater treatment system" means a system of treatment devices or disposal facilities that:

(A) is used for the disposal of domestic sewage, excluding liquid waste resulting from the processes used in industrial and commercial establishments;

(B) is located on the site where the sewage is produced; and

(C) produces not more than 5,000 gallons of waste a day.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.039, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.116, eff. Sept. 1, 1995;

Acts 1995, 74th Leg., ch. 347, Sec. 1, eff. Aug. 28, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 8.02, eff. September 1, 2011.

Sec. 367.007. ADMINISTRATION. (a) The commission may accept grants and donations from other sources to supplement the fees collected under Section 367.010. Grants and donations shall be deposited to the credit of the water resource management account and may be disbursed as the commission directs and in accordance with Section 367.008.

(b) Administrative and facilities support costs are payable from the water resources management account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.041, eff. Dec. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.118, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 347, Sec. 2, eff. Aug. 28, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 8.03, eff. September 1, 2011.

Sec. 367.008. AWARD OF COMPETITIVE GRANTS. (a) The commission shall establish procedures for awarding competitive grants and disbursing grant money.

(b) The commission shall award competitive grants to support applied research and demonstration projects by accredited colleges and universities in this state, by other governmental entities, or by acceptable public or private research centers regarding on-site wastewater treatment technology and systems applicable to this state that are directed toward improving the quality of wastewater treatment and reducing the cost of providing wastewater treatment to consumers, including wastewater reuse.

(c) The commission shall seek the advice of relevant experts when choosing research topics and awarding grants under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.042, eff. Dec. 1, 1991.

Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 8.04, eff. September 1, 2011.
Acts 2017, 85th Leg., R.S., Ch. 867 (H.B. 2771), Sec. 1, eff. September 1, 2017.

Sec. 367.009. APPROPRIATIONS. Money collected and appropriated for the purposes of this chapter shall be disbursed as the commission directs and in accordance with Section 367.008.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 8.05, eff. September 1, 2011.

Sec. 367.010. FEES. (a) The commission and each county, municipality, public health department, and river authority shall collect a $10 fee for each on-site wastewater treatment permit application processed.
(b) A county, municipality, public health department, or river authority that collects a fee shall forward the fee to the commission.
(c) The commission shall enforce the collection and forwarding of the fee.
(d) The fee proceeds shall be deposited to the credit of the water resources management account and may be used only for the purposes of Sections 367.007 and 367.008.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.119, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 347, Sec. 3, eff. Aug. 27 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 8.06, eff. September 1, 2011.
Acts 2017, 85th Leg., R.S., Ch. 867 (H.B. 2771), Sec. 2, eff. September 1, 2017.

CHAPTER 368. COUNTY REGULATION OF TRANSPORTATION OF WASTE

SUBCHAPTER A. TRANSPORTERS OF GREASE TRAP, SAND TRAP, AND SEPTIC WASTE

Sec. 368.001. REGULATORY PROGRAM. The commissioners court of a county may establish a program regulating transporters of grease trap, sand trap, and septic waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.002. PARTICIPATION BY MUNICIPALITY IN REGULATORY PROGRAM. The commissioners court may enter into a contract with a municipality that provides the terms and conditions under which the municipality may participate in the regulatory program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.003. PERMITS. The commissioners court of a county may:

(1) require a permit for trucks that transport grease trap, sand trap, and septic waste, including trucks serving unincorporated areas of the county;

(2) by order establish guidelines and procedures for issuing permits to trucks that transport grease trap, sand trap, and septic waste; and

(3) issue a single permit number that allows a municipality participating in the county regulatory program the option to add to that permit number a suffix unique to the municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.004. INSPECTIONS. The commissioners court of a county may:

(1) coordinate with municipalities the inspection of trucks that transport grease trap, sand trap, and septic waste;

(2) by order establish guidelines and procedures to coordinate truck inspections; and

(3) assess an inspection fee sufficient to cover the cost to the county of providing the inspection service.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.005. CONTRACTS. The commissioners court of a county may contract with a person to provide a service that is part of the regulatory program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.006. FORMS. The commissioners court of a county may develop a single manifest form with a uniform manifest registration and numbering system to be used by the county and each participating municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. REGULATION AND LICENSING OF WASTE HAULERS

Sec. 368.011. DEFINITIONS. In this subchapter:

(1) "Waste" means:

(A) animal and vegetable waste materials resulting from the handling, preparation, cooking, or consumption of food;

(B) discarded paper, rags, cardboard, wood, rubber, plastics, yard trimmings, fallen leaves, brush materials, and similar combustible items; and

(C) discarded glass, crockery, tin or aluminum cans, metal items, and similar items that are noncombustible at ordinary incinerator temperatures.

(2) "Waste hauler" means a person who, for compensation, transports waste by the use of a motor vehicle.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.012. COUNTY LICENSING AND REGULATION. To protect the public health, safety, or welfare, the commissioners court of a county with a population of less than 375,000 may by ordinance:

(1) require a waste hauler who transports waste in unincorporated areas of the county to be licensed by the county;

(2) establish requirements for obtaining and renewing a

waste hauler license;

(3) impose a license issuance or renewal fee in an amount that generates annually the approximate amount of revenue needed to fund the licensing program for a year;

(4) establish standards governing the transportation of waste in unincorporated areas of the county;

(5) establish grounds for suspending or revoking a waste hauler license; and

(6) prescribe any other provisions necessary to administer the licensing program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 426, Sec. 1, eff. May 29, 1997.

Sec. 368.013. EXEMPTIONS FOR CERTAIN WASTE HAULERS. (a) This subchapter does not apply to an entity that transports:

(1) material as part of a recycling program; or

(2) salt water, drilling fluids, or other waste associated with the exploration, development, and production of oil, gas, or geothermal resources.

(b) Except as provided by Subsection (c), a county may not require a waste hauler license to be held by a waste hauler:

(1) while transporting waste on behalf of a municipality or other governmental entity; or

(2) operating regularly in more than three counties.

(c) A county may require a waste hauler who transports waste on behalf of a municipality or other governmental entity to have a waste hauler license if the hauler deposits any part of that waste in a county other than the county in which all or part of the municipality or other governmental entity is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.014. BOND OR OTHER FINANCIAL ASSURANCE. (a) An applicant for a waste hauler license must execute a surety bond or provide other financial assurance that is payable for the use and benefit of the county or any other person harmed by the waste hauler's actions.

(b) The bond or other financial assurance must be in an amount

the commissioners court considers necessary or desirable according to the risk of harm associated with the operation of the waste hauling business.

(c) A bond executed under this section must comply with the insurance laws of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.015. FEES. Fees or other money received by a county under the licensing program shall be deposited to the credit of the general fund of the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.016. CONFLICT WITH OTHER REGULATIONS. If a requirement or standard established under Section 368.012 conflicts with state law, a rule adopted under state law, or a municipal ordinance or charter, the stricter provision prevails.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.017. INJUNCTION. A county is entitled to appropriate injunctive relief to prevent the violation or threatened violation of an ordinance the county adopts under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.018. CRIMINAL PENALTY. (a) If a county ordinance adopted under this subchapter defines an offense for a violation of the ordinance, the offense is a Class C misdemeanor.

(b) A separate offense occurs on each day on which all the elements of the offense exist.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 369. PLASTIC CONTAINERS

Sec. 369.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Plastic" means a material made of polymeric organic compounds and additives that can be shaped by flow.

(3) "Plastic bottle" means a plastic container that:

(A) has a neck smaller than the body of the container;

(B) is designed for a screw top, snap cap, or other closure; and

(C) has a capacity of not less than 16 fluid ounces or more than five gallons.

(4) "Rigid plastic container" means a formed or molded container, other than a plastic bottle, that:

(A) is intended for single use;

(B) is composed predominantly of plastic resin;

(C) has a relatively inflexible finite shape or form; and

(D) has a capacity of not less than eight ounces or more than five gallons.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 131, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.043, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.120, eff. Sept. 1, 1995.

Amended by:

Acts 2025, 89th Leg., R.S., Ch. 986 (S.B. 766), Sec. 20, eff. September 1, 2025.

Sec. 369.002. SYMBOLS FOR CERTAIN PLASTIC CONTAINERS. (a) A person may not manufacture or distribute a plastic bottle or rigid plastic container unless the appropriate symbol indicating the plastic resin used to produce the bottle or container is molded into or imprinted on the bottom or near the bottom of the bottle or container.

(b) A plastic bottle or rigid plastic container with a base cup or other component of a material different from the basic material used in making the bottle or container shall bear the symbol indicating its basic material.

(c) The symbols used under this section must consist of a

number placed within a triangle of arrows and of letters placed below the triangle of arrows. The triangle must be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The arrowhead of each arrow must be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle formed by the arrows must depict a clockwise path around the number.

(d) The numbers, letters of the symbols, and the plastic resins represented by the symbols are:

(1) 1 and PETE, representing polyethylene terephthalate;

(2) 2 and HDPE, representing high density polyethylene;

(3) 3 and V, representing vinyl;

(4) 4 and LDPE, representing low density polyethylene;

(5) 5 and PP, representing polypropylene;

(6) 6 and PS, representing polystyrene; and

(7) 7 and OTHER, representing all other resins, including layered plastics of a combination of materials.

(e) The commission may approve the use of another nationally or internationally recognized label coding system for special-purpose plastic bottles or rigid plastic containers which are components of motor vehicles in place of the symbols described by Subsections (c) and (d).

(f) The commission shall:

(1) maintain a list of the symbols; and

(2) provide a copy of that list to any person on request.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 131, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 99, Sec. 1, eff. May 7, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.121, eff. Sept. 1, 1995.

Sec. 369.003. PENALTY. (a) A person who violates Section 369.002(a) or (b) is subject to a civil penalty not to exceed $500 for each act of violation.

(b) If it appears that a person has violated or is violating Section 369.002, the attorney general or a district attorney, criminal district attorney, or county attorney shall institute and conduct a suit in the name of this state to recover the civil penalty imposed under this section.

(c) A civil penalty recovered under this section shall be deposited:

(1) in the state treasury if the attorney general brings the suit; or

(2) in the general fund of the county in which the violation occurred if a district attorney, criminal district attorney, or county attorney brings the suit.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 131, eff. Sept. 1, 1991.

CHAPTER 370. TOXIC CHEMICAL RELEASE REPORTING

Sec. 370.001. SHORT TITLE. This chapter may be cited as the Texas Toxic Chemical Release Reporting Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991.

Sec. 370.002. DEFINITIONS. In this chapter:

(1) "Administrator" means the administrator of the United States Environmental Protection Agency.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Environment" means water, air, and land and the interrelationship that exists among and between water, air, and land and all living things.

(4) "Executive director" means the executive director of the Texas Commission on Environmental Quality.

(5) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and are owned or operated by the same person or by any person who controls, is controlled by, or is under common control with that person.

(6) "Manufacture" means to produce, prepare, import, or compound a toxic chemical.

(7) "Person" means an individual, trust, firm, joint-stock company, corporation, including a government corporation, partnership, association, state, commission, municipality or other political subdivision of a state, or interstate body.

(8) "Process" means to prepare a toxic chemical, after its manufacture, for distribution in commerce:

(A) in the same form or physical state as, or in a different form or physical state from, the form in which the chemical was received by the person preparing the chemical; or

(B) as part of an article containing the toxic chemical.

(9) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing into the environment any toxic chemical. The term includes the abandonment or discarding of barrels, containers, and other closed receptacles of any toxic chemical.

(10) "Threshold amount" means the amount established by the administrator under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

(11) "Toxic chemical" means a chemical designated as a toxic chemical by the administrator under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

(12) "Toxic chemical release form" means the form published by the administrator under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.044, eff. Aug. 12, 1991.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 986 (S.B. 766), Sec. 21, eff. September 1, 2025.

Sec. 370.003. TOXIC CHEMICAL RELEASE FORM REQUIRED OF CERTAIN FACILITIES. (a) The owner or operator of a facility shall submit a toxic chemical release form to the executive director if the facility:

(1) has 10 or more full-time employees and a standard industrial classification code between 20 and 39 that was in effect on July 1, 1985, or has been designated as a facility subject to these requirements by the administrator; and

(2) manufactured, processed, or otherwise used a toxic chemical in excess of the threshold amount during the calendar year

for which a toxic chemical release form is required.

(b) The owner or operator of a facility subject to Subsection (a) shall submit a toxic chemical release form for each toxic chemical manufactured, processed, or otherwise used at the facility during the preceding calendar year in a quantity exceeding the threshold amount.

(c) The form shall be submitted not later than July 1 of each year and must contain data that reflect each release that occurred during the preceding calendar year. The administrator may modify the frequency with which a report must be submitted under this section as provided under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991.

Sec. 370.004. THRESHOLD AMOUNTS FOR REPORTING. (a) The threshold amounts for purposes of reporting a toxic chemical under Section 370.003 are as follows:

(1) for a toxic chemical used, but not manufactured or processed, at a facility, 10,000 pounds of the toxic chemical used at the facility during the preceding calendar year; or

(2) for a toxic chemical manufactured or processed at a facility, 25,000 pounds of the toxic chemical manufactured or processed at the facility during the preceding calendar year.

(b) The administrator may establish a threshold amount for a toxic chemical different from the amount established under Subsection (a).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991.

Sec. 370.005. USE OF AVAILABLE DATA. (a) To provide the information required on the toxic chemical release form, the owner or operator of a facility may use:

(1) readily available data, including monitoring data, collected under other law; or

(2) reasonable estimates of the amounts involved if data under Subdivision (1) are not readily available.

(b) This section does not require monitoring or measurement of the quantities, concentration, or frequency of a toxic chemical

released into the environment beyond the monitoring and measurement required under other law or regulation.

(c) To ensure consistency, data must be expressed in common units, as designated by the administrator.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991.

Sec. 370.006. PUBLIC AVAILABILITY OF TOXIC CHEMICAL RELEASE FORM. (a) A toxic chemical release form required under this chapter is intended to provide information to the public, including federal, state, and local governments and citizens of the communities surrounding a facility covered under Section 370.003.

(b) A toxic chemical release form shall be made available in a manner consistent with the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.) and Chapter 552, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.

Sec. 370.007. TOXIC CHEMICAL RELEASE REPORTING FUNDS. (a) Toxic chemical release reporting funds consist of money collected by the commission from:

(1) fees imposed on owners and operators of facilities required to submit a toxic chemical release form; and

(2) penalties imposed under this chapter.

(b) The commission may use the money collected under this chapter to pay for:

(1) costs incurred by the commission in implementing this chapter; and

(2) other commission activities necessary to implement the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 564, Sec. 1.06, eff. June 11, 1993; Acts 1993, 73rd Leg., ch. 746, Sec. 8, eff. Aug. 30, 1993.

Sec. 370.008. DISPOSITION OF FEES. (a) The owner or operator of a facility required to submit a toxic chemical release form under this chapter shall pay, at the time of the submission, a fee of $25 for each toxic chemical release form submitted.

(b) The maximum fee for a facility may not exceed $250.

(c) The commission by rule may increase or decrease the toxic chemical release form reporting fee as necessary.

(d) Fees collected under this section shall be deposited in the state treasury to the credit of the waste management account.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 564, Sec. 1.06, eff. June 11, 1993; Acts 1993, 73rd Leg., ch. 746, Sec. 8, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 63, eff. Sept. 1, 1997.

CHAPTER 371. USED OIL COLLECTION, MANAGEMENT, AND RECYCLING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 371.001. SHORT TITLE. This chapter may be cited as the Texas Used Oil Collection, Management, and Recycling Act.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 887, Sec. 1, eff. Sept. 1, 1995.

Sec. 371.002. FINDINGS. The legislature finds that:

(1) when properly managed and recycled, used oil is a valuable energy resource;

(2) used oil can be recycled into a number of different products;

(3) improper disposal of used oil is a significant environmental problem and a waste of a potentially valuable energy resource;

(4) there is a need for an expanded statewide network of used oil collection sites for private citizens who change their own motor oil;

(5) the private sector, with incentives, is best equipped to establish and operate used oil collection centers that are convenient for the public;

(6) the need for publicly operated used oil collection centers is greatest in more sparsely populated areas of the state and

should diminish over time;

(7) the United States Environmental Protection Agency has issued final regulations that properly classify and regulate used oil and used oil filters in accordance with the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.);

(8) the current used oil and used oil filter program in this state imposes more stringent management requirements than the regulations of the United States Environmental Protection Agency;

(9) limited public money is needed to finance public and private infrastructure investments to collect, manage, and recycle used motor oil;

(10) the used oil management standards under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) establish a balanced approach to the objectives of preserving a valuable resource and protecting the natural environment; and

(11) recycling, reuse, treatment, or proper disposal of used oil produces a more advantageous cost-benefit ratio in accomplishing the goals of state law, and these considerations should be included in the source reduction and waste minimization plans adopted under Section 361.505 to the extent applicable.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 887, Sec. 1, eff. Sept. 1, 1995.

Sec. 371.0025. PURPOSE AND SCOPE. (a) The purposes of this chapter are to:

(1) ensure that this state's used oil program is consistent with and not more stringent than the federal program for the management of used oil under 40 C.F.R. Part 279 unless otherwise required by state or federal law; and

(2) establish a program to promote public and private do-it-yourselfer used oil collection centers and used oil collection centers.

(b) This chapter does not apply to used oil:

(1) generated in connection with activities regulated by the Railroad Commission of Texas under Chapter 91 or 141, Natural Resources Code, or Chapter 27, Water Code;

(2) exempted under 40 C.F.R. Section 279.10(g) because the oil has been introduced into a crude oil pipeline or is being

processed at a petroleum refining facility; or

(3) generated through other activities exempted under 40 C.F.R. Part 271 or 279.

(c) This chapter does not apply to a used oil filter generated in connection with activities regulated by the Railroad Commission of Texas under Chapter 91 or 141, Natural Resources Code, or Chapter 27, Water Code.

Added by Acts 1995, 74th Leg., ch. 887, Sec. 2, eff. Sept. 1, 1995.

Sec. 371.003. DEFINITIONS. In this chapter:

(1) "Aboveground tank" means a tank used to store or process oil that is not an underground storage tank as defined by 40 C.F.R. Section 280.12.

(2) "Automotive oil" means any lubricating oils intended for use in an internal combustion engine, crankcase, transmission, gear box, or differential for an automobile, bus, or truck. The term includes oil that is not labeled specifically for that use but is suitable for that use according to generally accepted industry specifications.

(3) "Commission" means the Texas Commission on Environmental Quality.

(4) "Container" means a portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

(5) "Do-it-yourselfer used oil collection center" means a site or facility that accepts or aggregates and stores used oil collected only from household do-it-yourselfers. A registered do-it-yourselfer used oil collection center that is also a used oil generator may commingle household do-it-yourselfer used oil with the used oil it generates.

(6) "Existing tank" means a tank that is used for the storage or processing of used oil and that as of September 1, 1995, is in operation or is being installed. A tank is being installed if the owner or operator has obtained all necessary federal, state, and local approvals or permits and:

(A) a continuous on-site installation program has begun; or

(B) the owner or operator has entered into contractual obligations for installation of the tank that cannot be cancelled or

modified without substantial loss.

(7) "Household do-it-yourselfer used oil" means oil that is derived from a household, including used oil generated by an individual through the maintenance of the individual's personal vehicle or equipment.

(8) "Household do-it-yourselfer used oil generator" means an individual who generates household do-it-yourselfer used oil.

(9) "New tank" means a tank for the storage or processing of used oil the installation of which begins on or after September 1, 1995.

(10) "Petroleum refining facility" means an establishment primarily engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, and lubricants through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking, or other processes.

(11) "Processing" means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used-oil-derived products, including blending used oil with virgin petroleum products, blending used oils to meet fuel specifications, filtration, simple distillation, chemical or physical separation, and rerefining.

(12) "Reclaiming" means processing material to recover a usable product or regenerating material, including recovering lead from a spent battery and regenerating spent solvents.

(13) "Recycling" means:

(A) preparing used oil for reuse as a petroleum product by rerefining, reclaiming, or other means;

(B) using used oil as a lubricant or petroleum product instead of using a petroleum product made from new oil; or

(C) burning used oil for energy recovery.

(14) "Rerefining" means applying processes to material composed primarily of used oil to produce high-quality base stocks for lubricants or other petroleum products, including settling, filtering, catalytic conversion, fractional/vacuum distillation, hydrotreating, or polishing.

(15) "Rerefining distillation bottoms" means the heavy fraction of filtered and dehydrated used oil produced by vacuum distillation. The composition of still bottoms varies with column operation and feedstock.

(16) "Tank" means a stationary device designed to contain

an accumulation of used oil that is constructed primarily of nonearthen materials that provide structural support, including wood, concrete, steel, and plastic.

(17) "Used oil" means oil that has been refined from crude oil, or synthetic oil, that as a result of use has been contaminated by physical or chemical impurities.

(18) "Used oil aggregation point" means a site or facility that accepts, aggregates, or stores used oil collected from:

(A) used oil generation sites owned or operated by the owner or operator of the used oil aggregation point and transported to the used oil aggregation point in shipments of not more than 55 gallons; or

(B) household do-it-yourselfers.

(19) "Used oil burner" means a facility in which used oil not meeting the specifications in 40 C.F.R. Section 279.11 is burned for energy recovery in a device listed in 40 C.F.R. Section 279.61(a).

(20) "Used oil collection center" means a site or facility that is registered by the commission to manage used oil and accepts, aggregates, or stores used oil collected from:

(A) used oil generators regulated under 40 C.F.R. Part 279, Subpart C, who transport used oil to the used oil collection center in shipments of not more than 55 gallons under 40 C.F.R. Section 279.24; or

(B) household do-it-yourselfers.

(21) "Used oil fuel marketer" means a person who:

(A) directs a shipment of used oil not meeting the specifications in 40 C.F.R. Section 279.11 from the person's facility to a used oil burner; or

(B) first claims that used oil to be burned for energy recovery meets the used oil specifications in 40 C.F.R. Section 279.11.

(22) "Used oil generator" means a person, by site, whose act or process:

(A) produces used oil; or

(B) first causes used oil to become subject to regulation.

(23) "Used oil processor or rerefiner" means a facility that processes used oil.

(24) "Used oil transfer facility" means a transportation-

related facility, including a loading dock, parking area, storage area, or other area, where shipments of used oil are held for more than 24 hours and not more than 35 days during the normal course of transportation. A transfer facility that stores used oil for more than 35 days is subject to 40 C.F.R. Part 279, Subpart F.

(25) "Used oil transporter" means a person who:

(A) transports used oil; or

(B) owns or operates a used oil transfer facility.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.045, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 899, Sec. 4.05, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.122, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 3, eff. Sept. 1, 1995. Amended by:

Acts 2025, 89th Leg., R.S., Ch. 986 (S.B. 766), Sec. 22, eff. September 1, 2025.

SUBCHAPTER B. USED OIL RECYCLING PROGRAM

Sec. 371.021. PUBLIC EDUCATION. The commission shall conduct an education program to inform the public of the need for and benefits of the collection and recycling of used oil and used oil filters. The program shall:

(1) establish, maintain, and publicize a used oil information center that prepares and disperses materials and information explaining laws and rules regulating used oil and informing the public of places and methods for proper recycling of used oil;

(2) encourage the voluntary establishment of used oil collection and recycling programs by private businesses and organizations and by local governments and provide technical assistance to persons who organize those programs; and

(3) encourage local governments to procure recycled automotive and industrial oils and oils blended with recycled oils, if those oils meet equipment manufacturer's specifications.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.123, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

Sec. 371.022. NOTICE BY RETAIL DEALER. A retail dealer who annually sells directly to the public more than 500 gallons of oil in containers for use off-premises shall post in a prominent place a sign provided by the commission:

(1) informing the public that improper disposal of used oil is prohibited by law;

(2) containing instructions for disposal of used oil filters; and

(3) prominently displaying the toll-free telephone number of the state used oil information center established under Section 371.021.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.123, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

Sec. 371.023. GRANTS TO LOCAL GOVERNMENTS AND PRIVATE ENTITIES. (a) The commission shall develop a grant program for local governments and private entities that encourages the collection, reuse, and recycling of household do-it-yourselfer used oil.

(b) The commission may approve a grant for any project that uses one or more of the following programs:

(1) curbside pickup of containers of household do-it-yourselfer used oil by a local government or its representative;

(2) retrofitting of municipal solid waste equipment to facilitate curbside pickup of household do-it-yourselfer used oil;

(3) establishment of do-it-yourselfer used oil collection centers and used oil collection centers at locations accessible to the public, including landfills, fire stations, retail stores, quick lubrication centers, and automobile repair shops;

(4) provision of containers and other materials and supplies that can be used to store household do-it-yourselfer used oil for pickup or delivery to a do-it-yourselfer used oil collection center in an environmentally sound manner; and

(5) any other activity the advisory committee established under Subsection (c) determines will encourage the proper recycling of household do-it-yourselfer used oil.

(c) The commission shall appoint an advisory committee for the used oil grant program. The advisory committee consists of seven

members who serve at the pleasure of the commission and represent oil manufacturers as defined by Section 371.062, operators of used oil collection centers, and local governments. The advisory committee members serve without compensation and are not entitled to reimbursement for expenses incurred in the performance of their duties. The advisory committee shall:

(1) recommend criteria for grants;

(2) establish guidelines for allowable administrative expenses; and

(3) recommend grant recipients to the commission based on the used oil collection needs of this state.

(d) The commission by rule shall:

(1) establish procedures for the application for and criteria for the award of grants under this section; and

(2) adopt guidelines for allowable administrative expenses in accordance with guidelines established by the advisory committee.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.123, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

Sec. 371.024. COLLECTION FACILITIES. (a) All appropriate businesses and government agencies are encouraged to serve as do-it-yourselfer used oil collection centers or used oil collection centers.

(b) A do-it-yourselfer used oil collection center and a used oil collection center shall:

(1) register biennially with the commission; and

(2) report annually to the commission the amounts of used oil collected by the center from the public.

(c) The commission shall adopt rules governing the registration of and reporting by do-it-yourselfer used oil collection centers and used oil collection centers.

(d) The commission by rule shall adopt standards for managing and operating a do-it-yourselfer used oil collection center or a used oil collection center.

(e) The commission may impose a registration fee in an amount sufficient to cover the actual cost of registering do-it-yourselfer used oil collection centers and used oil collection centers. A

private entity that serves voluntarily as a do-it-yourselfer used oil collection center or a used oil collection center is exempt from the registration fee.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.124, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

Sec. 371.0245. REIMBURSEMENT OF USED OIL COLLECTION CENTER'S HAZARDOUS WASTE EXPENSE. (a) The commission, on proper application, shall reimburse the owner or operator of an eligible registered do-it-yourselfer used oil collection center or a used oil collection center for costs associated with the collection center's disposal of:

(1) household do-it-yourselfer used oil collected by the collection center that, unknown to the center at the time of collection, contains hazardous wastes or is unfit for recycling;

(2) household do-it-yourselfer used oil collected by the collection center that has been commingled with oils described in Subdivision (1) and is unsuitable for recycling; or

(3) contaminated used oil left at the collection center as used oil after posted business hours and without the knowledge of the collection center.

(b) A registered do-it-yourselfer used oil collection center or used oil collection center is eligible for reimbursement if it demonstrates to the satisfaction of the commission that:

(1) the center has established procedures to minimize the risk that the center will mix the used oil the center generates or collects from the public with hazardous wastes, especially halogenated wastes;

(2) the center accepts not more than:

(A) five gallons of used oil from any person at any one time if the center is a registered do-it-yourselfer used oil collection center; or

(B) 55 gallons of used oil from any person at one time if the center is a registered used oil collection center; and

(3) the center can document to the satisfaction of the commission the volume of used oil the center collects from the public during any period under review by:

(A) providing a process by which all individuals

leaving household do-it-yourselfer used oil at the center are required to provide their names, addresses, and the approximate amounts of used oil brought to the collection center; or

(B) another method approved by the commission.

(c) For the purpose of Subsection (b)(2), the owner or operator of a registered do-it-yourselfer used oil collection center or used oil collection center may presume that a quantity of used oil collected from a member of the public that does not exceed the applicable collection limit established by that subsection is not mixed with a hazardous substance if the owner or operator acts in good faith in the belief the oil is generated from the individual's personal activity.

(d) In any state fiscal year, a registered do-it-yourselfer used oil collection center or used oil collection center may not be reimbursed for more than $7,500 in total eligible disposal costs, subject to Section 371.0246(d).

(e) Reimbursements made under this section shall be paid out of the water resource management account and may not exceed an aggregate amount of $500,000 each fiscal year.

Added by Acts 1993, 73rd Leg., ch. 899, Sec. 4.07, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 65, eff. Sept. 1, 1997. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 733 (S.B. 1105), Sec. 1, eff. September 1, 2017.

Sec. 371.0246. PROCEDURES FOR REIMBURSEMENT. (a) An owner or operator of a registered do-it-yourselfer used oil collection center or used oil collection center may apply for reimbursement from the commission.

(b) An application for reimbursement shall be submitted on a form approved or provided by the commission.

(c) An application must contain:

(1) the name, address, and telephone number of the applicant;

(2) the name, mailing address, location address, and commission registration number of the registered do-it-yourselfer used oil collection center or used oil collection center from which

the contaminated oil was removed;

(3) the name, address, telephone number, and commission registration number of the hazardous waste transporter used to dispose of the contaminated used oil;

(4) a copy of any shipping documents that accompanied the transportation of the shipment of used oil;

(5) a copy of each invoice for which reimbursement is requested and evidence that the amount shown on the invoice has been paid in full in the form of:

(A) canceled checks;

(B) business receipts from the person who performed the work; or

(C) other documentation approved by the commission;

(6) a waste-characterization or similar documentation required before acceptance of a hazardous waste by the disposal facility that accepted the contaminated used oil for treatment or disposal; and

(7) any other information that the executive director may reasonably require.

(d) All claims for reimbursement filed under this section and Section 371.0245 are subject to funds available for disbursement in the water resource management account and to Section 371.0245(e). This subchapter does not create an entitlement to money in the water resource management account or any other fund.

Added by Acts 1993, 73rd Leg., ch. 899, Sec. 4.07, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 66, eff. Sept. 1, 1997. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 733 (S.B. 1105), Sec. 2, eff. September 1, 2017.

Sec. 371.025. LIMITATION OF LIABILITY. (a) A person may not recover from the owner, operator, or lessor of a registered do-it-yourselfer used oil collection center or used oil collection center any damages or costs of response actions at another location resulting from a release or threatened release of used oil collected at the center if:

(1) the owner, operator, or lessor of the collection center

does not mix the used oil collected with any hazardous waste or polychlorinated biphenyls (PCBs);

(2) the owner, operator, or lessor of the collection center does not accept used oil that the owner, operator, or lessor knows contains hazardous waste or PCBs; and

(3) the collection center is in compliance with management standards adopted by the commission.

(b) For purposes of this section, the owner, operator, or lessor of a do-it-yourselfer used oil collection center or a used oil collection center may presume that a quantity of less than five gallons of used oil accepted at any one time from any member of the public is not mixed with a hazardous waste or PCBs, provided that the owner, operator, or lessor acts in good faith.

(c) This section applies only to activities directly related to the collection of used oil by a do-it-yourselfer used oil collection center or a used oil collection center. This section does not apply to grossly negligent activities related to the operation of a do-it-yourselfer used oil collection center or a used oil collection center.

(d) This section does not affect or modify the obligations or liability of any person other than the owner, operator, or lessor of the collection center under any other provisions of state or federal law, including common law, for injury or damage resulting from a release of used oil or hazardous substances.

(e) This section does not affect or modify the obligations or liability of any owner, operator, or lessor of a collection center with regard to services other than accepting used oil from the public.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.125, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

Sec. 371.026. REGISTRATION AND REPORTING REQUIREMENTS OF USED OIL HANDLERS OTHER THAN GENERATORS. (a) The commission shall adopt rules governing registration and reporting of used oil handlers other than generators. The rules shall require that:

(1) a used oil handler other than a generator:

(A) register with the commission;

(B) provide evidence of familiarity with applicable state laws and rules and management procedures applicable to used oil handling; and

(C) provide proof of liability insurance or other evidence of financial responsibility for any liability that may be incurred in handling used oil, except that this provision does not apply to a used oil handler which is owned or otherwise effectively controlled by the owners or operators where the used oil is generated; and

(2) a used oil processor or rerefiner must report to the commission, in the form of a letter on a biennial basis by December 1 of each odd-numbered year, the calendar year covered by the report and the quantities of used oil accepted for processing or rerefining and the manner in which the used oil is processed or rerefined, including the specific processes employed.

(b) The commission by rule shall adopt reasonable management and safety standards for the handling of used oil.

(c) The commission may impose a registration fee in an amount sufficient to cover the actual cost of registering used oil handlers other than generators.

(d) A used oil transporter may consolidate or aggregate loads of used oil for purposes of transportation but may not process used oil, except that a used oil transporter may conduct incidental processing operations, including settling and water separation, that occur in the normal course of the transportation of used oil but that are not designed to produce, or make more amenable for the production of, used-oil-derived products or used oil fuel.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.126, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 389, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.027. GIFTS AND GRANTS. The commission may apply for, request, solicit, contract for, receive, and accept gifts, grants, donations, and other assistance from any source to carry out its powers and duties under this chapter.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.127, eff. Sept. 1,

1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

Sec. 371.028. RULES. Not later than January 1, 1996, the commission shall adopt rules, standards, and procedures necessary to implement the used oil recycling program established by this chapter. Unless otherwise required by federal or state law, the rules, standards, and procedures must be consistent with and not more stringent than the used oil management standards under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.127, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

SUBCHAPTER C. CERTAIN ACTIONS PROHIBITED; PENALTIES

Sec. 371.041. ACTIONS PROHIBITED. A person may not collect, transport, store, recycle, use, discharge, or dispose of used oil in any manner that endangers the public health or welfare or endangers or damages the environment.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. April 1, 1992. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.128, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 5, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 40, eff. Sept. 1, 1997.

SUBCHAPTER D. USED OIL RECYCLING FEES

Sec. 371.061. DEPOSIT OF FEES; USE OF FEE REVENUE. (a) The following amounts shall be deposited to the water resource management account:

(1) fees collected under Sections 371.024, 371.026, and 371.062;

(2) interest and penalties imposed under this chapter for late payment of fees, failure to file a report, or other violations of this chapter; and

(3) gifts, grants, donations, or other financial assistance the commission is authorized to receive under Section 371.027.

(b) In addition to other authorized uses of money in the water

resource management account, the commission may use money in that account for purposes authorized by this chapter, including:

(1) public education regarding used oil recycling;

(2) grants to public and private do-it-yourselfer used oil collection centers and used oil collection centers;

(3) registration of do-it-yourselfer used oil collection centers, used oil collection centers, and used oil handlers other than generators; and

(4) administrative costs of implementing this chapter.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 4.06, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.131, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 8, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 68, eff. Sept. 1, 1997.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 733 (S.B. 1105), Sec. 4, eff. September 1, 2017.

Sec. 371.062. FEE ON SALE OF AUTOMOTIVE OIL. (a) In this section:

(1) "Distributor" means a person who maintains a distribution center or warehouse in this state and annually sells more than 25,000 gallons of automotive oil.

(2) "First sale" means the first actual sale of automotive oil delivered to a location in this state and sold to a purchaser who is not an automotive oil manufacturer or distributor. The term does not include the sale of automotive oil:

(A) exported from this state to a location outside this state for the purpose of sale or use outside this state;

(B) for resale to or use by vessels exclusively engaged in foreign or interstate commerce;

(C) to a subsequent purchaser who maintains a do-it-yourselfer used oil collection center or used oil collection center registered by the commission at the location where the automotive oil is changed, used, consumed, or resold to do-it-yourselfers; or

(D) to the United States.

(3) "Importer" means any person who imports or causes to be imported automotive oil into this state for sale, use, or

consumption.

(4) "Oil manufacturer" means any person or entity that formulates automotive oil and packages, distributes, or sells that automotive oil. The term includes any person packaging or repackaging automotive oil.

(b) An oil manufacturer or distributor who makes a first sale of automotive oil is liable for a fee.

(c) An oil importer who imports or causes to be imported automotive oil is liable for the fee at the time the oil is received.

(d) An oil distributor or retailer who exports from this state to a location outside this state oil on which the automotive oil fee has been paid may request from his supplier a refund or credit of the fee paid on the exported oil. The supplier or oil manufacturer and the importer may in turn request a refund of the fee paid to the comptroller. The amount of refund that may be claimed under this section may equal but not exceed the amount of the fee paid on the automotive oil.

(e) An oil manufacturer, importer, distributor, or retailer who makes a sale to a vessel or a sale for resale to a vessel of automotive oil on which the automotive oil fee has been paid may file with the comptroller a request for refund of the fee paid on the oil or, where applicable, may request a refund or credit from the supplier to whom the fee was paid. The supplier may in turn request a refund from the comptroller. The amount of refund that may be claimed under this section may equal but not exceed the amount of the fee paid on the automotive oil.

(f) Each oil manufacturer, distributor, or importer required to pay a fee under this section shall:

(1) prepare and maintain, on a form provided or approved by the comptroller, a report of each first sale or, in the case of an importer, the first receipt in Texas of automotive oil by the person and the price received;

(2) retain the invoice or a copy of the invoice or other appropriate record of the sale or receipt for four years from the date of sale or receipt; and

(3) on or before the 25th day of the month following the end of each calendar quarter, file a report with the comptroller and remit to the comptroller the amount of fees required to be paid for the preceding quarter.

(g) Records required to be maintained under Subsection (f)

shall be available for inspection by the comptroller at all reasonable times.

(h) The comptroller shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this section.

(i) Except as provided by this section, Chapters 101 and 111 through 113, Tax Code, apply to the administration, payment, collection, and enforcement of fees under this section in the same manner that those chapters apply to the administration, payment, collection, and enforcement of taxes under Title 2, Tax Code.

(j) The fee imposed under this section is one cent per quart or four cents per gallon of automotive oil.

(k) A person required to pay a fee under this section may retain one percent of the amount of the fees due from each quarterly payment as reimbursement for administrative costs.

(l) The comptroller may deduct a percentage of the fees collected under this section in an amount sufficient to pay the reasonable and necessary costs of administering and enforcing this section. The comptroller shall credit the amount deducted to the general revenue fund. The balance of fees and all penalties and interest collected under this section shall be deposited to the credit of the water resource management account.

(m) A distributor must obtain a permit from the comptroller. The comptroller shall adopt an application form for the permit, which must include:

(1) the name under which the applicant transacts or intends to transact business;

(2) the location of the applicant's distribution center or warehouse in this state;

(3) if the applicant is a corporation or partnership, the names of the principal officers of the corporation or of the members of the partnership and the address of each officer or member; and

(4) any other information required by the comptroller.

(n) The comptroller may deny or revoke a permit under Subsection (m) if false information is submitted on the application or on a required fuels tax report or supplement.

(o) A permit under Subsection (m) may not be assigned.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 4.09, eff. Oct. 1,

1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.132, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 9; Acts 1997, 75th Leg., ch. 333, Sec. 69, eff. Sept. 1, 1997.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 733 (S.B. 1105), Sec. 5, eff. September 1, 2017.

SUBCHAPTER E. FILTER STORAGE, TRANSPORTATION, OR PROCESSING

Sec. 371.101. DEFINITIONS. In this subchapter:

(1) "Bill of lading" means a shipping document that confirms the receipt of a shipment.

(2) "Bulk filter container" means a portable device that:

(A) is part of an integrated delivery and retrieval system; and

(B) has a capacity greater than 330 gallons.

(3) "Component parts" means the severable parts of an oil filter and includes oil present in an oil filter.

(4) "Do-it-yourselfer" means an individual who removes a used oil filter in the process of an oil change or automotive repair from the engine of a light duty motor vehicle, small utility engine, noncommercial motor vehicle, or farm equipment owned or operated by the individual.

(5) "Generator" means a person whose activities produce used oil filters. The term does not include a do-it-yourselfer.

(6) "Process" means to prepare a used oil filter for recycling, steel recovery, energy recovery, or proper disposal.

(7) "Processor" means a person that processes used oil filters generated by another person. The term does not include a generator that consolidates, drains, or crushes used oil filters for off-site recycling or disposal.

(8) "Store" means to hold in a location for any period.

(9) "Storage facility" means a location that stores used oil filters before transportation, processing, recycling, or disposal of the filters. The term does not include the location of a generator.

(10) "Transporter" means a person that transports used oil filters to a location for storage, processing, recycling, or disposal.

(11) "Used oil filter" means any device that is an integral

part of an oil flow system, the primary purpose of which is to remove contaminants from flowing oil contained in the system, and that, as a result of use, has become contaminated and unsuitable for its original purpose, is removed from service, and contains entrapped used oil. The term does not include a filter attached to the equipment containing the oil flow system. This term continues to apply regardless of prior processing until but not after the filter has been burned for steel recovery or energy recovery or it is separated into its component parts.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.102. APPLICABILITY. (a) This subchapter applies to a used oil filter only if the filter has not been:

(1) separated into its component parts; or

(2) burned for:

(A) steel recovery; or

(B) energy recovery.

(b) This subchapter does not apply to:

(1) an industrial generator that is:

(A) registered with the commission as an industrial or hazardous waste facility; or

(B) under the waste management authority of a state agency other than the commission; or

(2) a do-it-yourselfer.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.103. GENERAL REQUIREMENTS. (a) A person may not store, process, or dispose of a used oil filter in a manner that results in the discharge of oil into soil or water.

(b) A person may not knowingly place on land a used oil filter that contains oil unless the used oil filter is in a container.

(c) A bulk filter container used to store used oil filters:

(1) must not leak; and

(2) must be securely closed, waterproof, and in good condition.

(d) A used oil filter may not be intentionally or knowingly placed in or accepted for disposal in a landfill permitted by the

commission.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.104. REGISTRATION AND REPORTING. (a) A transporter, storage facility, or processor may not store, process, recycle, or dispose of used oil filters unless the person is registered with the commission.

(b) Unless the person is registered with the commission as a storage facility, a person may not store used oil filters:

(1) that in the aggregate have a volume greater than six 55-gallon drums; or

(2) in more than one bulk filter container.

(c) A registered transporter, storage facility, or processor shall:

(1) renew the registration biennially; and

(2) report to the commission biennially the number of used oil filters the person transported, stored, or processed in the two years preceding the date of the report.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Jan. 1, 2000.

Sec. 371.105. SHIPMENT RECORDS. (a) Each shipment of used oil filters must be accompanied by a bill of lading that conforms to commission rules.

(b) In accordance with commission rules, a copy of the bill of lading for each shipment of used oil filters must be maintained by the generator of the filters, transporter of the filters, storage facility at which the filters were stored, and processor of the filters for at least three years after the date the filters were transported, stored, or processed.

(c) The copies of the bills of lading must be made available for the commission to inspect at any reasonable time.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Jan. 1, 2000.

Sec. 371.106. LIMITATIONS ON STORAGE. (a) A storage facility may not store a used oil filter for more than 120 days.

(b) A transporter may not store a used oil filter for more than 10 days.

(c) A processor may not store a used oil filter for more than 30 days before it is processed.

(d) A processor that stores used oil filters in a container shall label each container clearly with the phrase "Used Oil Filters."

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Jan. 1, 2000.

Sec. 371.107. VARIANCES. (a) The commission may grant an individual variance to allow:

(1) a generator to store used oil filters in a greater aggregate volume than the volume prescribed by Section 371.104(b); or

(2) a person to store used oil filters for a period longer than the period prescribed for that person by Section 371.106.

(b) The commission may not grant a variance under this section for a period of longer than two years.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.108. SPILL PREVENTION AND CONTROL. Each registered storage facility and each facility of a registered processor shall develop a plan to prevent spills and respond to spills in accordance with the federal spill prevention, control, and countermeasure requirements provided by Title 40, Code of Federal Regulations, Part 112, as amended.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.109. FINANCIAL RESPONSIBILITY. The commission shall adopt rules requiring a person required to register under Section 371.104 to demonstrate adequate financial responsibility.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.110. CIVIL AND ADMINISTRATIVE PENALTIES. (a) Notwithstanding Sections 7.052 and 7.102, Water Code, a person that violates this subchapter or a rule adopted under this subchapter is liable for a civil penalty of not less than $100 or more than $500 for each violation and for each day of a continuing violation.

(b) The commission or the attorney general at the request of the commission may bring a suit under Subchapter D, Chapter 7, Water Code, to recover the penalty.

(c) A local government with jurisdiction over the area in which the violation occurred may bring suit to recover the penalty.

(d) The violation described by Subsection (a) also is subject to an administrative penalty. The commission may recover the administrative penalty in a proceeding conducted as provided by Subchapter C, Chapter 7, Water Code.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Jan. 1, 2000.

CHAPTER 372. ENVIRONMENTAL PERFORMANCE STANDARDS FOR PLUMBING FIXTURES

Sec. 372.001. DEFINITIONS. In this chapter:

(1) "Commercial prerinse spray valve" means a handheld device that is designed and marketed for use with commercial dishwashing and ware washing equipment and that is used to spray water on dishes, flatware, and other food service items to remove food residue before the items are cleaned in a dishwasher or ware washer or by hand.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Executive director" means the executive director of the commission.

(4) "Plumbing fixture" means a device that receives water, waste, or both and discharges the water, waste, or both into a drainage system. The term includes a kitchen sink, utility sink, lavatory, bidet, bathtub, shower, urinal, toilet, or drinking water fountain.

(5) "Plumbing fixture fitting" means a device that controls and directs the flow of water. The term includes a sink faucet, lavatory faucet, shower head, or bath filler.

(6) "Pressurized flushing device" means a device that

contains a valve that:

(A) is attached to a pressurized water supply pipe that is of sufficient size to deliver water at the necessary rate of flow to ensure flushing when the valve is open; and

(B) opens on actuation to allow water to flow into the fixture at a rate and in a quantity necessary for the proper operation of the fixture and gradually closes to avoid water hammer.

(7) "Toilet" means a water closet.

(8) "Water closet" means a plumbing fixture that has a water-containing receptor that receives liquid and solid body waste and, on actuation, conveys the waste through an exposed integral trap seal into a drainage system.

Added by Acts 1991, 72nd Leg., ch. 293, Sec. 2, eff. Sept. 1, 1991. Renumbered from Sec. 421.001 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.047, eff. Aug. 12, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.048, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.133, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 1117 (H.B. 2428), Sec. 1, eff. January 1, 2006.

Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 1, eff. September 1, 2009.

Sec. 372.002. WATER SAVING PERFORMANCE STANDARDS. (a) A person may not sell, offer for sale, distribute, or import into this state a plumbing fixture for use in this state unless:

(1) the plumbing fixture meets the water saving performance standards provided by Subsection (b); and

(2) the plumbing fixture is listed by the commission under Subsection (c).

(b) The water saving performance standards for a plumbing fixture are the following standards:

(1) for a sink or lavatory faucet or a faucet aerator, maximum flow may not exceed 2.2 gallons of water per minute at a pressure of 60 pounds per square inch;

(2) for a shower head, maximum flow may not exceed 2.5 gallons of water per minute at a constant pressure over 80 pounds per square inch;

(3) for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state before January 1, 2014:

(A) maximum flow may not exceed an average of one gallon of water per flush; and

(B) the urinal and the associated flush valve, if any, must meet the performance, testing, and labeling requirements prescribed by American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals";

(4) except as provided by Subsection (g), for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state on or after January 1, 2014:

(A) maximum flow may not exceed an average of 0.5 gallons of water per flush; and

(B) the urinal and the associated flush valve, if any, must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(i) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals"; or

(ii) American Society of Mechanical Engineers Standard A112.19.19-2006 "Vitreous China Nonwater Urinals";

(5) for a toilet sold, offered for sale, or distributed in this state before January 1, 2014:

(A) maximum flow may not exceed an average of 1.6 gallons of water per flush; and

(B) the toilet must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(i) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals"; and

(ii) American Society of Mechanical Engineers Standard A112.19.14-2006 "Six-Liter Water Closets Equipped With a Dual Flushing Device";

(6) except as provided by Subsection (h), for a toilet

sold, offered for sale, or distributed in this state on or after January 1, 2014:

(A) the toilet must be a dual flush water closet that meets the following standards:

(i) the average flush volume of two reduced flushes and one full flush may not exceed 1.28 gallons; and

(ii) the toilet must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(a) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals"; and

(b) American Society of Mechanical Engineers Standard A112.19.14-2006 "Six-Liter Water Closets Equipped With a Dual Flushing Device"; or

(B) the toilet must be a single flush water closet that meets the following standards:

(i) the average flush volume may not exceed 1.28 gallons; and

(ii) the toilet must meet the performance, testing, and labeling requirements prescribed by American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals"; and

(7) a drinking water fountain must be self-closing.

(c) The commission shall make and maintain a current list of plumbing fixtures that are certified to the commission by the manufacturer to meet the water saving performance standards established by Subsection (b). To have a plumbing fixture included on the list, a manufacturer must supply to the commission, in the form prescribed by the commission:

(1) the identification and the performance specifications of the plumbing fixture; and

(2) certified test results from a laboratory accredited by the American National Standards Institute verifying that the plumbing fixture meets the water saving performance standards established by Subsection (b).

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1316, Sec. 6, eff. September 1, 2009.

(e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1316, Sec. 6, eff. September 1, 2009.

(f) This section does not apply to:

(1) a plumbing fixture that has been ordered by or is in the inventory of a building contractor or a wholesaler or retailer of plumbing fixtures on January 1, 1992;

(2) a fixture, such as a safety shower or aspirator faucet, that, because of the fixture's specialized function, cannot meet the standards provided by this section;

(3) a fixture originally installed before January 1, 1992, that is removed and reinstalled in the same building on or after that date;

(4) a fixture imported only for use at the importer's domicile;

(5) a nonwater-supplied urinal; or

(6) a plumbing fixture that has been certified by the United States Environmental Protection Agency under the WaterSense Program.

(g) The water saving performance standards for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state on or after January 1, 2014, are the standards prescribed by Subsection (b)(3) if the urinal was designed for heavy-duty commercial applications.

(h) The water saving performance standards for a toilet sold, offered for sale, or distributed in this state on or after January 1, 2014, are the standards prescribed by Subsection (b)(5) if the toilet is a water closet that has a design not typically found in a residential application or that is designed for a specialized application, including a water closet that:

(1) is mounted on the wall and discharges to the drainage system through the floor;

(2) is located in a correctional facility, as defined by Section 1.07, Penal Code;

(3) is used in a bariatric application;

(4) is used by children at a day-care facility; or

(5) consists of a non-tank type commercial bowl connected to the plumbing system through a pressurized flushing device.

Added by Acts 1991, 72nd Leg., ch. 293, Sec. 2, eff. Jan. 1, 1992. Renumbered from Sec. 421.002 by Acts 1991, 72nd Leg., 1st C.S., ch.

3, Sec. 1.047, eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.134, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 71, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 2, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 6, eff. September 1, 2009.

Sec. 372.0025. EXCEPTION: ACTION BY MUNICIPALITY OR COUNTY. The governing body of a municipality or county by ordinance or order may allow the sale in the municipality or county of a urinal or toilet that does not comply with Section 372.002(b)(4) or (6), respectively, if the governing body finds that to flush a public sewer system located in the municipality or county in a manner consistent with public health, a greater quantity of water is required because of the configuration of the drainage systems of buildings located in the municipality or county or the public sewer system.

Added by Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 3, eff. September 1, 2009.

Sec. 372.003. LABELING REQUIREMENTS. (a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1316, Sec. 6, eff. September 1, 2009.
(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1316, Sec. 6, eff. September 1, 2009.
(c) The commission by rule shall prohibit the sale, offering for sale, distribution, or importation into this state of a new commercial or residential clothes-washing machine, dish-washing machine, or lawn sprinkler unless:
(1) the manufacturer has furnished to the commission, in the form prescribed by the commission, the identification and performance specifications of the device; and
(2) the clothes-washing or dish-washing machine or lawn sprinkler is labeled in accordance with rules adopted by the commission with a statement that describes the device's water use characteristics.

(d) Rules adopted or amended under this section shall be developed by the commission in conjunction with a technical advisory panel of designated representatives of the Texas Water Development Board and the Texas State Board of Plumbing Examiners.

(e) This section shall not apply to those clothes-washing or dish-washing machines that are subject to and in compliance with the labeling requirements of the National Appliance Energy Conservation Act of 1987, Public Law 100-12.

Added by Acts 1991, 72nd Leg., ch. 293, Sec. 2, eff. Sept. 1, 1991. Renumbered from Sec. 421.003 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.047, eff. Aug. 12, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.049, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.135, eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 6, eff. September 1, 2009.

Sec. 372.0035. LEAD IN PLUMBING FIXTURES, PIPE, AND PIPE FITTING. (a) A person may not sell or offer for sale a plumbing fixture, pipe, or pipe fitting that contains more than eight percent lead for installing or repairing:

(1) a public drinking water system; or

(2) plumbing that provides water for human consumption and is connected to a public drinking water system.

(b) A person may not sell or offer for sale solder or flux that contains more than two-tenths percent lead for installing or repairing:

(1) a public drinking water system; or

(2) plumbing that provides water for human consumption and is connected to a public drinking water system.

(c) For purposes of this section, a person engaged in the business of installing or repairing plumbing is considered to have sold or offered for sale a plumbing fixture, pipe, pipe fitting, solder, or flux if the person uses or offers to use the fixture, pipe, fitting, solder, or flux to install or repair plumbing.

(d) This section does not prohibit the sale or offer for sale of a lead joint necessary for the repair of cast-iron pipe. The commission shall adopt rules to implement this subsection.

(e) The commission may adopt rules to implement this section.

(f) If a person licensed under Chapter 1301, Occupations Code, violates this section, the Texas State Board of Plumbing Examiners may discipline the person under Subchapter I of that chapter as if a violation of this section were a violation of that chapter.

(g) A person commits an offense if the person violates Subsection (a) or (b). An offense under this subsection is a Class C misdemeanor. Each violation is a separate offense and each day of a continuing violation is a separate offense.

(h) Within the jurisdiction of a municipality, a municipal plumbing inspector may issue a citation to a person who violates this section.

Added by Acts 1993, 73rd Leg., ch. 751, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.136, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.787, eff. Sept. 1, 2003.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 31, eff. May 26, 2021.

Sec. 372.005. COMMERCIAL PRERINSE SPRAY VALVE PERFORMANCE STANDARDS. (a) A person may not sell, offer for sale, distribute, lease, or import into this state a commercial prerinse spray valve for use in this state unless the prerinse spray valve:

(1) has a flow rate of 1.6 gallons of water per minute or less, as determined using the standard test method for prerinse spray valves developed by the American Society for Testing and Materials as specified in ASTM F2324-03 as that method existed on January 1, 2006; and

(2) is listed by the commission under Subsection (b).

(b) The commission shall make and maintain a current list of commercial prerinse spray valves that are certified to the commission by the manufacturer or importer to meet the performance standards provided by Subsection (a)(1). To have a commercial prerinse spray valve included on the list, the manufacturer or importer must supply to the commission, in the form prescribed by the commission, the identification and the performance specifications of the prerinse spray valve. The commission may test a listed commercial prerinse

spray valve to determine the accuracy of the manufacturer's or importer's certification and shall remove from the list a prerinse spray valve the commission determines to be inaccurately certified.

(c) The commission may assess against a manufacturer or an importer a reasonable fee for an inspection of a commercial prerinse spray valve to determine the accuracy of the manufacturer's or importer's certification in an amount determined by the commission to cover the expenses incurred in the administration of this chapter. A fee received by the commission under this subsection shall be deposited in the state treasury to the credit of the water resource management account. Fees deposited under this section may be appropriated only for the administration of this chapter.

Added by Acts 2005, 79th Leg., Ch. 1117 (H.B. 2428), Sec. 2, eff. January 1, 2006.

Sec. 372.006. NONWATER-SUPPLIED URINAL PERFORMANCE STANDARDS. (a) A person may not sell, offer for sale, or distribute in this state a nonwater-supplied urinal for use in this state unless the nonwater-supplied urinal:

(1) meets the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(A) American Society of Mechanical Engineers Standard A112.19.19-2006 "Vitreous China Nonwater Urinals"; or

(B) International Association of Plumbing and Mechanical Officials Standard ANSI Z124.9-2004 "Plastic Urinal Fixtures";

(2) provides a trap seal that complies with the building code of the local government in which the urinal is installed; and

(3) permits the uninhibited flow of waste through the urinal to the sanitary drainage system.

(b) The manufacturer or importer must submit to the commission certified test results from a laboratory accredited by the American National Standards Institute verifying that the nonwater-supplied urinal conforms to the requirements described by Subsection (a)(1).

(c) A person who installs a nonwater-supplied urinal shall install water distribution and fixture supply piping sized to accommodate a water-supplied urinal to an in-wall point immediately adjacent to the nonwater-supplied urinal location so that the

nonwater-supplied urinal can be replaced with a water-supplied urinal if desired by the owner or required by a code enforcement officer.

(d) A person who owns a nonwater-supplied urinal shall clean and maintain the nonwater-supplied urinal in accordance with the manufacturer's instructions.

Added by Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 3, eff. September 1, 2009.

CHAPTER 373. WATER CONSERVATION

Sec. 373.001. XERISCAPE ASSISTANCE PROGRAM. (a) The board on request shall assist counties and municipalities by providing a model xeriscape code and other technical assistance.

(b) The board shall work with counties and municipalities to promote, through educational programs and publications, the use of xeriscape practices, including the use of compost, in existing residential and commercial development.

(c) In this section:

(1) "Board" means the Texas Water Development Board.

(2) "Xeriscape" has the meaning assigned by Section 2166.404, Government Code.

Added by Acts 1993, 73rd Leg., ch. 642, Sec. 4, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19(17), eff. Sept. 1, 1997.

For expiration of this chapter, see Section 374.253.

CHAPTER 374. DRY CLEANER ENVIRONMENTAL RESPONSE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 374.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2005, 79th Leg., Ch. 1110, Sec. 19, eff. September 1, 2005.

(2) "Chlorinated dry cleaning solvent" means any dry cleaning solvent that contains a compound that has a molecular structure containing the element chlorine, including perchloroethylene, also known as tetrachloroethylene.

(3) "Commission" means the Texas Commission on Environmental Quality.

(4) "Corrective action" means those activities described by Section 374.152 or 374.153.

(5) "Corrective action plan" means a plan approved by the commission to perform corrective action at a dry cleaning facility.

(6) "Dry cleaning drop station" means a retail commercial establishment described in category 812320 of the 2002 North American Industry Classification System as an establishment the primary business of which is to act as a collection point for the drop-off and pick-up of garments or other fabrics that are sent to a dry cleaning facility for processing.

(7) "Dry cleaning facility" means:

(A) a retail commercial establishment, described in category 812320 of the 2002 North American Industry Classification System, that operates, or has operated, in whole or in part for the purpose of cleaning garments or other fabrics using a process that involves any use of dry cleaning solvents;

(B) all contiguous land used in connection with the establishment; and

(C) all structures and other appurtenances and improvements located on the contiguous land and used in connection with the establishment.

(8) "Dry cleaning solvent" includes:

(A) perchloroethylene, also known as tetrachloroethylene, petroleum-based solvents, hydrocarbons, silicone-based solvents, and other nonaqueous solvents used in the cleaning of garments or other fabrics at a dry cleaning facility; and

(B) the chemicals and compounds into which the solvents degrade.

(9) "Dry cleaning unit" means a machine or device that uses dry cleaning solvents to clean garments and other fabrics and any piping, ancillary equipment, and containment system associated with the machine or device.

(10) "Executive director" means the executive director of the commission.

(11) "Fund" means the dry cleaning facility release fund.

(12) "Owner" means a person who owns or leases, or has owned or leased, a dry cleaning facility and who is or has been responsible for the operation of dry cleaning operations at the dry cleaning facility.

(13) "Release" means a spill, emission, discharge, escape, leak, or disposal of dry cleaning solvent from a dry cleaning facility into the soil or water of the state.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 1, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 19, eff. September 1, 2005.

Sec. 374.002. APPLICABILITY OF OTHER LAW. To the extent that this chapter is inconsistent or in conflict with Chapter 361 or other general law, this chapter prevails.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.003. APPLICABILITY TO GOVERNMENTAL BODIES. This chapter does not apply to:

(1) a governmental entity, including a governmental agency or prison; or

(2) a political subdivision of this state, including a municipality or a conservation and reclamation district created under Section 59, Article XVI, Texas Constitution, that owns or operates a wholesale or retail water supply system, public solid waste system, public storm water and drainage system, or public solid waste disposal system.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.004. ADVISORY COMMITTEE. (a) The executive director shall appoint an advisory committee composed of:

(1) three representatives of the dry cleaning industry who shall provide professional and practical expertise to the commission;

(2) one public representative of urban areas; and

(3) one public representative of rural areas.

(b) The advisory committee shall:

(1) review and comment on the methodology the commission

uses to rank contaminated sites under Section 374.154;

(2) review and comment on the report the commission prepares each biennium under Section 374.056; and

(3) assist in the ongoing development of rules to implement, administer, and enforce this chapter.

(c) A member of the committee serves at the will of the executive director.

(d) A member of the advisory committee serves without compensation but is entitled to be reimbursed by the commission for actual and necessary travel expenses related to the performance of committee duties.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 2, eff. September 1, 2005.

SUBCHAPTER B. RULES, STANDARDS, CRITERIA, AND REPORTS

Sec. 374.051. COMMISSION RULES AND STANDARDS. (a) The commission, with the assistance of the advisory committee, shall adopt rules necessary to administer and enforce this chapter. Rules adopted under this section must be reasonably necessary:

(1) to preserve, protect, and maintain the water and other natural resources of this state; and

(2) to provide for prompt and appropriate corrective action of releases from dry cleaning facilities.

(b) The commission shall adopt rules that establish:

(1) performance standards for dry cleaning facilities;

(2) requirements for the removal of chlorinated dry cleaning solvents and wastes from dry cleaning facilities that are to be closed by the owner to prevent future releases;

(3) criteria to be used in setting priorities for the expenditure of money from the fund after consideration of:

(A) the benefit to be derived from corrective action compared to the cost of implementing the corrective action;

(B) the degree to which human health and the environment are affected by exposure to contamination;

(C) the present and reasonably foreseeable future uses of affected surface water or groundwater;

(D) the effect that interim or immediate remedial measures may have on future costs;

(E) the amount of money available for corrective action in the fund; and

(F) any additional factors the commission considers relevant; and

(4) criteria under which the commission may determine the level at which corrective action is considered to be complete.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 3, eff. September 1, 2005.

Sec. 374.052. FACILITY RETROFITTING.

(a) The commission by rule shall require dry cleaning facilities operating on or before January 1, 2004, to implement the performance standards adopted under Section 374.053 not later than January 1, 2006.

(b) The commission by rule shall require businesses operating on or before January 1, 2004, whose annual gross receipts are $150,000 or less to implement the performance standards adopted under Sections 374.053(c)(3), (4), and (5) not later than January 1, 2015.

(c) Repealed by Acts 2005, 79th Leg., Ch. 1110, Sec. 19, eff. September 1, 2005.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 4, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 19, eff. September 1, 2005.

Sec. 374.053. PERFORMANCE STANDARDS FOR NEW DRY CLEANING FACILITIES. (a) The commission by rule shall adopt performance standards for a new dry cleaning facility.

(b) Rules adopted under this section must allow for the use of new technologies as they become available.

(c) Rules adopted under this section must require:

(1) proper storage and disposal of wastes generated at the facility that contain any quantity of chlorinated dry cleaning solvent;

(2) compliance with emissions standards for hazardous air pollutants for perchloroethylene dry cleaning facilities adopted by the United States Environmental Protection Agency on September 22, 1993;

(3) dikes or other containment structures to be:

(A) installed around each dry cleaning unit that uses chlorinated dry cleaning solvents and each storage area for chlorinated dry cleaning solvents or waste; and

(B) capable of containing any leak, spill, or release of chlorinated dry cleaning solvent;

(4) secondary containment for all new or replaced dry cleaning units, regardless of the solvent used;

(5) all diked floor surfaces on which any chlorinated dry cleaning solvent may leak, spill, or otherwise be released to be made of epoxy, steel, or another material impervious to chlorinated dry cleaning solvents; and

(6) all chlorinated dry cleaning solvents to be delivered to dry cleaning facilities by means of closed, direct-coupled delivery systems, when those systems have become generally available.

(d) Rules adopted under this section shall ensure that wastewater from a dry cleaning unit using chlorinated dry cleaning solvent or discharge of chlorinated dry cleaning solvent is not discharged to a sanitary sewer, to a septic tank, or to water of this state.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 5, eff. September 1, 2005.

Sec. 374.054. COMPLETION CRITERIA. (a) In determining whether a corrective action is complete, the commission shall consider the factors listed under Section 374.051(b)(3) and:

(1) individual site characteristics, including natural remediation processes;

(2) state water quality standards; and

(3) additional factors the commission considers relevant.

(b) A deviation from a state water quality standard may not result in the application of a standard that is more stringent than the applicable standard.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 6, eff. September 1, 2005.

Sec. 374.055. CRITERIA FOR ADMINISTRATION OF CHAPTER. (a) The commission shall administer this chapter in accordance with this section.

(b) To the maximum extent possible, the commission shall deal with contamination from dry cleaning facilities by using money in the fund.

(c) The commission shall use money from the fund as sites are discovered in the normal course of the commission's business.

(d) The commission shall consider interim or early corrective action that may result in an overall reduction of risk to human health and the environment and in the reduction of total costs of corrective action at a site.

(e) The commission, in its discretion, may use innovative technology to perform corrective action.

(f) To the maximum extent possible, money in the fund must be used to address contamination resulting from releases.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.056. REPORT TO GOVERNOR AND LEGISLATURE. On or before December 1 of each even-numbered year, the executive director shall submit to the governor, lieutenant governor, speaker of the house of representatives, and members of the appropriate standing committees of the senate and the house of representatives a report regarding:

(1) money deposited to the credit of the fund during the two previous fiscal years and the sources of the receipts;

(2) disbursements from the fund during the two previous fiscal years and the purposes of the disbursements;

(3) the extent of corrective action taken under this chapter during the two previous fiscal years; and

(4) the ranking of sites on the date the report is made.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Jan. 1, 2004.

SUBCHAPTER C. FINANCIAL PROVISIONS

Sec. 374.101. DRY CLEANING FACILITY RELEASE FUND. (a) The dry cleaning facility release fund is an account in the general revenue fund.

(b) The fund consists of money from:

(1) proceeds from the charges and fees imposed by this chapter;

(2) interest attributable to investment of money in the fund;

(3) money recovered by the state under this chapter, including any money paid:

(A) under an agreement with the commission; or

(B) as penalties; and

(4) money received by the commission in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of this chapter.

(c) Money in the fund may be appropriated only to the commission for the purposes of this chapter, including any administrative duty imposed on the commission under this chapter.

(d) The commission may annually spend for administrative and start-up expenses incurred in fulfilling its duties under this chapter an amount of money from the fund not to exceed 15 percent of the amount of money credited to the fund in the same fiscal year as the expenditures.

(e) Subject to the limitations of this chapter, the commission shall use only money from the fund to pay for all expenses incurred by the commission in fulfilling its duties under this chapter.

(f) Section 403.095, Government Code, does not apply to money deposited to the fund.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 7, eff. September 1, 2005.

Sec. 374.102. DRY CLEANING FACILITY OR DROP STATION REGISTRATION; FEE; POSTING. (a) Each owner of an operating dry cleaning facility or dry cleaning drop station shall register with the commission on a form provided by the commission.

(b) An annual registration fee, the total amount of which may be divided into quarterly payments and billed on dates established by the commission, is assessed as follows:

(1) for a dry cleaning facility that:

(A) has gross annual receipts of more than $150,000, a fee of $2,500;

(B) has gross annual receipts of $150,000 or less, a fee of $250;

(C) is designated as nonparticipating under Section 374.104, a fee of $250; or

(D) depends entirely on revenue collected from an associated dry cleaning drop station or drop stations, a fee in accordance with Paragraphs (A) and (B) determined by the combined gross annual receipts of the drop station or drop stations; or

(2) for a dry cleaning drop station that:

(A) has gross annual receipts of more than $150,000, a fee of $750;

(B) has gross annual receipts of $150,000 or less, a fee of $250; or

(C) is designated as nonparticipating under Section 374.104, a fee of $125.

(c) Fees paid under this section shall be deposited to the credit of the fund.

(d) The owner of a dry cleaning facility or drop station shall post the owner's registration number, in a manner prescribed by the commission, in the public area of each of the owner's operating dry cleaning facilities or drop stations.

(e) Registration under this section must be renewed annually.

(f) For each registration application, the commission shall request that the comptroller verify whether the owner submitting the registration application is in good standing with the state and whether the owner's selection on the registration application of the gross annual receipts classification for the dry cleaning facility or drop station agrees with information reported to the comptroller for

the same tax or reporting year. Not later than the third business day after the comptroller receives the verification request, based in part on information supplied by the commission, the comptroller shall report to the commission the owner's standing and whether the owner's application information agrees with the comptroller's information.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 8, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 1, eff. June 15, 2007.

Sec. 374.1022. REGISTRATION OF PROPERTY OWNER OR PRECEDING PROPERTY OWNER. (a) The following persons may participate in the fund benefits by registering as provided by this section:

(1) a person who owns real property on which a dry cleaning facility or drop station is or was located; or

(2) a preceding owner of real property on which a dry cleaning facility or drop station is or was located who entered into an agreement with the current owner associated with the sale of the real property to the current owner that requires the person to be responsible for any costs associated with cleaning up contamination covered under this chapter.

(b) For a person described by Subsection (a) to participate in fund benefits, the person must:

(1) register with the commission on or before December 31, 2007, using a form prescribed by the commission;

(2) include on the registration form information identifying the person as a:

(A) property owner; or

(B) preceding property owner; and

(3) pay the annual registration fee of $1,500.

(c) A person described by Subsection (a) may participate in the fund benefits by registering after December 31, 2007, in the same manner as provided by Subsection (b). A person registering after that date must also pay:

(1) all past annual registration fees; and

(2) a late fee of $100 for each month or partial month that

has elapsed between December 2007 and the date of the registration.

(d) The annual registration fee may be divided into quarterly payments due over the year on dates established by the commission.

Added by Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 2, eff. June 15, 2007.

Sec. 374.1023. LIEN. (a) In addition to other remedies available under other law, a lien is imposed against the real property that is subject to a corrective action taken under this chapter if the person does not pay a registration fee under Section 374.1022 that is due while the corrective action is ongoing. The amount of the lien is the sum of:

(1) the costs of the action; and

(2) the fees due but not paid during the period of the corrective action.

(b) The lien imposed by this section arises and attaches to the real property subject to the corrective action at the time an affidavit is recorded and indexed in accordance with this section in the county in which the real property is located. For the purpose of determining rights of all affected parties, the lien does not relate back to a time before the date on which the affidavit is recorded, which date is the lien inception date. The lien continues until the liability for the corrective action costs and registration fees is satisfied or becomes unenforceable through operation of law. The executive director shall determine whether to prepare an affidavit. In determining whether to prepare an affidavit or whether a lien is satisfied, the executive director:

(1) shall proceed in the manner that the executive director determines will most likely result in the least overall costs to the state after any cost and fee recovery action; and

(2) may take into account a landowner's financial ability to satisfy the lien, including consideration of whether the real property that is the subject of the lien:

(A) is a homestead and is being occupied as a home by the landowner; and

(B) has a fair market value of $250,000 or less.

(c) An authorized representative of the commission must execute the affidavit. The affidavit must show:

(1) the names and addresses of the persons liable for the corrective action costs and registration fees;

(2) a description of the real property that is subject to or affected by the corrective action; and

(3) the amount of the corrective action costs and registration fees and the balance due.

(d) The county clerk shall record the affidavit in records kept for that purpose and shall index the affidavit under the names of the persons liable for the corrective action costs and registration fees.

(e) The commission shall record a relinquishment or satisfaction of the lien when the lien is paid or satisfied.

(f) The lien may be foreclosed only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien.

(g) The lien imposed by this section is not valid or enforceable if real property, an interest in real property, or a mortgage, lien, or other encumbrance on or against real property is acquired before the affidavit is recorded, unless the person acquiring the real property, an interest in the property, or the mortgage, lien, or other encumbrance on the property had or reasonably should have had actual notice or knowledge that the real property is subject to or affected by a corrective action or has knowledge that the state has incurred corrective action costs and is owed registration fees.

(h) If a lien is fixed or attempted to be fixed as provided by this section, the owner of the real property affected by the lien may file a bond to indemnify against the lien. The bond must be filed with the county clerk of the county in which the real property subject to the lien is located. An action to establish, enforce, or foreclose any lien or claim of lien covered by the bond must be brought not later than the 30th day after the date of service of notice of the bond. The bond must:

(1) describe the real property on which the lien is claimed;

(2) refer to the lien claimed in a manner sufficient to identify it;

(3) be in an amount double the amount of the lien referred to;

(4) be payable to the commission;

(5) be executed by the party filing the bond as principal

and a corporate surety authorized under the law of this state to execute the bond as surety; and

(6) be conditioned substantially that the principal and sureties will pay to the commission the amount of the lien claimed, plus costs, if the claim is proved to be a lien on the real property.

(i) After the bond is filed, the county clerk shall issue notice of the bond to the named obligee. A copy of the bond must be attached to the notice. The notice may be served on each obligee by having a copy delivered to the obligee by any person competent to make oath of the delivery. The original notice shall be returned to the office of the county clerk, and the person making service of copy shall make an oath on the back of the copies showing on whom and on what date the copies were served. The county clerk shall record the bond notice and return in records kept for that purpose. In acquiring an interest in real property, a purchaser or lender may rely on and is absolutely protected by the record of the bond, notice, and return.

(j) The commission may sue on the bond after the 30th day after the date on which the notice is served but may not sue on the bond later than one year after the date on which the notice is served. The commission is entitled to recover reasonable attorney's fees if the commission recovers in a suit on the lien or on the bond.

Added by Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 2, eff. June 15, 2007.

Sec. 374.103. FEE ON PURCHASE OF DRY CLEANING SOLVENT; DISPOSITION OF PROCEEDS. (a) Except as provided by Subsection (b) and Section 374.104(d), a fee of $20 per gallon is imposed on the purchase of the dry cleaning solvent perchloroethylene and $3 per gallon on the purchase of any other dry cleaning solvent by an owner of a dry cleaning facility. The person who distributes the solvent shall collect the fees and shall pay to the commission the amount due, in accordance with Subsection (a-1).

(a-1) A person who distributes dry cleaning solvent must register as a distributor with the commission. A registered distributor is entitled to withhold one percent of the amount of the fee imposed by Subsection (a) for the distributor's administrative expenses if the distributor pays the remaining amount to the

commission not later than the date prescribed by the commission.

(b) Subsection (a) does not apply to a dry cleaning facility designated as nonparticipating under Section 374.104.

(c) A person who distributes dry cleaning solvent may not sell the solvent for use in a dry cleaning facility unless the person first obtains and records the registration number of the owner of the facility.

(d) The commission shall adopt any procedures needed for the collection, administration, and enforcement of the fee imposed by this section and shall deposit all remitted fees to the credit of the fund.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 9, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 3, eff. June 15, 2007.

Sec. 374.104. OPTION NOT TO PARTICIPATE IN FUND BENEFITS. (a) The owner of a dry cleaning facility or drop station may file with the commission an option for the facility or drop station not to participate in fund benefits.

Text of subsection as amended by Acts 2005, 79th Leg., R.S., Ch. 800 (S.B. 444), Sec. 1

(b) An option not to participate must be filed on or before February 28, 2006. An owner may not file an option not to participate unless the owner was:

(1) the owner of the dry cleaning facility or drop station on January 1, 2004; and

(2) eligible to file the option on or before January 1, 2004, and inadvertently failed to file before that date.

Text of subsection as amended by Acts 2005, 79th Leg., R.S., Ch. 1110 (H.B. 2376), Sec. 10

(b) An option not to participate must be filed on or before February 28, 2006. An owner may not file an option not to participate after September 1, 2005, unless the owner was:

(1) the owner of the dry cleaning facility or drop station on January 1, 2004; and

(2) eligible to file the option on or before January 1, 2004, and inadvertently failed to file before that date.

(b-1) An owner of a dry cleaning facility or drop station who files an option not to participate in accordance with Subsection (b) is entitled to a refund of registration fees paid under Section 374.102 to the extent that a registration fee paid under that section in 2004 or 2005 exceeded the amount due for a nonparticipating dry cleaning facility or drop station.

(c) The commission shall designate a dry cleaning facility or drop station as nonparticipating if the owner:

(1) demonstrates, at the owner's expense and in accordance with commission rules, that:

(A) the owner has never used or allowed the use of the dry cleaning solvent perchloroethylene at any dry cleaning facility or drop station in this state; and

(B) perchloroethylene has never been used at that location;

(2) agrees that perchloroethylene will not be used as a dry cleaning solvent at the facility or drop station; and

(3) obtains the written consent of the person who owns the real property on which the dry cleaning facility or drop station is located.

(d) A facility designated as nonparticipating is not subject to the fees on dry cleaning solvents, other than perchloroethylene, under Section 374.103.

(e) On payment of the registration fee, the commission shall issue a specially marked registration document to the owner of a nonparticipating facility or drop station. The owner shall post the registration document in the public area of the facility or drop station.

(f) After a dry cleaning facility or drop station is designated as nonparticipating:

(1) the facility or drop station is not eligible for any expenditures of money from the fund or other benefits of participation under this chapter for that facility or drop station; and

(2) that facility or drop station may not later become a participating facility.

(g) A person who is the owner of a dry cleaning drop station who timely files an option not to participate in fund benefits under

this section may, as provided by this subsection, retain the status of the drop station as nonparticipating if the person moves the drop station to a new location. A person to whom this section applies must:

(1) provide to the commission the written consent of the property owner at the new location; and

(2) continue to comply with the other requirements of this section.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 800 (S.B. 444), Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 10, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 4, eff. June 15, 2007.

SUBCHAPTER D. RESPONSE TO RELEASE; CORRECTIVE ACTION

Sec. 374.151. RESPONSE TO RELEASE. (a) A person may not knowingly allow a release.

(b) A person who knows of a release of more than one quart of a chlorinated dry cleaning solvent or of more than one gallon of a non-chlorinated dry cleaning solvent shall:

(1) immediately contain and control the release; and

(2) notify the commission of the release before the expiration of 24 hours after the person learns of the release.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 11, eff. September 1, 2005.

Sec. 374.152. INVESTIGATION AND ASSESSMENT OF RELEASE; EMERGENCY ACTION. (a) If a release or a potential release poses a threat to human health or to the environment, the commission shall:

(1) investigate and assess the extent of the resulting contamination; and

(2) take necessary or appropriate emergency action to

ensure that human health or safety is not threatened by the release or the potential release.

(b) Emergency action under Subsection (a)(2) may include the treatment, restoration, or replacement of drinking water supplies.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.153. CORRECTIVE ACTION. (a) Subject to Subchapter E, the commission shall take corrective action for a release from a dry cleaning facility that results in contamination, including contamination that may have moved off the dry cleaning facility.

(b) Corrective action includes the cleanup of affected soil, groundwater, or surface water using the most cost-effective method that:

(1) is technologically feasible and reliable;

(2) provides adequate protection of human health and the environment; and

(3) minimizes, to the extent practical, environmental damage.

(c) The commission shall:

(1) operate and maintain corrective action;

(2) monitor releases from a dry cleaning facility, including contamination that may have moved off the dry cleaning facility;

(3) pay the reasonable costs incurred by the commission in providing field and laboratory services; and

(4) pay the reasonable costs of restoring property, as nearly as practicable, to the conditions that existed before the activities associated with:

(A) the investigation of a release;

(B) a cleanup; or

(C) related corrective action.

(d) The commission shall ensure the removal and proper disposal of wastes generated by a release.

(e) Except as provided by Subchapter E, the commission shall pay the costs of corrective action conducted under this subchapter by the commission or by other entities approved by the commission, regardless of whether the corrective action is included in a corrective action plan.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.1535. SITE RESTRICTIONS AFTER CORRECTIVE ACTION. (a) If the commission has completed corrective action at a dry cleaning site, perchloroethylene may not be used at that site.

(b) If the owner of a dry cleaning site uses perchloroethylene at the site after the completion of corrective action at that site, the site is not eligible for future corrective action using money from the fund.

Added by Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 5, eff. June 15, 2007.

Sec. 374.154. RANKING OF CONTAMINATED DRY CLEANING SITES. (a) For a contaminated dry cleaning site that does not require emergency action under Section 374.152, the commission shall assign a rank for the site relative to other sites previously ranked and awaiting corrective action based on information contained in the application for ranking.

(b) The following persons are eligible to apply for a site to be ranked under Subsection (a):

(1) a person who is an owner of the dry cleaning facility or drop station; and

(2) a person who is registered with the commission under Section 374.1022.

(c) If the applicant for ranking:

(1) is not an owner of the real property, the application must include proof that an owner of the real property has been notified of the application;

(2) is an owner of the real property and the dry cleaning facility or drop station is leased, the application must include proof that a lessee has been notified of the application; or

(3) is a person described by Section 374.1022(a)(2), the application must include proof that the owner of the real property and any lessee have been notified of the application.

(d) The application for ranking must contain information and evidence required by commission rule to aid in ranking. The information and evidence required may include:

(1) water or soil samples;

(2) analyses of the water or soil samples;

(3) hydrogeologic information from the contaminated site;

(4) information concerning the site's proximity to a private or public water supply; and

(5) other information or evidence the commission considers necessary.

(e) The costs incurred by an applicant in collecting the information and evidence under Subsection (d) shall be credited against the deductible payable by the applicant under Section 374.203(d).

(f) The commission shall notify the applicant of the relative ranking the commission assigns the applicant's site on or before the 90th day after the date the application is received by the commission.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 12, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 6, eff. June 15, 2007.

Sec. 374.155. POWER TO MODIFY COMMISSION RANKINGS OR POSTPONE CORRECTIVE ACTIONS. The commission may:

(1) modify the ranked status of a site as warranted under the system of priorities established under Section 374.051(b)(3); or

(2) postpone temporarily the completion of a corrective action for which money from the fund is being used, if the postponement is necessary to make money available for corrective action at a site with a higher ranking.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER E. LIABILITY AND RESPONSIBILITY

Sec. 374.202. OWNER RESPONSIBILITY. (a) The commission may hold an owner responsible for up to 100 percent of the costs of corrective action attributable to the owner if the commission finds, after notice and an opportunity for a hearing that:

(1) requiring the owner to bear the responsibility will not prejudice another owner or person who is eligible, under this chapter, to have corrective action costs paid by the fund; and

(2) the owner:

(A) caused a release by operating practices contrary to those generally in use at the time of the release;

(B) is in arrears for money owed under this chapter, after notice and an opportunity to correct the arrearage;

(C) obstructed the efforts of the commission to carry out its obligations under this chapter other than by the exercise of the owner's legal rights;

(D) caused or allowed the release because of a material violation of the performance standards established by this chapter or the rules adopted by the commission under this chapter; or

(E) has more than once violated Section 374.151 or related commission rules.

(b) To the extent that an owner is responsible for corrective action costs under this subsection, the owner is not entitled to the exemption under Section 374.207.

(c) The commission, or the attorney general at the request of the commission, may bring a civil action to recover any amounts owed to the commission under this section. The commission or attorney general, as applicable, may recover court costs, the costs of preparing for litigation, and reasonable attorney's fees incurred in an action brought under this section. An owner is jointly and severally liable with any other defendant for the entire amount of costs.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 13, eff. September 1, 2005.

Sec. 374.203. LIMITATION ON USE OF FUND FOR CORRECTIVE ACTION. (a) In this section, "contaminated dry cleaning site" means the areal extent of soil or groundwater contamination with dry cleaning solvents.

(b) The commission may not use money from the fund for the payment of costs in excess of $5 million for corrective action at a

single contaminated dry cleaning site.

(c) Except for dry cleaning sites that require emergency action under Section 374.152, the commission may not use money from the fund for corrective action at a contaminated dry cleaning site unless an eligible person applies for the ranking under Section 374.154 and is not otherwise ineligible for corrective action under this chapter.

(d) The owner of a dry cleaning facility or drop station, or other person who submits the application for ranking the facility under Section 374.154, shall pay as a nonrefundable deductible the first $5,000 of corrective action costs incurred because of a release from the dry cleaning facility or drop station. The commission may take corrective action regardless of whether the commission obtains the deductible.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 14, eff. September 1, 2005.

Sec. 374.204. LIMITATION ON LIABILITY. The fund, the commission, the executive director, this state, or agents or employees of this state may not be held liable for loss of business, damages, or taking of property associated with any corrective action taken under this chapter.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Jan. 1, 2004.

Sec. 374.205. LIMITATION ON USE OF FUND FOR THIRD PARTIES. Money from the fund may not be used to compensate third parties for bodily injury or property damage caused by a release, other than property damage included in a corrective action plan approved by the commission.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.206. USE OF OTHER SOURCES OF MONEY. This chapter does not create a liability or responsibility on the part of the commission, the executive director, this state, or agents or

employees of this state to pay any corrective action costs from a source other than the fund or to take corrective action if the amount of money in the fund is insufficient.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.207. ELIGIBLE OWNER OR REGISTERED PERSON EXEMPT FROM CERTAIN CLAIMS. If an owner or a person registered under Section 374.1022 is eligible under this chapter to have corrective action costs paid by the fund, an administrative or judicial claim may not be made under state law against the owner or other person by or on behalf of this state or by any other person, except a political subdivision, to compel corrective action or seek recovery of the costs of corrective action that result from the release.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Jan. 1, 2004.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 7, eff. June 15, 2007.

Sec. 374.208. UNAUTHORIZED PAYMENTS. (a) The commission may pay costs from the fund under this chapter only if the costs are:

(1) integral to corrective action for a release; or

(2) required for the administration or enforcement of this chapter.

(b) The commission may not spend money from the fund:

(1) for corrective action at a site contaminated by solvents normally used in dry cleaning operations, if the contamination did not result from the operation of a dry cleaning facility;

(2) for corrective action at a site, other than a dry cleaning facility, that is contaminated by dry cleaning solvents that were released while being transported to or from a dry cleaning facility by a person other than the owner of the dry cleaning facility or the owner's agents or employees; or

(3) for the payment of any costs:

(A) associated with a fine or penalty brought against a dry cleaning facility owner under state or federal law; or

(B) related to corrective action at a dry cleaning

facility that:

(i) has been included by the United States Environmental Protection Agency on the national priorities list; or

(ii) is a hazardous waste facility eligible for listing on the state registry under Subchapter F, Chapter 361.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER F. REVIEW OF ORDERS AND DECISIONS; VIOLATIONS; PENALTIES; EXPIRATION

Sec. 374.251. REVIEW OF ORDERS. (a) A person affected by an order of the commission under this chapter may, on or before the 15th day after the date of service of the order, make a written request for a hearing.

(b) A person affected by the final order in an administrative hearing under Subsection (a) is entitled to judicial review and may appeal the order on or before the 31st day after the date on which the order was rendered. If the state prevails in an appeal filed under this subsection, the state is entitled to recover reasonable expenses incurred in obtaining the judgment, including reasonable attorney's fees, costs involved in preparing for the litigation, and witness fees.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 15, eff. September 1, 2005.

Sec. 374.2511. CLOSURE OF UNREGISTERED FACILITY. The commission may issue a notice of violation to the owner or operator of a dry cleaning facility or dry cleaning drop station that is not registered under Section 374.102. The notice must inform the owner or operator of the nature of the violation and state that the commission may order the dry cleaning facility or dry cleaning drop station to cease operation if the violation is not corrected within 30 days after the receipt of the notice. If the owner or operator does not correct the violation within the prescribed time, the commission may order the dry cleaning facility or dry cleaning drop station to cease operation.

Added by Acts 2009, 81st Leg., R.S., Ch. 963 (H.B. 3547), Sec. 1, eff. September 1, 2009.

Sec. 374.252. VIOLATIONS; PENALTIES. (a) A person is subject to an administrative penalty under Section 7.0525, Water Code, if the person:

(1) operates a dry cleaning facility or drop station in violation of this chapter, rules adopted under this chapter, or orders of the commission made under this chapter;

(2) prevents or hinders a properly identified authorized officer, employee, or agent of the commission, or a properly identified person under order of or contract with the commission, from entering, inspecting, sampling, or responding to a release as authorized by this chapter;

(3) knowingly makes any false material statement or representation in any record, report, or other document filed, maintained, or used for the purpose of compliance with this chapter;

(4) knowingly destroys, alters, or conceals any record that this chapter or rules adopted under this chapter require to be maintained; or

(5) violates Section 374.151 or related commission rules.

(b) If a registration fee is not paid on or before the 30th day after the date the fee is due, the commission may assess a penalty not to exceed $50 per day for each day the fee is not paid.

(c) If a registration application for an operating dry cleaning facility or drop station is not filed with the commission on or before the 30th day after the date the application is due, the commission may assess a penalty not to exceed $50 per day for each day the application is not filed.

(d) The commission may use normal commission procedures for the collection of penalties and interest on a penalty imposed under this section.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Jan. 1, 2004. Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 16, eff. September 1, 2005.

Sec. 374.253. EXPIRATION. (a) This chapter expires on September 1, 2041.

(b) A corrective action, including any administrative duties associated with the action, for which remediation of a contaminated site has begun before September 1, 2041, shall be completed in accordance with this chapter using money from the fund, to the extent possible, but money may not be collected for or added to the fund on or after that date.

(c) The commission may continue a corrective action that has not progressed beyond the investigative or planning stage after September 1, 2041, to the extent money from the fund is available.

(d) Any unobligated money remaining in the fund after the completion of all corrective actions under Subsection (b) shall be transferred to the general revenue fund to the credit of the commission or a successor agency. The fund is abolished on the date of the transfer.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 17, eff. September 1, 2005.

Acts 2021, 87th Leg., R.S., Ch. 38 (S.B. 872), Sec. 1, eff. May 15, 2021.

CHAPTER 376. RENEWABLE ENERGY COMPONENT RECYCLING FACILITIES

Sec. 376.001. DEFINITION. In this chapter, "commission" means the Texas Commission on Environmental Quality.

Added by Acts 2025, 89th Leg., R.S., Ch. 273 (H.B. 3229), Sec. 1, eff. September 1, 2025.

Sec. 376.002. APPLICABILITY. This chapter applies only to a recycling facility that accepts, processes, and repurposes components to recover valuable materials from:

(1) a wind turbine generator, including turbine blades, nacelles, nacelle covers, towers, drivetrains, generators, magnets, power electronics, and cables;

(2) a solar energy device, as defined by Section 185.001, Utilities Code, including solar modules, junction boxes,

transformers, inverters, racks or trackers, and cables; or

(3) a battery energy storage system, including battery cells, racks, containers, inverters, battery management systems, cooling and fire suppression systems, and cables.

Added by Acts 2025, 89th Leg., R.S., Ch. 273 (H.B. 3229), Sec. 1, eff. September 1, 2025.

Sec. 376.003. REPORT. (a) The owner of a recycling facility shall submit a report to the commission not later than January 15 of each year that includes:

(1) an inventory of all components of a wind turbine generator, solar energy device, or battery energy storage system accepted by the facility for recycling that have not yet been recycled, including any components the facility has taken title to or assumed control of regardless of whether the components are located at the facility;

(2) an estimated timeline for recycling or disposing of the components described by Subdivision (1); and

(3) a cost estimate for recycling or disposing of the components described by Subdivision (1) prepared by an independent, third-party professional engineer licensed in this state.

(b) The owner of the recycling facility shall:

(1) submit with the facility's first report submitted under Subsection (a) evidence of financial assurance in an amount equal to 100 percent of the cost estimated under Subsection (a)(3); and

(2) submit with each subsequent report any additional financial assurance necessary to ensure that the amount of financial assurance the owner has on file with the commission for the facility is at least equal to 100 percent of the cost estimated under Subsection (a)(3) in the subsequent report.

(c) Acceptable forms of financial assurance for purposes of this section include:

(1) a parent company guaranty with a minimum investment grade credit rating for the parent company issued by a major domestic credit rating agency;

(2) a letter of credit; or

(3) a bond.

Added by Acts 2025, 89th Leg., R.S., Ch. 273 (H.B. 3229), Sec. 1, eff.

September 1, 2025.

Sec. 376.004. INTERNET POSTING. The commission shall maintain on its Internet website a list of recycling facilities in this state that are in compliance with this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 273 (H.B. 3229), Sec. 1, eff. September 1, 2025.

Sec. 376.005. ADMINISTRATIVE PENALTY. (a) A person may not accept, process, or repurpose components as described by Section 376.002 for compensation unless the person complies with the requirements of this chapter.

(b) The commission may impose an administrative penalty on an owner or operator of a recycling facility to which this section applies in accordance with Section 7.052(b-5), Water Code.

Added by Acts 2025, 89th Leg., R.S., Ch. 273 (H.B. 3229), Sec. 1, eff. September 1, 2025.

SUBTITLE C. AIR QUALITY
CHAPTER 382. CLEAN AIR ACT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 382.001. SHORT TITLE. This chapter may be cited as the Texas Clean Air Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 382.002. POLICY AND PURPOSE. (a) The policy of this state and the purpose of this chapter are to safeguard the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and the maintenance of adequate visibility.

(b) It is intended that this chapter be vigorously enforced and that violations of this chapter or any rule or order of the Texas

Commission on Environmental Quality result in expeditious initiation of enforcement actions as provided by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.139, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0893, eff. April 2, 2015.

Sec. 382.003. DEFINITIONS. In this chapter:

(1) "Administrator" means the Administrator of the United States Environmental Protection Agency.

(1-a) "Advanced clean energy project" means:

(A) a project for which an application for a permit or for an authorization to use a standard permit under this chapter is received by the commission on or after January 1, 2008, and before January 1, 2020, and that:

(i) involves the use of coal, biomass, petroleum coke, solid waste, natural gas, or fuel cells using hydrogen derived from such fuels, in the generation of electricity, or the creation of liquid fuels outside of the existing fuel production infrastructure while co-generating electricity, whether the project is implemented in connection with the construction of a new facility or in connection with the modification of an existing facility and whether the project involves the entire emissions stream from the facility or only a portion of the emissions stream from the facility;

(ii) with regard to the portion of the emissions stream from the facility that is associated with the project, is capable of achieving:

(a) on an annual basis:

(1) a 99 percent or greater reduction of sulfur dioxide emissions;

(2) if the project is designed for the use of feedstock, substantially all of which is subbituminous coal, an emission rate of 0.04 pounds or less of sulfur dioxide per million British thermal units as determined by a 30-day average; or

(3) if the project is designed for the use of one or more combustion turbines that burn natural gas, a sulfur dioxide emission rate that meets best available control technology

requirements as determined by the commission;

(b) on an annual basis:

(1) a 95 percent or greater reduction of mercury emissions; or

(2) if the project is designed for the use of one or more combustion turbines that burn natural gas, a mercury emission rate that complies with applicable federal requirements;

(c) an annual average emission rate for nitrogen oxides of:

(1) 0.05 pounds or less per million British thermal units;

(2) if the project uses gasification technology, 0.034 pounds or less per million British thermal units; or

(3) if the project is designed for the use of one or more combustion turbines that burn natural gas, two parts per million by volume; and

(d) an annual average emission rate for filterable particulate matter of 0.015 pounds or less per million British thermal units; and

(iii) captures not less than 50 percent of the carbon dioxide in the portion of the emissions stream from the facility that is associated with the project and sequesters that captured carbon dioxide by geologic storage or other means; or

(B) a project that is a facility:

(i) for which an authorization to use a standard permit was approved after January 1, 2020, but before September 1, 2023; and

(ii) that:

(a) utilizes natural gas to create methanol; and

(b) converts methanol to zero-sulfur transportation fuels.

(2) "Air contaminant" means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural.

(3) "Air pollution" means the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that:

(A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or

(B) interfere with the normal use or enjoyment of animal life, vegetation, or property.

(3-a) "Coal" has the meaning assigned by Section 134.004, Natural Resources Code.

(4) "Commission" means the Texas Commission on Environmental Quality.

(4-a) "Electric vehicle" means a motor vehicle that draws propulsion energy only from a rechargeable energy storage system.

(5) "Executive director" means the executive director of the commission.

(6) "Facility" means a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not considered to be a facility.

(7) "Federal source" means a facility, group of facilities, or other source that is subject to the permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) and includes:

(A) an affected source as defined by Section 402 of the federal Clean Air Act (42 U.S.C. Section 7651a) as added by Section 401 of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549);

(B) a major source as defined by Title III of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549);

(C) a major source as defined by Title V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549);

(D) a source subject to the standards or regulations under Section 111 or 112 of the federal Clean Air Act (42 U.S.C. Sections 7411 and 7412);

(E) a source required to have a permit under Part C or D of Title I of the federal Clean Air Act (42 U.S.C. Sections 7470 et seq. and 7501 et seq.);

(F) a major stationary source or major emitting facility under Section 302 of the federal Clean Air Act (42 U.S.C. Section 7602); and

(G) any other stationary source in a category

designated by the United States Environmental Protection Agency as subject to the permitting requirements of Title V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549).

(7-a) "Federally qualified clean coal technology" means a technology or process, including a technology or process applied at the precombustion, combustion, or postcombustion stage, for use at a new or existing facility that will achieve on an annual basis a 97 percent or greater reduction of sulfur dioxide emissions, an emission rate for nitrogen oxides of 0.08 pounds or less per million British thermal units, and significant reductions in mercury emissions associated with the use of coal in the generation of electricity, process steam, or industrial products, including the creation of liquid fuels, hydrogen for fuel cells, and other coproducts. The technology used must comply with applicable federal law regarding mercury emissions and must render carbon dioxide capable of capture, sequestration, or abatement. Federally qualified clean coal technology includes atmospheric or pressurized fluidized bed combustion technology, integrated gasification combined cycle technology, methanation technology, magnetohydrodynamic technology, direct and indirect coal-fired turbines, undiluted high-flame temperature oxygen combustion technology that excludes air, and integrated gasification fuel cells.

(7-b) "Hybrid vehicle" means a motor vehicle that draws propulsion energy from both gasoline or conventional diesel fuel and a rechargeable energy storage system.

(8) "Local government" means a health district established under Chapter 121, a county, or a municipality.

(9) "Modification of existing facility" means any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include:

(A) insignificant increases in the amount of any air contaminant emitted that is authorized by one or more commission exemptions;

(B) insignificant increases at a permitted facility;

(C) maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere;

(D) an increase in the annual hours of operation unless the existing facility has received a preconstruction permit or has been exempted, pursuant to Section 382.057, from preconstruction permit requirements;

(E) a physical change in, or change in the method of operation of, a facility that does not result in a net increase in allowable emissions of any air contaminant and that does not result in the emission of any air contaminant not previously emitted, provided that the facility:

(i) has received a preconstruction permit or permit amendment or has been exempted pursuant to Section 382.057 from preconstruction permit requirements no earlier than 120 months before the change will occur; or

(ii) uses, regardless of whether the facility has received a permit, an air pollution control method that is at least as effective as the best available control technology, considering technical practicability and economic reasonableness, that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur;

(F) a physical change in, or change in the method of operation of, a facility where the change is within the scope of a flexible permit or a multiple plant permit; or

(G) a change in the method of operation of a natural gas processing, treating, or compression facility connected to or part of a natural gas gathering or transmission pipeline which does not result in an annual emission rate of a pollutant in excess of the volume emitted at the maximum designed capacity, provided that the facility is one for which:

(i) construction or operation started on or before September 1, 1971, and at which either no modification has occurred after September 1, 1971, or at which modifications have occurred only pursuant to standard exemptions; or

(ii) construction started after September 1, 1971, and before March 1, 1972, and which registered in accordance with Section 382.060 as that section existed prior to September 1, 1991.

(9-a) "Motor vehicle" means a fully self-propelled vehicle having four wheels that has as its primary purpose the transport of a person or persons, or property, on a public highway.

(9-b) "Natural gas vehicle" means a motor vehicle that uses

only compressed natural gas or liquefied natural gas as fuel.

(10) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(10-a) "Qualifying motor vehicle" means a motor vehicle that meets the requirements of Section 382.210(b).

(11) "Select-use technology" means a technology that involves simultaneous combustion of natural gas with other fuels in fossil fuel-fired boilers. The term includes cofiring, gas reburn, and enhanced gas reburn/sorbent injection.

(11-a) "Solid waste" has the meaning assigned by Section 361.003.

(12) "Source" means a point of origin of air contaminants, whether privately or publicly owned or operated.

(13) "Well test" means the testing of an oil or gas well for a period of time less than 72 hours that does not constitute a major source or major modification under any provision of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 135, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.01, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 4, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.140, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 150, Sec. 1, eff. May 19, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 11.04(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 406, Sec. 1, eff. Aug. 30, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.01, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1277 (H.B. 3732), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(55), eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1109 (H.B. 469), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 347 (H.B. 3272), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1003 (H.B. 2446), Sec. 2, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0894, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 869 (H.B. 3837), Sec. 1, eff. September 1, 2023.

Sec. 382.004. CONSTRUCTION WHILE PERMIT AMENDMENT APPLICATION PENDING. (a) To the extent permissible under federal law, notwithstanding Section 382.0518, and except as provided by Subsection (c), a person who submits an application for a permit amendment may, at the person's own risk, begin construction related to the application after the executive director has issued a draft permit including the permit amendment.

(b) The commission may not consider construction begun under this section in determining whether to grant the permit amendment sought in the application.

(c) A person may not begin construction under this section if the facility that is the subject of the permit amendment is a concrete batch plant located within 880 yards of a property that is used as a residence.

(d) The commission shall adopt rules to implement this section.

Added by Acts 2005, 79th Leg., Ch. 422 (S.B. 1740), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1134 (H.B. 2726), Sec. 1, eff. January 1, 2020.

Sec. 382.005. EXCLUSIVE JURISDICTION TO REGULATE GREENHOUSE GAS EMISSIONS AND EXPRESS PREEMPTION OF LOCAL REGULATIONS. (a) In this section, "greenhouse gas emissions" has the meaning assigned by Section 382.05102.

(b) To the extent not preempted by federal law, the state has exclusive jurisdiction over the regulation of greenhouse gas emissions in this state.

(c) A municipality or other political subdivision may not enact or enforce an ordinance or other measure that directly regulates

greenhouse gas emissions.

Added by Acts 2023, 88th Leg., R.S., Ch. 198 (S.B. 784), Sec. 1, eff. September 1, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

Sec. 382.011. GENERAL POWERS AND DUTIES. (a) The commission shall:

(1) administer this chapter;

(2) establish the level of quality to be maintained in the state's air; and

(3) control the quality of the state's air.

(b) The commission shall seek to accomplish the purposes of this chapter through the control of air contaminants by all practical and economically feasible methods.

(c) The commission has the powers necessary or convenient to carry out its responsibilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.012. STATE AIR CONTROL PLAN. The commission shall prepare and develop a general, comprehensive plan for the proper control of the state's air.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.013. AIR QUALITY CONTROL REGIONS. The commission may designate air quality control regions based on jurisdictional boundaries, urban-industrial concentrations, and other factors, including atmospheric areas, necessary to provide adequate implementation of air quality standards.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.014. EMISSION INVENTORY. The commission may require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions of air contaminants in this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.0145. CLEAN FUEL INCENTIVE SURCHARGE. (a) The commission shall levy a clean fuel incentive surcharge of 20 cents per MMBtu on fuel oil used between April 15 and October 15 of each year in an industrial or utility boiler that is:

(1) capable of using natural gas; and

(2) located in a consolidated metropolitan statistical area or metropolitan statistical area with a population of 350,000 or more that has not met federal ambient air quality standards for ozone.

(b) The commission may not levy the clean fuel incentive surcharge on:

(1) waste oils, used oils, or hazardous waste-derived fuels burned for purposes of energy recovery or disposal, if the commission or the United States Environmental Protection Agency approves or permits the burning;

(2) fuel oil used during:

(A) any period of full or partial natural gas curtailment;

(B) any period when there is a failure to deliver sufficient quantities of natural gas to satisfy contractual obligations to the purchaser; or

(C) a catastrophic event as defined by Section 382.063;

(3) fuel oil used between April 15 and October 15 in equipment testing or personnel training up to an aggregate of the equivalent of 48 hours full-load operation; or

(4) any firm engaged in fixed price contracts with public works agencies for contracts entered into before August 28, 1989.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 136, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.015. POWER TO ENTER PROPERTY. (a) A member, employee, or agent of the commission may enter public or private property, other than property designed for and used exclusively as a private residence housing not more than three families, at a reasonable time to inspect and investigate conditions relating to emissions of air contaminants to or the concentration of air contaminants in the atmosphere.

(b) A member, employee, or agent who enters private property that has management in residence shall:

(1) notify the management, or the person then in charge, of the member's, employee's, or agent's presence; and

(2) show proper credentials.

(c) A member, employee, or agent who enters private property shall observe that establishment's rules concerning safety, internal security, and fire protection.

(d) The commission is entitled to the remedies provided by Sections 382.082-382.085 if a member, employee, or agent is refused the right to enter public or private property as provided by this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.144, eff. Sept. 1, 1995.

Sec. 382.016. MONITORING REQUIREMENTS; EXAMINATION OF RECORDS. (a) The commission may prescribe reasonable requirements for:

(1) measuring and monitoring the emissions of air contaminants from a source or from an activity causing or resulting in the emission of air contaminants subject to the commission's jurisdiction under this chapter; and

(2) the owner or operator of the source to make and maintain records on the measuring and monitoring of emissions.

(b) A member, employee, or agent of the commission may examine during regular business hours any records or memoranda relating to the operation of any air pollution or emission control equipment or facility, or relating to emission of air contaminants. This subsection does not authorize the examination of records or memoranda relating to the operation of equipment or a facility on property designed for and used exclusively as a private residence housing not more than three families.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.145, eff. Sept. 1, 1995.

Sec. 382.0161. AIR POLLUTANT WATCH LIST. (a) The commission shall establish and maintain an air pollutant watch list. The air pollutant watch list must identify:

(1) each air contaminant that the commission determines, on the basis of federal or state ambient air quality standards for the contaminant, should be included on the air pollutant watch list; and

(2) each geographic area of the state for which ambient air quality monitoring data indicates that the individual or cumulative emissions of one or more air contaminants identified by the commission under Subdivision (1) may cause short-term or long-term adverse human health effects or odors in that area.

(b) The commission shall publish notice of and allow public comment on:

(1) an addition of an air contaminant to or removal of an air contaminant from the air pollutant watch list; or

(2) an addition of an area to or removal of an area from the air pollutant watch list.

(c) When considering the addition or removal of an area to or from the air pollutant watch list, the commission shall provide the monitoring data related to the area to the state senator and representative who represent the area.

(d) The commission may hold a public meeting in an area listed on the air pollutant watch list to provide residents of the area with information regarding:

(1) the reasons for the area's inclusion on the air pollutant watch list; and

(2) commission actions to reduce the emissions of air contaminants contributing to the area's inclusion on the air pollutant watch list.

(e) The air pollutant watch list and the addition or removal of a pollutant or area to or from the list are not matters subject to the requirements of Subchapter B, Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 780 (H.B. 1981), Sec. 1, eff. September 1, 2011.

Sec. 382.017. RULES. (a) The commission may adopt rules. The commission shall hold a public hearing before adopting a rule consistent with the policy and purposes of this chapter.

(b) If the rule will have statewide effect, notice of the date, time, place, and purpose of the hearing shall be published one time at least 20 days before the scheduled date of the hearing in at least three newspapers, the combined circulation of which will, in the commission's judgment, give reasonable circulation throughout the state. If the rule will have effect in only a part of the state, the notice shall be published one time at least 20 days before the scheduled date of the hearing in a newspaper of general circulation in the area to be affected.

(c) Any person may appear and be heard at a hearing to adopt a rule. The executive director shall make a record of the names and addresses of the persons appearing at the hearing. A person heard or represented at the hearing or requesting notice of the commission's action shall be sent by mail written notice of the commission's action.

(d) Subsections (a) and (b) notwithstanding, the commission may adopt rules consistent with Chapter 2001, Government Code, if the commission determines that the need for expeditious adoption of proposed rules requires use of those procedures.

(e) The terms and provisions of a rule adopted by the commission may differentiate among particular conditions, particular sources, and particular areas of the state. In adopting a rule, the commission shall recognize that the quantity or characteristic of air contaminants or the duration of their presence in the atmosphere may cause a need for air control in one area of the state but not in other areas. In this connection, the commission shall consider:

(1) the factors found by it to be proper and just, including existing physical conditions, topography, population, and prevailing wind direction and velocity; and

(2) the fact that a rule and the degrees of conformance with the rule that may be proper for an essentially residential area of the state may not be proper for a highly developed industrial area or a relatively unpopulated area.

(f) Except as provided by Sections 382.0171-382.021 or to comply with federal law or regulations, the commission by rule may not specify:

(1) a particular method to be used to control or abate air

pollution;

(2) the type, design, or method of installation of equipment to be used to control or abate air pollution; or

(3) the type, design, method of installation, or type of construction of a manufacturing process or other kind of equipment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 137, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.33, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.145, eff. Sept. 1, 1995.

Sec. 382.0171. ALTERNATIVE FUELS AND SELECT-USE TECHNOLOGIES. (a) In adopting rules, the commission shall encourage and may allow the use of natural gas and other alternative fuels, as well as select-use technologies, that will reduce emissions.

(b) Any orders or determinations made under this section must be consistent with Section 382.024.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 138, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.146, eff. Sept. 1, 1995.

Sec. 382.0172. INTERNATIONAL BORDER AREAS. (a) In order to qualify for the exceptions provided by Section 179B of the federal Clean Air Act (42 U.S.C. Section 7509a), as added by Section 818 of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), the commission, in developing rules and control programs to be included in an implementation plan for an international border area, shall ensure that the plan or revision:

(1) meets all requirements applicable to the plan or revision under Title I of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), other than a requirement that the plan or revision demonstrates attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified by the applicable provision of Title I of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) or by a regulation adopted under that provision; and

(2) would be adequate to attain and maintain the relevant

national ambient air quality standards by the attainment date specified by the applicable provision of Title I of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) or by a regulation adopted under that provision, but for emissions emanating from outside the United States.

(b) For purposes of any emissions control or permit program adopted or administered by the commission and subject to Subsection (c), the commission, to the extent allowed by federal law, may:

(1) authorize the use of emissions reductions achieved outside the United States to satisfy otherwise applicable emissions reduction requirements if the commission finds that the emissions reductions achieved outside the United States are surplus to requirements imposed by applicable law and are appropriately quantifiable and enforceable; and

(2) allow the use of reductions in emissions of one air contaminant to satisfy otherwise applicable requirements for reductions in emissions of another air contaminant if the commission finds that the air contaminant emissions reductions that will be substituted are of equal or greater significance to the overall air quality of the area affected than reductions in emissions of the other air contaminant.

(c) The commission may authorize or allow substitution of emissions reductions under Subsection (b) only if:

(1) reductions in emissions of one air contaminant for which the area has been designated as nonattainment are substituted for reductions in emissions of another air contaminant for which the area has been designated as nonattainment; or

(2) the commission finds that the substitution will clearly result in greater health benefits for the community as a whole than would reductions in emissions at the original facility.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.02, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.147, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 960, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 820 (S.B. 784), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 1, eff. September 1, 2005.

Sec. 382.0173. ADOPTION OF RULES REGARDING CERTAIN STATE IMPLEMENTATION PLAN REQUIREMENTS AND STANDARDS OF PERFORMANCE FOR CERTAIN SOURCES. (a) The commission shall adopt rules to comply with Sections 110(a)(2)(D) and 111(d) of the federal Clean Air Act (42 U.S.C. Sections 7410 and 7411). In adopting the rules, at a minimum the commission shall adopt and incorporate by reference 40 C.F.R. Subparts AA through II and Subparts AAA through III of Part 96 and 40 C.F.R. Subpart HHHH of Part 60. The commission shall adopt a state implementation plan in accordance with the rules and submit the plan to the United States Environmental Protection Agency for approval according to the schedules adopted by that agency.

(b) The commission may require emissions reductions in conjunction with implementation of the rules adopted under Subsection (a) only for electric generating units. The commission shall make permanent allocations that are reflective of the allocation requirements of 40 C.F.R. Subparts AA through HH and Subparts AAA through HHH of Part 96 and 40 C.F.R. Subpart HHHH of Part 60, as applicable, at no cost to units as defined in 40 C.F.R. Sections 51.123 and 60.4102 using the United States Environmental Protection Agency's allocation method as specified by 40 C.F.R. Section 60.4142(a)(1)(i) or 40 C.F.R. Section 96.142(a)(1)(i), as applicable, with the exception of nitrogen oxides which shall be allocated according to the additional requirements of Subsection (c). The commission shall maintain a special reserve of allocations for new units commencing operation on or after January 1, 2001, as defined by 40 C.F.R. Subparts AA through HH and Subparts AAA through HHH of Part 96 and 40 C.F.R. Subpart HHHH of Part 60, as applicable, with the exception of nitrogen oxides which shall be allocated according to the additional requirements of Subsection (c).

(c) Additional requirements regarding NOx allocations:

(1) The commission shall maintain a special reserve of allocations for nitrogen oxide of 9.5 percent for new units. Beginning with the 2015 control period, units shall be considered new for each control period in which they do not have five years of operating data reported to the commission prior to the date of allocation for a given control period. Prior to the 2015 control period, units that commenced operation on or after January 1, 2001, will receive NOx allocations from the special reserve only.

(2) Nitrogen oxide allowances shall be established for the 2009-2014 control periods for units commencing operation before January 1, 2001, using the average of the three highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

(A) if the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 90 percent;

(B) if the unit is natural gas-fired during the year, the unit's control period heat input for such year is multiplied by 50 percent; and

(C) if the fossil fuel fired unit is not subject to Paragraph (A) or (B) of this subdivision, the unit's control period heat input for such year is multiplied by 30 percent.

(3) Before the allocation date specified by EPA for the control period beginning January 1, 2018, and every five years thereafter, the commission shall adjust the baseline for all affected units using the average of the three highest amounts of the unit's adjusted control period heat input for periods one through five of the preceding nine control periods, with the adjusted control period heat input for each year calculated as follows:

(A) for units commencing operation before January 1, 2001:

(i) if the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 90 percent;

(ii) if the unit is natural gas-fired during the year, the unit's control period heat input for such year is multiplied by 50 percent; and

(iii) if the fossil fuel fired unit is not subject to Subparagraph (i) or (ii) of this paragraph, the unit's control period heat input for such year is multiplied by 30 percent; and

(B) for units commencing operation on or after January 1, 2001, in accordance with the formulas set forth by USEPA in 40 C.F.R. 96.142 with any corrections to this section that may be issued by USEPA prior to the allocation date.

(d) This section applies only while the federal rules cited in this section are enforceable and does not limit the authority of the commission to implement more stringent emissions control

requirements.

(e) In adopting rules under Subsection (a), the commission shall incorporate any modifications to the federal rules cited in this section that result from:

(1) a request for rehearing regarding those rules that is filed with the United States Environmental Protection Agency;

(2) a petition for review of those rules that is filed with a court; or

(3) a final rulemaking action of the United States Environmental Protection Agency.

(f) The commission shall take all reasonable and appropriate steps to exclude the West Texas Region and El Paso Region, as defined by Section 39.264(g), Utilities Code, from any requirement under, derived from, or associated with 40 C.F.R. Sections 51.123, 51.124, and 51.125, including filing a petition for reconsideration with the United States Environmental Protection Agency requesting that it amend 40 C.F.R. Sections 51.123, 51.124, and 51.125 to exclude such regions. The commission shall promptly amend the rules it adopts under Subsection (a) of this section to incorporate any exclusions for such regions that result from the petition required under this subsection.

(g) The commission shall study the availability of mercury control technology. The commission shall also examine the timeline for implementing the reductions required under the federal rules, the cost of additional controls both to the plant owners and consumers, and the fiscal impact on the state of higher levels of mercury emissions between 2005 and 2018, and consider the impact of trading on local communities. The commission shall report its findings by September 1, 2006.

Added by Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 2, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 56 (S.B. 1672), Sec. 1, eff. May 10, 2007.

For expiration of this section, see Subsection (d).

Sec. 382.0175. AMOUNT OF FOREIGN EMISSIONS IN NONATTAINMENT AREAS; REVISION OF STATE IMPLEMENTATION PLAN. (a) In this section:

(1) "Foreign emissions" means emissions of air contaminants emanating from outside the United States.

(2) "Federal air quality monitor" means a monitor that is used to report data to the United States Environmental Protection Agency to demonstrate compliance with the national ambient air quality standards.

(b) The commission shall estimate the contribution of foreign emissions at each federal air quality monitor located in each nonattainment area in this state with respect to each air contaminant for which the area is designated as being in nonattainment for any national ambient air quality standards for ozone or particulate matter. The commission may contract with a third party to conduct the estimate required by this subsection.

(c) Not later than September 1, 2027, the executive director shall, using the estimate conducted under Subsection (b), report to the commission a recommendation on whether to revise the state implementation plan to account for the contribution of foreign emissions in each nonattainment area in this state in any manner permissible under federal law. In preparing the report to the commission, the executive director shall consider any areas in this state designated as nonattainment for ozone or particulate matter as of September 1, 2026.

(d) This section expires September 1, 2029.

Added by Acts 2023, 88th Leg., R.S., Ch. 634 (H.B. 4932), Sec. 1, eff. June 11, 2023.

Sec. 382.018. OUTDOOR BURNING OF WASTE AND COMBUSTIBLE MATERIAL. (a) Subject to Section 352.082, Local Government Code, and except as provided by Subsections (b) and (d), the commission by rule may control and prohibit the outdoor burning of waste and combustible material and may include requirements concerning the particular method to be used to control or abate the emission of air contaminants resulting from that burning.

(b) The commission by rule shall authorize outdoor burning of waste if the waste:

(1) consists of trees, brush, grass, leaves, branch trimmings, or other plant growth; and

(2) is burned:

(A) in an area that meets the national ambient air quality standards and that does not contain any part of a city that does not meet national ambient air quality standards; and

(B) on the property on which it was generated and by the owner of the property or any other person authorized by the owner.

(c) Rules adopted under Subsection (b) may not:

(1) require prior commission approval of the burning; or

(2) authorize the burning only when no practical alternative to burning exists.

(d) The commission may not control or prohibit outdoor burning of waste consisting of trees, brush, grass, leaves, branch trimmings, or other plant growth if:

(1) the person burning the waste is doing so at a site:

(A) designated for consolidated burning of waste generated from specific residential properties;

(B) located in a county with a population of less than 50,000;

(C) located outside of a municipality; and

(D) supervised at the time of the burning by:

(i) an employee of a fire department who is part of the fire protection personnel, as defined by Section 419.021, Government Code, of the department and is acting in the scope of the person's employment; or

(ii) a volunteer firefighter acting in the scope of the firefighter's volunteer duties; and

(2) the waste was generated from a property for which the site is designated.

(e) A fire department employee who will supervise a burning under Subsection (d)(1)(D) shall notify the commission of each burning supervised by the employee, and the commission shall provide the employee with information on practical alternatives to burning.

(f) If conduct that violates a rule adopted under this section also violates a municipal ordinance, that conduct may be prosecuted only under the municipal ordinance, provided that:

(1) the violation is not a second or subsequent violation of a rule adopted under this section or a municipal ordinance; and

(2) the violation does not involve the burning of heavy oils, asphaltic materials, potentially explosive materials, or chemical wastes.

(g) Notwithstanding Section 7.002, Water Code, the provisions of this section and rules adopted under this section may be enforced by a peace officer as described by Article 2A.001, Code of Criminal Procedure.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.147, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 419 (S.B. 1710), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 904 (H.B. 39), Sec. 1, eff. September 1, 2005.

Reenacted and amended by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 8.001, eff. September 1, 2007.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 145 (H.B. 1619), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 478 (H.B. 2386), Sec. 1, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.122, eff. January 1, 2025.

Sec. 382.019. METHODS USED TO CONTROL AND REDUCE EMISSIONS FROM LAND VEHICLES. (a) Except as provided by Section 382.202(j), or another provision of this chapter, the commission by rule may provide requirements concerning the particular method to be used to control and reduce emissions from engines used to propel land vehicles.

(b) The commission may not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification, or other approval of any feature or equipment designed to control emissions from motor vehicles if that feature or equipment has been certified, approved, or otherwise authorized under federal law.

(c) The commission or any other state agency may not adopt a rule requiring the use of Stage II vapor recovery systems that control motor vehicle refueling emissions at a gasoline dispensing facility in this state until the United States Environmental Protection Agency determines that the use of the system is required for compliance with the federal Clean Air Act (42 U.S.C. 7401 et

seq.), except the commission may adopt rules requiring such vapor recovery systems installed in nonattainment areas if it can be demonstrated to be necessary for the attainment of federal ozone ambient air quality standards or, following appropriate health studies and in consultation with the Department of State Health Services, it is determined to be necessary for the protection of public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.24, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.147, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 15.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.008(b), eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0895, eff. April 2, 2015.

Sec. 382.0191. IDLING OF MOTOR VEHICLE. (a) In this section, "idling" means allowing an engine to run while the motor vehicle is not engaged in forward or reverse motion.

(b) The commission may not prohibit or limit the idling of any motor vehicle with a gross vehicle weight rating greater than 8,500 pounds that is equipped with a 2008 or subsequent model year heavy-duty diesel engine or liquefied or compressed natural gas engine that has been certified by the United States Environmental Protection Agency or another state environmental agency to emit no more than 30 grams of nitrogen oxides emissions per hour when idling.

Added by Acts 2011, 82nd Leg., R.S., Ch. 390 (S.B. 493), Sec. 1, eff. June 17, 2011.

Sec. 382.0195. COMMERCIAL INFECTIOUS WASTE INCINERATORS. (a) The commission shall adopt rules prescribing the most effective emissions control technology reasonably available to control emissions of air contaminants from a commercial infectious waste incinerator.

(b) Rules adopted under this section must require that the prescribed emissions control technology be installed as soon as practicable at each commercial infectious waste incinerator.

(c) In this section, "commercial infectious waste incinerator" means a facility that accepts for incineration infectious waste generated outside the property boundaries of the facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 139, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.148, eff. Sept. 1, 1995.

Sec. 382.020. CONTROL OF EMISSIONS FROM FACILITIES THAT HANDLE CERTAIN AGRICULTURAL PRODUCTS. (a) The commission, when it determines that the control of air pollution is necessary, shall adopt rules concerning the control of emissions of particulate matter from plants at which grain, seed, legumes, or vegetable fibers are handled, loaded, unloaded, dried, manufactured, or processed according to a formula derived from the process weight of the materials entering the process.

(b) A person affected by a rule adopted under this section may use:

(1) the process weight method to control and measure the emissions from the plant; or

(2) any other method selected by that person that the commission or the executive director, if authorized by the commission, finds will provide adequate emission control efficiency and measurement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.0201. PROHIBITION ON COMMISSION RULE RELATING TO EMISSIONS FROM CERTAIN HOSPITAL OR MEDICAL DISINFECTANTS. (a) In this section, "hospital or medical disinfectant" means an antimicrobial product that is registered with and meets the performance standards of the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sections 136, 136a).

(b) Except as specifically required to comply with federal law or regulation, the commission may not adopt a rule that lessens the efficacy of a hospital or medical disinfectant in killing or inactivating agents of an infectious disease, including a rule

restricting volatile organic compound content of or emissions from the disinfectant.

Added by Acts 1999, 76th Leg., ch. 364, Sec. 1, eff. Sept. 1, 1999.

Sec. 382.0205. SPECIAL PROBLEMS RELATED TO AIR CONTAMINANT EMISSIONS. Consistent with applicable federal law, the commission by rule may control air contaminants as necessary to protect against adverse effects related to:

(1) acid deposition;

(2) stratospheric changes, including depletion of ozone; and

(3) climatic changes, including global warming.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.03, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.021. SAMPLING METHODS AND PROCEDURES. (a) The commission may prescribe the sampling methods and procedures to be used in determining violations of and compliance with the commission's rules, variances, and orders, including:

(1) ambient air sampling;

(2) stack-sampling;

(3) visual observation; or

(4) any other sampling method or procedure generally recognized in the field of air pollution control.

(b) The commission may prescribe new sampling methods and procedures if:

(1) in the commission's judgment, existing methods or procedures are not adequate to meet the needs and objectives of the commission's rules, variances, and orders; and

(2) the scientific applicability of the new methods or procedures can be satisfactorily demonstrated to the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.0215. ASSESSMENT OF EMISSIONS DUE TO EMISSIONS EVENTS. (a) In this section:

(1) "Emissions event" means an upset event, or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in the unauthorized emissions of air contaminants from one or more emissions points at a regulated entity.

(2) "Regulated entity" means all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. The term includes any property under common ownership or control identified in a permit or used in conjunction with the regulated activity at the same street address or location.

(a-1) Maintenance, startup, and shutdown activities shall not be considered unscheduled only if the activity will not and does not result in the emission of at least a reportable quantity of unauthorized emissions of air contaminants and the activity is recorded as may be required by commission rule, or if the activity will result in the emission of at least a reportable quantity of unauthorized emissions and:

(1) the owner or operator of the regulated entity provides any prior notice or final report that the commission, by rule, may establish;

(2) the notice or final report includes the information required in Subsection (b)(3); and

(3) the actual emissions do not exceed the estimates submitted in the notice by more than a reportable quantity.

(b) The commission shall require the owner or operator of a regulated entity that experiences emissions events:

(1) to maintain a record of all emissions events at the regulated entity in the manner and for the periods prescribed by commission rule;

(2) to notify the commission in a single report for each emissions event, as soon as practicable but not later than 24 hours after discovery of the emissions event, of an emissions event resulting in the emission of a reportable quantity of air contaminants as determined by commission rule; and

(3) to report to the commission in a single report for each emissions event, not later than two weeks after the occurrence of an emissions event that results in the emission of a reportable quantity of air contaminants as determined by commission rule, all information

necessary to evaluate the emissions event, including:

(A) the name of the owner or operator of the reporting regulated entity;

(B) the location of the reporting regulated entity;

(C) the date and time the emissions began;

(D) the duration of the emissions;

(E) the nature and measured or estimated quantity of air contaminants emitted, including the method of calculation of, or other basis for determining, the quantity of air contaminants emitted;

(F) the processes and equipment involved in the emissions event;

(G) the cause of the emissions; and

(H) any additional information necessary to evaluate the emissions event.

(c) The owner or operator of a boiler or combustion turbine fueled by natural gas, coal, lignite, wood, or fuel oil containing hazardous air pollutants at concentrations of less than 0.02 percent by weight that is equipped with a continuous emission monitoring system that completes a minimum of one cycle per operation (sampling, analyzing, and data recording) for each successive 15-minute interval who is required to submit excess emission reports by other state or federal regulations, shall, by commission rule, be allowed to submit information from that monitoring system to meet the requirements under Subsection (b)(3) so long as the notice submitted under Subsection (b)(2) contains the information required under Subsection (b)(3). Such excess emission reports shall satisfy the recordkeeping requirements of Subsection (b)(1) so long as the information in such reports meets commission requirements. This subsection does not require the commission to revise the reportable quantity for boilers and combustion turbines.

(d) The commission shall centrally track emissions events and collect information relating to:

(1) inspections or enforcement actions taken by the commission in response to emissions events; and

(2) the number of emissions events occurring in each commission region and the quantity of emissions from each emissions event.

(e) The commission shall develop the capacity for electronic reporting and shall incorporate reported emissions events into a

permanent online centralized database for emissions events. The commission shall develop a mechanism whereby the reporting entity shall be allowed to review the information relative to its reported emissions events prior to such information being included in the database. The database shall be easily searchable and accessible to the public. The commission shall evaluate information in the database to identify persons who repeatedly fail to report reportable emissions events. The commission shall enforce against such persons pursuant to Section 382.0216(i). The commission shall describe such enforcement actions in the report required in Subsection (g).

(f) An owner or operator of a regulated entity required by Section 382.014 to submit an annual emissions inventory report and which has experienced no emissions events during the relevant year must include as part of the inventory a statement that the regulated entity experienced no emissions events during the prior year. An owner or operator of a regulated entity required by Section 382.014 to submit an annual emissions inventory report must include the total annual emissions from all emissions events in categories as established by commission rule.

(g) The commission annually, or at the request of a member of the legislature, shall assess the information received under this section, including actions taken by the commission in response to the emissions events, and shall include the assessment in the report required by Section 5.126, Water Code.

(h) The commission may allow operators of pipelines, gathering lines, and flowlines to treat all such facilities under common ownership or control in a particular county as a single regulated entity for the purpose of assessment and regulation of emissions events.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.01(a), eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(a), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1095 (H.B. 2129), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 780 (H.B. 1981), Sec. 2, eff. September 1, 2011.

Sec. 382.0216. REGULATION OF EMISSIONS EVENTS. (a) In this section, "emissions event" has the meaning assigned by Section 382.0215.

(b) The commission shall establish criteria for determining when emissions events are excessive. The criteria must include consideration of:

(1) the frequency of the facility's emissions events;

(2) the cause of the emissions event;

(3) the quantity and impact on human health or the environment of the emissions event;

(4) the duration of the emissions event;

(5) the percentage of a facility's total annual operating hours during which emissions events occur; and

(6) the need for startup, shutdown, and maintenance activities.

(c) The commission shall require a facility to take action to reduce emissions from excessive emissions events. Consistent with commission rules, a facility required to take action under this subsection must either file a corrective action plan or file a letter of intent to obtain authorization for emissions from the excessive emissions events, provided that the emissions are sufficiently frequent, quantifiable, and predictable. If the intended authorization is a permit, a permit application shall be filed within 120 days of the filing of the letter of intent. If the intended authorization is a permit by rule or standard exemption, the authorization must be obtained within 120 days of the filing of the letter of intent. If the commission denies the requested authorization, within 45 days of receiving notice of the commission's denial, the facility shall file a corrective action plan to reduce emissions from the excessive emissions events.

(d) A corrective action plan filed under Subsection (c) must identify the cause or causes of each emissions event, specify the control devices or other measures that are reasonably designed to prevent or minimize similar emissions events in the future, and specify a time within which the corrective action plan will be implemented. A corrective action plan must be approved by the commission. A corrective action plan shall be deemed approved 45 days after filing, if the commission has not disapproved the plan; however, an owner or operator may request affirmative commission approval, in which case the commission must take final written action

to approve or disapprove the plan within 120 days. An approved corrective action plan shall be made available to the public by the commission, except to the extent information in the plan is confidential information protected under Chapter 552, Government Code. The commission shall establish reasonable schedules for the implementation of corrective action plans and procedures for revision of a corrective action plan if the commission finds the plan, after implementation begins, to be inadequate to meet the goal of preventing or minimizing emissions and emissions events. The implementation schedule shall be enforceable by the commission.

(e) The rules may not exclude from the requirement to submit a corrective action plan emissions events resulting from the lack of preventive maintenance or from operator error, or emissions that are a part of a recurring pattern of emissions events indicative of inadequate design or operation.

(f) The commission by rule may establish an affirmative defense to a commission enforcement action if the emissions event meets criteria defined by commission rule. In establishing rules under this subsection, the commission at a minimum must require consideration of the factors listed in Subsections (b)(1)-(6).

(g) The burden of proof in any claim of a defense to commission enforcement action for an emissions event is on the person claiming the defense.

(h) A person may not claim an affirmative defense to a commission enforcement action if the person failed to take corrective action under a corrective action plan approved by the commission within the time prescribed by the commission and an emissions event recurs because of that failure.

(i) In the event the owner or operator of a facility fails to report an emissions event, the commission shall initiate enforcement for such failure to report and for the underlying emissions event itself. This subsection does not apply where an owner or operator reports an emissions event and the report was incomplete, inaccurate, or untimely unless the owner or operator knowingly or intentionally falsified the information in the report.

(j) The commission shall account for and consider chronic excessive emissions events and emissions events for which the commission has initiated enforcement in the manner set forth by the commission in its review of an entity's compliance history.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.01(a), eff. Sept. 1, 2001.

Sec. 382.022. INVESTIGATIONS. The executive director may make or require the making of investigations:

(1) that the executive director considers advisable in administering this chapter and the commission's rules, orders, and determinations, including investigations of violations and general air pollution problems or conditions; or

(2) as requested or directed by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.023. ORDERS. (a) The commission may issue orders and make determinations as necessary to carry out the purposes of this chapter. Orders authorized by this chapter may be issued only by the commission unless expressly provided by this chapter.

(b) If it appears that this chapter or a commission rule, order, or determination is being violated, the commission, or the executive director if authorized by the commission or this chapter, may proceed under Sections 382.082-382.084, or hold a public hearing and issue orders on the alleged violation, or take any other action authorized by this chapter as the facts may warrant.

(c) In addition to the notice required by Chapter 2001, Government Code, the commission or the executive director shall give notice to such other interested persons as the commission or the executive director may designate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.149, eff. Sept. 1, 1995.

Sec. 382.024. FACTORS IN ISSUING ORDERS AND DETERMINATIONS. In issuing an order and making a determination, the commission shall consider the facts and circumstances bearing on the reasonableness of emissions, including:

(1) the character and degree of injury to or interference

with the public's health and physical property;

(2) the source's social and economic value;

(3) the question of priority of location in the area involved; and

(4) the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the source.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.025. ORDERS RELATING TO CONTROLLING AIR POLLUTION. (a) If the commission determines that air pollution exists, the commission may order any action indicated by the circumstances to control the condition.

(b) The commission shall grant to the owner or operator of a source time to comply with its orders as provided for by commission rules. Those rules must provide for time for compliance gauged to the general situations that the hearings on proposed rules indicate are necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.026. ORDERS ISSUED UNDER EMERGENCIES. The commission may issue an order under an air emergency under Section 5.514, Water Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.150, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 41, eff. Sept. 1, 1997.

Sec. 382.027. PROHIBITION ON COMMISSION ACTION RELATING TO AIR CONDITIONS EXISTING SOLELY IN COMMERCIAL AND INDUSTRIAL FACILITIES. (a) The commission may not adopt a rule, determination, or order that:

(1) relates to air conditions existing solely within buildings and structures used for commercial and industrial plants,

works, or shops if the source of the offending air contaminants is under the control of the person who owns or operates the plants, works, or shops; or

(2) affects the relations between employers and their employees relating to or arising out of an air condition from a source under the control of the person who owns or operates the plants, works, or shops.

(b) This section does not limit or restrict the authority or powers granted to the commission under Sections 382.018 and 382.021.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.151, eff. Sept. 1, 1995.

Sec. 382.0275. COMMISSION ACTION RELATING TO RESIDENTIAL WATER HEATERS. (a) In this section, "residential water heater" means a water heater that:

(1) is designed primarily for residential use; and

(2) has a maximum rated capacity of 75,000 British thermal units per hour (Btu/hr) or less.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 49, Sec. 2, eff. May 8, 2007.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 49, Sec. 2, eff. May 8, 2007.

(d) The commission may not adopt or enforce a rule, determination, or order that relates to emissions of residential water heaters that is below 40 nanograms of NOx per joule unless a lower standard is established by a federal statute or rule. Any commission rule, determination, or order existing on or before the effective date of this subsection related to emission specifications for residential water heaters that is more stringent than the 40 nanograms of NOx per joule standard is hereby repealed.

Added by Acts 2005, 79th Leg., Ch. 59 (H.B. 965), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 49 (S.B. 1665), Sec. 1, eff. May 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 49 (S.B. 1665), Sec. 2, eff. May 8, 2007.

Sec. 382.028. VARIANCES. (a) This chapter does not prohibit the granting of a variance.

(b) A variance is an exceptional remedy that may be granted only on demonstration that compliance with a provision of this chapter or commission rule or order results in an arbitrary and unreasonable taking of property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.152, eff. Sept. 1, 1995.

Sec. 382.029. HEARING POWERS. The commission may call and hold hearings, administer oaths, receive evidence at a hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to a hearing, and make findings of fact and decisions relating to administering this chapter or the rules, orders, or other actions of the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.153, eff. Sept. 1, 1995.

Sec. 382.0291. PUBLIC HEARING PROCEDURES. (a) Any statements, correspondence, or other form of oral or written communication made by a member of the legislature to a commission official or employee during a public hearing conducted by the commission shall become part of the record of the hearing, regardless of whether the member is a party to the hearing.

(b) When a public hearing conducted by the commission is required by law to be conducted at a certain location, the commission shall determine the place within that location at which the hearing will be conducted. In making that determination, the commission shall consider the cost of available facilities and the adequacy of a facility to accommodate the type of hearing and anticipated attendance.

(c) The commission shall conduct at least one session of a public hearing after normal business hours on request by a party to the hearing or any person who desires to attend the hearing.

(d) An applicant for a license, permit, registration, or similar form of permission required by law to be obtained from the commission may not amend the application after the 31st day before

the date on which a public hearing on the application is scheduled to begin. If an amendment of an application would be necessary within that period, the applicant shall resubmit the application to the commission and must again comply with notice requirements and any other requirements of law or commission rule as though the application were originally submitted to the commission on that date.

(e) If an application for a license, permit, registration, or similar form of permission required by law is pending before the commission at a time when changes take effect concerning notice requirements imposed by law for that type of application, the applicant must comply with the new notice requirements.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 9.02, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.153, eff. Sept. 1, 1995.

Sec. 382.030. DELEGATION OF HEARING POWERS. (a) The commission may delegate the authority to hold hearings called by the commission under this chapter to:

(1) one or more commission members;

(2) the executive director; or

(3) one or more commission employees.

(b) Except for hearings required to be held before the commission under Section 5.504, Water Code, the commission may authorize the executive director to:

(1) call and hold a hearing on any subject on which the commission may hold a hearing; and

(2) delegate the authority to hold any hearing called by the executive director to one or more commission employees.

(c) The commission may establish the qualifications for individuals to whom the commission or the executive director delegates the authority to hold hearings.

(d) An individual holding a hearing under this section may administer oaths and receive evidence at the hearing and shall report the hearing in the manner prescribed by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.153, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 42, eff. Sept. 1, 1997.

Sec. 382.031. NOTICE OF HEARINGS. (a) Notice of a hearing under this chapter shall be published at least once in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility. The notice must be published not less than 30 days before the date set for the hearing.

(b) Notice of the hearing must describe briefly and in summary form the purpose of the hearing and the date, time, and place of the hearing.

(c) If notice of the hearing is required by this chapter to be given to a person, the notice shall be served personally or mailed to the person at the person's most recent address known to the commission not less than 30 days before the date set for the hearing. If the party is not an individual, the notice may be given to an officer, agent, or legal representative of the party.

(d) The hearing body shall conduct the hearing at the time and place stated in the notice. The hearing body may continue the hearing from time to time and from place to place without the necessity of publishing, serving, mailing, or otherwise issuing new notice. If a hearing is continued and a time and place for the hearing to reconvene are not publicly announced by the hearing body at the hearing before it is recessed, a notice of any further setting of the hearing shall be served personally or mailed in the manner prescribed by Subsection (c) at a reasonable time before the new setting, but it is not necessary to publish a newspaper notice of the new setting. In this subsection, "hearing body" means the individual or individuals that hold a hearing under this section.

(e) This section applies to all hearings held under this chapter except as otherwise specified by Section 382.017.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.04, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.154, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 43, eff. Sept. 1, 1997.

Sec. 382.032. APPEAL OF COMMISSION ACTION. (a) A person affected by a ruling, order, decision, or other act of the commission or of the executive director, if an appeal to the commission is not

provided, may appeal the action by filing a petition in a district court of Travis County.

(b) The petition must be filed in the time required by Section 5.351, Water Code, unless the appeal relates to the commission's failure to take final action on an application for a federal operating permit, a reopening of a federal operating permit, a revision to a federal operating permit, or a permit renewal application for a federal operating permit in accordance with Section 382.0542(b), in which case the petition may be filed at any time before the commission or the executive director takes final action.

(c) Service of citation on the commission must be accomplished within 30 days after the date on which the petition is filed. Citation may be served on the executive director or any commission member.

(d) The plaintiff shall pursue the action with reasonable diligence. If the plaintiff does not prosecute the action within one year after the date on which the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

(e) In an appeal of an action of the commission or executive director other than cancellation or suspension of a variance, the issue is whether the action is invalid, arbitrary, or unreasonable.

(f) An appeal of the cancellation or suspension of a variance must be tried in the same manner as appeals from the justice court to the county court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 5, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 174 (S.B. 211), Sec. 3, eff. September 1, 2021.

Sec. 382.033. CONTRACTS; INSTRUMENTS. The commission may execute contracts and instruments that are necessary or convenient to perform its powers or duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.

Sec. 382.0335. AIR CONTROL ACCOUNT. (a) The commission may apply for, solicit, contract for, receive, or accept money from any source to carry out its duties under this chapter.

(b) Money received by the commission under this section shall be deposited to the credit of the air control account, an account in the general revenue fund. The commission may use money in the account for any necessary expenses incurred in carrying out commission duties under this chapter.

Added by Acts 1997, 75th Leg., ch. 333, Sec. 72, eff. Sept. 1, 1997.

Sec. 382.034. RESEARCH AND INVESTIGATIONS. The commission shall conduct or require any research and investigations it considers advisable and necessary to perform its duties under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.

Sec. 382.035. MEMORANDUM OF UNDERSTANDING. The commission by rule shall adopt any memorandum of understanding between the commission and another state agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.

Sec. 382.036. COOPERATION AND ASSISTANCE. The commission shall:

(1) encourage voluntary cooperation by persons or affected groups in restoring and preserving the purity of the state's air;

(2) encourage and conduct studies, investigations, and research concerning air quality control;

(3) collect and disseminate information on air quality control;

(4) advise, consult, and cooperate with other state agencies, political subdivisions of the state, industries, other

states, the federal government, and interested persons or groups concerning matters of common interest in air quality control; and

(5) represent the state in all matters relating to air quality plans, procedures, or negotiations for interstate compacts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.

Sec. 382.037. NOTICE IN TEXAS REGISTER REGARDING NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE. (a) This section applies only if:

(1) with respect to each active or revoked national ambient air quality standard for ozone referenced in 40 C.F.R. Section 81.344, the United States Environmental Protection Agency has, for each designated area referenced in that section:

(A) designated the area as attainment or unclassifiable/attainment; or

(B) approved a redesignation substitute making a finding of attainment for the area; and

(2) for each designated area described by Subdivision (1), with respect to an action of the United States Environmental Protection Agency described by Subdivision (1)(A) or (B):

(A) the action has been fully and finally upheld following judicial review or the limitations period to seek judicial review of the action has expired; and

(B) the rules under which the action was approved by the agency have been fully and finally upheld following judicial review or the limitations period to seek judicial review of those rules has expired.

(b) Not later than the 30th day after the date the conditions described by Subsection (a) have been met, the commission shall publish notice in the Texas Register that, with respect to each active or revoked national ambient air quality standard for ozone referenced in 40 C.F.R. Section 81.344, the United States Environmental Protection Agency has, for each designated area referenced in that section:

(1) designated the area as attainment or unclassifiable/attainment; or

(2) approved a redesignation substitute making a finding of

attainment for the area.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(b-1), eff. August 30, 2017.

Sec. 382.040. DOCUMENTS; PUBLIC PROPERTY. All information, documents, and data collected by the commission in performing its duties are state property. Subject to the limitations of Section 382.041, all commission records are public records open to inspection by any person during regular office hours.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 381.020 and amended by Acts 1993, 73rd Leg., ch. 485, Sec. 2, eff. June 9, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.158, eff. Sept. 1, 1995.

Sec. 382.041. CONFIDENTIAL INFORMATION. (a) Except as provided by Subsection (b), a member, employee, or agent of the commission may not disclose information submitted to the commission relating to secret processes or methods of manufacture or production that is identified as confidential when submitted.

(b) A member, employee, or agent of the commission may disclose information confidential under Subsection (a) to a representative of the United States Environmental Protection Agency on the request of a representative of that agency if:

(1) at the time of disclosure the member, employee, or agent notifies the representative that the material has been identified as confidential when submitted; and

(2) the commission, before the information is disclosed, has entered into an agreement with the United States Environmental Protection Agency that ensures that the agency treats information identified as confidential as though it had been submitted by the originator of the information with an appropriate claim of confidentiality under federal law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 381.022 and amended by Acts 1993, 73rd Leg., ch. 485, Sec. 3, eff. June 9, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.158, eff. Sept. 1, 1995.

SUBCHAPTER C. PERMITS

Sec. 382.051. PERMITTING AUTHORITY OF COMMISSION; RULES. (a) The commission may issue a permit:

(1) to construct a new facility or modify an existing facility that may emit air contaminants;

(2) to operate an existing facility affected by Section 382.0518(g); or

(3) to operate a federal source.

(b) To assist in fulfilling its authorization provided by Subsection (a), the commission may issue:

(1) special permits for certain facilities;

(2) a general permit for numerous similar sources subject to Section 382.054;

(3) a standard permit for similar facilities;

(4) a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere;

(5) a single federal operating permit or preconstruction permit for multiple federal sources or facilities located at the same site;

(6) a multiple plant permit for existing facilities at multiple locations subject to Section 382.0518 or 382.0519;

(7) an existing facility permit or existing facility flexible permit under Section 382.05183;

(8) a small business stationary source permit under Section 382.05184;

(9) an electric generating facility permit under Section 382.05185 of this code and Section 39.264, Utilities Code;

(10) a pipeline facilities permit under Section 382.05186; or

(11) other permits as necessary.

(c) The commission may issue a federal operating permit for a federal source in violation only if the operating permit incorporates a compliance plan for the federal source as a condition of the permit.

(d) The commission shall adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.06, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 6, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.159, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 406, Sec. 2, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 5.02, eff. Sept. 1, 2001.

Sec. 382.05101. DE MINIMIS AIR CONTAMINANTS. The commission may develop by rule the criteria to establish a de minimis level of air contaminants for facilities or groups of facilities below which the following types of permits are not required:

(1) a permit under Section 382.0518 or 382.0519;

(2) a standard permit under Section 382.05195, 382.05198, or 382.051985; or

(3) a permit by rule under Section 382.05196.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 3, eff. Aug. 30, 1999. Amended by Acts 2003, 78th Leg., ch. 361, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1102 (S.B. 1397), Sec. 1, eff. September 1, 2023.

Sec. 382.05102. PERMITTING AUTHORITY OF COMMISSION; GREENHOUSE GAS EMISSIONS. (a) In this section, "greenhouse gas emissions" means emissions of:

(1) carbon dioxide;

(2) methane;

(3) nitrous oxide;

(4) hydrofluorocarbons;

(5) perfluorocarbons; and

(6) sulfur hexafluoride.

(b) To the extent that greenhouse gas emissions require authorization under federal law, the commission may authorize greenhouse gas emissions in a manner consistent with Section 382.051.

(c) The commission shall:

(1) adopt rules to implement this section, including rules specifying the procedures to transition to review by the commission any applications pending with the United States Environmental

Protection Agency for approval under 40 C.F.R. Section 52.2305; and

(2) prepare and submit appropriate federal program revisions to the United States Environmental Protection Agency for approval.

(d) The permit processes authorized by this section are not subject to the requirements relating to a contested case hearing under this chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001, Government Code.

(e) If authorization to emit greenhouse gas emissions is no longer required under federal law, the commission shall:

(1) repeal the rules adopted under Subsection (c); and

(2) prepare and submit appropriate federal program revisions to the United States Environmental Protection Agency for approval.

Added by Acts 2013, 83rd Leg., R.S., Ch. 272 (H.B. 788), Sec. 2, eff. June 14, 2013.

Sec. 382.0511. PERMIT CONSOLIDATION AND AMENDMENT. (a) The commission may consolidate into a single permit any permits, special permits, standard permits, permits by rule, or exemptions for a facility or federal source.

(b) Consistent with the rules adopted under Subsection (d) and the limitations of this chapter, including limitations that apply to the modification of an existing facility, the commission may amend, revise, or modify a permit.

(c) The commission may authorize changes in a federal source to proceed before the owner or operator obtains a federal operating permit or revisions to a federal operating permit if:

(1) the changes are de minimis under Section 382.05101; or

(2) the owner or operator:

(A) has obtained a preconstruction permit or permit amendment required by Section 382.0518; or

(B) is operating under:

(i) a standard permit under Section 382.05195, 382.05198, or 382.051985;

(ii) a permit by rule under Section 382.05196; or

(iii) an exemption allowed under Section 382.057.

(d) The commission by rule shall develop criteria and

administrative procedures to implement Subsections (b) and (c).

(e) When multiple facilities have been consolidated into a single permit under this section and the consolidated permit is reopened for consideration of an amendment relating to one or more facilities authorized by that permit, the permit is not considered reopened with respect to facilities for which an amendment, revision, or modification is not sought unless this chapter specifically authorizes or requires that additional reopening in order to protect the public's health and physical property.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 7, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.160, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 406, Sec. 4, eff. Aug. 30, 1999; Acts 2003, 78th Leg., ch. 361, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1102 (S.B. 1397), Sec. 2, eff. September 1, 2023.

Sec. 382.0512. MODIFICATION OF EXISTING FACILITY. (a) Except as provided in Subsection (b), in determining whether a proposed change at an existing facility is a modification, the commission may not consider the effect on emissions of:

(1) any air pollution control method applied to a source; or

(2) any decreases in emissions from other sources.

(b) In determining whether a proposed change at an existing facility that meets the criteria of Section 382.003(9)(E) results in a net increase in allowable emissions, the commission shall consider the effect on emissions of:

(1) any air pollution control method applied to the facility;

(2) any decreases in allowable emissions from other facilities that have received a preconstruction permit or permit amendment no earlier than 120 months before the change will occur; and

(3) any decreases in actual emissions from other facilities that meet the criteria of Section 382.003(9)(E)(i) or (ii).

(c) Nothing in this section shall be construed to limit the

application of otherwise applicable state or federal requirements, nor shall this section be construed to limit the commission's powers of enforcement under this chapter.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 150, Sec. 2, eff. May 19, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 11.04(b), eff. Sept. 1, 1999.

Sec. 382.0513. PERMIT CONDITIONS. The commission may establish and enforce permit conditions consistent with this chapter. Permit conditions of general applicability shall be adopted by rule.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 8, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995.

Sec. 382.0514. SAMPLING, MONITORING, AND CERTIFICATION. The commission may require, at the expense of the permit holder and as a condition of the permit:

(1) sampling and monitoring of a permitted federal source or facility;

(2) certification of the compliance of the owner or operator of the permitted federal source with the terms and conditions of the permit and with all applicable requirements; and

(3) a periodic report of:

(A) the results of sampling and monitoring; and

(B) the certification of compliance.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 9, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995.

Sec. 382.0515. APPLICATION FOR PERMIT. A person applying for a permit shall submit to the commission:

(1) a permit application;

(2) copies of all plans and specifications necessary to determine if the facility or source will comply with applicable federal and state air control statutes, rules, and regulations and the intent of this chapter; and

(3) any other information the commission considers necessary.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995.

Sec. 382.05155. EXPEDITED PROCESSING OF APPLICATION. (a) An applicant, in a manner prescribed by the commission, may request the expedited processing of an application filed under this chapter if the applicant demonstrates that the purpose of the application will benefit the economy of this state or an area of this state.

(b) The executive director may grant an expedited processing request if the executive director determines that granting the request will benefit the economy of this state or an area of this state.

(c) The expediting of an application under this section does not affect a contested case hearing or applicable federal, state, and regulatory requirements, including the notice, opportunity for a public hearing, and submission of public comment required under this chapter.

(d) The commission by rule may add a surcharge to an application fee assessed under this chapter for an expedited application in an amount sufficient to cover the expenses incurred by the expediting, including overtime, costs of full-time equivalent commission employees to support the expedited processing of air permit applications, contract labor, and other costs. The surcharge is considered part of the application fee and shall be deposited with the fee to the credit of the clean air account established under Section 382.0622(b). Money from the surcharge collected under this section may be used to support the expedited processing of air permit applications under this section.

(e) The commission may authorize the use of overtime, full-time equivalent commission employees to support the expedited processing

of air permit applications, or contract labor to process expedited applications. The overtime, full-time equivalent commission employees, or contract labor authorized under this section is not included in the calculation of the number of full-time equivalent commission employees allotted under other law.

(f) The commission may pay for compensatory time, overtime, full-time equivalent commission employees supporting the expedited processing of air permit applications, or contract labor used to implement this section. The commission is authorized to set the rate for overtime compensation for full-time equivalent commission employees supporting the expedited processing of air permit applications.

(g) A rule adopted under this section must be consistent with Chapter 2001, Government Code. A rule adopted under this section regarding notice must include a provision to require an indication that the application is being processed in an expedited manner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 808 (S.B. 1756), Sec. 1, eff. June 14, 2013.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 393 (S.B. 698), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1173 (H.B. 3317), Sec. 16(a), eff. June 14, 2019.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.007, eff. September 1, 2021.

Sec. 382.0516. NOTICE TO STATE SENATOR, STATE REPRESENTATIVE, AND CERTAIN LOCAL OFFICIALS. (a) On receiving an application for a construction permit or an amendment to a construction permit, a special permit, or an operating permit for a facility that may emit air contaminants, the commission shall send notice of the application to the state senator and representative who represent the area in which the facility is or will be located.

(b) In addition to the notice required by Subsection (a), for an application that relates to an existing or proposed concrete batch plant, on receiving an application for a construction permit, an amendment to a construction permit, an operating permit, or an authorization to use a standard permit, the commission shall send

notice of the application:

(1) to the county judge of the county in which the facility is or will be located; and

(2) if the facility is or will be located in a municipality or the extraterritorial jurisdiction of a municipality, to the presiding officer of the municipality's governing body.

Added by Acts 1991, 72nd Leg., ch. 236, Sec. 2, eff. Sept. 1, 1991. Renumbered from Sec. 382.0511 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.07, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1327, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 5.01, eff. September 1, 2007.

Sec. 382.0517. DETERMINATION OF ADMINISTRATIVE COMPLETION OF APPLICATION. The commission shall determine when an application filed under Section 382.054 or Section 382.0518 is administratively complete. On determination, the commission by mail shall notify the applicant and any interested party who has requested notification. If the number of interested parties who have requested notification makes it impracticable for the commission to notify those parties by mail, the commission shall notify those parties by publication using the method prescribed by Section 382.031(a).

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995.

Sec. 382.0518. PRECONSTRUCTION PERMIT. (a) Before work is begun on the construction of a new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain a permit or permit amendment from the commission.

(b) The commission shall grant within a reasonable time a permit or permit amendment to construct or modify a facility if, from the information available to the commission, including information presented at any hearing held under Section 382.056(k), the

commission finds:

(1) the proposed facility for which a permit, permit amendment, or a special permit is sought will use at least the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility; and

(2) no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(c) In considering the issuance, amendment, or renewal of a permit, the commission may consider the applicant's compliance history in accordance with the method for using compliance history developed by the commission under Section 5.754, Water Code. In considering an applicant's compliance history under this subsection, the commission shall consider as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the permit, permit amendment, or permit renewal is sought. In this subsection, "environmental management system" has the meaning assigned by Section 5.127, Water Code.

(d) If the commission finds that the emissions from the proposed facility will contravene the standards under Subsection (b) or will contravene the intent of this chapter, the commission may not grant the permit, permit amendment, or special permit and shall set out in a report to the applicant its specific objections to the submitted plans of the proposed facility.

(e) If the person applying for a permit, permit amendment, or special permit makes the alterations in the person's plans and specifications to meet the commission's specific objections, the commission shall grant the permit, permit amendment, or special permit. If the person fails or refuses to alter the plans and specifications, the commission may not grant the permit, permit amendment, or special permit. The commission may refuse to accept a person's new application until the commission's objections to the plans previously submitted by that person are satisfied.

(f) A person may operate a facility or source under a permit issued by the commission under this section if:

(1) the facility or source is not required to obtain a federal operating permit under Section 382.054; and

(2) within the time and in the manner prescribed by

commission rule, the permit holder demonstrates that:

(A) the facility complies with all terms of the existing preconstruction permit; and

(B) operation of the facility or source will not violate the intent of this chapter or standards adopted by the commission.

(g) Subsections (a)-(d) do not apply to a person who has executed a contract or has begun construction for an addition, alteration, or modification to a new or an existing facility on or before August 30, 1971, and who has complied with the requirements of Section 382.060, as it existed on November 30, 1991. To qualify for any exemption under this subsection, a contract may not have a beginning construction date later than February 29, 1972.

(h) Section 382.056 does not apply to an applicant for a permit amendment under this section if the total emissions increase from all facilities authorized under the amended permit will meet the de minimis criteria defined by commission rule and will not change in character. For a facility affected by Section 382.020, Section 382.056 does not apply to an applicant for a permit amendment under this section if the total emissions increase from all facilities authorized under the permit amendment is not significant and will not change in character. In this subsection, a finding that a total emissions increase is not significant must be made as provided under Section 382.05196 for a finding under that section.

(i) In considering a permit amendment under this section the commission shall consider any adjudicated decision or compliance proceeding within the five years before the date on which the application was filed that addressed the applicant's past performance and compliance with the laws of this state, another state, or the United States governing air contaminants or with the terms of any permit or order issued by the commission.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.162, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 150, Sec. 3, eff. May 19, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.13, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1161, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1327, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.25, eff.

September 1, 2011.

Sec. 382.05181. PERMIT REQUIRED. (a) Any facility affected by Section 382.0518(g) that does not have an application pending for a permit under this chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, may not emit air contaminants on or after:

(1) September 1, 2003, if the facility is located in the East Texas region; or

(2) September 1, 2004, if the facility is located in the West Texas region.

(b) Any facility affected by Section 382.0518(g) that has obtained a permit under this chapter, other than a permit under Section 382.054, and has not fully complied with the conditions of the permit pertaining to the installation of emissions controls or reductions in emissions of air contaminants, may not emit air contaminants on or after:

(1) March 1, 2007, if the facility is located in the East Texas region; or

(2) March 1, 2008, if the facility is located in the West Texas region.

(c) The East Texas region:

(1) contains all counties traversed by or east of Interstate Highway 35 north of San Antonio or traversed by or east of Interstate Highway 37 south of San Antonio; and

(2) includes Bexar, Bosque, Coryell, Hood, Parker, Somervell, and Wise counties.

(d) The West Texas region includes all counties not contained in the East Texas region.

(e) The commission promptly shall review each application for a permit under this chapter for a facility affected by Section 382.0518(g). If the commission finds that necessary information is omitted from the application, that the application contains incorrect information, or that more information is necessary to complete the processing of the application, the commission shall issue a notice of deficiency and order the information to be provided not later than the 60th day after the date the notice is issued. If the information is not provided to the commission on or before that date, the commission shall dismiss the application.

(f) The commission shall take final action on an application for a permit under this chapter for a facility affected by Section 382.0518(g) before the first anniversary of the date on which the commission receives an administratively complete application.

(g) An owner or operator of a facility affected by Section 382.0518(g) that does not obtain a permit within the 12-month period may petition the commission for an extension of the time period for compliance specified by Subsection (b). The commission may grant not more than one extension for a facility, for an additional period not to exceed 12 months, if the commission finds good cause for the extension.

(h) A permit application under this chapter for a facility affected by Section 382.0518(g) is subject to the notice and hearing requirements as provided by Section 382.05191.

(i) This section does not apply to a facility eligible for a permit under Section 382.05184.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05182. NOTICE OF SHUTDOWN. (a) Any notice submitted in compliance with this section must be filed with the commission by the dates in Section 382.05181(a).

(b) A notice under this section shall include:

(1) the date the facility intends to cease operating;

(2) an inventory of the type and amount of emissions that will be eliminated when the facility ceases to operate; and

(3) any other necessary and relevant information the commission by rule deems appropriate.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05183. EXISTING FACILITY PERMIT. (a) The owner or operator of a facility affected by Section 382.0518(g) may apply for a permit to operate the facility under this section.

(b) The commission shall grant a permit under this section if, from the information available to the commission, the commission finds that the facility will use a control method at least as

beneficial as that described by Section 382.003(9)(E)(ii), considering the age and the remaining useful life of the facility.

(c) The commission may issue an existing facility flexible permit for some or all of the facilities at a site affected by Section 382.0518(g) and facilities permitted under Section 382.0519 in order to implement the requirements of this section. Permits issued under this subsection shall follow the same permit issuance, modification, and renewal procedures as existing facility permits.

(d) If the commission finds that the emissions from the facility will contravene the standards under Subsection (b) or the intent of this chapter, including protection of the public's health and physical property, the commission may not grant the permit under this section.

(e) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) The commission may adopt rules as necessary to implement and administer this section.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05184. SMALL BUSINESS STATIONARY SOURCE PERMIT. (a) Facilities affected by Section 382.0518(g) that are located at a small business stationary source, as defined by Section 5.135, Water Code, and are not required by commission rule to report to the commission under Section 382.014 may apply for a permit under this section before September 1, 2004.

(b) Facilities affected by Section 382.0518(g) that are located at a small business stationary source that does not have an application pending for a permit under this chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, may not emit air contaminants on or after March 1, 2008.

(c) The commission shall grant a permit under this section if, from the information available to the commission, the commission finds that there is no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(d) If the commission finds that the emissions from the facility will not comply with Subsection (c), the commission may not grant the permit under this section.

(e) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) A permit application under this section is not subject to notice and hearing requirements and is not subject to Chapter 2001, Government Code.

(g) The commission may adopt rules as necessary to implement and administer this section.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(b), eff. September 1, 2005.

Sec. 382.05185. ELECTRIC GENERATING FACILITY PERMIT. (a) An electric generating facility is considered permitted under this section with respect to all air contaminants if the facility is:

(1) a natural-gas-fired electric generating facility that has applied for or obtained a permit under Section 39.264, Utilities Code; or

(2) an electric generating facility exempted from permitting under Section 39.264(d), Utilities Code.

(b) A coal-fired electric generating facility that is required to obtain a permit under Section 39.264, Utilities Code:

(1) shall be considered permitted under this section with respect to nitrogen oxides, sulphur dioxide, and, as provided by commission rules, for opacity if the facility has applied for or obtained a permit under Section 39.264, Utilities Code; and

(2) is not considered permitted for criteria pollutants not described by Subsection (b)(1).

(c) The commission shall issue a permit for a facility subject to Subsection (b) for criteria pollutants not covered by Subsection (b)(1) if the commission finds that the emissions from the facility will not contravene the intent of this chapter, including protection of the public's health and physical property. Upon request by the

applicant, the commission shall include a permit application under this subsection with the applicant's pending permit application under Section 39.264, Utilities Code.

(d) The owner or operator of an electric generating facility with a permit or an application pending under Section 39.264, Utilities Code, may apply for a permit under this section before September 1, 2002, for a facility located at the same site if the facility not permitted or without a pending application under Section 39.264, Utilities Code, is:

(1) a generator that does not generate electric energy for compensation and is used not more than 10 percent of the normal annual operating schedule; or

(2) an auxiliary fossil-fuel-fired combustion facility that does not generate electric energy and does not emit more than 100 tons of any air contaminant annually.

(e) Emissions from facilities permitted under Subsection (d) shall be included in the emission allowance trading program established under Section 39.264, Utilities Code. The commission may not issue new allowances based on a permit issued under this section.

(f) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(g) The commission may adopt rules as necessary to implement and administer this section.

(h) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(i) For the purposes of this section, a natural-gas-fired electric generating facility includes a facility that was designed to burn either natural gas or fuel oil of a grade approved by commission rule. The commission shall adopt rules regarding acceptable fuel oil grades.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05186. PIPELINE FACILITIES PERMITS. (a) This section applies only to reciprocating internal combustion engines that are part of processing, treating, compression, or pumping facilities affected by Section 382.0518(g) connected to or part of a gathering

or transmission pipeline. Pipeline facilities affected by Section 382.0518(g) other than reciprocating internal combustion engines may apply for an existing facility permit or other applicable permit under this chapter other than a pipeline facilities permit.

(b) The commission by rule shall:

(1) provide for the issuance of a single permit for all reciprocating internal combustion facilities connected to or part of a gathering or transmission pipeline;

(2) provide for a means for mandatory emissions reductions for facilities permitted under this section to be achieved:

(A) at one source; or

(B) by averaging reductions among more than one reciprocating internal combustion facility connected to or part of a gathering or transmission pipeline; and

(3) allow an owner or operator to apply for separate permits under this section for discrete and separate reciprocating internal combustion facilities connected to or part of a gathering or transmission pipeline.

(c) If the mandatory emissions reductions under this section are to be achieved by averaging reductions among more than one source connected to or part of a gathering or transmission pipeline, the average may not include emissions reductions achieved in order to comply with other state or federal law.

(d) If the mandatory emissions reductions under this section are to be achieved at one source, the reduction may include emissions reductions achieved since January 1, 2001, in order to comply with other state or federal law.

(e) The commission shall grant a permit under this section for a facility or facilities located in the East Texas region if, from information available to the commission, the commission finds that the conditions of the permit will require a 50 percent reduction of the hourly emissions rate of nitrogen oxides, expressed in terms of grams per brake horsepower-hour. The commission may also require a 50 percent reduction of the hourly emissions rate of volatile organic compounds, expressed in terms of grams per brake horsepower-hour.

(f) The commission shall grant a permit under this section for facilities located in the West Texas region if, from information available to the commission, the commission finds that the conditions of the permit will require up to a 20 percent reduction of the hourly emissions rate of nitrogen oxides, expressed in terms of grams per

brake horsepower-hour. The commission may also require up to a 20 percent reduction of the hourly emissions rate of volatile organic compounds, expressed in terms of grams per brake horsepower-hour.

(g) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(h) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(i) The commission may adopt rules as necessary to implement and administer this section.

(j) A reciprocating internal combustion engine that is subject to this section and to a mass emissions cap as established by commission rule is considered permitted under this section with respect to all air contaminants if the facility is:

(1) located in an area designated nonattainment for an ozone national ambient air quality standard; and

(2) achieving compliance with all state and federal requirements designated for that area.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1023, Sec. 3, eff. June 20, 2003.

Sec. 382.051865. STATIONARY NATURAL GAS ENGINES USED IN COMBINED HEATING AND POWER SYSTEM. (a) In this section, "natural gas engine" includes a natural gas internal combustion engine, natural gas stationary internal combustion reciprocating engine, and natural gas turbine. The term does not include a natural gas engine that powers a motor vehicle as defined by Section 382.003(9-a), Health and Safety Code.

(b) This section applies only to a stationary natural gas engine used in a combined heating and power system.

(c) The commission shall issue a standard permit or permit by rule for stationary natural gas engines used in a combined heating and power system that establishes emission limits for air contaminants released by the engines.

(d) The commission in adopting a standard permit or permit by rule under this section may consider:

(1) the geographic location in which a stationary natural

gas engine may be used, including the proximity to an area designated as a nonattainment area;

(2) the total annual operating hours of a stationary natural gas engine;

(3) the technology used by a stationary natural gas engine;

(4) the types of fuel used to power a stationary natural gas engine; and

(5) other emission control policies of the state.

(e) The commission in adopting a standard permit or permit by rule under this section may not distinguish between the end-use functions powered by a stationary natural gas engine.

(f) The commission must provide for the emission limits for stationary natural gas engines subject to this section to be measured in terms of air contaminant emissions per unit of total energy output. The commission shall consider both the primary and secondary functions when determining the engine's emissions per unit of energy output.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1175 (H.B. 3268), Sec. 1, eff. June 17, 2011.

Sec. 382.051866. EMISSIONS REDUCTIONS INCENTIVES ACCOUNT. (a) In this section, "affiliate" means a person that directly or indirectly controls, is controlled by, or is under common control with another person.

(b) The comptroller of public accounts shall establish an account within the clean air account to be known as the emissions reductions incentives account.

(c) The emissions reductions incentives account consists of money from:

(1) gifts, grants, or donations to the account for a designated or general use;

(2) money from any other source the legislature designates; and

(3) the interest earned on money in the emissions reductions incentives account.

(d) Money in the emissions reductions incentives account may be appropriated only to pay for emissions reduction project incentives under a program developed under Section 382.051867 and administrative

expenses associated with providing the incentives or the incentive program established under that section.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1346, Sec. 3, eff. June 15, 2007.

(f) The emissions reductions incentives account is exempt from the application of Section 403.095, Government Code.

Added by Acts 2003, 78th Leg., ch. 1023, Sec. 2, eff. June 20, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1346 (S.B. 2000), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1346 (S.B. 2000), Sec. 3, eff. June 15, 2007.

Sec. 382.0519. VOLUNTARY EMISSIONS REDUCTION PERMIT. (a) Before September 1, 2001, the owner or operator of an existing, unpermitted facility not subject to the requirement to obtain a permit under Section 382.0518(g) may apply for a permit to operate that facility under this section.

(b) The commission shall grant within a reasonable time a permit under this section if, from the information available to the commission, including information presented at any public hearing or through written comment:

(1) the commission finds that the facility will use an air pollution control method at least as beneficial as that described in Section 382.003(9)(E)(ii), considering the age and remaining useful life of the facility, except as provided by Subdivision (2); or

(2) for a facility located in a near-nonattainment or nonattainment area for a national ambient air quality standard, the commission finds that the facility will use the more stringent of:

(A) a control method at least as beneficial as that described in Section 382.003(9)(E)(ii), considering the age and remaining useful life of the facility; or

(B) a control technology that the commission finds is demonstrated to be generally achievable for facilities in that area of the same type that are permitted under this section, considering the age and remaining useful life of the facility.

(c) If the commission finds that the emissions from the facility will contravene the standards under Subsection (b) or the

intent of this chapter, including protection of the public's health and physical property, the commission may not grant the permit under this section.

(d) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before work is begun on the construction of the modification.

(e) A permit issued by the commission under this section may defer the implementation of the requirement of reductions in the emissions of certain air contaminants only if the applicant will make substantial emissions reductions in other specific air contaminants. The deferral shall be based on a prioritization of air contaminants by the commission as necessary to meet local, regional, and statewide air quality needs.

(f) The commission shall give priority to the processing of applications for the issuance, amendment, or renewal of a permit for those facilities authorized under Section 382.0518(g) that are located less than two miles from the outer perimeter of a school, child day-care facility, hospital, or nursing home.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.

Sec. 382.05191. EMISSIONS REDUCTION PERMITS: NOTICE AND HEARING. (a) An applicant for a permit under Section 382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 shall publish notice of intent to obtain the permit in accordance with Section 382.056.

(b) The commission may authorize an applicant for a permit for a facility that constitutes or is part of a small business stationary source as defined in Section 5.135, Water Code, to provide notice using an alternative means if the commission finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, cost, and consistency with federal requirements.

(c) The commission shall provide an opportunity for a public hearing and the submission of public comment and send notice of a decision on an application for a permit under Section 382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 in the same manner as provided by Sections 382.0561 and 382.0562.

(d) A person affected by a decision of the commission to issue or deny a permit under Section 382.05183, 382.05185(c) or (d), or

382.05186 may move for rehearing and is entitled to judicial review under Section 382.032.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 965, Sec. 5.04, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(c), eff. September 1, 2005.

Sec. 382.05192. REVIEW AND RENEWAL OF EMISSIONS REDUCTION AND MULTIPLE PLANT PERMITS. Review and renewal of a permit issued under Section 382.05183, 382.05185(c) or (d), 382.05186, 382.0519, or 382.05194 shall be conducted in accordance with Section 382.055.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 965, Sec. 5.05, eff. Sept. 1, 2001.

Sec. 382.05193. EMISSIONS PERMITS THROUGH EMISSIONS REDUCTION. (a) The commission may issue a permit under Section 382.0519 for a facility:

(1) that makes a good faith effort to make equipment improvements and emissions reductions necessary to meet the requirements of that section;

(2) that, in spite of the effort, cannot reduce the facility's emissions to the degree necessary for the issuance of the permit; and

(3) the owner or operator of which acquires a sufficient number of emissions reduction credits to offset the facility's excessive emissions under the program established under Subsection (b).

(b) The commission by rule shall establish a program to grant emissions reduction credits to a facility if the owner or operator conducts an emissions reduction project to offset the facility's excessive emissions. To be eligible for a credit to offset a facility's emissions, the emissions reduction project must reduce emissions in the airshed, as defined by commission rule, in which the facility is located.

(c) The commission by rule shall provide that an emissions reduction project must reduce net emissions from one or more sources in this state in an amount and type sufficient to prevent air pollution to a degree comparable to the amount of the reduction in the facility's emissions that would be necessary to meet the permit requirement. Qualifying emissions reduction projects must include:

(1) generation of electric energy by a low-emission method, including:

(A) wind power;

(B) biomass gasification power; and

(C) solar power;

(2) the purchase and destruction of high-emission automobiles or other mobile sources;

(3) the reduction of emissions from a permitted facility that emits air contaminants to a level significantly below the levels necessary to comply with the facility's permit;

(4) a carpooling or alternative transportation program for the owner's or operator's employees;

(5) a telecommuting program for the owner's or operator's employees; and

(6) conversion of a motor vehicle fleet operated by the owner or operator to a low-sulphur fuel or an alternative fuel approved by the commission.

(d) A permit issued under Section 382.0519 for a facility participating in the program established under this section must be conditioned on the successful and timely completion of the project or projects for which the facility owner or operator acquires the credits.

(e) To renew the permit of a facility permitted under Section 382.0519 with credits acquired under the program established under this section, the commission shall require the owner or operator of the facility to have:

(1) made equipment improvements and emissions reductions necessary to meet the permit requirements under that section for a new permit; or

(2) acquired additional credits under the program as necessary to meet the permit requirements under that section for a new permit.

(f) Emissions reduction credits acquired under the program established under this section are not transferrable.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.

Sec. 382.05194. MULTIPLE PLANT PERMIT. (a) The commission may issue a multiple plant permit for multiple plant sites that are owned or operated by the same person or persons under common control if the commission finds that:

(1) the aggregate rate of emission of air contaminants to be authorized under the permit does not exceed the total of:

(A) for previously permitted facilities, the rates authorized in the existing permits; and

(B) for existing unpermitted facilities not subject to the requirement to obtain a preconstruction authorization under Section 382.0518(g) or for facilities authorized under Section 382.0519, the rates that would be authorized under Section 382.0519; and

(2) there is no indication that the emissions from the facilities will contravene the intent of this chapter, including protection of the public's health and physical property.

(b) A permit issued under this section may not authorize emissions from any of the facilities authorized under the permit that exceed the facility's highest historic annual rate or the levels authorized in the facility's most recent permit. In the absence of records extending back to the original construction of the facility, best engineering judgment shall be used to demonstrate the facility's highest historic annual rate to the commission.

(c) Emissions control equipment previously installed at a facility permitted under this section may not be removed or disabled unless the action is undertaken to maintain or upgrade the control equipment or to otherwise reduce the impact of emissions authorized by the commission.

(d) The commission by rule shall establish the procedures for application and approval for the use of a multiple plant permit.

(e) For a multiple plant permit that applies only to existing facilities for which an application is filed before September 1, 2001, the issuance, amendment, or revocation by the commission of the permit is not subject to Chapter 2001, Government Code.

(f) The commission may adopt rules as necessary to implement and administer this section and may delegate to the executive director under Section 382.061 the authority to issue, amend, or

revoke a multiple plant permit.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 935, Sec. 1, eff. June 14, 2001.

Sec. 382.05195. STANDARD PERMIT. (a) The commission may issue a standard permit for new or existing similar facilities if the commission finds that:

(1) the standard permit is enforceable;

(2) the commission can adequately monitor compliance with the terms of the standard permit; and

(3) for permit applications for facilities subject to Sections 382.0518(a)-(d) filed before September 1, 2001, the facilities will use control technology at least as effective as that described in Section 382.0518(b). For permit applications filed after August 31, 2001, all facilities permitted under this section will use control technology at least as effective as that described in Section 382.0518(b).

(b) The commission shall publish notice of a proposed standard permit in the Texas Register and in one or more statewide or regional newspapers designated by the commission by rule that will, in the commission's judgment, provide reasonable notice throughout the state. If the standard permit will be effective for only part of the state, the notice shall be published in a newspaper of general circulation in the area to be affected. The commission by rule may require additional notice to be given. The notice must include an invitation for written comments by the public to the commission regarding the proposed standard permit and must be published not later than the 30th day before the date the commission issues the standard permit.

(c) The commission shall hold a public meeting to provide an additional opportunity for public comment. The commission shall give notice of a public meeting under this subsection as part of the notice described in Subsection (b) not later than the 30th day before the date of the meeting.

(d) If the commission receives public comment related to the issuance of a standard permit, the commission shall issue a written response to the comments at the same time the commission issues or denies the permit. The response must be made available to the

public, and the commission shall mail the response to each person who made a comment.

(e) The commission by rule shall establish procedures for the amendment of a standard permit and for an application for, the issuance of, the renewal of, and the revocation of an authorization to use a standard permit.

(e-1) This subsection applies only to a standard permit issued under this section that authorizes the operation of a permanent concrete plant that performs wet batching, dry batching, or central mixing, as defined by the commission. The commission shall at least once every eight years conduct a protectiveness review of the permit regarding the operation of a permanent concrete plant described by this subsection. If the commission amends the permit after a protectiveness review, the commission shall allow facilities authorized to emit air contaminants under the permit as it read before the amendment to continue to operate until a date provided by the commission under Subsection (f) that provides facility operators a reasonable amount of time to comply with the amended permit.

(f) A facility authorized to emit air contaminants under a standard permit shall comply with an amendment to the standard permit beginning on the date the facility's authorization to use the standard permit is renewed or the date the commission otherwise provides. Before the date the facility is required to comply with the amendment, the standard permit, as it read before the amendment, applies to the facility.

(f-1) This subsection applies only to a standard permit issued under this section that authorizes the operation of a permanent concrete plant that performs wet batching, dry batching, or central mixing. If the commission amends the standard permit, the commission may require each facility operator authorized to begin new construction of a facility under the former standard permit to update the facility's plans for the new construction in accordance with the amended standard permit if:

(1) the facility operator did not begin the construction before the adoption of the amended permit; and

(2) the facility operator filed a request under commission rules for an extension to begin construction.

(g) The adoption or amendment of a standard permit or the issuance, renewal, or revocation of an authorization to use a standard permit is not subject to Chapter 2001, Government Code.

(h) The commission may adopt rules as necessary to implement and administer this section.

(i) The commission may delegate to the executive director the authority to issue, amend, renew, or revoke an authorization to use a standard permit.

(j) If a standard permit for a facility requires a distance, setback, or buffer from other property or structures as a condition of the permit, the determination of whether the distance, setback, or buffer is satisfied shall be made on the basis of conditions existing at the earlier of:

(1) the date new construction, expansion, or modification of a facility begins; or

(2) the date any application or notice of intent is first filed with the commission to obtain approval for the construction or operation of the facility.

(k) An application for an authorization to use a standard permit under this section for a concrete plant that performs wet batching, dry batching, or central mixing, including a permanent, temporary, or specialty concrete batch plant, as defined by the commission, must include a plot plan that clearly shows:

(1) a distance scale;

(2) a north arrow;

(3) all property lines, emission points, buildings, tanks, and process vessels and other process equipment in the area in which the facility will be located;

(4) at least two benchmark locations in the area in which the facility will be located; and

(5) if the permit requires a distance, setback, or buffer from other property or structures as a condition of the permit, whether the required distance or setback will be met.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 422 (S.B. 1740), Sec. 2, eff. September 1, 2005.

Acts 2021, 87th Leg., R.S., Ch. 159 (S.B. 952), Sec. 1, eff. September 1, 2021.

Acts 2025, 89th Leg., R.S., Ch. 160 (S.B. 2351), Sec. 1, eff. May 24, 2025.

Acts 2025, 89th Leg., R.S., Ch. 1139 (S.B. 763), Sec. 1, eff.

September 1, 2025.

Sec. 382.05196. PERMITS BY RULE. (a) Consistent with Section 382.051, the commission may adopt permits by rule for certain types of facilities if it is found on investigation that the types of facilities will not make a significant contribution of air contaminants to the atmosphere. The commission may not adopt a permit by rule authorizing any facility defined as "major" under any applicable preconstruction permitting requirements of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) or regulations adopted under that Act. Nothing in this subsection shall be construed to limit the commission's general power to control the state's air quality under Section 382.011(a).

(b) The commission by rule shall specifically define the terms and conditions for a permit by rule under this section.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.

Sec. 382.051961. PERMIT FOR CERTAIN OIL AND GAS FACILITIES. (a) This section applies only to new facilities or modifications of existing facilities that belong to Standard Industrial Classification Codes 1311 (Crude Petroleum and Natural Gas), 1321 (Natural Gas Liquids), 4612 (Crude Petroleum Pipelines), 4613 (Refined Petroleum Pipelines), 4922 (Natural Gas Transmission), and 4923 (Natural Gas Transmission and Distribution).

(b) The commission may not adopt a new permit by rule or a new standard permit or amend an existing permit by rule or an existing standard permit relating to a facility to which this section applies unless the commission:

(1) conducts a regulatory analysis as provided by Section 2001.0225, Government Code;

(2) determines, based on the evaluation of credible air quality monitoring data, that the emissions limits or other emissions-related requirements of the permit are necessary to ensure that the intent of this chapter is not contravened, including the protection of the public's health and physical property;

(3) establishes any required emissions limits or other emissions-related requirements based on:

(A) the evaluation of credible air quality monitoring data; and

(B) credible air quality modeling that is not based on the worst-case scenario of emissions or other worst-case modeling scenarios unless the actual air quality monitoring data and evaluation of that data indicate that the worst-case scenario of emissions or other worst-case modeling scenarios yield modeling results that reflect the actual air quality monitoring data and evaluation; and

(4) considers whether the requirements of the permit should be imposed only on facilities that are located in a particular geographic region of the state.

(c) The air quality monitoring data and the evaluation of that data under Subsection (b):

(1) must be relevant and technically and scientifically credible, as determined by the commission; and

(2) may be generated by an ambient air quality monitoring program conducted by or on behalf of the commission in any part of the state or by another governmental entity of this state, a local or federal governmental entity, or a private organization.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1080 (S.B. 1134), Sec. 1, eff. June 17, 2011.

Sec. 382.051962. AUTHORIZATION FOR PLANNED MAINTENANCE, START-UP, OR SHUTDOWN ACTIVITIES RELATING TO CERTAIN OIL AND GAS FACILITIES. (a) In this section, "planned maintenance, start-up, or shutdown activity" means an activity with emissions or opacity that:

(1) is not expressly authorized by commission permit, rule, or order and involves the maintenance, start-up, or shutdown of a facility;

(2) is part of normal or routine facility operations;

(3) is predictable as to timing; and

(4) involves the type of emissions normally authorized by permit.

(b) The commission may adopt one or more permits by rule or one or more standard permits and may amend one or more existing permits by rule or standard permits to authorize planned maintenance, start-up, or shutdown activities for facilities described by Section

382.051961(a). The adoption or amendment of a permit under this subsection must comply with Section 382.051961(b).

(c) An unauthorized emission or opacity event from a planned maintenance, start-up, or shutdown activity is subject to an affirmative defense as established by commission rules as those rules exist on the effective date of this section if:

(1) the emission or opacity event occurs at a facility described by Section 382.051961(a);

(2) an application or registration to authorize the planned maintenance, start-up, or shutdown activities of the facility is submitted to the commission on or before the earlier of:

(A) January 5, 2014; or

(B) the 120th day after the effective date of a new or amended permit adopted by the commission under Subsection (b); and

(3) the affirmative defense criteria in the rules are met.

(d) The affirmative defense described by Subsection (c) is not available for a facility on or after the date that an application or registration to authorize the planned maintenance, start-up, or shutdown activities of the facility is approved, denied, or voided.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1080 (S.B. 1134), Sec. 1, eff. June 17, 2011.

Sec. 382.051963. AMENDMENT OF CERTAIN PERMITS. (a) A permit by rule or standard permit that has been adopted by the commission under this subchapter and is in effect on the effective date of this section may be amended to require:

(1) the permit holder to provide to the commission information about a facility authorized by the permit, including the location of the facility; and

(2) any facility handling sour gas to be a minimum distance from a recreational area, a residence, or another structure not occupied or used solely by the operator of the facility or by the owner of the property upon which the facility is located.

(b) The amendment of a permit under this section is not subject to Section 382.051961(b).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1080 (S.B. 1134), Sec. 1, eff. June 17, 2011.

Sec. 382.051964. AGGREGATION OF FACILITIES. Notwithstanding any other provision of this chapter, the commission may not aggregate a facility that belongs to a Standard Industrial Classification code identified by Section 382.051961(a) with another facility that belongs to a Standard Industrial Classification code identified by that section for purposes of consideration as an oil and gas site, a stationary source, or another single source in a permit by rule or a standard permit unless the facilities being aggregated:

(1) are under the control of the same person or are under the control of persons under common control;

(2) belong to the same first two-digit major grouping of Standard Industrial Classification codes;

(3) are operationally dependant; and

(4) are located not more than one-quarter mile from a condensate tank, oil tank, produced water storage tank, or combustion facility that:

(A) is under the control of the same person who controls the facilities being aggregated or is under the control of persons under common control;

(B) belongs to the same first two-digit major grouping of Standard Industrial Classification codes as the facilities being aggregated; and

(C) is operationally dependant on the facilities being aggregated.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1080 (S.B. 1134), Sec. 1, eff. June 17, 2011.

Sec. 382.05197. MULTIPLE PLANT PERMIT: NOTICE AND HEARING. (a) An applicant for a permit under Section 382.05194 shall publish notice of intent to obtain the permit in accordance with Section 382.056, except that the notice of a proposed multiple plant permit for existing facilities shall be published in one or more statewide or regional newspapers that provide reasonable notice throughout the state. If the multiple plant permit for existing facilities will be effective for only part of the state, the notice shall be published in a newspaper of general circulation in the area to be affected. The commission by rule may require that additional notice be given.

(b) The commission may authorize an applicant for a permit for

an existing facility that constitutes or is part of a small business stationary source as defined in Section 5.135, Water Code, to provide notice using an alternative means if the commission finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, the cost, and the consistency with federal requirements.

(c) The commission shall provide an opportunity for a public hearing and the submission of public comment and send notice of a decision on an application for a permit under Section 382.05194 in the same manner as provided by Sections 382.0561 and 382.0562.

(d) A person affected by a decision of the commission to issue or deny a multiple plant permit may move for rehearing and is entitled to judicial review under Section 382.032.

Added by Acts 2001, 77th Leg., ch. 935, Sec. 2, eff. June 14, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(d), eff. September 1, 2005.

Sec. 382.05198. STANDARD PERMIT FOR CERTAIN CONCRETE PLANTS. (a) The commission shall issue a standard permit for a permanent concrete plant that performs wet batching, dry batching, or central mixing and that meets the following requirements:

(1) production records must be maintained on site while the plant is in operation until the second anniversary of the end of the period to which they relate;

(2) each cement or fly ash storage silo and weigh hopper must be equipped with a fabric or cartridge filter or vented to a fabric or cartridge filter system;

(3) each fabric or cartridge filter, fabric or cartridge filter system, and suction shroud must be maintained and operated properly with no tears or leaks;

(4) excluding the suction shroud filter system, each filter system must be designed to meet a standard of at least 0.01 outlet grain loading as measured in grains per dry standard cubic foot;

(5) each filter system and each mixer loading and batch truck loading emissions control device must meet a performance standard of no visible emissions exceeding 30 seconds in a five-

minute period as determined using United States Environmental Protection Agency Test Method 22 as that method existed on September 1, 2003;

(6) if a cement or fly ash silo is filled during nondaylight hours, the silo filter system exhaust must be sufficiently illuminated to enable a determination of compliance with the performance standard described by Subdivision (5);

(7) the conveying system for the transfer of cement or fly ash to and from each storage silo must be totally enclosed, operate properly, and be maintained without any tears or leaks;

(8) except during cement or fly ash tanker connection or disconnection, each conveying system for the transfer of cement or fly ash must meet the performance standard described by Subdivision (5);

(9) a warning device must be installed on each bulk storage silo to alert the operator in sufficient time for the operator to stop loading operations before the silo is filled to a level that may adversely affect the pollution abatement equipment;

(10) if filling a silo results in failure of the pollution abatement system or failure to meet the performance standard described by Subdivision (5), the failure must be documented and reported to the commission;

(11) each road, parking lot, or other area at the plant site that is used by vehicles must be paved with a cohesive hard surface that is properly maintained, cleaned, and watered so as to minimize dust emissions;

(12) each stockpile must be sprinkled with water or dust-suppressant chemicals or covered so as to minimize dust emissions;

(13) material used in the batch that is spilled must be immediately cleaned up and contained or dampened so as to minimize dust emissions;

(14) production of concrete at the plant must not exceed 300 cubic yards per hour;

(15) a suction shroud or other pickup device must be installed at the batch drop point or, in the case of a central mix plant, at the drum feed and vented to a fabric or cartridge filter system with a minimum capacity of 5,000 cubic feet per minute of air;

(16) the bag filter and capture system must be properly designed to accommodate the increased flow from the suction shroud and achieve a control efficiency of at least 99.5 percent;

(17) the suction shroud baghouse exhaust must be located more than 100 feet from any property line;

(18) stationary equipment, stockpiles, and vehicles used at the plant, except for incidental traffic and vehicles as they enter and exit the site, must be located or operated more than 100 feet from any property line; and

(19) the central baghouse must be located at least 440 yards from any building used as a single or multifamily residence, school, or place of worship at the time the application to use the permit is filed with the commission if the plant is located in an area that is not subject to municipal zoning regulation.

(b) Notwithstanding Subsection (a)(18), the commission shall issue a standard permit for a permanent concrete plant that performs wet batching, dry batching, or central mixing and does not meet the requirements of that subdivision if the plant meets the other requirements of Subsection (a) and:

(1) each road, parking lot, and other traffic area located within the distance of a property line provided by Subsection (a)(18) is bordered by dust-suppressing fencing or another barrier at least 12 feet high; and

(2) each stockpile located within the applicable distance of a property line is contained within a three-walled bunker that extends at least two feet above the top of the stockpile.

(c) An application for the issuance of a standard permit under this section must include a plot plan that meets the requirements of Section 382.05195(k).

(d) If the commission amends a standard permit issued under this section, the commission may require each facility operator authorized to begin new construction of a facility under the former standard permit to update the facility's plans for the new construction in accordance with the amended standard permit if:

(1) the facility operator did not begin the construction before the adoption of the amended permit; and

(2) the facility operator filed a request under commission rules for an extension to begin construction.

Added by Acts 2003, 78th Leg., ch. 361, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 159 (S.B. 952), Sec. 2, eff. September 1, 2021.

Acts 2025, 89th Leg., R.S., Ch. 160 (S.B. 2351), Sec. 2, eff. May 24, 2025.

Sec. 382.051985. STANDARD PERMIT FOR CERTAIN TEMPORARY CONCRETE PLANTS FOR PUBLIC WORKS. (a) The commission shall issue a standard permit that meets the requirements of Section 382.05195 for a temporary concrete plant that performs wet batching, dry batching, or central mixing to support a public works project. A plant operating under the permit:

(1) may not support a project that is not related to the public works project; and

(2) must be located in or contiguous to the right-of-way of the public works project.

(b) A plant permitted under this section may occupy a designated site for not more than 180 consecutive days or to supply material for a single project, but not other unrelated projects.

Added by Acts 2023, 88th Leg., R.S., Ch. 1102 (S.B. 1397), Sec. 3, eff. September 1, 2023.

Sec. 382.05199. STANDARD PERMIT FOR CERTAIN CONCRETE BATCH PLANTS: NOTICE AND HEARING. (a) A person may not begin construction of a permanent concrete plant that performs wet batching, dry batching, or central mixing under a standard permit issued under Section 382.05198 unless the commission authorizes the person to use the permit as provided by this section. The notice and hearing requirements of Subsections (b)-(g) apply only to an applicant for authorization to use a standard permit issued under Section 382.05198. An applicant for a permit for a concrete plant that does not meet the requirements of a standard permit issued under Section 382.05198 must comply with:

(1) Section 382.058 to obtain authorization to use a standard permit issued under Section 382.05195 or a permit by rule adopted under Section 382.05196; or

(2) Section 382.056 to obtain a permit issued under Section 382.0518.

(b) An applicant for an authorization to use a standard permit under Section 382.05198 must publish notice under this section not

later than the earlier of:

(1) the 30th day after the date the applicant receives written notice from the executive director that the application is technically complete; or

(2) the 75th day after the date the executive director receives the application.

(c) The applicant must publish notice at least once in a newspaper of general circulation in the municipality in which the plant is proposed to be located or in the municipality nearest to the proposed location of the plant. If the elementary or middle school nearest to the proposed plant provides a bilingual education program as required by Subchapter B, Chapter 29, Education Code, the applicant must also publish the notice at least once in an additional publication of general circulation in the municipality or county in which the plant is proposed to be located that is published in the language taught in the bilingual education program. This requirement is waived if such a publication does not exist or if the publisher refuses to publish the notice.

(d) The notice must include:

(1) a brief description of the proposed location and nature of the proposed plant;

(2) a description, including a telephone number, of the manner in which the executive director may be contacted for further information;

(3) a description, including a telephone number, of the manner in which the applicant may be contacted for further information;

(4) the location and hours of operation of the commission's regional office at which a copy of the application is available for review and copying; and

(5) a brief description of the public comment process, including the time and location of the public hearing, and the mailing address and deadline for filing written comments.

(e) The public comment period begins on the first date notice is published under Subsection (b) and extends to the close of the public hearing.

(f) Section 382.056 of this code and Chapter 2001, Government Code, do not apply to a public hearing held under this section. A public hearing held under this section is not an evidentiary proceeding. Any person may submit an oral or written statement

concerning the application at the public hearing. The applicant may set reasonable limits on the time allowed for oral statements at the public hearing.

(g) The applicant, in cooperation with the executive director, must hold the public hearing not less than 30 days and not more than 45 days after the first date notice is published under Subsection (b). The public hearing must be held in the county in which the plant is proposed to be located.

(h) Not later than the 35th day after the date the public hearing is held, the executive director shall approve or deny the application for authorization to use the standard permit. The executive director shall base the decision on whether the application meets the requirements of Section 382.05198. The executive director shall consider all comments received during the public comment period and at the public hearing in determining whether to approve the application. If the executive director denies the application, the executive director shall state the reasons for the denial and any modifications to the application that are necessary for the proposed plant to qualify for the authorization.

(i) The executive director shall issue a written response to any public comments received related to the issuance of an authorization to use the standard permit at the same time as or as soon as practicable after the executive director grants or denies the application. Issuance of the response after the granting or denial of the application does not affect the validity of the executive director's decision to grant or deny the application. The executive director shall:

(1) mail the response to each person who filed a comment; and

(2) make the response available to the public.

Added by Acts 2003, 78th Leg., ch. 361, Sec. 3, eff. Sept. 1, 2003.

Sec. 382.052. PERMIT TO CONSTRUCT OR MODIFY FACILITY WITHIN 3,000 FEET OF SCHOOL. In considering the issuance of a permit to construct or modify a facility within 3,000 feet of an elementary, junior high, or senior high school, the commission shall consider possible adverse short-term or long-term side effects of air contaminants or nuisance odors from the facility on the individuals

attending the school facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.163, eff. Sept. 1, 1995.

Sec. 382.053. PROHIBITION ON ISSUANCE OF CONSTRUCTION PERMIT FOR LEAD SMELTING PLANT AT CERTAIN LOCATIONS. (a) The commission may not grant a construction permit for a lead smelting plant at a site:

(1) located within 3,000 feet of an individual's residence; and

(2) at which lead smelting operations have not been conducted before August 31, 1987.

(b) This section does not apply to:

(1) a modification of a lead smelting plant in operation on August 31, 1987;

(2) a lead smelting plant or modification of a plant with the capacity to produce not more than 200 pounds of lead each hour; or

(3) a lead smelting plant that, when the plant began operation, was located more than 3,000 feet from the nearest residence.

(c) In this section, "lead smelting plant" means a facility operated as a smeltery for processing lead.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.164, eff. Sept. 1, 1995.

Sec. 382.054. FEDERAL OPERATING PERMIT. Subject to Section 382.0511(c), a person may not operate a federal source unless the person has obtained a federal operating permit from the commission under Section 382.0541, 382.0542, or 382.0543.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.09, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 10, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.165, eff. Sept. 1, 1995.

Sec. 382.0541. ADMINISTRATION AND ENFORCEMENT OF FEDERAL OPERATING PERMIT. (a) The commission may:

(1) require a federal source to obtain a permit under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.);

(2) require an existing facility or source to use, at a minimum, any applicable maximum achievable control technology required by the commission or by the United States Environmental Protection Agency;

(3) require facilities or federal sources that are new or modified and are subject to Section 112(g) of the federal Clean Air Act (42 U.S.C. Section 7412) to use, at a minimum, the more stringent of:

(A) the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating emissions from the proposed facility or federal source; or

(B) any applicable maximum achievable control technology (MACT), including any MACT developed pursuant to Section 112(g) of the federal Clean Air Act (42 U.S.C. Section 7412);

(4) establish maximum achievable control technology requirements in accordance with Section 112(j) of the federal Clean Air Act (42 U.S.C. Section 7412);

(5) issue initial permits with terms not to exceed five years for federal sources under Title V of the federal Clean Air Act, with terms not to exceed five years for all subsequently issued or renewed permits;

(6) administer the use of emissions allowances under Section 408 of the federal Clean Air Act (42 U.S.C. Section 7651g);

(7) reopen and revise an affected federal operating permit if:

(A) the permit has a term of three years or more remaining in order to incorporate requirements under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) adopted after the permit is issued;

(B) additional requirements become applicable to an affected source under the acid rain program;

(C) the federal operating permit contains a material mistake;

(D) inaccurate statements were made in establishing the emissions standards or other terms or conditions of the federal

operating permit; or

(E) a determination is made that the permit must be reopened and revised to assure compliance with applicable requirements;

(8) incorporate a federal implementation plan as a condition of a permit issued by the commission;

(9) exempt federal sources from the obligation to obtain a federal operating permit;

(10) provide that all representations in an application for a permit under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) are binding on the applicant until issuance or denial of the permit;

(11) provide that all terms and conditions of any federal operating permit required under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) shall be a complete and segregable section of the federal operating permit; and

(12) issue initial permits with fixed terms of five years for federal sources under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) with fixed five-year terms for all subsequently issued or renewed permits.

(b) The commission by rule shall provide for objection by the administrator to the issuance of any operating or general permit subject to Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f) and shall authorize the administrator to revoke and reissue, terminate, reopen, or modify a federal operating permit.

(c) This section does not affect the permit requirements of Section 382.0518, except that the commission may consolidate with an existing permit issued under this section a permit required by Section 382.0518.

(d) The commission promptly shall provide to the applicant notice of whether the application is complete. Unless the commission requests additional information or otherwise notifies the applicant that the application is incomplete before the 61st day after the commission receives an application, the application shall be deemed complete.

(e) Subsections (a)(3) and (4) do not prohibit the applicability of at least the best available control technology to a new or modified facility or federal source under Section 382.0518(b)(1).

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.10. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 11, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.166, eff. Sept. 1, 1995.

Sec. 382.0542. ISSUANCE OF FEDERAL OPERATING PERMIT; APPEAL OF DELAY. (a) A federal source is eligible for a permit required by Section 382.054 if from the information available to the commission, including information presented at a hearing held under Section 382.0561, the commission finds that:

(1) the federal source will use, at a minimum, any applicable maximum achievable control technology required by the commission or by the United States Environmental Protection Agency;

(2) for a federal source that is new or modified and subject to Section 112(g) of the federal Clean Air Act (42 U.S.C. Section 7412), the federal source will use, at a minimum, the more stringent of:

(A) the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions from the proposed federal source; or

(B) any applicable maximum achievable control technology required by the commission or by the United States Environmental Protection Agency; and

(3) the federal source will comply with the following requirements, if applicable:

(A) Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f) and the regulations adopted under that title;

(B) each standard or other requirement provided for in the applicable implementation plan approved or adopted by rule of the United States Environmental Protection Agency under Title I of the federal Clean Air Act (42 U.S.C. Sections 7401-7515) that implements the relevant requirements of that Act, including any revisions to the plan;

(C) each term or condition of a preconstruction permit issued by the commission or the United States Environmental Protection Agency in accordance with rules adopted by the commission or the United States Environmental Protection Agency under Part C or D, Title I of the federal Clean Air Act (42 U.S.C. 7401-7515);

(D) each standard or other requirement established under Section 111 of the federal Clean Air Act (42 U.S.C. Section

7411), including Subsection (d) of that section;

(E) each standard or other requirement established under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) including any requirement concerning accident prevention under Subsection (r)(7) of that section;

(F) each standard or other requirement of the acid rain program established under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) or the regulations adopted under that title;

(G) each requirement established under Section 504(b) or Section 114(a)(3) of the federal Clean Air Act (42 U.S.C. Section 7661c or 7414);

(H) each standard or other requirement governing solid waste incineration established under Section 129 of the federal Clean Air Act (42 U.S.C. Section 7429);

(I) each standard or other requirement for consumer and commercial products established under Section 183(e) of the federal Clean Air Act (42 U.S.C. Section 7511b);

(J) each standard or other requirement for tank vessels established under Section 183(f) of the federal Clean Air Act (42 U.S.C. Section 7511b);

(K) each standard or other requirement of the program to control air pollution from outer continental shelf sources established under Section 328 of the federal Clean Air Act (42 U.S.C. Section 7627);

(L) each standard or other requirement of regulations adopted to protect stratospheric ozone under Title VI of the federal Clean Air Act (42 U.S.C. Sections 7671-7671q) unless the administrator has determined that the standard or requirement does not need to be contained in a Title V permit; and

(M) each national ambient air quality standard or increment or visibility requirement under Part C of Title I of the federal Clean Air Act (42 U.S.C. Sections 7470-7492), but only as the standard, increment, or requirement would apply to a temporary source permitted under Section 504(e) of the federal Clean Air Act (42 U.S.C. Section 7661c).

(b) The commission shall:

(1) take final action on an application for a permit, permit revision, or permit renewal within 18 months after the date on which the commission receives an administratively complete

application;

(2) under an interim program, for those federal sources for which initial applications are required to be filed not later than one year after the effective date of the interim program, take final action on at least one-third of those applications annually over a period not to exceed three years after the effective date of the interim program;

(3) under the fully approved program, for those federal sources for which initial applications are required to be filed not later than one year after the effective date of the fully approved program, take final action on at least one-third of those applications annually over a period not to exceed three years after the effective date of the program; and

(4) take final action on a permit reopening not later than 18 months after the adoption of the requirement that prompted the reopening.

(c) If the commission fails to take final action as required by Subsection (b)(1) or (4), a person affected by the commission's failure to act may obtain judicial review under Section 382.032 at any time before the commission takes final action. A reviewing court may order the commission to act on the application without additional delay if it finds that the commission's failure to act is arbitrary or unreasonable.

(d) Subsection (a)(2) does not prohibit the applicability of at least the best available control technology to a new or modified facility or federal source under Section 382.0518(b)(1).

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.10, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 12, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995.

Sec. 382.0543. REVIEW AND RENEWAL OF FEDERAL OPERATING PERMIT. (a) In accordance with Section 382.0541(a)(5), a federal operating permit issued or renewed by the commission is subject to review at least every five years after the date of issuance to determine whether the authority to operate should be renewed.

(b) The commission by rule shall establish:

(1) the procedures for notifying a permit holder that the

permit is scheduled for review in accordance with this section;

(2) a deadline by which the holder of a permit must submit an application for renewal of the permit that is between the date six months before expiration of the permit and the date 18 months before expiration of the permit;

(3) the general requirements for an application; and

(4) the procedures for reviewing and acting on a renewal application.

(c) The commission promptly shall provide to the applicant notice of whether the application is complete. Unless the commission requests additional information or otherwise notifies the applicant that the application is incomplete before the 61st day after the commission receives an application, the application shall be deemed complete.

(d) The commission shall take final action on a renewal application for a federal operating permit within 18 months after the date an application is determined to be administratively complete. If the commission does not act on an application for permit renewal within 18 months after the date on which the commission receives an administratively complete application, a person who participated in the public participation process or a person affected by the commission's failure to act may obtain judicial review under Section 382.032 at any time before the commission takes final action.

(e) In determining whether and under which conditions a permit should be renewed, the commission shall consider:

(1) all applicable requirements in Section 382.0542(a)(3); and

(2) whether the federal source is in compliance with this chapter and the terms of the existing permit.

(f) The commission shall impose as terms and conditions in a renewed federal operating permit any applicable requirements under Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f). The terms or conditions of the renewed permit must provide for compliance with any applicable requirement under Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f). The commission may not impose requirements less stringent than those of the existing permit unless the commission determines that a proposed change will meet the requirements of Section 382.0541.

(g) If the applicant submits a timely and complete application for federal operating permit renewal, but the commission fails to

issue or deny the renewal permit before the end of the term of the previous permit:

(1) all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied; and

(2) the applicant may continue to operate until the permit renewal application is issued or denied, if the applicant submits additional information that is requested in writing by the commission that the commission needs to process the application on or before the time specified in writing by the commission.

(h) This section does not affect the commission's authority to begin an enforcement action under Sections 382.082-382.084.

Added by Acts 1993, 73rd Leg., ch. 485, Sec. 13, eff. June 9, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995.

Sec. 382.055. REVIEW AND RENEWAL OF PRECONSTRUCTION PERMIT. (a) A preconstruction permit issued or renewed by the commission is subject to review to determine whether the authority to operate should be renewed according to the following schedule:

(1) a preconstruction permit issued before December 1, 1991, is subject to review not later than 15 years after the date of issuance;

(2) a preconstruction permit issued on or after December 1, 1991, is subject to review:

(A) every 10 years after the date of issuance; or

(B) on the filing of an application for an amendment to the permit, if:

(i) the applicant is subject to Section 382.056;

(ii) the application is filed with the commission not more than three years before the date the permit is scheduled to expire; and

(iii) the applicant does not object to having the permit subjected to review at that time; and

(3) for cause, a preconstruction permit issued on or after December 1, 1991, for a facility at a nonfederal source may contain a provision requiring the permit to be renewed at a period of between five and 10 years.

(b) The commission by rule shall establish:

(1) a deadline by which the holder of a preconstruction permit must submit an application to renew the permit;

(2) the general requirements for an application for renewal of a preconstruction permit; and

(3) the procedures for reviewing and acting on renewal applications.

(c) Not less than 180 days before the date on which the renewal application is due, the commission shall provide written notice to the permit holder, by registered or certified mail or as provided by Subsection (c-1), that the permit is scheduled for review in accordance with this section. The notice must include a description of the procedure for filing a renewal application and the information to be included in the application.

(c-1) A notice under Subsection (c) may be sent by electronic communication if the commission develops a system that reliably replaces registered or certified mail as a means of verifying receipt of the notice.

(d) In determining whether and under which conditions a preconstruction permit should be renewed, the commission shall consider, at a minimum:

(1) the performance of the owner or operator of the facility according to the method developed by the commission under Section 5.754, Water Code; and

(2) the condition and effectiveness of existing emission control equipment and practices.

(e) The commission shall impose as a condition for renewal of a preconstruction permit only those requirements the commission determines to be economically reasonable and technically practicable considering the age of the facility and the effect of its emissions on the surrounding area. The commission may not impose requirements more stringent than those of the existing permit unless the commission determines that the requirements are necessary to avoid a condition of air pollution or to ensure compliance with otherwise applicable federal or state air quality control requirements. The commission may not impose requirements less stringent than those of the existing permit unless the commission determines that a proposed change will meet the requirements of Sections 382.0518 and 382.0541.

(f) On or before the 180th day after the date on which an application for renewal is filed, the commission shall renew the permit or, if the commission determines that the facility will not

meet the requirements for renewing the permit, shall:

(1) set out in a report to the applicant the basis for the commission's determination; and

(2) establish a schedule, to which the applicant must adhere in meeting the commission's requirements, that:

(A) includes a final date for meeting the commission's requirements; and

(B) requires completion of that action as expeditiously as possible.

(g) If the applicant meets the commission's requirements in accordance with the schedule, the commission shall renew the permit. If the applicant does not meet those requirements in accordance with the schedule, the applicant must show in a contested case proceeding why the permit should not expire immediately. The applicant's permit is effective until:

(1) the final date specified by the commission's report to the applicant;

(2) the existing permit is renewed; or

(3) the date specified by a commission order issued following a contested case proceeding held under this section.

(h) If the holder of a preconstruction permit to whom the commission has mailed or otherwise sent notice under this section does not apply for renewal of that permit by the date specified by the commission under this section, the permit shall expire at the end of the period described in Subsection (a).

(i) This section does not affect the commission's authority to begin an enforcement action under Sections 382.082-382.084.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.11, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 14, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 149, Sec. 1, eff. May 19, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.14, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 168 (S.B. 1673), Sec. 1, eff. May 22, 2007.

Acts 2017, 85th Leg., R.S., Ch. 381 (H.B. 4181), Sec. 1, eff. September 1, 2017.

Sec. 382.056. NOTICE OF INTENT TO OBTAIN PERMIT OR PERMIT REVIEW; HEARING. (a) Except as provided by Section 382.0518(h), an applicant for a permit or permit amendment under Section 382.0518 or a permit renewal review under Section 382.055 shall publish notice of intent to obtain the permit, permit amendment, or permit review not later than the 30th day after the date the commission determines the application to be administratively complete. The commission by rule shall require an applicant for a federal operating permit under Section 382.054 to publish notice of intent to obtain a permit, permit amendment, or permit review consistent with federal requirements and with the requirements of Subsection (b). The applicant shall publish the notice at least once in a newspaper of general circulation in the municipality in which the facility or federal source is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility or federal source. If the elementary or middle school nearest to the facility or proposed facility provides a bilingual education program as required by Subchapter B, Chapter 29, Education Code, the applicant shall also publish the notice at least once in an additional publication of general circulation in the municipality or county in which the facility is located or proposed to be located that is published in the language taught in the bilingual education program. This requirement is waived if such a publication does not exist or if the publisher refuses to publish the notice. The commission by rule shall prescribe the form and content of the notice and when notice must be published. The commission may require publication of additional notice. The commission by rule shall prescribe alternative procedures for publication of the notice in a newspaper if the applicant is a small business stationary source as defined by Section 5.135, Water Code, and will not have a significant effect on air quality. The alternative procedures must be cost-effective while ensuring adequate notice. Notice required to be published under this section shall only be required to be published in the United States.

(b) The notice must include:

(1) a description of the location or proposed location of the facility or federal source;

(2) the location at which a copy of the application is available for review and copying as provided by Subsection (d);

(3) a description, including a telephone number, of the

manner in which the commission may be contacted for further information;

(4) a description, including a telephone number, of the manner in which the applicant may be contacted for further information;

(5) a description of the procedural rights and obligations of the public, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice, that includes a statement that a person who may be affected by emissions of air contaminants from the facility, proposed facility, or federal source is entitled to request a hearing from the commission;

(6) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(7) the time and location of any public meeting to be held under Subsection (e); and

(8) any other information the commission by rule requires.

(c) At the site of a facility, proposed facility, or federal source for which an applicant is required to publish notice under this section, the applicant shall place a sign declaring the filing of an application for a permit or permit review for a facility at the site and stating the manner in which the commission may be contacted for further information. The commission shall adopt any rule necessary to carry out this subsection.

(d) The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility or federal source is located or proposed to be located.

(e) The applicant, in cooperation with the executive director, may hold a public meeting in the county in which the facility or federal source is located or proposed to be located in order to inform the public about the application and obtain public input.

(f) The executive director shall conduct a technical review of and issue a preliminary decision on the application.

(g) If, in response to the notice published under Subsection (a) for a permit or permit amendment under Section 382.0518 or a permit renewal review under Section 382.055, a person requests during the period provided by commission rule that the commission hold a public hearing and the request is not withdrawn before the date the preliminary decision is issued, the applicant shall publish notice of

the preliminary decision in a newspaper, and the commission shall seek public comment on the preliminary decision. The commission shall consider the request for public hearing under the procedures provided by Subsections (i)-(n). The commission may not seek further public comment or hold a public hearing under the procedures provided by Subsections (i)-(n) in response to a request for a public hearing on an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.

(g-1) The notice of intent required by Subsection (a) and the notice of the preliminary decision described by Subsection (g) may be consolidated into one notice if:

(1) not later than the 15th day after the date the application for which the notice is required is received, the commission determines the application to be administratively complete; and

(2) the preliminary decision and draft permit related to the application are available at the time of the commission's determination under Subdivision (1).

(h) If, in response to the notice published under Subsection (a) for a permit under Section 382.054, a person requests during the public comment period provided by commission rule that the commission hold a public hearing, the commission shall consider the request under the procedures provided by Section 382.0561 and not under the procedures provided by Subsections (i)-(n).

(i) The commission by rule shall establish the form and content of the notice, the manner of publication, and the duration of the public comment period. The notice must include:

(1) the information required by Subsection (b);

(2) a summary of the preliminary decision;

(3) the location at which a copy of the preliminary decision is available for review and copying as provided by Subsection (j);

(4) a description of the manner in which comments regarding the preliminary decision may be submitted; and

(5) any other information the commission by rule requires.

(j) The applicant shall make a copy of the preliminary decision available for review and copying at a public place in the county in which the facility is located or proposed to be located.

(k) During the public comment period, the executive director

may hold one or more public meetings in the county in which the facility is located or proposed to be located. The executive director shall hold a public meeting:

(1) on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or

(2) if the executive director determines that there is substantial public interest in the proposed activity.

(k-1) A permit applicant or the applicant's designated representative is required to attend a public meeting held under this section and must make a reasonable effort to respond to questions relevant to the permit application at the meeting.

(k-2) Notwithstanding any other law, if the commission holds a public meeting for a permit application for which consolidated notice was issued under this subchapter, the commission shall hold open the public comment period and the period for which a contested case hearing may be requested for the permit application for at least 36 hours after the end of the meeting.

(l) The executive director, in accordance with procedures adopted by the commission by rule, shall file with the chief clerk of the commission a response to each relevant and material public comment on the preliminary decision filed during the public comment period.

(m) The chief clerk of the commission shall transmit the executive director's decision, the executive director's response to public comments, and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing to:

(1) the applicant;

(2) any person who submitted comments during the public comment period;

(3) any person who requested to be on the mailing list for the permit action; and

(4) any person who timely filed a request for a public hearing in response to the notice published under Subsection (a).

(n) Except as provided by Section 382.0561, the commission shall consider a request that the commission reconsider the executive director's decision or hold a contested case hearing in accordance with the procedures provided by Sections 5.556 and 5.557, Water Code.

(n-1) With respect to a permit application filed with the

commission under Section 382.0518 for a project to construct or modify a liquefied natural gas export terminal or for renewal of a permit issued to a liquefied natural gas export terminal under Section 382.055:

(1) the requirements of Section 5.559, Water Code, apply;

(2) the commission shall adopt rules as necessary to implement Subdivision (1); and

(3) the executive director shall provide each response required by Subsection (l) not later than the 120th day after the close of the public comment period.

(o) Notwithstanding other provisions of this chapter, the commission may hold a hearing on a permit amendment, modification, or renewal if the commission determines that the application involves a facility for which the applicant's compliance history is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections.

(p) The commission by rule shall provide for additional notice, opportunity for public comment, or opportunity for public hearing to the extent necessary to satisfy a requirement to obtain or maintain delegation or approval of a federal program.

(q) The department shall establish rules to ensure that a permit applicant complies with the notice requirement under Subsection (a).

(r) This section does not apply to:

(1) the relocation or change of location of a portable facility to a site where a portable facility has been located at the proposed site at any time during the previous two years;

(2) a facility located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project; or

(3) a facility described by Section 382.065(c), unless that facility is in a county with a population of 3.3 million or more or in a county adjacent to such a county.

(s) For any permit application subject to this section, the measurement of distances to determine compliance with any location or distance restriction required by this chapter shall be taken toward structures that are in use as of the date that the application is filed with the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.12, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 15, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 149, Sec. 2, eff. May 19, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 6.42, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 11.04(c), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1350, Sec. 5, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 935, Sec. 4, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 965, Sec. 2.02, 16.15, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1327, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 226, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1054, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(e), eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 809 (S.B. 1472), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.26, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 45, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 394 (S.B. 1045), Sec. 1, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 1102 (S.B. 1397), Sec. 4, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 868 (S.B. 2037), Sec. 3, eff. September 1, 2025.

Sec. 382.0561. FEDERAL OPERATING PERMIT: HEARING. (a) Public hearings on applications for issuance, revision, reopening, or renewal of a federal operating permit shall be conducted under this section only and not under Chapter 2001, Government Code.

(b) On determination that an application for a federal operating permit under Sections 382.054-382.0542 or a renewal of a federal operating permit under Section 382.0543 is administratively complete and before the beginning of the public comment period, the commission or its designee shall prepare a draft permit.

(c) The commission or its designee shall hold a public hearing on a federal operating permit, a reopening of a federal operating

permit, or renewal application before granting the permit or renewal if within the public comment period a person who may be affected by the emissions or a member of the legislature from the general area in which the facility is located requests a hearing. The commission or its designee is not required to hold a hearing if the basis of the request by a person who may be affected is determined to be unreasonable.

(d) The following shall be available for public inspection in at least one location in the general area where the facility is located:

(1) information submitted by the application, subject to applicable confidentiality laws;

(2) the executive director's analysis of the proposed action; and

(3) a copy of the draft permit.

(e) The commission or its designee shall hold a public comment period on a federal operating permit application, a federal operating permit reopening application, or a federal operating permit renewal application under Sections 382.054-382.0542 or 382.0543. Any person may submit a written statement to the commission during the public comment period. The commission or its designee shall receive public comment for 30 days after the date on which notice of the public comment period is published. The commission or its designee may extend or reopen the comment period if the executive director finds an extension or reopening to be appropriate.

(f) Notice of the public comment period and opportunity for a hearing under this section shall be published in accordance with Section 382.056.

(g) Any person may submit an oral or written statement concerning the application at the hearing. The individual holding the hearing may set reasonable limits on the time allowed for oral statements at the hearing. The public comment period extends to the close of the hearing and may be further extended or reopened if the commission or its designee finds an extension or reopening to be appropriate.

(h) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision of the commission or its designee to issue or deny a permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments

supporting that position by the end of the public comment period.

(i) The commission or its designee shall consider all comments received during the public comment period and at the public hearing in determining whether to issue the permit and what conditions should be included if a permit is issued.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 16, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.168, eff. Sept. 1, 1995.

Sec. 382.0562. NOTICE OF DECISION. (a) The commission or its designee shall send notice of a proposed final action on a federal operating permit by first-class mail or electronic communication to the applicant and all persons who comment during the public comment period or at the public hearing. The notice shall include a response to any comment submitted during the public comment period and shall identify any change in the conditions of the draft permit and the reasons for the change.

(b) The notice required by Subsection (a) shall:

(1) state that any person affected by the decision of the commission or its designee may petition the administrator in accordance with Section 382.0563 and rules adopted under that section;

(2) state the date by which the petition must be filed; and

(3) explain the petition process.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 17, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 381 (H.B. 4181), Sec. 2, eff. September 1, 2017.

Sec. 382.0563. PUBLIC PETITION TO THE ADMINISTRATOR. (a) The commission by rule may provide for public petitions to the administrator in accordance with Section 505 of the federal Clean Air

Act (42 U.S.C. Section 7661d).

(b) The petition for review to the administrator under this section does not affect:

(1) a permit issued by the commission or its designee; or

(2) the finality of the commission's or its designee's action for purposes of an appeal under Section 382.032.

(c) The commission or its designee shall resolve any objection that the United States Environmental Protection Agency makes and terminate, modify, or revoke and reissue the permit in accordance with the objection not later than the 90th day after the date the commission receives the objection.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 18, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995.

Sec. 382.0564. NOTIFICATION TO OTHER GOVERNMENTAL ENTITIES. The commission by rule may allow for notification of and review by the administrator and affected states of permit applications, revisions, renewals, or draft permits prepared under Sections 382.054-382.0543.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 19, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995.

Sec. 382.0565. CLEAN COAL PROJECT PERMITTING PROCEDURE. (a) The United States Department of Energy may specify the FutureGen emissions profile for a project in that department's request for proposals or request for a contract. If the United States Department of Energy does not specify in a request for proposals or a request for a contract the FutureGen emissions profile, the profile means emissions of air contaminants at a component of the FutureGen project, as defined by Section 5.001, Water Code, that equal not more than:

(1) one percent of the average sulphur content of the coal or coals used for the generation of electricity at the component;

(2) 10 percent of the average mercury content of the coal

or coals used for the generation of electricity at the component;

(3) 0.05 pounds of nitrogen oxides per million British thermal units of energy produced at the component; and

(4) 0.005 pounds of particulate matter per million British thermal units of energy produced at the component.

(b) As authorized by federal law, the commission by rule shall implement reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile.

(c) When acting under a rule adopted under Subsection (b), the commission shall use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons.

(d) The permit processes authorized by this section are not subject to the requirements relating to a contested case hearing under this chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001, Government Code.

(e) This section does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

Added by Acts 2005, 79th Leg., Ch. 1097 (H.B. 2201), Sec. 3, eff. June 18, 2005.

Sec. 382.0566. ADVANCED CLEAN ENERGY PROJECT PERMITTING PROCEDURE. (a) As authorized by federal law, not later than nine months after the executive director declares an application for a permit under this chapter for an advanced clean energy project to be administratively complete, the executive director shall complete its technical review of the application.

(b) The commission shall issue a final order issuing or denying the permit not later than nine months after the executive director declares the application technically complete. The commission may extend the deadline set out in this subsection up to three months if it determines that the number of complex pending applications for permits under this chapter will prevent the commission from meeting the deadline imposed by this subsection without creating an extraordinary burden on the resources of the commission.

(c) The permit process authorized by this section is subject to the requirements relating to a contested case hearing under this chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001, Government Code, as applicable.

(d) The commission shall adopt rules to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1277 (H.B. 3732), Sec. 3, eff. September 1, 2007.

Sec. 382.0567. PROOF THAT TECHNOLOGY IS COMMERCIALLY FEASIBLE NOT REQUIRED; CONSIDERATION OF TECHNOLOGY TO BE ACHIEVABLE FOR CERTAIN PURPOSES PROHIBITED. (a) An applicant for a permit under this chapter for a project in connection with which advanced clean energy technology, federally qualified clean coal technology, or another technology is proposed to be used is not required to prove, as part of an analysis of whether the project will use the best available control technology or reduce emissions to the lowest achievable rate, that the technology proposed to be used has been demonstrated to be feasible in a commercial operation.

(b) The commission may not consider any technology or level of emission reduction to be achievable for purposes of a best available control technology analysis or lowest achievable emission rate analysis conducted by the commission under another provision of this chapter solely because the technology is used or the emission reduction is achieved by a facility receiving an incentive as an advanced clean energy project or new technology project, as described by Section 391.002.

Added by Acts 2007, 80th Leg., R.S., Ch. 1277 (H.B. 3732), Sec. 3, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 4, eff. September 1, 2009.

Sec. 382.057. EXEMPTION. (a) Consistent with Section 382.0511, the commission by rule may exempt from the requirements of Section 382.0518 changes within any facility if it is found on investigation that such changes will not make a significant contribution of air contaminants to the atmosphere. The commission

by rule shall exempt from the requirements of Section 382.0518 or issue a standard permit for the installation of emission control equipment that constitutes a modification or a new facility, subject to such conditions restricting the applicability of such exemption or standard permit that the commission deems necessary to accomplish the intent of this chapter. The commission may not exempt any modification of an existing facility defined as "major" under any applicable preconstruction permitting requirements of the federal Clean Air Act or regulations adopted under that Act. Nothing in this subsection shall be construed to limit the commission's general power to control the state's air quality under Section 382.011(a).

(b) The commission shall adopt rules specifically defining the terms and conditions for an exemption under this section in a nonattainment area as defined by Title I of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.14, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 20, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1125, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 406, Sec. 6, eff. Aug. 30, 1999.

Sec. 382.058. NOTICE OF AND HEARING ON CONSTRUCTION OF CONCRETE PLANT UNDER PERMIT BY RULE, STANDARD PERMIT, OR EXEMPTION. (a) A person may not begin construction on any concrete plant that performs wet batching, dry batching, or central mixing under a standard permit under Section 382.05195 or a permit by rule adopted by the commission under Section 382.05196 unless the person has complied with the notice and opportunity for hearing provisions under Section 382.056.

(b) This section does not apply to a concrete plant located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project.

(c) For purposes of this section, only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing under Section 382.056 as a person who may be affected.

(d) If the commission considers air dispersion modeling information in the course of adopting an exemption under Section

382.057 for a concrete plant that performs wet batching, dry batching, or central mixing, the commission may not require that a person who qualifies for the exemption conduct air dispersion modeling before beginning construction of a concrete plant, and evidence regarding air dispersion modeling may not be submitted at a hearing under Section 382.056.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 391, Sec. 1, 2, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 406, Sec. 7, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 10.002, eff. Sept. 1, 2001.

For expiration of this section, see Subsection (g).

Sec. 382.059. HEARING AND DECISION ON PERMIT AMENDMENT APPLICATION OF CERTAIN ELECTRIC GENERATING FACILITIES. (a) This section applies to a permit amendment application submitted solely to allow an electric generating facility to reduce emissions and comply with a requirement imposed by Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) to use applicable maximum achievable control technology. A permit amendment application shall include a condition that the applicant is required to complete the actions needed for compliance by the time allowed under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412).

(b) The commission shall provide an opportunity for a public hearing and the submission of public comment on the application in the manner provided by Section 382.0561.

(c) Not later than the 45th day after the date the application is received, the executive director shall issue a draft permit.

(d) Not later than the 30th day after the date of issuance of the draft permit under Subsection (c), parties may submit to the commission any legitimate issues of material fact regarding whether the choice of technology approved in the draft permit is the maximum achievable control technology required under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) and may request a contested case hearing before the commission. If a party requests a contested case hearing under this subsection, the commission shall conduct a contested case hearing and issue a final order issuing or denying the permit amendment not later than the 120th day after the

date of issuance of the draft permit under Subsection (c).

(e) The commission shall send notice of a decision on an application for a permit amendment under this section in the manner provided by Section 382.0562.

(f) A person affected by a decision of the commission to issue or deny a permit amendment may move for rehearing and is entitled to judicial review under Section 382.032.

(g) This section expires on the sixth anniversary of the date the administrator adopts standards for existing electric generating facilities under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412), unless a stay of the rules is granted.

(h) The commission shall adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.27, eff. September 1, 2011.

Sec. 382.0591. DENIAL OF APPLICATION FOR PERMIT; ASSISTANCE PROVIDED BY FORMER OR CURRENT EMPLOYEES. (a) The commission shall deny an application for the issuance, amendment, renewal, or transfer of a permit and may not issue, amend, renew, or transfer the permit if the commission determines that:

(1) a former employee participated personally and substantially as an employee in the commission's review, evaluation, or processing of the application before leaving employment with the commission; and

(2) after leaving employment with the commission, that former employee provided assistance to the applicant for the issuance, amendment, renewal, or transfer of the permit, including assistance with preparation or presentation of the application or legal representation of the applicant.

(b) The commission or the executive director may not issue a federal operating permit for a solid waste incineration unit if a member of the commission or the executive director is also responsible in whole or in part for the design and construction or the operation of the unit.

(c) The commission shall provide an opportunity for a hearing to an applicant before denying an application under this section.

(d) Action taken under this section does not prejudice any application other than an application in which the former employee

provided assistance.

(e) In this section, "former employee" means a person:

(1) who was previously employed by the commission as a supervisory or exempt employee; and

(2) whose duties during employment with the commission included involvement in or supervision of the commission's review, evaluation, or processing of applications.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 140, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 22, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.170, eff. Sept. 1, 1995.

Sec. 382.061. DELEGATION OF POWERS AND DUTIES. (a) The commission may delegate to the executive director the powers and duties under Sections 382.051-382.0563 and 382.059, except for the adoption of rules.

(b) An applicant or a person affected by a decision of the executive director may appeal to the commission any decision made by the executive director, with the exception of a decision regarding a federal operating permit, under Sections 382.051-382.055 and 382.059.

(c) Any person, including the applicant, affected by a decision of the executive director regarding federal operating permits may:

(1) petition the administrator in accordance with rules adopted under Section 382.0563; or

(2) file a petition for judicial review under Section 382.032.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.16, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 23, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.171, eff. Sept. 1, 1995.

Sec. 382.062. APPLICATION, PERMIT, AND INSPECTION FEES. (a) The commission shall adopt, charge, and collect a fee for:

(1) each application for:

(A) a permit or permit amendment, revision, or modification not subject to Title IV or V of the federal Clean Air Act (42 U.S.C. Sections 7651 et seq. and 7661 et seq.);

(B) a renewal review of a permit issued under Section

382.0518 not subject to Title IV or V of the federal Clean Air Act;

(2) inspections of a federal source performed to enforce this chapter or rules adopted by the commission under this chapter until the federal source is required to obtain an operating permit under Section 382.054; and

(3) inspections performed to enforce this chapter or rules adopted by the commission under this chapter at a facility not required to obtain an operating permit under Section 382.054.

(b) The commission may adopt rules relating to charging and collecting a fee for an exemption, for a permit, for a permit by rule, for a voluntary emissions reduction permit, for a multiple plant permit, or for a standard permit and for a variance.

(c) For purposes of the fees, the commission shall treat two or more facilities that compose an integrated system or process as a single facility if a structure, device, item of equipment, or enclosure that constitutes or contains a given stationary source operates in conjunction with and is functionally integrated with one or more other similar structures, devices, items of equipment, or enclosures.

(d) A fee assessed under this section may not be less than $25 or more than $75,000.

(e) The commission by rule shall establish the fees to be collected under Subsection (a) in amounts sufficient to recover:

(1) the reasonable costs to review and act on a variance application and enforce the terms and conditions of the variance; and

(2) not less than 50 percent of the commission's actual annual expenditures to:

(A) review and act on permits or special permits;

(B) amend and review permits;

(C) inspect permitted, exempted, and specially permitted facilities; and

(D) enforce the rules and orders adopted and permits, special permits, and exemptions issued under this chapter, excluding rules and orders adopted and permits required under Title IV or V of the federal Clean Air Act (42 U.S.C. Sections 7651 et seq. and 7661 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.18, eff. Sept. 1,

1991; Acts 1993, 73rd Leg., ch. 485, Sec. 24, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.172, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 406, Sec. 8, eff. Aug. 30, 1999.

Sec. 382.0621. OPERATING PERMIT FEE. (a) The commission shall adopt, charge, and collect an annual fee based on emissions for each source that either:

(1) is subject to permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549); or

(2) is based on plant operations, and the rate of emissions at the time the fee is due would be subject to the permitting requirements if the requirements were in effect on that date.

(b) Fees imposed under this section shall be at least sufficient to cover all reasonably necessary direct and indirect costs of developing and administering the permit program under Titles IV and V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), including the reasonable costs of:

(1) reviewing and acting on any application for a Title IV or V permit;

(2) implementing and enforcing the terms and conditions of a Title IV or V permit, excluding any court costs or other costs associated with any enforcement action;

(3) emissions and ambient monitoring;

(4) preparing generally applicable regulations or guidance;

(5) modeling, analyses, and demonstrations; and

(6) preparing inventories and tracking emissions.

(c) The commission by rule may provide for the automatic annual increase of fees imposed under this section by the percentage, if any, by which the consumer price index for the preceding calendar year exceeds the consumer price index for calendar year 1989. For purposes of this subsection:

(1) the consumer price index for any calendar year is the average of the Consumer Price Index for All Urban Consumers published by the United States Department of Labor as of the close of the 12-month period ending on August 31 of each calendar year; and

(2) the revision of the consumer price index that is most consistent with the consumer price index for calendar year 1989 shall be used.

(d) Except as provided by this section, the commission may not impose a fee for any amount of emissions of an air contaminant regulated under the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) in excess of 4,000 tons per year from any source. On and after September 1, 2001, for a facility that is not subject to the requirement to obtain a permit under Section 382.0518(g) that does not have a permit application pending, the commission shall:

(1) impose a fee under this section for all emissions, including emissions in excess of 4,000 tons; and

(2) treble the amount of the fee imposed for emissions in excess of 4,000 tons each fiscal year.

(e) This section does not restrict the authority of the commission under Section 382.062 to impose fees on sources not subject to the permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549).

(f) The commission may impose fees for emissions of greenhouse gas only to the extent the fees are necessary to cover the commission's additional reasonably necessary direct costs of implementing Section 382.05102.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.19, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.173, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 406, Sec. 9, eff. Aug. 30, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 272 (H.B. 788), Sec. 3, eff. June 14, 2013.

Sec. 382.0622. CLEAN AIR ACT FEES. (a) Clean Air Act fees consist of:

(1) fees collected by the commission under Sections 382.062, 382.0621, 382.202, and 382.302 and as otherwise provided by law;

(2) each amount designated by Section 548.510, Transportation Code, for deposit to the credit of the clean air account; and

(3) fees collected that are required under Section 185 of the federal Clean Air Act (42 U.S.C. Section 7511d).

(b) Except as provided by Subsection (b-1), Clean Air Act fees

shall be deposited in the state treasury to the credit of the clean air account and shall be used to safeguard the air resources of the state.

(b-1) Fees collected under Section 382.0621(a) on or after September 1, 2003, shall be deposited in the state treasury to the credit of the operating permit fees account. Fees collected under Section 382.0621(a) may not be commingled with any fees in the clean air account or with any other money in the state treasury.

(b-2) Money in the operating permit fees account established under Subsection (b-1) may be appropriated to the commission only to cover the costs of developing and administering the federal permit programs under Title IV or V of the federal Clean Air Act (42 U.S.C. Section 7651 et seq. and Section 7661 et seq.).

(b-3) Section 403.095, Government Code, does not apply to the operating permit fees account established under Subsection (b-1), and any balance remaining in the operating permit fees account at the end of a fiscal year shall be left in the account and used in the next or subsequent fiscal years only for the purposes stated in Subsection (b-2).

(c) The commission shall request the appropriation of sufficient money to safeguard the air resources of the state, including payments to the Public Safety Commission for incidental costs of administering the vehicle emissions inspection and maintenance program, except that after the date of delegation of the state's permitting program under Title V of the federal Clean Air Act (42 U.S.C. Sections 7661 et seq.), fees collected under Section 382.0621(a) may be appropriated only to cover costs of developing and administering the federal permit program under Titles IV and V of the federal Clean Air Act (42 U.S.C. Sections 7651 et seq. and 7661 et seq.).

(d)(1) Through the option of contracting for air pollution control services, including but not limited to compliance and permit inspections and complaint response, the commission may utilize appropriated money to purchase services from units of local government meeting each of the following criteria:

(A) the unit of local government received federal fiscal year 1990 funds from the United States Environmental Protection Agency pursuant to Section 105 of the federal Clean Air Act (42 U.S.C. Section 7405) for the operation of an air pollution program by formal agreement;

(B) the local unit of government is in a federally designated nonattainment area subject to implementation plan requirements, including automobile emission inspection and maintenance programs, under Title I of the federal Clean Air Act (42 U.S.C. Sections 7401-7515); and

(C) the local unit of government has not caused the United States Environmental Protection Agency to provide written notification that a deficiency in the quality or quantity of services provided by its air pollution program is jeopardizing compliance with a state implementation plan, a federal program delegation agreement, or any other federal requirement for which federal sanctions can be imposed.

(2) The commission may request appropriations of sufficient money to contract for services of local units of government meeting the eligibility criteria of this subsection to ensure that the combination of federal and state funds annually available for an air pollution program is equal to or greater than the program costs for the operation of an air quality program by the local unit of government. The commission is encouraged to fund an air pollution program operated by a local unit of government meeting the eligibility criteria of this subsection in a manner the commission deems an effective means of addressing federal and state requirements. The services to be provided by an eligible local unit of government under a contractual arrangement under this subsection shall be at least equal in quality and quantity to the services the local unit of government committed to provide in agreements under which it received its federal 1990 air pollution grant. The commission and the local units of government meeting the eligibility criteria of this subsection may agree to more extensive contractual arrangements.

(3) Nothing in this subsection shall prohibit a local unit of government from voluntarily discontinuing an air pollution program and thereby relinquishing this responsibility to the state.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 262, Sec. 1.10(1), eff. June 8, 2007.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.20, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 25, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.174, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.209, eff. Sept. 1,

1997; Acts 1997, 75th Leg., ch. 333, Sec. 74, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1075, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 203, Sec. 2, eff. June 10, 2003; Acts 2003, 78th Leg., ch. 552, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 958 (H.B. 1611), Sec. 1, eff. June 18, 2005.
Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.02, eff. June 8, 2007.
Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.10(1), eff. June 8, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 11, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. 2305), Sec. 5, eff. March 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 21, eff. September 1, 2015.
Acts 2023, 88th Leg., R.S., Ch. 362 (S.B. 2102), Sec. 1, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 851 (H.B. 3297), Sec. 1, eff. January 1, 2025.
Acts 2025, 89th Leg., R.S., Ch. 109 (S.B. 1729), Sec. 1, eff. September 1, 2025.

Sec. 382.063. ISSUANCE OF EMERGENCY ORDER BECAUSE OF CATASTROPHE. (a) The commission may issue an emergency order because of catastrophe under Section 5.515, Water Code.
(b) In this section, "catastrophe" means an unforeseen event, including an act of God, an act of war, severe weather, explosions, fire, or similar occurrences beyond the reasonable control of the operator that makes a facility or its functionally related appurtenances inoperable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.175, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 44, eff. Sept. 1, 1997.

Sec. 382.064. INITIAL APPLICATION DATE. An application for a

federal operating permit is not required to be submitted to the commission before the approval of the Title V permitting program by the United States Environmental Protection Agency.

Added by Acts 1993, 73rd Leg., ch. 485, Sec. 26, eff. June 9, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.176, eff. Sept. 1, 1995.

Sec. 382.065. CERTAIN LOCATIONS FOR OPERATING CONCRETE CRUSHING FACILITY PROHIBITED. (a) The commission by rule shall prohibit the operation of a concrete crushing facility within 440 yards of a building in use as a single or multifamily residence, school, or place of worship at the time the application for a permit to operate the facility at a site near the residence, school, or place of worship is filed with the commission. The measurement of distance for purposes of this subsection shall be taken from the point on the concrete crushing facility that is nearest to the residence, school, or place of worship toward the point on the residence, school, or place of worship that is nearest the concrete crushing facility.

(b) Subsection (a) does not apply to a concrete crushing facility:

(1) at a location for which commission authorization for the operation of a concrete crushing facility was in effect on September 1, 2001;

(2) at a location that satisfies the distance requirements of Subsection (a) at the time the application for the initial authorization for the operation of that facility at that location is filed with the commission, provided that the authorization is granted and maintained, regardless of whether a single or multifamily residence, school, or place of worship is subsequently built or put to use within 440 yards of the facility; or

(3) that:

(A) uses a concrete crusher:

(i) in the manufacture of products that contain recycled materials; and

(ii) that is located in an enclosed building; and

(B) is located:

(i) within 25 miles of an international border; and

(ii) in a municipality with a population of not

less than 6,100 but not more than 20,000.

(c) Except as provided by Subsection (d), Subsection (a) does not apply to a concrete crushing facility that:

(1) is engaged in crushing concrete and other materials produced by the demolition of a structure at the location of the structure and the concrete and other materials are being crushed primarily for use at that location;

(2) operates at that location for not more than 180 days;

(3) the commission determines will cause no adverse environmental or health effects by operating at that location; and

(4) complies with conditions stated in commission rules, including operating conditions.

(d) Notwithstanding Subsection (c), Subsection (a) applies to a concrete crushing facility in a county with a population of 3.3 million or more or in a county adjacent to such a county.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.07, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1054, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1089 (S.B. 1250), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 46, eff. September 1, 2011.

Sec. 382.066. SHIPYARD FACILITIES. (a) In this section, "shipyard" means a shipbuilding or ship repair operation.

(b) In determining whether to issue, or in conducting a review of, a permit or other authorization issued or adopted under this chapter for a shipyard, the commission:

(1) may not require and may not consider air dispersion modeling results predicting ambient concentrations of noncriteria pollutants over coastal waters of the state; and

(2) shall determine compliance with noncriteria ambient air pollutant standards and guidelines according to the land-based off-property concentrations of air contaminants.

(c) This section does not limit the commission's authority to take an enforcement action in response to a condition that constitutes a nuisance.

Added by Acts 2001, 77th Leg., ch. 1166, Sec. 1, eff. Sept. 1, 2001. Renumbered from Health & Safety Code Sec. 382.065 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(94), eff. Sept. 1, 2003.

Sec. 382.068. POULTRY FACILITY ODOR; RESPONSE TO COMPLAINTS. (a) In this section, "poultry facility" and "poultry litter" have the meanings assigned by Section 26.301, Water Code.

(b) The commission shall respond and investigate not later than 18 hours after receiving:

(1) a second complaint against a poultry facility concerning odor associated with:

(A) the facility; or

(B) the application of poultry litter to land by the poultry facility; or

(2) a complaint concerning odor from a poultry facility at which the commission has substantiated odor nuisance conditions in the previous 12 months.

(c) If after the investigation the commission determines that a poultry facility is violating the terms of its air quality authorization or is creating a nuisance, the commission shall issue a notice of violation.

(d) The commission by rule or order shall require the owner or operator of a poultry facility for which the commission has issued three notices of violation under this section during a 12-month period to enter into a comprehensive compliance agreement with the commission. The compliance agreement must include an odor control plan that the executive director determines is sufficient to control odors.

(e) The owner or operator of a new poultry facility shall complete a poultry facility training course on the prevention of poultry facility odor nuisances from the poultry science unit of the Texas AgriLife Extension Service not later than the 90th day after the date the facility first accepts poultry to raise. The owner or operator of a new poultry facility shall maintain records of the training and make the records available to the commission for inspection.

(f) The poultry science unit of the Texas AgriLife Extension Service may charge an owner or operator of a poultry facility a training fee to offset the direct cost of providing the training.

Added by Acts 2009, 81st Leg., R.S., Ch. 1386 (S.B. 1693), Sec. 1, eff. September 1, 2009.

Sec. 382.069. TEXAS BACKUP POWER PACKAGE. (a) In this section, "Texas backup power package" has the meaning assigned by Section 34.0201, Utilities Code.

(b) The commission by rule shall adopt a process to expedite the permitting of a Texas backup power package for which a permit is required under this chapter and for which a loan or grant is awarded under Chapter 34, Utilities Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 465 (S.B. 2627), Sec. 4, eff. November 7, 2023.

SUBCHAPTER D. PENALTIES AND ENFORCEMENT

Sec. 382.085. UNAUTHORIZED EMISSIONS PROHIBITED. (a) Except as authorized by a commission rule or order, a person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution.

(b) A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of this chapter or of any commission rule or order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.180, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 45, eff. Sept. 1, 1997.

Sec. 382.086. ENFORCEMENT DURING ELECTRIC DEMAND AND RELIABILITY EVENT. (a) The commission may exercise the commission's enforcement discretion to waive enforcement for emissions from electric generation facilities and on-site backup generation facilities in this state during a period requested by an independent system operator if the independent system operator notifies the commission that additional electric generation is necessary to mitigate an emergency condition or a significant risk of an emergency condition.

(b) After an independent system operator submits a notification

to the commission under Subsection (a):

(1) the independent system operator shall notify market participants in this state of the period in the notification during which limits or standards described by Subdivision (2) may not apply to the operation of an electric generation facility or on-site backup generation facility in this state; and

(2) notwithstanding any other state law and subject to Subsection (d), the commission has the discretion to enforce a rule or standard, including an emissions limit or standard, hours of operation limit, or any similar operational limit, against the owner or operator of an electric generation facility or on-site backup generation facility for the period in the notification.

(c) The owner or operator of an electric generation facility or on-site backup generation facility eligible for waived enforcement during the period in a notification submitted under Subsection (a) shall:

(1) take commercially reasonable steps to operate environmental controls and minimize excess emissions during the period;

(2) maintain operational records during the period; and

(3) submit proper documentation of the facility's operational records to the commission, including:

(A) the facility's name;

(B) a contact name and phone number;

(C) the county in which the facility is located;

(D) the customer reference number issued to the facility by the commission;

(E) the name of any units in the facility that exceeded an emissions limit or standard during the period; and

(F) a description of the emissions event, including the date, time, pollutant, quantity, and duration.

(d) The commission has the discretion to consider whether an exceedance of an emissions limit or standard during a period for which a notification is submitted under Subsection (a) is appropriate as the basis for an enforcement action against the owner or operator of an electric generation facility or on-site backup generation facility based on information available to the commission, including information contained in the documentation required by Subsection (c)(3).

(e) The owner or operator of an electric generation facility or

an on-site backup generation facility eligible for waived enforcement during the period in a notification submitted under Subsection (a) shall report any exceedance of an emissions limit or standard in accordance with commission regulations and permit requirements.

Added by Acts 2025, 89th Leg., R.S., Ch. 1018 (S.B. 2321), Sec. 1, eff. September 1, 2025.

SUBCHAPTER E. AUTHORITY OF LOCAL GOVERNMENTS

Sec. 382.111. INSPECTIONS; POWER TO ENTER PROPERTY. (a) A local government has the same power and is subject to the same restrictions as the commission under Section 382.015 to inspect the air and to enter public or private property in its territorial jurisdiction to determine if:

(1) the level of air contaminants in an area in its territorial jurisdiction and the emissions from a source meet the levels set by:

(A) the commission; or

(B) a municipality's governing body under Section 382.113; or

(2) a person is complying with this chapter or a rule, variance, or order issued by the commission.

(b) A local government shall send the results of its inspections to the commission when requested by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.187, eff. Sept. 1, 1995.

Sec. 382.112. RECOMMENDATIONS TO COMMISSION. A local government may make recommendations to the commission concerning a rule, determination, variance, or order of the commission that affects an area in the local government's territorial jurisdiction. The commission shall give maximum consideration to a local government's recommendations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.187, eff. Sept. 1, 1995.

Sec. 382.113. AUTHORITY OF MUNICIPALITIES. (a) Subject to Section 381.002, a municipality has the powers and rights as are otherwise vested by law in the municipality to:

(1) abate a nuisance; and

(2) enact and enforce an ordinance for the control and abatement of air pollution, or any other ordinance, not inconsistent with this chapter or the commission's rules or orders.

(b) An ordinance enacted by a municipality must be consistent with this chapter and the commission's rules and orders and may not make unlawful a condition or act approved or authorized under this chapter or the commission's rules or orders.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.187, eff. Sept. 1, 1995.

Sec. 382.115. COOPERATIVE AGREEMENTS. A local government may execute cooperative agreements with the commission or other local governments:

(1) to provide for the performance of air quality management, inspection, and enforcement functions and to provide technical aid and educational services to a party to the agreement; and

(2) for the transfer of money or property from a party to the agreement to another party to the agreement for the purpose of air quality management, inspection, enforcement, technical aid, and education.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.189, eff. Sept. 1, 1995.

SUBCHAPTER G. VEHICLE EMISSIONS

Sec. 382.201. DEFINITIONS. In this subchapter:

(1) "Affected county" means a county with a motor vehicle emissions inspection and maintenance program established under Section 548.301, Transportation Code.

(2) "Commercial vehicle" means a vehicle that is owned or leased in the regular course of business of a commercial or business entity.

(3) "Fleet vehicle" means a motor vehicle operated as one

of a group that consists of more than 10 motor vehicles and that is owned and operated by a public or commercial entity or by a private entity other than a single household.

(4) "Participating county" means an affected county in which the commissioners court by resolution has chosen to implement a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized by Section 382.209.

(5) "Retrofit" means to equip, or the equipping of, an engine or an exhaust or fuel system with new, emissions-reducing parts or equipment designed to reduce air emissions and improve air quality, after the manufacture of the original engine or exhaust or fuel system, so long as the parts or equipment allow the vehicle to meet or exceed state and federal air emissions reduction standards.

(6) "Retrofit equipment" means emissions-reducing equipment designed to reduce air emissions and improve air quality that is installed after the manufacture of the original engine or exhaust or fuel system.

(7) "Vehicle" includes a fleet vehicle.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.202. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM. (a) The commission by resolution may request the Public Safety Commission to establish a vehicle emissions inspection and maintenance program under Subchapter F, Chapter 548, Transportation Code, in accordance with this section and rules adopted under this section. The commission by rule may establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) and its subsequent amendments.

(b) The commission by rule may require emissions-related inspection and maintenance of land vehicles, including testing exhaust emissions, examining emission control devices and systems, verifying compliance with applicable standards, and other requirements as provided by federal law or regulation.

(c) If the program is established under this section, the commission:

(1) shall adopt vehicle emissions inspection and

maintenance requirements for certain areas as required by federal law or regulation; and

(2) shall adopt vehicle emissions inspection and maintenance requirements for counties not subject to a specific federal requirement in response to a formal request by resolutions adopted by the county and the most populous municipality within the county according to the most recent federal decennial census.

(d) Except as provided by Subsection (d-2), on adoption of a resolution by the commission and after proper notice, the Department of Public Safety of the State of Texas shall implement a system that requires, in a county that is included in a vehicle emissions inspection and maintenance program under Subchapter F, Chapter 548, Transportation Code, that a motor vehicle registered in this state, unless the vehicle is not covered by the system, be annually or biennially inspected under the vehicle emissions inspection and maintenance program as required by the state's air quality state implementation plan. The Department of Public Safety shall implement such a system when it is required by any provision of federal or state law, including any provision of the state's air quality state implementation plan.

(d-1) The commission may adopt rules providing for the inclusion on a vehicle inspection report for a vehicle inspected in a county that is included in a vehicle emissions inspection and maintenance program under Subchapter F, Chapter 548, Transportation Code, of notification regarding whether the vehicle is subject to a safety recall for which the vehicle has not been repaired or the repairs are incomplete. The commission may accept gifts, grants, and donations from any source, including private and nonprofit organizations, for the purpose of providing the notification described by this subsection.

(d-2) If approved by the United States Environmental Protection Agency as part of the state's air quality state implementation plan, the Department of Public Safety of the State of Texas shall provide under Subsection (d) for a three-year emissions inspection period for a vehicle registered under Section 502.0026, Transportation Code. The commission shall establish and assess fees for an emissions inspection conducted under this section in amounts calculated to provide the same revenue that would be provided if the vehicle was inspected annually or biennially.

(e) The commission may assess fees for vehicle emissions-

related inspections performed at inspection or reinspection facilities authorized and licensed by the commission in amounts reasonably necessary to recover the costs of developing, administering, evaluating, and enforcing the vehicle emissions inspection and maintenance program. If the program relies on privately operated or contractor-operated inspection or reinspection stations, an appropriate portion of the fee as determined by commission rule may be retained by the station owner, contractor, or operator to recover the cost of performing the inspections and provide for a reasonable margin of profit. Any portion of the fee collected by the commission is a Clean Air Act fee under Section 382.0622.

(e-1) The portion of a fee imposed under Subsection (e) that is not authorized to be retained by an inspection station must be collected as provided by Section 548.509, Transportation Code.

(f) The commission:

(1) shall, no less frequently than biennially, review the fee established under Subsection (e); and

(2) may use part of the fee collected under Subsection (e) to provide incentives, including financial incentives, for participation in the testing network to ensure availability of an adequate number of testing stations.

(g) The commission shall:

(1) use part of the fee collected under Subsection (e) to fund low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs created under Section 382.209; and

(2) to the extent practicable, distribute available funding created under Subsection (e) to participating counties in reasonable proportion to the amount of fees collected under Subsection (e) in those counties or in the regions in which those counties are located.

(h) Regardless of whether different tests are used for different vehicles as determined under Section 382.205, the commission may:

(1) set fees assessed under Subsection (e) at the same rate for each vehicle in a county or region; and

(2) set different fees for different counties or regions.

(i) The commission shall examine the efficacy of annually inspecting diesel vehicles for compliance with applicable federal emission standards, compliance with an opacity or other emissions-related standard established by commission rule, or both and shall

implement that inspection program if the commission determines the program would minimize emissions. For purposes of this subsection, a diesel engine not used in a vehicle registered for use on public highways is not a diesel vehicle.

(j) The commission may not establish, before January 1, 2004, vehicle fuel content standards to provide for vehicle fuel content for clean motor vehicle fuels for any area of the state that are more stringent or restrictive than those standards promulgated by the United States Environmental Protection Agency applicable to that area except as provided in Subsection (o) unless the fuel is specifically authorized by the legislature.

(k) The commission by rule may establish classes of vehicles that are exempt from vehicle emissions inspections and by rule may establish procedures to allow and review petitions for the exemption of individual vehicles, according to criteria established by commission rule. Rules adopted by the commission under this subsection must be consistent with federal law. The commission by rule may establish fees to recover the costs of administering this subsection. Fees collected under this subsection shall be deposited to the credit of the clean air account, an account in the general revenue fund, and may be used only for the purposes of this section.

(l) Except as provided by this subsection, a person who sells or transfers ownership of a motor vehicle for which a passing vehicle inspection report has been issued is not liable for the cost of emission control system repairs that are required for the vehicle subsequently to receive a passing report. This subsection does not apply to repairs that are required because emission control equipment or devices on the vehicle were removed or tampered with before the sale or transfer of the vehicle.

(m) The commission may conduct audits to determine compliance with this section.

(n) The commission may suspend the emissions inspection program as it applies to pre-1996 vehicles in an affected county if:

(1) the department certifies that the number of pre-1996 vehicles in the county subject to the program is 20 percent or less of the number of those vehicles that were in the county on September 1, 2001; and

(2) an alternative testing methodology that meets or exceeds United States Environmental Protection Agency requirements is available.

(o) The commission may not require the distribution of Texas low-emission diesel as described in revisions to the State Implementation Plan for the control of ozone air pollution prior to February 1, 2005.

(p) The commission may consider, as an alternative method of compliance with Subsection (o), fuels to achieve equivalent emissions reductions.

(q) Repealed by Acts 2007, 80th Leg., R.S., Ch. 262, Sec. 1.10(2), eff. June 8, 2007.

(r) Repealed by Acts 2007, 80th Leg., R.S., Ch. 262, Sec. 1.10(2), eff. June 8, 2007.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.25, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 547, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 1, Sec. 1, eff. Jan. 31, 1995; Acts 1995, 74th Leg., ch. 34, Sec. 1, 9(1), (3), eff. May 1, 1995; Acts 1995, 74th Leg., ch. 76, Sec. 11.157, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.207, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 333, Sec. 73, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1069, Sec. 1, eff. June 19, 1997. Renumbered from Health & Safety Code Sec. 382.037 and amended by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.008(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 958 (H.B. 1611), Sec. 2, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.10(2), eff. June 8, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. 2305), Sec. 6, eff. March 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 971 (S.B. 711), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 362 (S.B. 2102), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 851 (H.B. 3297), Sec. 2, eff. January 1, 2025.

Acts 2025, 89th Leg., R.S., Ch. 109 (S.B. 1729), Sec. 2, eff. September 1, 2025.

Text of section effective on the date described by Section 2, Ch. 671 (H.B. 5033), Acts of the 89th Legislature, Regular Session, 2025.

Sec. 382.2025. IMPLEMENTATION OF PROGRAM. Notwithstanding any other law, the commission and the Department of Public Safety are not required to implement or enforce any other provision of this subchapter or a requirement under Chapter 548, Transportation Code, related to emissions inspections.

Added by Acts 2025, 89th Leg., R.S., Ch. 671 (H.B. 5033), Sec. 1.

Sec. 382.203. VEHICLES SUBJECT TO PROGRAM; EXEMPTIONS. (a) The inspection and maintenance program applies to any gasoline-powered vehicle that is:

(1) required to be registered in and is primarily operated in an affected county; and

(2) at least two and less than 25 years old; or

(3) subject to test-on-resale requirements under Section 548.3011, Transportation Code.

(b) In addition to a vehicle described by Subsection (a), the program applies to:

(1) a vehicle with United States governmental plates primarily operated in an affected county;

(2) a vehicle operated on a federal facility in an affected county; and

(3) a vehicle primarily operated in an affected county that is exempt from motor vehicle registration requirements or eligible under Chapter 502, Transportation Code, to display an "exempt" license plate.

(c) The Department of Public Safety of the State of Texas by rule may waive program requirements, in accordance with standards adopted by the commission, for certain vehicles and vehicle owners, including:

(1) the registered owner of a vehicle who cannot afford to comply with the program, based on reasonable income standards;

(2) a vehicle that cannot be brought into compliance with emissions standards by performing repairs;

(3) a vehicle:

(A) on which at least $100 has been spent to bring the vehicle into compliance; and

(B) that the department can verify is driven an average of less than 5,000 miles each year; and

(4) a vehicle for which parts are not readily available.

(d) The program does not apply to a:

(1) motorcycle;

(2) slow-moving vehicle as defined by Section 547.001, Transportation Code; or

(3) vehicle that is registered but not operated primarily in a county or group of counties subject to a motor vehicle emissions inspection program established under Subchapter F, Chapter 548, Transportation Code.

Added by Acts 1997, 75th Leg., ch. 1069, Sec. 2, eff. June 19, 1997. Renumbered from Sec. 382.0372 and amended by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 851 (H.B. 3297), Sec. 3, eff. January 1, 2025.

Sec. 382.204. REMOTE SENSING PROGRAM COMPONENT. (a) The commission and the Department of Public Safety of the State of Texas jointly shall develop a program component for enforcing vehicle emissions testing and standards by use of remote or automatic emissions detection and analysis equipment.

(b) The program component may be employed in any county designated as a nonattainment area within the meaning of Section 107(d) of the Clean Air Act (42 U.S.C. Section 7407) and its subsequent amendments, in any affected county, or in any county adjacent to an affected county.

(c) If a vehicle registered in a county adjacent to an affected county is detected under the program component authorized by this section as operating and exceeding acceptable emissions limitations in an affected county, the department shall provide notice of the violation under Section 548.306, Transportation Code.

Added by Acts 1997, 75th Leg., ch. 1069, Sec. 2, eff. June 19, 1997. Renumbered from Sec. 382.0373 and amended by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.205. INSPECTION EQUIPMENT AND PROCEDURES. (a) The commission by rule may adopt:

(1) standards and specifications for motor vehicle emissions testing equipment;

(2) recordkeeping and reporting procedures; and

(3) measurable emissions standards a vehicle must meet to pass the inspection.

(b) In adopting standards and specifications under Subsection (a), the commission may require different types of tests for different vehicle models.

(c) In consultation with the Department of Public Safety of the State of Texas, the commission may contract with one or more private entities to provide testing equipment, training, and related services to inspection stations in exchange for part of the testing fee. A contract under this subsection may apply to one specified area of the state or to the entire state. The commission at least once during each year shall review each contract entered into under this subsection to determine whether the contracting entity is performing satisfactorily under the terms of the contract. Immediately after completing the review, the commission shall prepare a report summarizing the review and send a copy of the report to the speaker of the house of representatives, the lieutenant governor, and the governor.

(d) The Department of Public Safety of the State of Texas by rule shall adopt:

(1) testing procedures in accordance with motor vehicle emissions testing equipment specifications; and

(2) procedures for issuing a vehicle inspection report following an emissions inspection and submitting information to the inspection database described by Section 548.251, Transportation Code, following an emissions inspection.

(e) The commission and the Department of Public Safety of the State of Texas by joint rule may adopt procedures to encourage a stable private market for providing emissions testing to the public in all areas of an affected county, including:

(1) allowing facilities to perform one or more types of emissions tests; and

(2) any other measure the commission and the Department of Public Safety consider appropriate.

(f) Rules and procedures under this section must ensure that

approved repair facilities participating in a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program established under Section 382.209 have access to adequate testing equipment.

(g) Subject to Subsection (h), the commission and the Department of Public Safety of the State of Texas by rule may allow alternative vehicle emissions testing if:

(1) the technology provides accurate and reliable results;

(2) the technology is widely and readily available to persons interested in performing alternative vehicle emissions testing; and

(3) the use of alternative testing is not likely to substantially affect federal approval of the state's air quality state implementation plan.

(h) A rule adopted under Subsection (g) may not be more restrictive than federal regulations governing vehicle emissions testing.

Added by Acts 1997, 75th Leg., ch. 1069, Sec. 2, eff. June 19, 1997. Amended by Acts 1999, 76th Leg., ch. 1189, Sec. 42, eff. Sept. 1, 1999. Renumbered from Sec. 382.0374 and amended by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. 2305), Sec. 7, eff. March 1, 2015.

Sec. 382.206. COLLECTION OF DATA; REPORT. (a) The commission and the Department of Public Safety of the State of Texas may collect inspection and maintenance information derived from the emissions inspection and maintenance program, including:

(1) inspection results;

(2) inspection station information;

(3) information regarding vehicles operated on federal facilities;

(4) vehicle registration information; and

(5) other data the United States Environmental Protection Agency requires.

(b) The commission shall:

(1) report the information to the United States

Environmental Protection Agency; and

(2) compare the information on inspection results with registration information for enforcement purposes.

Added by Acts 1997, 75th Leg., ch. 1069, Sec. 2, eff. June 19, 1997. Renumbered from Sec. 382.0375 by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.207. INSPECTION STATIONS; QUALITY CONTROL AUDITS. (a) The Department of Public Safety of the State of Texas by rule shall adopt standards and procedures for establishing vehicle emissions inspection stations authorized and licensed by the state.

(b) A vehicle emissions inspection may be performed at a decentralized independent inspection station or at a centralized inspection facility operated or licensed by the state. In developing the program for vehicle emissions inspections, the Department of Public Safety shall make all reasonable efforts to preserve the present decentralized system.

(c) After consultation with the Texas Department of Transportation, the commission shall require state and local transportation planning entities designated by the commission to prepare long-term projections of the combined impact of significant planned transportation system changes on emissions and air quality. The projections shall be prepared using air pollution estimation methodologies established jointly by the commission and the Texas Department of Transportation. This subsection does not restrict the Texas Department of Transportation's function as the transportation planning body for the state or its role in identifying and initiating specific transportation-related projects in the state.

(d) The Department of Public Safety may authorize enforcement personnel or other individuals to remove, disconnect, adjust, or make inoperable vehicle emissions control equipment, devices, or systems and to operate a vehicle in the tampered condition in order to perform a quality control audit of an inspection station or other quality control activities as necessary to assess and ensure the effectiveness of the vehicle emissions inspection and maintenance program.

(e) The Department of Public Safety shall develop a challenge station program to provide for the reinspection of a motor vehicle at

the option of the owner of the vehicle to ensure quality control of a vehicle emissions inspection and maintenance system.

(f) The commission may contract with one or more private entities to operate a program established under this section.

(g) In addition to other procedures established by the commission, the commission shall establish procedures by which a private entity with whom the commission has entered into a contract to operate a program established under this section may agree to perform:

(1) testing at a fleet facility or dealership using mobile test equipment;

(2) testing at a fleet facility or dealership using test equipment owned by the fleet or dealership but calibrated and operated by the private entity's personnel; or

(3) testing at a fleet facility or dealership using test equipment owned and operated by the private entity and installed at the fleet or dealership facility.

(h) The fee for a test conducted as provided by Subsection (g) shall be set by the commission in an amount not to exceed twice the fee otherwise provided by law or by rule of the commission. An appropriate portion of the fee, as determined by the commission, may be remitted by the private entity to the fleet facility or dealership.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.26, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 547, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 34, Sec. 3, eff. May 1, 1995; Acts 1995, 74th Leg., ch. 76, Sec. 11.158, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 165, Sec. 22(41), eff. Sept. 1, 1995. Renumbered from Sec. 382.038 by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.208. ATTAINMENT PROGRAM. (a) Except as provided by Section 382.202(j) or another provision of this chapter, the commission shall coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards and to protect the public from exposure to hazardous air contaminants

from motor vehicles.

(b) Participating agencies include the Texas Department of Transportation and metropolitan planning organizations designated by the governor.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.26, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.158, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 165, Sec. 22(42), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 15.03, eff; Sept. 1, 2001. Renumbered from Sec. 382.039 by Acts 2001, 77th Leg., ch; 1075, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.008(c), eff. Sept. 1, 2003.

Sec. 382.209. LOW-INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM. (a) The commission and the Public Safety Commission by joint rule shall establish and authorize the commissioners court of a participating county to implement a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program subject to agency oversight that may include reasonable periodic commission audits.

(b) The commission shall provide funding for local low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs with available funds collected under Section 382.202, 382.302, or other designated and available funds. The programs shall be administered in accordance with Chapter 783, Government Code. Program costs may include call center management, application oversight, invoice analysis, education, outreach, and advertising. Not more than 10 percent of the money provided to a local low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program under this section may be used for the administration of the programs, including program costs.

(c) The rules adopted under Subsection (a) must provide procedures for ensuring that a program implemented under authority of that subsection does not apply to a vehicle that is:

(1) registered under Section 504.501 or 504.502, Transportation Code; and

(2) not regularly used for transportation during the normal course of daily activities.

(d) Subject to the availability of funds, a low-income vehicle

repair assistance, retrofit, and accelerated vehicle retirement program established under this section shall provide monetary or other compensatory assistance for:

(1) repairs directly related to bringing certain vehicles that have failed a required emissions test into compliance with emissions requirements;

(2) a replacement vehicle or replacement assistance for a vehicle that has failed a required emissions test and for which the cost of repairs needed to bring the vehicle into compliance is uneconomical; and

(3) installing retrofit equipment on vehicles that have failed a required emissions test, if practically and economically feasible, in lieu of or in combination with repairs performed under Subdivision (1). The commission and the Department of Public Safety of the State of Texas shall establish standards and specifications for retrofit equipment that may be used under this section.

(e) A vehicle is not eligible to participate in a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program established under this section unless:

(1) the vehicle is capable of being operated;

(2) the registration of the vehicle:

(A) is current; and

(B) reflects that the vehicle has been registered in the county implementing the program for at least 12 of the 15 months preceding the application for participation in the program;

(3) the commissioners court of the county administering the program determines that the vehicle meets the eligibility criteria adopted by the commission, the Texas Department of Motor Vehicles, and the Public Safety Commission;

(4) if the vehicle is to be repaired, the repair is done by a repair facility recognized by the Department of Public Safety, which may be an independent or private entity licensed by the state; and

(5) if the vehicle is to be retired under this subsection and Section 382.213, the replacement vehicle is a qualifying motor vehicle.

(f) A fleet vehicle, a vehicle owned or leased by a governmental entity, or a commercial vehicle is not eligible to participate in a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program established and implemented

under this section.

(g) A participating county may contract with any appropriate entity, including the regional council of governments or the metropolitan planning organization in the appropriate region, or with another county for services necessary to implement the participating county's low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program. The participating counties in a nonattainment region or counties participating in an early action compact under Subchapter H may agree to have the money collected in any one county be used in any other participating county in the same region.

(h) Participation by an affected county in a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program is not mandatory. To the extent allowed by federal law, any emissions reductions attributable to a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program in a county that are attained during a period before the county is designated as a nonattainment county shall be considered emissions reductions credit if the county is later determined to be a nonattainment county.

(i) Notwithstanding the vehicle replacement requirements provided by Subsection (d)(2), the commission by rule may provide monetary or other compensatory assistance under the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program, subject to the availability of funds, for the replacement of a vehicle that meets the following criteria:

(1) the vehicle is gasoline-powered and is at least 10 years old;

(2) the vehicle owner meets applicable financial eligibility criteria;

(3) the vehicle meets the requirements provided by Subsections (e)(1) and (2); and

(4) the vehicle has passed a Department of Public Safety motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(j) The commission may provide monetary or other compensatory assistance under the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program for a replacement vehicle or replacement assistance for a pre-1996 model year replacement vehicle that passes the required United States Environmental

Protection Agency Start-Up Acceleration Simulation Mode Standards emissions test but that would have failed the United States Environmental Protection Agency Final Acceleration Simulation Mode Standards emissions test or failed to meet some other criterion determined by the commission; provided, however, that a replacement vehicle under this subsection must be a qualifying motor vehicle.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 958 (H.B. 1611), Sec. 3, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.03, eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3F.01, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.004, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 347 (H.B. 3272), Sec. 2, eff. September 1, 2011.

Sec. 382.210. IMPLEMENTATION GUIDELINES AND REQUIREMENTS. (a) The commission by rule shall adopt guidelines to assist a participating county in implementing a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized under Section 382.209. The guidelines at a minimum shall recommend:

(1) a minimum and maximum amount for repair assistance;

(2) a minimum and maximum amount toward the purchase price of a replacement vehicle qualified for the accelerated retirement program, based on vehicle type and model year, with the maximum amount not to exceed:

(A) $3,000 for a replacement car of the current model year or the previous three model years, except as provided by Paragraph (C);

(B) $3,000 for a replacement truck of the current model year or the previous two model years, except as provided by Paragraph (C); and

(C) $3,500 for a replacement vehicle of the current model year or the previous three model years that:

(i) is a hybrid vehicle, electric vehicle, or natural gas vehicle; or

(ii) has been certified to meet federal Tier 2, Bin 3 or a cleaner Bin certification under 40 C.F.R. Section 86.1811-04, as published in the February 10, 2000, Federal Register;

(3) criteria for determining eligibility, taking into account:

(A) the vehicle owner's income, which may not exceed 300 percent of the federal poverty level;

(B) the fair market value of the vehicle; and

(C) any other relevant considerations;

(4) safeguards for preventing fraud in the repair, purchase, or sale of a vehicle in the program; and

(5) procedures for determining the degree and amount of repair assistance a vehicle is allowed, based on:

(A) the amount of money the vehicle owner has spent on repairs;

(B) the vehicle owner's income; and

(C) any other relevant factors.

(b) A replacement vehicle described by Subsection (a)(2) must:

(1) except as provided by Subsection (c), be a vehicle in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or a cleaner Bin certification under 40 C.F.R. Section 86.1811-04, as published in the February 10, 2000, Federal Register;

(2) have a gross vehicle weight rating of less than 10,000 pounds;

(3) have an odometer reading of not more than 70,000 miles; and

(4) be a vehicle the total cost of which does not exceed:

(A) for a vehicle described by Subsection (a)(2)(A) or (B), $35,000; or

(B) for a vehicle described by Subsection (a)(2)(C), $45,000.

(c) The commission may adopt any revisions made by the federal government to the emissions standards described by Subsection (b)(1).

(d) A participating county shall provide an electronic means for distributing vehicle repair or replacement funds once all program criteria have been met with regard to the repair or replacement. The county shall ensure that funds are transferred to a participating dealer under this section not later than the 10th business day after

the date the county receives proof of the sale and any required administrative documents from the participating dealer.

(e) In rules adopted under this section, the commission shall require a mandatory procedure that:

(1) produces a document confirming that a person is eligible to purchase a replacement vehicle in the manner provided by this chapter, and the amount of money available to the participating purchaser;

(2) provides that a person who seeks to purchase a replacement vehicle in the manner provided by this chapter is required to have the document required by Subdivision (1) before the person enters into negotiation for a replacement vehicle in the manner provided by this chapter; and

(3) provides that a participating dealer who relies on a document issued as required by Subdivision (1) has no duty to otherwise confirm the eligibility of a person to purchase a replacement vehicle in the manner provided by this chapter.

(f) In this section, "total cost" means the total amount of money paid or to be paid for the purchase of a motor vehicle as set forth as "sales price" in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas Department of Motor Vehicles. In a transaction that does not involve the use of that form, the term means an amount of money that is equivalent, or substantially equivalent, to the amount that would appear as "sales price" on the Application for Texas Certificate of Title if that form were involved.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.04, eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3F.02, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 12, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 347 (H.B. 3272), Sec. 3, eff. September 1, 2011.

Sec. 382.211. LOCAL ADVISORY PANEL. (a) The commissioners

court of a participating county may appoint one or more local advisory panels consisting of representatives of automobile dealerships, the automotive repair industry, safety inspection facilities, the public, antique and vintage car clubs, local nonprofit organizations, and locally affected governments to advise the county regarding the operation of the county's low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program, including the identification of a vehicle make or model with intrinsic value as an existing or future collectible.

(b) The commissioners court may delegate all or part of the administrative and financial matters to one or more local advisory panels established under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.212. EMISSIONS REDUCTION CREDIT. (a) In this section, "emissions reduction credit" means an emissions reduction certified by the commission that is:

(1) created by eliminating future emissions, quantified during or before the period in which emissions reductions are made;

(2) expressed in tons or partial tons per year; and

(3) banked by the commission in accordance with commission rules relating to emissions banking.

(b) To the extent allowable under federal law, the commission by rule shall authorize:

(1) the assignment of a percentage of emissions reduction credit to a private, commercial, or business entity that purchases, for accelerated retirement, a qualified vehicle under a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program;

(2) the transferability of an assigned emissions reduction credit;

(3) the use of emissions reduction credit by the holder of the credit against any state or federal emissions requirements applicable to a facility owned or operated by the holder of the credit;

(4) the assignment of a percentage of emissions reduction credit, on the retirement of a fleet vehicle, a vehicle owned or leased by a governmental entity, or a commercial vehicle, to the

owner or lessor of the vehicle; and

(5) other actions relating to the disposition or use of emissions reduction credit that the commission determines will benefit the implementation of low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs established under Section 382.209.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.213. DISPOSITION OF RETIRED VEHICLE. (a) Except as provided by Subsection (c) and Subdivision (5) of this subsection, a vehicle retired under an accelerated vehicle retirement program authorized by Section 382.209 may not be resold or reused in its entirety in this or another state. Subject to the provisions of Subsection (i), the automobile dealer who takes possession of the vehicle must submit to the program administrator proof, in a manner adopted by the commission, that the vehicle has been retired. The vehicle must be:

(1) destroyed;

(2) recycled;

(3) dismantled and its parts sold as used parts or used in the program;

(4) placed in a storage facility of a program established under Section 382.209 and subsequently destroyed, recycled, or dismantled and its parts sold or used in the program; or

(5) repaired, brought into compliance, and used as a replacement vehicle under Section 382.209(d)(2).

(a-1) The commission shall establish a partnership with representatives of the steel industry, automobile dismantlers, and the scrap metal recycling industry to ensure that:

(1) vehicles retired under Section 382.209 are scrapped or recycled; and

(2) proof of scrapping or recycling is provided to the commission.

(b) Not more than 10 percent of all vehicles eligible for retirement under this section may be used as replacement vehicles under Subsection (a)(5).

(c) A vehicle identified by a local advisory panel as an existing or future collectible vehicle under Section 382.211 may be

sold to an individual if the vehicle:

(1) is repaired and brought into compliance;

(2) is removed from the state;

(3) is removed from an affected county; or

(4) is stored for future restoration and cannot be registered in an affected county except under Section 504.501 or 504.502, Transportation Code.

(d) Notwithstanding Subsection (a)(3), the dismantler of a vehicle shall scrap the emissions control equipment and engine. The dismantler shall certify that the equipment and engine have been scrapped and not resold into the marketplace. A person who causes, suffers, allows, or permits a violation of this subsection or of a rule adopted under this section is subject to a civil penalty under Subchapter D, Chapter 7, Water Code, for each violation. For purposes of this subsection, a separate violation occurs with each fraudulent certification or prohibited resale.

(e) Notwithstanding Subsection (d), vehicle parts not related to emissions control equipment or the engine may be resold in any state. The only cost to be paid by a recycler for the residual scrap metal of a vehicle retired under this section shall be the cost of transportation of the residual scrap metal to the recycling facility.

(f) Any dismantling of vehicles or salvaging of steel under this section must be performed at a facility located in this state.

(g) In dismantling a vehicle under this section, the dismantler shall remove any mercury switches in accordance with state and federal law.

(h) The commission shall adopt rules:

(1) defining "emissions control equipment" and "engine" for the purposes of this section; and

(2) providing a procedure for certifying that emissions control equipment and vehicle engines have been scrapped or recycled.

(i) Notwithstanding any other provision of this section, and except as provided by this subsection, a dealer is in compliance with this section and incurs no civil or criminal liability as a result of the disposal of a replaced vehicle if the dealer produces proof of transfer of the replaced vehicle by the dealer to a dismantler. The defense provided by this subsection is not available to a dealer who knowingly and intentionally conspires with another person to violate this section.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.05, eff. June 8, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.005, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 347 (H.B. 3272), Sec. 4, eff. September 1, 2011.

Sec. 382.214. SALE OF VEHICLE WITH INTENT TO DEFRAUD. (a) A person who with intent to defraud sells a vehicle in an accelerated vehicle retirement program established under Section 382.209 commits an offense that is a third degree felony.

(b) Sale of a vehicle in an accelerated vehicle retirement program includes:

(1) sale of the vehicle to retire the vehicle under the program; and

(2) sale of a vehicle purchased for retirement under the program.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.215. SALE OF VEHICLE NOT REQUIRED. Nothing in this subchapter may be construed to require a vehicle that has failed a required emissions test to be sold or destroyed by the owner.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.216. INCENTIVES FOR VOLUNTARY PARTICIPATION IN VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM. The commission, the Texas Department of Transportation, and the Public Safety Commission may, subject to federal limitations:

(1) encourage counties likely to exceed federal clean air standards to implement voluntary:

(A) motor vehicle emissions inspection and maintenance programs; and

(B) low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs;

(2) establish incentives for counties to voluntarily implement motor vehicle emissions inspection and maintenance programs and low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs; and

(3) designate a county that voluntarily implements a motor vehicle emissions inspection and maintenance program or a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program as a "Clean Air County" and give preference to a county designated as a Clean Air County in any federal or state clean air grant program.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.218. REQUIRED PARTICIPATION BY CERTAIN COUNTIES. (a) This section applies only to a county that borders the United Mexican States and in which a municipality with a population of 500,000 or more is located.

(b) A county that was at any time required, because of the county's designation as a nonattainment area under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407), to participate in the vehicle emissions inspection and maintenance program under this subchapter and Subchapter F, Chapter 548, Transportation Code, shall continue to participate in the program even if the county is designated as an attainment area under the federal Clean Air Act.

Added by Acts 2005, 79th Leg., Ch. 958 (H.B. 1611), Sec. 4, eff. June 18, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 47, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 99, eff. September 1, 2023.

Sec. 382.219. PURCHASE OF REPLACEMENT VEHICLE; AUTOMOBILE DEALERSHIPS. (a) An amount described by Section 382.210(a)(2) may be used as a down payment toward the purchase of a replacement vehicle.

(b) An automobile dealer that participates in the procedures and programs offered by this chapter must be located in the state.

No dealer is required to participate in the procedures and programs provided by this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.06, eff. June 8, 2007.

Sec. 382.220. USE OF FUNDING FOR LOCAL INITIATIVE PROJECTS. (a) Money that is made available to participating counties under Section 382.202(g) or 382.302 may be appropriated only for programs administered in accordance with Chapter 783, Government Code, to improve air quality. A participating county may agree to contract with any appropriate entity, including a metropolitan planning organization or a council of governments to implement a program under Section 382.202, 382.209, or this section.

(b) A program under this section must be implemented in consultation with the commission and may include a program to:

(1) expand and enhance the AirCheck Texas Repair and Replacement Assistance Program;

(2) develop and implement programs or systems that remotely determine vehicle emissions and notify the vehicle's operator;

(3) develop and implement projects to implement the commission's smoking vehicle program;

(4) develop and implement projects in consultation with the director of the Department of Public Safety for coordinating with local law enforcement officials to reduce the use of counterfeit registration insignia and vehicle inspection reports by providing local law enforcement officials with funds to identify vehicles with counterfeit registration insignia and vehicle inspection reports and to carry out appropriate actions;

(5) develop and implement programs to enhance transportation system improvements; or

(6) develop and implement new air control strategies designed to assist local areas in complying with state and federal air quality rules and regulations.

(c) Money that is made available for the implementation of a program under Subsection (b) may not be expended for local government fleet or vehicle acquisition or replacement, call center management, application oversight, invoice analysis, education, outreach, or advertising purposes.

(d) Fees collected under Sections 382.202 and 382.302 may be used in an amount not to exceed $7 million per fiscal year for projects described by Subsection (b), of which $2 million may be used only for projects described by Subsection (b)(4). The remaining $5 million may be used for any project described by Subsection (b). The fees shall be made available only to counties participating in the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs created under Section 382.209 and only on a matching basis, whereby the commission provides money to a county in the same amount that the county dedicates to a project authorized by Subsection (b). The commission may reduce the match requirement for a county that proposes to develop and implement independent test facility fraud detection programs, including the use of remote sensing technology for coordinating with law enforcement officials to detect, prevent, and prosecute the use of counterfeit registration insignia and vehicle inspection reports.

Added by Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.07, eff. June 8, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 13, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 1038 (H.B. 2859), Sec. 1, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. 2305), Sec. 8, eff. March 1, 2015.

SUBCHAPTER H. VEHICLE EMISSIONS PROGRAMS IN CERTAIN COUNTIES

Sec. 382.301. DEFINITIONS. In this subchapter:

(1) "Early action compact" means an agreement entered into before January 1, 2003, by the United States Environmental Protection Agency, the commission, the governing body of a county that is in attainment of the one-hour national ambient air quality standard for ozone but that has incidents approaching, or monitors incidents that exceed, the eight-hour national ambient air quality standard for ozone, and the governing body of the most populous municipality in that county that results in the submission of:

(A) an early action plan to the commission that the commission finds to be adequate; and

(B) a state implementation plan revision to the United States Environmental Protection Agency on or before December 31, 2004, that provides for attainment of the eight-hour national ambient air quality standard for ozone on or before December 31, 2007.

(2) "Participating county" means a county that is a party to an early action compact.

Added by Acts 2003, 78th Leg., ch. 203, Sec. 1, eff. June 10, 2003.

Sec. 382.302. INSPECTION AND MAINTENANCE PROGRAM. (a) A participating county whose early action plan contains provisions for a motor vehicle emissions inspection and maintenance program and has been found adequate by the commission may formally request the commission to adopt motor vehicle emissions inspection and maintenance program requirements for the county. The request must be made by a resolution adopted by the governing body of the participating county and the governing body of the most populous municipality in the county.

(b) After approving a request made under Subsection (a), the commission by resolution may request the Public Safety Commission to establish motor vehicle emissions inspection and maintenance program requirements for the participating county under Subchapter F, Chapter 548, Transportation Code, in accordance with this section and rules adopted under this section. The motor vehicle emissions inspection and maintenance program requirements for the participating county may include exhaust emissions testing, emissions control devices and systems inspections, or other testing methods that meet or exceed United States Environmental Protection Agency requirements, and a remote sensing component as provided by Section 382.204. The motor vehicle emissions inspection and maintenance program requirements adopted for the participating county may apply to all or to a defined subset of vehicles described by Section 382.203.

(c) The commission may assess a fee for a vehicle inspection performed in accordance with a program established under this section. The fee must be in an amount reasonably necessary to recover the costs of developing, administering, evaluating, and enforcing the participating county's motor vehicle emissions inspection and maintenance program. An appropriate part of the fee as determined by commission rule may be retained by the station

owner, contractor, or operator to recover the cost of performing the inspection and provide for a reasonable margin of profit.

(d) The incentives for voluntary participation established under Section 382.216 shall be made available to a participating county.

(e) A participating county may participate in the program established under Section 382.209.

Added by Acts 2003, 78th Leg., ch. 203, Sec. 1, eff. June 10, 2003.

SUBCHAPTER I. PROGRAMS TO ENCOURAGE THE USE OF INNOVATIVE TECHNOLOGIES

Sec. 382.401. ALTERNATIVE LEAK DETECTION TECHNOLOGY. (a) In this section, "alternative leak detection technology" means technology, including optical gas imaging technology, designed to detect leaks and emissions of air contaminants.

(b) The commission by rule shall establish a program that allows the owner or operator of a facility regulated under this chapter to use voluntarily as a supplemental detection method any leak detection technology that has been incorporated and adopted by the United States Environmental Protection Agency into a program for detecting leaks or emissions of air contaminants. The program must provide regulatory incentives to encourage voluntary use of the alternative leak detection technology at a regulated facility that is capable of detecting leaks or emissions that may not be detected by methods or technology approvable under the commission's regulatory program for leak detection and repair in effect on the date the commission adopts the program. The incentives may include:

(1) on-site technical assistance; and

(2) to the extent consistent with federal requirements:

(A) inclusion of the facility's use of alternative leak detection technology in the owner or operator's compliance history and compliance summaries;

(B) consideration of the implementation of alternative leak detection technology in scheduling and conducting compliance inspections; and

(C) credits or offsets to the facility's emissions reduction requirements based on the emissions reductions achieved by voluntary use of alternative leak detection technology.

(c) The owner or operator of a facility using an alternative leak detection technology shall repair and record an emission or leak of an air contaminant from a component subject to the commission's regulatory program for leak detection and repair that is detected by the alternative technology as provided by the commission's leak detection and repair rules in effect at the time of the detection. A repair to correct an emission or leak detected by the use of alternative leak detection technology may be confirmed using the same technology.

(d) As part of the program of incentives adopted under Subsection (b), the commission shall:

(1) ensure that the owner or operator of a facility records and repairs, if possible and within a reasonable period, any leak or emission of an air contaminant at the facility that is detected by the voluntary use of alternative leak detection technology from a component not subject to commission rules for leak detection and repair in effect on the date of detection;

(2) establish the reasonable period allowed for the repair of a component causing a leak or emission in a way that includes consideration of the size and complexity of the repair required;

(3) subject to commission reporting requirements only those components that are not repairable within the reasonable time frame established by the commission; and

(4) exempt from commission enforcement a leak or emission that is repaired within the reasonable period established by the commission.

(e) To the extent consistent with federal requirements, the commission may not take an enforcement action against an owner or operator of a facility participating in the program established under this section for a leak or an emission of an air contaminant that would otherwise be punishable as a violation of the law or of the terms of the permit under which the facility operates if the leak or emission was detected by using alternative technology and it would not have been detected under the commission's regulatory program for leak detection and repair in effect on the date of the detection.

Added by Acts 2007, 80th Leg., R.S., Ch. 870 (H.B. 1526), Sec. 1, eff. June 15, 2007.

SUBCHAPTER J. FEDERAL GREENHOUSE GAS REPORTING RULE

Sec. 382.451. DEVELOPMENT OF FEDERAL GREENHOUSE GAS REPORTING RULE. (a) The commission and the Railroad Commission of Texas, the Department of Agriculture, and the Public Utility Commission of Texas shall jointly participate in the federal government process for developing federal greenhouse gas reporting requirements and the federal greenhouse gas registry requirements.

(b) The commission shall adopt rules as necessary to comply with any federal greenhouse gas reporting requirements adopted by the federal government for private and public facilities eligible to participate in the federal greenhouse gas registry. In adopting the rules, the commission shall adopt and incorporate by reference rules implementing the federal reporting requirements and the federal registry.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 29, eff. September 1, 2009.
Redesignated from Health and Safety Code, Section 382.501 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(29), eff. September 1, 2011.

Sec. 382.452. VOLUNTARY ACTIONS INVENTORY. The commission shall:

(1) establish an inventory of voluntary actions taken by businesses in this state or by state agencies since September 1, 2001, to reduce carbon dioxide emissions; and

(2) work with the United States Environmental Protection Agency to give credit for early action under any federal rules that may be adopted for federal greenhouse gas regulation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 29, eff. September 1, 2009.
Redesignated from Health and Safety Code, Section 382.502 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(29), eff. September 1, 2011.

SUBCHAPTER K. OFFSHORE GEOLOGIC STORAGE OF CARBON DIOXIDE

Sec. 382.501. DEFINITIONS. In this subchapter:

(1) "Board" means the School Land Board.

(2) "Bureau" means the Bureau of Economic Geology at The University of Texas at Austin.

(3) "Carbon dioxide repository" means an offshore deep subsurface geologic repository for the storage of anthropogenic carbon dioxide.

(4) "Land commissioner" means the commissioner of the General Land Office.

(5) "Offshore" has the meaning assigned by Section 27.040, Water Code.

(6) "Railroad commission" means the Railroad Commission of Texas.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 460 (H.B. 1284), Sec. 1, eff. June 9, 2021.

Sec. 382.502. RULES; ENFORCEMENT. (a) The railroad commission by rule may adopt standards for the location, construction, maintenance, monitoring, and operation of a carbon dioxide repository.

(b) If the United States Environmental Protection Agency issues requirements regarding carbon dioxide sequestration, the railroad commission shall ensure that the construction, maintenance, monitoring, and operation of the carbon dioxide repository under this subchapter comply with those requirements.

(c) Subchapter F, Chapter 27, Water Code, applies to the civil, administrative, or criminal enforcement of a rule adopted by the railroad commission under this section in the same manner as Subchapter F, Chapter 27, Water Code, applies to the civil, administrative, or criminal enforcement of a rule adopted by the railroad commission under Chapter 27, Water Code.

(d) A penalty collected under this section shall be deposited to the credit of the anthropogenic carbon dioxide storage trust fund established under Section 121.003, Natural Resources Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 460 (H.B. 1284), Sec. 2, eff. June 9, 2021.

Sec. 382.503. STUDY; SELECTION OF LOCATION. (a) The land commissioner shall contract with the bureau to conduct a study of state-owned offshore submerged land to identify potential locations for a carbon dioxide repository.

(b) The land commissioner shall recommend suitable sites for carbon dioxide storage to the board based on the findings of the study.

(c) The board shall make the final determination of suitable locations for carbon dioxide storage.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.504. CONTRACT FOR NECESSARY INFRASTRUCTURE AND OPERATION. (a) Once the location has been established for the carbon dioxide repository, the board may issue requests for proposals for the lease of permanent school fund land for the construction of any necessary infrastructure for the transportation and storage of carbon dioxide to be stored in the carbon dioxide repository.

(b) The board may contract for construction or operational services for the repository.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.505. ACCEPTANCE OF CARBON DIOXIDE FOR STORAGE; FEES AND CARBON CREDITS. (a) Once the carbon dioxide repository is established, the board may accept carbon dioxide for storage.

(b) The board by rule may establish a fee for the storage of carbon dioxide in the carbon dioxide repository. If this state participates in a program that facilitates the trading of carbon credits, a fee under this subsection may be established as a percentage of the carbon credits associated with the storage.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1,

eff. September 1, 2009.

Sec. 382.506. MEASURING, MONITORING, AND VERIFICATION; ROLE OF BUREAU. (a) The railroad commission by rule may establish standards for the measurement, monitoring, and verification of the permanent storage status of the carbon dioxide in the carbon dioxide repository.

(b) The bureau shall review any measurement, monitoring, and verification of the permanent storage status of carbon dioxide in the carbon dioxide repository performed by another person at the direction of the state.

(c) The bureau shall serve as a scientific advisor for the measuring, monitoring, and permanent storage status verification of the carbon dioxide repository.

(d) The bureau shall provide to the board data relating to the measurement, monitoring, and verification of the permanent storage status of the carbon dioxide in the carbon dioxide repository, as determined by the board.

(e) The board may use revenue from the fee authorized by Section 382.505 to contract with the bureau to perform the functions described by this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 460 (H.B. 1284), Sec. 3, eff. June 9, 2021.

Sec. 382.507. OWNERSHIP OF CARBON DIOXIDE. (a) The board shall acquire title to carbon dioxide stored in the carbon dioxide repository on a determination by the board that permanent storage has been verified and that the storage location has met all applicable state and federal requirements for closure of carbon dioxide storage sites.

(b) The right, title, and interest in carbon dioxide acquired under this section are the property of the permanent school fund and shall be administered and controlled by the board.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1,

eff. September 1, 2009.

Sec. 382.508. LIABILITY. (a) The transfer of title to the state under Section 382.507 does not relieve a producer of carbon dioxide of liability for any act or omission regarding the generation of stored carbon dioxide performed before the carbon dioxide was stored.

(b) On the date the permanent school fund, under Section 382.507, acquires the right, title, and interest in carbon dioxide, the producer of the carbon dioxide is relieved of liability for any act or omission regarding the carbon dioxide in the carbon dioxide repository.

(c) This section does not relieve a person who contracts with the board under Section 382.504(b) of liability for any act or omission regarding the construction or operation, as applicable, of the carbon dioxide repository.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.509. RATES FOR TRANSPORTATION. Neither the railroad commission nor the board may establish or regulate the rates charged for the transportation of carbon dioxide to the carbon dioxide repository.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 460 (H.B. 1284), Sec. 4, eff. June 9, 2021.

Sec. 382.510. ANNUAL REPORT. The land commissioner shall issue annually a report regarding the carbon dioxide repository. The report may be submitted electronically by posting on the General Land Office's Internet website. The report must include information regarding:

(1) the total volume of carbon dioxide stored;

(2) the total volume of carbon dioxide received for storage

during the year; and

(3) the volume of carbon dioxide received from each producer of carbon dioxide.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

SUBCHAPTER L. REGULATION OF HYDROFLUOROCARBONS

Sec. 382.551. SUBSTITUTES FOR HYDROFLUOROCARBON REFRIGERANTS APPLICABLE TO COMMERCIAL OR RESIDENTIAL BUILDINGS OR CONSTRUCTION. A building code or other requirement applicable to commercial or residential buildings or construction may not prohibit the use of a substitute refrigerant authorized pursuant to 42 U.S.C. Section 7671k.

Added by Acts 2021, 87th Leg., R.S., Ch. 100 (S.B. 1210), Sec. 1, eff. January 1, 2023.

SUBCHAPTER M. CEMENT OR AGGREGATE PRODUCTION AND SEMICONDUCTOR WAFER MANUFACTURING FACILITY

Sec. 382.601. DEFINITIONS. In this subchapter:

(1) "Aggregate production operation" has the meaning assigned by Section 28A.001, Water Code.

(2) "Portland cement kiln" means a system, including any solid, gaseous, or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce portland cement clinker.

(3) "Semiconductor wafer manufacturing facility" means a manufacturing facility that conducts any of the following processes with respect to semiconductor production:

(A) growing single-crystal ingots or boules;

(B) wafer slicing;

(C) etching and polishing;

(D) bonding;

(E) cleaning;

(F) epitaxial deposition; or

(G) metrology.

Added by Acts 2025, 89th Leg., R.S., Ch. 1171 (S.B. 1758), Sec. 1,

eff. June 22, 2025.

Sec. 382.602. LIMITATION OF LIABILITY. An owner or operator of a facility operating under a new source review permit issued under this chapter that authorizes the operation of a portland cement kiln, or the production of aggregates at an aggregate production operation, is not liable for damages to a semiconductor wafer manufacturing facility resulting from seismic or vibrational disturbances caused by the cement or aggregate production facility owner's or operator's activities on the site of the cement or aggregate production facility if the cement or aggregate production facility began operating before the date the semiconductor wafer manufacturing facility began operating.

Added by Acts 2025, 89th Leg., R.S., Ch. 1171 (S.B. 1758), Sec. 1, eff. June 22, 2025.

For expiration of this subchapter, see Section 382.655.

SUBCHAPTER M-1. CEMENT OR AGGREGATE PRODUCTION AND SEMICONDUCTOR WAFER MANUFACTURING FACILITY PILOT PROGRAM: GRAYSON COUNTY

Sec. 382.651. DEFINITIONS. In this subchapter:

(1) "Aggregate production operation" has the meaning assigned by Section 28A.001, Water Code.

(2) "Bureau" means the Bureau of Economic Geology of The University of Texas at Austin.

(3) "Portland cement kiln" means a system, including any solid, gaseous, or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce portland cement clinker.

(4) "Semiconductor wafer manufacturing facility" has the meaning assigned by Section 382.601.

Added by Acts 2025, 89th Leg., R.S., Ch. 1171 (S.B. 1758), Sec. 1, eff. June 22, 2025.

Sec. 382.652. GRAYSON COUNTY PILOT PROGRAM. This subchapter applies only to:

(1) a semiconductor wafer manufacturing facility that begins commercial operation after January 1, 2025, and before December 31, 2025; and

(2) a facility that:

(A) is proposed to be constructed under or is operating under a new source review permit that authorizes the construction or operation of a portland cement kiln; and

(B) is associated with a facility that produces aggregates at an aggregate production operation.

Added by Acts 2025, 89th Leg., R.S., Ch. 1171 (S.B. 1758), Sec. 1, eff. June 22, 2025.

Sec. 382.653. STUDY AND REPORT. (a) The bureau shall conduct a study, in consultation with owners or operators of facilities described by Section 382.652 in Grayson County, to:

(1) analyze seismological data related to aggregate production operations;

(2) assess the vibrational impact of the production of aggregates on bedrock;

(3) analyze vibrational parameters necessary to ensure the successful operation of a semiconductor wafer manufacturing facility within 10 miles of a facility described by Section 382.652(2); and

(4) investigate whether a minimum distance between a facility described by Section 382.652(2) and a semiconductor wafer manufacturing facility is necessary to prevent seismic or vibrational disruption to the operation of the semiconductor wafer manufacturing facility, considering the depth of the excavation activities conducted for the production of aggregates.

(b) In conducting the study under this section, the bureau may:

(1) collaborate with:

(A) the commission and any other state agency, political subdivision, or institution of higher education; and

(B) any other stakeholder or private entity as necessary; and

(2) enter into a nondisclosure agreement with a private entity.

(c) In addition to money appropriated by the legislature to the bureau for the purpose of this section, the bureau may accept gifts,

grants, and other donations for the purposes of conducting the study under this section.

(d) Not later than August 1, 2026, the bureau shall prepare and submit to the governor, the lieutenant governor, the speaker of the house of representatives, and each standing legislative committee with primary jurisdiction over the environment or natural resources a report on the results of the study conducted under this section and any recommendations for legislative or other action.

Added by Acts 2025, 89th Leg., R.S., Ch. 1171 (S.B. 1758), Sec. 1, eff. June 22, 2025.

Sec. 382.654. OPERATIONS WITHIN STUDY AREA. The commission may not issue, renew, or amend a permit or authorize the use of a standard permit or a permit by rule under this chapter for the construction or operation of a facility described by Section 382.652(2) within 10 miles of a facility described by Section 382.652(1) in Grayson County.

Added by Acts 2025, 89th Leg., R.S., Ch. 1171 (S.B. 1758), Sec. 1, eff. June 22, 2025.

Sec. 382.655. EXPIRATION. This subchapter expires September 1, 2031.

Added by Acts 2025, 89th Leg., R.S., Ch. 1171 (S.B. 1758), Sec. 1, eff. June 22, 2025.

CHAPTER 383. CLEAN AIR FINANCING ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 383.001. SHORT TITLE. This chapter may be cited as the Clean Air Financing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.002. POLICY AND PURPOSE. (a) The policy of the state and the purpose of this chapter are to:

(1) safeguard state air resources from emissions of air contaminants and other pollution;

(2) protect public health, general welfare, physical property, and the esthetic enjoyment of air resources by the public; and

(3) maintain adequate visibility.

(b) It is the policy of the state that the control of air pollution is essential to the well-being and survival of state inhabitants and the protection of the environment. The control, prevention, and abatement of air pollution will conserve and develop state natural resources, within the meaning of Article XVI, Section 59(a), of the Texas Constitution, by preventing further damage to the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.003. DEFINITIONS. In this chapter:

(1) "Air contaminant" has the meaning assigned by Section 382.003 (Texas Clean Air Act).

(2) "Air pollution" has the meaning assigned by Section 382.003 (Texas Clean Air Act).

(3) "Bond" includes a note.

(4) "Coastal basin" means an area that:

(A) is defined and designated as a coastal basin as of April 26, 1973, by the Texas Water Development Board, and as a separate unit that has the purpose of water development and interwatershed transfers; and

(B) has boundaries determined by a contour map filed in the office of the Texas Water Development Board.

(5) "Commission" means the Texas Commission on Environmental Quality.

(6) "Control facility" means a facility that has been certified by the commission, or by its executive secretary if the commission authorizes, as being designed to reduce or eliminate air pollution.

(7) "Disposal system" has the meaning assigned by Section 30.003(10), Water Code.

(8) "District" means a district or authority created under Article XVI, Section 59, or Article III, Section 52, of the Texas

Constitution, but does not include a district or authority located entirely within a river authority unless the district or authority:

(A) has all or part of at least two municipalities within its boundaries;

(B) is governed by Chapter 56, 60, 61, 62, or 63, Water Code; or

(C) is created for the primary purpose of navigation of its coastal and inland waters.

(9) "Issuer" means a municipality, county, or district.

(10) "Real property" means land, a structure, a franchise or interest in land, water, land under water, riparian rights, air rights, or another thing or right pertaining to that property, including an easement, right-of-way, use, lease, license, or other incorporeal hereditament, or an estate, interest, or legal or equitable right, including a term for years or lien on that property because of a judgment, mortgage, or other reason.

(11) "Resolution" means the action, including an order or ordinance, that authorizes bonds and that is taken by the governing body of an issuer.

(12) "River authority" has the meaning assigned by Section 30.003(4), Water Code.

(13) "River basin" means an area that:

(A) is defined and designated as a river basin as of April 26, 1973, by the Texas Water Development Board, and as a separate unit that has the purpose of water development and interwatershed transfers; and

(B) has boundaries determined by a contour map filed in the office of the Texas Water Development Board.

(14) "Security agreement" means a trust indenture or other instrument securing bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.198, eff. Sept. 1, 1995. Amended by:

Acts 2025, 89th Leg., R.S., Ch. 986 (S.B. 766), Sec. 23, eff. September 1, 2025.

Sec. 383.004. CERTIFICATION OF CONTROL FACILITY BY COMMISSION. The commission may prescribe necessary criteria and procedures for

certifying a control facility and may limit certification to confirmation that a proposed facility is intended to control air pollution. Certification of a control facility's adequacy or expected performance or of other specifications is not necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.199, eff. Sept. 1, 1995.

Sec. 383.005. ADOPTION OF ALTERNATE PROCEDURE. If a court holds that a procedure under this chapter violates the United States Constitution or Texas Constitution, an issuer by resolution may provide an alternate procedure that conforms to those constitutions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.006. EFFECT OF CHAPTER ON OTHER LAW. (a) This chapter does not limit the authority of the commission, a district, or a local government in performing a power or duty provided by other law. This chapter does not limit the authority of the commission or a local government to adopt and enforce rules or carry out duties under Chapter 382 (Texas Clean Air Act).

(b) Chapter 382 (Texas Clean Air Act) shall be enforced without regard to ownership of a control facility financed under this chapter.

(c) This chapter does not affect the right of a private person to pursue, against a person who contracts with an issuer under this chapter, a common-law remedy to abate or recover damages for a condition of pollution or other nuisance. A person purchasing or using a control facility under contract with an issuer may not assert the defense of sovereign immunity because of the issuer's ownership of the control facility.

(d) An issuer may use other law not in conflict with this chapter to the extent convenient or necessary to carry out a power or authority expressly or impliedly granted by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.200, eff. Sept. 1, 1995.

SUBCHAPTER B. OPERATION OF CONTROL FACILITY

Sec. 383.011. AUTHORITY TO ACQUIRE AND TRANSFER PROPERTY. (a) An issuer may acquire, construct, and improve a control facility and may acquire real property as the issuer considers appropriate for the control facility.

(b) An issuer may enter into a lease or other contract under which another person uses or acquires the issuer's control facility. An issuer may sell a control facility, by installment payments or otherwise, to any person on conditions the issuer considers desirable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.012. LOCATION OF CONTROL FACILITY. (a) A control facility may be located on the property of any person.

(b) A control facility of a municipality must be located in whole or in part within:

(1) the boundaries of the municipality; or

(2) the municipality's extraterritorial jurisdiction, as determined under Chapter 42, Local Government Code.

(c) A control facility of a river authority may be located outside the river authority's boundaries if it is located in whole or in part within the river authority's river basin or a coastal basin adjoining the river authority's boundaries. A control facility of a river authority may be located anywhere in the state if it is financed at the same time and with the same bond issue as a control facility located within the river authority's boundaries or located in whole or in part within the river authority's river basin or a coastal basin adjoining the river authority's boundaries.

(d) A control facility of a county or a district other than a river authority must be located in whole or in part within the county's or district's boundaries.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.013. CONTRACTS. (a) A lease or other contract entered into under this chapter may be for the term agreed to by the parties. The lease or other contract may provide that it continues in effect until specified bonds or refunding bonds issued in place of

the specified bonds are fully paid.

(b) The provisions of Chapter 2253, Government Code, that relate to performance and payment bonds apply to a construction contract let by an issuer, except that an issuer is not required to receive construction bids on a project.

(c) Any law requiring competitive bids does not apply to a construction contract for a project authorized by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1064, Sec. 34, eff. Sept. 1, 1999.

Sec. 383.014. COST OF CERTAIN REQUIRED ALTERATIONS. The relocation, raising, lowering, rerouting, changing of grade, or altering of construction of a highway, railroad, electric transmission line, telegraph or telephone property or facility, or pipeline made necessary by the actions of an issuer shall be accomplished at the sole expense of the issuer, who shall pay the cost of the required activity as necessary to provide comparable replacement, minus the net salvage value of any replaced facility. The issuer shall pay that amount from the proceeds of bonds issued to finance a control facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.015. TAXATION. (a) An issuer is not required to pay a tax or other assessment on a control facility or part of a control facility.

(b) Bonds issued under this chapter, the transfer of the bonds, and income from the bonds are exempt from taxation in this state.

(c) This chapter does not affect state law relating to an ad valorem tax imposed on a person who is not a public agency or political subdivision or on an interest held by such a person. A control facility purchased or used under this chapter is subject to ad valorem taxation payable by the person contracting with the issuer for the facility's purchase or use as if the contract created a leasehold.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. BONDS

Sec. 383.021. AUTHORITY TO ISSUE. (a) An issuer may issue negotiable bonds, payable from revenues of the issuer, to pay costs related to the acquisition, construction, or improvement of a control facility, including:

(1) the cost of real property acquired for the control facility;

(2) finance charges;

(3) interest before and during construction and for a period the issuer finds reasonable after completion of construction;

(4) expenses incurred for architectural, engineering, and legal services;

(5) expenses incurred for plans, specifications, surveys, and estimates;

(6) expenses incurred in placing the control facility in operation;

(7) expenses of administration; and

(8) other expenses necessary or incident to the acquisition, construction, or improvement.

(b) The bonds may be issued in more than one series and from time to time as required to carry out the purposes of this chapter.

(c) Pending issuance of definitive bonds, the issuer may authorize the delivery of negotiable interim bonds eligible for exchange or substitution by use of the definitive bonds.

(d) An issuer may not issue bonds to acquire an existing control facility solely for the purpose of leasing or selling it back to the person from whom it was acquired or to another person controlled by that person, unless the control facility is to be substantially improved before it is leased or sold back to such a person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.022. FORM AND PROCEDURE. (a) Bonds under this chapter must be authorized by resolution. The bonds must:

(1) be signed by the presiding officer or assistant presiding officer of the governing body;

(2) be attested by the secretary of the governing body; and

(3) have the seal of the issuer impressed, printed, or lithographed on the bonds.

(b) The bonds may have the characteristics and bear the designation determined by the governing body of the issuer, except that the designation must include for each control facility to be financed with the bonds:

(1) the name of each person using or purchasing the control facility;

(2) the name of each person guaranteeing the contractual obligations of each person using or purchasing the control facility; or

(3) a statement, if applicable, that a group of persons will be using or purchasing the control facility.

(c) The governing body may authorize a required signature to be printed or lithographed on the bonds. The issuer may adopt or use the signature of a person who has been an officer, regardless of whether the person is an officer when the bonds are delivered to a purchaser.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.023. TERMS. Bonds issued under this chapter must mature serially or otherwise not more than 40 years after they are issued. The bonds may:

(1) bear interest at a rate and be sold at a price or under terms that the governing body of the issuer determines to be the most advantageous reasonably obtainable;

(2) be made callable before maturity at times and prices prescribed in the resolution authorizing the bonds;

(3) be in coupon form; and

(4) be registrable as to principal or as to principal and interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.024. APPROVAL AND REGISTRATION. (a) An issuer shall submit bonds that have been authorized by its governing body,

including refunding bonds and the record relating to the bond issuance, to the attorney general for examination as to their validity. If the bonds state that they are secured by a pledge of proceeds of a lease or other contract previously entered into by the issuer, the issuer may submit the contract with the bonds.

(b) If the bonds have been authorized in accordance with state law and any contract has been made in accordance with state law, the attorney general shall approve the bonds and contract and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds and contract are incontestable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.025. PLEDGE OF REVENUE AS SECURITY; ELECTION. (a) An issuer's bonds may be secured, as specified by the resolution or a security agreement, by a pledge of all or part of the revenues of the issuer derived from:

(1) the use or sale of a control facility or disposal system; or

(2) services rendered by a disposal system.

(b) Except as provided by Section 383.026, before a municipality or county issues bonds secured under Subsection (a), the municipality or county must publish notice of its intention to issue the bonds at least once in a newspaper of general circulation within the boundaries of the municipality or county. Not later than 30 days after the date of the publication, not less than 10 percent of the qualified voters of the municipality or county may file a petition with the clerk or secretary of the governing body requesting the governing body to order an election on the issuance of the bonds. On the filing of the petition, the governing body shall order an election to be held in the municipality or county to determine whether the bonds may be issued as indicated in the notice. The governing body shall set the date of the election in accordance with Section 41.001, Election Code. If the majority of voters who vote at the election approve the issuance of the bonds, the governing body may issue the bonds. If a petition is not filed within the period provided by this subsection, the governing body may issue the bonds without an election.

(c) The governing body shall fix and periodically revise payments under a lease or other contract for the use or sale of a control facility so that the payments and other pledged revenue will be sufficient to pay the bonds and interest on the bonds as they mature and become due and to maintain reserve or other funds as provided by the resolution or security agreement. The governing body may direct the investment of money in the funds created by the resolution or security agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.026. PLEDGE OF OTHER UTILITY REVENUE; ELECTION. (a) In addition to the security under Section 383.025, a municipality's or county's bonds may be secured, as specified by the resolution or a security agreement, by a pledge of other utility revenue of the municipality or county.

(b) Before issuing bonds secured by other utility revenue, the governing body must order an election to determine whether the bonds may be issued. The governing body shall set the date of the election in accordance with Section 41.001, Election Code. The manner of holding the election is governed by Chapter 1251, Government Code. If the majority of voters who vote at the election approve the issuance of the bonds, the governing body may issue the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.272, eff. Sept. 1, 2001.

Sec. 383.027. SECURITY MAY APPLY TO ADDITIONAL BONDS. A pledge under Section 383.025 or 383.026 may reserve the right, under conditions specified by the pledge, to issue additional bonds to be on a parity with or subordinate to the bonds secured by the pledge. Bonds issued under this chapter may be combined in the same issue with bonds issued for other purposes authorized by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.028. TRUSTS AS SECURITY. (a) The governing body may additionally secure bonds, including refunding bonds, by a trust

indenture under which the trustee may be a bank having trust powers located inside or outside the state.

(b) Regardless of any mortgage, deed of trust lien, or security interest under Section 383.029, the trust indenture may:

(1) contain any provision that the governing body prescribes for the security of the bonds and the preservation of the trust estate;

(2) provide for amendment or modification of the trust indenture;

(3) condition the right to spend the issuer's money or sell an issuer's control facility on approval of a registered professional engineer selected as provided by the trust indenture;

(4) contain provisions governing issuance of bonds to replace lost, stolen, or mutilated bonds; and

(5) otherwise provide for protecting and enforcing a bondholder's rights and remedies as is reasonable, proper, and lawful.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.029. OTHER SECURITY. (a) The bonds may be additionally secured by a mortgage, deed of trust lien, or security interest in a designated control facility of the governing body and all property and rights appurtenant to the control facility.

(b) The mortgage, deed of trust lien, or security interest may give the trustee the power to operate the control facility, sell the control facility to pay the debt, or take any other action to secure the bonds.

(c) A purchaser at a sale under a mortgage or deed of trust lien is the absolute owner of the control facility and rights purchased.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.030. ACTION BY BONDHOLDERS. (a) The resolution or a security agreement may provide that on default in the payment of principal of or interest on the bonds, or threatened default under conditions stated in the resolution or security agreement, and on petition of the holders of outstanding bonds, a court of competent

jurisdiction may appoint a receiver to collect and receive pledged income.

(b) The resolution or security agreement may limit or qualify the rights of less than all of the holders of outstanding bonds payable from the same source to institute or prosecute litigation affecting the issuer's property or income.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.031. INVESTMENT AND USE OF PROCEEDS. (a) The governing body may set aside amounts from the proceeds of the sale of bonds for payment into an interest and sinking fund and reserve funds and may provide for this in the resolution or a security agreement. All expenses of issuing and selling the bonds must be paid from the proceeds of the sale of the bonds.

(b) Proceeds from the sale of bonds may be invested in:

(1) direct or indirect obligations of the United States government or an agency of the United States government that mature in a manner specified by the resolution or a security agreement; or

(2) certificates of deposit of a bank or trust company if the deposits are secured by obligations described by Subdivision (1).

(c) A bank or trust company with trust powers may be designated as depository for proceeds of bonds or of lease or other contract revenue. The bank or trust company shall furnish indemnifying bonds or pledge securities as required by the issuer to secure the deposits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.032. REFUNDING BONDS. (a) A governing body may issue refunding bonds to refund the principal of, interest on, and any redemption premium applicable to outstanding bonds. The refunding bonds may:

(1) refund more than one series of outstanding bonds and combine the revenue pledged to the outstanding bonds for the security of the refunding bonds; and

(2) be secured by other or additional revenues and deed of trust liens.

(b) The provisions of this chapter relating to issuance of

bonds, security for bonds, approval by the attorney general, and remedies of bondholders apply to refunding bonds.

(c) The comptroller shall register refunding bonds:

(1) on the surrender and cancellation of the original bonds; or

(2) without surrender and cancellation of the original bonds if:

(A) the resolution authorizing the refunding bonds provides that their proceeds be deposited in the bank where the original bonds are payable; and

(B) the refunding bonds are issued in an amount sufficient to pay the principal of, interest on, and any redemption premium applicable to the original bonds up to their option date or maturity date.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.033. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Bonds issued under this chapter are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company;

(6) a fiduciary;

(7) a trustee; and

(8) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of the state.

(b) The bonds may secure the deposits of public funds of the state or a municipality, county, school district, or other political corporation or subdivision of the state. The bonds are lawful and sufficient security for those deposits in an amount up to their face value, if accompanied by all appurtenant unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.034. BONDS NOT GENERAL OBLIGATION. The bonds are special obligations payable solely from revenues pledged to their

payment and are not general obligations of the governing body, the issuer, or the state. A bondholder may not demand payment from money obtained from a tax or other revenue of the issuer, excluding revenues pledged to the payment of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 384. AREA EMISSION REDUCTION CREDIT ORGANIZATIONS

Sec. 384.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Emission reduction credit" means a credit recognized by the commission and the United States Environmental Protection Agency for reductions in emissions of air pollutants.

(3) "Nonattainment area" means an area so designated within the meaning of Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407).

(4) "Organization" means an area emission reduction credit organization in this state.

(5) "Regional council of governments" means a council of governments designated as the metropolitan planning organization or a metropolitan planning organization in the event the council of governments is not so designated.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.201, eff. Sept. 1, 1995.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 986 (S.B. 766), Sec. 24, eff. September 1, 2025.

Sec. 384.002. PURPOSE. The purpose of an area emission reduction credit organization shall be to promote the coexistence of the improvement of air quality and economic development within the region through the acquisition and distribution of emission reduction credits. Its activities may include the use of emission reduction credits to help meet federal reasonable further progress requirements as well as using emission reduction credits to facilitate the issuance of permits.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.003. ESTABLISHMENT OF ORGANIZATION. A regional council of governments whose area of jurisdiction contains a nonattainment area may establish an organization on approval by the commission of its creation petition as provided by Section 384.015.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.202, eff. Sept. 1, 1995.

Sec. 384.004. FUNCTIONS; ORGANIZATION. An organization created under this chapter shall:

(1) represent all counties within a nonattainment area;

(2) have a board of directors appointed in accordance with the provisions of this chapter;

(3) have the power, authority, and limitations provided by this chapter; and

(4) have bylaws setting forth its organization and procedures, including provisions for conflicts of interest.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.005. OFFSET REQUIREMENTS. All transactions of an organization involving emission reduction credits shall be subject to the offset requirements of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.006. LOCATION RESTRICTION. There shall not be more than one organization within a metropolitan statistical area or consolidated metropolitan statistical area.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.007. STAFF. The regional council of governments may provide staff to an organization created under this chapter.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.008. BOARD OF DIRECTORS. (a) The board of directors of an organization shall consist of not less than six and not more than 21 appointed members, provided, however, that the number of appointed members is divisible by three. The appointed members are appointed by and may be removed for cause by the governing body of the regional council of governments. The appointed members serve three-year terms, with one-third of the members' terms expiring each year. In order to stagger the terms, the initial appointees of a board of directors shall draw lots to determine which one-third serves for one year, which one-third serves for two years, and which one-third serves for three years. In addition, the board of directors shall have one ex officio nonvoting member from the commission, designated by the executive director of the commission to act as a liaison between the commission and the area emission reduction credit organization.

(b) The appointed members of the board of directors shall represent the general public, large industrial sources of emissions, small regulated businesses, and environmental and economic development interests. Each county in the nonattainment area shall be represented on the board of directors, and other areas in the region shall be represented in a manner that reflects the relative contributions of each area to total emissions or potential emission reductions.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.203, eff. Sept. 1, 1995.

Sec. 384.009. REMOVAL FOR CAUSE. The regional council of governments appointing a member of the board of directors of an organization may remove such member for cause if the member:

(1) cannot discharge the member's duties for a substantial portion of the term for which the member is appointed because of illness or disability; or

(2) is absent from more than half of the regularly scheduled meetings that the member is eligible to attend during a calendar year unless the absence is excused by a majority vote of the board of directors.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.010. CONFLICT OF INTEREST. A member of a board of directors may not vote on a matter in which the member or the member's employer has a direct financial interest.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.011. AUTHORITY. The board of directors of an organization shall have independent decision-making authority and shall not be required to have its decisions reviewed by the governing body of the regional council of governments. A regional council of governments shall not have any liability under any contracts entered into by an organization.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.012. POWERS AND DUTIES. An organization shall have the authority to:

(1) receive and use funds;

(2) have an account at the Texas Commission on Environmental Quality Air Emission Reduction Credit Bank;

(3) acquire emission reduction credits through purchase, donation, or other means;

(4) transfer emission reduction credits by sale or other means;

(5) identify, evaluate, promote, initiate, and facilitate potential projects and strategies to generate emission reduction credits;

(6) provide financial assistance for projects to generate emission reduction credits;

(7) employ staff;

(8) enter into contracts; and

(9) consider sustainability of projects.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.204, eff. Sept. 1, 1995.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 986 (S.B. 766), Sec. 25, eff. September 1, 2025.

Sec. 384.013. PROHIBITIONS. An organization created under this chapter shall have no regulatory or taxing authority.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.014. ANNUAL REPORT. By March 1 of each year each area organization shall file with the commission and the regional council of governments an annual report for the preceding calendar year. The annual report shall contain a financial accounting, an accounting of emission reduction credits, and a listing of all emission reduction credit transactions entered into by the organization.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.205, eff. Sept. 1, 1995.

Sec. 384.015. PROCEDURE FOR FILING AND APPROVAL OF PETITION. (a) A regional council of governments may authorize by resolution the submission of a petition to the commission requesting the creation of an organization under this chapter.

(b) The petition shall contain sufficient information to permit a determination of compliance with the provisions of this chapter and shall include a copy of the proposed bylaws and a plan for ensuring compliance with the requirements of this chapter.

(c) The commission shall review the petition for compliance with this chapter and hold a hearing in the region to obtain public comment on the petition.

(d) The commission shall approve the petition and creation of the organization if, after hearing, it finds that the requirements of

this chapter are met and that such creation would be in the public interest.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.206, eff. Sept. 1, 1995.

Sec. 384.016. AUDIT. The commission shall have the authority to audit any organization created under this chapter.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.207, eff. Sept. 1, 1995.

Sec. 384.017. WITHDRAWAL OF APPROVAL. The commission shall have the authority to withdraw its approval of an organization created under this chapter and to dissolve such organization if it finds, after notice and hearing, that the organization has failed to comply with the provisions of this chapter.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.207, eff. Sept. 1, 1995.

Sec. 384.018. DISSOLUTION. An organization created under this chapter shall be dissolved by the commission 12 years after its creation unless the commission approves a petition, submitted and approved in accordance with Section 384.015, for an additional 12-year term. The commission may continue to approve successive 12-year terms for the organization as long as the need for the organization exists.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.207, eff. Sept. 1, 1995.

For expiration of this chapter, see Section 386.002.

CHAPTER 386. TEXAS EMISSIONS REDUCTION PLAN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 386.001. DEFINITIONS. In this chapter:

(1) "Account" means the Texas emissions reduction plan account established under Section 386.251.

(2) "Affected county" includes:

(A) Bastrop County;

(B) Bexar County;

(C) Caldwell County;

(D) Comal County;

(E) Ellis County;

(F) Gregg County;

(G) Guadalupe County;

(H) Harrison County;

(I) Hays County;

(J) Henderson County;

(K) Hood County;

(L) Hunt County;

(M) Johnson County;

(N) Kaufman County;

(O) Nueces County;

(P) Parker County;

(Q) Rockwall County;

(R) Rusk County;

(S) San Patricio County;

(T) Smith County;

(U) Travis County;

(V) Upshur County;

(W) Williamson County;

(X) Wilson County; and

(Y) any other county designated as an affected county by commission rule because of deteriorating air quality.

(3) "Commission" means the Texas Commission on Environmental Quality.

(4) Repealed by Acts 2005, 79th Leg., Ch. 1125, Sec. 22, eff. September 1, 2005.

(5) "Fund" means the Texas emissions reduction plan fund established under Section 386.250.

(6) "Incremental cost" means the cost of an applicant's project less a baseline cost that would otherwise be incurred by an

applicant in the normal course of business. Incremental costs may include added lease or fuel costs as well as additional capital costs.

(7) "Laboratory" means the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System.

(8) "Nonattainment area" means an area so designated under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407), as amended.

(9) "Plan" means the Texas emissions reduction plan.

(10) "Site" means the total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person or persons under common control.

(10-a) "Stationary engine" means a machine used in a nonmobile application that converts fuel into mechanical motion, including turbines and other internal combustion devices.

(11) "Utility commission" means the Public Utility Commission of Texas.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 22, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 14, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(b-2), eff. August 30, 2017.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-2)(1), eff. August 30, 2017.

Acts 2019, 86th Leg., R.S., Ch. 127 (H.B. 1627), Sec. 1, eff. May 23, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1301 (H.B. 3745), Sec. 1.01, eff. September 1, 2021.

Sec. 386.002. EXPIRATION. This chapter expires on the last day of the state fiscal biennium during which the commission publishes in

the Texas Register the notice required by Section 382.037.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 3, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.01, eff. June 8, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 15, eff. September 1, 2009.
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(c), eff. August 30, 2017.

SUBCHAPTER B. TEXAS EMISSIONS REDUCTION PLAN

Sec. 386.051. TEXAS EMISSIONS REDUCTION PLAN. (a) The utility commission, the commission, and the comptroller shall establish and administer the Texas emissions reduction plan in accordance with this chapter.

(b) Under the plan, the commission and the comptroller shall provide grants or other funding for:

(1) the diesel emissions reduction incentive program established under Subchapter C, including for infrastructure projects established under that subchapter;

(2) the motor vehicle purchase or lease incentive program established under Subchapter D;

(3) the air quality research support program established under Chapter 387;

(4) the clean school bus program established under Chapter 390;

(5) the new technology implementation grant program established under Chapter 391;

(6) the regional air monitoring program established under Section 386.252(a);

(7) a health effects study as provided by Section 386.252(a);

(8) air quality planning activities as provided by Section 386.252(d);

(9) a contract with the Energy Systems Laboratory at the

Texas A&M Engineering Experiment Station for computation of creditable statewide emissions reductions as provided by Section 386.252(a);

(10) the Texas clean fleet program established under Chapter 392;

(11) the Texas alternative fueling facilities program established under Chapter 393;

(12) the Texas natural gas vehicle grant program established under Chapter 394;

(13) other programs the commission may develop that lead to reduced emissions of nitrogen oxides, particulate matter, or volatile organic compounds in a nonattainment area or affected county;

(14) other programs the commission may develop that support congestion mitigation to reduce mobile source ozone precursor emissions;

(15) the seaport and rail yard areas emissions reduction program established under Subchapter D-1;

(16) conducting research and other activities associated with making any necessary demonstrations to the United States Environmental Protection Agency to account for the impact of foreign emissions or an exceptional event;

(17) studies of or pilot programs for incentives for port authorities located in nonattainment areas or affected counties as provided by Section 386.252(a);

(18) the governmental alternative fuel fleet grant program established under Chapter 395;

(19) remittance of funds to the state highway fund for use by the Texas Department of Transportation for congestion mitigation and air quality improvement projects in nonattainment areas and affected counties; and

(20) the Texas hydrogen infrastructure, vehicle, and equipment grant program established under Subchapter G.

(b-1) Under the plan, the commission may establish and administer other programs, including other grants or funding programs, as determined by the commission to be necessary or effective in fulfilling its duties and achieving the objectives described under Section 386.052. The commission may apply the criteria and requirements applicable to the programs under Subsection (b) to programs established under this subsection, or the commission may establish separate criteria and requirements as necessary to

achieve the commission's objectives. The additional programs shall be consistent with and comply with all applicable laws, regulations, and guidelines pertaining to the use of state funds, the awarding and administration of grants and contracts, and achieving reductions in ozone precursors or particulate matter. Under this subsection, the commission may place a priority on programs that address the following goals:

(1) reduction of emissions of oxides of nitrogen or particulate matter from heavy-duty on-road vehicles and non-road equipment, including drayage vehicles, locomotives, and marine vessels, at seaport facilities or servicing seaport facilities in nonattainment areas; and

(2) reduction of emissions from the operation of drilling, production, completions, and related heavy-duty on-road vehicles or non-road equipment in oil and gas production fields where the commission determines that the programs can help prevent that area or an adjacent area from being in violation of national ambient air quality standards.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1230, Sec. 25(1), eff. June 14, 2013.

(d) Equipment purchased before September 1, 2001, is not eligible for a grant or other funding under the plan.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 11, Sec. 3, eff. Oct. 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 1, eff. June 17, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 5, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 28 (S.B. 527), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 25(1), eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(c-1), eff. August 30, 2017.

Acts 2021, 87th Leg., R.S., Ch. 1043 (H.B. 4472), Sec. 1, eff.

September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 889 (H.B. 4885), Sec. 1, eff. September 1, 2023.

Sec. 386.0515. AGRICULTURAL PRODUCT TRANSPORTATION PROJECTS. (a) In this section:

(1) "Agricultural product transportation" means the transportation of a raw agricultural product from the place of production using a heavy-duty truck to:

(A) a nonattainment area;

(B) an affected county;

(C) a destination inside the clean transportation zone; or

(D) a county adjacent to a county described by Paragraph (B) or that contains an area described by Paragraph (A) or (C).

(2) "Clean transportation zone" has the meaning assigned by Section 393.001.

(b) Notwithstanding other eligibility requirements, the commission shall by rule or policy provide specific eligibility requirements under the Texas Clean Fleet Program established under Chapter 392 and under the Texas natural gas vehicle grant program established under Chapter 394, as added by Chapter 892 (Senate Bill No. 385), Acts of the 82nd Legislature, Regular Session, 2011, for projects relating to agricultural product transportation.

(c) The determining factor for eligibility for participation in a program established under Chapter 392 or 394 for a project relating to agricultural product transportation is the overall accumulative net reduction in emissions of oxides of nitrogen in a nonattainment area, an affected county, or the clean transportation zone.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(c-2), eff. August 30, 2017.

Sec. 386.052. COMMISSION DUTIES. (a) In administering the

plan established under this chapter and in accordance with the requirements of this chapter, the commission:

(1) shall:

(A) manage plan funds and oversee the plan;

(B) produce guidelines, protocols, and criteria for eligible projects;

(C) develop methodologies for evaluating project cost-effectiveness;

(D) prepare reports regarding the progress and effectiveness of the plan; and

(E) take all appropriate and necessary actions so that emissions reductions achieved through the plan are credited by the United States Environmental Protection Agency to the appropriate emissions reduction objectives in the state implementation plan; and

(2) may hire staff and consultants needed to complete the commission's duties under this section and ensure timely review of applications and reimbursement of grant applicants' eligible project costs.

(b) Appropriate commission objectives include:

(1) achieving maximum reductions in oxides of nitrogen to demonstrate compliance with the state implementation plan;

(2) preventing areas of the state from being in violation of national ambient air quality standards;

(3) achieving cost-saving and multiple benefits by reducing emissions of other pollutants;

(4) achieving reductions of emissions of diesel exhaust from school buses; and

(5) advancing new technologies that reduce oxides of nitrogen and other emissions from facilities and other stationary sources.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 2, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.02, eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 6, eff. September 1, 2009.

Sec. 386.053. GUIDELINES AND CRITERIA. (a) The commission shall adopt grant guidelines and criteria consistent with the requirements of this chapter.

(b) Guidelines must include protocols to calculate projected emissions reductions, project cost-effectiveness, and safeguards to ensure that funded projects generate emissions reductions not otherwise required by state or federal law.

(c) The commission shall make draft guidelines and criteria available to the public and the United States Environmental Protection Agency before the 30th day preceding the date of final adoption and shall hold at least one public meeting to consider public comments on the draft guidelines and criteria before final adoption. The public meeting shall be held in the affected state implementation plan area, and if the guidelines affect more than one state implementation plan area, a public meeting shall be held in each affected state implementation plan area affected by the guidelines.

(d) The commission may propose revisions to the guidelines and criteria adopted under this section as necessary to improve the ability of the plan to achieve its goals. Revisions may include, among other changes, adding additional pollutants, adding stationary engines or engines used in stationary applications, adding vehicles and equipment that use fuels other than diesel, or adjusting eligible program categories, as appropriate, to ensure that incentives established under this chapter achieve the maximum possible emissions reductions. The commission shall make a proposed revision available to the public before the 30th day preceding the date of final adoption of the revision and shall hold at least one public meeting to consider public comments on the proposed revision before final adoption.

(e) Because the legislature finds that the current state of air quality in the state jeopardizes the state's ability to meet federal air quality requirements, the commission and the comptroller may adopt emergency rules under Section 2001.034, Government Code, with abbreviated notice, to carry out any rulemaking necessary to implement this chapter.

(f) Except as provided by Subsection (e), the rulemaking requirements of Chapter 2001, Government Code, do not apply to the

adoption or revision of guidelines and criteria under this section.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 2, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 4, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.03, eff. June 8, 2007.

Sec. 386.054. MONITORING PROCEDURES. (a) The commission shall develop procedures for monitoring whether the emissions reductions projected for projects awarded grants under this chapter are actually achieved. Monitoring procedures may include project reviews and contract requirements that the grant recipient provide information semiannually about the project. If the commission requires an annual report, the report shall contain a minimum amount of information required from a recipient and the report format shall be simple and convenient.
(b) Monitoring and reviewing procedures must be sufficient to enable emissions reductions generated by funded projects to be fully credited to air quality plans.
(c) The commission may revise monitoring and review procedures from time to time as necessary or appropriate to enhance the effectiveness of the plan.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 386.055. AVAILABILITY OF EMISSIONS REDUCTION CREDITS GENERALLY. (a) A project funded under a program established under this chapter may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program.
(b) An emissions reduction generated by a program established under this chapter:
(1) may not be used as a marketable emissions reduction credit or, except as provided by Section 386.056, to offset any emissions reduction obligation; and

(2) may be used to demonstrate conformity with the state implementation plan.

(c) A project involving a new emissions reduction measure that would otherwise generate marketable credits under state or federal emissions reduction credit averaging, banking, or trading programs is not eligible for funding under a program established under this chapter unless:

(1) the project includes the transfer of the reductions that would otherwise be marketable credits to the state implementation plan or the owner or operator as provided by Section 386.056; and

(2) the reductions are permanently retired.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 386.056. AVAILABILITY OF EMISSIONS REDUCTIONS IN CERTAIN NONATTAINMENT AREAS. (a) An owner or operator of a site located in the Houston-Galveston or Dallas-Fort Worth nonattainment area may use emissions reductions generated by a program established under this chapter to offset the requirements of commission rules relating to control of air pollution from oxides of nitrogen if:

(1) the owner or operator of the site contributes to the fund $75,000 for each ton of emissions that is used, not to exceed 25 tons annually and not to exceed one-half ton per day;

(2) the owner or operator of the site demonstrates to the commission's satisfaction that the site will be in full compliance with the commission's emissions reduction rules not later than the fifth anniversary of the date on which the emissions reductions would otherwise be required;

(3) emissions from the site are reduced by at least 80 percent from the established baseline; and

(4) the commission approves a petition by the owner or operator that demonstrates that it is technically infeasible to comply with the commission's emissions reduction requirements above 80 percent.

(b) Funds collected under this section shall be used to generate emissions reductions needed to meet the commission's attainment demonstration.

(c) The commission shall verify that emissions reductions generated from funds collected under this section occur in the same nonattainment area in which the site that purchased the emissions reductions is located.

(d) The commission shall assure that the emissions reductions funded under the programs authorized by this subchapter used to offset commission requirements under this section benefit the community in which the site using the emissions reductions is located. If there are no eligible emissions reduction projects within the community, the commission may authorize projects in an adjacent community. In this subsection, "community" means a justice of the peace precinct.

(e) The commission shall assure that emission reduction credits may be received in the Houston-Galveston nonattainment area for energy efficiency and urban heat island programs in connection with the State Implementation Plan for the eight-hour ozone standard.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1095 (H.B. 2129), Sec. 2, eff. September 1, 2005.

Sec. 386.057. REVIEW AND REPORTING REQUIREMENTS. (a) The commission annually shall review programs established under the plan, including each project funded under the plan, the amount granted for the project, the emissions reductions attributable to the project, and the cost-effectiveness of the project.

(b) Not later than December 1, 2002, and not later than December 1 of each subsequent second year, the commission shall publish and submit to the legislature a biennial plan report. The report must include:

(1) the information included in the annual reviews conducted under Subsection (a);

(2) specific information for individual projects as required by Subsection (c);

(3) information contained in reports received under Sections 386.205, 388.003(e), 388.006, and 391.104; and

(4) a summary of the commission's activities under Section

386.052.

(c) For projects funded as part of the infrastructure program under Subchapter C, the report must:

(1) describe and evaluate:

(A) the infrastructure facilities funded under that subchapter;

(B) the degree to which the funded facilities are supporting on-road or non-road diesel projects;

(C) the amount of fuel or electricity dispensed for each facility; and

(D) associated emissions reductions and cost-effectiveness; and

(2) make a finding regarding the need for additional appropriations from the account to improve the ability of the program to achieve its goals.

(d) The report must:

(1) account for money received, money disbursed as grants, money reserved for grants based on project approvals, and any recommended transfer of money between allocations and must estimate future demand for grant funds under the plan;

(2) describe the overall effectiveness of the plan in delivering the emissions reductions that may be credited to air quality plans;

(3) evaluate the effectiveness of the plan in soliciting and evaluating project applications, providing awards in a timely manner, and monitoring project implementation;

(4) describe adjustments made to project selection criteria and recommend any further needed changes or adjustments to the grant programs, including changes in grant award criteria, administrative procedures, or statutory provisions that would enhance the plan's effectiveness and efficiency;

(5) describe adjustments made to the maximum cost-effectiveness amount and award amount;

(6) evaluate the benefits of addressing additional pollutants as part of the plan; and

(7) include legislative recommendations necessary to improve the effectiveness of the plan.

(e) Not later than October 1 of each year, the Texas Department of Transportation shall report to the commission the following information for all congestion mitigation and air quality improvement

projects in nonattainment areas and affected counties that are planned to be funded, or received initial funding during the preceding 10 years, from money received by the department under this chapter:

(1) projects to mitigate congestion and improve air quality that are currently planned;

(2) projects to mitigate congestion and improve air quality that have been completed;

(3) estimated emissions reductions for all planned and completed congestion mitigation projects; and

(4) estimated cost per ton analysis of reduced emissions of nitrogen oxides, particulate matter, or volatile organic compounds for each congestion mitigation project planned or completed.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 22, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 7, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(d), eff. August 30, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1301 (H.B. 3745), Sec. 1.02, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1043 (H.B. 4472), Sec. 2, eff. September 1, 2021.

SUBCHAPTER C. DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM

Sec. 386.101. DEFINITIONS. In this subchapter:

(1) "Cost-effectiveness" means the total dollar amount expended divided by the total number of tons of oxides of nitrogen emissions reduction attributable to that expenditure. Cost-effectiveness for the program as a whole and for particular projects under the program is calculated as provided by Sections 386.105 and 386.106.

(2) "Fuel cell" means an electrochemical device that uses fuel and oxidant to continuously generate electricity.

(3) "Motor vehicle" means a self-propelled device designed

for transporting persons or property on a public highway that is required to be registered under Chapter 502, Transportation Code.

(4) "Non-road diesel" means a vehicle or piece of equipment, excluding a motor vehicle or on-road diesel, that is powered by a non-road engine, including:

(A) non-road nonrecreational equipment and vehicles;

(B) construction equipment;

(C) locomotives;

(D) marine vessels; and

(E) other high-emitting diesel engine categories established by the commission.

(5) "Non-road engine" means an internal combustion engine that is:

(A) in or on a piece of equipment that is self-propelled or that propels itself and performs another function, excluding a vehicle that is used solely for competition;

(B) in or on a piece of equipment that is intended to be propelled while performing its function; or

(C) designed to be and capable of being carried or moved from one location to another.

(6) "On-road diesel" means an on-road diesel-powered motor vehicle that has a gross vehicle weight rating of 8,500 pounds or more.

(7) "Program" means the diesel emissions reduction incentive program established under this subchapter.

(8) "Qualifying fuel" includes any liquid or gaseous fuel or additives registered or verified by the United States Environmental Protection Agency that is ultimately dispensed into a motor vehicle or on-road or non-road diesel that provides reductions of emissions of oxides of nitrogen beyond reductions required by state or federal law.

(9) "Repower" means to replace an old engine powering an on-road or non-road diesel with a new engine, a used engine, a remanufactured engine, or electric motors, drives, or fuel cells.

(10) "Retrofit" means to equip an engine and fuel system with new emissions-reducing parts or technology verified by the United States Environmental Protection Agency after manufacture of the original engine and fuel system.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1,

2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 3, eff. June 20, 2003.

Sec. 386.102. PROGRAM. (a) The commission shall establish and administer a diesel emissions reduction incentive program. Under the program, the commission shall provide grants for eligible projects to offset the incremental cost of projects that reduce emissions of oxides of nitrogen from high-emitting diesel sources in nonattainment areas and affected counties of the state. The commission shall determine the eligibility of projects.

(b) Projects that may be considered for a grant under the program include:

(1) purchase or lease of on-road or non-road diesels;

(2) emissions-reducing retrofit projects for on-road or non-road diesels;

(3) emissions-reducing repower projects for on-road or non-road diesels;

(4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;

(5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower emissions of oxides of nitrogen;

(6) use of qualifying fuel;

(7) implementation of infrastructure projects; and

(8) replacement of on-road or non-road diesels with newer on-road or non-road diesels.

(c) A project listed in Subsection (b) is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board

policy of a public or private entity.

(e) To improve the success of the program the commission:

(1) shall establish cost-effective limits for grants awarded under the program to an owner or operator of a locomotive or marine vessel that are lower than the cost-effectiveness limits applied to other emissions reductions grants;

(2) shall determine the maximum amount of reductions available from the locomotive and marine sectors and develop strategies to facilitate the maximum amount of reductions in these sectors; and

(3) shall include in the report required by Section 386.057(b) that is due not later than December 1, 2006, an analysis of the cost-effectiveness of the grants in these sectors.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 4, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 6, eff. September 1, 2005.

Sec. 386.103. APPLICATION FOR GRANT. (a) Any person as defined by Section 382.003 that owns one or more on-road or non-road diesels that operate primarily within a nonattainment area or affected county of this state or that otherwise contributes to the state inventory of emissions of oxides of nitrogen may apply for a grant under the program. The commission may adopt guidelines to allow a person other than the owner to apply for and receive a grant in order to improve the ability of the program to achieve its goals.

(b) An application for a grant under this subchapter must be made on an application provided by the commission and must contain information required by the commission, including:

(1) a detailed description of the proposed project;

(2) information necessary for the commission to determine whether the project meets eligibility requirements for the type of project proposed, including a statement of the amounts of any other public financial assistance the project will receive; and

(3) other information the commission may require.

(c) To reduce the administrative burden for the commission and

applicants, the commission may streamline the application process by:

(1) reducing data entry and the copying and recopying of applications; and

(2) developing, maintaining, and periodically updating a system to accept applications electronically through the commission's Internet website.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 5, eff. June 20, 2003.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(d-1), eff. August 30, 2017.

Sec. 386.104. ELIGIBILITY REQUIREMENTS. (a) The commission shall establish criteria for setting priorities for projects eligible to receive grants under this subchapter. The commission shall review and may modify the criteria and priorities as appropriate.

(b) A proposed project as described in Section 386.102 must meet the requirements of this section to be eligible for a grant under the program.

(c) Except as otherwise provided by this subsection, for a proposed project as described by Section 386.102(b), not less than 75 percent of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state. The commission may set the minimum percentage of vehicle miles traveled or hours of operation required to take place in a nonattainment area or affected county at a percentage and for a period that is different from the percentage and period specified by this subsection, provided that the commission may not set the minimum percentage at a level that is less than 55 percent. The commission may allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside a nonattainment area or affected county to count towards the percentage of use requirement in this subsection.

(c-1) For a proposed project involving a marine vessel or engine, the vessel or engine must be operated in the intercoastal waterways or bays adjacent to a nonattainment area or affected county

of this state for a sufficient percentage of time over the lifetime of the project, as determined by the commission, to meet the cost-effectiveness requirements of Section 386.105. The percentage determined by the commission under this subsection may not be less than 55 percent.

(c-2) For a proposed project involving non-road equipment used for natural gas recovery purposes, the equipment must be operated in a nonattainment area or affected county for a sufficient amount of use over the lifetime of the project, as determined by the commission, to meet the cost-effectiveness requirements of Section 386.105.

(d) Each proposed project must meet the cost-effectiveness requirements of Sections 386.105 and 386.106.

(e) A proposed repower project must exceed commission requirements relating to baseline emissions levels of the engines being replaced under the project.

(f) A proposed retrofit, repower, replacement, or add-on equipment project must document, in a manner acceptable to the commission, a reduction in emissions of oxides of nitrogen of at least 30 percent compared with the baseline emissions adopted by the commission for the relevant engine year and application. After study of available emissions reduction technologies and after public notice and comment, the commission may revise the minimum percentage reduction in emissions of oxides of nitrogen required by this subsection to improve the ability of the program to achieve its goals.

(f-1) The commission may establish minimum percentage reduction standards alternative to the standards established under Subsection (f) as an incentive for the conversion of heavy-duty diesel on-road vehicle engines or non-road engines to operate under a dual-fuel configuration that uses natural gas and diesel fuels through an alternative fuel conversion system certified by the United States Environmental Protection Agency or the California Air Resources Board. In determining the emissions rate of the converted vehicle and engine to compute the emissions reductions that can be attributed to the conversion system, the commission may take into account whether the emissions certification requirements for the conversion system prevent fully accounting for the emissions reductions. If the commission determines it to be necessary and appropriate, the commission may consider under this subsection certified engine test

information that demonstrates reductions of emissions of nitrogen oxides and other pollutants and other information to verify the emissions reductions.

(g) If a baseline emissions standard does not exist for on-road or non-road diesels in a particular category, the commission, for purposes of this subchapter, shall establish an appropriate baseline emissions level for comparison purposes.

(h) The commission may approve payments to offset the incremental cost, over the expected lifetime of the motor vehicle or on-road or non-road diesel, of the use of qualifying fuel in a motor vehicle or on-road or non-road diesel if the proposed project as a whole, including the incremental fuel cost, meets the requirements of this subchapter. The commission shall develop an appropriate method for converting incremental fuel costs over the lifetime of the motor vehicle or on-road or non-road diesel into an initial cost for purposes of determining cost-effectiveness as required by Section 386.105.

(i) If the commission determines that a heavy-duty motor vehicle or engine under this chapter must be decommissioned, the commission shall require the decommissioning to be carried out by crushing the vehicle, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the commission that permanently removes the vehicle from operation in this state. The commission shall provide a means for an applicant to propose an alternative method for complying with the requirements of this subsection. The commission shall enforce the requirements of this subsection.

(j) The executive director may waive any eligibility requirements established under this section on a finding of good cause, which may include a waiver for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances.

(k) The commission shall consider an application under this chapter for the replacement of a vehicle that has been owned, leased, or otherwise commercially financed by the applicant. If the commission determines that a heavy-duty motor vehicle or engine that is leased or otherwise commercially financed must be decommissioned, the commission shall ensure that the applicant has a legal right to decommission the vehicle or engine before awarding a grant to the applicant.

(l) The commission shall consider an application for a vehicle replacement or a fleet expansion for a project with an activity life of five years or more, or 400,000 miles, whichever is earlier.

(m) The commission shall provide a form that minimizes, to the maximum extent possible, the amount of paperwork required.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 6, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.04, eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 16, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 835 (H.B. 3399), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 4, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(d-2), eff. August 30, 2017.

Acts 2019, 86th Leg., R.S., Ch. 766 (H.B. 1346), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 1043 (H.B. 4472), Sec. 3, eff. September 1, 2021.

Sec. 386.105. CALCULATION OF COST-EFFECTIVENESS. (a) In calculating cost-effectiveness, one-time grants of money at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project by the commission, taking into account the interest rate on bonds, interest earned by state funds, and other factors the commission considers appropriate.

(b) The commission shall establish reasonable methodologies for evaluating project cost-effectiveness consistent with Subsection (a) and with accepted methods.

(c) The commission shall develop protocols for calculating oxides of nitrogen emissions reductions not otherwise required by state or federal law in nonattainment areas and affected counties of this state from representative project types over the life of the

projects.

(d) The commission may include in cost-effectiveness determinations only reductions in oxides of nitrogen emissions that are achieved in nonattainment areas and affected counties of this state.

(e) The commission may allow for the apportionment of credits associated with a project between the plan and another program or entity if the part of the credit assigned to the program that is part of the plan still meets any applicable cost-effectiveness criteria.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 7, eff. June 20, 2003.

Sec. 386.106. COST-EFFECTIVENESS CRITERIA; DETERMINATION OF GRANT AMOUNT. (a) Except as otherwise provided by statute, the commission may not award a grant that, net of taxes, provides an amount that exceeds the incremental cost of the proposed project.

(b) The commission shall adopt guidelines for capitalizing incremental lease costs so those costs may be offset by a grant under this subchapter.

(c) In determining the amount of a grant under this subchapter, the commission shall reduce the incremental cost of a proposed new purchase, lease, retrofit, repower, or add-on equipment project by the value of any existing financial incentive that directly reduces the cost of the proposed project, including tax credits or deductions, other grants, or any other public financial assistance.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 8, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.05, eff. June 8, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 5, eff. June 14, 2013.

Sec. 386.107. ADJUSTMENT TO MAXIMUM COST-EFFECTIVENESS AMOUNT AND AWARD AMOUNT. After study of available emissions reduction

technologies and costs and after public notice and comment, the commission may change the values of the maximum grant award criteria established in Section 386.106 to account for inflation or to improve the ability of the program to achieve its goals.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e), eff. August 30, 2017.

Sec. 386.108. INFRASTRUCTURE PROJECTS. (a) The commission shall provide funding under Section 386.252(a) for infrastructure projects.

(b) To implement the requirement of Subsection (a), the commission shall:

(1) solicit applications for a balanced mix of projects involving fueling and electrification infrastructure that is linked to motor vehicle and on-road and non-road diesel projects and consistent with program goals;

(2) coordinate infrastructure projects with motor vehicle and on-road and non-road diesel projects representing a broad range of fuels, technologies, and applications as appropriate and consistent with the goals of this chapter;

(3) adopt guidelines and criteria for infrastructure projects to be funded under the program; and

(4) oversee, monitor, and evaluate the use of grants awarded under this program and report on the effectiveness of this grant program in relation to the purposes and goals of this chapter.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 28 (S.B. 527), Sec. 2, eff. September 1, 2011.

Sec. 386.109. ELIGIBLE INFRASTRUCTURE PROJECTS. (a) The commission may consider for funding under Section 386.108:

(1) the purchase and installation at a site of equipment

that is designed primarily to dispense qualifying fuel, other than standard gasoline or diesel, or the purchase of on-site mobile fueling equipment;

(2) infrastructure projects, including auxiliary power units, designed to dispense electricity to:

(A) motor vehicles;

(B) on-road and non-road diesels; and

(C) marine vessels;

(3) a project that involves a technology that allows a vehicle to replace with electric power, while the vehicle is parked, the power normally supplied by the vehicle's internal combustion engine; and

(4) a project to reduce air pollution and engine idling by relieving congestion through rail relocation or improvement at a rail intersection that is located in a nonattainment or near nonattainment area.

(b) The commission may provide funding to other state agencies to implement projects under Subsection (a)(3), including funding for the lease, purchase, or installation of idle reduction technologies and facilities at rest areas and other public facilities on major highway transportation routes located in areas eligible for funding or for marine vessels operating on water routes eligible for funding. Funding under this subsection may include reasonable operational costs determined by the commission to be needed for the initial start-up and proper operation of the idle reduction technologies. The state agency leasing, owning, or operating the idle reduction facility constructed with funds provided under this subsection may, but is not required to, charge reasonable fees for the provision of idle reduction services provided that those fees are used to directly offset the cost of providing the services.

(c) In evaluating a request for funding of an eligible infrastructure project, the commission shall encourage the use of a technology that allows a vehicle to replace with electric power, while the vehicle is parked, the power normally supplied by the vehicle's internal combustion engine at the state's ports and border crossings in affected areas.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.06, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1165 (H.B. 160), Sec. 2, eff. June 15, 2007.

Reenacted by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.012, eff. September 1, 2009.

Sec. 386.110. APPLICATION PACKAGE FOR INFRASTRUCTURE PROJECTS. (a) The commission shall develop a simple, standardized application package for infrastructure project grants under this subchapter. The package must include:

(1) an application form;

(2) a brief description of:

(A) the program;

(B) the projects that are eligible for available funding;

(C) the selection criteria and evaluation process; and

(D) the required documentation;

(3) the name of a person or office to contact for more information;

(4) an example of the contract that an applicant will be required to execute before receiving a grant; and

(5) any other information the commission considers useful to inform the applicant and expedite the application process.

(b) The application form shall require as much information as the commission determines is necessary to properly evaluate each project but shall otherwise minimize the information required.

(c) The commission may not require an applicant, as part of the application process, to calculate tons of emissions reduced or cost-effectiveness.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 386.111. APPLICATION REVIEW PROCEDURES. (a) The commission shall review an application for a grant for a project authorized under this subchapter, including an application for a grant for an infrastructure project, immediately on receipt of the

application. If the commission determines that an application is incomplete, the commission shall notify the applicant with an explanation of what is missing from the application. The commission shall evaluate the completed application according to the appropriate project criteria. Subject to available funding, the commission shall make a final determination on an application as soon as possible.

(b) The commission shall make every effort to expedite the application review process and to award grants to qualified projects in a timely manner. To the extent possible, the commission shall coordinate project review and approval with any timing constraints related to project purchases or installations to be made by an applicant.

(c) The commission may deny an application for a project that does not meet the applicable project criteria or that the commission determines is not made in good faith, is not credible, or is not in compliance with this chapter and the goals of this chapter.

(d) Subject to availability of funds, the commission shall award a grant under this subchapter in conjunction with the execution of a contract that obligates the commission to make the grant and the recipient to perform the actions described in the recipient's grant application. The contract must incorporate provisions for recapturing grant money in proportion to any loss of emissions reductions or underachievement in dispensing qualifying fuel compared with the volume of emissions reductions or amount of fuel dispensed that was projected in awarding the grant. Grant money recaptured under the contract provision shall be deposited in the fund and reallocated for other projects under this subchapter.

(e) An applicant may seek reimbursement for qualifying equipment installed after the effective date of this program.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 7, eff. September 1, 2005.

Sec. 386.112. ON-ROAD DIESEL PURCHASE OR LEASE INCENTIVE. (a) The commission shall develop a purchase or lease incentive program for new on-road diesels and shall adopt rules necessary to implement

the program and to reimburse a purchaser or lessee of a new on-road diesel that is eligible for reimbursement of incremental costs under this subchapter.

(b) The program shall authorize statewide incentives for the reimbursement of incremental costs for the purchase or lease, according to the schedule provided by Section 386.113, of new on-road diesels that are certified by the United States Environmental Protection Agency or the California Air Resources Board to an emissions standard provided by Section 386.113 if the purchaser or lessee of the on-road diesel agrees to register the vehicle in this state and to operate the on-road diesel in this state for not less than 75 percent of the on-road diesel's annual mileage.

(c) Only one incentive will be provided for each new on-road diesel. The incentive shall be provided to the purchaser if the on-road diesel is not purchased for the purpose of leasing the on-road diesel to another person, or to the lessee and not to the purchaser if the on-road diesel is purchased for the purpose of leasing the on-road diesel to another person. A lease incentive for a new on-road diesel shall be prorated based on an eight-year lease term.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 9, eff. June 20, 2003.

Sec. 386.113. ON-ROAD DIESEL PURCHASE OR LEASE INCENTIVE SCHEDULE. A new on-road diesel is eligible for reimbursement of incremental costs according to the following schedule:

Incentive emissions standard (oxides of nitrogen)		Reimbursement amount
Date of manufacture (2001)	Date of manufacture (10/1/02-9/30/06)	
2.5 g/bhp-hr NOx	1.2 g/bhp-hr NOx	up to $15,000
1.5 g/bhp-hr NOx	0.5 g/bhp-hr NOx	up to $25,000
0.0 g/bhp-hr NOx	0.0 g/bhp-hr NOx	up to $25,000

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 386.114. MODIFICATION OF INCENTIVE EMISSIONS STANDARDS. After evaluating new technologies and after public notice and comment, the commission may change the incentive emissions standards established by Section 386.113 to improve the ability of the program to achieve its goals.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e), eff. August 30, 2017.

Sec. 386.115. MODIFICATION OF VEHICLE ELIGIBILITY. After evaluating the availability of vehicles meeting the emissions standards and after public notice and comment, the commission may expand the program to include other on-road vehicles, regardless of fuel type used, that meet the emissions standards, have a gross vehicle weight rating of greater than 8,500 pounds, and are purchased or leased in lieu of a new on-road diesel.

Added by Acts 2003, 78th Leg., ch. 1331, Sec. 10, eff. June 20, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e), eff. August 30, 2017.

Sec. 386.116. SMALL BUSINESS INCENTIVES. (a) In this section, "small business" means a business owned by a person who:

(1) owns and operates not more than five vehicles, one of which is:

(A) an on-road diesel; or

(B) a non-road diesel; and

(2) has owned the vehicle described by Subdivision (1)(A) or (B) for more than two years.

(b) The commission shall develop a method of providing fast and simple access to grants under this subchapter for a small business.

The method must:

(1) create a separate small business grant program; or

(2) require the commission to give special consideration to small businesses when implementing another program established under this subchapter.

(c) The commission shall publicize and promote the availability of grants under this subchapter for small businesses to encourage the use of vehicles that produce fewer emissions.

(d) The commission shall include in the biennial plan report required by Section 386.057(b) a report of commission actions and results under this section.

Added by Acts 2003, 78th Leg., ch. 1331, Sec. 10, eff. June 20, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 8, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-1), eff. August 30, 2017.

Sec. 386.117. REBATE GRANTS. (a) The commission shall adopt a process for awarding grants under this subchapter in the form of rebates to streamline the grant application, contracting, reimbursement, and reporting processes for certain projects. The process adopted under this section must:

(1) designate certain types of projects, such as repowers, replacements, and retrofits, as eligible for rebates;

(2) project standardized oxides of nitrogen emissions reductions for each designated project type;

(3) assign a standardized rebate amount for each designated project type;

(4) allow for processing rebates on an ongoing first-come, first-served basis; and

(5) consolidate, simplify, and reduce the administrative work for applicants and the commission associated with grant application, contracting, reimbursement, and reporting processes for designated project types.

(b) The commission may limit or expand the designated project types as necessary to further the goals of the program.

(c) The commission may award rebate grants as a pilot project

for a specific region or may award the grants statewide.

(d) The commission may administer the rebate grants or may designate another entity to administer the grants.

(e) The commission shall:

(1) investigate the requirements for establishing an Internet-based application process for rebate grants and report those requirements to the legislature not later than December 31, 2007; or

(2) implement an Internet-based application process for rebate grants not later than June 1, 2008.

(f) The commission or its designee shall notify potential applicants of any changes to the rebate grant process by its e-mail list service and posting those changes on its Internet website at least 30 days before the changes become effective.

Added by Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 9, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.07, eff. June 8, 2007.

SUBCHAPTER D. MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM

Sec. 386.151. DEFINITIONS. In this subchapter:

(1) "Light-duty motor vehicle" means a motor vehicle with a gross vehicle weight rating of less than 10,000 pounds.

(2) "Motor vehicle" means a self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Chapter 502, Transportation Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2), eff. August 30, 2017.

Sec. 386.152. APPLICABILITY. The provisions of this subchapter relating to a lessee do not apply to a person who rents or leases a light-duty motor vehicle for a term of 30 days or less.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2), eff. August 30, 2017.

Sec. 386.153. COMMISSION DUTIES REGARDING LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM. (a) The commission shall develop a purchase or lease incentive program for new light-duty motor vehicles and shall adopt rules necessary to implement the program.

(b) The program shall authorize statewide incentives for the purchase or lease of new light-duty motor vehicles powered by compressed natural gas, liquefied petroleum gas, or hydrogen fuel cell or other electric drives for a purchaser or lessee who agrees to register and operate the vehicle in this state for a minimum period of time to be established by the commission.

(c) Only one incentive will be provided for each new light-duty motor vehicle. The incentive shall be provided to the lessee and not to the purchaser if the motor vehicle is purchased for the purpose of leasing the vehicle to another person.

(d) The commission by rule may revise the standards for the maximum unloaded vehicle weight rating and gross vehicle weight rating of an eligible vehicle to ensure that all of the vehicle weight configurations available under one general vehicle model may be eligible for an incentive.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2), eff. August 30, 2017.

Sec. 386.154. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE REQUIREMENTS. (a) A new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas is eligible for a $5,000 incentive if the vehicle:

(1) has four wheels;

(2) was originally manufactured to comply with and has been certified by an original equipment manufacturer or intermediate or final state vehicle manufacturer as complying with, or has been altered to comply with, federal motor vehicle safety standards, state emissions regulations, and any additional federal or state regulations applicable to vehicles powered by compressed natural gas or liquefied petroleum gas;

(3) was manufactured for use primarily on public streets, roads, and highways;

(4) has a dedicated or bi-fuel compressed natural gas or

liquefied petroleum gas fuel system:

(A) installed prior to first sale or within 500 miles of operation of the vehicle following first sale; and

(B) with a range of at least 125 miles as estimated, published, and updated by the United States Environmental Protection Agency;

(5) has, as applicable, a:

(A) compressed natural gas fuel system that complies with the:

(i) 2013 NFPA 52 Vehicular Gaseous Fuel Systems Code; and

(ii) American National Standard for Basic Requirements for Compressed Natural Gas Vehicle (NGV) Fuel Containers, commonly cited as "ANSI/CSA NGV2"; or

(B) liquefied petroleum gas fuel system that complies with:

(i) the 2011 NFPA 58 Liquefied Petroleum Gas Code; and

(ii) Section VII of the 2013 ASME Boiler and Pressure Vessel Code; and

(6) was acquired on or after September 1, 2013, or a later date established by the commission, by the person applying for the incentive under this subsection and for use or lease by that person and not for resale.

(b) If the commission determines that an updated version of a code or standard described by Subsection (a)(5) is more stringent than the version of the code or standard described by Subsection (a)(5), the commission by rule may provide that a vehicle for which a person applies for an incentive under Subsection (a) is eligible for the incentive only if the vehicle complies with the updated version of the code or standard.

(c) The incentive under Subsection (a) is limited to 1,000 vehicles for each state fiscal biennium.

(d) A new light-duty motor vehicle powered by an electric drive is eligible for a $2,500 incentive if the vehicle:

(1) has four wheels;

(2) was manufactured for use primarily on public streets, roads, and highways;

(3) has not been modified from the original manufacturer's specifications;

(4) has a maximum speed capability of at least 55 miles per hour;

(5) is propelled to a significant extent by an electric motor that draws electricity from a hydrogen fuel cell or from a battery that:

(A) has a capacity of not less than four kilowatt hours; and

(B) is capable of being recharged from an external source of electricity; and

(6) was acquired on or after September 1, 2013, or a later date as established by the commission, by the person applying for the incentive under this subsection and for use or lease by that person and not for resale.

(e) The incentive under Subsection (d) is limited to 2,000 vehicles for each state fiscal biennium.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2), eff. August 30, 2017.

Sec. 386.155. MANUFACTURER'S REPORT. (a) At the beginning of but not later than July 1 of each year preceding the vehicle model year, a manufacturer of motor vehicles, an intermediate or final state vehicle manufacturer, or a manufacturer of compressed natural gas or liquefied petroleum gas systems shall provide to the commission a list of the new vehicle or natural gas or liquefied petroleum gas systems models that the manufacturer intends to sell in this state during that model year that meet the incentive requirements established under Section 386.154. The manufacturer or installer may supplement the list provided to the commission under this section as necessary to include additional new vehicle models the manufacturer intends to sell in this state during the model year.

(b) The commission may supplement the information provided under Subsection (a) with additional information on available vehicle models, including information provided by manufacturers or installers of systems to convert new motor vehicles to operate on natural gas or liquefied petroleum gas before sale as a new vehicle or within 500 miles of operation of the vehicle following first sale.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2), eff. August 30, 2017.

Sec. 386.156. LIST OF ELIGIBLE MOTOR VEHICLES. (a) On August 1 of each year the commission shall publish a list of new motor vehicle models eligible for inclusion in an incentive under this subchapter. The commission shall publish supplements to that list as necessary to include additional new vehicle models.

(b) The commission shall publish the list of eligible motor vehicle models on the commission's Internet website.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2), eff. August 30, 2017.

Sec. 386.157. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE. (a) A person who purchases or leases a new light-duty motor vehicle described by Section 386.154 and listed under Section 386.156(a) is eligible to apply for an incentive under this subchapter.

(b) A lease incentive for a new light-duty motor vehicle shall be prorated based on a three-year lease term.

(c) To receive money under an incentive program provided by this subchapter, the purchaser or lessee of a new light-duty motor vehicle who is eligible to apply for an incentive under this subchapter shall apply for the incentive in the manner provided by law or by rule of the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2), eff. August 30, 2017.

Sec. 386.158. COMMISSION TO ACCOUNT FOR MOTOR VEHICLE PURCHASE OR LEASE INCENTIVES. (a) The commission by rule shall develop a method to administer and account for the motor vehicle purchase or lease incentives authorized by this subchapter and to pay incentive money to the purchaser or lessee of a new motor vehicle, on application of the purchaser or lessee as provided by this subchapter.

(b) The commission shall develop and publish forms and instructions for the purchaser or lessee of a new motor vehicle to use in applying to the commission for an incentive payment under this

subchapter. The commission shall make the forms available to new motor vehicle dealers and leasing agents. Dealers and leasing agents shall make the forms available to their prospective purchasers or lessees.

(c) The commission may require the submission of forms and documentation as needed to verify eligibility for an incentive under this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2), eff. August 30, 2017.

Sec. 386.159. PURCHASE OR LEASE INCENTIVES INFORMATION. (a) The commission shall establish a toll-free telephone number available to motor vehicle dealers and leasing agents for the dealers and agents to call to verify that incentives are available. The commission may provide for issuing verification numbers over the telephone line.

(b) Reliance by a dealer or leasing agent on information provided by the commission is a complete defense to an action involving or based on eligibility of a vehicle for an incentive or availability of vehicles eligible for an incentive.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2), eff. August 30, 2017.

Sec. 386.160. RESERVATION OF INCENTIVES. The commission may provide for dealers and leasing agents to reserve for a limited time period incentives for vehicles that are not readily available and must be ordered, if the dealer or leasing agent has a purchase or lease order signed by an identified customer.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2), eff. August 30, 2017.

SUBCHAPTER D-1. SEAPORT AND RAIL YARD AREAS EMISSIONS REDUCTION PROGRAM

Sec. 386.181. DEFINITIONS; RULES. (a) In this subchapter:

(1) "Cargo handling equipment" means any heavy-duty non-

road, self-propelled vehicle or land-based equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods.

(2) "Drayage truck" means a heavy-duty on-road or non-road vehicle that is used for drayage activities and that operates in or transgresses through a seaport or rail yard for the purpose of loading, unloading, or transporting cargo, including transporting empty containers and chassis.

(3) "Repower" means to replace an old engine powering a vehicle with a new engine, a used engine, a remanufactured engine, or electric motors, drives, or fuel cells.

(b) The commission may include more specific definitions in the rules or guidelines developed to implement the program established by this subchapter in order to reduce emissions in and around seaports in a nonattainment area.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 13, eff. June 14, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(f-1), eff. August 30, 2017.
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(f-2), eff. August 30, 2017.

Sec. 386.182. COMMISSION DUTIES. (a) The commission shall:

(1) develop a purchase incentive program to encourage owners to:

(A) replace older drayage trucks and cargo handling equipment with newer drayage trucks and cargo handling equipment; or

(B) repower drayage trucks and cargo handling equipment; and

(2) adopt guidelines necessary to implement the program described by Subdivision (1).

(b) The commission by rule and guideline shall establish criteria for the engines and the models of drayage trucks and cargo handling equipment that are eligible for inclusion in an incentive program under this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 13, eff. June 14, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(g), eff. August 30, 2017.

Sec. 386.183. DRAYAGE TRUCK AND CARGO HANDLING EQUIPMENT PURCHASE INCENTIVE. (a) To be eligible for an incentive under this subchapter, a person must:

(1) purchase a replacement drayage truck, piece of cargo handling equipment, or engine that under Subsection (a-1)(1)(A) or (2)(A), as applicable, and the guidelines adopted by the commission under Section 386.182 is eligible for inclusion in the program for an incentive under this subchapter; and

(2) agree to:

(A) register the drayage truck in this state, if the replacement or repowered vehicle is an on-road drayage truck;

(B) operate the replacement or repowered drayage truck or cargo handling equipment in and within a maximum distance established by the commission of a seaport or rail yard in a nonattainment area of this state for not less than 50 percent of the truck's or equipment's annual mileage or hours of operation, as determined by the commission; and

(C) permanently remove the drayage truck, cargo handling equipment, or engine replaced under the program from operation in a nonattainment area of this state by destroying the engine in accordance with guidelines established by the commission and, if the incentive is for a replacement drayage truck or cargo handling equipment, scrapping the truck or equipment after the purchase of the replacement truck or equipment in accordance with guidelines established by the commission.

(a-1) To be eligible for purchase under this program:

(1) a drayage truck or cargo handling equipment must:

(A) be powered by an electric motor or contain an engine certified to the current federal emissions standards applicable to that type of engine, as determined by the commission; and

(B) emit oxides of nitrogen at a rate that is at least 25 percent less than the rate at which the truck or equipment being replaced under the program emits such pollutants; and

(2) an engine repowering a drayage truck or cargo handling

equipment must:

(A) be an electric motor or an engine certified to the current federal emissions standards applicable to that type of engine, as determined by the commission; and

(B) emit oxides of nitrogen at a rate that is at least 25 percent less than the rate at which the former engine in the truck or equipment being repowered under the program emits such pollutants.

(b) To receive money under an incentive program provided by this subchapter, the purchaser of a drayage truck, piece of cargo handling equipment, or engine eligible for inclusion in the program must apply for the incentive in the manner provided by law, rule, or guideline of the commission.

(c) Not more than one incentive may be provided for each drayage truck or piece of cargo handling equipment purchased or repowered.

(d) An incentive provided under this subchapter may be used to fund not more than 80 percent of, as applicable, the purchase price of:

(1) the drayage truck or cargo handling equipment; or

(2) the engine and any other eligible costs associated with repowering the drayage truck or cargo handling equipment, as determined by the commission.

(e) The commission shall establish procedures to verify that a person who receives an incentive:

(1) has operated in a seaport or rail yard and owned or leased the drayage truck or cargo handling equipment to be replaced or repowered for at least two years prior to receiving the grant; and

(2) as applicable:

(A) after purchase of the replacement drayage truck or cargo handling equipment, permanently destroys the engine and scraps the truck or equipment replaced under the program in accordance with guidelines established by the commission; or

(B) after repowering the drayage truck or cargo handling equipment, permanently destroys the engine that was contained in the truck or equipment in accordance with guidelines established by the commission.

(f) The commission may modify this program to improve its effectiveness or further the goals of Subchapter B.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 13,

eff. June 14, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(g-1), eff. August 30, 2017.
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(g-2), eff. August 30, 2017.

SUBCHAPTER E. EVALUATION OF UTILITY COMMISSION ENERGY EFFICIENCY PROGRAMS

Sec. 386.205. EVALUATION OF UTILITY COMMISSION ENERGY EFFICIENCY PROGRAMS. In cooperation with the laboratory, the utility commission shall provide an annual report to the commission that, by county, quantifies the reductions of energy demand, peak loads, and associated emissions of air contaminants achieved from programs implemented under Section 39.905, Utilities Code.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 15, eff. June 14, 2013.
Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.28, eff. September 1, 2019.

SUBCHAPTER F. TEXAS EMISSIONS REDUCTION PLAN FUND AND ACCOUNT

Sec. 386.250. TEXAS EMISSIONS REDUCTION PLAN FUND. (a) The Texas emissions reduction plan fund is established as a trust fund outside the state treasury to be held by the comptroller and administered by the commission as trustee. Money in the fund may be spent without legislative appropriation and may be used only as provided by this chapter. Interest and other earnings on the balance of the fund shall be credited to the fund.

(b) The fund consists of:

(1) the amount of money deposited to the credit of the fund under:

(A) Section 386.056;

(B) Sections 151.0515 and 152.0215, Tax Code; and

(C) Sections 501.138, 502.358, and 548.5055,

Transportation Code; and

(2) grant money recaptured under Section 386.111(d) and Chapter 391.

(c) Not later than the 30th day after the last day of each state fiscal biennium, the commission shall transfer the unencumbered balance of the fund remaining on the last day of the state fiscal biennium to the credit of the state highway fund for use by the Texas Department of Transportation for projects described by Section 386.051(b)(19).

Added by Acts 2019, 86th Leg., R.S., Ch. 1301 (H.B. 3745), Sec. 1.04, eff. September 1, 2021.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 1043 (H.B. 4472), Sec. 4, eff. September 1, 2021.

Sec. 386.251. TEXAS EMISSIONS REDUCTION PLAN ACCOUNT. (a) The Texas emissions reduction plan account is an account in the state treasury.

(b) The account is administered by the commission for the benefit of the plan established under this chapter. The account is exempt from the application of Section 403.095, Government Code. Interest earned on the account shall be credited to the account.

(c) The account consists of its accumulated balance.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 10, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.08, eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 8, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1296 (H.B. 2357), Sec. 244, eff. January 1, 2012.

Acts 2019, 86th Leg., R.S., Ch. 1301 (H.B. 3745), Sec. 1.05, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1043 (H.B. 4472), Sec. 5, eff. September 1, 2021.

Sec. 386.252. USE OF FUND AND ACCOUNT. (a) Money in the fund and account may be used only to implement and administer programs established under the plan. Subject to the reallocation of funds by the commission under Subsection (h) and after remittance to the state highway fund under Subsection (a-1), money from the fund and account to be used for the programs under Section 386.051(b) shall initially be allocated as follows:

(1) four percent may be used for the clean school bus program under Chapter 390;

(2) eight percent total may be used between the Texas hydrogen infrastructure, vehicle, and equipment grant program established under Subchapter G and the new technology implementation grant program under Chapter 391, from which at least $1 million will be set aside for electricity storage projects related to renewable energy and not more than $8 million may be used for the Texas hydrogen infrastructure, vehicle, and equipment grant program;

(3) five percent may be used for the Texas clean fleet program under Chapter 392;

(4) not more than $3 million may be used by the commission to fund a regional air monitoring program in commission Regions 3 and 4 to be implemented under the commission's oversight, including direction regarding the type, number, location, and operation of, and data validation practices for, monitors funded by the program through a regional nonprofit entity located in North Texas having representation from counties, municipalities, higher education institutions, and private sector interests across the area;

(5) 7.5 percent may be used for the Texas natural gas vehicle grant program under Chapter 394;

(6) not more than $6 million may be used for the Texas alternative fueling facilities program under Chapter 393, of which a specified amount may be used for fueling stations to provide natural gas fuel, except that money may not be allocated for the Texas alternative fueling facilities program for the state fiscal year ending August 31, 2019;

(7) not more than $750,000 may be used each year to support research related to air quality as provided by Chapter 387;

(8) not more than $200,000 may be used for a health effects study;

(9) at least $6 million but not more than 15 percent may be used by the commission for administrative costs, including all direct and indirect costs for administering the plan, costs for conducting outreach and education activities, and costs attributable to the review or approval of applications for marketable emissions reduction credits;

(10) six percent may be used by the commission for the seaport and rail yard areas emissions reduction program established under Subchapter D-1;

(11) 2.5 percent may be used for the light-duty motor vehicle purchase or lease incentive program established under Subchapter D;

(12) not more than $500,000 may be used by the commission to contract with the Energy Systems Laboratory at the Texas A&M Engineering Experiment Station annually for the development and annual computation of creditable statewide emissions reductions for the state implementation plan that are obtained through:

(A) wind and other renewable energy resources;

(B) energy efficiency programs administered by the Public Utility Commission of Texas or the State Energy Conservation Office; or

(C) the implementation of advanced building energy codes;

(13) not more than $500,000 may be used for studies of or pilot programs for incentives for port authorities located in nonattainment areas or affected counties to encourage cargo movement that reduces emissions of nitrogen oxides and particulate matter; and

(14) the balance is to be used by the commission for the diesel emissions reduction incentive program under Subchapter C as determined by the commission.

(a-1) The commission shall remit not less than 35 percent of the amount deposited to the credit of the fund to the state highway fund for use by the Texas Department of Transportation for projects described by Section 386.051(b)(19).

(b) Money in the fund and account may be used by the commission for programs under Sections 386.051(b)(13), (b)(14), and (b-1).

(c) If the legislature does not specify amounts or percentages from the total appropriation to the commission to be allocated under Subsection (a) or (b), the commission shall determine the amounts of the total appropriation to be allocated under each of those

subsections, such that the total appropriation is expended while maximizing emissions reductions.

(d) To supplement funding for air quality planning activities in affected counties, $500,000 from the fund is to be deposited annually in the state treasury to the credit of the clean air account created under Section 382.0622.

(e) Money in the fund and account may be used for administrative costs incurred by the Energy Systems Laboratory at the Texas A & M Engineering Experiment Station.

(f) Not more than $2.5 million from the fund and account may be used by the commission to conduct research and other activities associated with making any necessary demonstrations to the United States Environmental Protection Agency to account for the impact of foreign emissions or an exceptional event.

(g) The commission may use money from the fund and account to award grants under the governmental alternative fuel fleet grant program established under Chapter 395, except that the commission may not use for that purpose more than three percent of the balance of the fund as of September 1 of each state fiscal year of the biennium for the governmental alternative fuel fleet grant program in that fiscal year.

(h) Subject to the limitations outlined in this section, money allocated under this section to a particular program may be used for another program under the plan as determined by the commission, based on demand for grants for eligible projects under particular programs after the commission solicits projects to which to award grants according to the initial allocation provisions of this section.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 12, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 3, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 1095 (H.B. 2129), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 11, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 12, eff. September 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.09, eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 23, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1232 (S.B. 1759), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 28 (S.B. 527), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 589 (S.B. 20), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 589 (S.B. 20), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 10.003(a), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 16, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 17, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 18, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 19, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 25(7), eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 25(8), eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(h), eff. August 30, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1301 (H.B. 3745), Sec. 1.06, eff. September 1, 2021.

Acts 2019, 86th Leg., R.S., Ch. 1301 (H.B. 3745), Sec. 1.07, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1043 (H.B. 4472), Sec. 6, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 889 (H.B. 4885), Sec. 2, eff. September 1, 2023.

SUBCHAPTER G. TEXAS HYDROGEN INFRASTRUCTURE, VEHICLE, AND EQUIPMENT GRANT PROGRAM

Sec. 386.301. DEFINITIONS. In this subchapter:

(1) "Hydrogen vehicle or equipment" means a heavy-duty motor vehicle or piece of heavy-duty equipment that uses hydrogen to operate the vehicle or equipment, including through the use of hydrogen fuel cells or an internal combustion engine that runs on hydrogen.

(2) "Program" means the Texas hydrogen infrastructure, vehicle, and equipment grant program established under this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 889 (H.B. 4885), Sec. 3, eff. September 1, 2023.

Sec. 386.302. PROGRAM. (a) The commission shall establish and administer the Texas hydrogen infrastructure, vehicle, and equipment grant program to encourage the adoption of hydrogen infrastructure, vehicles, and equipment. Under the program, the commission shall provide funding for eligible projects to offset the incremental cost of projects that reduce emissions of oxides of nitrogen from high-emitting sources in nonattainment areas and affected counties of this state. The commission shall determine the eligibility of projects.

(b) Projects that may be considered for a grant under the program include:

(1) implementation of hydrogen infrastructure projects;

(2) purchase or lease of on-road or non-road hydrogen vehicles or equipment;

(3) replacement of on-road or non-road heavy-duty vehicles or equipment with newer on-road or non-road hydrogen vehicles or equipment; and

(4) the repower or conversion of on-road or non-road heavy-duty vehicles or equipment with a powertrain that runs on or is powered by hydrogen.

(c) A project listed in Subsection (b) is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection

does not apply to:

(1) an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in vehicles, equipment, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase of a hydrogen vehicle or equipment or facility required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(d) The commission shall prioritize the awarding of grants under this subchapter in the following order:

(1) projects to replace on-road heavy-duty vehicles with newer on-road hydrogen vehicles;

(2) projects to purchase, lease, repower, or convert on-road heavy-duty vehicles with a powertrain that runs on or is powered by hydrogen;

(3) projects to implement hydrogen refueling infrastructure that will be accessible and available to the public at times designated by the grant contract;

(4) projects to replace non-road heavy-duty vehicles with newer non-road hydrogen vehicles; and

(5) projects to purchase, lease, repower, or convert non-road heavy-duty vehicles with a powertrain that runs on or is powered by hydrogen.

(e) Subject to Subsection (d), in awarding grants under this subchapter, the commission shall give preference to the most cost-effective projects that will result in the greatest reduction in emissions of oxides of nitrogen.

(f) The commission shall establish additional eligibility and prioritization criteria as needed to implement the program.

Added by Acts 2023, 88th Leg., R.S., Ch. 889 (H.B. 4885), Sec. 3, eff. September 1, 2023.

Sec. 386.303. APPLICATION PACKAGE. (a) The commission shall develop a simple, standardized application package for grants under this subchapter. The package must include:

(1) an application form;

(2) a brief description of:

(A) the program;

(B) the projects that are eligible for available funding;

(C) the selection criteria and evaluation process; and

(D) the required documentation;

(3) the name of a person or office to contact for more information;

(4) an example of the contract that an applicant will be required to execute before receiving a grant; and

(5) any other information the commission considers useful to inform the applicant and expedite the application process.

(b) The application form shall require as much information as the commission determines is necessary to properly evaluate each project but shall otherwise minimize the information required.

Added by Acts 2023, 88th Leg., R.S., Ch. 889 (H.B. 4885), Sec. 3, eff. September 1, 2023.

Sec. 386.304. APPLICATION REVIEW PROCEDURES. (a) The commission shall review an application for a grant for a project authorized under this subchapter. If the commission determines that an application is incomplete, the commission shall notify the applicant with an explanation of what is missing from the application. The commission shall evaluate the completed application according to the appropriate project criteria. Subject to available funding, the commission shall make a final determination on an application as soon as possible.

(b) The commission shall make every effort to expedite the application review process and to award grants to qualified projects in a timely manner. To the extent possible, the commission shall coordinate project review and approval with any timing constraints related to project purchases or installations to be made by an applicant.

(c) The commission may deny an application for a project that does not meet the applicable project criteria or that the commission determines is not made in good faith, is not credible, or is not in compliance with this chapter and the goals of this chapter.

(d) Subject to availability of funds, the commission shall

award a grant under this subchapter in conjunction with the execution of a contract that obligates the commission to make the grant and the recipient to perform the actions described in the recipient's grant application. The contract must incorporate provisions for recapturing grant money in proportion to any loss of emissions reductions compared with the volume of emissions reductions that was projected in awarding the grant. Grant money recaptured under the contract provision shall be deposited in the fund and reallocated for other projects under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 889 (H.B. 4885), Sec. 3, eff. September 1, 2023.

CHAPTER 387. AIR QUALITY RESEARCH SUPPORT PROGRAM

Sec. 387.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Program" means the air quality research support program established under this chapter.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 11, Sec. 4, eff. Oct. 20, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 28 (S.B. 527), Sec. 5, eff. September 1, 2011.

Sec. 387.002. AIR QUALITY RESEARCH SUPPORT PROGRAM. (a) The commission shall contract with a nonprofit organization or institution of higher education to establish and administer a program to support research related to air quality.

(b) The board of directors of a nonprofit organization establishing and administering the research program related to air quality under this chapter may not have more than 11 members, must include two persons with relevant scientific expertise to be nominated by the commission, and may not include more than four county judges selected from counties in the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas. The two persons with relevant scientific expertise to be nominated by the commission

may be employees or officers of the commission, provided that they do not participate in funding decisions affecting the granting of funds by the commission to a nonprofit organization on whose board they serve.

(c) The commission shall provide oversight as appropriate for grants provided under the program established under this chapter.

(d) A nonprofit organization or institution of higher education shall submit to the commission for approval a budget for the disposition of funds granted under the program established under this chapter.

(e) A nonprofit organization or institution of higher education shall be reimbursed for costs incurred in establishing and administering the research program related to air quality under this chapter. Reimbursable administrative costs of a nonprofit organization or institution of higher education may not exceed 10 percent of the program budget.

(f) A nonprofit organization that receives grants from the commission under this chapter is subject to Chapters 551 and 552, Government Code.

Redesignated and amended from Health and Safety Code, Section 387.010 by Acts 2011, 82nd Leg., R.S., Ch. 28 (S.B. 527), Sec. 6, eff. September 1, 2011.

Sec. 387.008. ENVIRONMENTAL RESEARCH FUND. (a) The environmental research fund is an account in the general revenue fund. The fund consists of money from gifts, grants, or donations to the fund for designated or general use and from any other source designated by the legislature.

(b) Money in the environmental research fund may be used only by the commission for operations and projects under this chapter.

(c) Sections 403.095 and 404.071, Government Code, do not apply to the fund. Interest earned on the fund shall be credited to the fund.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 29, Sec. 4, eff. May 14, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 11, Sec. 11, eff. Oct. 20, 2003.

Sec. 387.009. ADVISORY COMMITTEES. The commission may appoint advisory committees as necessary or desirable to assist the commission in performing its duties under this chapter. An advisory committee may include representatives of industry, environmental groups, consumer groups, local governments, agriculture, the commission, the General Land Office, and the Railroad Commission of Texas. Any senator or representative desiring to do so may participate on any advisory committee appointed under this section. Members of an advisory committee are not entitled to compensation.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 11, Sec. 12, eff. Oct. 20, 2003.

CHAPTER 388. TEXAS BUILDING ENERGY PERFORMANCE STANDARDS

Sec. 388.001. LEGISLATIVE FINDINGS. (a) The legislature finds that an effective building energy code is essential to:

(1) reducing the air pollutant emissions that are affecting the health of residents of this state;

(2) moderating future peak electric power demand;

(3) assuring the reliability of the electrical grid; and

(4) controlling energy costs for residents and businesses in this state.

(b) The legislature further finds that this state has a number of unique climate types, all of which require more energy for cooling than for heating, and that there are many cost-effective measures that can reduce peak energy use and reduce cooling and other energy costs in buildings.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 388.002. DEFINITIONS. In this chapter:

(1) "Affected county" has the meaning assigned by Section 386.001.

(2) "Building" has the meaning assigned by the International Building Code.

(3) "Code official" means an individual employed by a local jurisdiction to review construction plans and other documents,

inspect construction, or administer and enforce building standards under this chapter.

(4) "Code-certified inspector" means an inspector who is certified by the International Code Council, the Building Officials and Code Administrators International, Inc., the International Conference of Building Officials, or the Southern Building Code Congress International to have met minimum standards for interpretation and enforcement of requirements of the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code.

(5) "Commission" means the Texas Commission on Environmental Quality.

(6) "International Residential Code" means the International Residential Code for One- and Two-Family Dwellings as adopted by the International Code Council.

(7) "International Energy Conservation Code" means the International Energy Conservation Code as adopted by the International Code Council.

(8) "Laboratory" means the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System.

(9) "Local jurisdiction" means the authority responsible for implementation and enforcement of local building codes.

(10) "Municipality" has the meaning assigned by Section 1.005, Local Government Code.

(11) "Nonattainment area" has the meaning assigned by Section 386.001.

(12) "Single-family residential" means having the character of a detached one- or two-family dwelling or a multiple single-family dwelling not more than three stories high with separate means of egress, including the accessory structures of the dwelling.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2025, 89th Leg., R.S., Ch. 986 (S.B. 766), Sec. 26, eff. September 1, 2025.

For expiration of Subsections (j) and (k), see Subsection (k).

Sec. 388.003. ADOPTION OF BUILDING ENERGY EFFICIENCY PERFORMANCE STANDARDS. (a) To achieve energy conservation in single-family residential construction, the energy efficiency chapter of the International Residential Code, as it existed on May 1, 2001, is adopted as the energy code in this state for single-family residential construction. On September 1, 2016, the energy efficiency chapter of the International Residential Code, as it existed on May 1, 2015, is adopted as the energy code in this state for single-family residential construction. On or after September 1, 2021, the State Energy Conservation Office may adopt and substitute for that energy code the latest published edition of the energy efficiency chapter of the International Residential Code, based on written findings on the stringency of the chapter submitted by the laboratory under Subsection (b-3). The office:

(1) may not amend or adopt an edition under this subsection more often than once every six years;

(2) by rule shall establish an effective date for an adopted edition that is not earlier than nine months after the date of adoption; and

(3) may amend an adopted or published edition.

(a-1) Before amending or adopting an edition of the energy efficiency chapter of the International Residential Code under Subsection (a), the State Energy Conservation Office shall conduct an analysis that:

(1) measures the impact of the amendment or adoption on housing attainability in this state; and

(2) quantifies the incremental construction cost and energy use cost savings associated with construction to evaluate the cost-effectiveness of the proposed amendment or adoption.

(a-2) The analysis under Subsection (a-1)(2) must calculate the payback period for any required products or minimum standards or requirements that are more stringent than the energy code in effect on the date immediately before the date the amendment or adoption would take effect.

(b) To achieve energy conservation in all other residential, commercial, and industrial construction, the International Energy Conservation Code as it existed on May 1, 2001, is adopted as the energy code for use in this state for all other residential, commercial, and industrial construction. The State Energy Conservation Office may adopt and substitute for that energy code the

latest published edition of the International Energy Conservation Code, based on written findings on the stringency of the edition submitted by the laboratory under Subsection (b-3). The office:

(1) by rule shall establish an effective date for an adopted edition that is not earlier than nine months after the date of adoption; and

(2) may amend an adopted or published edition.

(b-2) The State Energy Conservation Office by rule shall establish a procedure for persons who have an interest in the amendment or adoption of energy codes under Subsection (a) or (b) to have an opportunity to comment on the codes under consideration. The office shall consider persons who have an interest in adoption of those codes to include:

(1) commercial and residential builders, architects, and engineers;

(2) municipal, county, and other local government authorities;

(3) environmental groups;

(4) electric, gas, and water utilities operated by a public or private entity; and

(5) manufacturers of building materials and products.

(b-3) The laboratory shall:

(1) submit to the State Energy Conservation Office written findings on the stringency of the latest published edition of the International Residential Code energy efficiency provisions only if the date of the edition allows the office to adopt the edition under Subsection (a)(1);

(2) submit to the State Energy Conservation Office written findings on the stringency of the latest published edition of the International Energy Conservation Code not later than six months after publication of a new edition; and

(3) in developing the findings, consider the comments submitted under Subsection (b-2).

(c) A municipality shall establish procedures:

(1) for the administration and enforcement of the codes;

(2) to ensure that code-certified inspectors shall perform inspections and enforce the code in the inspectors' jurisdictions; and

(3) to track and report to the state energy conservation office on implementation of the codes.

(d) A municipality may establish procedures to adopt local amendments to the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code. Notwithstanding the requirements of Subsection (e), a municipality located in an area defined by Section 388.002(11) or in an affected county may establish procedures to adopt local amendments to the Energy Rating Index Compliance Alternative or subsequent alternative compliance path as described by Subsection (j).

(e) Local amendments may not result in less stringent energy efficiency requirements in nonattainment areas and in affected counties than the energy efficiency chapter of the International Residential Code or International Energy Conservation Code. Local amendments must comply with the National Appliance Energy Conservation Act of 1987 (42 U.S.C. Sections 6291-6309), as amended. The laboratory, at the request of a municipality or county, shall determine the relative impact of proposed local amendments to an energy code, including whether proposed amendments are substantially equal to or less stringent than the unamended code. For the purpose of establishing uniform requirements throughout a region, and on request of a council of governments, a county, or a municipality, the laboratory may recommend a climatically appropriate modification or a climate zone designation for a county or group of counties that is different from the climate zone designation in the unamended code. The laboratory shall:

(1) report its findings to the council, county, or municipality, including an estimate of any energy savings potential above the unamended code from local amendments; and

(2) annually submit a report to the commission:

(A) identifying the municipalities and counties whose codes are more stringent than the unamended code, and whose codes are equally stringent or less stringent than the unamended code; and

(B) quantifying energy savings and emissions reductions from this program for consideration in the state implementation plan for emissions reduction credit.

(f) Each municipality, and each county that has established procedures under Subsection (d), shall periodically review and consider revisions made by the International Code Council to the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code adopted after May 1, 2001.

(g) The laboratory shall have the authority to set and collect fees to perform certain tasks in support of the requirements in Sections 388.004, 388.007, and 388.008.

(h) Within the boundaries of an airport operated by a joint board created under Subchapter D, Chapter 22, Transportation Code, the constituent agencies of which are populous home-rule municipalities, the powers of a municipality under this section are exclusively the powers of the joint board.

(i) A building certified by a national, state, or local accredited energy efficiency program and determined by the laboratory to be in compliance with the energy efficiency requirements of this section may, at the option of the municipality, be considered in compliance. The United States Environmental Protection Agency's Energy Star Program certification of energy code equivalency shall be considered in compliance. A home energy rating system index utilizing Standard 301 of the American National Standard for the Calculation and Labeling of the Energy Performance of Dwelling and Sleeping Units using an Energy Rating Index, commonly cited as ANSI/RESNET/ICC 301, as it existed on January 1, 2021, as described by Subsection (j) shall be considered in compliance provided that:

(1) the building meets the mandatory requirements of Section R406.2 of the 2018 International Energy Conservation Code; and

(2) the building thermal envelope is equal to or greater than the levels of efficiency and solar heat gain coefficient in Table R402.1.2 or Table R402.1.4 of the 2018 International Energy Conservation Code.

(j) For the purposes of this chapter, Standard 301 of the American National Standard for the Calculation and Labeling of the Energy Performance of Dwelling and Sleeping Units using an Energy Rating Index, commonly cited as ANSI/RESNET/ICC 301, as it existed on January 1, 2021, used to measure compliance for single-family residential construction that uses an energy rating index is as follows:

(1) for climate zone 2, an energy rating index of:

(A) 63 or lower from September 1, 2019, to August 31, 2022;

(B) 59 or lower on or after September 1, 2022;

(C) 57 or lower on or after September 1, 2025; and

(D) 55 or lower on or after September 1, 2028;

(2) for climate zone 3, an energy rating index of:

(A) 63 or lower from September 1, 2019, to August 31, 2022;

(B) 59 or lower on or after September 1, 2022;

(C) 57 or lower on or after September 1, 2025; and

(D) 55 or lower on or after September 1, 2028; and

(3) for climate zone 4, an energy rating index of:

(A) 67 or lower from September 1, 2019, to August 31, 2022;

(B) 63 or lower on or after September 1, 2022;

(C) 61 or lower on or after September 1, 2025; and

(D) 59 or lower on or after September 1, 2028.

(k) This subsection and Subsection (j) expire September 1, 2031.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 15, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 15, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 3.01, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 11, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.013, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 937 (H.B. 51), Sec. 3, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 541 (H.B. 1736), Sec. 1, eff. June 16, 2015.

Acts 2015, 84th Leg., R.S., Ch. 541 (H.B. 1736), Sec. 2(1), eff. June 16, 2015.

Acts 2015, 84th Leg., R.S., Ch. 541 (H.B. 1736), Sec. 2(2), eff. June 16, 2015.

Acts 2021, 87th Leg., R.S., Ch. 487 (H.B. 3215), Sec. 1, eff. September 1, 2021.

Acts 2025, 89th Leg., R.S., Ch. 81 (S.B. 783), Sec. 2, eff. September 1, 2025.

Sec. 388.004. ENFORCEMENT OF ENERGY STANDARDS OUTSIDE OF MUNICIPALITY. (a) For construction outside of the local jurisdiction of a municipality:

(1) a building certified by a national, state, or local accredited energy efficiency program shall be considered in compliance;

(2) a building with inspections from private code-certified inspectors using the energy efficiency chapter of the International Residential Code or International Energy Conservation Code shall be considered in compliance; and

(3) a builder who does not have access to either of the above methods for a building shall certify compliance using a form provided by the laboratory, enumerating the code-compliance features of the building.

(b) A builder shall retain until the third anniversary of the date on which compliance is achieved the original copy of any documentation that establishes compliance under this section. The builder on receipt of any compliance documentation shall provide a copy to the owner of the building.

(c) A single-family residence built in the unincorporated area of a county the construction of which was completed on or after September 1, 2001, but not later than August 31, 2002, shall be considered in compliance.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 16, eff. June 20, 2003.

Sec. 388.005. ENERGY EFFICIENCY PROGRAMS IN INSTITUTIONS OF HIGHER EDUCATION AND CERTAIN GOVERNMENTAL ENTITIES. (a) In this section:

(1) "Institution of higher education" includes an institution of higher education as defined by Section 61.003, Education Code, and a private institution of higher education that receives funding from the state.

(2) "Political subdivision" means:

(A) an affected county; or

(B) any political subdivision in a nonattainment area or in an affected county other than:

(i) a school district; or

(ii) a district as defined by Section 36.001 or 49.001, Water Code, that had a total annual electricity expense of less than $200,000 in the previous fiscal year of the district.

(3) "State agency" means a department, commission, board, office, council, or other agency in the executive branch of state government that is created by the constitution or a statute of this state and has authority not limited to a geographical portion of the state.

(b) Each political subdivision, institution of higher education, or state agency shall implement all energy efficiency measures that meet the standards established for a contract for energy conservation measures under Section 302.004(b), Local Government Code, in order to reduce electricity consumption by the existing facilities of the entity.

(c) Each political subdivision, institution of higher education, or state agency shall establish a goal to reduce the electric consumption by the entity by at least five percent each state fiscal year for seven years, beginning September 1, 2019.

(d) A political subdivision, institution of higher education, or state agency that does not attain the goals established under Subsection (c) must include in the report required by Subsection (e) justification that the entity has already implemented all available cost-effective measures. An entity that submits a report under this subsection indicating that the entity has reviewed its available options, has determined that no additional measures are cost-effective, and has already implemented all available cost-effective measures is exempt from the annual reporting requirement of Subsection (e) if a subsequent report would indicate no change in status. An entity may be required to provide notice that it is exempt to the State Energy Conservation Office.

(e) A political subdivision, institution of higher education, or state agency annually shall report to the State Energy Conservation Office, on forms provided by that office, regarding the entity's goal, the entity's efforts to meet the goal, and progress the entity has made under this section. The State Energy Conservation Office shall provide assistance and information to the entity to help the entity meet goals established under this section. The office must develop and make available a standardized form for reporting purposes.

(f) This section does not apply to a state agency or an institution of higher education that the State Energy Conservation Office determines, before September 1, 2007, adopted a plan for conserving energy under which the agency or institution established a percentage goal for reducing the consumption of electricity. The exemption provided by this section applies only while the agency or institution has an energy conservation plan in effect and only if the agency or institution submits reports on the conservation plan each year to the governor, the Legislative Budget Board, and the State Energy Conservation Office.

(g) Except as provided by Subsection (h), this section does not apply to the electricity consumption of a district as defined by Section 36.001 or 49.001, Water Code, that relates to the operation and maintenance of facilities or improvements for:

(1) wastewater collection and treatment;

(2) water supply and distribution; or

(3) storm water diversion, detention, or pumping.

(h) At least once every five years, a political subdivision that is a district as defined by Section 36.001 or 49.001, Water Code, shall for district facilities described by Subsection (g):

(1) evaluate the consumption of electricity;

(2) establish goals to reduce the consumption of electricity; and

(3) identify and implement cost-effective energy efficiency measures to reduce the consumption of electricity.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 1, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 3.02, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 12, eff. September 1, 2007.

Reenacted and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.014, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 637 (S.B. 898), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 6.12, eff.

June 17, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 1, eff. September 1, 2013.
Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.29, eff. September 1, 2019.

Sec. 388.006. STATE ENERGY CONSERVATION OFFICE EVALUATION. The State Energy Conservation Office annually shall provide the laboratory with an evaluation of the effectiveness of state and political subdivision energy efficiency programs, including programs under this chapter. The laboratory shall calculate, based on the evaluation and the forms submitted to the office, the amount of energy savings and estimated reduction in pollution achieved as a result of the implementation of programs. The laboratory shall share the information with the commission, the United States Environmental Protection Agency, and the Electric Reliability Council of Texas to help with long-term forecasting and in estimating pollution reduction.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 637 (S.B. 898), Sec. 2, eff. September 1, 2011.
Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.30, eff. September 1, 2019.

Sec. 388.007. DISTRIBUTION OF INFORMATION AND TECHNICAL ASSISTANCE. (a) The laboratory shall make available to builders, designers, engineers, and architects code implementation materials that explain the requirements of the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code and that describe methods of compliance acceptable to code officials.
(b) The materials may include software tools, simplified prescriptive options, and other materials as appropriate. The simplified materials may be designed for projects in which a design professional is not involved.

(c) The laboratory may provide local jurisdictions with technical assistance concerning implementation and enforcement of the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code, including local amendments to those codes.

(d) The laboratory may conduct outreach to the real estate industry, including real estate agents, home builders, remodelers, appraisers, and financial institutions, on the value of energy code compliance and verified, above-code, high-performance construction.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 937 (H.B. 51), Sec. 4, eff. September 1, 2011.

Sec. 388.008. DEVELOPMENT OF HOME ENERGY RATINGS. (a) The laboratory shall develop a standardized report format to be used by providers of home energy ratings. The laboratory may develop different report formats for rating newly constructed residences from those for existing residences. The form must be designed to give potential buyers information on a structure's energy performance, including:

(1) insulation;
(2) types of windows;
(3) heating and cooling equipment;
(4) water heating equipment;
(5) additional energy conserving features, if any;
(6) results of performance measurements of building tightness and forced air distribution; and
(7) an overall rating of probable energy efficiency relative to the minimum requirements of the International Energy Conservation Code or the energy efficiency chapter of the International Residential Code, as appropriate.

(b) The laboratory shall establish a public information program to inform homeowners, sellers, buyers, and others regarding home energy ratings.

(c) The laboratory may cooperate with an industry organization or trade association to:

(1) develop guidelines for home energy ratings;

(2) provide training for individuals performing home energy ratings and providers of home energy ratings; and

(3) provide a registry of completed ratings for newly constructed residences and residential improvement projects for the purpose of computing the energy savings and emissions reductions benefits of the home energy ratings program.

(d) The laboratory shall include information on the benefits attained from this program in an annual report to the commission.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 13, eff. September 1, 2007.

Sec. 388.010. OUTREACH TO NEAR-NONATTAINMENT AREAS. The commission shall conduct outreach to near-nonattainment areas and affected counties on the benefits of implementing energy efficiency initiatives, including the promotion of energy-efficient building programs and urban heat island mitigation techniques, as a way to meet air quality attainment goals under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.), as amended.

Added by Acts 2003, 78th Leg., ch. 1331, Sec. 17, eff. June 20, 2003.

Sec. 388.011. CERTIFICATION OF MUNICIPAL BUILDING INSPECTORS. The laboratory shall develop and administer statewide a training program for municipal building inspectors seeking to become code-certified inspectors. The laboratory shall also work with national code organizations to assist participants in the certification program. The laboratory may collect reasonable fees from participants in the program to pay the costs of administering the program.

Acts 2003, 78th Leg., ch. 1148, Sec. 1.
Renumbered from Health and Safety Code, Section 388.009 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(50), eff. September 1, 2005.

Sec. 388.012. DEVELOPMENT OF ALTERNATIVE ENERGY-SAVING METHODS. The laboratory shall develop at least three alternative methods for achieving a 15 percent greater potential energy savings in residential, commercial, and industrial construction than the potential energy savings of construction that is in minimum compliance with Section 388.003. The alternative methods:

(1) may include both prescriptive and performance-based approaches, such as the approach of the United States Environmental Protection Agency's Energy Star qualified new home labeling program; and

(2) must include an estimate of:

(A) the implementation costs and energy savings to consumers; and

(B) the related emissions reductions.

Added by Acts 2005, 79th Leg., Ch. 1095 (H.B. 2129), Sec. 4, eff. September 1, 2005.

CHAPTER 389. EMISSIONS REDUCTION RECOGNITION EFFORTS

Sec. 389.001. DEFINITION. In this chapter, "commission" means the Texas Commission on Environmental Quality.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 986 (S.B. 766), Sec. 27, eff. September 1, 2025.

Sec. 389.002. USE OF CERTAIN INFORMATION FOR FEDERAL RECOGNITION OF EMISSIONS REDUCTIONS. The commission, using information derived from the reports to the commission under Sections 386.205, 388.003(e), and 388.006, shall take all appropriate and necessary actions so that emissions reductions achieved by means of activities under Chapters 386 and 388 are credited by the United States Environmental Protection Agency to the appropriate emissions reduction objectives in the state implementation plan.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 389.003. COMPUTING ENERGY EFFICIENCY EMISSIONS REDUCTIONS AND ASSOCIATED CREDITS. (a) The commission shall develop a method to use in computing emissions reductions obtained through energy efficiency initiatives, including renewable energy initiatives, and the credits associated with those reductions.

(b) The laboratory shall assist the commission and affected political subdivisions in quantifying, as part of the state implementation plan, credits for emissions reductions attributable to energy efficiency programs, including renewable energy programs.

Added by Acts 2003, 78th Leg., ch. 1331, Sec. 18, eff. June 20, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 16, eff. September 1, 2005.

For expiration of this chapter, see Section 390.006.

CHAPTER 390. CLEAN SCHOOL BUS PROGRAM

Sec. 390.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(1-a) "Diesel exhaust" means one or more of the air pollutants emitted from an engine by the combustion of diesel fuel, including particulate matter, nitrogen oxides, volatile organic compounds, air toxics, and carbon monoxide.

(2) "Incremental cost" has the meaning assigned by Section 386.001.

(3) "Program" means the clean school bus program established under this chapter.

(4) "Qualifying fuel" includes any liquid or gaseous fuel or additive registered or verified by the United States Environmental Protection Agency, other than standard gasoline or diesel, that is ultimately dispensed into a school bus that provides reductions of emissions of particulate matter.

(5) "Retrofit" has the meaning assigned by Section 386.101.

Added by Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 4, eff. June 17, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(h-1), eff. August 30, 2017.

Sec. 390.002. PROGRAM. (a) The commission shall establish and administer a clean school bus program designed to reduce the exposure of school children to diesel exhaust in and around diesel-fueled school buses. Under the program, the commission shall provide grants for eligible projects to offset the incremental cost of projects that reduce emissions of diesel exhaust.

(b) Projects that may be considered for a grant under the program include:

(1) diesel oxidation catalysts for school buses built before 1994;

(2) diesel particulate filters for school buses built from 1994 to 1998;

(3) the purchase and use of emission-reducing add-on equipment for school buses, including devices that reduce crankcase emissions;

(4) the use of qualifying fuel;

(5) other technologies that the commission finds will bring about significant emissions reductions; and

(6) replacement of a pre-2007 model year school bus.

Added by Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 4, eff. June 17, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(h-2), eff. August 30, 2017.

Sec. 390.003. APPLICATION FOR GRANT. (a) A school district in this state that operates one or more diesel-fueled school buses or a transportation system provided by a countywide school district may apply for and receive a grant under the program.

(b) The commission may adopt guidelines to allow a regional planning commission, council of governments, or similar regional

planning agency created under Chapter 391, Local Government Code, or a private nonprofit organization to also apply for and receive a grant to improve the ability of the program to achieve its goals.

(c) An application for a grant under this chapter must be made on a form provided by the commission and must contain the information required by the commission.

Added by Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 4, eff. June 17, 2005.

Sec. 390.004. ELIGIBILITY OF PROJECTS FOR GRANTS. (a) The commission by rule shall establish criteria for setting priorities for projects eligible to receive grants under this chapter. The commission shall review and may modify the criteria and priorities as appropriate.

(b) A school bus proposed for retrofit must be used on a regular, daily route to and from a school and have at least five years of useful life remaining unless the applicant agrees to remove the retrofit device at the end of the life of the bus and reinstall the device on another bus.

(c) A school bus proposed for replacement must:

(1) be of model year 2006 or earlier;

(2) have been owned and operated by the applicant for at least the two years before submission of the grant application;

(3) be in good operational condition; and

(4) be currently used on a regular, daily route to and from a school.

(d) A school bus proposed for purchase to replace a pre-2007 model year school bus must be of the current model year or the year before the current model year at the time of submission of the grant application.

Added by Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 4, eff. June 17, 2005.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(i), eff. August 30, 2017.

Sec. 390.005. RESTRICTION ON USE OF GRANT. (a) A recipient of

a grant under this chapter shall use the grant to pay the incremental costs of the project for which the grant is made, which may include the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. The recipient may not use the grant to pay the recipient's administrative expenses.

(b) A school bus acquired to replace an existing school bus must be purchased and the grant recipient must agree to own and operate the school bus on a regular, daily route to and from a school for at least five years after a start date established by the commission, based on the date the commission accepts documentation of the permanent destruction or permanent removal of the school bus being replaced.

(c) A school bus replaced under this program must be rendered permanently inoperable by crushing the bus, by making a hole in the engine block and permanently destroying the frame of the bus, or by another method approved by the commission, or be permanently removed from operation in this state. The commission shall establish criteria for ensuring the permanent destruction or permanent removal of the engine or bus. The commission shall enforce the destruction and removal requirements.

(d) In this section, "permanent removal" means the permanent export of a school bus or the engine of a school bus to a destination outside of the United States, Canada, or the United Mexican States.

Added by Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 4, eff. June 17, 2005.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(i-1), eff. August 30, 2017.

Sec. 390.006. EXPIRATION. This chapter expires on the last day of the state fiscal biennium during which the commission publishes in the Texas Register the notice required by Section 382.037.

Added by Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 4, eff. June 17, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 17, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(i-2),

eff. August 30, 2017.

For expiration of this chapter, see Section 391.304.

CHAPTER 391. NEW TECHNOLOGY IMPLEMENTATION FOR FACILITIES AND STATIONARY SOURCES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 391.001. DEFINITIONS. In this chapter:

(1) "Best available control technology" has the meaning assigned by Section 169 of the federal Clean Air Act (42 U.S.C. Section 7479(3)).

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Facility" has the meaning assigned by Section 382.003.

(4) "Incremental cost" has the meaning assigned by Section 386.001.

(5) "New technology" means emissions control technology that results in emissions reductions that exceed state or federal requirements in effect at the time of submission of a new technology implementation grant application.

(6) "Stationary source" has the meaning assigned by Section 302 of the federal Clean Air Act (42 U.S.C. Section 7602(z)).

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.002. GRANT PROGRAM. (a) The commission shall establish and administer a new technology implementation grant program to assist the implementation of new technologies to reduce emissions from facilities and other stationary sources in this state. The commission may establish a minimum capital expenditure threshold for projects under Subsection (b)(2). Under the program, the commission shall provide grants or other financial incentives for eligible projects to offset the incremental cost of emissions reductions.

(b) Projects that may be considered for a grant under the program include:

(1) advanced clean energy projects, as defined by Section 382.003(1-a)(A);

(2) new technology projects that reduce emissions of regulated pollutants from stationary sources;

(3) new technology projects that reduce emissions from upstream, midstream, or downstream oil and gas production, completions, gathering, storage, processing, transmission, or refining activities through:

(A) the replacement, repower, or retrofit of stationary compressor engines;

(B) the installation of systems to reduce or eliminate the loss of gas, flaring of gas, or burning of gas using other combustion control devices; or

(C) the installation of systems that reduce flaring emissions and other site emissions; and

(4) electricity storage projects related to renewable energy, including projects to store electricity produced from wind and solar generation that provide efficient means of making the stored energy available during periods of peak energy use.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 20, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(j), eff. August 30, 2017.

Acts 2021, 87th Leg., R.S., Ch. 695 (H.B. 2361), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1043 (H.B. 4472), Sec. 7, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 869 (H.B. 3837), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 889 (H.B. 4885), Sec. 4, eff. September 1, 2023.

Sec. 391.003. GUIDELINES AND CRITERIA. (a) The commission shall adopt grant guidelines and criteria consistent with the requirements of this chapter.

(b) The guidelines must include:

(1) protocols to compute projected emissions reductions and

project cost-effectiveness; and

(2) safeguards to ensure that the projects funded result in emissions reductions not otherwise required by state or federal law.

(c) The commission may propose revisions to the guidelines and criteria adopted under this section as necessary to improve the ability of the program to achieve the program goals.

(d) The commission may adopt emergency rules under Section 2001.034, Government Code, with abbreviated notice, to carry out any rulemaking necessary to implement this chapter.

(e) Except as provided by Subsection (d), the rulemaking requirements of Chapter 2001, Government Code, do not apply to the adoption or revision of guidelines and criteria under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.004. AVAILABILITY OF EMISSIONS REDUCTION CREDITS IN CERTAIN NONATTAINMENT AREAS. A project funded under this chapter must comply with Sections 386.055 and 386.056, as applicable.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

SUBCHAPTER B. GRANT APPLICATIONS AND REVIEW

Sec. 391.101. APPLICATION FOR GRANT. (a) The owner of a facility located in this state may apply for a grant under the program established under Section 391.002. To improve the ability of the program to achieve the program goals, the commission may adopt guidelines to allow a person other than the owner to apply for and receive a grant.

(b) An application for a grant under this chapter must be made on a form provided by the commission and must contain information required by the commission, including:

(1) a detailed description of the proposed project;

(2) information necessary for the commission to determine whether the project meets the commission's eligibility requirements, including a statement of the amounts of any other public financial assistance the project will receive; and

(3) other information the commission may require.

(c) An application for a grant under this chapter must contain a plan for implementation of a program that will provide project information and education to the public in the areas subject to public notice under federal and state permitting requirements for the proposed project until completion of the permitting process. The plan must provide for a publicly accessible informational Internet website.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.102. GRANT APPLICATION REVIEW PROCEDURES. (a) The commission shall review an application for a grant for a project authorized under this chapter according to dates specified in a request for grant applications. If the commission determines that an application is incomplete, the commission shall notify the applicant and provide an explanation of the information missing from the application. The commission shall evaluate the completed application according to the guidelines and criteria adopted under Section 391.003.

(b) To the extent possible, the commission shall coordinate project review and approval with any timing constraints related to project purchases or installations to be made by an applicant.

(c) The commission may deny a grant application for a project that does not meet the applicable criteria or that the commission determines is not made in good faith, is not credible, or is not in compliance with this chapter or the goals of this chapter.

(d) Subject to the availability of funding, the commission shall award a grant under this chapter in conjunction with the execution of a contract that obligates the commission to make the grant and the recipient to perform the actions described by the recipient's grant application. Subject to Section 391.204, the contract must incorporate provisions for recapturing grant money for noncompliance with grant requirements. Grant money recaptured under the contract provisions shall be deposited in the Texas emissions reduction plan fund and reallocated for other projects under this subchapter.

(e) An applicant may seek reimbursement for qualifying equipment installed after the effective date of this program.

(f) In reviewing a grant application under this chapter, the commission may:

(1) solicit review and comments from:

(A) the comptroller to assess:

(i) the financial stability of the applicant;

(ii) the economic benefits and job creation potential associated with the project; and

(iii) any other information related to the duties of that office;

(B) the Public Utility Commission of Texas to assess:

(i) the reliability of the proposed technology;

(ii) the feasibility and cost-effectiveness of electric transmission associated with the project; and

(iii) any other information related to the duties of that agency; and

(C) the Railroad Commission of Texas to assess:

(i) the availability and cost of the fuel involved with the project; and

(ii) any other information related to the duties of that agency; and

(2) consider the comments received under Subdivision (1) in the commission's grant award decision process.

(g) The commission may solicit review and comments from other state agencies or other entities with subject matter expertise applicable to the review of a grant application.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(j-1), eff. August 30, 2017.

Sec. 391.103. EVIDENCE OF EMISSIONS REDUCTION POTENTIAL REQUIRED. (a) An application for a new technology implementation grant under this chapter must show reasonable evidence that the proposed technology is capable of providing a significant reduction in emissions.

(b) The commission shall consider specifically, for each proposed new technology implementation grant application:

(1) the projected potential for reduced emissions and the cost-effectiveness of the new technology;

(2) the potential for the new technology to contribute significantly to air quality goals; and

(3) the strength of the implementation plan.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.104. REPORTING REQUIREMENTS. The commission shall include in the biennial plan report required by Section 386.057(b) information that summarizes the applications received and grants awarded in the preceding biennium. Preparation of the information for the report may include the participation of any state agency involved in the review of applications under Section 391.102, if the commission determines participation of the agency is needed.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(j-2), eff. August 30, 2017.

SUBCHAPTER C. PROJECT REQUIREMENTS

Sec. 391.201. ELIGIBILITY OF PROJECTS FOR GRANTS. (a) The commission shall establish criteria for prioritizing projects eligible to receive grants under this chapter. The commission shall review and may modify the criteria and priorities as appropriate.

(b) A proposed project must meet the requirements of this section to be eligible for a grant under the program established under Section 391.002.

(c) Each proposed project must meet the cost-effectiveness requirements established by the commission.

(d) A new technology implementation project must document, in a manner acceptable to the commission, an achieved reduction from the baseline emissions adopted by the commission for the relevant facility or stationary source. After studying available emissions reduction technologies, the commission may impose a required minimum percentage reduction of emissions to improve the ability of the

program to achieve the program goals.

(e) If a baseline emissions standard does not exist for a facility, the commission, for purposes of this subchapter, shall adopt an appropriate baseline emissions level for comparison purposes.

(f) Planned water usage for proposed projects must be consistent with the state water plan.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.202. EVALUATING COST-EFFECTIVENESS. The commission shall establish reasonable methodologies for evaluating project cost-effectiveness, consistent with accepted methods.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.203. DETERMINATION OF GRANT AMOUNT. (a) The commission may not award a grant that, net of taxes, provides an amount that exceeds the incremental cost of the proposed project.

(b) In determining the amount of a grant under this subchapter, the commission shall reduce the incremental cost of a proposed project by the value of any existing financial incentive that directly reduces the cost of the proposed project, including tax credits or deductions, other grants, or any other public financial assistance.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.204. COST SHARING; RECAPTURING GRANT. (a) The commission shall require an applicant to bear at least 50 percent of the costs of implementing a project funded under this chapter.

(b) The commission may not require repayment of grant money, except that the commission must require provisions for recapturing grant money for noncompliance with grant requirements.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.205. PREFERENCES. (a) Except as provided by Subsection (c), in awarding grants under this chapter the commission shall give preference to projects that:

(1) involve the transport, use, recovery for use, or prevention of the loss of natural resources originating or produced in this state;

(2) contain an energy efficiency component;

(3) include the use of solar, wind, or other renewable energy sources;

(4) recover waste heat from the combustion of natural resources and use the heat to generate electricity; or

(5) reduce flaring emissions and other site emissions.

(b) Projects that include more than one of the criteria described by Subsection (a) shall be given a greater preference in the award of grants under this chapter.

(c) The commission may give preference under Subsection (a) only if the cost-effectiveness and emission performance of the project are comparable to those of a project not claiming a preference described by that subsection.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(k), eff. August 30, 2017.

Acts 2021, 87th Leg., R.S., Ch. 695 (H.B. 2361), Sec. 2, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1043 (H.B. 4472), Sec. 8, eff. September 1, 2021.

SUBCHAPTER D. FUNDING; EXPIRATION

Sec. 391.301. RESTRICTION ON USE OF GRANT. A recipient of a grant under this chapter must use the grant to pay the incremental costs of the purchase, lease, or installation of the project for which the grant is made, which may include reasonable and necessary

expenses for the labor needed to install emissions-reducing equipment. The recipient may use the grant for the costs of operating and maintaining the emissions-reducing equipment.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 695 (H.B. 2361), Sec. 3, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 1043 (H.B. 4472), Sec. 9, eff. September 1, 2021.

Sec. 391.302. COMPTROLLER REVIEW OF USE OF GRANT FUNDS. (a) The comptroller annually shall conduct a review of each recipient of a new technology implementation grant under this chapter to ensure that the recipient's use of the grant complies with state law and the terms of the award.

(b) To assist with a review under this section, the commission shall provide the comptroller with all monitoring reports received from grant recipients and any other documentation requested by the comptroller.

(c) On a finding of any misuse of grant money or other noncompliance with grant requirements, the comptroller shall provide a report to the commission with recommendations for subsequent action, including the recapture of money misused.

(d) A finding of any misuse of grant money by a recipient of a grant under this chapter results in a debt owed to the state, and the comptroller may withhold warrants and electronic funds transfers to the recipient in accordance with Section 403.055, Government Code.

(e) The comptroller may contract with another state agency, an institution of higher education, or a private entity to conduct a review under this section or to assist the comptroller in conducting any part of the review.

(f) The comptroller may adopt rules to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.303. TIME OF USE OF GRANT FUNDING. Money appropriated

for grants to be made by the commission under this chapter for a fiscal year may be distributed in subsequent fiscal years if the grant has been awarded and treated as a binding encumbrance by the commission before the end of the appropriation year of the money appropriated for grant purposes. Distribution of the grant money is subject to Section 403.071, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.304. EXPIRATION. This chapter expires on the last day of the state fiscal biennium during which the commission publishes in the Texas Register the notice required by Section 382.037.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(k-1), eff. August 30, 2017.

For expiration of this chapter, see Section 392.008.

CHAPTER 392. TEXAS CLEAN FLEET PROGRAM

Sec. 392.001. DEFINITIONS. In this chapter:

(1) "Alternative fuel" means a fuel other than gasoline or diesel fuel, including electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, or a mixture of fuels containing at least 85 percent methanol by volume.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Golf cart" has the meaning assigned by Section 551.401, Transportation Code.

(4) "Hybrid vehicle" means a vehicle with at least two different energy converters and two different energy storage systems on board the vehicle for the purpose of propelling the vehicle.

(5) "Incremental cost" has the meaning assigned by Section 386.001.

(6) "Light-duty motor vehicle" has the meaning assigned by Section 386.151.

(7) "Motor vehicle" has the meaning assigned by Section 386.151.

(8) "Neighborhood electric vehicle" means a motor vehicle that:

(A) is originally manufactured to meet, and does meet, the equipment requirements and safety standards established for "low-speed vehicles" in Federal Motor Vehicle Safety Standard No. 500 (49 C.F.R. Section 571.500);

(B) is a slow-moving vehicle, as defined by Section 547.001, Transportation Code, that is able to attain a speed of more than 20 miles per hour but not more than 25 miles per hour in one mile on a paved, level surface;

(C) is a four-wheeled motor vehicle;

(D) is powered by electricity or alternative power sources;

(E) has a gross vehicle weight rating of less than 3,000 pounds; and

(F) is not a golf cart.

(9) "Program" means the Texas clean fleet program established under this chapter.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(k-2), eff. August 30, 2017.
Acts 2019, 86th Leg., R.S., Ch. 1233 (H.B. 1548), Sec. 4, eff. June 14, 2019.

Sec. 392.002. PROGRAM. (a) The commission shall establish and administer the Texas clean fleet program to encourage a person that has a fleet of diesel-powered vehicles to replace them with alternative fuel or hybrid vehicles. Under the program, the commission shall provide grants for eligible projects to offset the incremental cost of projects for fleet owners.

(b) An entity that places 10 or more qualifying vehicles in service for use entirely in this state during a calendar year is eligible to participate in the program.

(c) Notwithstanding Subsection (b), an entity that submits a grant application for 10 or more qualifying vehicles is eligible to participate in the program even if the commission denies approval for one or more of the vehicles during the application process.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(l), eff. August 30, 2017.

Sec. 392.003. QUALIFYING VEHICLES. (a) A vehicle is a qualifying vehicle that may be considered for a grant under the program if during the eligibility period established by the commission the entity purchases a new on-road vehicle that:

(1) is certified to the appropriate current federal emissions standards as determined by the commission;

(2) replaces a diesel-powered on-road vehicle of the same weight classification and use; and

(3) is a hybrid vehicle or fueled by an alternative fuel.

(b) A vehicle is not a qualifying vehicle if the vehicle:

(1) is a neighborhood electric vehicle;

(2) has been used as a qualifying vehicle to qualify for a grant under this chapter for a previous reporting period or by another entity; or

(3) has qualified for a similar grant or tax credit in another jurisdiction.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(l-1), eff. August 30, 2017.

Sec. 392.004. APPLICATION FOR GRANT. (a) An entity operating in this state that operates a fleet of at least 75 vehicles may apply for and receive a grant under the program.

(b) The commission may adopt guidelines to allow a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Local Government Code, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

(c) An application for a grant under this chapter must be made on a form provided by the commission and must contain the information required by the commission.

(d) The commission shall minimize, to the maximum extent possible, the amount of paperwork required for an application.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(l-2), eff. August 30, 2017.

Sec. 392.005. ELIGIBILITY OF PROJECTS FOR GRANTS. (a) The commission by rule shall establish criteria for prioritizing projects eligible to receive grants under this chapter. The commission shall review and revise the criteria as appropriate.

(b) To be eligible for a grant under the program, a project must:

(1) result in a reduction in emissions of nitrogen oxides or other pollutants, as established by the commission, of at least 25 percent, based on:

(A) the baseline emission level set by the commission under Subsection (g); and

(B) the certified emission rate of the new vehicle; and

(2) replace a vehicle that:

(A) is an on-road vehicle that has been owned, leased, or otherwise commercially financed and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(B) satisfies any minimum average annual mileage or fuel usage requirements established by the commission;

(C) satisfies any minimum percentage of annual usage requirements established by the commission; and

(D) is in operating condition and has at least two years of remaining useful life, as determined in accordance with criteria established by the commission.

(c) As a condition of receiving a grant, the qualifying vehicle must be continuously owned, registered, and operated in the state by the grant recipient until the earlier of the fifth anniversary of the activity start date established by the commission or the date the vehicle has been in operation for 400,000 miles after the activity start date established by the commission. Not less than 75 percent of the annual use of the qualifying vehicle, either mileage or fuel use as determined by the commission, must occur in the state.

(c-1) For purposes of Subsection (c), the commission shall establish the activity start date based on the date the commission accepts verification of the disposition of the vehicle being replaced.

(d) The commission shall include and enforce the usage provisions in the grant contracts. The commission shall monitor compliance with the contract requirements, including submission of reports on at least an annual basis, or more frequently as determined by the commission.

(e) The commission by contract may require the return of all or a portion of grant funds for a grant recipient's noncompliance with the usage and percentage of use requirements under this section.

(f) A vehicle or engine replaced under this program must be rendered permanently inoperable by crushing the vehicle, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the commission that permanently removes the vehicle from operation in this state. The commission shall provide a means for an applicant to propose an alternative method of complying with the requirements of this subsection. The commission shall enforce the requirements of this subsection.

(g) The commission shall establish baseline emission levels for emissions of nitrogen oxides for on-road vehicles being replaced. The commission may consider and establish baseline emission rates for additional pollutants of concern, as determined by the commission.

(h) Mileage requirements established by the commission under Subsection (b)(2)(B) may differ by vehicle weight categories and type of use.

(i) The executive director may waive the requirements of

Subsection (b)(2)(A) on a finding of good cause, which may include a waiver for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(m), eff. August 30, 2017.

Sec. 392.006. RESTRICTION ON USE OF GRANT. A recipient of a grant under this chapter shall use the grant to pay the incremental costs of the project for which the grant is made, which may include the initial cost of the alternative fuel vehicle and the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. The recipient may not use the grant to pay the recipient's administrative expenses.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.

Sec. 392.007. AMOUNT OF GRANT. (a) The amount the commission shall award for each vehicle being replaced is up to 80 percent, as determined by the commission, of the total cost for replacement of a heavy-duty or light-duty diesel engine.

(b) The commission may revise the standards for determining grant amounts, as needed to reflect changes to federal emission standards and decisions on pollutants of concern.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 21, eff. June 14, 2013.

Sec. 392.008. EXPIRATION. This chapter expires on the last day of the state fiscal biennium during which the commission publishes in the Texas Register the notice required by Section 382.037.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(m-1), eff. August 30, 2017.

For expiration of this chapter, see Section 393.007.

CHAPTER 393. ALTERNATIVE FUELING FACILITIES PROGRAM

Sec. 393.001. DEFINITIONS. In this chapter:

(1) "Alternative fuel" means a fuel other than gasoline or diesel fuel, other than biodiesel fuel, including electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, or a mixture of fuels containing at least 85 percent methanol by volume.

(1-a) "Clean transportation zone" means:

(A) counties containing or intersected by a portion of an interstate highway connecting the cities of Houston, San Antonio, Dallas, and Fort Worth;

(B) counties located within the area bounded by the interstate highways described by Paragraph (A);

(C) counties containing or intersected by a portion of:

(i) an interstate highway connecting San Antonio to Corpus Christi or Laredo;

(ii) the most direct route using highways in the state highway system connecting Corpus Christi and Laredo; or

(iii) a highway corridor connecting Corpus Christi and Houston;

(D) counties located within the area bounded by the highways described by Paragraph (C);

(E) counties in this state all or part of which are included in a nonattainment area designated under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407); and

(F) counties designated as affected counties under Section 386.001.

(2) "Commission" means the Texas Commission on

Environmental Quality.

(3) "Program" means the Texas alternative fueling facilities program established under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(m-2), eff. August 30, 2017.

Sec. 393.002. PROGRAM. (a) The commission shall establish and administer the Texas alternative fueling facilities program to provide fueling facilities for alternative fuel in the clean transportation zone. Under the program, the commission shall provide a grant for each eligible facility to offset the cost of those facilities.

(b) An entity that constructs or reconstructs an alternative fueling facility is eligible to participate in the program.

(c) To ensure that alternative fuel vehicles have access to fuel and to build the foundation for a self-sustaining market for alternative fuels in Texas, the commission shall provide for strategically placed fueling facilities in the clean transportation zone to enable an alternative fuel vehicle to travel in those areas relying solely on the alternative fuel.

(d) The commission shall maintain a listing to be made available to the public online of all vehicle fueling facilities that have received grant funding, including location and hours of operation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(n), eff. August 30, 2017.

Sec. 393.003. APPLICATION FOR GRANT. (a) An entity operating in this state that constructs or reconstructs a facility to dispense alternative fuels may apply for and receive a grant under the program.

(b) The commission may allow a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Local Government Code, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

(c) An application for a grant under this chapter must be made on a form provided by the commission and must contain the information required by the commission.

(d) An application for a grant under the program must include a certification that the applicant complies with laws, rules, guidelines, and requirements applicable to taxation of fuel provided by the applicant at each fueling facility owned or operated by the applicant. The commission may terminate a grant awarded under this section without further obligation to the grant recipient if the commission determines that the recipient did not comply with a law, rule, guideline, or requirement described by this subsection. This subsection does not create a cause of action to contest an application or award of a grant.

(e) The commission shall disburse grants under the program through a competitive application selection process to offset a portion of the eligible costs.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(n-1), eff. August 30, 2017.

Sec. 393.004. ELIGIBILITY OF FACILITIES FOR GRANTS. (a) In addition to the requirements of this chapter, the commission shall establish additional eligibility and prioritization criteria as needed to implement the program.

(b) The prioritization criteria established under Subsection (a) must provide that, for each grant round, the commission may not award a grant to an entity that does not agree to make the alternative fueling facility accessible and available to the public at times designated by the grant contract until each eligible entity that does agree to those terms has been awarded a grant.

(c) The commission may not award more than one grant for each

facility.

(d) The commission may give preference to or otherwise limit grant selections to:

(1) fueling facilities providing specific types of alternative fuels;

(2) fueling facilities in a specified area or location; and

(3) fueling facilities meeting other specified prioritization criteria established by the commission.

(e) For fueling facilities to provide natural gas, the commission shall give preference to:

(1) facilities providing both liquefied natural gas and compressed natural gas at a single location;

(2) facilities located not more than one mile from an interstate highway system;

(3) facilities located in the area in and between the Houston, San Antonio, and Dallas-Fort Worth areas; and

(4) facilities located in the area in and between the Corpus Christi, Laredo, and San Antonio areas.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(n-2), eff. August 30, 2017.

Sec. 393.005. RESTRICTION ON USE OF GRANT. (a) A recipient of a grant under this chapter shall use the grant only to pay the costs of the facility for which the grant is made. The recipient may not use the grant to pay the recipient's:

(1) administrative expenses;

(2) expenses for the purchase of land or an interest in land; or

(3) expenses for equipment or facility improvements that are not directly related to the delivery, storage, compression, or dispensing of the alternative fuel at the facility.

(b) Each grant must be awarded using a contract that requires the recipient to meet operational, maintenance, and reporting requirements as specified by the commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff.

September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(o), eff. August 30, 2017.

Sec. 393.006. AMOUNT OF GRANT. (a) Grants awarded under this chapter for a facility to provide alternative fuels other than natural gas may not exceed the lesser of:

(1) 50 percent of the sum of the actual eligible costs incurred by the grant recipient within deadlines established by the commission; or

(2) $600,000.

(b) Grants awarded under this chapter for a facility to provide natural gas may not exceed:

(1) $400,000 for a compressed natural gas facility;

(2) $400,000 for a liquefied natural gas facility; or

(3) $600,000 for a facility providing both liquefied and compressed natural gas.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 24, eff. June 14, 2013.
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(o-1), eff. August 30, 2017.

Sec. 393.007. EXPIRATION. This chapter expires on the last day of the state fiscal biennium during which the commission publishes in the Texas Register the notice required by Section 382.037.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(o-2), eff. August 30, 2017.

For expiration of this chapter, see Section 394.012.

CHAPTER 394. TEXAS NATURAL GAS VEHICLE GRANT PROGRAM

Sec. 394.001. DEFINITIONS. In this chapter:

(1) "Certified" includes:

(A) new vehicle or new engine certification by the United States Environmental Protection Agency; or

(B) certification or approval by the United States Environmental Protection Agency of a system to convert a vehicle or engine to operate on an alternative fuel and a demonstration by the emissions data used to certify or approve the vehicle or engine, if the commission determines the testing used to obtain the emissions data is consistent with the testing required for approval of an alternative fuel conversion system for new and relatively new vehicles or engines under 40 C.F.R. Part 85.

(1-a) "Clean transportation zone" has the meaning assigned by Section 393.001.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Executive director" means the executive director of the Texas Commission on Environmental Quality.

(4) "Heavy-duty motor vehicle" means a motor vehicle that:

(A) has a gross vehicle weight rating of more than 8,500 pounds; and

(B) is certified to or has an engine certified to the United States Environmental Protection Agency's emissions standards for heavy-duty vehicles or engines.

(5) "Incremental cost" has the meaning assigned by Section 386.001.

(6) "Medium-duty motor vehicle" means a motor vehicle with a gross vehicle weight rating of more than 8,500 pounds that:

(A) is certified to the United States Environmental Protection Agency's light-duty emissions standard; or

(B) has an engine certified to the United States Environmental Protection Agency's light-duty emissions standard.

(7) "Motor vehicle" has the meaning assigned by Section 386.151.

(7-a) "Natural gas engine" means an engine that operates:

(A) solely on natural gas, including compressed natural gas, liquefied natural gas, or liquefied petroleum gas; or

(B) on a combination of diesel fuel and natural gas,

including compressed natural gas, liquefied natural gas, or liquefied petroleum gas, and is capable of achieving at least 60 percent displacement of diesel fuel with natural gas.

(8) "Natural gas vehicle" means a motor vehicle that is powered by a natural gas engine.

(9) "Program" means the Texas natural gas vehicle grant program established under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(p), eff. August 30, 2017.
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-2)(3), eff. August 30, 2017.
Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 9.002, eff. September 1, 2019.

Sec. 394.002. PROGRAM. The commission shall establish and administer the Texas natural gas vehicle grant program to encourage an entity that has a heavy-duty or medium-duty motor vehicle to repower the vehicle with a natural gas engine or replace the vehicle with a natural gas vehicle. Under the program, the commission shall provide grants for eligible heavy-duty motor vehicles and medium-duty motor vehicles to offset the incremental cost for the entity of repowering or replacing the heavy-duty or medium-duty motor vehicle.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Sec. 394.003. QUALIFYING VEHICLES. (a) A vehicle is a qualifying vehicle that may be considered for a grant under the program if during the eligibility period established by the commission the entity:

(1) purchased, leased, or otherwise commercially financed the vehicle as an on-road heavy-duty or medium-duty motor vehicle that:

(A) is a new natural gas vehicle or, subject to Subsection (c), a used natural gas vehicle;

(B) is certified to the appropriate current federal emissions standards as determined by the commission; and

(C) replaces an on-road heavy-duty or medium-duty motor vehicle of the same weight classification and use; or

(2) repowered the on-road motor vehicle to a natural gas vehicle powered by a natural gas engine that is certified to the appropriate current federal emissions standards as determined by the commission.

(b) A heavy-duty or medium-duty motor vehicle is not a qualifying vehicle if the vehicle or the natural gas engine powering the vehicle:

(1) has been awarded a grant under this chapter for a previous reporting period; or

(2) has received a similar grant or tax credit in another jurisdiction if that grant or tax credit program is relied on for credit in the state implementation plan.

(c) A used natural gas vehicle that is proposed to replace an on-road heavy-duty or medium-duty motor vehicle must be of model year 2017 or later, provided that the model year may not be more than six years older than the current model year at the time of the submission of the grant application.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(p-1), eff. August 30, 2017.

Acts 2021, 87th Leg., R.S., Ch. 450 (H.B. 963), Sec. 1, eff. September 1, 2021.

Sec. 394.004. APPLICATION FOR GRANT. (a) Only an entity operating in this state that operates a heavy-duty or medium-duty motor vehicle may apply for and receive a grant under this chapter.

(b) An application for a grant under this chapter must be made on a form provided by the commission and must contain the information required by the commission.

(c) The commission, after consulting stakeholders, shall:

(1) simplify the application form; and

(2) minimize, to the maximum extent possible, documentation

required for an application.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Sec. 394.005. ELIGIBILITY FOR GRANTS. (a) The commission shall establish criteria for prioritizing qualifying vehicles eligible to receive grants under this chapter. The commission shall review and revise the criteria as appropriate.

(b) To be eligible for a grant under the program:

(1) the use of the qualifying vehicle must be projected to result in a reduction in emissions of nitrogen oxides of at least 25 percent as compared to the motor vehicle or engine being replaced, based on:

(A) the baseline emission level set by the commission under Subsection (g); and

(B) the certified emission rate of the qualifying vehicle; and

(2) the qualifying vehicle must:

(A) replace a heavy-duty or medium-duty motor vehicle that:

(i) is an on-road vehicle that has been owned, leased, or otherwise commercially financed and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(ii) satisfies any minimum average annual mileage or fuel usage requirements established by the commission;

(iii) satisfies any minimum percentage of annual usage requirements established by the commission; and

(iv) is in operating condition and has at least two years of remaining useful life, as determined in accordance with criteria established by the commission;

(B) replace a heavy-duty or medium-duty motor vehicle that:

(i) is owned by the applicant;

(ii) is an on-road vehicle that has been:

(a) owned, leased, or otherwise commercially financed and operated in Texas as a fleet vehicle for at least the two years immediately preceding the submission of a grant

application; and

(b) registered in a county located in the clean transportation zone for at least the two years immediately preceding the submission of a grant application; and

(iii) otherwise satisfies the mileage, usage, and useful life requirements established under Paragraph (A) as determined by documentation associated with the vehicle; or

(C) be a heavy-duty or medium-duty motor vehicle repowered with a natural gas engine that:

(i) is installed in an on-road vehicle that has been owned, leased, or otherwise commercially financed and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(ii) satisfies any minimum average annual mileage or fuel usage requirements established by the commission;

(iii) satisfies any minimum percentage of annual usage requirements established by the commission; and

(iv) is installed in an on-road vehicle that, at the time of the vehicle's repowering, was in operating condition and had at least two years of remaining useful life, as determined in accordance with criteria established by the commission.

(c) As a condition of receiving a grant, the qualifying vehicle must be continuously owned, leased, or otherwise commercially financed and registered and operated in the state by the grant recipient until the earlier of the fourth anniversary of the activity start date established by the commission or the date the vehicle has been in operation for 400,000 miles after the activity start date established by the commission. Not less than 75 percent of the annual use of the qualifying vehicle, either mileage or fuel use as determined by the commission, must occur in the clean transportation zone.

(c-1) For purposes of Subsection (c), the commission shall establish the activity start date based on the date the commission accepts verification of the disposition of the vehicle or engine.

(d) The commission shall include and enforce the usage provisions in the grant contracts. The commission shall monitor compliance with the ownership, leasing, and usage requirements, including submission of reports on at least an annual basis, or more frequently as determined by the commission.

(e) The commission by contract may require the return of all or

a portion of grant funds for a grant recipient's noncompliance with the usage and percentage of use requirements under this section.

(f) A heavy-duty or medium-duty motor vehicle replaced under this program must be rendered permanently inoperable by crushing the vehicle, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the commission, or be permanently removed from operation in this state. The commission shall establish criteria for ensuring the permanent destruction or permanent removal of the engine or vehicle. The commission shall enforce the destruction and removal requirements. For purposes of this subsection, "permanent removal" means the permanent export of the vehicle or engine to a destination outside of the United States, Canada, or the United Mexican States.

(g) The commission shall establish baseline emission levels for emissions of nitrogen oxides for on-road heavy-duty or medium-duty motor vehicles being replaced or repowered by using the emission certification for the engine or vehicle being replaced. The commission may consider deterioration of the emission performance of the engine of the vehicle being replaced in establishing the baseline emission level. The commission may consider and establish baseline emission rates for additional pollutants of concern.

(h) Mileage or fuel use requirements established by the commission under Subsection (b)(2)(A)(ii) may differ by vehicle weight categories and type of use.

(i) The executive director may waive the requirements of Subsection (b)(2)(A)(i) or (B)(ii) on a finding of good cause, which may include short lapses in registration or operation due to economic conditions, seasonal work, or other circumstances.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(p-2), eff. August 30, 2017.

Acts 2021, 87th Leg., R.S., Ch. 450 (H.B. 963), Sec. 2, eff. September 1, 2021.

Sec. 394.006. RESTRICTION ON USE OF GRANT. A recipient of a grant under this chapter shall use the grant to pay the incremental

costs of the replacement or vehicle repower for which the grant is made, which may include a portion of the initial cost of the natural gas vehicle or natural gas engine, including the cost of the natural gas fuel system and installation. The recipient may not use the grant to pay the recipient's administrative expenses.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(q), eff. August 30, 2017.

Sec. 394.007. AMOUNT OF GRANT. (a) The commission shall develop a grant schedule that:

(1) assigns a standardized grant in an amount up to 90 percent of the incremental cost of a natural gas vehicle purchase, lease, other commercial finance, or repowering;

(2) is based on:

(A) the certified emission level of nitrogen oxides, or other pollutants as determined by the commission, of the engine powering the natural gas vehicle; and

(B) the usage of the natural gas vehicle; and

(3) may take into account the overall emissions reduction achieved by the natural gas vehicle.

(b) Not less than 60 percent of the total amount of grants awarded under this chapter for the purchase and repowering of motor vehicles must be awarded to motor vehicles with a gross vehicle weight rating of at least 33,001 pounds. The minimum grant requirement under this subsection does not apply if the commission does not receive enough grant applications to satisfy the requirement for motor vehicles described by this subsection that are eligible to receive a grant under this chapter.

(c) A person may not receive a grant under this chapter that, when combined with any other grant, tax credit, or other governmental incentive, exceeds the incremental cost of the vehicle or vehicle repower for which the grant is awarded. A person shall return to the commission the amount of a grant awarded under this chapter that, when combined with any other grant, tax credit, or other governmental incentive, exceeds the incremental cost of the vehicle or vehicle

repower for which the grant is awarded.

(d) The commission shall reduce the amount of a grant awarded under this chapter as necessary to keep the combined incentive total at or below the incremental cost of the vehicle for which the grant is awarded if the grant recipient is eligible to receive an automatic incentive at or before the time a grant is awarded under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 22, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(q-1), eff. August 30, 2017.

Sec. 394.008. GRANT PROCEDURES. (a) The commission shall establish procedures for:

(1) awarding grants under this chapter to reimburse eligible costs;

(2) streamlining the grant application, contracting, reimbursement, and reporting process for qualifying natural gas vehicle purchases or repowers; and

(3) preapproving the award of grants to applicants who propose to purchase and replace motor vehicles described by Section 394.005(b)(2)(B).

(b) Procedures established under this section must:

(1) provide for the commission to compile and regularly update a listing of potentially eligible natural gas vehicles and natural gas engines that are certified to the appropriate current federal emissions standards as determined by the commission;

(2) provide a method to calculate the reduction in emissions of nitrogen oxides, volatile organic compounds, carbon monoxide, particulate matter, and sulfur compounds for each replacement or repowering;

(3) assign a standardized grant amount for each qualifying vehicle or engine repower under Section 394.007;

(4) allow for processing applications on an ongoing first-come, first-served basis;

(5) require grant applicants to identify natural gas fueling stations that are available to fuel the qualifying vehicle in the area of its use;

(6) provide for payment not later than the 30th day after the date the request for reimbursement for an approved grant is received;

(7) provide for application submission and application status checks using procedures established by the commission, which may include application submission and status checks to be made over the Internet; and

(8) consolidate, simplify, and reduce the administrative work for applicants and the commission associated with grant application, contracting, reimbursement, and reporting requirements.

(c) The commission, or its designee, shall oversee the grant process and is responsible for final approval of any grant.

(d) Grant recipients are responsible for meeting all grant conditions, including reporting and monitoring as required by the commission through the grant contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(q-2), eff. August 30, 2017.

Sec. 394.012. EXPIRATION. This chapter expires on the last day of the state fiscal biennium during which the commission publishes in the Texas Register the notice required by Section 382.037.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r), eff. August 30, 2017.

For expiration of this chapter, see Section 395.015.

CHAPTER 395. GOVERNMENTAL ALTERNATIVE FUEL FLEET GRANT PROGRAM

Sec. 395.001. DEFINITIONS. In this chapter:

(1) "Alternative fuel" means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen fuel cells, or electricity, including electricity to power fully electric motor vehicles and plug-in hybrid motor vehicles.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Incremental cost" has the meaning assigned by Section 386.001.

(4) "Motor vehicle" means a self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Chapter 502, Transportation Code.

(5) "Plug-in hybrid motor vehicle" has the meaning assigned by Section 2158.001, Government Code.

(6) "Political subdivision" means a county, municipality, school district, junior college district, river authority, water district or other special district, or other political subdivision created under the constitution or a statute of this state.

(7) "Program" means the governmental alternative fuel fleet grant program established under this chapter.

(8) "State agency" has the meaning assigned by Section 2151.002, Government Code, and includes the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.002. PROGRAM. (a) The commission shall establish and administer a governmental alternative fuel fleet grant program to assist an eligible applicant described by Section 395.003 in purchasing or leasing new motor vehicles that operate primarily on an alternative fuel.

(b) The program may provide a grant to an applicant described by Section 395.003 to:

(1) purchase or lease a new motor vehicle described by Section 395.004; or

(2) purchase, lease, or install refueling infrastructure or equipment or procure refueling services as described by Section 395.005 to store and dispense alternative fuel needed for a motor vehicle described by Subdivision (1) of this subsection.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1),

eff. August 30, 2017.

Sec. 395.003. ELIGIBLE APPLICANTS. (a) A state agency or political subdivision is eligible to apply for a grant under the program if the entity operates a fleet of more than 15 motor vehicles, excluding motor vehicles that are owned and operated by a private company or other third party under a contract with the entity.

(b) A mass transit or school transportation provider or other public entity established to provide public or school transportation services is eligible for a grant under the program.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.004. MOTOR VEHICLE REQUIREMENTS. (a) A grant recipient may purchase or lease with money from a grant under the program a new motor vehicle that is originally manufactured to operate using one or more alternative fuels or is converted to operate using one or more alternative fuels before the first retail sale of the vehicle, and that:

(1) has a dedicated system, dual-fuel system, or bi-fuel system; and

(2) if the motor vehicle is a fully electric motor vehicle or plug-in hybrid motor vehicle, has a United States Environmental Protection Agency rating of at least 75 miles per gallon equivalent or a 75-mile combined city and highway range.

(b) A grant recipient may not use money from a grant under the program to replace a motor vehicle, transit bus, or school bus that operates on an alternative fuel unless the replacement vehicle produces fewer emissions and has greater fuel efficiency than the vehicle being replaced.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.005. REFUELING INFRASTRUCTURE, EQUIPMENT, AND SERVICES. A grant recipient may purchase, lease, or install

refueling infrastructure or equipment or procure refueling services with money from a grant under the program if:

(1) the purchase, lease, installation, or procurement is made in conjunction with the purchase or lease of a motor vehicle as described by Section 395.004 or the conversion of a motor vehicle to operate primarily on an alternative fuel;

(2) the grant recipient demonstrates that a refueling station that meets the needs of the recipient is not available within five miles of the location at which the recipient's vehicles are stored or primarily used; and

(3) for the purchase or installation of refueling infrastructure or equipment, the infrastructure or equipment will be owned and operated by the grant recipient, and for the lease of refueling infrastructure or equipment or the procurement of refueling services, a third-party service provider engaged by the grant recipient will provide the infrastructure, equipment, or services.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.006. ELIGIBLE COSTS. (a) A motor vehicle lease agreement paid for with money from a grant under the program must have a term of at least three years.

(b) Refueling infrastructure or equipment purchased or installed with money from a grant under the program must be used specifically to store or dispense alternative fuel, as determined by the commission.

(c) A lease of or service agreement for refueling infrastructure, equipment, or services paid for with money from a grant under the program must have a term of at least three years.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.007. GRANT AMOUNTS. (a) The commission may establish standardized grant amounts based on the incremental costs associated with the purchase or lease of different categories of motor vehicles, including the type of fuel used, vehicle class, and other categories the commission considers appropriate.

(b) In determining the incremental costs and setting the standardized grant amounts, the commission may consider the difference in cost between a new motor vehicle operated using conventional gasoline or diesel fuel and a new motor vehicle operated using alternative fuel.

(c) The amount of a grant for the purchase or lease of a motor vehicle may not exceed the amount of the incremental cost of the purchase or lease.

(d) The commission may establish grant amounts to reimburse the full cost of the purchase, lease, installation, or procurement of refueling infrastructure, equipment, or services or may establish criteria for reimbursing a percentage of the cost.

(e) A grant under the program may be combined with funding from other sources, including other grant programs, except that a grant may not be combined with other funding or grants from the Texas emissions reduction plan. When combined with other funding sources, a grant may not exceed the total cost to the grant recipient.

(f) In providing a grant for the lease of a motor vehicle under this chapter, the commission shall establish criteria:

(1) to offset incremental costs through an up-front payment to lower the cost basis of the lease; or

(2) if determined appropriate by the commission, to provide for reimbursement of lease payments over no more than the period of availability of the contracted funds under applicable state law and regulation, which may be less than the required three-year lease term.

(g) In providing a grant for the lease of refueling infrastructure, equipment, or services, the commission shall establish criteria:

(1) to offset incremental costs through an up-front payment to lower the cost basis of the lease; or

(2) if determined appropriate by the commission, to provide for reimbursement of lease payments over no more than the period of availability of the contracted funds under applicable state law and regulation, which may be less than the required three-year lease term.

(h) Notwithstanding Subsection (d), the commission is not obligated to fund the full cost of the purchase, lease, installation, or procurement of refueling infrastructure, equipment, or services if those costs cannot be incurred and reimbursed over the period of

availability of the funds under applicable state law and regulation.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.008. AVAILABILITY OF EMISSIONS REDUCTION CREDITS. (a) A project that is funded from a grant under the program and that would generate marketable emissions reduction credits under a state or federal emissions reduction credit averaging, banking, or trading program is not eligible for funding under the program unless:

(1) the project includes the transfer of the credits, or the reductions that would otherwise be marketable credits, to the commission and, if applicable, the state implementation plan; and

(2) the credits or reductions, as applicable, are permanently retired.

(b) An emissions reduction generated by a purchase or lease under this chapter may be used to demonstrate conformity with the state implementation plan.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.009. USE OF GRANT MONEY. A grant recipient when using money from a grant under the program shall prioritize:

(1) the purchase or lease of new motor vehicles, including new motor vehicles that are converted to operate on an alternative fuel, when replacing vehicles or adding vehicles to the fleet;

(2) the purchase of new motor vehicles, including new motor vehicles that are converted to operate on an alternative fuel, to replace vehicles that have the highest total mileage and do not use an alternative fuel; and

(3) to the extent feasible, obtaining, whether by purchase, purchase and conversion, or lease, motor vehicles that use compressed natural gas, liquefied natural gas, or liquefied petroleum gas.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.010. GRANT PROCEDURES AND CRITERIA. (a) The commission shall establish specific criteria and procedures in order to implement and administer the program, including the creation and provision of application forms and guidance on the application process.

(b) The commission shall award a grant through a contract between the commission and the grant recipient.

(c) The commission shall provide an online application process for the submission of all required application documents.

(d) The commission may limit funding for a particular period according to priorities established by the commission, including limiting the availability of grants to specific entities, for certain types of vehicles and infrastructure, or to certain geographic areas to ensure equitable distribution of grant funds across the state.

(e) In awarding grants under the program, the commission shall prioritize projects in the following order:

(1) projects that are proposed by a state agency;

(2) projects that are in or near a nonattainment area;

(3) projects that are in an affected county, as that term is defined by Section 386.001; and

(4) projects that will produce the greatest emissions reductions.

(f) In addition to the requirements under Subsection (e), in awarding grants under the program, the commission shall consider:

(1) the total amount of the emissions reduction that would be achieved from the project;

(2) the type and number of vehicles purchased or leased;

(3) the location of the fleet and the refueling infrastructure or equipment;

(4) the number of vehicles served and the rate at which vehicles are served by the refueling infrastructure or equipment;

(5) the amount of any matching funds committed by the applicant; and

(6) the schedule for project completion.

(g) The commission may not award more than 10 percent of the total amount awarded under the program in any fiscal year for purchasing, leasing, installing, or procuring refueling infrastructure, equipment, or services.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1),

eff. August 30, 2017.

Sec. 395.011. FUNDING. The legislature may appropriate money to the commission from the Texas emissions reduction plan account established under Section 386.251 to administer the program.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1301 (H.B. 3745), Sec. 1.08, eff. September 1, 2021.

Sec. 395.012. ADMINISTRATIVE COSTS. In each fiscal year, the commission may use up to 1.5 percent of the total amount of money allocated to the program in that fiscal year, but not more than $1 million, for the administrative costs of the program.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.013. RULES. The commission may adopt rules as necessary to implement this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.014. REPORT REQUIRED. On or before November 1 of each even-numbered year, the commission shall submit to the governor, lieutenant governor, and members of the legislature a report that includes the following information regarding awards made under the program during the preceding state fiscal biennium:

(1) the number of grants awarded under the program;

(2) the recipient of each grant awarded;

(3) the number of vehicles replaced;

(4) the number, type, and location of any refueling infrastructure, equipment, or services funded under the program;

(5) the total emissions reductions achieved under the

program; and

(6) any other information the commission considers relevant.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.015. EXPIRATION. This chapter expires on the last day of the state fiscal biennium during which the commission publishes in the Texas Register the notice required by Section 382.037.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

SUBTITLE D. NUCLEAR AND RADIOACTIVE MATERIALS

CHAPTER 401. RADIOACTIVE MATERIALS AND OTHER SOURCES OF RADIATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 401.0005. SHORT TITLE. This chapter may be cited as the Texas Radiation Control Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 142, eff. Sept. 1, 1991.

Sec. 401.001. POLICY. In furtherance of the state's responsibility to protect occupational and public health and safety and the environment, it is the policy of the state to institute and maintain:

(1) a regulatory program for sources of radiation that provides for:

(A) compatibility with federal standards and regulatory programs;

(B) a single, effective regulatory system in the state; and

(C) a regulatory system that is to the degree possible compatible with other states' systems; and

(2) a program that permits development and use of sources of radiation for peaceful purposes consistent with public health and safety and environmental protection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.002. PURPOSE. It is the purpose of this chapter to carry out the policies stated in Section 401.001 by providing a program to:

(1) ensure effective regulation of sources of radiation for protection of the occupational and public health and safety and the environment;

(2) promote an orderly regulatory pattern in the state, among the states, and between the federal government and the state, and facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation to minimize regulatory duplication;

(3) establish procedures for assumption and performance of certain regulatory responsibilities with respect to sources of radiation; and

(4) permit maximum use of sources of radiation consistent with public health and safety and environmental protection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.003. DEFINITIONS. In this chapter, unless otherwise specifically provided:

(1) "Advisory board" means the radiation advisory board.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(74), eff. April 2, 2015.

(3) "By-product material" means:

(A) a radioactive material, other than special nuclear material, that is produced in or made radioactive by exposure to radiation incident to the process of producing or using special nuclear material; and

(B) tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes.

(4) "Commission" means the Texas Commission on Environmental Quality.

(5) "Commissioner" means the commissioner of state health services.

(6) "Department" means the Department of State Health Services or other department designated by the executive commissioner.

(7) "Director" means the director of the radiation control program under the department's jurisdiction.

(8) "Disposal" means, with regard to low-level radioactive waste, isolation or removal of low-level radioactive waste from mankind and mankind's environment without intent to retrieve that low-level radioactive waste later. The term does not include emissions and discharges under department rules.

(9) "Electronic product" means a manufactured product or device or component part of a manufactured product or device that has an electronic circuit that during operation can generate or emit a physical field of radiation.

(9-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(10) "Federal commission" means the United States Nuclear Regulatory Commission.

(11) "Perpetual care account" means the radiation and perpetual care account.

(12) "General license" means a license issued under department rules for which an application is not required to be filed to transfer, acquire, own, possess, or use quantities of or devices or equipment that make use of by-product, source, special nuclear, or other radioactive material.

(12-a) "Gross receipts" includes, with respect to an entity or affiliated members, owners, shareholders, or limited or general partners, all receipts from the entity's disposal operations in Texas licensed under this chapter including any bonus, commission, or similar payment received by the entity from a customer, contractor, subcontractor, or other person doing business with the entity or affiliated members, owners, shareholders, or limited or general partners. This term does not include receipts from the entity's operations in Texas, or affiliated members, owners, shareholders, or limited or general partners, for capital reimbursements, bona fide storage and processing, and federal or state taxes or fees on waste received uniquely required to meet the specifications of a license or contract. The commission may promulgate rules in establishing the

criteria for determining gross receipts consistent with the parameters of this definition.

(12-b) "High-level radioactive waste" has the meaning assigned by 42 U.S.C. Section 10101(12) and includes spent nuclear fuel as defined by 42 U.S.C. Section 10101(23).

(13) "Local government" means a municipality, county, special district, or other political subdivision of the state.

(14) "Person" includes a legal successor to or representative, agent, or agency of any person but does not include the federal commission and federal agencies the federal commission licenses or exempts.

(15) "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent to that county, in which nuclear or radioactive material is or will be located; or

(B) is doing business or has a legal interest in land in the county or adjacent county.

(16) "Processing" means the storage, extraction of material, transfer, volume reduction, compaction, or other separation and preparation of low-level radioactive waste for reuse or disposal, including a treatment or activity that renders the waste less hazardous, safer for transport, or amenable to recovery, storage, or disposal.

(17) "Radiation" means one or more of the following:

(A) gamma-rays and X-rays, alpha and beta particles, and other atomic or nuclear particles or rays;

(B) emission of radiation from an electronic device to energy density levels that could reasonably cause bodily harm; or

(C) sonic, ultrasonic, or infrasonic waves emitted from an electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.

(18) "Radioactive material" means a naturally occurring or artificially produced solid, liquid, or gas that emits radiation spontaneously.

(19) "Radioactive substance" includes:

(A) by-product material;

(B) naturally occurring radioactive material waste,

excluding oil and gas NORM waste;

(C) radioactive material;

(D) low-level radioactive waste;

(E) source material;

(F) source of radiation; and

(G) special nuclear material.

(20) Repealed by Acts 1999, 76th Leg., ch. 1367, Sec. 39, eff. Sept. 1, 1999.

(21) "Registration" includes:

(A) notice to the department of the service or use of an electronic product; and

(B) registration under Section 401.105.

(22) "Source material" means:

(A) uranium, thorium, or other material that the governor by order declares to be source material after the federal commission has determined the material to be source material; or

(B) ore that contains one or more of the materials listed in Subdivision (A) to the degree of concentration that the governor by order declares to be source material after the federal commission has determined the material to be of a degree of concentration to be source material.

(23) "Source of radiation" means radioactive material or a device or equipment that emits or is capable of producing radiation intentionally or incidentally.

(24) "Special nuclear material" means:

(A) plutonium, uranium 233, uranium enriched in the isotope 233 or the isotope 235, and any other material other than source material that the governor by order declares to be special nuclear material after the federal commission determines the material to be special nuclear material; or

(B) material other than source material that is artificially enriched by any of the materials listed in Subdivision (A).

(25) "Specific license" means a license, issued pursuant to an application, to use, manufacture, produce, transfer, receive, acquire, own, possess, process, or dispose of quantities of or devices or equipment using by-product, source, special nuclear, or other radioactive material.

(26) "Naturally occurring radioactive material waste" or "NORM waste" means solid, liquid, or gaseous material or combination

of materials, excluding source material, special nuclear material, and by-product material, that:

(A) in its natural physical state spontaneously emits radiation;

(B) is discarded or unwanted; and

(C) is not exempt by department rule adopted under Section 401.106.

(27) "Oil and gas NORM waste" means solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and by-product material, that:

(A) in its natural physical state spontaneously emits radiation;

(B) is discarded or unwanted;

(C) is not exempt by department rule adopted under Section 401.106; and

(D) constitutes, is contained in, or has contaminated oil and gas waste as that term is defined in Section 91.1011 of the Natural Resources Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 810, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.208, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1338, Sec. 1, eff. June 20, 1997; Acts 1999, 76th Leg., ch. 1367, Sec. 1, 39, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1009, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 580, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 1, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0899, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(74), eff. April 2, 2015.

Acts 2021, 87th Leg., 2nd C.S., Ch. 2 (H.B. 7), Sec. 1, eff. September 9, 2021.

Sec. 401.004. LOW-LEVEL RADIOACTIVE WASTE DEFINED. (a) Except as provided by Subsection (b), "low-level radioactive waste" means

radioactive material that:

(1) is discarded or unwanted and is not exempt by department rule adopted under Section 401.106;

(2) is waste, as that term is defined by 10 C.F.R. Section 61.2; and

(3) is subject to:

(A) concentration limits established under 10 C.F.R. Section 61.55, or compatible rules established by the executive commissioner or commission, as applicable; and

(B) disposal criteria established under Title 10, Code of Federal Regulations, or established by the department or commission, as applicable.

(b) "Low-level radioactive waste" does not include:

(1) high-level radioactive waste as defined by 10 C.F.R. Section 60.2;

(2) spent nuclear fuel as defined by 10 C.F.R. Section 72.3;

(3) by-product material described by Section 401.003(3)(B);

(4) naturally occurring radioactive material waste that is not oil and gas NORM waste; or

(5) oil and gas NORM waste.

Added by Acts 1999, 76th Leg., ch. 1367, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0900, eff. April 2, 2015.

Sec. 401.005. CODE OF FEDERAL REGULATIONS REFERENCES. A reference in this chapter to the "C.F.R." or the "Code of Federal Regulations" means the Code of Federal Regulations as it existed on September 1, 1999.

Added by Acts 1999, 76th Leg., ch. 1367, Sec. 2, eff. Sept. 1, 1999.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 401.011. RADIATION CONTROL AGENCY. (a) The department is the Texas Radiation Control Agency. The department has jurisdiction over activities and substances regulated under this chapter except as provided by Subsection (b) and Subchapters E, F, G, and K.

(b) The commission has jurisdiction to regulate and license:

(1) the disposal of radioactive substances;

(2) the processing or storage of low-level radioactive waste or naturally occurring radioactive material waste received from other persons, except oil and gas NORM;

(3) the recovery or processing of source material in accordance with Subchapter G;

(4) the processing of by-product material as defined by Section 401.003(3)(B); and

(5) sites for the disposal of:

(A) low-level radioactive waste;

(B) by-product material; or

(C) naturally occurring radioactive material waste.

(c) The department and commission each shall exercise its respective powers and duties under this chapter for the protection of the occupational health and safety and the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.209, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1338, Sec. 2, eff. June 20, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 2, eff. June 15, 2007.

Sec. 401.012. DESIGNATION OF DIRECTOR. The commissioner shall designate the director of the radiation control program under the department's jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.209, eff. Sept. 1, 1995.

Sec. 401.013. DUTIES OF DIRECTOR. The director or the director's designee shall perform the department's functions under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 143, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 448, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.209, eff. Sept. 1, 1995.

Sec. 401.014. EMPLOYEES. The department and commission each within its jurisdiction may employ, compensate, and prescribe the powers and duties of persons as necessary to carry out this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.209, eff. Sept. 1, 1995.

Sec. 401.015. RADIATION ADVISORY BOARD. (a) The radiation advisory board is composed of the following 19 members appointed by the governor:

(1) one representative from industry who is trained in nuclear physics, science, or nuclear engineering;

(2) one representative from labor;

(3) one representative from agriculture;

(4) one representative from the insurance industry;

(5) one individual who is engaged in the use and application of nuclear physics in medicine and is certified by the American Board of Radiology or licensed by the Texas Medical Board under Chapter 602, Occupations Code;

(6) one hospital administrator;

(7) one individual licensed by the Texas Medical Board who specializes in nuclear medicine;

(8) one individual licensed by the Texas Medical Board who specializes in pathology;

(9) one individual licensed by the Texas Medical Board who specializes in radiology;

(10) one representative from the nuclear utility industry;

(11) one representative from the radioactive waste industry;

(12) one representative from the petroleum industry;

(13) one health physicist certified by the American Board of Health Physics;

(14) one individual licensed by the State Board of Dental Examiners;

(15) one representative from the uranium mining industry;

(16) one individual licensed by the State Board of Veterinary Medical Examiners; and

(17) three representatives of the public.

(b) Advisory board members serve for staggered six-year terms.

(c) A person is not eligible to be appointed as a representative of the public on the advisory board if that person or that person's spouse is:

(1) engaged in an occupation in the health care field; or

(2) employed by, participates in the management of, or has a financial interest, other than as a consumer, in part of the nuclear utility industry or in a business entity or other organization that is licensed under Subchapter F or Subchapter G.

(d) In this subsection, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. A person may not be a member of the advisory board if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health physics or radiological health; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health physics or radiological health.

(e) A person may not be a member of the advisory board or act as the general counsel to the advisory board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the advisory board.

(f) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 554, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 9.01, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0901, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 9.003, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 255 (S.B. 1592), Sec. 1, eff. May

27, 2023.

Sec. 401.0151. TRAINING FOR ADVISORY BOARD MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the advisory board may not vote, deliberate, or be counted as a member in attendance at a meeting of the advisory board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the advisory board;

(2) the role and functions of the advisory board;

(3) the rules of the advisory board and applicable rules of the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(4) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(5) any applicable ethics policies adopted by the advisory board or the Texas Ethics Commission.

(c) A person appointed to the advisory board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 9.02, eff. Sept. 1, 1999.

Sec. 401.0152. INFORMATION ABOUT STANDARDS OF CONDUCT. The department shall provide to members of the advisory board, as often as necessary, information regarding the requirements for office under this subchapter, including information regarding a person's

responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 9.02, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0902, eff. April 2, 2015.

Sec. 401.0153. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the advisory board that a member:

(1) does not have at the time of taking office the qualifications required by Section 401.015(a);

(2) does not maintain during service on the advisory board the qualifications required by Section 401.015(a);

(3) is ineligible for membership under Section 401.015(c), (d), or (e);

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled advisory board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the advisory board.

(b) The validity of an action of the advisory board is not affected by the fact that it is taken when a ground for removal of an advisory board member exists.

(c) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the advisory board chairman of the potential ground. The advisory board chairman shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the advisory board chairman, the commissioner shall notify the next highest ranking officer of the advisory board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 9.02, eff. Sept. 1, 1999.

Sec. 401.016. OFFICERS. (a) The governor shall designate a member of the advisory board as the advisory board chairman to serve in that capacity at the will of the governor.

(b) The advisory board shall elect from its members a vice-chairman and secretary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 9.03, eff. Sept. 1, 1999.

Sec. 401.017. SALARY; EXPENSES. A member of the advisory board is not entitled to receive a salary for service on the advisory board but may be reimbursed for actual expenses incurred in attending advisory board meetings or for engaging in authorized advisory board business.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.018. MEETINGS. (a) The advisory board shall meet quarterly on dates set by the advisory board.

(b) The advisory board shall hold special meetings that may be called by the advisory board chairman or by five advisory board members.

(c) Advisory board meetings may be held at any designated place in the state determined by the advisory board chairman to best serve the purpose for which the meeting is called.

(d) Each member of the advisory board shall be given timely notice of each advisory board meeting.

(e) A record must be kept of each advisory board meeting.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 554, Sec. 2, eff. Sept. 1, 1997.

Sec. 401.0181. PUBLIC TESTIMONY. The advisory board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the advisory board and to speak on any issue under the jurisdiction of the advisory board.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 9.04, eff. Sept. 1,

1999.

Sec. 401.019. ADVISORY BOARD DUTIES. The advisory board shall:

(1) review and evaluate state radiation policies and programs;

(2) make recommendations and furnish technical advice to the department, the commission, the Railroad Commission of Texas, and other state agencies that may be required on matters relating to development, use, and regulation of sources of radiation; and

(3) review proposed rules and guidelines of any state agency relating to regulation of sources of radiation and recommend changes in proposed or existing rules and guidelines relating to those matters.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 553, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 554, Sec. 3, eff. June 2, 1997.
Reenacted and amended by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0903, eff. April 2, 2015.

Sec. 401.020. DUTY OF AGENCIES WITH RADIATION-RELATED PROGRAMS. A state agency shall:

(1) consider the recommendations and advice of the advisory board that concern the agency's policies or programs related to the development, use, or regulation of a source of radiation; and

(2) provide the advisory board a written response to the recommendations or advice.

Added by Acts 1997, 75th Leg., ch. 553, Sec. 2, eff. June 2, 1997.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 401.051. ADOPTION OF RULES AND GUIDELINES. The executive commissioner and commission each within the jurisdiction of that officer or agency may adopt rules and guidelines relating to control of sources of radiation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.210, eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0904, eff. April 2, 2015.

Sec. 401.052. RULES FOR TRANSPORTATION AND ROUTING. (a) The executive commissioner shall adopt rules that provide for transportation and routing of radioactive material and waste in this state.

(b) Rules adopted under this section for low-level radioactive waste must:

(1) to the extent practicable, be compatible with United States Department of Transportation and federal commission regulations relating to the transportation of low-level radioactive waste;

(2) require each shipper and carrier of low-level radioactive waste to adopt an emergency plan approved by the department for responding to transportation accidents;

(3) require the notification and reporting of accidents to the department and to local emergency planning committees in the county where the accident occurs;

(4) require each shipper to adopt a quality control program approved by the department to verify that shipping containers are suitable for shipment to a licensed disposal facility;

(5) assess a fee on shippers for shipments to a Texas low-level radioactive waste disposal facility of low-level radioactive waste originating in Texas or out-of-state; and

(6) require a carrier to carry liability insurance in an amount the executive commissioner determines is sufficient to cover damages likely to be caused by a shipping accident in accordance with regulations imposed by the United States Department of Transportation and the federal commission.

(c) In adopting rules under this section, the executive commissioner shall consult with the advisory board and the commission.

(d) Fees assessed under this section:

(1) may provide additional revenue to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission;

(2) may not exceed $10 per cubic foot of shipped low-level

radioactive waste;

(3) shall be collected by the department and deposited to the credit of the perpetual care account;

(4) shall be used by the department for emergency planning for and response to transportation accidents involving low-level radioactive waste, including first responder training in counties through which transportation routes are designated in accordance with Subsection (a); and

(5) may not be collected on waste disposed of at a federal waste disposal facility.

(e) Money expended from the perpetual care account to respond to accidents involving low-level radioactive waste must be reimbursed to the perpetual care account by the responsible shipper or carrier according to rules adopted by the executive commissioner.

(f) In this section, "shipper" means a person who generates low-level radioactive waste and ships or arranges with others to ship the waste to a disposal site.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 878, Sec. 23, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.211, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 3, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 580, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0905, eff. April 2, 2015.

Sec. 401.0525. GROUNDWATER PROTECTION STANDARDS. (a) The commission shall adopt and enforce groundwater protection standards compatible with federal standards adopted under the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.).

(b) In adopting any standards relating to nonradioactive constituents the commission shall consider the compatibility of those standards with the commission's groundwater protection standards adopted under other programs.

(c) With the exception of a permit for a facility located at

the site of nuclear power reactors and nuclear research and test reactors operated by a university, in accordance with Subsection (d), the commission may not under the authority given to the agency under Section 301, 304, or 401 of the Clean Water Act (33 U.S.C. Sections 1311, 1314, and 1341) issue a general construction permit or approve a Stormwater Pollution Prevention Plan under Section 26.040, Water Code, or issue a permit under the Texas Pollutant Discharge Elimination System Program under Section 26.027, 26.028, or 26.121, Water Code, for the construction or operation of a facility that is licensed for the disposal or storage of high-level radioactive waste by the United States Nuclear Regulatory Commission under 10 C.F.R. Part 72. Section 401.005 does not apply to this subsection.

(d) A facility permitted under the exception provided by Subsection (c) may store high-level radioactive waste only at the nuclear power reactor or the nuclear research and test reactor operated by a university, at which the waste originated.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 144, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.212, eff. Sept. 1, 1995.
Amended by:

Acts 2021, 87th Leg., 2nd C.S., Ch. 2 (H.B. 7), Sec. 2, eff. September 9, 2021.

Acts 2025, 89th Leg., R.S., Ch. 1091 (H.B. 4112), Sec. 1, eff. September 1, 2025.

Sec. 401.053. CLASSIFICATION SYSTEM FOR LOW-LEVEL RADIOACTIVE WASTE. The department may establish a classification system for low-level radioactive waste that is based on radiological, chemical, and biological characteristics and on physical state so that low-level radioactive waste can be managed safely and compatibly.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1367, Sec. 4, eff. Sept. 1, 1999.

Sec. 401.054. NOTICE AND HEARING. (a) The department shall provide notice and an opportunity for a hearing on a matter under its jurisdiction as provided by its formal hearing procedures and Chapter 2001, Government Code, on written request of a person affected by any

of the following procedures:

(1) the denial, suspension, or revocation by the department of a license or registration;

(2) the determination by the department of compliance with or the grant of exemptions from a department rule or order; or

(3) the grant or amendment by the department of a specific license.

(b) This section does not apply to license or registration activities for which other notice and hearing procedures are required by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.213, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 46, eff. Sept. 1, 1997.

Sec. 401.055. ORDERS. The department or commission shall issue and modify necessary orders in connection with proceedings conducted by the agency under this chapter on matters under the agency's jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.214, eff. Sept. 1, 1995.

Sec. 401.056. EMERGENCY ORDERS. (a) If the department or commission finds an emergency exists as a result of a matter under its jurisdiction that requires immediate action to protect the public health and safety and the environment, the agency, without notice or hearing, may issue an order stating the existence of the emergency and requiring that action be taken at the agency's direction to meet the emergency.

(b) The emergency order is effective immediately.

(c) A person to whom an emergency order is directed shall comply immediately with that order.

(d) The agency shall provide a person to whom an emergency order is directed an opportunity for a hearing on written application to the agency not later than the 30th day following the date of the emergency order.

(e) The agency shall hold a requested hearing not earlier than the 11th day and not later than the 20th day following the date of

receipt of the hearing application.

(f) The agency shall continue, modify, or revoke an emergency order based on the hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.215, eff. Sept. 1, 1995.

Sec. 401.057. RECORDS. (a) The department or commission, within its jurisdiction, shall require each person who possesses or uses a source of radiation to maintain:

(1) records relating to the use, receipt, storage, transfer, or disposal of that source of radiation;

(2) appropriate records that show the radiation exposure of each individual for whom personnel monitoring is required by the agency's rules, licenses, registrations, and orders; and

(3) other records the agency requires.

(b) The executive commissioner or commission by rule may provide exemptions to the records requirements under Subsections (a)(1) and (3).

(c) Copies of records required to be maintained under Subsection (a) shall be submitted to the agency on request.

(d) A person who possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at any time the employee has received exposure that exceeds the maximum permissible levels provided by the agency's rules and on termination of employment. The person shall furnish to an employee on request a copy of the employee's annual exposure record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.216, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0906, eff. April 2, 2015.

Sec. 401.058. INFORMATION. (a) The department shall collect and disseminate information relating to the transportation of sources of radiation. The department and the commission each within its jurisdiction shall collect and disseminate information relating to

the control of sources of radiation.

(b) The department and commission each, as part of the collection and dissemination of information, shall maintain:

(1) a file of license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(2) a file of registrants possessing sources of radiation requiring registration under this chapter and any administrative or judicial action relating to those registrants; and

(3) a file of pending and adopted rules and guidelines relating to regulation of sources of radiation and proceedings relating to those rules and guidelines.

(c) The commission, as part of the collection and dissemination of information, shall maintain a file of:

(1) known locations in this state at which radioactive material has been disposed of and at which soil and facilities are contaminated; and

(2) information on inspection reports relating to the radioactive material disposed of and radiation levels at those locations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.216, eff. Sept. 1, 1995.

Sec. 401.059. PROGRAM DEVELOPMENT. (a) The department shall develop programs to evaluate hazards associated with the use of sources of radiation.

(b) The department and commission shall develop programs within their respective jurisdictions with due regard for compatibility with federal programs for the regulation of sources of radiation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.217, eff. Sept. 1, 1995.

Sec. 401.060. STUDIES, INVESTIGATIONS, ETC. The department and commission each within its jurisdiction shall encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to the control of sources of radiation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.218, eff. Sept. 1, 1995.

Sec. 401.061. LOW-LEVEL RADIOACTIVE WASTE STUDIES. The department and commission each within its jurisdiction shall conduct studies of the need for low-level radioactive waste processing and disposal facilities and technologies as the agency considers necessary for minimizing the risks to the public and the environment from low-level radioactive waste management.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.218, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 4, eff. Sept. 1, 1999.

Sec. 401.062. TRAINING PROGRAMS. (a) The department and commission each may institute training programs to qualify their personnel to carry out this chapter.

(b) The department and commission each may make those personnel available to participate in a program of the federal government, another state, or an interstate agency to carry out this chapter's purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.218, eff. Sept. 1, 1995.

Sec. 401.063. GENERAL INSPECTION AUTHORITY. (a) The department or commission or the agency's representative may enter public or private property at reasonable times to determine whether, in a matter under the agency's jurisdiction, there is compliance with this chapter and the agency's rules, licenses, registrations, and orders under this chapter.

(b) The department or commission or the agency's representative may enter an area under the jurisdiction of the federal government only with the concurrence of the federal government or its designated representative.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.218, eff. Sept. 1, 1995.

Sec. 401.064. INSPECTION OF X-RAY EQUIPMENT. (a) The executive commissioner shall adopt rules relating to the frequency of department inspections of electronic products.

(b) In adopting the rules, the executive commissioner shall consider the threat to human health and safety that the electronic products may present.

(c) The executive commissioner shall adopt an inspection interval of five years for routine inspections of electronic products that present a minimal threat to human health and safety.

(d) The executive commissioner by rule shall require a person who inspects medical, podiatric medical, dental, veterinary, or chiropractic electronic products to have special training in the design and uses of the products.

(e) The department shall conduct inspections of medical, podiatric medical, dental, veterinary, and chiropractic electronic products in a manner designed to cause as little disruption of a medical, podiatric medical, dental, veterinary, or chiropractic practice as is practicable.

(f) In adopting rules under this section relating to the inspection of medical, podiatric medical, dental, veterinary, and chiropractic electronic products, the executive commissioner shall solicit and follow the recommendations of the State Board of Dental Examiners for the inspections of dental electronic products, the Texas Department of Licensing and Regulation for the inspection of podiatric medical electronic products, the Texas Medical Board for the inspection of medical electronic products, the State Board of Veterinary Medical Examiners for the inspection of medical electronic products used in the practice of veterinary medicine, and the Texas Board of Chiropractic Examiners for the inspection of chiropractic electronic products, unless in conflict with federal statutes or federal rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 207, Sec. 1, eff. May 19, 1993; Acts 1995, 74th Leg., ch. 965, Sec. 80, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0907, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.008, eff. September 1, 2019.

Sec. 401.065. INSPECTION AGREEMENTS. The department or commission, in matters under its jurisdiction, with the approval of the governor, may enter into an agreement with the federal government, another state, or an interstate agency under which the state, in cooperation with the other parties to the agreement, performs inspections or other functions relating to the control of sources of radiation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.219, eff. Sept. 1, 1995.

Sec. 401.066. SURVEILLANCE PLANS. The department shall prepare and update emergency and environmental surveillance plans for fixed nuclear facilities in this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.067. LOCAL GOVERNMENT INSPECTIONS. (a) An agent or employee of a local government may examine and copy during regular business hours records relating to activities licensed under Subchapter F. Examinations and copying of records must be done at the local government's expense and subject to limitations in Chapter 552, Government Code.

(b) Records copied under this section are public records unless the record's owner shows to the satisfaction of the commission that the records if made public will divulge trade secrets. On such a showing, the commission shall consider the copied records confidential.

(c) A local government agent or employee may not enter private property that has management in residence unless the agent or employee notifies the management, or person in charge, of the agent's or employee's presence and exhibits proper credentials. The agent or employee shall observe the rules of the establishment being inspected relating to safety, internal security, and fire protection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), 11.220, eff. Sept. 1, 1995.

Sec. 401.068. IMPOUNDING SOURCES OF RADIATION. The department or commission, in an emergency relating to a substance or activity under the agency's jurisdiction, may impound or order impounded sources of radiation that are in the possession of a person who is not equipped to observe or fails to observe this chapter or the agency's rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.221, eff. Sept. 1, 1995.

Sec. 401.069. MEMORANDUM OF UNDERSTANDING. The executive commissioner or commission must adopt as a rule any memorandum of understanding between the department or commission, as appropriate, and another state agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.221, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0908, eff. April 2, 2015.

Sec. 401.070. RELATIONSHIP WITH OTHER ENTITIES. The department shall advise, consult, and cooperate, on matters under its jurisdiction, with other state agencies, the federal government, other states, interstate agencies, local governments, and groups concerned with the control and transportation of sources of radiation. The commission shall advise, consult, and cooperate with those entities on matters under its jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.221, eff. Sept. 1, 1995.

Sec. 401.071. GENERAL POWERS OF COMMISSION IN RELATION TO LOW-

LEVEL RADIOACTIVE WASTE. (a) The commission may:

(1) conduct, request, and participate in studies, investigations, and research relating to selection, preparation, construction, operation, maintenance, decommissioning, closing, and financing of disposal sites for and disposal of low-level radioactive waste; and

(2) advise, consult, and cooperate with the federal government, the state, interstate agencies, local governmental entities in this state, and private entities on matters involving the disposal of low-level radioactive waste.

(b) In carrying out its duties under this section the commission may:

(1) apply for, receive, accept, and administer gifts, grants, and other funds available from any source; and

(2) contract with the federal government, the state, interstate agencies, local governmental agencies, and private entities.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 3, eff. Sept. 1, 2003.

Sec. 401.072. DISPOSAL OR STORAGE OF HIGH-LEVEL RADIOACTIVE WASTE. With the exception of storage at the site of nuclear power reactors and nuclear research and test reactors operated by a university, at which the waste originated, a person, including the compact waste disposal facility license holder, may not dispose of or store high-level radioactive waste in this state.

Added by Acts 2021, 87th Leg., 2nd C.S., Ch. 2 (H.B. 7), Sec. 3, eff. September 9, 2021.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 1091 (H.B. 4112), Sec. 2, eff. September 1, 2025.

SUBCHAPTER D. LICENSING AND REGISTRATION

Sec. 401.101. LICENSE AND REGISTRATION REQUIREMENT. A person may not use, manufacture, produce, transport, transfer, receive, acquire, own, possess, process, or dispose of a source of radiation unless that person has a license, registration, or exemption from the department or commission as provided by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995.

Sec. 401.102. APPLICATION TO NUCLEAR REACTOR FACILITIES. Nuclear reactor facilities licensed by the federal commission are not required to be licensed or registered under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995.

Sec. 401.103. RULES AND GUIDELINES FOR LICENSING AND REGISTRATION. (a) The executive commissioner shall adopt rules and guidelines that provide for licensing and registration for the transportation of sources of radiation.

(b) The executive commissioner and commission each within the jurisdiction of that officer or agency shall adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation.

(c) In adopting rules and guidelines, the executive commissioner and commission shall consider the compatibility of those rules and guidelines with federal regulatory programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0909, eff. April 2, 2015.

Sec. 401.104. LICENSING AND REGISTRATION RULES. (a) Except as provided by Subsections (b) and (e), the executive commissioner by rule shall provide for the general or specific licensing of:

(1) radioactive material; or

(2) devices or equipment using radioactive material.

(b) Except as provided by Subsection (e), the commission by rule shall provide for licensing for the disposal of radioactive substances.

(c) The executive commissioner or commission shall provide in rules of the appropriate agency for the issuance, amendment,

suspension, and revocation of licenses.

(d) The executive commissioner or commission, within the jurisdiction of that officer or agency, may require the registration or licensing of other sources of radiation.

(e) The executive commissioner or commission may not require a license for a person that is a party to an order issued under Section 361.188 or 361.272 for sites subject to Subchapter F, Chapter 361, or an agreement entered into under Section 361.606. This subsection does not exempt the person from complying with technical standards that a holder of a license otherwise required by this chapter for the particular activity is required to meet. The exemption granted by this subsection applies only to the assessment and remediation of the contamination at the site.

(f) A separate commercial storage and processing license may be issued for a site also licensed for disposal under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1338, Sec. 3, eff. June 20, 1997; Acts 1999, 76th Leg., ch. 1367, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 3, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0910, eff. April 2, 2015.

Sec. 401.105. RECOGNITION OF OTHER LICENSES. The executive commissioner or commission, each within the jurisdiction of that officer or agency, by rule may recognize other federal or state licenses the executive commissioner or commission, as appropriate, considers desirable, subject to registration requirements the executive commissioner or commission, as appropriate, may prescribe.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0911, eff. April 2, 2015.

Sec. 401.106. EXEMPTION FROM LICENSING OR REGISTRATION REQUIREMENTS OR FROM APPLICATION OF RULE. (a) The executive commissioner or commission by rule may exempt a source of radiation or a kind of use or user from the licensing or registration requirements provided by this chapter and under the agency's jurisdiction if the executive commissioner or commission finds that the exemption of that source of radiation or kind of use or user will not constitute a significant risk to the public health and safety and the environment.

(b) The department or commission, as applicable, may exempt a source of radiation or a kind of use or user from the application of a rule adopted by the executive commissioner or commission under this chapter if the department or commission, respectively, determines that the exemption:

(1) is not prohibited by law; and

(2) will not result in a significant risk to public health and safety and the environment.

(c) Notwithstanding any other law, the commission may, on request or its own initiative, authorize on-site disposal of low-level radioactive waste on a specific basis at any site at which low-level radioactive waste disposal operations began before September 1, 1989, if after evaluation of the specific characteristics of the waste, the disposal site, and the method of disposal, the commission finds that the continuation of the disposal activity will not constitute a significant risk to the public health and safety and to the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1367, Sec. 6, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 4, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0912, eff. April 2, 2015.

Sec. 401.107. LICENSE APPLICATION. (a) An application for a specific license issued by the department or commission must be in writing and must state the information that the executive commissioner or commission, as appropriate, by rule determines to be

necessary to decide the technical, insurance, and financial qualifications or any other of the applicant's qualifications the issuing agency considers reasonable or necessary to protect the occupational and public health and safety and the environment.

(b) The issuing agency at any time after an application is filed with the agency, and if the application is for a renewal, before the expiration of the license, may require further written statements and may make inspections the agency considers necessary to determine if the license should be granted or denied or if the current license should be modified, suspended, or revoked.

(c) The applicant or license holder shall sign each license application and each statement, and the agency may require the applicant or license holder to make the application or statement under oath.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0913, eff. April 2, 2015.

Sec. 401.108. FINANCIAL QUALIFICATIONS. (a) Before a license is issued or renewed by the commission, the applicant shall demonstrate to the commission that the applicant is financially qualified to conduct the licensed activity, including any required decontamination, decommissioning, reclamation, and disposal, by posting security acceptable to the commission.

(b) A license holder shall submit to the department or commission, as appropriate, at intervals required by department or commission rules or the license, proof that the license holder has updated, as appropriate, the security posted under Subsection (a).

(c) The commission at regular intervals not to exceed five years shall reevaluate the qualifications and security provided by a license holder under Subchapter F or Subchapter G. The reevaluation may coincide with license renewal procedures if renewal and reevaluation occur in the same year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1009, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 5, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0914, eff. April 2, 2015.

Sec. 401.109. SECURITY. (a) The executive commissioner or commission may require a holder of a license issued by the applicable agency to provide security acceptable to the applicable agency to assure performance of the license holder's obligations under this chapter. The department shall deposit security provided to the department under this section to the credit of the perpetual care account. The executive commissioner by rule shall provide that any evidence of security must be made payable to the credit of the perpetual care account. The commission shall deposit security provided to the commission under this section to the credit of the environmental radiation and perpetual care account. The commission shall provide that security must be made payable to the credit of the environmental radiation and perpetual care account.

(b) The commission shall require a holder of a license that authorizes the disposal of radioactive substances to provide security acceptable to the commission to assure performance of the license holder's obligations under this chapter.

(c) The amount and type of security required shall be determined under the agency's rules in accordance with criteria that include:

(1) the need for and scope of decontamination, decommissioning, reclamation, or disposal activity reasonably required to protect the public health and safety and the environment;

(2) reasonable estimates of the cost of decontamination, decommissioning, reclamation, and disposal as provided by Section 401.303; and

(3) the cost of perpetual maintenance and surveillance, if any.

(d) In this section "security" includes:

(1) a cash deposit;

(2) a surety bond;

(3) a certificate of deposit;

(4) an irrevocable letter of credit;

(5) a deposit of government securities;

(6) an insurance policy, the form and content of which is acceptable to the agency; and

(7) other security acceptable to the agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 580, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 5, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 6, eff. June 15, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 2, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0915, eff. April 2, 2015.

Sec. 401.110. DETERMINATION ON LICENSE. (a) In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a license or registration, the commission may consider an applicant's or license holder's technical competence, financial qualifications, and compliance history under the method for using compliance history developed by the commission under Section 5.754, Water Code.

(b) In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a license or registration, the department may consider the technical competence, financial qualifications, and compliance history of an applicant, license holder, or registration holder. After an opportunity for a hearing, the department shall deny an application for a license or registration, license or registration amendment, or license or registration renewal if the applicant's compliance history reveals a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process through significant violations of this chapter or the department's rules adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.16, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1009, Sec. 2, eff. Sept. 1, 2001; Acts 2003,

78th Leg., ch. 414, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.28, eff. September 1, 2011.

Sec. 401.111. CRITERIA FOR CERTAIN UNSUITABLE NEW SITES. (a) The commission, in adopting rules for the issuance of licenses under the commission's jurisdiction for new sites for processing or disposal of radioactive substances from other persons, shall adopt criteria for the designation of unsuitable sites, including:

(1) flood hazard areas;

(2) areas with characteristics of discharge from or recharge of a groundwater aquifer system; or

(3) areas in which soil conditions make spill cleanup impracticable.

(b) The commission shall consult with the Texas Water Development Board, the State Soil and Water Conservation Board, the Bureau of Economic Geology, and other appropriate state agencies in developing proposed rules. The commission by rule shall:

(1) require selection of sites in areas in which natural conditions minimize potential contamination of surface water and groundwater; and

(2) prohibit issuance of licenses for unsuitable sites as defined by the rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 7, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 7, eff. June 15, 2007.

Sec. 401.112. LOW-LEVEL RADIOACTIVE WASTE PROCESSING OR DISPOSAL LICENSE APPLICATION AND CONSIDERATIONS. (a) The commission, in making a licensing decision on a specific license application to process or dispose of low-level radioactive waste from other persons, shall consider:

(1) site suitability, geological, hydrological, and

meteorological factors, and natural hazards;

(2) compatibility with present uses of land near the site;

(3) socioeconomic effects on surrounding communities of operation of the licensed activity and of associated transportation of low-level radioactive waste;

(4) the need for and alternatives to the proposed activity, including an alternative siting analysis prepared by the applicant;

(5) the applicant's qualifications, including:

(A) financial and technical qualifications and compliance history under the method for using compliance history developed by the commission under Section 5.754, Water Code, for an application to the commission; and

(B) the demonstration of financial qualifications under Section 401.108;

(6) background monitoring plans for the proposed site;

(7) suitability of facilities associated with the proposed activities;

(8) chemical, radiological, and biological characteristics of the low-level radioactive waste and waste classification under Section 401.053;

(9) adequate insurance of the applicant to cover potential injury to any property or person, including potential injury from risks relating to transportation;

(10) training programs for the applicant's employees;

(11) a monitoring, record-keeping, and reporting program;

(12) spill detection and cleanup plans for the licensed site and related to associated transportation of low-level radioactive waste;

(13) decommissioning and postclosure care plans;

(14) security plans;

(15) worker monitoring and protection plans;

(16) emergency plans; and

(17) a monitoring program for applicants that includes prelicense and postlicense monitoring of background radioactive and chemical characteristics of the soils, groundwater, and vegetation.

(b) An applicant for the specific license must submit with the application information necessary for the commission to consider the factors under Subsection (a).

(c) The commission by rule shall provide specific criteria for the different types of licensed low-level radioactive waste

activities for the listed factors and may include additional factors and criteria that the commission determines necessary for full consideration of a license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 8, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 16.17, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 414, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 8, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.29, eff. September 1, 2011.

Sec. 401.113. ENVIRONMENTAL ANALYSIS. (a) Before a hearing under Section 401.114 begins, the commission shall prepare or have prepared a written analysis of the effect on the environment of a proposed licensed activity that the commission determines has a significant effect on the human environment.

(b) The commission shall make the analysis available to the public not later than the 31st day before the date of a hearing under Section 401.114.

(c) The analysis must include:

(1) an assessment of radiological and nonradiological effects of the activity on the public health;

(2) an assessment of any effect on a waterway or groundwater resulting from the activity;

(3) consideration of alternatives to the activities to be conducted under the license; and

(4) consideration of the long-term effects associated with activities, including decommissioning, decontamination, and reclamation impacts, including the management of low-level radioactive waste, to be conducted under the license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.224, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 9, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 9, eff.

June 15, 2007.

Sec. 401.114. NOTICE AND HEARING. (a) Before the commission grants or renews a license to process or dispose of low-level radioactive waste from other persons, the commission shall give notice and shall provide an opportunity for a public hearing in the manner provided by the commission's formal hearing procedure and Chapter 2001, Government Code.

(b) In addition to other notice, the commission shall publish notice of the hearing in the manner provided by Chapter 313, Government Code, in the county in which the proposed facility is to be located. The notice shall state the subject and the time, place, and date of the hearing.

(c) The commission shall mail, by certified mail in the manner provided by the commission's rules, written notice to each person who owns property adjacent to the proposed site. The notice must be mailed not later than the 31st day before the date of the hearing and must include the same information that is in the published notice. If true, the commission or the applicant must certify that the notice was mailed as required by this subsection, and at the hearing the certificate is conclusive evidence of the mailing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.225, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 10, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 10, eff. June 15, 2007.

Sec. 401.115. LICENSES FROM OTHER AGENCIES. A holder of a license to operate a facility to process or dispose of low-level radioactive waste may not operate the facility until the holder has obtained all other required licenses or permits from other agencies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1367, Sec. 11, eff. Sept. 1, 1999.

Sec. 401.116. LICENSE AMENDMENT. (a) An amendment to a

license to process or dispose of low-level radioactive waste from other persons may take effect immediately.

(b) The department or commission, as appropriate, shall publish notice of the license amendment once in the Texas Register and in a newspaper of general circulation in the county in which the licensed activity is located and shall give notice to any person who has notified the agency, in advance, of the desire to receive notice of proposed amendment of the license.

(c) Notice under this section must include:

(1) the identity of the license holder;

(2) identification of the license; and

(3) a short and plain statement of the license amendment's substance.

(d) The agency shall give notice and provide for a hearing to be conducted to consider the license amendment if a person affected files a written complaint with the agency before the 31st day after the date on which notice is published under Subsection (b). The agency shall give notice of the hearing as provided by Section 401.114.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.226, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 12, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0916, eff. April 2, 2015.

Sec. 401.117. CONSTRUCTION LIMITATION. The commission shall prohibit major construction relating to activities to be permitted under a license issued by the commission to process or dispose of low-level radioactive waste from other persons until the requirements in Sections 401.113 and 401.114 are completed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.227, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 13, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 11, eff. June 15, 2007.

Sec. 401.118. LICENSE FORM AND CONTENT. (a) The department or commission shall prescribe the form and the terms for each license it issues.

(b) Each license is subject to amendment, revision, or modification by rule or order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.228, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0917, eff. April 2, 2015.

Sec. 401.119. LICENSE TRANSFER. A license issued by the department or commission may be assigned only to a person qualified under rules of the issuing agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.229, eff. Sept. 1, 1995.

SUBCHAPTER E. MANAGEMENT OF LOW-LEVEL RADIOACTIVE WASTE

Sec. 401.151. COMPATIBILITY WITH FEDERAL STANDARDS. The department and commission each shall assure that the management of low-level radioactive waste under their respective jurisdictions is compatible with applicable federal commission standards.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.230, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 15, eff. Sept. 1, 1999.

Sec. 401.152. CORRECTIVE ACTION AND MEASURES. (a) If the department or commission, under procedures provided by Section 401.056, finds that low-level radioactive waste under its jurisdiction threatens the public health and safety and the environment and that the license holder managing the low-level radioactive waste is unable to remove the threat, the agency by order may require any action, including a corrective measure, that is necessary to remove the threat.

(b) The department shall use the security provided by the

license holder to pay the costs of actions that are taken or that are to be taken under this section. The department shall send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to:

(1) enforce security supplied by the license holder;

(2) convert an amount of security into cash, as necessary; and

(3) disburse from the security in the radiation and perpetual care account the amount necessary to pay the costs.

(c) The commission shall use the security provided by the license holder to pay the costs of actions taken or to be taken under this section, including costs associated with the Texas Low-Level Radioactive Waste Disposal Compact Commission. The commission shall send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to:

(1) enforce security supplied by the license holder;

(2) convert an amount of security to cash, as necessary; and

(3) disburse from the security in the environmental radiation and perpetual care account the amount necessary to pay the costs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.230, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 16, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 580, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 6, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 3, eff. September 1, 2013.

SUBCHAPTER F. SPECIAL PROVISIONS CONCERNING LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

Sec. 401.2005. DEFINITIONS. In this subchapter:

(1) "Compact" means the Texas Low-Level Radioactive Waste Disposal Compact established under Section 403.006.

(1-a) "Compact waste" means low-level radioactive waste that:

(A) is originally generated onsite in a host state or a

party state; or

(B) is not generated in a host state or a party state but has been approved for importation to this state by the compact commission under Section 3.05 of the compact.

(1-b) "Curie capacity" means the amount of the radioactivity of the waste that may be accepted by the compact waste disposal facility as determined by the commission in the compact waste disposal facility license.

(2) "Compact waste disposal facility" means the low-level radioactive waste disposal facility licensed by the commission under this subchapter for the disposal of compact waste.

(3) "Disposal facility site" means the tract of land on which is located the compact waste disposal facility and the federal facility waste disposal facility, if applicable. The term includes the immediate area surrounding the facility or facilities.

(4) "Federal facility waste" means low-level radioactive waste that is the responsibility of the federal government under the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Sections 2021b-2021j).

(5) "Federal facility waste disposal facility" means a facility for the disposal of federal facility waste licensed under Section 401.216.

(6) "Host state" has the meaning assigned by Section 2.01 of the compact established under Section 403.006.

(6-a) "Nonparty compact waste" means low-level radioactive waste imported from a state other than a party state as authorized under Section 3.05(6) of the compact.

(7) "Party state" has the meaning assigned by Section 2.01 of the compact established under Section 403.006.

(8) "Party state compact waste" means low-level radioactive waste generated in a party state.

(9) "Waste of international origin" means low-level radioactive waste that originates outside of the United States or a territory of the United States, including waste subsequently stored or processed in the United States.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 1, eff.

September 1, 2011.

Sec. 401.201. REGULATION OF LOW-LEVEL RADIOACTIVE WASTE DISPOSAL. The commission shall directly regulate the disposal of low-level radioactive waste in accordance with this subchapter. The person making the disposal shall comply with this subchapter and commission rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 19, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.202. LICENSING AUTHORITY. (a) The commission may grant, deny, renew, revoke, suspend, or withdraw licenses for the disposal of low-level radioactive waste from other persons and for the processing of that waste.

(b) The commission shall receive applications for and may issue not more than one license for a single compact waste disposal facility. The commission may issue the license only for a facility that meets:

(1) requirements for licensing provided by this subchapter and by commission rules; and

(2) requirements for disposal adopted by the commission that meet federal requirements for disposal.

(c) Except as provided by Section 401.216, the commission shall provide that the compact waste disposal facility license authorizes only the disposal of compact waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 143, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 19, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 12, eff. June 15, 2007.

Sec. 401.204. ACQUISITION OF PROPERTY. (a) An application for a compact waste disposal facility license may not be considered unless the applicant has acquired the title to and any interest in land and buildings as required by commission rule.

(b) If an applicant for a compact waste disposal license is unsuccessful in acquiring a mineral right that the rules adopted under Subsection (a) require the applicant to acquire, the commission may allow the applicant, to the extent permissible under federal law, to enter into a surface use agreement that restricts mineral access, including slant drilling and subsurface mining, to the extent necessary to prevent intrusion into the disposal facility site.

(c) If an applicant cannot reach a surface use agreement described by Subsection (b) with a private landowner, the attorney general shall, on request of the commission, institute condemnation proceedings as provided under Chapter 21, Property Code, to acquire fee simple interest in the mineral right.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 19, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.205. RESPONSIBILITIES OF PERSONS LICENSED TO DISPOSE OF LOW-LEVEL RADIOACTIVE WASTE. (a) The compact waste disposal facility license holder shall:

(1) arrange for and pay the costs of management, control, stabilization, and disposal of compact waste and the decommissioning of the licensed activity;

(2) convey to the state when the license is issued all required right, title, and interest in land and buildings acquired under commission rules adopted under Section 401.204, together with requisite rights of access to that property; and

(3) formally acknowledge before termination of the license the conveyance to the state of the right, title, and interest in compact waste located on the property conveyed.

(b) The compact waste disposal facility license holder, if licensed under Section 401.216 to dispose of federal facility waste, shall:

(1) arrange for and pay the costs of management, control,

stabilization, and disposal of federal facility waste and the decommissioning of the licensed federal facility waste disposal activity;

(2) on decommissioning of the licensed federal facility waste disposal activity, convey to the federal government, as provided by the federal Nuclear Waste Policy Act of 1982, Subtitle D (42 U.S.C. Section 10171 et seq.), as amended, all required right, title, and interest in land and buildings acquired under commission rules under Section 401.204, together with requisite rights of access to that property;

(3) formally acknowledge before termination of the license the conveyance to the federal government of the right, title, and interest in radioactive waste located on the property conveyed; and

(4) before accepting federal facility waste, submit to the commission a written agreement, signed by an official of the federal government, stating that the federal government will assume all required right, title, and interest in land and buildings acquired under commission rules under Section 401.204 for the disposal of federal facility waste, together with requisite rights of access to the land and buildings, in accordance with the federal Nuclear Waste Policy Act of 1982, Subtitle D (42 U.S.C. Section 10171 et seq.), as amended.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 19, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.2051. CONVEYANCE OF WASTE. (a) The compact waste disposal facility license holder shall convey to the state at no cost to the state title to the compact waste delivered to the disposal facility for disposal at the time the waste is accepted at the site. Acceptance occurs when the acceptance criteria specified in the license have been satisfied. This section does not apply to federal facility waste accepted at a federal facility waste disposal facility.

(b) The title and all related rights and interest in compact waste conveyed under this section are the property of the commission on the state's behalf. The commission may administer the waste as

property in the name of the state.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.206. RESIDENT INSPECTOR. (a) The compact waste disposal facility license holder shall reimburse the commission for the salary and other expenses of two or more resident inspectors employed by the commission.

(b) The commission may require that the compact waste disposal facility license holder provide facilities at the disposal site for the resident inspectors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 20, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.207. OUT-OF-STATE WASTE; NONPARTY COMPACT WASTE. (a) The compact waste disposal facility license holder may not accept low-level radioactive waste generated in another state for disposal under a license issued by the commission unless the waste is:

(1) accepted under a compact to which the state is a contracting party;

(2) federal facility waste that the license holder is licensed to dispose of under Section 401.216; or

(3) generated from manufactured sources or devices originating in this state.

(b) The compact waste disposal facility license holder may accept for disposal at the compact waste disposal facility approved nonparty compact waste that is classified as Class A, Class B, or Class C low-level radioactive waste in accordance with the compact waste disposal facility license to the extent the acceptance does not diminish the disposal volume or curie capacity available to party states. The license holder may not accept any nonparty compact waste for disposal at the facility until the license has been modified by the commission to specifically authorize the disposal of nonparty compact waste.

(c) The compact waste disposal facility license holder may not accept waste of international origin for disposal at the facility.

(d) The compact waste disposal facility license holder may not accept for disposal at the compact waste disposal facility nonparty compact waste that does not meet the waste characteristics and waste forms for disposal applicable to compact waste as set forth by the commission in the compact waste disposal facility license. Before the license holder may accept nonparty compact waste for disposal, the commission must certify through a written evaluation that the waste is authorized for disposal under the license. If the disposal is not authorized under the license, the commission must inform the license holder of the license amendments necessary to authorize the disposal.

(d-1) Beginning September 1, 2015, the compact waste disposal facility license holder may accept nonparty compact waste for disposal at the facility only if:

(1) the waste has been volume-reduced, if eligible, by at least a factor of three in a manner consistent with this subchapter as provided by commission rule; and

(2) the compact waste disposal facility license holder collects a surcharge under Subsection (g).

(d-2) If volume reduction of a low-level radioactive waste stream would result in a change of waste classification to a class higher than Class C, the payment of the fee and compliance with other requirements of Subsection (d-1) do not apply.

(d-3) The commission may assess an additional fee on a nonparty compact waste generator for failing to comply with the volume reduction requirements established under this section. The fee shall be deposited to the credit of the low-level radioactive waste fund under Section 401.249. Fees deposited under this subsection may be transferred and used only to support the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission under Section 401.251.

(e) The compact waste disposal facility license holder may not collect a fee under this section or enter into a contract for the disposal of nonparty low-level radioactive waste that has been designated as Class A low-level radioactive waste under 10 C.F.R. Section 61.55 and commission rule unless the waste is containerized. The compact waste disposal facility license holder may collect a fee and dispose of:

(1) not more than the greater of:

(A) 1.167 million curies of nonparty compact waste; or

(B) an amount of nonparty compact waste equal to 30 percent of the initial licensed capacity of the facility; and

(2) not more than 275,000 curies of nonparty compact waste in any fiscal year.

(e-1) The legislature by general law may establish revised limits under Subsection (e) after considering the results of the study under Section 401.208.

(e-2) The commission's executive director, on completion of the study under Section 401.208, may prohibit the license holder from accepting any additional nonparty compact waste if the commission determines from the study that the capacity of the facility will be limited, regardless of whether the limit under Subsection (f) has been reached.

(f) Of the total initial licensed capacity of the compact waste disposal facility:

(1) not more than 30 percent of the volume and curie capacity shall be for nonparty compact waste; and

(2) of the remaining capacity, not less than 80 percent of the volume and curie capacity shall be for compact waste generated in the host state and 20 percent of the volume and curie capacity shall be for compact waste generated in Vermont.

(g) The commission shall assess a surcharge for the disposal of nonparty compact waste at the compact waste disposal facility. The surcharge is 20 percent of the total contracted rate under Section 401.2456 and must be assessed in addition to the total contracted rate under that section.

(h) A surcharge collected under Subsection (g) shall be deposited to the credit of the environmental radiation and perpetual care account.

(h-1) The commission shall conduct a study of the surcharge described by Subsection (g) and, not later than December 1, 2016, shall issue the results of the review to the legislature. The commission shall review the operations and expenses of the compact waste disposal facility license holder and shall require the compact waste disposal facility license holder to provide justification of disposal expenses and historical costs associated with the facility through appropriate evidentiary and empirical records, studies, and other applicable methodologies. The commission shall consider the impact of the surcharge on the overall revenue generated for the state and may request the assistance of the comptroller in conducting

the analysis of the impact of the surcharge.

(i) The Texas Low-Level Radioactive Waste Disposal Compact Commission by rule shall adopt procedures and forms for the approval of the importation of nonparty compact waste.

(j) An application for the approval of the importation of nonparty compact waste may be submitted to the Texas Low-Level Radioactive Waste Disposal Compact Commission only by the generator of the waste.

(k) The commission, in coordination with the Texas Low-Level Radioactive Waste Disposal Compact Commission, shall adopt rules establishing criteria and thresholds by which incidental commingling of party state compact waste and waste from other sources at a commercial processing facility is considered and reasonably limited. The criteria and thresholds for commingling under this subsection established by commission rule are binding on any criteria and thresholds that may be established by the Texas Low-Level Radioactive Waste Disposal Compact Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 4, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 790 (H.B. 2662), Sec. 1(a), eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 790 (H.B. 2662), Sec. 1(b), eff. September 1, 2019.

Sec. 401.208. STUDY OF CAPACITY. (a) At least once every four years, the commission shall conduct a study on the available volume and curie capacity of the compact waste disposal facility for the disposal of party state compact waste and nonparty compact waste.

(a-1) In order to conduct the study under this section, the commission may require a generator of low-level radioactive waste to provide annually:

(1) information reasonably necessary to evaluate the adequacy of the capacity of the compact waste disposal facility as accurately as possible, including the amount in volume and curies that the generator intends to export or dispose of at a facility other than the compact waste disposal facility;

(2) the amount in volume and curies of low-level radioactive waste that was stored on-site at the generator's facility in the preceding year; and

(3) the length of time waste was stored at the generator's facility.

(b) The commission shall consider and make recommendations regarding:

(1) the future volume and curie capacity needs of party state and nonparty state generators and any additional reserved capacity necessary to meet those needs;

(2) the calculation of radioactive decay related to the compact waste disposal facility and radiation dose assessments based on the curie capacity;

(3) the necessity of containerization of the waste;

(4) the effects of the projected volume and radioactivity of the waste on the health and safety of the public; and

(5) the costs and benefits of volume reduction and stabilized waste forms.

(c) The commission shall submit a final report of the results of the study to the standing committees of the senate and the house of representatives with jurisdiction over the disposal of low-level radioactive waste.

(d) The Texas Low-Level Radioactive Waste Disposal Compact Commission shall use the study to anticipate the future capacity needs of the compact waste disposal facility.

(e) The commission may conduct a study described by Subsection (a) at any time if the commission determines that a study is necessary.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 3, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 5, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 790 (H.B. 2662), Sec. 2, eff.

June 15, 2017.

Sec. 401.2085. REVIEW OF FINANCIAL ASSURANCE. (a) The commission shall conduct a review of the adequacy of the financial assurance mechanisms of the compact waste disposal facility license holder that were approved by the commission before January 1, 2011, against projected post-closure costs, including a review of the adequacy of funds for unplanned events. The review shall consider:

(1) the segregation of financial assurance funds from other funds;

(2) the degree of risk that the financial instruments are subject to financial reversal;

(3) potential post-closure risks associated with the compact waste disposal facility; and

(4) the adequacy of the financial instruments to cover the state's liabilities.

(b) Not later than December 1, 2012, the commission shall submit a final report of the results of the review to the standing committees of the senate and the house of representatives with jurisdiction over the disposal of low-level radioactive waste.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 3, eff. September 1, 2011.

Sec. 401.209. ACQUISITION AND OPERATION OF LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITES. (a) The commission may acquire the fee simple title in land, affected mineral rights, and buildings at which low-level radioactive waste can be or is being disposed of in a manner consistent with public health and safety and the environment.

(b) Property acquired under this section may be used only for disposing of low-level radioactive waste until the commission determines that another use would not endanger the health, safety, or general welfare of the public or the environment.

(c) The commission may lease property acquired under this section for operating a disposal site for low-level radioactive waste.

(d) The right, title, and interest in low-level radioactive

waste accepted for disposal at property and facilities acquired under this section and any other interest acquired under this chapter are the property of the commission, acting on behalf of the state, and shall be administered and controlled by the commission in the name of the state.

(e) A right, title, or interest acquired under this chapter does not vest in any fund created by the Texas Constitution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 145, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.210. TRANSFER COSTS OF PROPERTY. Low-level radioactive waste and land and buildings transferred to the state or to the federal government under this chapter shall be transferred to the state or to the federal government without cost, other than administrative and legal costs incurred in making the transfer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.211. LIABILITY. (a) The transfer of the title to low-level radioactive waste and land and buildings to the state or to the federal government does not relieve a license holder of liability for any act or omission performed before the transfer or while the low-level radioactive waste or land and buildings are in the possession and control of the license holder.

(b) The acceptance, storage, or disposal of federal facility waste by the compact waste disposal facility license holder at a federal facility waste disposal facility does not create any liability under state law on the part of the state, or on the part of any officer or agency of the state, for damages, removal, or remedial action with respect to the land, the facility, or the waste accepted, stored, or disposed of.

(c) The compact waste disposal facility license must require

the license holder to indemnify the state for any liability imposed on the state under state or federal law, as required by the commission for the disposal of federal facility waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.212. MONITORING, MAINTENANCE, AND EMERGENCY MEASURES. The commission may undertake monitoring, maintenance, and emergency measures that are necessary to protect the public health and safety and the environment in connection with low-level radioactive waste and property for which it has assumed custody.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.213. INTERSTATE COMPACTS. The commission shall cooperate with and encourage the use of interstate compacts, including the Southern States Energy Board, to develop regional sites that divide among the states the disposal burden of low-level radioactive waste generated in the region.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.214. REGIONAL DISPOSAL FACILITY UNDER COMPACT. The compact waste disposal facility licensed under this subchapter is the regional disposal facility established and operated under the compact established under Chapter 403 for purposes of the federal Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Sections 2021b-2021j).

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.215. ACCEPTANCE OF LOW-LEVEL RADIOACTIVE WASTE. Subject to limitations provided by Sections 401.207 and 401.248, the compact waste disposal facility shall accept for disposal all compact waste that is presented to it and that is properly processed and packaged.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.216. FEDERAL FACILITY WASTE DISPOSAL. (a) The commission may license the compact waste disposal facility license holder to dispose of federal facility waste. The commission may license federal facility waste disposal only at a separate and distinct facility that is operated exclusively for the disposal of federal facility waste and that is adjacent to the compact waste disposal facility.

(b) For the first five years after a license under this section is issued, the commission shall limit the overall capacity of the federal facility waste disposal facility to not more than three million cubic yards. Of that amount, the commission shall limit the total volume of waste accepted at the federal facility waste disposal facility that must be disposed of in accordance with Section 401.218 to not more than 300,000 cubic yards.

(c) Unless the commission makes an affirmative finding that increasing the capacity of the federal facility waste disposal facility would pose a significant risk to human health, public safety, or the environment, on the fifth anniversary of the date the license under this section is issued, the commission shall increase the overall capacity of the federal facility waste disposal facility by three million cubic yards, for a total capacity of six million cubic yards, and shall increase the acceptable volume of waste that must be disposed of in accordance with Section 401.218 by 300,000 cubic yards, for a total volume of 600,000 cubic yards.

(d) The commission may not allow commingling of compact waste and federal facility waste.

(e) The compact waste disposal facility license holder may not accept federal facility waste at a federal facility waste disposal

facility until the license holder begins accepting compact waste at the compact waste disposal facility.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.217. LOCATION OF DISPOSAL FACILITY SITE. The commission may not issue a license for a compact waste disposal facility or license the operation of a federal facility waste disposal facility if the disposal facility site is located:

(1) in a county any part of which is located 62 miles or less from an international boundary;

(2) in a county in which the average annual rainfall is greater than 20 inches;

(3) in a county that adjoins river segment 2309, 2310, or 2311 as identified by the commission in the Texas Surface Water Quality Standards, 30 T.A.C. Section 307.10(3);

(4) in a 100-year flood plain; or

(5) less than 20 miles upstream of or up-drainage from the maximum elevation of the surface of a reservoir project that:

(A) has been constructed or is under construction by the United States Bureau of Reclamation or the United States Army Corps of Engineers; or

(B) has been approved for construction by the Texas Water Development Board as part of the state water plan under Subchapter C, Chapter 16, Water Code.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.218. DISPOSAL OF CERTAIN WASTE. (a) In this section, "Class A low-level radioactive waste," "Class B low-level radioactive waste," and "Class C low-level radioactive waste" have the meanings assigned by commission rule.

(b) The compact waste disposal facility license holder shall dispose of Class B low-level radioactive waste and Class C low-level radioactive waste:

(1) within a reinforced concrete container and within a reinforced concrete barrier or within containment structures made of materials technologically equivalent or superior to reinforced concrete; and

(2) in such a manner that the waste can be monitored and retrieved.

(c) The commission by rule may require a compact waste disposal facility license holder to dispose of certain Class A low-level radioactive wastes that present a hazard because of their high radiation levels in the manner required for Class B low-level radioactive waste and Class C low-level radioactive waste under Subsection (b). To the extent practicable, rules adopted under this subsection shall be consistent with federal rules regarding classification of low-level radioactive waste under 10 C.F.R. Part 61.

(d) In addition to the fees charged to support the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission, the commission's executive director may charge a license holder a fee to cover the administrative costs of the executive director's action to adjust, correct, or otherwise modify a license.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 6, eff. September 1, 2013.

Sec. 401.219. TECHNIQUES FOR MANAGING LOW-LEVEL RADIOACTIVE WASTE. (a) As a condition for obtaining a compact waste disposal facility license, an applicant must submit to the commission or its designee evidence relating to the reasonableness of any technique for managing low-level radioactive waste to be practiced at the proposed disposal facility or facilities.

(b) Before determining the techniques to be used for managing low-level radioactive waste, an applicant shall study alternative techniques, including:

(1) waste processing and reduction at the site of waste generation and at the disposal facility; and

(2) the use of aboveground isolation facilities.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.220. DESIGN OF FACILITY. The design of a disposal facility should incorporate, to the extent practicable, safeguards

against hazards resulting from local meteorological conditions, including phenomena such as hurricanes, tornados, earthquakes, earth tremors, violent storms, and susceptibility to flooding.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.221. MIXED WASTE. (a) In this section, "mixed waste" means a combination of hazardous waste as defined by Chapter 361 and low-level radioactive waste and includes federal mixed waste.

(b) The compact waste disposal facility license holder in accepting mixed waste at the compact waste disposal facility or a federal facility waste disposal facility shall comply with Chapter 361, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended, and this chapter.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.222. TERM OF LICENSE. The compact waste disposal facility license issued under this subchapter expires on the 15th anniversary of its date of issuance and may be renewed for one or more terms of 10 years.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.223. HEALTH SURVEILLANCE SURVEY. The commission, the department, and local public health officials shall develop a health surveillance survey for the population located in the vicinity of the disposal facility site.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.224. PACKAGING OF RADIOACTIVE WASTE. The executive commissioner shall adopt rules relating to the packaging of radioactive waste.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0918, eff. April 2, 2015.

Sec. 401.225. SHIPMENT OF LOW-LEVEL RADIOACTIVE WASTE. (a) On arrival of a shipment of low-level radioactive waste at the compact waste disposal facility or a federal facility waste disposal facility, the compact waste disposal facility license holder must determine that the waste complies with all laws, rules, and standards relating to processing and packaging of low-level radioactive waste before the waste is accepted for disposal at the facility.

(b) A person making a shipment of low-level radioactive waste that is in excess of 75 cubic feet shall give the compact waste disposal facility license holder written notice of the shipment at least 72 hours before shipment to the compact waste disposal facility or a federal facility waste disposal facility begins. The written notice must contain information required by the department.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.226. IMPROPERLY PROCESSED OR PACKAGED LOW-LEVEL RADIOACTIVE WASTE. (a) If low-level radioactive waste that is not properly processed or packaged arrives at the compact waste disposal facility or a federal facility waste disposal facility, the compact waste disposal facility license holder shall properly process and package the waste for disposal and charge the person making the shipment a fee to have the low-level radioactive waste properly processed and packaged.

(b) The compact waste disposal facility license holder shall report to the federal and state agencies that establish rules and standards for processing, packaging, and transporting low-level radioactive waste any person who delivers to the compact waste disposal facility or a federal facility waste disposal facility low-level radioactive waste that is not properly processed or packaged.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.227. SELECTION OF APPLICATION FOR COMPACT WASTE DISPOSAL FACILITY LICENSE. (a) In selecting an application for the

compact waste disposal facility license, the commission shall:

(1) issue notice of the opportunity to submit an application to dispose of low-level radioactive waste in accordance with Section 401.228;

(2) review all applications received under Subdivision (1) for administrative completeness;

(3) evaluate all administratively complete applications in accordance with the evaluation criteria established by Sections 401.233-401.236 and shall select the application that has the highest comparative merit in accordance with Section 401.232; and

(4) review the selected application under Subdivision (3) for technical completeness and issue a draft license in accordance with Sections 401.237 and 401.238.

(b) If the selected application is rejected or denied by the commission, the commission may select the next highest comparative merit application and proceed in accordance with Subsection (a)(4).

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.228. NOTICE TO RECEIVE APPLICATIONS. Not later than January 1, 2004, the commission shall give to the secretary of state for publication in the Texas Register notice that:

(1) the commission will accept applications for a 30-day period, beginning 180 days after the date of the Texas Register notice, for the siting, construction, and operation of a facility or facilities for disposal of low-level radioactive waste;

(2) applications must comply with Chapter 401, Health and Safety Code, the rules of the commission, and any other applicable requirements in the commission's discretion;

(3) applications must include a nonrefundable $500,000 application processing fee;

(4) applications received within the 30-day application receipt period will be evaluated by the commission for administrative completeness;

(5) applications deemed administratively complete will be evaluated by the commission in accordance with the statutory evaluation criteria under Sections 401.233-401.236; and

(6) based on the commission's evaluation, one application will be selected to be processed by the commission.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.229. APPLICATION PROCESSING FEE. An application for a compact waste disposal facility license must include payment to the commission of an application processing fee of $500,000. The commission may not review an application for administrative completeness until the commission receives the application processing fee. The application processing fee is nonrefundable. If the commission's costs in processing an application under this subchapter exceed the $500,000 application processing fee, the commission may assess and collect additional fees from the applicant to recover the costs. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.230. RECEIPT OF APPLICATIONS. (a) For a 30-day period beginning 180 days after the date notice is published under Section 401.228, the commission shall accept applications for a compact waste disposal facility license.

(b) Not later than the 45th day after the date an application is received, the commission shall issue an administrative notice of deficiency to each applicant whose application is timely submitted but is determined by the commission to be administratively incomplete.

(c) The commission shall provide an applicant for whom an administrative notice of deficiency is issued not more than three 30-day opportunities to cure the noted deficiencies in the application.

(d) The commission shall reject any application that, after the period for correcting deficiencies has expired, is not administratively complete.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.231. ADMINISTRATIVELY COMPLETE APPLICATION. The commission shall consider as administratively complete an application for which the commission has received the portions of the application

necessary to allow the commission to review the technical merits of the application, including:

(1) the identity and qualifications of the applicant;

(2) a description of the proposed disposal facility or facilities and disposal facility site;

(3) a description of the character of the proposed activities and the types and quantities of waste to be managed at the disposal facility or facilities;

(4) a description of the proposed schedules for construction, receipt of waste, and closure;

(5) a description of the financial assurance mechanism to be used;

(6) a description of the design features of the facility or facilities, along with a description of the methods of construction and operation of the facility or facilities;

(7) a characterization of the area and disposal facility site characteristics, including ecology, geology, soils, hydrology, natural radiation background, climatology, meteorology, demography, and current land uses;

(8) a description of the safety programs to be used at the proposed facility or facilities;

(9) a copy of the warranty deed or other conveyance showing required right, title, and interest in the land and buildings on which the facility or facilities are proposed to be located is owned in fee by the applicant as required by Section 401.204;

(10) an application processing fee in the amount prescribed by Section 401.229 and proof of additional funds sufficient to cover any further costs of processing the application as estimated by the commission; and

(11) a copy of a resolution of support of the proposed facility or facilities from the commissioners court of the county in which the facility or facilities are proposed to be located.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.232. EVALUATION OF APPLICATIONS; COMMISSION SELECTION. (a) The commission shall have prepared by commission personnel or an independent contractor a written evaluation of each administratively complete application in terms of the criteria

established under Sections 401.233-401.236.

(b) The commission shall conduct at least one public meeting in the county or counties where a compact waste disposal facility or federal facility waste disposal facility is to be located to receive public comments on the administratively complete applications. The commission shall set the time and place of the meetings as soon as practicable after the close of the period for administrative review of the applications.

(c) The commission may issue a request for further information to each applicant whose application is determined by the commission to be insufficient for the purposes of the commission's evaluation.

(d) The commission shall provide an applicant for whom a request for further information is issued two 30-day opportunities to adequately respond in the discretion of the commission.

(e) The commission shall use the written evaluations and application materials to evaluate each application according to the statutory criteria established by Sections 401.233-401.236. The commission shall evaluate each application for each statutory criterion for purposes of comparing the relative merit of the applications, giving:

(1) equal weight to each criterion within a tier of criteria; and

(2) the greatest weight to tier 1 criteria, greater weight to tier 2 criteria than to tier 3 criteria, and the least weight to tier 4 criteria.

(f) Before publication of the notice of the commission's intention to accept applications under Section 401.228, the commission by rule may adopt criteria in addition to the criteria under Sections 401.233-401.236 by which the commission may evaluate applications. The criteria must be consistent with those sections.

(g) Not later than the 270th day after it receives the last timely filed application, the commission, based on the written evaluations and application materials, shall select the application that has the highest comparative merit.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.233. TIER 1 CRITERIA. (a) The commission shall consider as tier 1 criteria:

(1) the natural characteristics of the disposal facility site for a proposed disposal facility or facilities;

(2) the adequacy of the proposed facility or facilities and activities to safely isolate, shield, and contain low-level radioactive waste from mankind and mankind's environment; and

(3) the adequacy of financial assurance related to the proposed activities.

(b) Natural characteristics of the disposal facility site include:

(1) the suitability of the site for the proposed activities, including the site's:

(A) geological characteristics;

(B) topography, including features relating to erosion;

(C) surface and underground hydrology;

(D) meteorological factors; and

(E) natural hazards;

(2) the compatibility of disposal activities with any uses of land near the site that could affect the natural performance of the site or that could affect monitoring of the disposal facility or facilities and disposal facility site;

(3) the adequacy of plans for the collection of prelicense monitoring data and background monitoring plans for the disposal facility site, including analysis of the ambient conditions of the site and established trends of the site's natural parameters, including:

(A) natural background radioactivity levels;

(B) radon gas levels;

(C) air particulate levels;

(D) soil characteristics, including chemical characteristics;

(E) surface water and groundwater characteristics; and

(F) flora and fauna at the site;

(4) the possible effects of disposal activities on flora and fauna at or near the site; and

(5) the ease of access to the site.

(c) Adequacy of the proposed disposal facility or facilities and activities includes:

(1) the capability of the proposed facility or facilities and activities to isolate, shield, and contain low-level radioactive waste in conformity with federal standards;

(2) acceptable operational safety; and

(3) acceptable long-term safety as demonstrated by analysis or study.

(d) Financial assurance criteria include:

(1) adequacy of the applicant's financial qualifications to:

(A) conduct the licensed activities as proposed, including:

(i) any required decontamination, decommissioning, reclamation, or disposal; and

(ii) control and maintenance of the disposal facility site and facility or facilities after the cessation of active operations; and

(B) address any unanticipated extraordinary events that would pose a risk to public health and safety and the environment and that may occur at the disposal facility site after decommissioning and closure of the disposal facility or facilities;

(2) the adequacy of the applicant's financial assurance in an amount and type acceptable to the commission and adequate to cover potential injury to any property or person;

(3) the adequacy of the applicant's financial security, as required by commission rules; and

(4) the degree of certainty that the applicant will be able to maintain adequate financial security.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.234. TIER 2 CRITERIA. The commission shall consider as tier 2 criteria:

(1) the suitability of facilities at the site that are associated with proposed activities and the adequacy of their engineering and design; and

(2) the suitability of the proposed disposal facility or facilities for the chemical, radiological, and biological characteristics of the low-level radioactive waste as classified under the system established under Section 401.053.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.235. TIER 3 CRITERIA. The commission shall consider as tier 3 criteria the applicant's:

(1) technical qualifications to receive, store, process, and dispose of low-level radioactive waste;

(2) experience in management and disposal of low-level radioactive waste and other radioactive materials;

(3) previous operating practices in this state and elsewhere, including the practices of a parent, subsidiary, or affiliated entity of the applicant, related to radioactive materials;

(4) record of compliance with environmental statutes, rules, and licenses in this state and in any other jurisdiction, including the records of a parent or subsidiary of the applicant, subject to Section 401.243;

(5) training programs proposed for its employees whose duties relate to the proposed disposal facility site and activities;

(6) monitoring, recordkeeping, and reporting plans;

(7) low-level radioactive waste spill detection and cleanup plans for the proposed disposal facility site and activities;

(8) decommissioning and postclosure plans;

(9) security plans;

(10) monitoring and protection plans for workers;

(11) emergency plans;

(12) plans for background monitoring during the license period, including analysis of the ambient conditions of the disposal facility site and analysis of established trends of the disposal facility site's natural parameters, including:

(A) natural background radioactivity levels;

(B) radon gas levels;

(C) air particulate levels;

(D) soil characteristics, including chemical characteristics;

(E) surface water and groundwater characteristics; and

(F) flora and fauna at the site; and

(13) ability to adequately manage the proposed disposal facility or facilities and activities for the term of the license.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.236. TIER 4 CRITERIA. The commission shall consider

as tier 4 criteria:

(1) the compatibility of uses of land near the proposed disposal facility site that could be affected by the construction and operation of the disposal facility or facilities; and

(2) possible socioeconomic effects on communities in the host county of:

(A) the proposed disposal facility or facilities;

(B) the operation of the proposed disposal facility or facilities; and

(C) related transportation of low-level radioactive waste to the disposal facility or facilities.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.237. TECHNICAL REVIEW. (a) Immediately on the commission's selection of the application that has the highest comparative merit in accordance with Section 401.232, the commission shall begin a technical review of the selected application.

(b) The commission shall complete the technical review and prepare a draft license not later than the 15th month after the month in which the technical review begins.

(c) The commission shall give priority to the review of the selected application over all other radioactive materials and waste licensing and registration matters pending before the commission, except those the executive director of the commission determines necessary to avert or address a health and safety emergency.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.238. NOTICE OF DRAFT LICENSE AND OPPORTUNITY FOR HEARING. On completion of the technical review of the selected application and preparation of the draft license, the commission shall publish, at the applicant's expense, notice of the draft license and specify the requirements for requesting a contested case hearing by a person affected. The notice shall include a statement that the draft license is available for review on the commission's website and that the draft license and the application materials are available for review at the offices of the commission and in the county or counties in which the proposed disposal facility site is

located. Notice shall be published in the Texas Register and in a newspaper of general circulation in each county in which the proposed disposal facility site is located. The applicant shall mail the notice by certified mail to each person who owns land adjacent to the proposed disposal facility site.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.239. CONTESTED CASE; FINAL ACTION ON APPLICATION. (a) An administrative law judge of the State Office of Administrative Hearings shall conduct a contested case hearing on the application and draft license if the applicant or a person affected requests a hearing.

(b) The administrative law judge may not admit as a party to the contested case hearing a person other than the applicant, the executive director of the commission, or a person affected.

(c) The administrative law judge shall issue a proposal for decision not later than the first anniversary of the publication date of the notice of draft license published under Section 401.238.

(d) The commission shall take final action on the proposal for decision of the administrative law judge not later than the 90th day after the date the proposal is issued.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.240. JUDICIAL REVIEW. (a) Notwithstanding any other law, a person affected by an action of the commission under this subchapter may file a petition for judicial review of the action only after the commission takes final action on a license application under Section 401.239(d). A petition must be filed not later than the 30th day after the date of the final action.

(b) In its review of an action under this subchapter, a court may not substitute its judgment for the judgment of the commission on the weight of the evidence the commission considered, but:

(1) may affirm the action in whole or in part; and

(2) shall reverse or remand the case for further proceedings if substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions:

(A) are in violation of a constitutional or statutory provision;

(B) are in excess of the commission's statutory authority;

(C) are made through unlawful procedure;

(D) are affected by other error of law;

(E) are not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or

(F) are arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.241. SECURITY. (a) In determining the amount of security required of a compact waste disposal facility license holder under Section 401.109, the commission shall also consider the need for financial security to address and prevent unplanned events that pose a risk to public health and safety and that may occur after the decommissioning and closure of the compact waste disposal facility or a federal facility waste disposal facility licensed under Section 401.216.

(b) The amount of security required of a license holder under this section may not be less than $20 million at the time the disposal facility site is decommissioned. The commission shall use interest earned on the security to offset any other financial obligations incurred by the license holder to the commission. The commission shall establish a schedule for the total payment of the amount of the security required under this section based on:

(1) the amount of low-level radioactive waste received at the site;

(2) the long-term risk to health, safety, and the environment posed by the waste; and

(3) the need to address and prevent unplanned events that pose a risk to public health and safety.

(c) The payment schedule required under this section must be sufficient to ensure that the amount of security provided by the license holder at any time between the issuance of the license and the time at which the facility is decommissioned is sufficient to:

(1) address any increase in the risk to public health and safety that accompanies an increase in the volume of waste accepted by the license holder; and

(2) meet the requirements of the commission for addressing unplanned events that may occur after the site has been closed.

(d) The commission may require a license holder under this subchapter to provide security in the forms listed under Section 401.109(d).

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.242. ACCEPTANCE OF WASTE. (a) The commission shall require the compact waste disposal facility license holder to follow, as closely as is possible, the schedule submitted to the commission under Section 401.231. If the compact waste disposal facility license holder holds a permit to process, store, or dispose of hazardous waste under Chapter 361, the license holder may accept hazardous waste according to the schedule under Section 401.231 before the compact waste disposal facility begins operation.

(b) If the commission finds that the compact waste disposal facility license holder has violated this chapter or any commission rule in a manner that may endanger public health or safety, the commission may prohibit the license holder from accepting low-level radioactive waste at either the compact waste disposal facility or the federal facility waste disposal facility until the commission finds that the license holder is in compliance with the statute or rule found to be violated.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.243. COMPLIANCE HISTORY. After an opportunity for a hearing, the commission shall deny an application for a license under this subchapter or an amendment or renewal for a license under this subchapter if the applicant's compliance history reveals a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process through a history of violations of this chapter or the commission's rules under this chapter.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.244. HOST COUNTY PUBLIC PROJECTS. (a) The compact waste disposal facility license holder each quarter shall transfer to the commissioners court of the host county five percent of the gross receipts from:

(1) compact waste received at the compact waste disposal facility; and

(2) any federal facility waste received at a federal facility waste disposal facility licensed under Section 401.216.

(b) The commissioners court of the host county may:

(1) spend the money for public projects in the host county; or

(2) disburse the money to other local entities or to public nonprofit corporations to be spent for local public projects.

(c) Money received from the compact waste disposal facility license holder under this section may be spent only for public projects in the host county that are for the use and benefit of the public at large.

(d) Money received by the commissioners court of the host county under this section is not a loan or grant-in-aid subject to review by a regional planning commission under Chapter 391, Local Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 878, Sec. 16, eff. June 18, 1993; Acts 1999, 76th Leg., ch. 1367, Sec. 32, eff. Sept. 1, 1999. Renumbered from Health and Safety Code Sec. 402.252 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 8, eff. Sept. 1, 2003.

Sec. 401.2445. STATE FEE. The compact waste disposal facility license holder each quarter shall transfer to the state general revenue fund five percent of the gross receipts from:

(1) compact waste received at the compact waste disposal facility; and

(2) any federal facility waste received at a federal facility waste disposal facility licensed under Section 401.216.

Added by Acts 2017, 85th Leg., R.S., Ch. 790 (H.B. 2662), Sec. 3(b), eff. September 1, 2019.

Sec. 401.245. PARTY STATE COMPACT WASTE DISPOSAL FEES. (a) A compact waste disposal facility license holder who receives party state compact waste for disposal pursuant to the compact shall have collected a waste disposal fee to be paid by each person who delivers party state compact waste to the compact waste disposal facility for disposal.

(b) The commission by rule shall adopt and periodically revise party state compact waste disposal fees under this section according to a schedule that is based on the projected annual volume of low-level radioactive waste received, the relative hazard presented by each type of low-level radioactive waste that is generated by the users of radioactive materials, and the costs identified in Section 401.246.

(c) In determining relative hazard, the commission shall consider the radioactive, physical, and chemical properties of each type of low-level radioactive waste.

(d) Rules adopted under this section may include provisions establishing:

(1) classification of customers and services; and

(2) applicability of fees.

(e) Fees adopted under this section must be consistent with the criteria listed under Section 401.246.

(f) A rule or order adopted by the commission under this section may not conflict with a ruling of a federal regulatory body.

(g) For the purposes of a contested case involving the adoption of fees under this section, only a party state generator of low-level radioactive waste may be considered a person affected.

(h) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1159, Sec. 13(1), eff. September 1, 2013.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 5.01, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 878, Sec. 17, eff. June 18, 1993; Acts 1999, 76th Leg., ch. 1367, Sec. 33, eff. Sept. 1, 1999. Renumbered from Health and Safety Code Sec. 402.272 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 11, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 4, eff.

September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 5, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 13(1), eff. September 1, 2013.

Sec. 401.2455. INTERIM PARTY STATE COMPACT WASTE DISPOSAL FEES. (a) The commission's executive director may establish interim party state compact waste disposal fees effective only for the period beginning on the date the compact waste disposal facility license holder is approved to accept waste at the disposal facility and ending on the effective date of the rules establishing the fees under Section 401.245. A generator is not entitled to a refund, and may not be charged a surcharge, for the disposal of waste under interim fees once the final fees have been adopted.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1159, Sec. 13(2), eff. September 1, 2013.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 6, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 13(2), eff. September 1, 2013.

Sec. 401.2456. CONTRACTS FOR NONPARTY COMPACT WASTE DISPOSAL. (a) At any time after the commission has granted approval to begin operating the compact waste disposal facility, the compact waste disposal facility license holder may contract rates with nonparty compact waste generators for the disposal of nonparty compact waste at the facility in accordance with the compact waste disposal facility license.

(b) Rates and contract terms negotiated under this section are subject to review and approval by the commission's executive director to ensure they meet all of the requirements of this section.

(c) Rates negotiated under this section must be set both by a price per curie and a price per cubic foot. Fees resulting from the negotiated rates must be greater than, as applicable:

(1) the compact waste disposal fees under Section 401.245

as set by the commission that are in effect at the time the rates are negotiated; or

(2) the interim compact waste disposal fees under Section 401.2455 as set by the commission's executive director that are in effect at the time the rates are negotiated.

(d) A contract under this section must:

(1) be negotiated in good faith;

(2) conform to applicable antitrust statutes and regulations; and

(3) be nondiscriminatory.

(e) Rates set under this section must generate fees sufficient to meet the criteria for party state compact waste under Sections 401.246(a) and (c).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 6, eff. September 1, 2011.

Sec. 401.246. WASTE DISPOSAL FEE CRITERIA. (a) Party state compact waste disposal fees adopted by the commission under Section 401.245 must be sufficient to:

(1) allow the compact waste facility license holder to recover costs of operating and maintaining the compact waste disposal facility and a reasonable profit on the operation of that facility;

(2) provide an amount necessary to meet future costs of decommissioning, closing, and postclosure maintenance and surveillance of the compact waste disposal facility and the compact waste disposal facility portion of the disposal facility site;

(3) provide an amount to fund local public projects under Section 401.244;

(4) provide a reasonable rate of return on capital investment in the facilities used for management or disposal of compact waste at the compact waste disposal facility;

(5) provide an amount necessary to pay compact waste disposal facility licensing fees, to pay compact waste disposal facility fees set by rule or statute, and to provide security for the compact waste disposal facility as required by the commission under law and commission rules; and

(6) provide an amount necessary to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission.

(b) To the extent practicable, the commission shall use the methods used by the Public Utility Commission of Texas under Sections 36.051, 36.052, and 36.053, Utilities Code, when establishing overall revenues, reasonable return, and invested capital for the purpose of setting fees under Subsection (a).

(c) In determining compact waste disposal fees, the commission shall only consider capital investment in property by the compact waste disposal facility license holder that is used and useful to the compact waste disposal facility as authorized under this chapter. The commission may not consider the capital investment costs or related costs incurred before September 1, 2003, in determining disposal fees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 804, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 449, Sec. 34, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 878, Sec. 19, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(30), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 402.273 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 11, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 6.01, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 7, eff. September 1, 2011.

Sec. 401.247. REASONABLE AND NECESSARY EXPENSES. Fees paid under this subchapter are reasonable and necessary expenses for ratemaking purposes.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 17.03, eff. Sept. 1, 1991. Renumbered from Health and Safety Code Sec. 402.276 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 11, eff. Sept. 1, 2003.

Sec. 401.248. LIMITATIONS ON LOW-LEVEL RADIOACTIVE WASTE DISPOSAL. (a) The commission by rule shall exclude from a disposal facility certain types of low-level radioactive waste that are incompatible with disposal operations.

(b) The state may enter into compacts with another state or several states for the disposal in this state of low-level radioactive waste only if the compact:

(1) limits the total volume of all low-level radioactive waste to be disposed of in this state from the other party state or party states to 20 percent of the annual average of low-level radioactive waste projected to be disposed of in this state from 1995 through 2045;

(2) gives this state full administrative control over management and operation of the compact waste disposal facility;

(3) requires the other state or states to join this state in any legal action necessary to prevent states that are not members of the compact from disposing of low-level radioactive waste at the compact waste disposal facility;

(4) allows this state to charge a fee for the disposal of low-level radioactive waste at the compact waste disposal facility;

(5) requires the other state or states to join in any legal action involving liability from the compact waste disposal facility;

(6) requires the other state or states to share the full cost of constructing the compact waste disposal facility;

(7) allows this state to regulate, in accordance with federal law, the means and routes of transportation of the low-level radioactive waste in this state;

(8) requires the other state or states to pay for community assistance projects selected by the host county in an amount not less than $1 million or 10 percent of the amount contributed by the other state or states;

(9) is agreed to by the Texas Legislature, the legislature of the other state or states, and the United States Congress; and

(10) complies with all applicable federal law.

(c) This section does not affect the ability of this state to transfer low-level radioactive waste to another state.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1244, Sec. 11, eff. September 1, 2011.

(e) The compact waste disposal facility license holder may not accept compact waste at the compact waste disposal facility unless the compact commission established by the compact under Section 403.006 has adopted bylaws necessary to carry out the terms of the compact.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 583, Sec. 5, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.0511, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 878, Sec. 13, eff. June 18, 1993; Acts 1999, 76th Leg., ch. 1367, Sec. 29, eff. Sept. 1, 1999. Renumbered from Health and Safety Code Sec. 402.219 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 10, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 8, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 11, eff. September 1, 2011.

Sec. 401.249. LOW-LEVEL RADIOACTIVE WASTE FUND. (a) The low-level radioactive waste fund is in the state treasury.

(b) The low-level radioactive waste fund is an interest-bearing fund. Interest earned on money in the fund shall be deposited to the credit of the fund.

(c) Except as otherwise provided by this chapter, money collected by the commission, including fees collected under Section 401.229, any additional fees collected to recover costs of processing a license application, annual fees, and any other fees necessary to administer this subchapter shall be deposited to the credit of the low-level radioactive waste fund.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(74), eff. April 2, 2015.

(e) The commission may transfer money from the low-level radioactive waste fund to the environmental radiation and perpetual care account to make payments required by the commission under Section 401.303. The commission shall notify the Texas Low-Level Radioactive Waste Disposal Compact Commission of an action the commission takes under this subsection.

(f) The commission shall deposit in the fund the portion of the fee collected under Section 401.245 that is calculated in accordance with Section 401.246(a) to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission, as required by Section 4.04(4), Texas Low-Level Radioactive Waste Disposal Compact

(Section 403.006 of this code). The fee shall be assessed for party state compact waste and nonparty compact waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 148, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 804, Sec. 7, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 878, Sec. 20, eff. June 18, 1993; Acts 1999, 76th Leg., ch. 1367, Sec. 35, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 580, Sec. 11, eff. Sept. 1, 2003. Renumbered from Health and Safety Code Sec. 402.275 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 12, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 7, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(74), eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 598 (S.B. 1330), Sec. 1, eff. September 1, 2017.

Sec. 401.250. PAYMENTS BY PARTY STATES. (a) Notwithstanding any other provision of law, Act of the legislature or the executive branch, or any other agreement, the initial payment of $12.5 million due from each nonhost party state under Section 5.01 of the compact established under Section 403.006 is due not later than November 1, 2003. In accordance with Section 7.01 of the compact, the host state establishes the following terms and conditions for a state to become a party state to the compact after January 1, 2011:

(1) the state must make an initial payment of half of the total amount due to the host state under Subsection (b) on the later of September 1, 2011, or the date the state becomes a party state; and

(2) the state must pay the remainder of the amount owed under Subsection (b) on the later of the date of the opening of the compact waste disposal facility or the date the facility first accepts waste from the state.

(b) Each state that becomes a party state:

(1) after January 1, 2011, and before September 1, 2018, shall contribute a total of $30 million to the host state, including the initial payment under Subsection (a)(1); and

(2) on or after September 1, 2018, and before September 1, 2023, shall contribute $50 million to the host state, including the initial payment under Subsection (a)(1).

(c) The requirements of this section apply to a state that becomes a party state after January 1, 2011, regardless of whether the state had previously been a party to the compact. A state that has withdrawn as a party state shall pay the previously committed fee of $25 million in addition to the fees set in Subsection (b).

(d) A payment made under this section may not be refunded, even if a party state withdraws from the compact.

(e) For the purposes of calculating the amount of a payment required under Section 4.05(5) of the compact, the amount of a payment under this section is considered to be a payment under Article V of the compact.

(f) This section prevails over any other law or agreement in conflict or inconsistent with this section.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 13, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 9, eff. September 1, 2011.

Sec. 401.251. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION ACCOUNT. (a) The low-level radioactive waste disposal compact commission account is an account in the general revenue fund.

(b) On the first day of each state fiscal year, the comptroller shall transfer from the low-level radioactive waste fund to the low-level radioactive waste disposal compact commission account an amount equal to the amount appropriated for that state fiscal year. On September 30 of each fiscal year, the comptroller shall transfer the unexpended and unencumbered money from the previous fiscal year in the low-level radioactive waste disposal compact commission account to the low-level radioactive waste fund.

(c) Money in the low-level radioactive waste disposal compact commission account may be used only to support the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 6.02, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 8, eff. September 1, 2013.

SUBCHAPTER G. SPECIAL PROVISIONS CONCERNING BY-PRODUCT MATERIAL

Sec. 401.261. SUBCHAPTER APPLICATION. In this subchapter:

(1) "By-product material" does not include that by-product material defined by Section 401.003(3)(A).

(2) "Processing" means the possession, use, storage, extraction of material, transfer, volume reduction, compaction, or other separation incidental to recovery of source material.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.232, eff. Sept. 1, 1995.

Sec. 401.262. MANAGEMENT OF CERTAIN BY-PRODUCT MATERIAL. The commission has sole and exclusive authority to assure that processing and disposal sites are closed and that by-product material is managed and disposed of in compliance with:

(1) the federal commission's applicable standards; and

(2) closure criteria the federal commission and the United States Environmental Protection Agency have determined are protective of human health and safety and the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 4, eff. June 20, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 13, eff. June 15, 2007.

Sec. 401.2625. LICENSING AUTHORITY. The commission has sole and exclusive authority to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for source material recovery and processing or for storage, processing, or disposal of by-product material.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 143, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 5, eff. June 20, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 14, eff. June 15, 2007.

Sec. 401.263. APPLICATION; ENVIRONMENTAL ANALYSIS. (a) If the commission is considering the issuance, renewal, or amendment of a license to process materials that produce by-product materials or a license to dispose of by-product material and the commission determines that the licensed activity will have a significant impact on the human environment, the commission shall prepare or have prepared a written environmental analysis.

(b) The analysis must include:

(1) an assessment of the radiological and nonradiological effects of the licensed activity on the public health;

(2) an assessment of any effect of the licensed activity on a waterway or groundwater;

(3) consideration of alternatives to the licensed activity, including alternative sites and engineering methods; and

(4) consideration of decommissioning, decontamination, reclamation, and other long-term effects associated with a licensed activity, including management of by-product material.

(c) The commission shall give notice of the analysis as provided by commission rule and shall make the analysis available to the public for written comment not later than the 31st day before the date of the hearing on the license.

(d) After notice is given, the commission shall provide an opportunity for written comments by persons affected.

(e) The analysis shall be included as part of the record of the commission's proceedings.

(f) The commission by rule shall prohibit major construction with respect to an activity that is to be licensed until the requirements of Subsections (a), (b), (c), and (e) are completed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 6, eff. June 20, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 15, eff. June 15, 2007.

Sec. 401.264. NOTICE AND HEARING. (a) The commission on its own motion may or on the written request of a person affected shall provide an opportunity for a public hearing on an application over which the commission has jurisdiction to determine whether to issue, renew, or amend a license to process materials that produce by-product materials or a license to dispose of by-product materials in the manner provided by Chapter 2001, Government Code, and permit appearances with or without counsel and the examination and cross-examination of witnesses under oath.

(b) A person affected may become a party to a proceeding on a determination that the person possesses a justiciable interest in the result of the proceeding.

(c) The commission shall make a record of the proceedings and provide a transcript of the hearing on request of, and payment for, the transcript or provision of a sufficient deposit to assure payment by any person requesting the transcript.

(d) The commission shall provide an opportunity to obtain a written determination of action to be taken. The determination must be based on evidence presented to the commission and include findings. The written determination is available to the public.

(e) The determination is subject to judicial review in a district court of Travis County.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1338, Sec. 7, eff. June 20, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 16, eff. June 15, 2007.

Sec. 401.265. CONDITIONS OF CERTAIN BY-PRODUCT MATERIAL LICENSES. The commission shall prescribe conditions in a radioactive substances license issued, renewed, or amended for an activity that results in production of by-product material to minimize or, if

possible, eliminate the need for long-term maintenance and monitoring before the termination of the license, including conditions that:

(1) the license holder will comply with the applicable decontamination, decommissioning, reclamation, and disposal standards that are prescribed by the commission and that are compatible with the federal commission's standards for sites at which those ores were processed and at which the by-product material is deposited; and

(2) the ownership of a disposal site, other than a disposal well covered by a permit issued under Chapter 27, Water Code, and the by-product material resulting from the licensed activity are transferred, subject to Sections 401.266-401.269, to:

(A) the state; or

(B) the federal government if the state declines to acquire the site, the by-product material, or both the site and the by-product material.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 8, eff. June 20, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 17, eff. June 15, 2007.

Sec. 401.266. TRANSFER OF LAND REQUIRED. (a) The commission by rule or order may require that before a license covering land used for the disposal of by-product material is terminated, the land, including any affected interests in the land, must be transferred to the federal government or to the state unless:

(1) the federal commission determines before the license terminates that the transfer of title to the land and the by-product material is unnecessary to protect the public health, safety, or welfare or to minimize danger to life or property; or

(2) the land is held in trust by the federal government for an Indian tribe, is owned by an Indian tribe subject to a restriction against alienation imposed by the federal government, is owned by the federal government, or is owned by the state.

(b) By-product material transferred to the state under this section shall be transferred without cost to the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 9, eff. June 20, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 18, eff. June 15, 2007.

Sec. 401.267. ACQUISITION AND SALE OF CERTAIN BY-PRODUCT MATERIALS AND SITES. (a) The commission may acquire by-product material and fee simple title in land, affected mineral rights, and buildings at which that by-product material is disposed of and abandoned so that the by-product material and property can be managed in a manner consistent with protecting public health, safety, and the environment.

(b) The commission may sell land acquired under this section at the land's fair market value after the commission has taken corrective action to restore the land to a condition that does not compromise the public health or safety or the environment. The General Land Office shall negotiate and close a transaction under this subsection on behalf of the commission using procedures under Section 31.158(c), Natural Resources Code. Proceeds from the transaction shall be deposited in the Texas capital trust fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 10, eff. June 20, 1997; Acts 1999, 76th Leg., ch. 244, Sec. 1, eff. Aug. 30, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 19, eff. June 15, 2007.

Sec. 401.268. LIABILITY. The transfer of the title to by-product material, land, and buildings under Section 401.267 does not relieve a license holder of liability for acts performed before the transfer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993.

Sec. 401.269. MONITORING, MAINTENANCE, AND EMERGENCY MEASURES. (a) The commission may undertake monitoring, maintenance, and emergency measures in connection with by-product material and property for which it has assumed custody under Section 401.267 that are necessary to protect the public health and safety and the environment.

(b) The commission shall maintain the by-product material and property transferred to it in a manner that will protect the public health and safety and the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 11, eff. June 20, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 20, eff. June 15, 2007.

Sec. 401.270. CORRECTIVE ACTION AND MEASURES. (a) If the commission finds that by-product material or the operation by which that by-product material is derived threatens the public health and safety or the environment, the commission by order may require any action, including a corrective measure, that is necessary to correct or remove the threat.

(b) The commission may issue an emergency order to a person responsible for an activity, including a past activity, concerning the recovery or processing of source material or the disposal of by-product material if it appears that there is an actual or threatened release of source material or by-product material that presents an imminent and substantial danger to the public health and safety or the environment, regardless of whether the activity was lawful at the time. The emergency order may be issued without notice or hearing.

(c) An emergency order may be issued under Subsection (b) to:

(1) restrain the person from allowing or continuing the release or threatened release; and

(2) require the person to take any action necessary to provide and implement an environmentally sound remedial action plan designed to eliminate the release or threatened release.

(d) An emergency order issued under Subsection (b) shall:

(1) be delivered to the person identified by the order by

certified mail, return receipt requested;

(2) be delivered by hand delivery to the person identified by the order; or

(3) on failure of delivery of the order by certified mail or hand delivery, be served on the person by publication:

(A) once in the Texas Register; and

(B) once in a newspaper of general circulation in each county in which was located the last known address of a person identified by the order.

(e) The commission shall use the security provided by the license holder to pay the costs of actions that are taken or that are to be taken under this section. The commission shall send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to:

(1) enforce security supplied by the licensee;

(2) convert an amount of security into cash, as necessary; and

(3) disburse from the security in the perpetual care account the amount necessary to pay the costs.

(f) If an order issued by the commission under this section is adopted without notice or hearing, the order shall set a time, at least 10 but not more than 30 days following the date of issuance of the emergency order, and a place for a hearing to be held in accordance with the rules of the commission. As a result of this hearing, the commission shall decide whether to affirm, modify, or set aside the emergency order. All provisions of the emergency order shall remain in force and effect during the pendency of the hearing, unless otherwise altered by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1072, Sec. 47, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1338, Sec. 12, eff. June 20, 1997; Acts 2003, 78th Leg., ch. 580, Sec. 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 14, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 21, eff. June 15, 2007.

Sec. 401.271. STATE FEE ON RADIOACTIVE SUBSTANCES. (a) A holder of a license issued by the commission under this chapter that authorizes the disposal of a radioactive substance from other persons shall remit each quarter an amount equal to 10 percent of the license holder's gross receipts received from disposal operations under a license issued under this chapter that occur after the effective date of the Act enacting this section as follows:

(1) five percent shall be remitted to the comptroller for deposit to the credit of the general revenue fund; and

(2) five percent shall be remitted to the host county in accordance with Sections 401.244(b) and (d).

(b) Subsection (a) does not apply to compact waste or federal facility waste as defined by Section 401.2005 or industrial solid waste as defined by Section 361.003.

(c) A holder of a license or permit issued by the commission under this chapter or Chapter 361 that authorizes the storage, other than disposal, of a radioactive waste or elemental mercury from other persons shall remit each quarter to the commission for deposit into the general revenue fund an amount equal to 20 percent of the license or permit holder's gross receipts received from the storage of the substance for any period exceeding one year. This subsection applies only to the storage of the substance for any period exceeding one year. This subsection applies only to the storage of radioactive waste or elemental mercury at or adjacent to the compact waste disposal facility.

Added by Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 22, eff. June 15, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 10, eff. September 1, 2011.

Sec. 401.272. AUDIT AUTHORITY. The commission may audit a license holder's financial records and waste manifest information to ensure that the fees imposed under this chapter are accurately paid. The license holder shall comply with the commission's audit-related requests for information.

Added by Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 22, eff. June 15, 2007.

SUBCHAPTER H. FINANCIAL PROVISIONS

Sec. 401.301. LICENSE AND REGISTRATION FEES. (a) The commission and department may collect a fee for each license and registration the agency issues.

(b) The commission and the executive commissioner each by rule shall set the fee in an amount that may not exceed the actual expenses annually incurred to:

(1) process applications for licenses or registrations;

(2) amend or renew licenses or registrations;

(3) make inspections of license holders and registrants; and

(4) enforce this chapter and rules, orders, licenses, and registrations under this chapter.

(c) The commission and department may collect a fee, in addition to the license and registration fee, of not less than 20 percent of the amount of the license and registration fee nor more than $10,000 from each licensee or registrant who fails to pay the fees authorized by this section.

(d) The commission and executive commissioner shall require that each person who holds a specific license issued by the commission or department pay to the applicable agency an additional five percent of the appropriate fee set under Subsection (b). Fees collected by the department under this subsection shall be deposited to the credit of the perpetual care account. Fees collected by the commission under this subsection shall be deposited to the environmental radiation and perpetual care account. The fees are not refundable. The holder of a specific license authorizing the extraction, processing, or concentration of uranium or thorium from ore is not required to pay the additional fee described by this subsection before the beginning of operations under the license.

(e) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1159, Sec. 13(3), eff. September 1, 2013.

(f) Notwithstanding any other provision of this section, the department may not assess a fee on a local law enforcement agency for the licensing and registration of an X-ray machine that is used to screen packages or other objects the agency suspects may contain an explosive or other item that would pose a danger to the public health and safety. Except as otherwise provided by this subsection, a local

law enforcement agency is subject to the licensing and registration requirements of this chapter.

(g) The commission may assess and collect additional fees from the applicant to recover the costs the commission incurs for administrative review, technical review, and hearings on the application.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 17.04, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.233, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 201, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1367, Sec. 22, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1009, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 580, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 15, 16, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1061 (H.B. 2285), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 23, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.015, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.016, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 9, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 13(3), eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0919, eff. April 2, 2015.

Sec. 401.302. NUCLEAR REACTOR AND FIXED NUCLEAR FACILITY FEE. (a) The executive commissioner, in coordination with the commission, by rule may set an annual fee to be collected by the department from the operator of each nuclear reactor or other fixed nuclear facility in the state that uses special nuclear material.

(b) The amount of fees collected may not exceed the actual expenses that arise from emergency planning and implementation and environmental surveillance activities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 24, eff. June 15, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0920, eff. April 2, 2015.

Sec. 401.303. PAYMENT FOR MAINTENANCE, SURVEILLANCE, OR OTHER CARE. (a) The executive commissioner or commission may require the holder of a license issued by the agency to pay annually to the issuing agency an amount determined by the issuing agency if continuing or perpetual maintenance, surveillance, or other care is required after termination of a licensed activity.

(b) The issuing agency annually shall review the license holder's payments under this section to determine if the payment schedule is adequate for the maintenance and surveillance that the licensed activity requires or may require in the future.

(c) The issuing agency may review estimates of costs that are required to be incurred under this chapter in accordance with the need, nature, and cost of decontamination, stabilization, decommissioning, reclamation, and disposal activity and the maintenance and surveillance required for public health and safety and the environment.

(d) The issuing agency shall set the charges for maintenance and perpetual care at amounts consistent with existing technology.

(e) The issuing agency may not impose charges that exceed the amount that the issuing agency projects to be required for maintenance, surveillance, and other necessary care required after the licensed activity is terminated.

(f) An increase in costs may not be applied retroactively but may apply to increases in subsequent annual payments.

(g) If a license holder satisfies the obligations under this chapter, the issuing agency shall have the comptroller promptly refund to the license holder from the perpetual care account or the environmental radiation and perpetual care account, as applicable, the excess of the amount of all payments made by the license holder to the issuing agency and the investment earnings of those payments over the amount determined to be required for the continuing maintenance and surveillance of land, buildings, and radioactive

material conveyed to the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.234, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 580, Sec. 7, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 17, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 10, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0921, eff. April 2, 2015.

Sec. 401.304. ACCEPTANCE AND ADMINISTRATION OF FUNDS. The department and commission each may accept and administer conditional or other loans, grants, gifts, or other funds from the federal government or other sources to carry out their respective functions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.234, eff. Sept. 1, 1995.

Sec. 401.305. RADIATION AND PERPETUAL CARE ACCOUNT. (a) The radiation and perpetual care account is an account in the general revenue fund.

(b) The department shall deposit to the credit of the perpetual care account money and security it receives under this chapter, including an administrative penalty collected by the department under Sections 401.384-401.390 but excluding fees collected under Sections 401.301(a)-(c) and 401.302. Interest earned on money in the perpetual care account shall be credited to the perpetual care account.

(c) Money and security in the perpetual care account may be administered by the department only for storage, maintenance, and distribution of mammography medical records or the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive substances for the protection of the public health and safety and the environment under this chapter and for refunds under Section 401.303.

(d) Money and security in the perpetual care account may not be used for normal operating expenses of the department.

(e) The department may use money in the perpetual care account to pay for measures:

(1) to prevent or mitigate the adverse effects of abandonment of radioactive substances, default on a lawful obligation, insolvency, or other inability by the holder of a license issued by the department to meet the requirements of this chapter or of department rules;

(2) to assure the protection of the public health and safety and the environment from the adverse effects of ionizing radiation; and

(3) to protect the health and safety of mammography patients by assuring mammography medical records are made available to affected patients.

(f) The department may provide, by the terms of a contract or lease entered into between the department and any person, by the terms of a mammography certification issued by the department to any person, or by the terms of a license issued to any person, for the storage, maintenance, and distribution of mammography medical records. The department may provide, by the terms of a contract or lease entered into between the department and any person or by the terms of a license issued by the department to any person, for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site or facility subject to department jurisdiction under this chapter as needed to carry out the purpose of this chapter.

(g) The existence of the perpetual care account does not make the department liable for the costs of storage, maintenance, and distribution of mammography medical records arising from a mammography certification holder's failure to store, maintain, and make available mammography medical records or for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive substances arising from a license holder's abandonment of radioactive substances, default on a lawful obligation, insolvency, or inability to meet the requirements of this chapter or of department rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 146, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.235, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1009, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th

Leg., ch. 580, Sec. 8, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 18, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 25, eff. June 15, 2007.
Acts 2009, 81st Leg., R.S., Ch. 515 (S.B. 1082), Sec. 1, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 11, eff. September 1, 2013.

Sec. 401.306. ENVIRONMENTAL RADIATION AND PERPETUAL CARE ACCOUNT. (a) The environmental radiation and perpetual care account is an account in the general revenue fund to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission.

(b) The commission shall deposit to the credit of the environmental radiation and perpetual care account money and security it receives under this chapter, including fees collected under Section 401.301(d). Interest earned on money in the environmental radiation and perpetual care account shall be credited to the environmental radiation and perpetual care account.

(c) Money and security in the environmental radiation and perpetual care account may be administered by the commission only for the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive substances for the protection of the public health and safety and the environment under this chapter and for refunds under Section 401.303.

(d) Money and security in the environmental radiation and perpetual care account may not be used for normal operating expenses of the commission.

(e) The commission may use money in the environmental radiation and perpetual care account to pay for measures:

(1) to prevent or mitigate the adverse effects of abandonment of radioactive substances, default on a lawful obligation, insolvency, or other inability by the holder of a license issued by the commission to meet the requirements of this chapter or of commission rules; and

(2) to ensure the protection of the public health and safety and the environment.

(f) The commission may provide, by the terms of a contract or lease entered into between the commission and any person, or by the terms of a license issued to any person, for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site or facility subject to commission jurisdiction under this chapter as needed to carry out the purposes of this chapter.

(g) The existence of the environmental radiation and perpetual care account does not make the commission liable for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive substances arising from a license holder's abandonment of radioactive substances, default on a lawful obligation, insolvency, or inability to meet the requirements of this chapter or of commission rules.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 12, eff. September 1, 2013.

Sec. 401.307. PERPETUAL CARE ACCOUNT AND ENVIRONMENTAL RADIATION AND PERPETUAL CARE ACCOUNT CAPS. (a) The fees imposed under Sections 401.052(d) and 401.301(d) are suspended when the sum of the balances of the perpetual care account and the environmental radiation and perpetual care account reaches $100 million. The fees are reinstated when the sum of the balances of the perpetual care account and the environmental radiation and perpetual care account falls to $50 million or less.

(b) The surcharge collected under Section 401.207(g) is collected without regard to the balances of the perpetual care account and the environmental radiation and perpetual care account.

(c) Notwithstanding Subsection (a), a fee imposed by the commission under Section 401.301(d) on the holder of a license authorizing the extraction, processing, or concentration of uranium or thorium from ore is suspended when the amount in the environmental radiation and perpetual care account attributable to those fees reaches $2 million. If the amount in that account attributable to those fees is reduced to $1.5 million or less, the fee is reinstated until the amount reaches $2 million.

(d) Notwithstanding Subsection (a), a fee imposed under Section 401.052(d) is suspended from imposition against a party state compact waste generator when the amount in the perpetual care account

attributable to those fees reaches $500,000. If the amount in that account attributable to those fees is reduced to $350,000 or less, the fee is reinstated until the amount reaches $500,000.

(e) This section does not relieve a generator from liability for a transportation accident involving low-level radioactive waste.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 12, eff. September 1, 2013.

SUBCHAPTER I. COURT PROCEEDINGS

Sec. 401.341. JUDICIAL REVIEW. A person who is affected by a final decision of the department and who has exhausted all administrative remedies available in the appropriate agency is entitled to judicial review under Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.236, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 48, eff. Sept. 1, 1997.

Sec. 401.342. SUIT BY ATTORNEY GENERAL. (a) The attorney general, at the request of the department regarding an activity under its jurisdiction, shall institute an action in a district court in Travis County or in any county in which a violation occurs or is about to occur if in the department's judgment a person has engaged in or is about to engage in an act or practice that violates or will violate this chapter, a rule adopted by the executive commissioner under this chapter, or a license, registration, or order issued by the department under this chapter. The attorney general may determine the court in which suit will be instituted.

(b) The attorney general may petition the court for:

(1) an order enjoining the act or practice or an order directing compliance and reimbursement of the perpetual care account, if applicable;

(2) civil penalties as provided by Section 401.381; or

(3) a permanent or temporary injunction, restraining order, or other appropriate order if the department shows that the person engaged in or is about to engage in any of the acts or practices.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 11.236, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 49, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 580, Sec. 9, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 19, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0922, eff. April 2, 2015.

Sec. 401.343. RECOVERY OF SECURITY. (a) The department or commission shall seek reimbursement, either by an order of the department or commission or a suit filed by the attorney general at the request of the department or commission, of security from the perpetual care account used by the department or commission to pay for actions, including corrective measures, to remedy spills or contamination by radioactive substances resulting from a violation of this chapter relating to an activity under the jurisdiction of the department or commission, a violation of a rule adopted under this chapter, or a violation of a license, registration, or order issued by the department or commission under this chapter.

(b) On request by the department or commission, the attorney general shall file suit to recover security under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.236, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 50, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 580, Sec. 10, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 20, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 26, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0923, eff. April 2, 2015.

SUBCHAPTER J. ENFORCEMENT

Sec. 401.381. GENERAL CIVIL PENALTIES. (a) A person who causes, suffers, allows, or permits a violation of this chapter, a department rule or order, or a license or registration condition is subject to a civil penalty of not less than $100 or more than $25,000

for each violation and for each day that a continuing violation occurs.

(b) The attorney general may file suit to recover a civil penalty under this section in a district court in Travis County or in the county in which the violation occurred. If the attorney general seeks to recover civil penalties for violations that have occurred in more than one county, the attorney general may join all of the violations in one suit and may file the suit either in a district court in Travis County or in a district court in a county in which at least one of the violations occurred.

(c) The civil penalty provided by this section is cumulative of any other remedy provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.237, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 51, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1009, Sec. 5, eff. Sept. 1, 2001.

Sec. 401.382. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally or knowingly violates a provision of this chapter other than the offense described by Section 401.383.

(b) An offense under this section is a Class B misdemeanor, unless it is shown on the trial of the person that the person has been previously convicted of an offense under this section, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.383. CRIMINAL PENALTY FOR CERTAIN ACTS RELATED TO LOW-LEVEL RADIOACTIVE WASTE. (a) A person commits an offense if the person intentionally or knowingly receives, processes, concentrates, stores, transports, or disposes of low-level radioactive waste without a license issued under this chapter.

(b) An offense under this section is a Class A misdemeanor, unless it is shown at the trial of the person that the person has been previously convicted of an offense under this section, in which event the offense is punishable by a fine of not less than $2,000 or more than $100,000, confinement in the county jail for not more than

one year, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1367, Sec. 37, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 10.003, eff. Sept. 1, 2001.

Sec. 401.384. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty as provided by this section and Sections 401.385-401.390 against a person who causes, suffers, allows, or permits a violation of a provision of this chapter relating to an activity under the department's jurisdiction, a rule adopted by the executive commissioner under this chapter, an order issued by the department under this chapter, or a condition of a license or registration issued by the department under this chapter.

(b) The penalty for each violation may not exceed $10,000 a day for a person who violates this chapter or a rule, order, license, or registration issued under this chapter. Each day a violation continues may be considered a separate violation.

(c) In determining the amount of the penalty, the department shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts and the hazard or potential hazard created to the public health or safety;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matters that justice requires.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.238, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 52, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1009, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0924, eff. April 2, 2015.

Sec. 401.385. PRELIMINARY REPORT OF VIOLATION. If the department, after an investigation, concludes that a violation relating to an activity under its jurisdiction has occurred, the

department may issue a preliminary report:

(1) stating the facts that support the conclusion;

(2) recommending that an administrative penalty under Section 401.384 be imposed; and

(3) recommending the amount of the penalty, which shall be based on the seriousness of the violation as determined from the facts surrounding the violation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.239, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 53, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1009, Sec. 7, eff. Sept. 1, 2001.

Sec. 401.386. NOTICE OF PRELIMINARY REPORT. (a) The department shall give written notice of its preliminary report to the person charged with the violation not later than the 10th day after the date on which the report is issued.

(b) The notice must include:

(1) a brief summary of the charges;

(2) a statement of the recommended penalty amount; and

(3) a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(c) Not later than the 20th day after the date on which the notice is sent, the person charged may consent in writing to the report, including the recommended penalty, or make a written request for a hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.240, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 54, eff. Sept. 1, 1997.

Sec. 401.387. CONSENT TO PENALTY. (a) If the person charged with the violation consents to the penalty recommended by the department or does not respond to the notice on time, the department by order shall assess that penalty or order a hearing to be held on the findings and recommendations in the report.

(b) If the department assesses the recommended penalty, the department shall give written notice to the person charged of the

decision and that person must pay the penalty.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.241, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 55, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0925, eff. April 2, 2015.

Sec. 401.388. HEARING AND DECISION. (a) If the person charged requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings and shall give notice of a hearing to be held by that office.

(b) The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings.

(c) The administrative law judge shall make findings of fact and promptly issue to the department a written proposal for decision as to the occurrence of the violation and a recommendation of the amount of the proposed penalty if a penalty is warranted.

(d) Based on the findings of fact and the recommendations of the administrative law judge, the department by order may find that a violation has occurred and assess an administrative penalty or may find that no violation occurred.

(e) All proceedings under Subsections (a)-(d) are subject to Chapter 2001, Government Code.

(f) The department shall give notice to the person charged of the department's decision, and if the department finds that a violation has occurred and an administrative penalty has been assessed, the department shall give to the person charged written notice of:

(1) the department's findings;

(2) the amount of the penalty; and

(3) the person's right to judicial review of the department's order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.241, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 56, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1009, Sec. 8, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0926, eff. April 2, 2015.

Sec. 401.389. DISPOSITION OF PENALTY; JUDICIAL REVIEW. (a) Not later than the 30th day after the date on which the department's order is final, the person charged with the penalty shall pay the full amount of the penalty or file a petition for judicial review.

(b) If the person seeks judicial review of the violation, the amount of the penalty, or both, the person, within the time provided by Subsection (a), shall:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) posting with the court a supersedeas bond in a form approved by the court for the amount of the penalty; or

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(b-1) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(c) The department may request enforcement by the attorney general if the person charged fails to comply with this section.

(d) Judicial review of the order or decision of the department assessing the penalty shall be under Subchapter G, Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(53), 11.241, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 57, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0927, eff. April 2, 2015.

Sec. 401.390. REMITTING PENALTY PAYMENTS; RELEASING BONDS. (a) On the date the court's judgment that an administrative penalty against a person should be reduced or not assessed becomes final, the court shall order that:

(1) the appropriate amount of any penalty payment plus accrued interest be remitted to the person not later than the 30th day after that date; or

(2) the bond be released, if a supersedeas bond has been posted.

(b) Accrued interest on amounts remitted by the department shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid to the department under Section 401.389(a) and ending on the date the penalty is remitted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.241, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 58, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0928, eff. April 2, 2015.

Sec. 401.393. COMMISSION ENFORCEMENT. The commission may enforce the provisions of this chapter under the commission's jurisdiction as provided by Chapter 7, Water Code.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 59, eff. Sept. 1, 1997.

SUBCHAPTER K. LICENSING AUTHORITY OF TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND THE RAILROAD COMMISSION OF TEXAS

Sec. 401.412. COMMISSION LICENSING AUTHORITY. (a) Notwithstanding any other provision of this chapter and subject to

Sections 401.102 and 401.415, the commission has sole and exclusive authority to directly regulate and to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for the disposal of radioactive substances.

(b) Notwithstanding any other provision of this chapter, the commission has the sole and exclusive authority to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for the recovery and processing of source material or disposal of by-product material under Subchapter G.

(c) The commission may adopt any rules and guidelines reasonably necessary to exercise its authority under this section. In adopting rules and guidelines, the commission shall consider the compatibility of those rules and guidelines with federal regulatory programs and the rules and guidelines of the executive commissioner.

(d) The commission may assess and collect an annual fee for each license and registration and for each application in an amount sufficient to recover its reasonable costs to administer its authority under this chapter.

(e) The commission may set and collect an annual fee from the operator of each nuclear reactor or other fixed nuclear facilities in the state that uses special nuclear material. The amount of the fees collected may not exceed the actual expenses that arise from emergency response activities, including training.

(f) The commission shall establish by rule the amounts appropriate for the fees collected under this section. The fees collected under this section shall be deposited in the waste management account and reappropriated for use by the commission for expenses incurred by the commission in administering the provisions of this chapter.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.050, eff. Aug. 12, 1991. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.243, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 75, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1338, Sec. 13, eff. June 20, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 28, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0929, eff. April 2, 2015.

Sec. 401.413. COMMISSION DISPOSAL LICENSE REQUIRED. A person required by another section of this chapter to obtain a license for the disposal of a radioactive substance is required to obtain the license from the commission and not from the department.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.050, eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.243, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1338, Sec. 14, eff. June 20, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 29, eff. June 15, 2007.

Sec. 401.414. MEMORANDA OF UNDERSTANDING. The Texas Commission on Environmental Quality, the executive commissioner for the Health and Human Services Commission, and the Railroad Commission of Texas by rule shall adopt memoranda of understanding defining their respective duties under this chapter.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.050, eff. Aug. 12, 1991.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 30, eff. June 15, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0930, eff. April 2, 2015.

Sec. 401.415. OIL AND GAS NORM WASTE. (a) Notwithstanding any other provision of this chapter, the Railroad Commission of Texas:

(1) has sole authority to regulate and issue licenses, permits, and orders for the disposal of oil and gas NORM waste; and

(2) may, in order to protect public health and safety and the environment, require the owner or operator of oil and gas equipment used in exploration, production, or disposal to:

(A) determine whether the equipment contains or is contaminated with oil and gas NORM waste; and

(B) identify any equipment determined to contain or be

contaminated with oil and gas NORM.

(b) The Railroad Commission of Texas may adopt any rules reasonably necessary to exercise its authority under this section.

(c) The Railroad Commission of Texas may enforce this section or any rule, order, license, or permit adopted or issued under this section in the manner and subject to the conditions provided in Title 3 of the Natural Resources Code, including the authority to seek and obtain civil penalties and injunctive relief as provided in that title.

(d) The Railroad Commission of Texas shall consult with the department and the Texas Commission on Environmental Quality as appropriate regarding administration of this section.

(e) To ensure that the State of Texas retains its Agreement Status with the federal commission, and to ensure that radioactive materials are managed consistently to protect the public health and safety and the environment, the Railroad Commission of Texas shall issue rules on the management of oil and gas NORM waste and in so doing shall consult with the commission and the department regarding protection of the public health and the environment. The rules of the railroad commission shall provide protection for public health, safety, and the environment equivalent to the protection provided by rules applicable to disposal of other NORM wastes having similar properties, quantities, and distribution, although the approved methods and sites for disposing of oil and gas NORM wastes may be different from those approved for other NORM wastes.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.050, eff. Aug. 12, 1991. Amended by Acts 1993, 73rd Leg., ch. 810, Sec. 2, 3, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(29), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 276, Sec. 1, eff. May 22, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0931, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 986 (S.B. 766), Sec. 28, eff. September 1, 2025.

SUBCHAPTER L. CERTIFICATION OF MAMMOGRAPHY SYSTEMS

Sec. 401.421. DEFINITIONS. In this subchapter:

(1) "Certification" means an authorization for the use of a mammography system.

(2) "Mammography" means the use of radiation to produce an image of the breast on film, paper, or digital display that may be used to detect the presence of pathological conditions of the breast.

(3) "Mammography system" includes the following:

(A) an x-ray unit used as a source of radiation in producing images of breast tissue;

(B) an imaging system used for the formation of a latent image of breast tissue;

(C) an imaging processing device for changing a latent image of breast tissue to a visual image that can be used for diagnostic purposes;

(D) a viewing device used for the visual evaluation of an image of breast tissue if the image is produced in interpreting visual data captured on an image receptor;

(E) a medical radiological technologist who performs a mammography; and

(F) a physician who engages in, and who meets the requirements provided by department rule relating to, the reading, evaluation, and interpretation of mammograms.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0932, eff. April 2, 2015.

Sec. 401.422. CERTIFICATION REQUIRED. (a) A person may not perform mammography unless the mammography system used has been issued a certification under this subchapter.

(b) A certification under Subsection (a) is required in addition to any license, registration, or other requirement under this chapter.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. July 1, 1994.

Sec. 401.423. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND DEPARTMENT. (a) The department shall:

(1) prescribe application forms for original and renewal

certifications; and

(2) take other action necessary to enforce this subchapter.

(a-1) The executive commissioner shall adopt rules for the administration of this subchapter.

(b) The department shall apply under the Mammography Quality Standards Act of 1992 (42 U.S.C. Section 263b) to become an accreditation body and carry out the certification program requirements and to implement the standards established by the United States Secretary of Health under that Act in this state. If the United States Secretary of Health grants the department's application, the department shall assume those responsibilities.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 759, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0933, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0934, eff. April 2, 2015.

Sec. 401.424. MAMMOGRAPHY CERTIFICATION STANDARDS. (a) To receive a mammography certification under this subchapter, the mammography system must, at a minimum:

(1) meet criteria at least as stringent as the American College of Radiology mammography accreditation program;

(2) be specifically designed and used for the performance of mammography;

(3) be operated by an individual certified as a medical radiologic technologist under Chapter 601, Occupations Code, who meets, at a minimum, the requirements for personnel who perform mammography established by the Mammography Quality Standards Act of 1992 (42 U.S.C. Section 263b); and

(4) be used in a facility that:

(A) meets, at minimum, the requirements for certification of the Mammography Quality Standards Act of 1992 (42 U.S.C. Section 263b);

(B) has a licensed medical physicist specialized in radiology under Chapter 602, Occupations Code, who at least annually

provides on-site consultation to the facility, including a complete evaluation of the entire mammography system to ensure compliance with this subchapter;

(C) maintains records of the consultations required under Paragraph (B) for not less than seven years after the date the consultation was performed;

(D) establishes a quality control program that meets requirements that are at least as stringent as those of the American College of Radiology mammography accreditation program; and

(E) maintains and makes available to a patient of the facility original mammograms performed at the facility until the earlier of either:

(i) the fifth anniversary of the mammography or, if an additional mammogram of the same patient is not performed by the facility, the 10th anniversary of the mammography; or

(ii) at the request of the patient, the date the patient's medical records are forwarded to another medical institution.

(b) To protect the public health, the executive commissioner by rule may adopt more stringent or additional requirements for:

(1) the certification of mammography systems; and

(2) the retention of original mammograms.

(c) To protect the public health, the executive commissioner by rule shall adopt qualifications for a physician who reads, evaluates, and interprets a mammogram that are no less stringent than the standards of the American College of Radiology.

(d) The department shall make available to the public copies of the criteria of the American College of Radiology mammography accreditation program or the modified criteria provided by department rule.

(e) Notwithstanding any other provision of this chapter, the standards imposed for certification under this chapter may not be less stringent than the standards imposed on a facility under the Mammography Quality Standards Act of 1992 (42 U.S.C. Section 263b).

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 759, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.792, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0935, eff.

April 2, 2015.

Sec. 401.426. APPLICATION FOR CERTIFICATION. (a) A person who owns, leases, or uses or the agent of a person who owns, leases, or uses a mammography system must file a written application for certification under Section 401.424 on a form prescribed by the department.

(b) The department may require, at any time after an application is filed, further information from the applicant and conduct inspections necessary to determine whether the application for certification should be granted or denied.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 759, Sec. 3, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0936, eff. April 2, 2015.

Sec. 401.427. CERTIFICATION RENEWAL; FEES. (a) A certification is valid for three years.

(b) The executive commissioner by rule may adopt a system under which certifications under this subchapter expire on various dates during the year.

(c) The executive commissioner by rule shall set and the department shall collect an annual fee for certification holders in an amount reasonable and necessary to administer this subchapter. A certification holder who fails to pay the annual fee before the date set by the executive commissioner shall pay the annual fee and a late fee set by the executive commissioner. The department may revoke the certification of a certification holder who does not pay the annual fee and late fee before the required date.

(d) A certification holder may renew the certification by filing an application for renewal and paying the annual fee before the date the certification expires. If a certification holder fails to renew the certification by the required date, the certification holder may renew the certification on payment of the annual fee and a late fee set by the executive commissioner. If the certification is not renewed before the 181st day after the date on which the

certification expired, the certification holder must apply for an original certification under this subchapter.

(e) A mammography system may not be used after the expiration date of the certification unless the holder of the expired certification has made a timely and sufficient application for renewal of the certification as provided under Section 2001.054, Government Code, and a final determination of the application by the department has not been made.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(57), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 759, Sec. 4, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0937, eff. April 2, 2015.

Sec. 401.428. DENIAL, SUSPENSION, REVOCATION, OR REINSTATEMENT OF CERTIFICATION. (a) The department may deny, suspend, revoke, or reinstate a certification.

(b) The executive commissioner shall adopt rules establishing the grounds for denial, suspension, revocation, or reinstatement of a certification and establishing procedures for disciplinary actions.

(c) Proceedings relating to the suspension or revocation of a certification issued under this subchapter are subject to Chapter 2001, Government Code.

(d) A person whose certification has been revoked may apply for a new certification on the expiration of one year after the date the certification was revoked.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0938, eff. April 2, 2015.

Sec. 401.429. CERTIFICATION FOR MULTIPLE MAMMOGRAPHY SYSTEMS. (a) An applicant for certification under Section 401.426 must obtain a separate certification for each mammography system that is owned,

leased, or used by the applicant.

(b) Certification of multiple mammography systems by a single applicant may be recorded on a single certification document. If multiple mammography systems are recorded on a single certification document, each specific machine certified, if any, must be identified on the certification document by referring to the machine's manufacturer, model number, and serial number.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.

Sec. 401.430. INSPECTIONS. (a) The department shall inspect each mammography system that has not been fully certified under the Mammography Quality Standards Act of 1992 (42 U.S.C. Section 263b) not later than the 60th day after the date the certification under this subchapter is issued.

(b) The executive commissioner by rule shall establish the routine inspection frequency for mammography systems that receive certification under this subchapter.

(c) The department shall make reasonable attempts to coordinate inspections under this section with other inspections required under this chapter for the facility where the mammography system is used.

(d) After each satisfactory inspection, the department shall issue a certificate of inspection for each mammography system inspected. The certificate of inspection must be posted at a conspicuous place on or near the place where the mammography system is used. The certificate of inspection shall:

(1) specifically identify the mammography system inspected;

(2) state the name and address of the facility where the mammography system was used at the time of the inspection; and

(3) state the date of the inspection.

(e) A notice of a mammography system's failure to satisfy department standards shall be posted:

(1) on the mammography system at a conspicuous place if the system is a machine; or

(2) near the place where the mammography system practices if the system is an individual.

(f) If a facility's mammography system fails to meet the department's certification standards and the failure is a Severity Level I violation under the department's rules, the facility shall

notify each patient on whom the facility performed a mammography during the period in which the system failed to meet the department's certification standards. The facility shall:

(1) inform the patient that the mammography system failed to satisfy the department's certification standards;

(2) recommend that the patient consult with the patient's physician regarding the need for another mammogram; and

(3) list the three facilities closest to the original testing facility that have a certified mammography system.

(g) In addition to the requirement of Subsection (f), the department may require a facility to notify a patient of any other failure of the facility's mammography system to meet the department's certification standards.

(h) To protect the public health, the executive commissioner may adopt rules concerning the grounds for posting a failure notice and the placement and size of the failure notice, and for patient notification under Subsections (f) and (g), as appropriate.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 759, Sec. 5, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1009, Sec. 9, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1355 (S.B. 527), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0939, eff. April 2, 2015.

SUBCHAPTER M. LASER HAIR REMOVAL

Sec. 401.501. DEFINITIONS. In this subchapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(1-a) "Department" means the Texas Department of Licensing and Regulation.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(74), eff. April 2, 2015.

(2) "Executive director" means the executive director of the department.

(3) "Laser hair removal" means the use of a laser or pulsed light device for nonablative hair removal procedures.

(4) "Laser hair removal facility" means a business location that provides laser hair removal.

(5) "Laser or pulsed light device" means a device approved by the department and the United States Food and Drug Administration for laser hair removal.

(6) "Nonablative hair removal procedure" means a hair removal procedure using a laser or pulsed light device that does not remove the epidermis.

(7) "Operator" means the owner of a laser hair removal facility, an agent of an owner, or an independent contractor of a laser hair removal facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(74), eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.225, eff. September 1, 2017.

Sec. 401.5011. GENERAL POWERS AND DUTIES. The executive director shall administer and enforce this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.226, eff. September 1, 2017.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 985 (S.B. 748), Sec. 1, eff. September 1, 2025.

Sec. 401.502. EXAMINATION. The commission may adopt rules to govern the development and administration of an examination for an applicant under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.227, eff. September 1, 2017.

Sec. 401.503. APPLICATION PROCESS. (a) An application for a certificate or license under this subchapter must be submitted in the manner and on a form prescribed by the executive director.

(b) The application must require an applicant to provide sworn statements relating to the applicant's education and to provide other information required by the commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.228, eff. September 1, 2017.

Sec. 401.504. CERTIFICATE FOR INDIVIDUALS REQUIRED. (a) A person may not perform or attempt to perform laser hair removal unless the person holds the appropriate certificate under this subchapter.

(b) A certificate issued under this subchapter only authorizes a person to perform nonablative cosmetic laser hair removal. The certificate does not authorize the person to diagnose, treat, or offer to treat any client for any illness, disease, injury, defect, or deformity of the human body. The certificate holder shall specifically disclose this limitation in writing to all clients and prospective clients.

(c) This subchapter does not require a health professional licensed under another law to hold a certificate under this subchapter to perform laser hair removal if the performance of laser hair removal is within the scope of that professional's practice as determined by the professional's licensing board.

(d) This subchapter does not apply to a physician or to a physician's employee or delegate acting under Chapter 157, Occupations Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2010.

Sec. 401.505. CERTIFIED LASER HAIR REMOVAL PROFESSIONAL. (a) An applicant for a laser hair removal professional certificate must:

(1) be certified by a recognized certifying agency,

including the Society for Clinical and Medical Hair Removal or another certification entity approved by the department;

(2) meet the requirements for a senior laser hair removal technician certificate under Section 401.506; and

(3) pass an examination required by the department.

(b) A certified laser hair removal professional acting under the protocol established with a consulting physician may perform laser hair removal without supervision.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.229, eff. September 1, 2017.

Sec. 401.506. SENIOR LASER HAIR REMOVAL TECHNICIAN. (a) Except as provided by Subsection (b), an applicant for a senior laser hair removal technician certificate must:

(1) meet the requirements for a laser hair removal technician certificate under Section 401.507; and

(2) have supervised at least 100 laser hair removal procedures, as audited by a certified laser hair removal professional.

(b) The qualifications for eligibility for an applicant for a senior laser hair removal technician certificate who is a licensed health professional shall be established by the entity that issues licenses for that health profession.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.507. LASER HAIR REMOVAL TECHNICIAN. An applicant for a laser hair removal technician certificate must:

(1) meet the requirements for a laser hair removal apprentice-in-training certificate under Section 401.508; and

(2) have performed at least 100 laser hair removal procedures under the direct supervision of a senior laser hair removal technician or a certified laser hair removal professional.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.508. LASER HAIR REMOVAL APPRENTICE-IN-TRAINING. (a) An applicant for a laser hair removal apprentice-in-training certificate must have at least 24 hours of training in safety, laser physics, skin typing, skin reactions, treatment protocols, burns, eye protection, emergencies, and posttreatment protocols.

(b) A laser hair removal apprentice-in-training must work directly under the supervision of a senior laser hair removal technician or a certified laser hair removal professional.

(c) A person must be at least 18 years of age to qualify to be a laser hair removal apprentice-in-training.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.509. CONTINUING EDUCATION. The commission by rule shall establish continuing education requirements for renewal of a certificate under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 3.001, eff. September 1, 2019.

Sec. 401.510. FACILITY LICENSE REQUIRED. (a) A person may not operate a laser hair removal facility unless the person holds a license issued under this subchapter to operate the facility.

(b) A separate license is required for each laser hair removal facility.

(c) This section does not apply to:

(1) a facility owned or operated by a physician for the practice of medicine;

(2) a licensed hospital; or

(3) a clinic owned or operated by a licensed hospital.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2010.

Sec. 401.512. TERM OF CERTIFICATE OR LICENSE. (a) A certificate or license expires on the second anniversary of the date of issuance and may be renewed.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.297(3), eff. September 1, 2017.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.297(3), eff. September 1, 2017.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.230, eff. September 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.231, eff. September 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.297(3), eff. September 1, 2017.

Sec. 401.513. DISPLAY OF LICENSE OR CERTIFICATE. A person holding a license or certificate under this subchapter shall display the person's license or certificate in an open public area of the laser hair removal facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.514. LASER OR PULSED LIGHT DEVICE. (a) A laser or pulsed light device used for laser hair removal in a laser hair removal facility must comply with all applicable federal and state laws and regulations.

(b) A person who adulterates or misbrands a laser or pulsed light device violates Chapter 431. The department may investigate a person accused of adulterating or misbranding a laser or pulsed light device.

(c) A person may only use a laser or pulsed light device approved for laser hair removal by the federal Food and Drug Administration for that purpose and may only use the device at the settings expected to safely remove hair.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.515. CUSTOMER NOTICE; LIABILITY. (a) A laser hair removal facility shall give each customer a written statement outlining the relevant risks associated with laser hair removal, including a warning that failure to use the eye protection provided to the customer by the laser hair removal facility may result in damage to the eyes.

(b) The commission shall adopt rules relating to the customer notice.

(c) Compliance with the notice requirement does not affect the liability of the laser hair removal facility operator or a manufacturer of a laser or pulsed light device.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.232, eff. September 1, 2017.

Sec. 401.516. WARNING SIGNS. (a) A laser hair removal facility shall post a warning sign as prescribed by the commission in a conspicuous location readily visible to a person entering the facility. The sign must provide a toll-free telephone number and e-mail address for the department and inform the customer that the customer may contact the department.

(b) Repealed by Acts 2025, 89th Leg., R.S., Ch. 985 (S.B. 748), Sec. 2, eff. September 1, 2025.

(c) Repealed by Acts 2025, 89th Leg., R.S., Ch. 985 (S.B. 748), Sec. 2, eff. September 1, 2025.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.233, eff. September 1, 2017.

Acts 2025, 89th Leg., R.S., Ch. 985 (S.B. 748), Sec. 2, eff. September 1, 2025.

Sec. 401.517. OPERATIONAL REQUIREMENTS. (a) Except as provided by Subsection (b), a laser hair removal facility shall have a certified laser hair removal professional or a licensed health professional described by Section 401.504(c) present to supervise the laser hair removal procedures performed at the facility during the facility's operating hours.

(b) A laser hair removal facility may continue to perform laser hair removal procedures after the facility's certified laser hair removal professional leaves the facility if a senior laser hair removal technician is present to perform or supervise each procedure. Not later than the 45th day after the date the facility's certified laser hair removal professional leaves the facility:

(1) the facility's senior laser hair removal technician must become certified as a laser hair removal professional under Section 401.505; or

(2) the facility must hire a new certified laser hair removal professional.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2010.

Sec. 401.518. SAFETY. (a) A laser hair removal facility operator is responsible for maintaining the laser hair removal facility's compliance with the requirements of this subchapter and commission rules relating to laser and pulsed light devices.

(b) A laser hair removal facility operator may not claim, advertise, or distribute promotional materials that claim that laser hair removal is free from risk or provides any medical benefit.

(c) A laser hair removal facility operator may not produce false or misleading advertising regarding the services offered at the facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.234, eff. September 1, 2017.

Sec. 401.519. CONSULTING PHYSICIAN. (a) A laser hair removal facility must have a written contract with a consulting physician to:

(1) establish proper protocols for the services provided at the facility; and

(2) audit the laser hair removal facility's protocols and operations.

(b) Under the rules of the commission, a laser hair removal facility must document with the department the facility's contractual relationship with the consulting physician.

(c) The consulting physician must be available for emergency consultation with the facility as appropriate to the circumstances, including, if the physician considers it necessary, an emergency appointment with the client. If the consulting physician is unavailable for an emergency consultation, another designated physician must be available for the consultation with the facility relating to care for the client.

(d) This subchapter does not relieve a consulting physician or another health care professional from complying with applicable regulations prescribed by a state or federal agency.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.235, eff. September 1, 2017.

Sec. 401.520. DISCLOSURE OF RECORD PROHIBITED; EXCEPTION. (a) Except as provided by Subsection (b), an operator or other person may not disclose a customer record required to be kept by the department.

(b) An operator or other person may disclose a customer record if:

(1) the customer or a person authorized to act on behalf of the customer requests the record;

(2) the department, the Texas Medical Board, a health authority, or an authorized agent requests the record;

(3) the customer consents in writing to disclosure of the record to another person;

(4) the customer is a victim, witness, or defendant in a criminal proceeding and the record is relevant to that proceeding;

(5) the record is requested in a criminal or civil proceeding by court order or subpoena; or

(6) disclosure is otherwise required by law.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.521. PROHIBITED PRACTICE. (a) A person may not operate a laser or pulsed light device with the intent to treat an illness, disease, injury, or physical defect or deformity unless the person is:

(1) a physician;

(2) acting under a physician's order; or

(3) authorized under other law to treat the illness, disease, injury, or physical defect or deformity in that manner.

(b) A person who violates Subsection (a) is practicing medicine in violation of Subtitle B, Title 3, Occupations Code, and is subject to the penalties under that subtitle and Subchapter F, Chapter 51, Occupations Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2010.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.236, eff. September 1, 2017.

Sec. 401.522. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of an administrative penalty imposed for a violation of this subchapter or a rule adopted or order issued under this subchapter may not exceed $5,000 for each violation.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.297(4), eff. September 1, 2017.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.297(4), eff. September 1, 2017.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2010.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.237, eff.

September 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.238, eff. September 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.297(4), eff. September 1, 2017.

CHAPTER 403. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT

Sec. 403.0005. DEFINITIONS. In this chapter:

(1) "Commission" means the commission established by Article III of the Texas Low-Level Radioactive Waste Disposal Compact.

(2) "Host state commissioner" means a person who is appointed from this state to serve on the commission under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 2, eff. September 1, 2011.

Sec. 403.001. MEMBERS OF COMMISSION. (a) The governor shall appoint six members to represent this state on the commission established by Article III of the Texas Low-Level Radioactive Waste Disposal Compact. One of the voting members of the compact commission shall be a legal resident of the host county.

(b) The governor may provide an alternate for each commissioner appointed under this section.

Added by Acts 1993, 73rd Leg., ch. 460, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 2003, 78th Leg., ch. 1067, Sec. 21, eff. Sept. 1, 2003.

Sec. 403.002. TERMS OF COMMISSION MEMBERS; VACANCY. Host state commissioners serve staggered six-year terms, with the terms of two host state commissioners expiring on September 1 of each odd-numbered year. A host state commissioner serves until a successor is appointed and qualified. A vacancy in the office of host state commissioner is filled for the unexpired term by appointment of the governor.

Added by Acts 1993, 73rd Leg., ch. 460, Sec. 1, eff. Aug. 30, 1993.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 3, eff. September 1, 2011.

Sec. 403.003. OATH. A host state commissioner shall take the constitutional oath of office and shall also take an oath to faithfully perform the duties of commissioner.

Added by Acts 1993, 73rd Leg., ch. 460, Sec. 1, eff. Aug. 30, 1993.

Sec. 403.004. COMPENSATION. A host state commissioner is not entitled to compensation for performing the duties of host state commissioner but is entitled to reimbursement for actual and necessary expenses incurred in the performance of the duties of host state commissioner.

Added by Acts 1993, 73rd Leg., ch. 460, Sec. 1, eff. Aug. 30, 1993.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 3, eff. September 1, 2011.

Sec. 403.005. POWERS AND DUTIES. (a) The Texas Low-Level Radioactive Waste Disposal Compact Commission and the members of the commission have the powers and duties prescribed by the compact. The members of the commission are responsible for administering the provisions of the compact.
(b) The commission may conduct other activities not described by the federal law governing the commission or the compact, as long as those activities are consistent with the policies and procedures of this state.

Added by Acts 1993, 73rd Leg., ch. 460, Sec. 1, eff. Aug. 30, 1993.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 403 (S.B. 1667), Sec. 1, eff. June 1, 2017.

Sec. 403.0051. COMMISSION AS INDEPENDENT ENTITY; FUNDING. (a) The commission is an independent entity established by federal law and governed by the compact and is not an agency of this state or a program, department, or other division of, or administratively attached to, an agency of this state.

(b) The legislature may appropriate money to the commission. Money for the commission may not be appropriated as part of an appropriation for the Texas Commission on Environmental Quality.

(c) The comptroller may:

(1) assign the commission an agency code; and

(2) from funds appropriated to the commission, provide for the reimbursement of a commission member or employee or a person who contracts with the commission for purchases approved by the commission, including state and local sales tax.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 4, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 403 (S.B. 1667), Sec. 2, eff. June 1, 2017.

Sec. 403.0053. ATTORNEY GENERAL TO REPRESENT COMMISSION. The attorney general shall represent the commission under this chapter in all matters before the state courts and any court of the United States.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 4, eff. September 1, 2011.

Sec. 403.0054. APPLICABILITY OF SUNSET ACT. (a) The commission is subject to review under Chapter 325, Government Code (Texas Sunset Act), as if it were a state agency subject to review under that chapter, but may not be abolished under that chapter.

(b) The commission shall be reviewed during each period in which the Texas Commission on Environmental Quality is reviewed.

(c) The commission shall pay the cost incurred by the Sunset Advisory Commission in performing a review of the commission under this section. The Sunset Advisory Commission shall determine the cost, and the commission shall pay the amount promptly on receipt of

a statement from the Sunset Advisory Commission detailing the cost.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 4, eff. September 1, 2011.

Sec. 403.0055. AUDIT. The commission is subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 4, eff. September 1, 2011.

Sec. 403.006. TEXT OF COMPACT. The Texas Low-Level Radioactive Waste Disposal Compact reads as follows:

ARTICLE I. POLICY AND PURPOSE

Sec. 1.01. The party states recognize a responsibility for each state to seek to manage low-level radioactive waste generated within its boundaries, pursuant to the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Sections 2021b-2021j). They also recognize that the United States Congress, by enacting the Act, has authorized and encouraged states to enter into compacts for the efficient management and disposal of low-level radioactive waste. It is the policy of the party states to cooperate in the protection of the health, safety, and welfare of their citizens and the environment and to provide for and encourage the economical management and disposal of low-level radioactive waste. It is the purpose of this compact to provide the framework for such a cooperative effort; to promote the health, safety, and welfare of the citizens and the environment of the party states; to limit the number of facilities needed to effectively, efficiently, and economically manage low-level radioactive waste and to encourage the reduction of the generation thereof; and to distribute the costs, benefits, and obligations among the party states; all in accordance with the terms of this compact.

ARTICLE II. DEFINITIONS

Sec. 2.01. As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Act" means the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act

of 1985 (42 U.S.C. Sections 2021b-2021j).

(2) "Commission" means the Texas Low-Level Radioactive Waste Disposal Compact Commission established in Article III of this compact.

(3) "Compact facility" or "facility" means any site, location, structure, or property located in and provided by the host state for the purpose of management or disposal of low-level radioactive waste for which the party states are responsible.

(4) "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the United States Nuclear Regulatory Commission and the United States Environmental Protection Agency under applicable laws, or by the host state.

(5) "Generate," when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(6) "Generator" means a person who produces or processes low-level radioactive waste in the course of its activities, excluding persons who arrange for the collection, transportation, management, treatment, storage, or disposal of waste generated outside the party states, unless approved by the commission.

(7) "Host county" means a county in the host state in which a disposal facility is located or is being developed.

(8) "Host state" means a party state in which a compact facility is located or is being developed. The state of Texas is the host state under this compact.

(9) "Institutional control period" means that period of time following closure of the facility and transfer of the facility license from the operator to the custodial agency in compliance with the appropriate regulations for long-term observation and maintenance.

(10) "Low-level radioactive waste" has the same meaning as that term is defined in Section 2(9) of the Act (42 U.S.C. Section 2021b(9)), or in the host state statute so long as the waste is not incompatible with management and disposal at the compact facility.

(11) "Management" means collection, consolidation, storage, packaging, or treatment.

(12) "Operator" means a person who operates a disposal facility.

(13) "Party state" means any state that has become a party in accordance with Article VII of this compact. Texas, Maine, and

Vermont are initial party states under this compact.

(14) "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.

(15) "Transporter" means a person who transports low-level radioactive waste.

ARTICLE III. THE COMMISSION

Sec. 3.01. There is hereby established the Texas Low-Level Radioactive Waste Disposal Compact Commission. The commission shall consist of one voting member from each party state except that the host state shall be entitled to six voting members. Commission members shall be appointed by the party state governors, as provided by the laws of each party state. Each party state may provide alternates for each appointed member.

Sec. 3.02. A quorum of the commission consists of a majority of the members. Except as otherwise provided in this compact, an official act of the commission must receive the affirmative vote of a majority of its members.

Sec. 3.03. The commission is a legal entity separate and distinct from the party states and has governmental immunity to the same extent as an entity created under the authority of Article XVI, Section 59, of the Texas Constitution. Members of the commission shall not be personally liable for actions taken in their official capacity. The liabilities of the commission shall not be deemed liabilities of the party states.

Sec. 3.04. The commission shall:

(1) Compensate its members according to the host state's law.

(2) Conduct its business, hold meetings, and maintain public records pursuant to laws of the host state, except that notice of public meetings shall be given in the nonhost party states in accordance with their respective statutes.

(3) Be located in the capital city of the host state.

(4) Meet at least once a year and upon the call of the chair, or any member. The governor of the host state shall appoint a chair and vice-chair.

(5) Keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the commission.

(6) Approve a budget each year and establish a fiscal year that conforms to the fiscal year of the host state.

(7) Prepare, adopt, and implement contingency plans for the disposal and management of low-level radioactive waste in the event that the compact facility should be closed. Any plan which requires the host state to store or otherwise manage the low-level radioactive waste from all the party states must be approved by at least four host state members of the commission. The commission, in a contingency plan or otherwise, may not require a nonhost party state to store low-level radioactive waste generated outside of the state.

(8) Submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the commission, including an annual report to be submitted on or before January 31 of each year.

(9) Assemble and make available to the party states and to the public information concerning low-level radioactive waste management needs, technologies, and problems.

(10) Keep a current inventory of all generators within the party states, based upon information provided by the party states.

(11) By no later than 180 days after all members of the commission are appointed under Section 3.01 of this article, establish by rule the total volume of low-level radioactive waste that the host state will dispose of in the compact facility in the years 1995-2045, including decommissioning waste. The shipments of low-level radioactive waste from all nonhost party states shall not exceed 20 percent of the volume estimated to be disposed of by the host state during the 50-year period. When averaged over such 50-year period, the total of all shipments from nonhost party states shall not exceed 20,000 cubic feet a year. The commission shall coordinate the volumes, timing, and frequency of shipments from generators in the nonhost party states in order to assure that over the life of this agreement shipments from the nonhost party states do not exceed 20 percent of the volume projected by the commission under this paragraph.

Sec. 3.05. The commission may:

(1) Employ staff necessary to carry out its duties and functions. The commission is authorized to use to the extent practicable the services of existing employees of the party states. Compensation shall be as determined by the commission.

(2) Accept any grants, equipment, supplies, materials, or

services, conditional or otherwise, from the federal or state government. The nature, amount, and condition, if any, of any donation, grant, or other resources accepted pursuant to this paragraph and the identity of the donor or grantor shall be detailed in the annual report of the commission.

(3) Enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the commission shall bind a party state.

(4) Adopt, by a majority vote, bylaws and rules necessary to carry out the terms of this compact. Any rules promulgated by the commission shall be adopted in accordance with Chapter 2001, Government Code.

(5) Sue and be sued and, when authorized by a majority vote of the members, seek to intervene in administrative or judicial proceedings related to this compact.

(6) Enter into an agreement with any person, state, regional body, or group of states for the importation of low-level radioactive waste into the compact for management or disposal, provided that the agreement receives a majority vote of the commission. The commission may adopt such conditions and restrictions in the agreement as it deems advisable.

(7) Upon petition, allow an individual generator, a group of generators, or the host state of the compact to export low-level radioactive waste to a low-level radioactive waste disposal facility located outside the party states. The commission may approve the petition only by a majority vote of its members. The permission to export low-level radioactive waste shall be effective for that period of time and for the specified amount of low-level radioactive waste, and subject to any other term or condition, as is determined by the commission.

(8) Monitor the exportation outside of the party states of material which otherwise meets the criteria of low-level radioactive waste, where the sole purpose of the exportation is to manage or process the material for recycling or waste reduction and return it to the party states for disposal in the compact facility.

Sec. 3.06. Jurisdiction and venue of any action contesting any action of the commission shall be in the United States District Court in the district where the commission maintains its office.

ARTICLE IV. RIGHTS, RESPONSIBILITIES, AND OBLIGATIONS OF PARTY STATES

Sec. 4.01. The host state shall develop and have full

administrative control over the development, management, and operation of a facility for the disposal of low-level radioactive waste generated within the party states. The host state shall be entitled to unlimited use of the facility over its operating life. Use of the facility by the nonhost party states for disposal of low-level radioactive waste, including such waste resulting from decommissioning of any nuclear electric generation facilities located in the party states, is limited to the volume requirements of Section 3.04(11) of Article III.

Sec. 4.02. Low-level radioactive waste generated within the party states shall be disposed of only at the compact facility, except as provided in Section 3.05(7) of Article III.

Sec. 4.03. The initial states of this compact cannot be members of another low-level radioactive waste compact entered into pursuant to the Act.

Sec. 4.04. The host state shall do the following:

(1) Cause a facility to be developed in a timely manner and operated and maintained through the institutional control period.

(2) Ensure, consistent with any applicable federal and host state laws, the protection and preservation of the environment and the public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the disposal facilities within the host state.

(3) Close the facility when reasonably necessary to protect the public health and safety of its citizens or to protect its natural resources from harm. However, the host state shall notify the commission of the closure within three days of its action and shall, within 30 working days of its action, provide a written explanation to the commission of the closure, and implement any adopted contingency plan.

(4) Establish reasonable fees for disposal at the facility of low-level radioactive waste generated in the party states based on disposal fee criteria set out in Sections 402.272 and 402.273, Texas Health and Safety Code. The same fees shall be charged for the disposal of low-level radioactive waste that was generated in the host state and in the nonhost party states. Fees shall also be sufficient to reasonably support the activities of the commission.

(5) Submit an annual report to the commission on the status of the facility, including projections of the facility's anticipated future capacity, and on the related funds.

(6) Notify the commission immediately upon the occurrence of any event that could cause a possible temporary or permanent closure of the facility and identify all reasonable options for the disposal of low-level radioactive waste at alternate compact facilities or, by arrangement and commission vote, at noncompact facilities.

(7) Promptly notify the other party states of any legal action involving the facility.

(8) Identify and regulate, in accordance with federal and host state law, the means and routes of transportation of low-level radioactive waste in the host state.

Sec. 4.05. Each party state shall do the following:

(1) Develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for the facility to conform to packaging, processing, and waste form specifications of the host state.

(2) Maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at the facility, including but not limited to the amount of low-level radioactive waste and the class of low-level radioactive waste generated by each generator.

(3) Develop and enforce procedures requiring generators within its borders to minimize the volume of low-level radioactive waste requiring disposal. Nothing in this compact shall prohibit the storage, treatment, or management of waste by a generator.

(4) Provide the commission with any data and information necessary for the implementation of the commission's responsibilities, including taking those actions necessary to obtain this data or information.

(5) Pay for community assistance projects designated by the host county in an amount for each nonhost party state equal to 10 percent of the payment provided for in Article V for each such state. One-half of the payment shall be due and payable to the host county on the first day of the month following ratification of this compact agreement by congress and one-half of the payment shall be due and payable on the first day of the month following the approval of a facility operating license by the host state's regulatory body.

(6) Provide financial support for the commission's activities prior to the date of facility operation and subsequent to the date of congressional ratification of this compact under Section

7.07 of Article VII. Each party state will be responsible for annual payments equaling its pro-rata share of the commission's expenses, incurred for administrative, legal, and other purposes of the commission.

(7) If agreed by all parties to a dispute, submit the dispute to arbitration or other alternate dispute resolution process. If arbitration is agreed upon, the governor of each party state shall appoint an arbitrator. If the number of party states is an even number, the arbitrators so chosen shall appoint an additional arbitrator. The determination of a majority of the arbitrators shall be binding on the party states. Arbitration proceedings shall be conducted in accordance with the provisions of 9 U.S.C. Sections 1 through 16. If all parties to a dispute do not agree to arbitration or alternate dispute resolution process, the United States District Court in the district where the commission maintains its office shall have original jurisdiction over any action between or among parties to this compact.

(8) Provide on a regular basis to the commission and host state:

(A) an accounting of waste shipped and proposed to be shipped to the compact facility, by volume and curies;

(B) proposed transportation methods and routes; and

(C) proposed shipment schedules.

(9) Seek to join in any legal action by or against the host state to prevent nonparty states or generators from disposing of low-level radioactive waste at the facility.

Sec. 4.06. Each party state shall act in good faith and may rely on the good faith performance of the other party states regarding requirements of this compact.

ARTICLE V. PARTY STATE CONTRIBUTIONS

Sec. 5.01. Each party state, except the host state, shall contribute a total of $25 million to the host state. Payments shall be deposited in the host state treasury to the credit of the low-level waste fund in the following manner except as otherwise provided. Not later than the 60th day after the date of congressional ratification of this compact, each nonhost party state shall pay to the host state $12.5 million. Not later than the 60th day after the date of the opening of the compact facility, each nonhost party state shall pay to the host state an additional $12.5 million.

Sec. 5.02. As an alternative, the host state and the nonhost states may provide for payments in the same total amount as stated above to be made to meet the principal and interest expense associated with the bond indebtedness or other form of indebtedness issued by the appropriate agency of the host state for purposes associated with the development, operation, and post-closure monitoring of the compact facility. In the event the member states proceed in this manner, the payment schedule shall be determined in accordance with the schedule of debt repayment. This schedule shall replace the payment schedule described in Section 5.01 of this article.

ARTICLE VI. PROHIBITED ACTS AND PENALTIES

Sec. 6.01. No person shall dispose of low-level radioactive waste generated within the party states unless the disposal is at the compact facility, except as otherwise provided in Section 3.05(7) of Article III.

Sec. 6.02. No person shall manage or dispose of any low-level radioactive waste within the party states unless the low-level radioactive waste was generated within the party states, except as provided in Section 3.05(6) of Article III. Nothing herein shall be construed to prohibit the storage or management of low-level radioactive waste by a generator, nor its disposal pursuant to 10 C.F.R. Section 20.302.

Sec. 6.03. Violations of this article may result in prohibiting the violator from disposing of low-level radioactive waste in the compact facility, or in the imposition of penalty surcharges on shipments to the facility, as determined by the commission.

ARTICLE VII. ELIGIBILITY; ENTRY INTO EFFECT; CONGRESSIONAL CONSENT; WITHDRAWAL; EXCLUSION

Sec. 7.01. The states of Texas, Maine, and Vermont are party states to this compact. Any other state may be made eligible for party status by a majority vote of the commission and ratification by the legislature of the host state, subject to fulfillment of the rights of the initial nonhost party states under Section 3.04(11) of Article III and Section 4.01 of Article IV, and upon compliance with those terms and conditions for eligibility that the host state may establish. The host state may establish all terms and conditions for the entry of any state, other than the states named in this section, as a member of this compact; provided, however, the specific provisions of this compact, except for those pertaining to the

composition of the commission and those pertaining to Section 7.09 of this article, may not be changed except upon ratification by the legislatures of the party states.

Sec. 7.02. Upon compliance with the other provisions of this compact, a state made eligible under Section 7.01 of this article may become a party state by legislative enactment of this compact or by executive order of the governor of the state adopting this compact. A state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened after the executive order is issued, unless before the adjournment, the legislature enacts this compact.

Sec. 7.03. Any party state may withdraw from this compact by repealing enactment of this compact subject to the provisions herein. In the event the host state allows an additional state or additional states to join the compact, the host state's legislature, without the consent of the nonhost party states, shall have the right to modify the composition of the commission so that the host state shall have a voting majority on the commission; provided, however, that any modification maintains the right of each initial party state to retain one voting member on the commission.

Sec. 7.04. If the host state withdraws from the compact, the withdrawal shall not become effective until five years after enactment of the repealing legislation and the nonhost party states may continue to use the facility during that time. The financial obligation of the nonhost party states under Article V shall cease immediately upon enactment of the repealing legislation. If the host state withdraws from the compact or abandons plans to operate a facility prior to the date of any nonhost party state payment under Sections 4.05(5) and (6), of Article IV or Article V, the nonhost party states are relieved of any obligations to make the contributions. This section sets out the exclusive remedies for the nonhost party states if the host state withdraws from the compact or is unable to develop and operate a compact facility.

Sec. 7.05. A party state, other than the host state, may withdraw from the compact by repealing the enactment of this compact, but this withdrawal shall not become effective until two years after the effective date of the repealing legislation. During this two-year period the party state will continue to have access to the facility. The withdrawing party shall remain liable for any payments under Sections 4.05(5) and (6) of Article IV that were due during the

two-year period and shall not be entitled to any refund of payments previously made.

Sec. 7.06. Any party state that substantially fails to comply with the terms of the compact or to fulfill its obligations hereunder may have its membership in the compact revoked by a seven-eighths vote of the commission following notice that a hearing will be scheduled not less than six months from the date of the notice. In all other respects, revocation proceedings undertaken by the commission will be subject to Chapter 2001, Government Code, except that a party state may appeal the commission's revocation decision to the United States District Court in accordance with Section 3.06 of Article III. Revocation shall take effect one year from the date such party state receives written notice from the commission of a final action. Written notice of revocation shall be transmitted immediately following the vote of the commission, by the chair, to the governor of the affected party state, all other governors of party states, and to the United States Congress.

Sec. 7.07. This compact shall take effect following its enactment under the laws of the host state and any other party state and thereafter upon the consent of the United States Congress and shall remain in effect until otherwise provided by federal law. If Texas and either Maine or Vermont ratify this compact, the compact shall be in full force and effect as to Texas and the other ratifying state, and this compact shall be interpreted as follows:

(1) Texas and the other ratifying state are the initial party states.

(2) The commission shall consist of two voting members from the other ratifying state and six from Texas.

(3) Each party state is responsible for its pro-rata share of the commission's expenses.

Sec. 7.08. This compact is subject to review by the United States Congress and the withdrawal of the consent of congress every five years after its effective date, pursuant to federal law.

Sec. 7.09. The host state legislature, with the approval of the governor, shall have the right and authority, without the consent of the nonhost party states, to modify the provisions contained in Section 3.04(11) of Article III to comply with Section 402.219(c)(1), Texas Health and Safety Code, as long as the modification does not impair the rights of the initial nonhost party states.

ARTICLE VIII. CONSTRUCTION AND SEVERABILITY

Sec. 8.01. The provisions of this compact shall be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party shall not be infringed upon unnecessarily.

Sec. 8.02. This compact does not affect any judicial proceeding pending on the effective date of this compact.

Sec. 8.03. No party state acquires any liability, by joining this compact, resulting from the siting, operation, maintenance, long-term care, or any other activity relating to the compact facility. No nonhost party state shall be liable for any harm or damage from the siting, operation, maintenance, or long-term care relating to the compact facility. Except as otherwise expressly provided in this compact, nothing in this compact shall be construed to alter the incidence of liability of any kind for any act or failure to act. Generators, transporters, owners, and operators of the facility shall be liable for their acts, omissions, conduct, or relationships in accordance with applicable law. By entering into this compact and securing the ratification by congress of its terms, no party state acquires a potential liability under Section 5(d)(2)(C) of the Act (42 U.S.C. Section 2021e(d)(2)(C)) that did not exist prior to entering into this compact.

Sec. 8.04. If a party state withdraws from the compact pursuant to Section 7.03 of Article VII or has its membership in this compact revoked pursuant to Section 7.06 of Article VII, the withdrawal or revocation shall not affect any liability already incurred by or chargeable to the affected state under Section 8.03 of this article.

Sec. 8.05. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared by a court of competent jurisdiction to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby to the extent the remainder can in all fairness be given effect. If any provision of this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

Sec. 8.06. Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:

(1) the United States Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2011 et seq.); or

(2) an agreement state under Section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2021).

Sec. 8.07. Nothing in this compact confers any new authority on the states or commission to do any of the following:

(1) Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the United States Nuclear Regulatory Commission or the United States Department of Transportation.

(2) Regulate health, safety, or environmental hazards from source, by-product, or special nuclear material.

(3) Inspect the activities of licensees of the agreement states or of the United States Nuclear Regulatory Commission.

Added by Acts 1993, 73rd Leg., ch. 460, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

SUBTITLE F. LIGHT POLLUTION

CHAPTER 425. REGULATION OF CERTAIN OUTDOOR LIGHTING

Sec. 425.001. DEFINITIONS. In this chapter:

(1) "Cutoff luminaire" means a luminaire in which 2.5% or less of the lamp lumens are emitted above a horizontal plane through the luminaire's lowest part and 10% or less of the lamp lumens are emitted at a vertical angle 80 degrees above the luminaire's lowest point.

(2) "Light pollution" means the night sky glow caused by the scattering of artificial light in the atmosphere.

(3) "Outdoor lighting fixture" means any type of fixed or movable lighting equipment that is designed or used for illumination outdoors. The term includes billboard lighting, street lights, searchlights and other lighting used for advertising purposes, and area lighting. The term does not include lighting equipment that is required by law to be installed on motor vehicles or lighting required for the safe operation of aircraft.

(4) "State funds" means:

(A) money appropriated by the legislature; or

(B) bond revenues of the state.

Added by Acts 1999, 76th Leg., ch. 713, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 421.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(76), eff. Sept. 1, 2001.

Sec. 425.002. STANDARDS FOR STATE-FUNDED OUTDOOR LIGHTING FIXTURES. (a) An outdoor lighting fixture may be installed, replaced, maintained, or operated using state funds only if:

(1) the new or replacement outdoor lighting fixture is a cutoff luminaire if the rated output of the outdoor lighting fixture is greater than 1,800 lumens;

(2) the minimum illuminance adequate for the intended purpose is used with consideration given to nationally recognized standards;

(3) for lighting of a designated highway of the state highway system, the Texas Department of Transportation determines that the purpose of the outdoor lighting fixture cannot be achieved by the installation of reflective road markers, lines, warning or informational signs, or other effective passive methods; and

(4) full consideration has been given to energy conservation, reducing glare, minimizing light pollution, and preserving the natural night environment.

(b) For purposes of Subsection (a)(4), "energy conservation" means reducing energy costs and resources used and includes using a light with lower wattage or a timer switch.

(c) Subsection (a) does not apply if:

(1) a federal law, rule, or regulation preempts state law;

(2) the outdoor lighting fixture is used on a temporary basis because emergency personnel require additional illumination for emergency procedures;

(3) the outdoor lighting fixture is used on a temporary basis for nighttime work;

(4) special events or situations require additional illumination;

(5) the outdoor lighting fixture is used solely to enhance the aesthetic beauty of an object; or

(6) a compelling safety interest exists that cannot be addressed by another method.

(d) Special events or situations that may require additional illumination include sporting events and illumination of monuments, historic structures, or flags. Illumination for special events or situations must be installed to shield the outdoor lighting fixtures from direct view and to minimize upward lighting and light pollution.

Added by Acts 1999, 76th Leg., ch. 713, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 421.002 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(76), eff. Sept. 1, 2001.

SUBTITLE G. ENVIRONMENTAL HEALTH

CHAPTER 427. TEXAS ENVIRONMENTAL HEALTH INSTITUTE

Sec. 427.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Department" means the Department of State Health Services.

(3) "Federal superfund site" means a site defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended.

(4) "Immediately surrounding area" means an area determined by the commission to have been significantly exposed to one or more pollutants from the identified site.

(5) "Institute" means the Texas Environmental Health Institute.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 19.01, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.017, eff. September 1, 2009.

Sec. 427.002. TEXAS ENVIRONMENTAL HEALTH INSTITUTE. The commission shall enter into an agreement with the department to jointly establish the Texas Environmental Health Institute in order to examine ways to identify, treat, manage, prevent, and reduce health problems associated with environmental contamination.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 19.01, eff. Sept. 1,

2001.

Sec. 427.003. PURPOSES. The purposes of the institute are to:

(1) develop a statewide plan to identify health conditions, related or potentially related to environmental contamination, of residents of this state who live or have lived within the immediately surrounding area of a federal superfund site or a state superfund site;

(2) develop a plan to promote and protect the health and safety of residents in immediately surrounding areas by preventing or reducing their health risks from exposure to chemical and biological contaminants, radioactive materials, and other hazards in the environment and the workplace;

(3) develop a plan for informing and educating citizens in immediately surrounding areas about the identified health risks and ways to prevent or reduce exposure;

(4) identify private and federal funding opportunities for institute operations; and

(5) conduct, coordinate, or pursue funding for research concerning short-term and long-term impacts of exposure to environmental contamination.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 19.01, eff. Sept. 1, 2001.

Sec. 427.004. PROGRAMS. The commission and the department may establish at the institute any programs necessary to carry out the institute's established purposes under this chapter. The commission and the executive commissioner of the Health and Human Services Commission may contract with public or private entities to carry out the institute's purposes.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 19.01, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.018, eff. September 1, 2009.

Sec. 427.005. GIFTS AND GRANTS. The commission and the department may accept and administer gifts and grants to fund the institute from any individual, corporation, trust, or foundation or the United States, subject to limitations or conditions imposed by law.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 19.01, eff. Sept. 1, 2001.

TITLE 6. FOOD, DRUGS, ALCOHOL, AND HAZARDOUS SUBSTANCES
SUBTITLE A. FOOD AND DRUG HEALTH REGULATIONS
CHAPTER 430. GENERAL PROVISIONS

Sec. 430.001. DEFINITIONS. In this subtitle:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0940, eff. April 2, 2015.

CHAPTER 431. TEXAS FOOD, DRUG, AND COSMETIC ACT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 431.001. SHORT TITLE. This chapter may be cited as the Texas Food, Drug, and Cosmetic Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.002. DEFINITIONS. In this chapter:

(1) "Advertising" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Animal feed," as used in Subdivision (23), in Section 512 of the federal Act, and in provisions of this chapter referring to those paragraphs or sections, means an article intended for use as

food for animals other than man as a substantial source of nutrients in the diet of the animals. The term is not limited to a mixture intended to be the sole ration of the animals.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(75), eff. April 2, 2015.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(75), eff. April 2, 2015.

(5) "Butter" means the food product usually known as butter that is made exclusively from milk or cream, or both, with or without common salt or additional coloring matter, and containing not less than 80 percent by weight of milk fat, after allowing for all tolerances.

(5-a) "Cell-cultured protein" means a food product derived from harvesting animal cells and artificially replicating those cells in a growth medium to produce tissue.

(6)(A) "Color additive" means a material that:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source; and

(ii) when added or applied to a food, drug, or cosmetic, or to the human body or any part of the human body, is capable, alone or through reaction with other substance, of imparting color. The term does not include any material exempted under the federal Act.

(B) "Color" includes black, white, and intermediate grays.

(C) Paragraph (A) does not apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological processes of produce of the soil and thereby affecting its color, whether before or after harvest.

(7) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(75), eff. April 2, 2015.

(8) "Consumer commodity," except as otherwise provided by this subdivision, means any food, drug, device, or cosmetic, as those terms are defined by this chapter or by the federal Act, and any other article, product, or commodity of any kind or class that is customarily produced or distributed for sale through retail sales

agencies or instrumentalities for consumption by individuals, or for use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and that usually is consumed or expended in the course of the consumption or use. The term does not include:

(A) a meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(B) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136), or The Virus-Serum-Toxin Act (21 U.S.C. 151 et seq.);

(C) a drug subject to the provisions of Section 431.113(c)(1) or Section 503(b)(1) of the federal Act;

(D) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 205(e)); or

(E) a commodity subject to the provisions of Chapter 61, Agriculture Code, relating to the inspection, labeling, and sale of agricultural and vegetable seed.

(9) "Contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(10) "Cosmetic" means articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part of the human body for cleaning, beautifying, promoting attractiveness, or altering the appearance, and articles intended for use as a component of those articles. The term does not include soap.

(11) "Counterfeit drug" means a drug, or the container or labeling of a drug, that, without authorization, bears the trademark, trade name or other identifying mark, imprint, or device of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug, and that falsely purports or is represented to be the product of, or to have been packed or distributed by, the other drug manufacturer, processor, packer, or distributor.

(12) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(75), eff. April 2, 2015.

(13) "Device," except when used in Sections 431.003,

431.021(l), 431.082(g), 431.112(c) and 431.142(c), means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is:

(A) recognized in the official United States Pharmacopoeia National Formulary or any supplement to it;

(B) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease in man or other animals; or

(C) intended to affect the structure or any function of the body of man or other animals and that does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and is not dependent on metabolization for the achievement of any of its principal intended purposes.

(14) "Drug" means articles recognized in the official United States Pharmacopoeia National Formulary, or any supplement to it, articles designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, articles, other than food, intended to affect the structure or any function of the body of man or other animals, and articles intended for use as a component of any article specified in this subdivision. The term does not include devices or their components, parts, or accessories. A food for which a claim is made in accordance with Section 403(r) of the federal Act, and for which the claim is approved by the secretary, is not a drug solely because the label or labeling contains such a claim.

(15) "Federal Act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.).

(16) "Food" means:

(A) articles used for food or drink for man;

(B) chewing gum; and

(C) articles used for components of any such article.

(17) "Food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any use), if such substance is not generally recognized, among experts qualified by scientific

training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:

(A) a pesticide chemical in or on a raw agricultural commodity;

(B) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;

(C) a color additive;

(D) any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, Pub. L. No. 85-929, 52 Stat. 1041 (codified as amended in various sections of 21 U.S.C.), pursuant to the federal Act, the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) or the Meat Inspection Act of 1906 (21 U.S.C. 601 et seq.); or

(E) a new animal drug.

(18) "Health authority" means a physician designated to administer state and local laws relating to public health.

(19) "Immediate container" does not include package liners.

(20) "Infant formula" means a food that is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.

(21) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information that appears on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any, of the retail package of the article, or is easily legible through the outside container or wrapper.

(22) "Labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

(23) "Manufacture" means:

(A) the process of combining or purifying food or packaging food for sale to a person at wholesale or retail, and

includes repackaging, labeling, or relabeling of any food;

(B) the process of preparing, propagating, compounding, processing, packaging, repackaging, labeling, testing, or quality control of a drug or drug product, but does not include compounding that is done within the practice of pharmacy and pursuant to a prescription drug order or initiative from a practitioner for a patient or prepackaging that is done in accordance with Section 562.154, Occupations Code;

(C) the process of preparing, fabricating, assembling, processing, packing, repacking, labeling, or relabeling a device; or

(D) the making of any cosmetic product by chemical, physical, biological, or other procedures, including manipulation, sampling, testing, or control procedures applied to the product.

(24) "New animal drug" means any drug intended for use for animals other than man, including any drug intended for use in animal feed:

(A) the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of animal drugs as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling of the drug (except that such an unrecognized drug is not deemed to be a "new animal drug" if at any time before June 25, 1938, it was subject to the Food and Drug Act of June 30, 1906, and if at that time its labeling contained the same representations concerning the conditions of its use);

(B) the composition of which is such that the drug, as a result of investigations to determine its safety and effectiveness for use under those conditions, has become recognized but that has not, otherwise than in the investigations, been used to a material extent or for a material time under those conditions; or

(C) is composed wholly or partly of penicillin, streptomycin, chloratetracycline, chloramphenicol, or bacitracin, or any derivative of those substances, unless:

(i) a published order of the secretary is in effect that declares the drug not to be a new animal drug on the grounds that the requirement of certification of batches of the drug, as provided by Section 512(n) of the federal Act, is not necessary to ensure that the objectives specified in Section 512(n)(3) of that Act are achieved; and

(ii) Paragraph (A) or (B) of this subdivision does not apply to the drug.

(25) "New drug" means:

(A) any drug, except a new animal drug, the composition of which is such that such drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof (except that such an unrecognized drug is not a "new drug" if at any time before May 26, 1985, it was subject to the Food and Drug Act of June 30, 1906, and if at that time its labeling contained the same representations concerning the conditions of its use); or

(B) any drug, except a new animal drug, the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

(26) "Official compendium" means the official United States Pharmacopoeia National Formulary, or any supplement to it.

(27) "Package" means any container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers. The term includes wrapped meats enclosed in papers or other materials as prepared by the manufacturers thereof for sale. The term does not include:

(A) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors;

(B) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings do not bear printed matter relating to any particular commodity; or

(C) containers subject to the provisions of the Standard Barrel Act (Apple Barrels) (15 U.S.C. 231, 21 U.S.C. 20) or the Standard Barrel Act (Fruits and Vegetables) (15 U.S.C. 234-236).

(28) "Person" includes individual, partnership, corporation, and association.

(29) "Pesticide chemical" means any substance which, alone,

in chemical combination or in formulation with one or more other substances, is a "pesticide" within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u)), as now in force or as amended, and that is used in the production, storage, or transportation of raw agricultural commodities.

(30) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(31) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(32) "Saccharin" includes calcium saccharin, sodium saccharin, and ammonium saccharin.

(33) "Safe" refers to the health of humans or animals.

(34) "Secretary" means the secretary of the United States Department of Health and Human Services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 149, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 539, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 459, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 629, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 111, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 383, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 982, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1099, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 28 (S.B. 492), Sec. 5, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0941, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0942, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(75), eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 968 (S.B. 261), Sec. 1, eff. September 1, 2025.

Sec. 431.003. ARTICLE MISBRANDED BECAUSE OF MISLEADING LABELING

OR ADVERTISING. If an article is alleged to be misbranded because the labeling or advertising is misleading, then in determining whether the labeling or advertising is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or any combination of these, but also the extent to which the labeling or advertising fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertising relates under the conditions of use prescribed in the labeling or advertising thereof, or under such conditions of use as are customary or usual.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 150, eff. Sept. 1, 1991.

Sec. 431.004. REPRESENTATION OF DRUG AS ANTISEPTIC. The representation of a drug, in its labeling, as an antiseptic shall be considered to be a representation that the drug is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.005. PROVISIONS REGARDING SALE OF FOOD, DRUGS, DEVICES, OR COSMETICS. The provisions of this chapter regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packaging, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.006. CERTAIN COMBINATION PRODUCTS. If the United

States Food and Drug Administration determines, with respect to a product that is a combination of a drug and a device, that:

(1) the primary mode of action of the product is as a drug, a person who engages in wholesale distribution of the product is subject to licensure under Subchapter I; and

(2) the primary mode of action of the product is as a device, a distributor or manufacturer of the product is subject to licensure under Subchapter L.

Added by Acts 1999, 76th Leg., ch. 132, Sec. 1, eff. May 20, 1999.

Sec. 431.007. COMPLIANCE WITH OTHER LAW; MOLLUSCAN SHELLFISH. A person who is subject to this chapter and who handles molluscan shellfish, as that term is defined by Section 436.002, shall comply with Section 436.105.

Added by Acts 1999, 76th Leg., ch. 1298, Sec. 1, eff. June 18, 1999. Renumbered from Sec. 431.006 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(78), eff. Sept. 1, 2001.

Sec. 431.008. APPLICABILITY OF CHAPTER TO DISTRESSED OR RECONDITIONED MERCHANDISE AND CERTAIN LICENSED ENTITIES. (a) This chapter applies to a food, drug, device, or cosmetic that is distressed merchandise for purposes of Chapter 432 or that has been subject to reconditioning in accordance with Chapter 432.

(b) Except as provided by Subsection (c), this chapter applies to the conduct of a person licensed under Chapter 432.

(c) A person who holds a license under Chapter 432 and is engaging in conduct within the scope of that license is not required to hold a license as a wholesale drug distributor under Subchapter I, a food wholesaler under Subchapter J, or a device distributor under Subchapter L.

Added by Acts 2001, 77th Leg., ch. 265, Sec. 1, eff. May 22, 2001.

Sec. 431.009. APPLICABILITY OF CHAPTER TO FROZEN DESSERTS. (a) This chapter applies to a frozen dessert, an imitation frozen dessert, a product sold in semblance of a frozen dessert, or a mix

for one of those products subject to Chapter 440. A frozen dessert, an imitation frozen dessert, a product sold in semblance of a frozen dessert, or a mix for one of those products is food for purposes of this chapter.

(b) Except as provided by Subsection (c), this chapter applies to the conduct of a person licensed under Chapter 440.

(c) A person who holds a license under Chapter 440 related to the manufacturing of a product regulated under that chapter and is engaging in conduct within the scope of that license is not required to hold a license as a food manufacturer or food wholesaler under Subchapter J.

Added by Acts 2003, 78th Leg., ch. 112, Sec. 1, eff. Sept. 1, 2003.

Sec. 431.010. APPLICABILITY OF CHAPTER TO MILK AND MILK PRODUCTS. (a) This chapter applies to milk or a milk product subject to Chapter 435. Milk or a milk product is a food for purposes of this chapter.

(b) Except as provided by Subsection (c), this chapter applies to the conduct of a person who holds a permit under Chapter 435.

(c) A person who holds a permit under Chapter 435 related to the processing, producing, bottling, receiving, transferring, or transporting of Grade A milk or milk products and who is engaging in conduct within the scope of that permit is not required to hold a license as a food manufacturer or food wholesaler under Subchapter J.

Added by Acts 2003, 78th Leg., ch. 757, Sec. 1, eff. Sept. 1, 2003.

Sec. 431.011. APPLICABILITY OF CHAPTER TO CONSUMABLE HEMP PRODUCTS AND MANUFACTURERS. (a) This chapter applies to a consumable hemp product subject to Chapter 443. An article regulated under this chapter may not be deemed to be adulterated solely on the basis that the article is a consumable hemp product.

(b) Except as provided by Subsection (c), this chapter applies to the conduct of a person who holds a license under Chapter 443.

(c) A person who holds a license under Chapter 443 related to the processing of hemp or the manufacturing of a consumable hemp product regulated under that chapter and is engaging in conduct within the scope of that license is not required to hold a license as

a food manufacturer or food wholesaler under Subchapter J.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 4, eff. June 10, 2019.

SUBCHAPTER B. PROHIBITED ACTS

Sec. 431.021. PROHIBITED ACTS. The following acts and the causing of the following acts within this state are unlawful and prohibited:

(a) the introduction or delivery for introduction into commerce of any food, drug, device, or cosmetic that is adulterated or misbranded;

(b) the adulteration or misbranding of any food, drug, device, or cosmetic in commerce;

(c) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(d) the distribution in commerce of a consumer commodity, if such commodity is contained in a package, or if there is affixed to that commodity a label that does not conform to the provisions of this chapter and of rules adopted under the authority of this chapter; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(1) are engaged in the packaging or labeling of such commodities; or

(2) prescribe or specify by any means the manner in which such commodities are packaged or labeled;

(e) the introduction or delivery for introduction into commerce of any article in violation of Section 431.084, 431.114, or 431.115;

(f) the dissemination of any false advertisement;

(g) the refusal to permit entry or inspection, or to permit the taking of a sample or to permit access to or copying of any record as authorized by Sections 431.042-431.044; or the failure to establish or maintain any record or make any report required under Section 512(j), (l), or (m) of the federal Act, or the refusal to permit access to or verification or copying of any such required record;

(h) the manufacture within this state of any food, drug, device, or cosmetic that is adulterated or misbranded;

(i) the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in this state from whom the person received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false;

(j) the use, removal, or disposal of a detained or embargoed article in violation of Section 431.048;

(k) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale after shipment in commerce and results in such article being adulterated or misbranded;

(l)(1) forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted under this chapter or the regulations promulgated under the provisions of the federal Act;

(2) making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling thereof so as to render such drug a counterfeit drug;

(3) the doing of any act that causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug;

(m) the using by any person to the person's own advantage, or revealing, other than to the department, to a health authority, or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under the authority of this chapter concerning any method or process that as a trade secret is entitled to protection;

(n) the using, on the labeling of any drug or device or in any advertising relating to such drug or device, of any representation or suggestion that approval of an application with respect to such drug

or device is in effect under Section 431.114 or Section 505, 515, or 520(g) of the federal Act, as the case may be, or that such drug or device complies with the provisions of such sections;

(o) the using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with Sections 431.042-431.044 or Section 704 of the federal Act;

(p) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor of the drug to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter that is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal Act. Nothing in this subsection shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter;

(q)(1) placing or causing to be placed on any drug or device or container of any drug or device, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing;

(2) selling, dispensing, disposing of or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container of any drug or device, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by Subdivision (1); or

(3) making, selling, disposing of, causing to be made, sold, or disposed of, keeping in possession, control, or custody, or concealing with intent to defraud any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling of any drug or container so as to render such drug a counterfeit drug;

(r) dispensing or causing to be dispensed a different drug in place of the drug ordered or prescribed without the express permission in each case of the person ordering or prescribing;

(s) the failure to register in accordance with Section 510 of the federal Act, the failure to provide any information required by Section 510(j) or (k) of the federal Act, or the failure to provide a notice required by Section 510(j)(2) of the federal Act;

(t)(1) the failure or refusal to:

(A) comply with any requirement prescribed under Section 518 or 520(g) of the federal Act; or

(B) furnish any notification or other material or information required by or under Section 519 or 520(g) of the federal Act;

(2) with respect to any device, the submission of any report that is required by or under this chapter that is false or misleading in any material respect;

(u) the movement of a device in violation of an order under Section 304(g) of the federal Act or the removal or alteration of any mark or label required by the order to identify the device as detained;

(v) the failure to provide the notice required by Section 412(b) or 412(c), the failure to make the reports required by Section 412(d)(1)(B), or the failure to meet the requirements prescribed under Section 412(d)(2) of the federal Act;

(w) except as provided under Subchapter M of this chapter and Section 562.1085, Occupations Code, the acceptance by a person of an unused prescription or drug, in whole or in part, for the purpose of resale, after the prescription or drug has been originally dispensed, or sold;

(x) engaging in the wholesale distribution of drugs or operating as a distributor or manufacturer of devices in this state without obtaining a license issued by the department under Subchapter I, L, or N, as applicable;

(y) engaging in the manufacture of food in this state or operating as a warehouse operator in this state without having a license as required by Section 431.222 or operating as a food wholesaler in this state without having a license under Section 431.222 or being registered under Section 431.2211, as appropriate;

(z) unless approved by the United States Food and Drug Administration pursuant to the federal Act, the sale, delivery, holding, or offering for sale of a self-testing kit designed to indicate whether a person has a human immunodeficiency virus infection, acquired immune deficiency syndrome, or a related disorder

or condition;

(aa) making a false statement or false representation in an application for a license or in a statement, report, or other instrument to be filed with or requested by the department under this chapter;

(bb) failing to comply with a requirement or request to provide information or failing to submit an application, statement, report, or other instrument required by the department;

(cc) performing, causing the performance of, or aiding and abetting the performance of an act described by Subsection (x);

(dd) purchasing or otherwise receiving a prescription drug from a pharmacy in violation of Section 431.411(a);

(ee) selling, distributing, or transferring a prescription drug to a person who is not authorized under state or federal law to receive the prescription drug in violation of Section 431.411(b);

(ff) failing to deliver prescription drugs to specified premises as required by Section 431.411(c);

(gg) failing to maintain or provide pedigrees as required by Section 431.412 or 431.413;

(hh) failing to obtain, pass, or authenticate a pedigree as required by Section 431.412 or 431.413;

(ii) the introduction or delivery for introduction into commerce of a drug or prescription device at a flea market;

(jj) the receipt of a prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected of being counterfeit, and the delivery or proffered delivery of such a drug for payment or otherwise; or

(kk) the alteration, mutilation, destruction, obliteration, or removal of all or any part of the labeling of a prescription drug or the commission of any other act with respect to a prescription drug that results in the prescription drug being misbranded.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 151, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 539, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 440, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1047, Sec. 6, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 282, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1138, Sec. 2, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 198, Sec. 2.71, eff.

Sept. 1, 2003; Acts 2003, 78th Leg., ch. 321, Sec. 2, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 383, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 982, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(i), eff. March 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 1, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0943, eff. April 2, 2015.

For expiration of this section, see Subsection (c).

Sec. 431.02105. PROHIBITED ACT; TEMPORARY PROVISION. (a) The offering for sale or sale of cell-cultured protein for human consumption within this state is unlawful and prohibited.

(b) A violation of this section may be enforced in the same manner as a violation of Section 431.021 is enforced under Subchapter C.

(c) This section expires September 1, 2027.

Added by Acts 2025, 89th Leg., R.S., Ch. 968 (S.B. 261), Sec. 2, eff. September 1, 2025.

Sec. 431.0211. EXCEPTION. Any provision of Section 431.021 that relates to a prescription drug does not apply to a prescription drug manufacturer, or an agent of a prescription drug manufacturer, who is obtaining or attempting to obtain a prescription drug for the sole purpose of testing the prescription drug for authenticity.

Added by Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 2, eff. September 1, 2007.

Sec. 431.022. OFFENSE: TRANSFER OF PRODUCT CONTAINING EPHEDRINE. (a) A person commits an offense if the person knowingly sells, transfers, or otherwise furnishes a product containing ephedrine to a person 17 years of age or younger, unless:

(1) the actor is:

(A) a practitioner or other health care provider licensed by this state who has obtained, as required by law, consent to the treatment of the person to whom the product is furnished; or

(B) the parent, guardian, or managing conservator of the person to whom the product is furnished;

(2) the person to whom the product is furnished has had the disabilities of minority removed for general purposes under Chapter 31, Family Code; or

(3) the product is a drug.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section, in which event the offense is a Class B misdemeanor.

(c) A product containing ephedrine that is not described in Subsection (a)(3) must be labeled in accordance with department rules to indicate that sale to persons 17 years of age or younger is prohibited.

Added by Acts 1999, 76th Leg., ch. 151, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0944, eff. April 2, 2015.

Sec. 431.023. LIMITED EXEMPTION FOR DISTRESSED FOOD, DRUGS, DEVICES, OR COSMETICS. In relation to a food, drug, device, or cosmetic that is distressed merchandise for purposes of Chapter 432, Sections 431.021(a), (c), and (d) do not prohibit:

(1) the introduction or delivery for introduction into commerce of the merchandise for the purpose of reconditioning in accordance with Chapter 432 and not for sale to the ultimate consumer;

(2) the receipt in commerce of the merchandise for the purpose of reconditioning in accordance with Chapter 432 and not for sale to the ultimate consumer;

(3) the holding of merchandise for the purpose of reconditioning in accordance with Chapter 432 and not for resale to the ultimate consumer; or

(4) the reconditioning of the merchandise in accordance with Chapter 432.

Added by Acts 2001, 77th Leg., ch. 265, Sec. 2, eff. May 22, 2001.

Sec. 431.024. ORTHODONTIC DEVICES. (a) In this section:

(1) "Orthodontic device" means any class II or class III medical device, as defined by the United States Food and Drug Administration under 21 U.S.C. Section 360c and 21 C.F.R. Section 860.3, excluding a retainer used to keep teeth in a fixed position, that is:

(A) used in orthodontic treatment to move a patient's teeth or jaw or correct a misalignment or malposition; and

(B) manufactured to address the specific orthodontic needs of an individual patient.

(2) "Dentist" means a person licensed to practice dentistry in this state under Subtitle D, Title 3, Occupations Code.

(b) A person may not sell an orthodontic device to a patient in this state or provide a service related to the design or manufacture of an orthodontic device unless the person:

(1) is a dentist who has provided the services prescribed by Subsection (c) to the patient; or

(2) receives written or electronic confirmation from a dentist who has provided the services prescribed by Subsection (c) to the patient.

(c) A person may not sell an orthodontic device or provide a service related to the design or manufacture of an orthodontic device to a patient in this state who has not received:

(1) an in-person intraoral dental examination and an examination of the patient's head and neck;

(2) a review of recently performed x-rays, panoramic x-rays, computed tomography, bone imaging scans, or other appropriate diagnostic imaging sufficient to allow the dentist to detect patient conditions that preclude or contraindicate the provision of safe orthodontic treatment, including:

(A) untreated caries;

(B) gingivitis and periodontal disease;

(C) issues with the roots of teeth in the periodontium, including short roots;

(D) the presence of an osseointegrated dental implant or other fixed dental appliance;

(E) fractured, cracked, or split teeth or roots; or

(F) any other oral pathology or condition that precludes orthodontic treatment;

(3) a prescription for an orthodontic device issued by:

(A) the dentist who provided the examination described by Subdivision (1) and reviewed the appropriate diagnostic imaging described by Subdivision (2); or

(B) the dentist who:

(i) will conduct and monitor the patient's orthodontic treatment; and

(ii) has either:

(a) received a referral from the patient's dentist described by Paragraph (A); or

(b) requested, received, and maintained clearance for orthodontic treatment from the patient's dentist described by Paragraph (A);

(4) subject to Subsection (d), counsel by a dentist described by Subdivision (3) regarding available orthodontic treatment options and the risks associated with those treatments; and

(5) a review of the patient's medical and dental health histories.

(d) The required counsel under Subsection (c)(4) is valid only if the patient acknowledges and verifies in writing, with the patient's signature, that the patient received the counsel. The dentist providing the required counsel shall attach and maintain the patient's written acknowledgment of counsel in the patient's file.

(e) A person who sells an orthodontic device to a patient or provides a service related to the design or manufacture of an orthodontic device shall maintain any documents received under Subsection (c) for not less than seven years after the date of sale or provision of services.

(f) A dentist may not require a patient to agree to use a particular type of orthodontic device as a condition of performing the examination or review described by Subsections (c)(1) and (c)(2).

(g) A dentist described by Subsection (c)(3)(A) shall provide any records collected under Subsections (c)(1) and (c)(2) to another dentist in accordance with Section 258.109, Occupations Code, if:

(1) disclosure of a dental record is authorized under Subchapter C, Chapter 258, Occupations Code; and

(2) the other dentist requests the records.

Added by Acts 2025, 89th Leg., R.S., Ch. 693 (H.B. 4070), Sec. 1, eff. September 1, 2025.

SUBCHAPTER C. ENFORCEMENT

Sec. 431.041. DEFINITION. In this subchapter, "detained or embargoed article" means a food, drug, device, cosmetic, or consumer commodity that has been detained or embargoed under Section 431.048.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.042. INSPECTION. (a) To enforce this chapter, the department or a health authority may, on presenting appropriate credentials to the owner, operator, or agent in charge:

(1) enter at reasonable times an establishment, including a factory or warehouse, in which a food, drug, device, or cosmetic is manufactured, processed, packed, or held for introduction into commerce or held after the introduction;

(2) enter a vehicle being used to transport or hold the food, drug, device, or cosmetic in commerce; or

(3) inspect at reasonable times, within reasonable limits, and in a reasonable manner, the establishment or vehicle and all equipment, finished and unfinished materials, containers, and labeling of any item and obtain samples necessary for the enforcement of this chapter.

(b) The inspection of an establishment, including a factory, warehouse, or consulting laboratory, in which a prescription drug or restricted device is manufactured, processed, packed, or held for introduction into commerce extends to any place or thing, including a record, file, paper, process, control, or facility, in order to determine whether the drug or device:

(1) is adulterated or misbranded;

(2) may not be manufactured, introduced into commerce, sold, or offered for sale under this chapter; or

(3) is otherwise in violation of this chapter.

(c) An inspection under Subsection (b) may not extend to:

(1) financial data;

(2) sales data other than shipment data;

(3) pricing data;

(4) personnel data other than data relating to the qualifications of technical and professional personnel performing functions under this chapter;

(5) research data other than data:

(A) relating to new drugs, antibiotic drugs, and devices; and

(B) subject to reporting and inspection under regulations issued under Section 505(i) or (j), 519, or 520(g) of the federal Act; or

(6) data relating to other drugs or devices that, in the case of a new drug, would be subject to reporting or inspection under regulations issued under Section 505(j) of the federal Act.

(d) An inspection under Subsection (b) shall be started and completed with reasonable promptness.

(e) This section does not apply to:

(1) a pharmacy that:

(A) complies with Subtitle J, Title 3, Occupations Code;

(B) regularly engages in dispensing prescription drugs or devices on prescriptions of practitioners licensed to administer the drugs or devices to their patients in the course of their professional practice; and

(C) does not, through a subsidiary or otherwise, manufacture, prepare, propagate, compound, or process a drug or device for sale other than in the regular course of its business of dispensing or selling drugs or devices at retail;

(2) a practitioner licensed to prescribe or administer a drug who manufactures, prepares, propagates, compounds, or processes the drug solely for use in the course of the practitioner's professional practice;

(3) a practitioner licensed to prescribe or use a device who manufactures or processes the device solely for use in the course of the practitioner's professional practice; or

(4) a person who manufactures, prepares, propagates, compounds, or processes a drug or manufactures or processes a device solely for use in research, teaching, or chemical analysis and not for sale.

(f) The executive commissioner may exempt a class of persons from inspection under this section if the executive commissioner finds that inspection as applied to the class is not necessary for

the protection of the public health.

(g) The department or a health authority who makes an inspection under this section to enforce the provisions of this chapter applicable to infant formula shall be permitted, at all reasonable times, to have access to and to copy and verify records:

(1) in order to determine whether the infant formula manufactured or held in the inspected facility meets the requirements of this chapter; or

(2) that are required by this chapter.

(h) If the department or a health authority while inspecting an establishment, including a factory or warehouse, obtains a sample, the department or health authority before leaving the establishment shall give to the owner, operator, or the owner's or operator's agent a receipt describing the sample.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.793, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 111, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0945, eff. April 2, 2015.

Sec. 431.043. ACCESS TO RECORDS. A person who is required to maintain records under this chapter or Section 519 or 520(g) of the federal Act or a person who is in charge or custody of those records shall, at the request of the department or a health authority, permit the department or health authority at all reasonable times access to and to copy and verify the records, including records that verify that the hemp in a consumable hemp product was produced in accordance with Chapter 122, Agriculture Code, or 7 U.S.C. Chapter 38, Subchapter VII.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0946, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 5, eff. June 10, 2019.

Sec. 431.044. ACCESS TO RECORDS SHOWING MOVEMENT IN COMMERCE. (a) To enforce this chapter, a carrier engaged in commerce or other person receiving a food, drug, device, or cosmetic in commerce or holding a food, drug, device, or cosmetic received in commerce shall, at the request of the department or a health authority, permit the department or health authority at all reasonable times to have access to and to copy all records showing:

(1) the movement in commerce of the food, drug, device, or cosmetic;

(2) the holding of the food, drug, device, or cosmetic after movement in commerce; and

(3) the quantity, shipper, and consignee of the food, drug, device, or cosmetic.

(b) The carrier or other person may not refuse access to and copying of the requested record if the request is accompanied by a written statement that specifies the nature or kind of food, drug, device, or cosmetic to which the request relates.

(c) Evidence obtained under this section or evidence that is directly or indirectly derived from the evidence obtained under this section may not be used in a criminal prosecution of the person from whom the evidence is obtained.

(d) A carrier is not subject to other provisions of this chapter because of the carrier's receipt, carriage, holding, or delivery of a food, drug, device, or cosmetic in the usual course of business as a carrier.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0947, eff. April 2, 2015.

Sec. 431.045. EMERGENCY ORDER. (a) The commissioner or a person designated by the commissioner may issue an emergency order, either mandatory or prohibitory in nature, in relation to the manufacture or distribution of a food, drug, device, or cosmetic in the department's jurisdiction if the commissioner or the person designated by the commissioner determines that:

(1) the manufacture or distribution of the food, drug, device, or cosmetic creates or poses an immediate and serious threat

to human life or health; and

(2) other procedures available to the department to remedy or prevent the occurrence of the situation will result in unreasonable delay.

(b) The commissioner or a person designated by the commissioner may issue the emergency order without notice and hearing if the commissioner or a person designated by the commissioner determines this is practicable under the circumstances.

(c) If an emergency order is issued without a hearing, the department shall propose a time and place for a hearing and refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office shall set the time and place for the hearing at which the emergency order is affirmed, modified, or set aside. The hearing shall be held under the contested case provisions of Chapter 2001, Government Code, and the department's formal hearing rules.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(75), eff. April 2, 2015.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 629, Sec. 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 262, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0948, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(75), eff. April 2, 2015.

Sec. 431.046. VIOLATION OF RULES. A violation of a rule adopted under this chapter is a violation of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.047. VIOLATION; INJUNCTION. (a) The department or a health authority may petition the district court for a temporary restraining order to restrain a continuing violation of Subchapter B or a threat of a continuing violation of Subchapter B if the department or health authority finds that:

(1) a person has violated, is violating, or is threatening

to violate Subchapter B; and

(2) the violation or threatened violation creates an immediate threat to the health and safety of the public.

(b) A district court, on petition of the department or a health authority, and on a finding by the court that a person is violating or threatening to violate Subchapter B shall grant any injunctive relief warranted by the facts.

(c) Venue for a suit brought under this section is in the county in which the violation or threat of violation is alleged to have occurred or in Travis County.

(d) The department and the attorney general may each recover reasonable expenses incurred in obtaining injunctive relief under this section, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses. The expenses recovered by the department may be used by the department for the administration and enforcement of this chapter. The expenses recovered by the attorney general may be used by the attorney general.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 3, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0949, eff. April 2, 2015.

Sec. 431.048. DETAINED OR EMBARGOED ARTICLE. (a) The department shall affix to an article that is a food, drug, device, cosmetic, or consumer commodity a tag or other appropriate marking that gives notice that the article is, or is suspected of being, adulterated or misbranded and that the article has been detained or embargoed if the department finds or has probable cause to believe that the article:

(1) is adulterated;

(2) is misbranded so that the article is dangerous or fraudulent under this chapter; or

(3) violates Section 431.084, 431.114, or 431.115.

(b) The tag or marking on a detained or embargoed article must warn all persons not to use the article, remove the article from the premises, or dispose of the article by sale or otherwise until

permission for use, removal, or disposal is given by the department or a court.

(c) A person may not use a detained or embargoed article, remove a detained or embargoed article from the premises, or dispose of a detained or embargoed article by sale or otherwise without permission of the department or a court. The department may permit perishable goods to be moved to a place suitable for proper storage.

(d) The department shall remove the tag or other marking from an embargoed or detained article if the department finds that the article is not adulterated or misbranded.

(e) The department may not detain or embargo an article, including an article that is distressed merchandise, that is in the possession of a person licensed under Chapter 432 and that is being held for the purpose of reconditioning in accordance with Chapter 432, unless the department finds or has probable cause to believe that the article cannot be adequately reconditioned in accordance with that chapter and applicable rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 282, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 265, Sec. 3, eff. May 22, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0950, eff. April 2, 2015.

Sec. 431.049. REMOVAL ORDER FOR DETAINED OR EMBARGOED ARTICLE. (a) If the claimant of the detained or embargoed articles or the claimant's agent fails or refuses to transfer the articles to a secure place after the tag or other appropriate marking has been affixed as provided by Section 431.048, the department may order the transfer of the articles to one or more secure storage areas to prevent their unauthorized use, removal, or disposal.

(b) The department may provide for the transfer of the article if the claimant of the article or the claimant's agent does not carry out the transfer order in a timely manner. The costs of the transfer shall be assessed against the claimant of the article or the claimant's agent.

(c) The claimant of the article or the claimant's agent shall pay the costs of the transfer.

(d) The department may request the attorney general to bring an action in the district court in Travis County to recover the costs of the transfer. In a judgment in favor of the state, the court may award costs, attorney fees, court costs, and interest from the time the expense was incurred through the date the department is reimbursed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 152, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 282, Sec. 3, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0951, eff. April 2, 2015.

Sec. 431.0495. RECALL ORDERS. (a) In conjunction with the issuance of an emergency order under Section 431.045 or the detention or embargo of an article under Section 431.048, the commissioner may order a food, drug, device, cosmetic, or consumer commodity to be recalled from commerce.

(b) The commissioner's recall order may require the articles to be removed to one or more secure areas approved by the department.

(c) The recall order must be in writing and signed by the commissioner.

(d) The recall order may be issued before or in conjunction with the affixing of the tag or other appropriate marking as provided by Section 431.048(a) or in conjunction with the commissioner's issuance of an emergency order under Section 431.045.

(e) The recall order is effective until the order:

(1) expires on its own terms;

(2) is withdrawn by the commissioner;

(3) is reversed by a court in an order denying condemnation under Section 431.050; or

(4) is set aside at the hearing provided to affirm, modify, or set aside an emergency order under Section 431.045.

(f) The claimant of the articles or the claimant's agent shall pay the costs of the removal and storage of the articles removed.

(g) If the claimant or the claimant's agent fails or refuses to carry out the recall order in a timely manner, the commissioner may provide for the recall of the articles. The costs of the recall

shall be assessed against the claimant of the articles or the claimant's agent.

(h) The commissioner may request the attorney general to bring an action in the district court of Travis County to recover the costs of the recall. In a judgment in favor of the state, the court may award costs, attorney fees, court costs, and interest from the time the expense was incurred through the date the department is reimbursed.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 153, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0952, eff. April 2, 2015.

Sec. 431.050. CONDEMNATION. An action for the condemnation of an article may be brought before a court in whose jurisdiction the article is located, detained, or embargoed if the article is adulterated, misbranded, or in violation of Section 431.084, 431.114, or 431.115.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.051. DESTRUCTION OF ARTICLE. (a) A court shall order the destruction of a sampled article or a detained or embargoed article if the court finds that the article is adulterated or misbranded.

(b) After entry of the court's order, an authorized agent shall supervise the destruction of the article.

(c) The claimant of the article shall pay the cost of the destruction of the article.

(d) The court shall tax against the claimant of the article or the claimant's agent all court costs and fees, and storage and other proper expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.052. CORRECTION BY PROPER LABELING OR PROCESSING. (a) A court may order the delivery of a sampled article or a detained or

embargoed article that is adulterated or misbranded to the claimant of the article for labeling or processing under the supervision of the department if:

(1) the decree has been entered in the suit;

(2) the costs, fees, and expenses of the suit have been paid;

(3) the adulteration or misbranding can be corrected by proper labeling or processing; and

(4) a good and sufficient bond, conditioned on the correction of the adulteration or misbranding by proper labeling or processing, has been executed.

(b) The claimant shall pay the costs of the supervision.

(c) The court shall order that the article be returned to the claimant and the bond discharged on the representation to the court by the department that the article no longer violates this chapter and that the expenses of the supervision are paid.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0953, eff. April 2, 2015.

Sec. 431.053. CONDEMNATION OF PERISHABLE ARTICLES. (a) The department shall immediately condemn or render by any means unsalable as human food an article that is a nuisance under Subsection (b) and that the department finds in any room, building, or other structure or in a vehicle.

(b) Any meat, seafood, poultry, vegetable, fruit, or other perishable article is a nuisance if it:

(1) is unsound;

(2) contains a filthy, decomposed, or putrid substance; or

(3) may be poisonous or deleterious to health or otherwise unsafe.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0954, eff. April 2, 2015.

Sec. 431.054. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates Subchapter B or an order adopted or registration issued under this chapter.

(b) In determining the amount of the penalty, the department shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) such other matters as justice may require.

(c) The penalty may not exceed $25,000 a day for each violation.

(d) Each day a violation continues may be considered a separate violation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 4, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0955, eff. April 2, 2015.

Sec. 431.055. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a person charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, an administrative law judge of the State Office of Administrative Hearings shall make findings of fact and shall issue to the department a written proposal for decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the person charged with the violation does not request a hearing, the department may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a person, the department shall issue an order requiring that the person pay the penalty.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(75), eff. April 2, 2015.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0956, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(75), eff. April 2, 2015.

Sec. 431.056. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the department shall inform the person against whom the order is issued of the amount of the penalty for the violation.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

(1) pay the penalty in full; or

(2) file a petition for judicial review of the department's order contesting the amount of the penalty, the fact of the violation, or both.

(b-1) If the person seeks judicial review within the period prescribed by Subsection (b), the person may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) posting with the court a supersedeas bond for the amount of the penalty; or

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(b-2) If the department receives a copy of an affidavit under Subsection (b-1)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the

person is financially unable to pay the penalty or to give a supersedeas bond.

(c) A bond posted under this section must be in a form approved by the court and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to, post the bond with, or file the affidavit with the court within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0957, eff. April 2, 2015.

Sec. 431.057. REFUND OF ADMINISTRATIVE PENALTY. On the date the court's judgment that an administrative penalty against a person should be reduced or not assessed becomes final, the court shall order that:

(1) the appropriate amount of any penalty payment plus accrued interest be remitted to the person not later than the 30th day after that date; or

(2) the bond be released, if the person has posted a bond.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0958, eff. April 2, 2015.

Sec. 431.058. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the department may bring a civil action to recover an administrative penalty under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0959, eff. April 2, 2015.

Sec. 431.0585. CIVIL PENALTY. (a) At the request of the department, the attorney general or a district, county, or city attorney shall institute an action in district court to collect a civil penalty from a person who has violated Section 431.021.

(b) The civil penalty may not exceed $25,000 a day for each violation. Each day of violation constitutes a separate violation for purposes of the penalty assessment.

(c) The court shall consider the following in determining the amount of the penalty:

(1) the person's history of any previous violations of Section 431.021;

(2) the seriousness of the violation;

(3) any hazard posed to the public health and safety by the violation; and

(4) demonstrations of good faith by the person charged.

(d) Venue for a suit brought under this section is in the city or county in which the violation occurred or in Travis County.

(e) A civil penalty recovered in a suit instituted by a local government under this section shall be paid to that local government.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 154, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0960, eff. April 2, 2015.

Sec. 431.059. CRIMINAL PENALTY; DEFENSES. (a) A person commits an offense if the person violates any of the provisions of Section 431.021 relating to unlawful or prohibited acts. A first offense under this subsection is a Class A misdemeanor unless it is shown on the trial of an offense under this subsection that the defendant was previously convicted of an offense under this subsection, in which event the offense is a state jail felony. In a criminal proceeding under this section, it is not necessary to prove intent, knowledge, recklessness, or criminal negligence of the defendant beyond the degree of culpability, if any, stated in Section 431.021 to establish criminal responsibility for the violation.

(a-1) Repealed by Acts 2007, 80th Leg., R.S., Ch. 980, Sec. 14.

(a-2) Repealed by Acts 2007, 80th Leg., R.S., Ch. 980, Sec. 14.

(b) A person is not subject to the penalties of Subsection (a):

(1) for having received an article in commerce and having delivered or offered delivery of the article, if the delivery or offer was made in good faith, unless the person refuses to furnish, on request of the department or a health authority, the name and address of the person from whom the article was received and copies of any documents relating to the receipt of the article;

(2) for having violated Section 431.021(a) or (e) if the person establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in this state from whom the person received in good faith the article, to the effect that:

(A) in the case of an alleged violation of Section 431.021(a), the article is not adulterated or misbranded within the meaning of this chapter; and

(B) in the case of an alleged violation of Section 431.021(e), the article is not an article that may not, under the provisions of Section 404 or 405 of the federal Act or Section 431.084 or 431.114, be introduced into commerce;

(3) for having violated Section 431.021, if the violation exists because the article is adulterated by reason of containing a color additive not from a batch certified in accordance with regulations promulgated under the federal Act, if the person establishes a guaranty or undertaking signed by, and containing the name and address of, the manufacturer of the color additive, to the effect that the color additive was from a batch certified in accordance with the applicable regulations promulgated under the federal Act;

(4) for having violated Section 431.021(b), (c), or (k) by failure to comply with Section 431.112(i) with respect to an article received in commerce to which neither Section 503(a) nor Section 503(b)(1) of the federal Act applies if the delivery or offered delivery was made in good faith and the labeling at the time of the delivery or offer contained the same directions for use and warning statements as were contained in the labeling at the same time of the receipt of the article; or

(5) for having violated Section 431.021(l)(2) if the person acted in good faith and had no reason to believe that use of the punch, die, plate, stone, or other thing would result in a drug being a counterfeit drug, or for having violated Section 431.021(l)(3) if the person doing the act or causing it to be done acted in good faith

and had no reason to believe that the drug was a counterfeit drug.

(c) A publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, is not liable under this section for the dissemination of the false advertisement, unless the person has refused, on the request of the department, to furnish the department the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in this state who caused the person to disseminate the advertisement.

(d) A person is not subject to the penalties of Subsection (a) for a violation of Section 431.021 involving misbranded food if the violation exists solely because the food is misbranded under Section 431.082 because of its advertising, and a person is not subject to the penalties of Subsection (a) for such a violation unless the violation is committed with the intent to defraud or mislead.

(e) It is an affirmative defense to prosecution under Subsection (a) that the conduct charged is exempt, in accordance with Section 431.023, from the application of Section 431.021.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 155, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 265, Sec. 4, eff. May 22, 2001; Acts 2003, 78th Leg., ch. 111, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 383, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 982, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(h), eff. March 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 14, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 14 Sec. 14, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0961, eff. April 2, 2015.

Sec. 431.060. INITIATION OF PROCEEDINGS. (a) The attorney general, or a district, county, or municipal attorney to whom the department or a health authority reports a violation of this chapter,

shall initiate and prosecute appropriate proceedings without delay.

(b) The department or attorney general may, as authorized by Section 307 of the federal Act, bring in the name of this state a suit for civil penalties or to restrain a violation of Section 401 or Section 403(b) through (i), (k), (q), or (r) of the federal Act if the food that is the subject of the proceedings is located in this state.

(c) The department or attorney general may not bring a proceeding under Subsection (b):

(1) before the 31st day after the date on which the state has given notice to the secretary of its intent to bring a suit;

(2) before the 91st day after the date on which the state has given notice to the secretary of its intent to bring a suit if the secretary has, not later than the 30th day after receiving notice from the state, commenced an informal or formal enforcement action pertaining to the food that would be the subject of the suit brought by the state; or

(3) if the secretary is diligently prosecuting a suit in court pertaining to that food, has settled a suit pertaining to that food, or has settled the informal or formal enforcement action pertaining to that food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 459, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0962, eff. April 2, 2015.

Sec. 431.061. MINOR VIOLATION. This chapter does not require the department or a health authority to report for prosecution or the institution of proceedings under this chapter a minor violation of this chapter if the department or health authority believes that the public interest is adequately served by a suitable written notice or warning.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0963, eff. April 2, 2015.

SUBCHAPTER D. FOOD

Sec. 431.0805. DEFINITIONS. In this subchapter:

(1) "Analogue product" means a food product derived by combining processed plant products, insects, or fungus with food additives to approximate the texture, flavor, appearance, or other aesthetic qualities or the chemical characteristics of any specific type of egg, egg product, fish, meat, meat food product, poultry, or poultry product.

(2) Repealed by Acts 2025, 89th Leg., R.S., Ch. 968 (S.B. 261), Sec. 6, eff. September 1, 2025.

(3) "Close proximity" means:

(A) immediately before or after the name of the product;

(B) in the line of the label immediately before or after the line containing the name of the product; or

(C) within the same phrase or sentence containing the name of the product.

(4) "Egg" has the meaning assigned by Section 4(g), Egg Products Inspection Act (21 U.S.C. Section 1033(g)). The term does not include an analogue product or cell-cultured protein.

(5) "Egg product" has the meaning assigned by Section 4(f), Egg Products Inspection Act (21 U.S.C. Section 1033(f)). The term does not include an analogue product or cell-cultured protein.

(6) "Fish" has the meaning assigned by Section 403 of the federal Act (21 U.S.C. Section 343(q)(4)(E)). The term does not include an analogue product or cell-cultured protein.

(7) "Meat" has the meaning assigned by 9 C.F.R. Section 301.2. The term does not include an analogue product or cell-cultured protein.

(8) "Meat food product" has the meaning assigned by Section 1(j), Federal Meat Inspection Act (21 U.S.C. Section 601(j)). The term does not include an analogue product or cell-cultured protein.

(9) "Poultry" has the meaning assigned by Section 4(e), Poultry Products Inspection Act (21 U.S.C. Section 453(e)). The term does not include an analogue product or cell-cultured protein.

(10) "Poultry product" has the meaning assigned by Section 4(f), Poultry Products Inspection Act (21 U.S.C. Section 453(f)). The term does not include an analogue product or cell-cultured protein.

Added by Acts 2023, 88th Leg., R.S., Ch. 32 (S.B. 664), Sec. 1, eff. September 1, 2023.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 968 (S.B. 261), Sec. 3, eff. September 1, 2025.
Acts 2025, 89th Leg., R.S., Ch. 968 (S.B. 261), Sec. 6, eff. September 1, 2025.

Sec. 431.081. ADULTERATED FOOD. A food shall be deemed to be adulterated:

(a) if:

(1) it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance the food shall not be considered adulterated under this subdivision if the quantity of the substance in the food does not ordinarily render it injurious to health;

(2) it:

(A) bears or contains any added poisonous or added deleterious substance, other than one that is a pesticide chemical in or on a raw agricultural commodity, a food additive, a color additive, or a new animal drug which is unsafe within the meaning of Section 431.161;

(B) is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 431.161(a);

(C) is, or it bears or contains, any food additive which is unsafe within the meaning of Section 431.161(a); provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 431.161(a), and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of Section 431.161 and Section 409 of the federal Act, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food, when ready to eat, is not greater than the tolerance prescribed for the raw agricultural commodity; or

(D) is, or it bears or contains, a new animal drug, or a conversion product of a new animal drug, that is unsafe under Section 512 of the federal Act;

(3) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for foods;

(4) it has been produced, prepared, packed or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health;

(5) it is, in whole or in part, the product of a diseased animal, an animal which has died otherwise than by slaughter, or an animal that has been fed upon the uncooked offal from a slaughterhouse;

(6) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(7) it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect in accordance with Section 409 of the federal Act;

(b) if:

(1) any valuable constituent has been in whole or in part omitted or abstracted therefrom;

(2) any substance has been substituted wholly or in part therefor;

(3) damage or inferiority has been concealed in any manner;

(4) any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is;

(5) it contains saccharin, dulcin, glucin, or other sugar substitutes except in dietary foods, and when so used shall be declared; or

(6) it be fresh meat and it contains any chemical substance containing sulphites, sulphur dioxide, or any other chemical preservative which is not approved by the United States Department of Agriculture, the Animal and Plant Health Inspection Service (A.P.H.I.S.) or by department rules;

(c) if it is, or it bears or contains, a color additive that is unsafe under Section 431.161(a); or

(d) if it is confectionery and:

(1) has any nonnutritive object partially or completely imbedded in it; provided, that this subdivision does not apply if, in accordance with department rules, the object is of practical, functional value to the confectionery product and would not render the product injurious or hazardous to health;

(2) bears or contains any alcohol, other than alcohol not in excess of five percent by volume. Any confectionery that bears or contains any alcohol in excess of one-half of one percent by volume derived solely from the use of flavoring extracts and less than five percent by volume:

(A) may not be sold to persons under the legal age necessary to consume an alcoholic beverage in this state;

(B) must be labeled with a conspicuous, readily legible statement that reads, "Sale of this product to a person under the legal age necessary to consume an alcoholic beverage is prohibited";

(C) may not be sold in a form containing liquid alcohol such that it is capable of use for beverage purposes as that term is used in the Alcoholic Beverage Code;

(D) may not be sold through a vending machine;

(E) must be labeled with a conspicuous, readily legible statement that the product contains not more than five percent alcohol by volume; and

(F) may not be sold in a business establishment which derives less than 50 percent of its gross sales from the sale of confectioneries; or

(3) bears or contains any nonnutritive substance; provided, that this subdivision does not apply to a nonnutritive substance that is in or on the confectionery by reason of its use for a practical, functional purpose in the manufacture, packaging, or storage of the confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of this chapter; and provided further, that the executive commissioner may, for the purpose of avoiding or resolving uncertainty as to the application of this subdivision, adopt rules allowing or prohibiting the use of particular nonnutritive substances.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 439, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0964, eff. April 2, 2015.

Sec. 431.0815. FOOD CONTAINING ARTIFICIAL COLOR, ADDITIVES, OR CERTAIN BANNED CHEMICALS. (a) A food manufacturer shall ensure each food product the manufacturer offers for sale in this state includes a warning label disclosing the use of any of the following ingredients, if the United States Food and Drug Administration requires the ingredient to be named on a food label and the ingredient is used in a product intended for human consumption:

(1) acetylated esters of mono- and diglycerides (acetic acid ester);

(2) anisole;

(3) azodicarbonamide (ADA);

(4) butylated hydroxyanisole (BHA);

(5) butylated hydroxytoluene (BHT);

(6) bleached flour;

(7) blue 1 (CAS 3844-45-9);

(8) blue 2 (CAS 860-22-0);

(9) bromated flour;

(10) calcium bromate;

(11) canthaxanthin;

(12) certified food colors by the United States Food and Drug Administration;

(13) citrus red 2 (CAS 6358-53-8);

(14) diacetyl;

(15) diacetyl tartaric and fatty acid esters of mono- and diglycerides (DATEM);

(16) dimethylamylamine (DMAA);

(17) dioctyl sodium sulfosuccinate (DSS);

(18) ficin;

(19) green 3 (CAS 2353-45-9);

(20) interesterified palm oil;

(21) interesterified soybean oil;

(22) lactylated fatty acid esters of glycerol and propylene glycol;

(23) lye;

(24) morpholine;

(25) olestra;
(26) partially hydrogenated oil (PHO);
(27) potassium aluminum sulfate;
(28) potassium bromate;
(29) potassium iodate;
(30) propylene oxide;
(31) propylparaben;
(32) red 3 (CAS 16423-68-0);
(33) red 4 (CAS 4548-53-2);
(34) red 40 (CAS 25956-17-6);
(35) sodium aluminum sulfate;
(36) sodium lauryl sulfate;
(37) sodium stearyl fumarate;
(38) stearyl tartrate;
(39) synthetic trans fatty acid;
(40) thiodipropionic acid;
(41) titanium dioxide;
(42) toluene;
(43) yellow 5 (CAS 1934-21-0); and
(44) yellow 6 (CAS 2783-94-0).

(b) The warning label must:

(1) include the following statement if the food contains an ingredient listed in Subsection (a), printed in a font size not smaller than the smallest font used to disclose other consumer information required by the United States Food and Drug Administration:

"WARNING: This product contains an ingredient that is not recommended for human consumption by the appropriate authority in Australia, Canada, the European Union, or the United Kingdom.";

(2) be placed in a prominent and reasonably visible location; and

(3) have sufficiently high contrast with the immediate background to ensure the warning is likely to be seen and understood by the ordinary individual under customary conditions of purchase and use.

(c) A food manufacturer or, to the extent a food manufacturer provides the information required under this section to a retailer, a retailer that offers a product described by Subsection (a) for sale in this state on the manufacturer's or retailer's Internet website shall disclose to the consumer all labeling information required

under Subsection (b) and department rule by:

(1) posting a legible statement on the manufacturer's or retailer's Internet website on which the product is offered for sale; or

(2) otherwise communicating the information to the consumer.

(d) This section does not apply to:

(1) an ingredient used in a product not intended for human consumption;

(2) food labeled, prepared, served, or sold in a restaurant;

(3) food labeled, prepared, or served in a retail establishment;

(4) a product regulated by the United States Department of Agriculture's Food Safety and Inspection Service;

(5) a product labeled with a governmental warning with a recommendation from the surgeon general of the United States Public Health Service;

(6) a drug or dietary supplement; or

(7) a pesticide chemical, soil or plant nutrient, or other agricultural chemical used in the production, storage, or transportation of a raw agricultural commodity.

(e) This section does not create a private cause of action for a violation of this section.

(f) For the purposes of this section, "food manufacturer" includes any manufacturer that offers a food product for sale in this state, regardless of where the product was originally produced.

Added by Acts 2025, 89th Leg., R.S., Ch. 1179 (S.B. 25), Sec. 9, eff. September 1, 2025.

Sec. 431.0816. ENFORCEMENT BY ATTORNEY GENERAL. (a) If the attorney general believes a manufacturer has violated or is violating Section 431.0815, the attorney general may bring an action on behalf of this state to enjoin the manufacturer from violating that section.

(b) In addition to seeking an injunction under Subsection (a), the attorney general may request and the court may order any other relief that may be in the public interest, including:

(1) the imposition of a civil penalty in an amount not to

exceed $50,000 per day for each distinct food product in violation of Section 431.0815; and

(2) an order requiring reimbursement to this state for the reasonable value of investigating and bringing an enforcement action for a violation of Section 431.0815.

Added by Acts 2025, 89th Leg., R.S., Ch. 1179 (S.B. 25), Sec. 9, eff. September 1, 2025.

Sec. 431.0817. FEDERAL PREEMPTION. On and after September 1, 2025, and the effective date of a federal law or regulation issued by the United States Food and Drug Administration or the United States Department of Agriculture, Section 431.0815 has no effect if:

(1) for a specific ingredient, including a food additive and color additive, listed under Section 431.0815(a), the law or regulation:

(A) prohibits the use of the ingredient;

(B) imposes conditions on the use of the ingredient, including a condition requiring a warning or disclosure statement; or

(C) determines an ingredient or class of ingredients is safe for human consumption; or

(2) the law or regulation requires a labeling statement relating to ultra-processed or processed foods.

Added by Acts 2025, 89th Leg., R.S., Ch. 1179 (S.B. 25), Sec. 9, eff. September 1, 2025.

Sec. 431.082. MISBRANDED FOOD. A food shall be deemed to be misbranded:

(a) if its labeling is false or misleading in any particular or fails to conform with the requirements of Section 431.181;

(b) if, in the case of a food to which Section 411 of the federal Act applies, its advertising is false or misleading in a material respect or its labeling is in violation of Section 411(b)(2) of the federal Act;

(c) if it is offered for sale under the name of another food;

(d) if it is an imitation of another food, unless its label

bears, in prominent type of uniform size, the word "imitation" and immediately thereafter the name of the food imitated;

(d-1) if it is an analogue product of meat, a meat food product, poultry, a poultry product, an egg product, or fish, unless its label bears in prominent type equal to or greater in size than the surrounding type and in close proximity to the name of the product one of the following:

(1) "analogue";

(2) "meatless";

(3) "plant-based";

(4) "made from plants"; or

(5) a similar qualifying term or disclaimer intended to clearly communicate to a consumer the contents of the product;

(e) if its container is so made, formed, or filled as to be misleading;

(f) if in package form unless it bears a label containing:

(1) the name and place of business of the manufacturer, packer, or distributor; and

(2) an accurate statement, in a uniform location on the principal display panel of the label, of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under this subsection reasonable variations shall be permitted, and exemptions as to small packages shall be established, by department rules;

(g) if any word, statement, or other information required by or under the authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(h) if it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by federal regulations or department rules as provided by Section 431.245, unless:

(1) it conforms to such definition and standard; and

(2) its label bears the name of the food specified in the definition and standard, and, in so far as may be required by those regulations or rules, the common names of ingredients, other than spices, flavoring, and coloring, present in such food;

(i) if it purports to be or is represented as:

(1) a food for which a standard of quality has been prescribed by federal regulations or department rules as provided by Section 431.245, and its quality falls below such standard unless its label bears, in such manner and form as those regulations or rules specify, a statement that it falls below such standard; or

(2) a food for which a standard or standards of fill of container have been prescribed by federal regulations or department rules as provided by Section 431.245, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as those regulations or rules specify, a statement that it falls below such standard;

(j) unless its label bears:

(1) the common or usual name of the food, if any; and

(2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient, and if the food purports to be a beverage containing vegetable or fruit juice, a statement with appropriate prominence on the information panel of the total percentage of the fruit or vegetable juice contained in the food; except that spices, flavorings, and colors not required to be certified under Section 721(c) of the federal Act, other than those sold as such, may be designated as spices, flavorings, and colors, without naming each; provided that, to the extent that compliance with the requirements of this subdivision is impractical or results in deception or unfair competition, exemptions shall be established by department rules;

(k) if it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the executive commissioner determines to be, and by rule prescribed, as necessary in order to fully inform purchasers as to its value for such uses;

(l) if it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided that, to the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by department rules. The provisions of this subsection and Subsections (h) and (j) with respect to artificial coloring do not apply in the case of butter, cheese, and ice cream;

(m) if it is a raw agricultural commodity that is the

produce of the soil and bears or contains a pesticide chemical applied after harvest, unless the shipping container of the commodity bears labeling that declares the presence of the chemical in or on the commodity and the common or usual name and the function of the chemical, except that the declaration is not required while the commodity, after removal from the shipping container, is being held or displayed for sale at retail out of the container in accordance with the custom of the trade;

(n) if it is a product intended as an ingredient of another food and if used according to the directions of the purveyor will result in the final food product being adulterated or misbranded;

(o) if it is a color additive, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to the color additive as may be contained in regulations issued under Section 721 of the federal Act;

(p) if its packaging or labeling is in violation of an applicable regulation issued under Section 3 or 4 of the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472 or 1473);

(q)(1) if it is a food intended for human consumption and is offered for sale, unless its label or labeling bears nutrition information that provides:

(A)(i) the serving size that is an amount customarily consumed and that is expressed in a common household measure that is appropriate to the food; or

(ii) if the use of the food is not typically expressed in a serving size, the common household unit of measure that expresses the serving size of the food;

(B) the number of servings or other units of measure per container;

(C) the total number of calories in each serving size or other unit of measure that are:

(i) derived from any source; and

(ii) derived from fat;

(D) the amount of total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugar, dietary fiber, and total protein contained in each serving size or other unit of measure; and

(E) any vitamin, mineral, or other nutrient required to be placed on the label and labeling of food under the federal Act; or

(2)(A) if it is a food distributed at retail in bulk display cases, or a food received in bulk containers, unless it has nutrition labeling prescribed by the secretary; and

(B) if the secretary determines it is necessary, nutrition labeling will be mandatory for raw fruits, vegetables, and fish, including freshwater or marine finfish, crustaceans, mollusks including shellfish, amphibians, and other forms of aquatic animal life, except that:

(3)(A) Subdivisions (1) and (2) do not apply to food:

(i) that is served in restaurants or other establishments in which food is served for immediate human consumption or that is sold for sale or use in those establishments;

(ii) that is processed and prepared primarily in a retail establishment, that is ready for human consumption, that is of the type described in Subparagraph (i), that is offered for sale to consumers but not for immediate human consumption in the establishment, and that is not offered for sale outside the establishment;

(iii) that is an infant formula subject to Section 412 of the federal Act;

(iv) that is a medical food as defined in Section 5(b) of the Orphan Drug Act (21 U.S.C. Section 360ee(b)); or

(v) that is described in Section 405, clause (2), of the federal Act;

(B) Subdivision (1) does not apply to the label of a food if the secretary determines by regulation that compliance with that subdivision is impracticable because the package of the food is too small to comply with the requirements of that subdivision and if the label of that food does not contain any nutrition information;

(C) if the secretary determines that a food contains insignificant amounts of all the nutrients required by Subdivision (1) to be listed in the label or labeling of food, the requirements of Subdivision (1) do not apply to the food if the label, labeling, or advertising of the food does not make any claim with respect to the nutritional value of the food, provided that if the secretary determines that a food contains insignificant amounts of more than half the nutrients required by Subdivision (1) to be in the label or labeling of the food, the amounts of those nutrients shall be stated in a simplified form prescribed by the secretary;

(D) if a person offers food for sale and has annual

gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers that is not more than $50,000, the requirements of this subsection do not apply to food sold by that person to consumers unless the label or labeling of food offered by that person provides nutrition information or makes a nutrition claim;

(E) if foods are subject to Section 411 of the federal Act, the foods shall comply with Subdivisions (1) and (2) in a manner prescribed by the rules; and

(F) if food is sold by a food distributor, Subdivisions (1) and (2) do not apply if the food distributor principally sells food to restaurants or other establishments in which food is served for immediate human consumption and the food distributor does not manufacture, process, or repackage the food it sells;

(r) if it is a food intended for human consumption and is offered for sale, and a claim is made on the label, labeling, or retail display relating to the nutrient content or a nutritional quality of the food to a specific disease or condition of the human body, except as permitted by Section 403(r) of the federal Act; or

(s) if it is a food intended for human consumption and its label, labeling, and retail display do not comply with the requirements of Section 403(r) of the federal Act pertaining to nutrient content and health claims.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 156, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 459, Sec. 3, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0965, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 32 (S.B. 664), Sec. 2, eff. September 1, 2023.

Sec. 431.083. FOOD LABELING EXEMPTIONS. (a) Except as provided by Subsection (c), the executive commissioner shall adopt rules exempting from any labeling requirement of this chapter:

(1) small open containers of fresh fruits and fresh

vegetables; and

(2) food that is in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed, on conditions that the food is not adulterated or misbranded under the provisions of this chapter when removed from the processing, labeling, or repacking establishment.

(b) Food labeling exemptions adopted under the federal Act apply to food in this state except as modified or rejected by department rules.

(c) The executive commissioner may not adopt rules under Subsection (a) to exempt foods from the labeling requirements of Sections 403(q) and (r) of the federal Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 459, Sec. 4, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0966, eff. April 2, 2015.

Sec. 431.084. EMERGENCY PERMITS FOR FOODS CONTAMINATED WITH MICROORGANISMS. (a) The department shall provide for the issuance of temporary permits to a manufacturer, processor, or packer of a class of food in any locality that provides conditions for the manufacture, processing, or packing for the class of food as necessary to protect the public health only if the department finds after investigation that:

(1) the distribution in this state of a class of food may, because the food is contaminated with microorganisms during the manufacture, processing, or packing of the food in any locality, be injurious to health; and

(2) the injurious nature of the food cannot be adequately determined after the food has entered commerce.

(b) The executive commissioner by rule shall establish standards and procedures for the enforcement of this section.

(c) During the period for which permits are issued for a class of food determined by the department to be injurious under Subsection (a), a person may not introduce or deliver for introduction into commerce the food unless the person is a manufacturer, processor, or

packer who has a permit issued by the department as authorized by rules adopted under this section.

(d) The department may immediately suspend a permit issued under this section if a condition of the permit is violated. An immediate suspension is effective on notice to the permit holder.

(e) A holder of a permit that has been suspended may at any time apply for the reinstatement of the permit. Immediately after a hearing and an inspection of the permit holder's establishment, the department shall reinstate the permit if adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued or as amended.

(f) A permit holder shall provide access to the permit holder's factory or establishment to the department to allow the department to determine whether the permit holder complies with the conditions of the permit. Denial of access is grounds for suspension of the permit until the permit holder freely provides the access.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0967, eff. April 2, 2015.

SUBCHAPTER E. DRUGS AND DEVICES

Sec. 431.111. ADULTERATED DRUG OR DEVICE. A drug or device shall be deemed to be adulterated:

(a)(1) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or

(2)(A) if it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or

(B) if it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this chapter as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess; or

(3) if its container is composed, in whole or in part, of

any poisonous or deleterious substance which may render the contents injurious to health; or

(4) if it:

(A) bears or contains, for purposes of coloring only, a color additive that is unsafe under Section 431.161(a); or

(B) is a color additive, the intended use of which in or on drugs or devices is for purposes of coloring only, and is unsafe under Section 431.161(a); or

(5) if it is a new animal drug that is unsafe under Section 512 of the federal Act;

(b) if it purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standards set forth in such compendium. Such determination as to strength, quality or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under the authority of the federal Act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standards of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standards is plainly stated on its label. Whenever a drug is recognized in The United States Pharmacopeia and The National Formulary (USP-NF), it shall be subject to the requirements of the USP-NF;

(c) if it is not subject to Subsection (b) and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess;

(d) if it is a drug and any substance has been:

(1) mixed or packed therewith so as to reduce its quality or strength; or

(2) substituted wholly or in part therefor;

(e) if it is, or purports to be or is represented as, a device that is subject to a performance standard established under Section 514 of the federal Act, unless the device is in all respects in conformity with the standard;

(f)(1) if it is a class III device:

(A)(i) that is required by a regulation adopted under Section 515(b) of the federal Act to have an approval under that section of an application for premarket approval and that is not

exempt from Section 515 as provided by Section 520(g) of the federal Act; and

(ii)(I) for which an application for premarket approval or a notice of completion of a product development protocol was not filed with the United States Food and Drug Administration by the 90th day after the date of adoption of the regulation; or

(II) for which that application was filed and approval was denied or withdrawn, for which that notice was filed and was declared incomplete, or for which approval of the device under the protocol was withdrawn;

(B) that was classified under Section 513(f) of the federal Act into class III, which under Section 515(a) of the federal Act is required to have in effect an approved application for premarket approval, that is not exempt from Section 515 as provided by Section 520(g) of the federal Act, and that does not have the application in effect; or

(C) that was classified under Section 520(l) of the federal Act into class III, which under that section is required to have in effect an approved application under Section 515 of the federal Act, and that does not have the application in effect, except that:

(2)(A) in the case of a device classified under Section 513(f) of the federal Act into class III and intended solely for investigational use, Subdivision (1)(B) does not apply to the device during the period ending on the 90th day after the date of adoption of the regulations prescribing the procedures and conditions required by Section 520(g)(2) of the federal Act; and

(B) in the case of a device subject to a regulation adopted under Section 515(b) of the federal Act, Subdivision (1) does not apply to the device during the period ending on whichever of the following dates occurs later:

(i) the last day of the 30-day calendar month beginning after the month in which the classification of the device into class III became effective under Section 513 of the federal Act; or

(ii) the 90th day after the date of adoption of the regulation;

(g) if it is a banned device;

(h) if it is a device and the methods used in, or the facilities or controls used for its manufacture, packing, storage, or

installations are not in conformity with applicable requirements under Section 520(f)(1) of the federal Act or an applicable condition as prescribed by an order under Section 520(f)(2) of the federal Act; or

(i) if it is a device for which an exemption has been granted under Section 520(g) of the federal Act for investigational use and the person who was granted the exemption or any investigator who uses the device under the exemption fails to comply with a requirement prescribed by or under that section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 440, Sec. 2, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0968, eff. April 2, 2015.

Sec. 431.112. MISBRANDED DRUG OR DEVICE. A drug or device shall be deemed to be misbranded:

(a)(1) if its labeling is false or misleading in any particular; or

(2) if its labeling or packaging fails to conform with the requirements of Section 431.181.

(b) if in a package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under Subdivision (2) reasonable variations shall be permitted, and exemptions as to small packages shall be allowed in accordance with regulations prescribed by the secretary under the federal Act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d)(1) if it is a drug, unless:

(A) its label bears, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name

or the chemical formula):

(i) the established name (as defined in Subdivision (3)) of the drug, if any; and

(ii) in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided, that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subparagraph shall apply only to prescription drugs; and

(B) for any prescription drug the established name of the drug or ingredient, as the case may be, on the label (and on any labeling on which a name for such drug or ingredient is used) is printed prominently and in type at least half as large as that used thereon for any proprietary name or designation for such drug or ingredient; and provided, that to the extent that compliance with the requirements of Paragraph (A)(ii) or this paragraph is impracticable, exemptions shall be allowed under regulations promulgated by the secretary under the federal Act;

(2) if it is a device and it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name (as defined in Subdivision (4)) prominently printed in type at least half as large as that used thereon for any proprietary name or designation for such device, except that to the extent compliance with this subdivision is impracticable, exemptions shall be allowed under regulations promulgated by the secretary under the federal Act;

(3) as used in Subdivision (1), the term "established name," with respect to a drug or ingredient thereof, means:

(A) the applicable official name designated pursuant to Section 508 of the federal Act; or

(B) if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof in such compendium; or

(C) if neither Paragraph (A) nor Paragraph (B) applies,

then the common or usual name, if any, of such drug or of such ingredient; provided further, that where Paragraph (B) applies to an article recognized in the United States Pharmacopoeia National Formulary, the official title used in the United States Pharmacopoeia National Formulary shall apply;

(4) as used in Subdivision (2), the term "established name" with respect to a device means:

(A) the applicable official name of the device designated pursuant to Section 508 of the federal Act;

(B) if there is no such name and such device is an article recognized in an official compendium, then the official title thereof in such compendium; or

(C) if neither Paragraph (A) nor Paragraph (B) applies, then any common or usual name of such device;

(e) unless its labeling bears:

(1) adequate directions for use; and

(2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or durations of administration or application, in such manner and form, as are necessary for the protection of users unless the drug or device has been exempted from those requirements by the regulations adopted by the secretary;

(f) if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein unless the method of packing has been modified with the consent of the secretary. Whenever a drug is recognized in the United States Pharmacopoeia National Formulary, it shall be subject to the requirements of the United States Pharmacopoeia National Formulary with respect to packaging and labeling. If there is an inconsistency between the requirements of this subsection and those of Subsection (d) as to the name by which the drug or its ingredients shall be designated, the requirements of Subsection (d) prevail;

(g) if it has been found by the secretary to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the secretary shall by regulations require as necessary for the protection of public health;

(h) if:

(1) it is a drug and its container is so made, formed, or filled as to be misleading; or

(2) it is an imitation of another drug; or

(3) it is offered for sale under the name of another drug;

(i) if it is dangerous to health when used in the dosage, or manner or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(j) if it is a color additive, the intended use of which is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, as may be contained in rules issued under Section 431.161(b);

(k) in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(1) the established name as defined in Subsection (d), printed prominently and in type at least half as large as that used for any trade or brand name;

(2) the formula showing quantitatively each ingredient of the drug to the extent required for labels under Subsection (d); and

(3) other information in brief summary relating to side effects, contraindications, and effectiveness as required in regulations issued under Section 701(e) of the federal Act;

(l) if it was manufactured, prepared, propagated, compounded, or processed in an establishment in this state not registered under Section 510 of the federal Act, if it was not included in a list required by Section 510(j) of the federal Act, if a notice or other information respecting it was not provided as required by that section or Section 510(k) of the federal Act, or if it does not bear symbols from the uniform system for identification of devices prescribed under Section 510(e) of the federal Act as required by regulation;

(m) if it is a drug and its packaging or labeling is in violation of an applicable regulation issued under Section 3 or 4 of the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472 or 1473);

(n) if a trademark, trade name, or other identifying mark,

imprint or device of another, or any likeness of the foregoing has been placed thereon or on its container with intent to defraud;

(o) in the case of any restricted device distributed or offered for sale in this state, if:

(1) its advertising is false or misleading in any particular; or

(2) it is sold, distributed, or used in violation of regulations prescribed under Section 520(e) of the federal Act;

(p) in the case of any restricted device distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued by the manufacturer, packer, or distributor with respect to that device:

(1) a true statement of the device's established name as defined in Section 502(e) of the federal Act, printed prominently and in type at least half as large as that used for any trade or brand name thereof; and

(2) a brief statement of the intended uses of the device and relevant warnings, precautions, side effects, and contraindications and in the case of specific devices made subject to regulations issued under the federal Act, a full description of the components of such device or the formula showing quantitatively each ingredient of such device to the extent required in regulations under the federal Act;

(q) if it is a device subject to a performance standard established under Section 514 of the federal Act, unless it bears such labeling as may be prescribed in such performance standard; or

(r) if it is a device and there was a failure or refusal:

(1) to comply with any requirement prescribed under Section 518 of the federal Act respecting the device; or

(2) to furnish material required by or under Section 519 of the federal Act respecting the device.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 282, Sec. 4, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 111, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1099, Sec. 2, eff. Sept. 1, 2003.

Sec. 431.113. EXEMPTION FOR CERTAIN DRUGS AND DEVICES. (a)

The executive commissioner shall adopt rules exempting from any labeling or packaging requirement of this chapter drugs and devices that are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packaged on condition that such drugs and devices are not adulterated or misbranded under the provisions of this chapter on removal from such processing, labeling, or repacking establishment.

(b) Drugs and device labeling or packaging exemptions adopted under the federal Act shall apply to drugs and devices in this state except insofar as modified or rejected by department rules.

(c)(1) A drug intended for use by man that:

(A) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or

(B) is limited by an approved application under Section 505 of the federal Act to use under the professional supervision of a practitioner licensed by law to administer such drug shall be dispensed only:

(i) on a written prescription of a practitioner licensed by law to administer such drug; or

(ii) on an oral prescription of such practitioner that is reduced promptly to writing and filed by the pharmacist; or

(iii) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order that is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act that results in a drug being misbranded while held for sale.

(2) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of Section 431.112, except Sections 431.112(a)(1), (h)(2), and (h)(3), and the packaging requirements of Sections 431.112(f), (g), and (m), if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber, and, if stated in the prescription, the name of the

patient, and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drugs dispensed in the course of the conduct of business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of Subdivision (1).

(3) A drug that is subject to Subdivision (1) shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear at a minimum, the symbol "RX Only." A drug to which Subdivision (1) does not apply shall be deemed to be misbranded if at any time prior to dispensing its label bears the caution statement quoted in the preceding sentence.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 111, Sec. 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1099, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0969, eff. April 2, 2015.

Sec. 431.114. NEW DRUGS. (a) A person shall not sell, deliver, offer for sale, hold for sale or give away any new drug unless:

(1) an application with respect thereto has been approved and the approval has not been withdrawn under Section 505 of the federal Act; and

(2) a copy of the letter of approval or approvability issued by the United States Food and Drug Administration is on file with the department if the product is manufactured in this state.

(b) A person shall not use in or on human beings or animals a new drug or new animal drug limited to investigational use unless the person has filed with the United States Food and Drug Administration a completed and signed investigational new drug (IND) application in accordance with 21 C.F.R. 312.20-312.38 and the exemption has not been terminated. The drug shall be plainly labeled in compliance with Section 505(i) of the federal Act.

(c) This section shall not apply:

(1) to any drug that is not a new drug as defined in the federal Act;

(2) to any drug that is licensed under the Public Health

Service Act (42 U.S.C. 201 et seq.); or

(3) to any drug approved by the department by the authority of any prior law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 157, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 111, Sec. 6, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0970, eff. April 2, 2015.

Sec. 431.1145. REQUIRED REPORT OF CERTAIN DRUG-RELATED ADVERSE EVENTS. (a) In this section, "serious adverse event" means an event that:

(1) results in death;

(2) is considered life-threatening;

(3) results in inpatient hospitalization or an extension of the duration of an existing hospitalization;

(4) results in a persistent or significant incapacity or substantial disruption of an individual's ability to perform normal life functions;

(5) results in a congenital anomaly or birth defect; or

(6) results in a medically important medical condition that, based on the physician's reasonable medical judgment, may require medical or surgical intervention to prevent an outcome described by Subdivisions (1) through (5).

(b) This section applies only to a drug that is:

(1) experimental or investigational; or

(2) authorized or approved for emergency use by the United States Food and Drug Administration.

(c) Notwithstanding Subsection (b), this section does not apply to a drug that is administered or used as part of a clinical trial.

(d) Notwithstanding any other law, a physician shall report to the United States Food and Drug Administration through the MedWatch reporting program any serious adverse event the physician's patient suffers if:

(1) the physician:

(A) diagnoses the patient with a condition related to the serious adverse event; and

(B) knows the patient was administered or used a drug to which this section applies; and

(2) the patient suffers the serious adverse event before the first anniversary of the date the patient was administered or used the drug.

(e) A physician who violates this section is subject to:

(1) for an initial violation, non-disciplinary corrective action by the Texas Medical Board; and

(2) for each subsequent violation, disciplinary action by the Texas Medical Board as if the physician violated Subtitle B, Title 3, Occupations Code.

(f) For purposes of non-disciplinary corrective action or disciplinary action imposed under Subsection (e), the Texas Medical Board may not consider a violation of this section after the third anniversary of the date of the violation. The Texas Medical Board shall retain information on each violation of this section in the physician's permanent record.

(g) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2025, 89th Leg., R.S., Ch. 767 (S.B. 269), Sec. 2, eff. September 1, 2025.

Sec. 431.115. NEW ANIMAL DRUGS. (a) A new animal drug shall, with respect to any particular use or intended use of the drug, be deemed unsafe for the purposes of this chapter unless:

(1) there is in effect an approval of an application filed pursuant to Section 512(b) of the federal Act with respect to the use or intended use of the drug; and

(2) the drug, its labeling, and the use conforms to the approved application.

(b) A new animal drug shall not be deemed unsafe for the purposes of this chapter if the article is for investigational use and conforms to the terms of an exemption in effect with respect thereto under Section 512(j) of the federal Act.

(c) This section does not apply to any drug:

(1) licensed under the virus-serum-toxin law of March 4, 1913 (21 U.S.C. 151-159);

(2) approved by the United States Department of

Agriculture; or

(3) approved by the department by the authority of any prior law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 158, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0971, eff. April 2, 2015.

Sec. 431.116. AVERAGE MANUFACTURER PRICE. (a) In this section, "average manufacturer price" has the meaning assigned by 42 U.S.C. Section 1396r-8(k), as amended.

(b) A person who manufactures a drug, including a person who manufactures a generic drug, that is sold in this state shall file with the department:

(1) the average manufacturer price for the drug; and

(2) the price that each wholesaler in this state pays the manufacturer to purchase the drug.

(c) The information required under Subsection (b) must be filed annually or more frequently as determined by the department.

(d) The department and the attorney general may investigate the manufacturer to determine the accuracy of the information provided under Subsection (b). The attorney general may take action to enforce this section.

(e) Repealed by Acts 2005, 79th Leg., Ch. 349, Sec. 29, eff. September 1, 2007.

(f) Notwithstanding any other state law, pricing information disclosed by manufacturers or labelers under this section may be provided by the department only to the Medicaid vendor drug program for its sole use. The Medicaid vendor drug program may use the information only as necessary to administer its drug programs, including Medicaid drug programs.

(g) Notwithstanding any other state law, pricing information disclosed by manufacturers or labelers under this section is confidential and, except as necessary to permit the attorney general to enforce state and federal laws, may not be disclosed by the Health and Human Services Commission or any other state agency in a form that discloses the identity of a specific manufacturer or labeler or

the prices charged by a specific manufacturer or labeler for a specific drug.

(h) The attorney general shall treat information obtained under this section in the same manner as information obtained by the attorney general through a civil investigative demand under Section 36.054, Human Resources Code.

(i) Notwithstanding any other state law, the penalties for unauthorized disclosure of confidential information under Chapter 552, Government Code, apply to unauthorized disclosure of confidential information under this section.

Added by Acts 2001, 77th Leg., ch. 1003, Sec. 2, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.199, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 349 (S.B. 1188), Sec. 29, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0972, eff. April 2, 2015.

Sec. 431.117. PRIORITY FOR HEALTH CARE PROVIDERS IN DISTRIBUTION OF INFLUENZA VACCINE. The executive commissioner shall study the wholesale distribution of influenza vaccine in this state to determine the feasibility of implementing a system that requires giving a priority in filling orders for influenza vaccine to physicians and other licensed health care providers authorized to administer influenza vaccine over retail establishments. The executive commissioner may implement such a system if it is determined to be feasible.

Added by Acts 2007, 80th Leg., R.S., Ch. 922 (H.B. 3184), Sec. 2, eff. June 15, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0973, eff. April 2, 2015.

Sec. 431.118. LIABILITY OF MANUFACTURER FOR ADVERTISING CERTAIN VACCINES. (a) In this section, "advertise" means a media communication, including through television, radio, print, the

Internet, digital or electronic media, product placement, promotion by an influencer in exchange for compensation, or other manner of paid promotion, a vaccine manufacturer purchases to promote the manufacturer's vaccine. The term does not include:

(1) any discussion between a health care provider and the provider's patient or written materials a health care provider provides to a patient concerning a vaccine; or

(2) any posters, decorations, or other materials or promotional items concerning a vaccine that are displayed in or made available by a health care facility, health care provider's office, or other clinical setting.

(b) A manufacturer is liable to an individual if:

(1) the manufacturer advertises a vaccine in this state; and

(2) the advertised vaccine causes harm or injury to the individual.

(c) Notwithstanding any other law, an individual may bring an action under this section not later than the third anniversary of the date the cause of action accrues.

(d) A court shall award a claimant who prevails in an action brought under this section:

(1) actual damages; and

(2) court costs and reasonable attorney's fees incurred in bringing the action.

Added by Acts 2025, 89th Leg., R.S., Ch. 623 (H.B. 3441), Sec. 1, eff. September 1, 2025.

SUBCHAPTER F. COSMETICS

Sec. 431.141. ADULTERATED COSMETIC. A cosmetic shall be deemed to be adulterated:

(a) if it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual; provided, that this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon; "Caution: This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying

directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness"; and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this subsection and Subsection (e) the term "hair dye" shall not include eyelash dyes or eyebrow dyes;

(b) if it consists in whole or in part of any filthy, putrid, or decomposed substance;

(c) if it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(d) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(e) if it is not a hair dye and it is, or it bears or contains, a color additive that is unsafe within the meaning of Section 431.161(a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.142. MISBRANDED COSMETIC. (1) A cosmetic shall be deemed to be misbranded:

(a) if:

(1) its labeling is false or misleading in any particular; and

(2) its labeling or packaging fails to conform with the requirements of Section 431.181;

(b) if in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count, which statement shall be separately and accurately stated in a uniform location on the principal display panel of the label; provided, that under Subdivision (2) reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by department rules;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness

(as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if its container is so made, formed, or filled as to be misleading;

(e) if it is a color additive, unless its packaging and labeling are in conformity with the packaging and labeling requirements, applicable to the color additive, prescribed under Section 721 of the federal Act. This subsection shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes, as defined by Section 431.141(a); or

(f) if its packaging or labeling is in violation of an applicable regulation issued pursuant to Section 3 or 4 of the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472 or 1473).

(2) The executive commissioner shall adopt rules exempting from any labeling requirement of this chapter cosmetics that are in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, on condition that the cosmetics are not adulterated or misbranded under the provisions of this chapter on removal from the processing, labeling, or repacking establishment. Cosmetic labeling exemptions adopted under the federal Act shall apply to cosmetics in this state except insofar as modified or rejected by department rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 159, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0974, eff. April 2, 2015.

SUBCHAPTER G. POISONOUS OR DELETERIOUS SUBSTANCES

Sec. 431.161. POISONOUS OR DELETERIOUS SUBSTANCES. (a) Any poisonous or deleterious substance, food additive, pesticide chemical in or on a raw agricultural commodity, or color additive shall, with respect to any particular use or intended use, be deemed unsafe for

the purpose of Section 431.081(a)(2) with respect to any food, Section 431.111(a) with respect to any drug or device, or Section 431.141 with respect to any cosmetic. However, if a rule adopted under Section 431.181 or Subsection (b) is in effect that limits the quantity of that substance, and if the use or intended use of that substance conforms to the terms prescribed by the rule, a food, drug, or cosmetic shall not, by reason of bearing or containing that substance in accordance with the rules, be considered adulterated within the meaning of Section 431.081(a)(1), 431.111, or 431.141.

(b) The executive commissioner, whenever public health or other considerations in the state so require or on the petition of an interested party, may adopt rules prescribing tolerances for any added, poisonous, or deleterious substances, food additives, pesticide chemicals in or on raw agricultural commodities, or color additives, including zero tolerances and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities. The rules may prescribe the conditions under which a food additive or a color additive may be safely used and may prescribe exemptions if the food additive or color additive is to be used solely for investigational or experimental purposes. Rules adopted under this section limiting the quantity of poisonous or deleterious substances in food must provide equal or stricter standards than those adopted by the federal Food and Drug Administration or its successor. A person petitioning for the adoption of a rule shall establish by data submitted to the executive commissioner that a necessity exists for the rule and that its effect will not be detrimental to the public health. If the data furnished by the petitioner are not sufficient to allow the executive commissioner to determine whether the rules should be adopted, the executive commissioner may require additional data to be submitted. The petitioner's failure to comply with the request is sufficient grounds to deny the request. In adopting rules relating to those substances, the executive commissioner shall consider, among other relevant factors, the following information furnished by the petitioner, if any:

(1) the name and all pertinent information concerning the substance, including, if available, its chemical identity and composition, a statement of the conditions of the proposed use, directions, recommendations, and suggestions, specimens of proposed labeling, all relevant data bearing on the physical or other

technical effect, and the quantity required to produce that effect;

(2) the probable composition of any substance formed in or on a food, drug, or cosmetic resulting from the use of that substance;

(3) the probable consumption of that substance in the diet of man and animals, taking into account any chemically or pharmacologically related substance in the diet;

(4) safety factors that, in the opinion of experts qualified by scientific training and experience to evaluate the safety of those substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

(5) the availability of any needed practicable methods of analysis for determining the identity and quantity of:

(A) that substance in or on an article;

(B) any substance formed in or on an article because of the use of that substance; and

(C) the pure substance and all intermediates and impurities; and

(6) facts supporting a contention that the proposed use of that substance will serve a useful purpose.

(c) The executive commissioner may adopt emergency rules under Chapter 2001, Government Code, to establish tolerance levels of poisonous or deleterious substances in food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0975, eff. April 2, 2015.

SUBCHAPTER G-1. ABUSABLE SYNTHETIC SUBSTANCES

Sec. 431.171. DESIGNATION OF CONSUMER COMMODITY AS ABUSABLE SYNTHETIC SUBSTANCE. (a) The commissioner may designate a consumer commodity as an abusable synthetic substance if the commissioner determines that the consumer commodity is likely an abusable synthetic substance and the importation, manufacture, distribution, or retail sale of the commodity poses a threat to public health.

(b) In determining whether a consumer commodity is an abusable

synthetic substance, the commissioner may consider:

(1) whether the commodity is sold at a price higher than similar commodities are ordinarily sold;

(2) any evidence of clandestine importation, manufacture, distribution, or diversion from legitimate channels;

(3) any evidence suggesting the product is intended for human consumption, regardless of any consumption prohibitions or warnings on the packaging of the commodity; or

(4) whether any of the following factors suggest the commodity is an abusable synthetic substance intended for illicit drug use:

(A) the appearance of the packaging of the commodity;

(B) oral or written statements or representations of a person who sells, manufactures, distributes, or imports the commodity;

(C) the methods by which the commodity is distributed; and

(D) the manner in which the commodity is sold to the public.

Added by Acts 2015, 84th Leg., R.S., Ch. 712 (H.B. 1212), Sec. 2, eff. September 1, 2015.

Sec. 431.172. APPLICABILITY OF CHAPTER TO ABUSABLE SYNTHETIC SUBSTANCE. A commodity classified as an abusable synthetic substance by the commissioner under Section 431.171 is subject to:

(1) the provisions of this chapter that apply to food and cosmetics, including provisions relating to adulteration, packaging, misbranding, and inspection; and

(2) all enforcement actions under Subchapter C.

Added by Acts 2015, 84th Leg., R.S., Ch. 712 (H.B. 1212), Sec. 2, eff. September 1, 2015.

SUBCHAPTER H. FAIR PACKAGING AND LABELING; FALSE ADVERTISING

Sec. 431.181. FAIR PACKAGING AND LABELING. (a) All labels of consumer commodities, as defined by this chapter, shall conform with the requirements for the declaration of net quantity of contents of Section 4 of the Fair Packaging and Labeling Act (15 U.S.C. 1451 et

seq.) and the regulations promulgated pursuant thereto; provided, that consumer commodities exempted from the requirements of Section 4 of the Fair Packaging and Labeling Act shall also be exempt from this subsection.

(b) The label of any package of a consumer commodity that bears a representation as to the number of servings of the commodity contained in the package shall bear a statement of the net quantity (in terms of weight, measure, or numerical count) of each serving.

(c) No person shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by Subsection (a), but nothing in this subsection shall prohibit supplemental statements at other places on the package describing in nondeceptive terms the net quantity of contents; provided, that the supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

(d) Whenever the executive commissioner determines that rules containing prohibitions or requirements other than those prescribed by Subsection (a) are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, the executive commissioner shall adopt with respect to that commodity rules effective to:

(1) establish and define standards for the characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this subdivision shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages that may be used to enclose any commodity;

(2) regulate the placement on any package containing any commodity, or on any label affixed to the commodity, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents;

(3) require that the label on each package of a consumer commodity (other than one which is a food within the meaning of

Section 431.002) bear:

(A) the common or usual name of the consumer commodity, if any; and

(B) in case the consumer commodity consists of two or more ingredients, the common or usual name of each ingredient listed in order of decreasing predominance, but nothing in this paragraph shall be deemed to require that any trade secret be divulged; or

(4) prevent the nonfunctional slack-fill of packages containing consumer commodities. For the purpose of this subdivision, a package shall be deemed to be nonfunctionally slack-filled if it is filled of substantially less than its capacity for reasons other than:

(A) protection of the contents of the package; or

(B) the requirements of the machine used for enclosing the contents in the package.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0976, eff. April 2, 2015.

Sec. 431.182. FALSE ADVERTISEMENT. (a) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) The advertising of a food that incorporates a health claim not in conformance with or defined by Section 403(r) of the federal Act is deemed to be false or misleading for the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 459, Sec. 5, eff. Sept. 1, 1993.

Sec. 431.183. FALSE ADVERTISEMENT OF DRUG OR DEVICE. (a) An advertisement of a drug or device is false if the advertisement represents that the drug or device affects:

(1) infectious and parasitic diseases;

(2) neoplasms;

(3) endocrine, nutritional, and metabolic diseases and immunity disorders;

(4) diseases of blood and blood-forming organs;

(5) mental disorders;

(6) diseases of the nervous system and sense organs;

(7) diseases of the circulatory system;

(8) diseases of the respiratory system;

(9) diseases of the digestive system;

(10) diseases of the genitourinary system;

(11) complications of pregnancy, childbirth, and the puerperium;

(12) diseases of the skin and subcutaneous tissue;

(13) diseases of the musculoskeletal system and connective tissue;

(14) congenital anomalies;

(15) certain conditions originating in the perinatal period;

(16) symptoms, signs, and ill-defined conditions; or

(17) injury and poisoning.

(b) Subsection (a) does not apply to an advertisement of a drug or device if the advertisement does not violate Section 431.182 and is disseminated:

(1) to the public for self-medication and is consistent with the labeling claims permitted by the federal Food and Drug Administration;

(2) only to members of the medical, dental, and veterinary professions and appears only in the scientific periodicals of those professions; or

(3) only for the purpose of public health education by a person not commercially interested, directly or indirectly, in the sale of the drug or device.

(c) The executive commissioner by rule shall authorize the advertisement of a drug having a curative or therapeutic effect for a disease listed under Subsection (a) if the executive commissioner determines that an advance in medical science has made any type of self-medication safe for the disease. The executive commissioner may impose conditions and restrictions on the advertisement of the drug necessary in the interest of public health.

(d) This section does not indicate that self-medication for a disease other than a disease listed under Subsection (a) is safe or effective.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 160, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0977, eff. April 2, 2015.

SUBCHAPTER I. WHOLESALE DISTRIBUTORS OF NONPRESCRIPTION DRUGS

Sec. 431.201. DEFINITIONS. In this subchapter:

(1) "Nonprescription drug" means any drug that is not a prescription drug as defined by Section 431.401.

(2) "Place of business" means each location at which a drug for wholesale distribution is located.

(3) "Wholesale distribution" means distribution to a person other than a consumer or patient, and includes distribution by a manufacturer, repackager, own label distributor, broker, jobber, warehouse, or wholesaler.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(b), eff. March 1, 2006.

Sec. 431.2011. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to the wholesale distribution of nonprescription drugs.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(c), eff. March 1, 2006.

Sec. 431.202. LICENSE REQUIRED. (a) A person may not engage in wholesale distribution of nonprescription drugs in this state unless the person holds a wholesale drug distribution license issued by the department under this subchapter or Subchapter N.

(b) An applicant for a license under this subchapter must submit an application to the department on the form prescribed by the department or electronically on the state electronic Internet portal.

(c) A license issued under this subchapter expires on the second anniversary of the date of issuance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 161, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 539, Sec. 5, eff. Sept. 1, 1991.
Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(d), eff. March 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 973 (H.B. 1504), Sec. 28, eff. June 17, 2011.

Sec. 431.203. CONTENTS OF LICENSE STATEMENT. The license statement must contain:

(1) the name under which the business is conducted;

(2) the address of each place of business that is licensed;

(3) the name and residence address of:

(A) the proprietor, if the business is a proprietorship;

(B) all partners, if the business is a partnership; or

(C) all principals, if the business is an association;

(4) the date and place of incorporation, if the business is a corporation;

(5) the names and residence addresses of the individuals in an administrative capacity showing:

(A) the managing proprietor, if the business is a proprietorship;

(B) the managing partner, if the business is a partnership;

(C) the officers and directors, if the business is a corporation; or

(D) the persons in a managerial capacity, if the business is an association; and

(6) the residence address of an individual in charge of each place of business.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 7, eff. Sept. 1, 1991.

Sec. 431.2031. EFFECT OF OPERATION IN OTHER JURISDICTIONS; REPORTS. (a) A person who engages in the wholesale distribution of

drugs outside this state may engage in the wholesale distribution of drugs in this state if the person holds a license issued by the department.

(b) The department may accept reports from authorities in other jurisdictions to determine the extent of compliance with this chapter and the minimum standards adopted under this chapter.

(c) The department may issue a license to a person who engages in the wholesale distribution of drugs outside this state to engage in the wholesale distribution of drugs in this state, if after an examination of the reports of the person's compliance history and current compliance record, the department determines that the person is in compliance with this subchapter and department rules.

(d) The department shall consider each licensing statement filed by a person who wishes to engage in wholesale distribution of drugs in this state on an individual basis.

Added by Acts 1991, 72nd Leg., ch. 539, Sec. 8, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0978, eff. April 2, 2015.

Sec. 431.204. FEES. (a) The department shall collect fees for:

(1) a license that is filed or renewed;

(2) a license that is amended, including a notification of a change in the location of a licensed place of business required under Section 431.206; and

(3) an inspection performed in enforcing this subchapter and rules adopted under this subchapter.

(b) The executive commissioner by rule shall set the fees in amounts that allow the department to recover the biennial expenditures of state funds by the department in:

(1) reviewing and acting on a license;

(2) amending and renewing a license;

(3) inspecting a licensed facility; and

(4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

(c) Fees collected under this section shall be deposited to the credit of the food and drug registration fee account of the general

revenue fund and appropriated to the department to carry out the administration and enforcement of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 9, eff. Sept. 1, 1991. Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(e), eff. March 1, 2006.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0979, eff. April 2, 2015.

Sec. 431.206. CHANGE OF LOCATION OF PLACE OF BUSINESS. (a) Not fewer than 30 days in advance of the change, the licensee shall notify the department in writing of the licensee's intent to change the location of a licensed place of business.

(b) The notice shall include the address of the new location, and the name and residence address of the individual in charge of the business at the new location.

(c) Not more than 10 days after the completion of the change of location, the licensee shall notify the department in writing to confirm the completion of the change of location and provide verification of the information previously provided or correct and confirm any information that has changed since providing the notice of intent.

(d) The notice and confirmation required by this section are deemed adequate if the licensee sends the notices by certified mail, return receipt requested, to the central office of the department or submits them electronically through the state electronic Internet portal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 9, eff. Sept. 1, 1991. Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(f), eff. March 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 973 (H.B. 1504), Sec. 29, eff. June 17, 2011.

Sec. 431.207. REFUSAL TO LICENSE; SUSPENSION OR REVOCATION OF

LICENSE. (a) The department may refuse an application for a license or may suspend or revoke a license if the applicant or licensee:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude;

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(5) has not complied with this chapter or the rules implementing this chapter;

(6) has violated Section 431.021(l)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(7) has violated Chapter 481 or 483;

(8) has violated the rules of the public safety director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or licensee to maintain; or

(9) fails to complete a license application or submits an application that contains false, misleading, or incorrect information or contains information that cannot be verified by the department.

(b) The executive commissioner by rule shall establish minimum standards required for the issuance or renewal of a license under this subchapter.

(c) The refusal to license an applicant or the suspension or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., ch. 539, Sec. 9, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(f), eff. March 1, 2006.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0980, eff. April 2, 2015.

Sec. 431.208. REPORTING OF PURCHASE PRICE. (a) On the department's request, a person who engages in the wholesale distribution of drugs in this state shall file with the department information showing the actual price at which the wholesale distributor sells a particular drug to a retail pharmacy.
(b) The executive commissioner shall adopt rules to implement this section.
(c) The department and the attorney general may investigate the distributor to determine the accuracy of the information provided under Subsection (a). The attorney general may take action to enforce this section.
(d) Repealed by Acts 2005, 79th Leg., Ch. 349, Sec. 29, eff. September 1, 2007.

Added by Acts 2001, 77th Leg., ch. 1003, Sec. 3, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 349 (S.B. 1188), Sec. 29, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0981, eff. April 2, 2015.

SUBCHAPTER J. FOOD MANUFACTURERS, FOOD WHOLESALERS, AND WAREHOUSE OPERATORS

Sec. 431.221. DEFINITIONS. In this subchapter:
(1) "Place of business" means:
(A) each location where:
(i) a person manufactures food; or
(ii) food for wholesale is distributed; or
(B) a warehouse where food is stored.
(2) "Food manufacturer" means a person who combines,

purifies, processes, or packages food for sale through a wholesale outlet. The term also includes a retail outlet that packages or labels food before sale and a person that represents itself as responsible for the purity and proper labeling of an article of food by labeling the food with the person's name and address. The term does not include a restaurant that provides food for immediate human consumption to a political subdivision or to a licensed nonprofit organization if the restaurant would not otherwise be considered a food manufacturer under this subdivision.

(3) "Food wholesaler" means a person who distributes food for resale, either through a retail outlet owned by that person or through sales to another person. The term "food wholesaler" shall not include:

(A) a commissary which distributes food primarily intended for immediate consumption on the premises of a retail outlet under common ownership;

(B) an establishment engaged solely in the distribution of nonalcoholic beverages in sealed containers; or

(C) a restaurant that provides food for immediate human consumption to a political subdivision or to a licensed nonprofit organization if the restaurant would not otherwise be considered a food wholesaler under this subdivision.

(4) Deleted by Acts 1997, 75th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1997

(5) "Direct seller" means an individual:

(A) who is not affiliated with a permanent retail establishment and who engages in the business of:

(i) in-person sales of prepackaged nonperishable foods, including dietary supplements, to a buyer on a buy-sell basis, a deposit-commission basis, or a similar basis for resale in a home; or

(ii) sales of prepackaged nonperishable foods, including dietary supplements, in a home;

(B) who receives substantially all remuneration for a service, whether in cash or other form of payment, which is directly related to sales or other output, including the performance of the service, and not to the number of hours worked; and

(C) who performs services under a written contract between the individual and the person for whom the service is performed, and the contract provides that the individual is not

treated as an employee with respect to federal tax purposes.

(6) "Licensed nonprofit organization" means an organization that is licensed under any statutory authority of the State of Texas and is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, as an organization described in Section 501(c)(3) of that code.

(7) "Warehouse operator" means a person that operates a warehouse where food is stored.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 348, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 1047, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1378, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 334, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 383, Sec. 5, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(51), eff. September 1, 2005.

Sec. 431.2211. APPLICATION OF SUBCHAPTER. (a) A person is not required to hold a license under this subchapter if the person is:

(1) a person, firm, or corporation that only harvests, packages, or washes raw fruits or vegetables for shipment at the location of harvest;

(2) an individual who only sells prepackaged nonperishable foods, including dietary supplements, from a private home as a direct seller;

(3) a person who holds a license under Chapter 432 and who only engages in conduct within the scope of that license; or

(4) a restaurant that:

(A) provides food for immediate human consumption to a political subdivision or to a licensed nonprofit organization if the restaurant would not otherwise be required to hold a license under this subchapter; or

(B) sells food directly to an individual consumer if:

(i) the restaurant holds a permit as a food service establishment under Chapter 437;

(ii) the restaurant complies with Section 437.026; and

(iii) the restaurant is not otherwise required to hold a license under this subchapter.

(a-1) A person is not required to hold a license under this subchapter if the person holds a license under Chapter 440 and is engaging in conduct within the scope of that license.

(a-2) A person is not required to hold a license under this subchapter if the person holds a permit under Chapter 435 related to the processing, producing, bottling, receiving, transferring, or transporting of Grade A milk or milk products and is engaging in conduct within the scope of that permit.

(a-3) A person is not required to hold a license under this subchapter if the person holds a license under Chapter 443 and is engaging in conduct within the scope of that license.

(b) An exemption from the licensing requirements prescribed by this subchapter does not exempt the person from other provisions prescribed by this subchapter or from rules adopted by the executive commissioner to administer and enforce those provisions.

(c) This subchapter does not apply to the distribution of beverages in sealed containers by holders of licenses or permits issued under Chapter 19, 20, 23, or 64, Alcoholic Beverage Code. The provisions of the Alcoholic Beverage Code prevail to the extent of any conflict with this chapter.

(d) A food wholesaler is not required to obtain a license under this subchapter for a place of business if all of the food distributed from that place of business will be stored in a warehouse licensed under this subchapter.

(e) A food wholesaler that is not required to obtain a license for a place of business under Subsection (d) shall register that place of business with the department. The executive commissioner shall adopt rules for the registration of food wholesalers under this section.

Amended by Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 348, Sec. 2, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 629, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1378, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 262, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 112, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 334, Sec.

2, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 383, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 757, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 1, eff. September 1, 2012.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0982, eff. April 2, 2015.
Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 6, eff. June 10, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 392, eff. September 1, 2019.
Acts 2021, 87th Leg., R.S., Ch. 242 (H.B. 1276), Sec. 2, eff. June 4, 2021.

Sec. 431.222. LICENSE REQUIRED; LICENSING FEES. (a) Except as provided by Section 431.2211, a food manufacturer, food wholesaler, or warehouse operator in this state must apply for and obtain from the department every two years a license for each place of business that the food manufacturer, food wholesaler, or warehouse operator operates in this state. The food manufacturer, food wholesaler, or warehouse operator must pay a licensing fee for each establishment.

(b) The department shall require a food manufacturer that distributes only food manufactured by that firm to obtain only a license as a food manufacturer. A person that does not manufacture food and serves only as a food wholesaler must obtain only a food wholesaler's license. A person that distributes both its own manufactured food and food it does not manufacture must obtain only a food manufacturer's license. A warehouse operator who also distributes food is required to obtain only a warehouse operator license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 162, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 383, Sec. 7, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0983, eff.

April 2, 2015.

Sec. 431.223. CONTENTS OF LICENSE APPLICATION. (a) The person applying for a license under this subchapter must provide, at a minimum, the following information in a license application:

(1) the name under which the food manufacturer, wholesale distributor, or warehouse operator conducts business;

(2) the address of each place of business in this state that is licensed;

(3) if the food manufacturer, wholesale distributor, or warehouse operator is an individual, a partnership, or an association, the name or names of:

(A) the proprietor, if the business is a sole proprietorship;

(B) all partners, if the business is a partnership; or

(C) all principals, if the business is an association;

(4) if the food manufacturer, wholesale distributor, or wholesale operator is a corporation, the date and place of incorporation and the name and address of its registered agent in this state;

(5) the names and residences of the individuals in an administrative capacity, showing:

(A) the managing proprietor, if the business is a sole proprietorship;

(B) the managing partner, if the business is a partnership;

(C) the officers and directors, if the business is a corporation; or

(D) the persons in a managerial capacity, if the business is an association; and

(6) the residence address of a person in charge of each place of business.

(b) The license application must be signed, verified, and filed on a form furnished by the department according to department rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 383, Sec. 8, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0984, eff. April 2, 2015.

Sec. 431.224. FEES. (a) The department shall collect fees for:

(1) a license that is filed or renewed;

(2) a license that is amended, including a notification of a change in the location of a licensed place of business required under Section 431.2251; and

(3) an inspection performed to enforce this subchapter and rules adopted under this subchapter.

(b) The department may charge fees every two years.

(c) The executive commissioner by rule shall set the fees in amounts that allow the department to recover the biennial expenditures of state funds by the department in:

(1) reviewing and acting on a license;

(2) amending and renewing a license;

(3) inspecting a licensed facility; and

(4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

(d) The department shall use not less than one-half of license fees collected for inspecting a licensed place of business or enforcing this subchapter, and the remainder for the administration of this subchapter.

(e) All license fees received by the department under this subchapter shall be deposited in the state treasury to the credit of the food and drug registration account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 163, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0985, eff. April 2, 2015.

Sec. 431.2245. PROCESSING OF LICENSING FEES. (a) The department shall establish a system for processing licensing fees under this chapter, including vended water facility licensing fees.

(b) Under the fee processing system, the maximum time for processing a fee payment made by a negotiable instrument may not exceed 48 hours, beginning at the time that the negotiable instrument is first received by the department and ending at the time that the fee payment is submitted for deposit by the department to the treasury division of the office of the comptroller.

(c) The comptroller shall cooperate with the department in developing the fee processing system.

Added by Acts 1999, 76th Leg., ch. 697, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0986, eff. April 2, 2015.

Sec. 431.225. EXPIRATION DATE. (a) The executive commissioner by rule may provide that licenses expire on different dates.

(b) If the license expiration date is changed, license fees shall be prorated so that each license holder pays only that portion of the license fee allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 164, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0987, eff. April 2, 2015.

Sec. 431.2251. CHANGE IN LOCATION OF PLACE OF BUSINESS. Not later than the 31st day before the date of the change, the license holder shall notify in writing the department of the license holder's intent to change the location of a licensed place of business. The notice shall include the address of the new location and the name and residence address of the individual in charge of the place of business. Not later than the 10th day after the completion of the change of location, the license holder shall forward to the department the name and residence address of the individual in charge of the new place of business. Notice is considered adequate if the

license holder provides the intent and verification notices to the department by certified mail, return receipt requested, mailed to the central office of the department.

Added by Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0988, eff. April 2, 2015.

Sec. 431.226. REFUSAL TO GRANT LICENSE; SUSPENSION OR REVOCATION OF LICENSE. (a) The department may refuse an application for a license or may suspend or revoke a license.

(b) The executive commissioner by rule shall establish minimum standards for granting and maintaining a license. In adopting rules under this section, the executive commissioner shall:

(1) ensure that the minimum standards prioritize safe handling of fruits and vegetables based on known safety risks, including any history of outbreaks of food-borne communicable diseases; and

(2) consider acceptable produce safety standards developed by a federal agency, state agency, or university.

(c) The refusal or the suspension or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0989, eff. April 2, 2015.

Sec. 431.227. FOOD SAFETY BEST PRACTICE EDUCATION PROGRAM. (a) The department shall approve food safety best practice education programs for places of business licensed under this chapter.

(b) A place of business that completes a food safety best

practice education program approved by the department shall receive a certificate valid for five years from the date of completion of the program.

(c) When determining which places of business to inspect under Section 431.042, the appropriate inspecting authority shall consider whether the place of business holds a valid certificate from a food safety best practice education program under this section.

(d) The executive commissioner shall adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 3, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0990, eff. April 2, 2015.

SUBCHAPTER K. GENERAL ADMINISTRATIVE PROVISIONS AND RULEMAKING AUTHORITY

Sec. 431.241. RULEMAKING AUTHORITY. (a) The executive commissioner may adopt rules for the efficient enforcement of this chapter.

(b) The executive commissioner may conform rules adopted under this chapter, if practicable, with regulations adopted under the federal Act.

(c) The enumeration of specific federal laws and regulations in Sections 431.244 and 431.245 does not limit the general authority granted to the executive commissioner in Subsection (b) to conform rules adopted under this chapter to those adopted under the federal Act.

(d) The executive commissioner may adopt the federal regulations issued by the secretary pursuant to the Prescription Drug Marketing Act of 1987 (21 U.S.C. Sections 331, 333, 353, and 381), as necessary or desirable so that the state wholesale drug distributor licensing program in Subchapter N may achieve compliance with that Act.

(e) The executive commissioner shall not establish a drug formulary that restricts by any prior or retroactive approval process a physician's ability to treat a patient with a prescription drug that has been approved and designated as safe and effective by the

United States Food and Drug Administration, in compliance with federal law and subject to review by the executive commissioner.

(f) Nothing in this section shall effect a prior approval program in operation on the effective date of this section nor shall any portion of this chapter prohibit a prior approval process on any federally exempted products.

(g) The department may assess a fee for the issuance of a certificate of free sale and another certification issued under this chapter. The executive commissioner by rule shall set each fee in an amount sufficient to recover the cost to the department of issuing the particular certificate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 11, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 675, Sec. 7, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0991, eff. April 2, 2015.

Sec. 431.242. CONTESTED CASE HEARINGS AND APPEALS. A hearing under this chapter or an appeal from a final administrative decision shall be conducted under Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 431.244. FEDERAL REGULATIONS ADOPTED AS STATE RULES. (a) A regulation adopted by the secretary under the federal Act concerning pesticide chemicals, food additives, color additives, special dietary use, processed low acid food, acidified food, infant formula, bottled water, or vended bottled water is a rule for the purposes of this chapter, unless the executive commissioner modifies or rejects the rule.

(b) A regulation adopted under the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.) is a rule for the purposes of this chapter, unless the executive commissioner modifies or rejects the rule. The executive commissioner may not adopt a rule that conflicts with the labeling requirements for the net quantity of contents required under Section 4 of the Fair Packaging and Labeling Act (15

U.S.C. 1453) and the regulations adopted under that Act.

(c) A regulation adopted by the secretary under Sections 403(b) through (i) of the federal Act is a rule for the purposes of this chapter unless the executive commissioner modifies or rejects the rule. The executive commissioner may not adopt a rule that conflicts with the limitations provided by Sections 403(q) and (r) of the federal Act.

(d) A federal regulation that this section provides as a rule for the purposes of this chapter is effective:

(1) on the date that the regulation becomes effective as a federal regulation; and

(2) whether or not the executive commissioner or department has fulfilled the rulemaking provisions of Chapter 2001, Government Code.

(e) If the executive commissioner modifies or rejects a federal regulation, the executive commissioner shall comply with the rulemaking provisions of Chapter 2001, Government Code.

(f) For any federal regulation adopted as a state rule under this chapter, including a regulation considered to be a rule for purposes of this chapter under Subsection (a), (b), or (c), the department shall provide on its Internet website:

(1) a link to the text of the federal regulation;

(2) a clear explanation of the substance of and purpose for the regulation; and

(3) information on providing comments in response to any proposed or pending federal regulation, including an address to which and the manner in which comments may be submitted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 12, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 459, Sec. 6, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 4, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0992, eff. April 2, 2015.

Sec. 431.245. DEFINITION OR STANDARD OF IDENTITY, QUALITY, OR

FILL OF CONTAINER. (a) A definition or standard of identity, quality, or fill of container of the federal Act is a definition or standard of identity, quality, or fill of container in this chapter, except as modified by department rules.

(b) The executive commissioner by rule may establish definitions and standards of identity, quality, and fill of container for a food if:

(1) a federal regulation does not apply to the food; and

(2) the executive commissioner determines that adopting the rules will promote honest and fair dealing in the interest of consumers.

(c) A temporary permit granted for interstate shipment of an experimental pack of food that varies from the requirements of federal definitions and standards of identity is automatically effective in this state under the conditions of the permit.

(d) The department may issue additional permits if the department determines that:

(1) it is necessary for the completion of an otherwise adequate investigation; and

(2) the interests of consumers are safeguarded.

(e) A permit issued under Subsection (d) is subject to the terms and conditions of department rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0993, eff. April 2, 2015.

Sec. 431.246. REMOVAL OF ADULTERATED ITEM FROM STORES. The executive commissioner shall adopt rules that provide a system for removing adulterated items from the shelves of a grocery store or other retail establishment selling those items.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0994, eff. April 2, 2015.

Sec. 431.247. DELEGATION OF POWERS OR DUTIES. (a) Repealed by

Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(75), eff. April 2, 2015.

(b) A health authority may, unless otherwise restricted by law, delegate a power or duty imposed on the health authority by this chapter to an employee of the local health department, the local health unit, or the public health district in which the health authority serves.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(75), eff. April 2, 2015.

Sec. 431.248. MEMORANDUM OF UNDERSTANDING WITH DEPARTMENT OF AGRICULTURE. (a) The department and the Department of Agriculture shall execute a memorandum of understanding that:

(1) requires each agency to disclose to the other agency any positive results of testing conducted by the agency for pesticides in food; and

(2) specifies how each agency will assist the other in performing its duties regarding pesticides in food.

(b) The executive commissioner and the Department of Agriculture shall adopt the memorandum of understanding as a rule.

(c) The department and the Department of Agriculture shall request the federal Food and Drug Administration to join in execution of the memorandum of understanding.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0995, eff. April 2, 2015.

Sec. 431.249. DISSEMINATION OF INFORMATION. (a) The department may publish reports summarizing the judgments, decrees, and court orders rendered under this chapter, including the nature and disposition of the charge.

(b) The department may disseminate information regarding a food, drug, device, or cosmetic in a situation that the department determines to involve imminent danger to health or gross deception of

consumers.

(c) This section does not prohibit the department from collecting, reporting, and illustrating the results of an investigation by the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0996, eff. April 2, 2015.

Sec. 431.250. PUBLIC COMMENTS FOR FEDERAL GRANTS AND CONTRACTS. (a) The department shall annually solicit comments from interested persons regarding the grants and contracts the department has requested from or entered into with the United States Food and Drug Administration for implementing the federal Act and its amendments, including the Food Safety Modernization Act (21 U.S.C. Section 2201 et seq.).

(b) The department shall solicit comments by posting on the department's Internet website a detailed description of and providing notice to interested persons of each grant and contract described by Subsection (a) requested or entered into during the previous year. The description and notice must include the benefits to this state, the department, the regulated community, and the public.

(c) The department shall respond to questions and comments about a grant or contract described by Subsection (a) to the best of the department's knowledge. If an interested person requests that the department decline to receive future federal funding from the grant or contract, the department shall consider the request and determine whether the benefits of the grant or contract outweigh the person's concerns.

Added by Acts 2015, 84th Leg., R.S., Ch. 749 (H.B. 1846), Sec. 1, eff. September 1, 2015.

SUBCHAPTER L. DEVICE DISTRIBUTORS AND MANUFACTURERS

Sec. 431.271. DEFINITIONS. In this subchapter:

(1) "Distributor" means a person who furthers the marketing of a finished domestic or imported device from the original place of manufacture to the person who makes final delivery or sale to the

ultimate consumer or user. The term includes an importer or an own-label distributor. The term does not include a person who repackages a finished device or who otherwise changes the container, wrapper, or labelling of the finished device or the finished device package.

(2) "Finished device" means a device, or any accessory to a device, that is suitable for use, without regard to whether it is packaged or labelled for commercial distribution.

(3) "Importer" means any person who initially distributes a device imported into the United States.

(4) "Manufacturer" means a person who manufactures, fabricates, assembles, or processes a finished device. The term includes a person who repackages or relabels a finished device. The term does not include a person who only distributes a finished device.

(5) "Place of business" means each location at which a finished device is manufactured or held for distribution.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1047, Sec. 2, eff. Sept. 1, 1995.

Sec. 431.272. LICENSE REQUIRED; MINIMUM STANDARDS. (a) Except as provided by Section 431.273, a person may not operate as a distributor or manufacturer of devices in this state unless the person has a license from the department for each place of business.

(b) A distributor or manufacturer of devices in this state must comply with the minimum requirements specified in the federal Act and in this chapter.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1047, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0997, eff. April 2, 2015.

Sec. 431.273. EXEMPTION FROM LICENSING. (a) A person is exempt from licensing under this subchapter if the person engages only in the following types of device distribution:

(1) intracompany sales;

(2) distribution from a place of business located outside of this state; or

(3) the sale, purchase, or trade of a distressed or reconditioned device by a salvage broker or a salvage operator licensed under Chapter 432 (Texas Food, Drug, Device, and Cosmetic Salvage Act).

(a-1) A person is exempt from licensing under this subchapter if the person holds a registration certificate issued under Chapter 266, Occupations Code, and engages only in conduct within the scope of that registration.

(b) An exemption from the licensing requirements under this section does not constitute an exemption from the other provisions of this chapter or the rules adopted by the executive commissioner to administer and enforce this chapter.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 1047, Sec. 3, eff. Sept. 1, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 302 (H.B. 1395), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0998, eff. April 2, 2015.

Sec. 431.274. LICENSE APPLICATION. (a) A person applying for a license under this subchapter shall provide, at a minimum, the following information on a license application form furnished by the department:

(1) the name under which the business is conducted;

(2) the address of each place of business that is licensed;

(3) the name and residence address of:

(A) the proprietor, if the business is a proprietorship;

(B) all partners, if the business is a partnership; or

(C) all principals, if the business is an association;

(4) the date and place of incorporation if the business is a corporation;

(5) the names and residence addresses of the individuals in

an administrative capacity showing:

(A) the managing proprietor, if the business is a proprietorship;

(B) the managing partner, if the business is a partnership;

(C) the officers and directors, if the business is a corporation; or

(D) the persons in a managerial capacity, if the business is an association; and

(6) the residence address of an individual in charge of each place of business.

(b) The license application must be signed, verified, and completed in a manner described in department rules.

(c) A person applying for a license under this subchapter must pay a licensing fee for each place of business.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0999, eff. April 2, 2015.

Sec. 431.276. FEES. (a) The department shall collect fees for:

(1) a license that is filed or renewed;

(2) a license that is amended, including notification of a change of location of a licensed place of business required under Section 431.278, a change of the name of an association or corporation, or a change in the ownership of the licensee; and

(3) an inspection performed to enforce this subchapter and rules adopted under this subchapter.

(b) The department may charge fees every two years.

(c) The executive commissioner by rule shall set the fees in amounts that allow the department to recover the biennial expenditures of state funds by the department in:

(1) reviewing and acting on a license or renewal license;

(2) amending a license;

(3) inspecting a licensed facility; and

(4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

(d) At least half of the licensing fees collected shall be used to inspect an applicant or licensed place of business.

(e) Fees collected under this section shall be deposited to the credit of the food and drug registration fee account of the general revenue fund and may be appropriated to the department only to carry out this chapter.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1000, eff. April 2, 2015.

Sec. 431.278. CHANGE OF LOCATION OF PLACE OF BUSINESS. (a) Not fewer than 30 days in advance of the change, the licensee shall notify the department in writing of the licensee's intent to change the location of a licensed place of business. The notice shall include the address of the new location and the name and residence address of the individual in charge of the business at the new location.

(b) Not later than the 10th day after the date of completion of the change of location, the licensee shall notify the department in writing to verify the change of location, the address of the new location, and the name and residence address of the individual in charge of the business at the new address.

(c) Notice is adequate if the licensee provides the intent and verification notices to the department by certified mail, return receipt requested, mailed to the central office of the department.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1001, eff. April 2, 2015.

Sec. 431.279. REFUSAL TO LICENSE; SUSPENSION OR REVOCATION OF LICENSE. (a) The department may refuse an application or may suspend or revoke a license if the applicant or licensee:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude;

(2) is an association, partnership, or corporation and the

managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs; or

(5) has not complied with this chapter or the rules implementing this chapter.

(b) The department may refuse an application for a license or may suspend or revoke a license if the department determines from evidence presented during a hearing that the applicant or licensee:

(1) has violated Section 431.021(l)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(2) has violated Chapter 481 (Texas Controlled Substances Act) or 483 (Dangerous Drugs); or

(3) has violated the rules of the public safety director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or licensee to maintain.

(c) The refusal to license an applicant or the suspension or revocation of a license by the department and the appeal from that action are governed by the department's formal hearing procedures and the procedures for a contested case hearing under Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1002, eff. April 2, 2015.

SUBCHAPTER M. DRUG DONATION PROGRAM

Sec. 431.321. DEFINITIONS. (a) "Charitable medical clinic" means a clinic, including a licensed pharmacy that is a community pharmaceutical access program provider, that provides medical care or drugs without charge or for a substantially reduced charge, complies with the insurance requirements of Chapter 84, Civil Practice and Remedies Code, and is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) or 501(c)(4) of the code and is operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community.

(b) "Seller" means a person, other than a charitable drug donor, as defined in Chapter 82, Civil Practice and Remedies Code.

(c) "Manufacturer" means a person, other than a charitable drug donor, as defined in Chapter 82, Civil Practice and Remedies Code.

(d) "Charitable drug donor" means a licensed convalescent or nursing home or related institution, licensed hospice, hospital, physician, pharmacy, or a pharmaceutical seller or manufacturer that donates drugs pursuant to a qualified patient assistance program, that donates drugs to a charitable medical clinic.

(d-1) In this subchapter, "community pharmaceutical access program" means a program offered by a licensed pharmacy under which the pharmacy assists financially disadvantaged persons to access prescription drugs at no charge or at a substantially reduced charge.

(e) In this subchapter, "patient assistance program" means a qualified program offered by a pharmaceutical manufacturer under which the manufacturer provides drugs to financially disadvantaged persons at no charge or at a substantially reduced cost. The term does not include the provision of a drug as part of a clinical trial.

Added by Acts 2001, 77th Leg., ch. 1138, Sec. 1, eff. Jan. 1, 2002.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 820 (S.B. 1896), Sec. 2, eff. June 15, 2007.

Sec. 431.322. DONATION OF UNUSED DRUGS TO CHARITABLE MEDICAL CLINIC. (a) A charitable drug donor may donate certain unused prescription drugs to a charitable medical clinic, and a charitable

clinic may accept, dispense, or administer the donated drugs in accordance with this subchapter.

(b) A seller or manufacturer of a drug may not donate drugs to a charitable medical clinic except pursuant to a qualified patient assistance program. A seller or manufacturer of a drug that donates drugs through a qualified patient assistance program shall be considered a charitable drug donor.

(c) The charitable drug donor shall use appropriate safeguards established by department rule to ensure that the drugs are not compromised or illegally diverted while being stored or transported to the charitable medical clinic.

(d) The charitable medical clinic may not accept the donated drugs unless:

(1) the charitable drug donor certifies that the drugs have been properly stored while in the possession of the donor or of the person for whom the drugs were originally dispensed;

(2) the charitable drug donor provides the clinic with a verifiable address and telephone number; and

(3) the person transferring possession of the drugs presents the charitable medical clinic with photographic identification.

Added by Acts 2001, 77th Leg., ch. 1138, Sec. 1, eff. Jan. 1, 2002.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1003, eff. April 2, 2015.

Sec. 431.323. CIRCUMSTANCES UNDER WHICH DONATED DRUGS MAY BE ACCEPTED AND DISPENSED. (a) A charitable medical clinic may accept and dispense or administer donated drugs only in accordance with this subchapter.

(b) The donated drugs must be drugs that require a prescription. A donated drug may not be a controlled substance under Chapter 481.

(c) The donated drugs must be approved by the federal Food and Drug Administration and:

(1) be sealed in the manufacturer's unopened original tamper-evident packaging and either:

(A) individually packaged; or

(B) packaged in unit-dose packaging;

(2) be oral or parenteral medication in sealed single-dose containers approved by the federal Food and Drug Administration;

(3) be topical or inhalant drugs in sealed units-of-use containers approved by the federal Food and Drug Administration; or

(4) be parenteral medication in sealed multiple-dose containers approved by the federal Food and Drug Administration from which no doses have been withdrawn; and

(5) must not be the subject of a mandatory recall by a state or federal agency or a voluntary recall by a drug seller or manufacturer.

(d) The charitable medical clinic may dispense or administer the donated drugs only:

(1) before the expiration date or within the recommended shelf life of the donated drugs, as applicable; and

(2) after a licensed pharmacist has determined that the drugs are of an acceptable integrity.

(e) The donated drugs may be accepted and dispensed or administered by the charitable medical clinic only in accordance with department rules.

Added by Acts 2001, 77th Leg., ch. 1138, Sec. 1, eff. Jan. 1, 2002.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1004, eff. April 2, 2015.

Sec. 431.324. RULES. The executive commissioner shall adopt rules to implement this subchapter that are designed to protect the public health and safety.

Added by Acts 2001, 77th Leg., ch. 1138, Sec. 1, eff. Jan. 1, 2002.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1005, eff. April 2, 2015.

Sec. 431.325. LIMITATION ON LIABILITY. (a) Charitable drug donors, charitable medical clinics, and their employees are not liable for harm caused by the accepting, dispensing, or administering of drugs donated in strict compliance with this subchapter unless the

harm is caused by:

(i) willful or wanton acts of negligence;

(ii) conscious indifference or reckless disregard for the safety of others; or

(iii) intentional conduct.

(b) This section does not limit, or in any way affect or diminish, the liability of a drug seller or manufacturer pursuant to Chapter 82, Civil Practice and Remedies Code.

(c) This section shall not apply where harm results from the failure to fully and completely comply with the requirements of this subchapter.

(d) This section shall not apply to a charitable medical clinic that fails to comply with the insurance provisions of Chapter 84, Civil Practice and Remedies Code.

Added by Acts 2001, 77th Leg., ch. 1138, Sec. 1, eff. Jan. 1, 2002.

SUBCHAPTER N. WHOLESALE DISTRIBUTORS OF PRESCRIPTION DRUGS

Sec. 431.401. DEFINITIONS. In this subchapter:

(1) "Authentication" means to affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree for the drug has occurred.

(2) "Authorized distributor of record" means a distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's products in accordance with Section 431.4011.

(3) "Pharmacy warehouse" means a location for which a person holds a wholesale drug distribution license under this subchapter, that serves as a central warehouse for drugs or devices, and from which intracompany sales or transfers of drugs or devices are made to a group of pharmacies under common ownership and control.

(3-a) "Co-licensed product partner" means one of two or more parties that have the right to engage in the manufacturing or marketing of a prescription drug consistent with the United States Food and Drug Administration's regulations and guidances implementing the Prescription Drug Marketing Act of 1987 (Pub. L. No. 100-293).

(3-b) "Drop shipment" means the sale of a prescription drug to a wholesale distributor by the manufacturer of the prescription drug, or by the manufacturer's co-licensed product partner, third-

party logistics provider, or exclusive distributor, in which:

(A) the wholesale distributor takes title but not physical possession of the prescription drug;

(B) the wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer the drug to a patient; and

(C) the pharmacy, pharmacy warehouse, or other authorized person receives delivery of the prescription drug directly from the manufacturer or the manufacturer's third-party logistics provider or exclusive distributor.

(4) "Logistics provider" means a person that receives prescription drugs only from the original manufacturer, delivers the prescription drugs at the direction of that manufacturer, and does not purchase, sell, trade, or take title to any prescription drug.

(4-a) "Manufacturer" means a person licensed or approved by the United States Food and Drug Administration to engage in the manufacture of drugs or devices, consistent with the federal agency's definition of "manufacturer" under the agency's regulations and guidances implementing the Prescription Drug Marketing Act of 1987 (Pub. L. No. 100-293). The term does not include a pharmacist engaged in compounding that is done within the practice of pharmacy and pursuant to a prescription drug order or initiative from a practitioner for a patient or prepackaging that is done in accordance with Section 562.154, Occupations Code.

(4-b) "Manufacturer's exclusive distributor" means a person who holds a wholesale distributor license under this subchapter, who contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of the manufacturer, and who takes title to, but does not have general responsibility to direct the sale or disposition of, the manufacturer's prescription drug. A manufacturer's exclusive distributor must be an authorized distributor of record to be considered part of the normal distribution channel.

(5) "Normal distribution channel" means a chain of custody for a prescription drug, either directly or by drop shipment, from the manufacturer of the prescription drug, the manufacturer to the manufacturer's co-licensed product partner, the manufacturer to the manufacturer's third-party logistics provider, or the manufacturer to the manufacturer's exclusive distributor, to:

(A) a pharmacy to:

(i) a patient; or

(ii) another designated person authorized by law to dispense or administer the drug to a patient;

(B) an authorized distributor of record to:

(i) a pharmacy to a patient; or

(ii) another designated person authorized by law to dispense or administer the drug to a patient;

(C) an authorized distributor of record to a wholesale distributor licensed under this chapter to another designated person authorized by law to administer the drug to a patient;

(D) an authorized distributor of record to a pharmacy warehouse to the pharmacy warehouse's intracompany pharmacy;

(E) a pharmacy warehouse to the pharmacy warehouse's intracompany pharmacy or another designated person authorized by law to dispense or administer the drug to a patient;

(F) a person authorized by law to prescribe a prescription drug that by law may be administered only under the supervision of the prescriber; or

(G) an authorized distributor of record to one other authorized distributor of record to a licensed practitioner for office use.

(6) "Pedigree" means a document or electronic file containing information that records each wholesale distribution of a prescription drug, from sale by a manufacturer, through acquisition and sale by any wholesale distributor or repackager, until final sale to a pharmacy or other person dispensing or administering the prescription drug.

(7) "Place of business" means each location at which a drug for wholesale distribution is located.

(8) "Prescription drug" has the meaning assigned by 21 C.F.R. Section 203.3.

(9) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling of a drug to further the distribution of a prescription drug. The term does not include repackaging by a pharmacist to dispense a drug to a patient.

(10) "Repackager" means a person who engages in repackaging.

(10-a) "Third-party logistics provider" means a person who holds a wholesale distributor license under this subchapter, who contracts with a prescription drug manufacturer to provide or

coordinate warehousing, distribution, or other services on behalf of the manufacturer, and who does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. A third-party logistics provider must be an authorized distributor of record to be considered part of the normal distribution channel.

(11) "Wholesale distribution" means distribution of prescription drugs to a person other than a consumer or patient. The term does not include:

(A) intracompany sales of prescription drugs, which means transactions or transfers of prescription drugs between a division, subsidiary, parent, or affiliated or related company that is under common ownership and control, or any transaction or transfer between co-license holders of a co-licensed product;

(B) the sale, purchase, distribution, trade, or transfer of prescription drugs or the offer to sell, purchase, distribute, trade, or transfer a prescription drug for emergency medical reasons;

(C) the distribution of prescription drug samples by a representative of a manufacturer;

(D) the return of drugs by a hospital, health care entity, or charitable institution in accordance with 21 C.F.R. Section 203.23;

(E) the sale of reasonable quantities by a retail pharmacy of a prescription drug to a licensed practitioner for office use;

(F) the sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug under a prescription;

(G) the sale, transfer, merger, or consolidation of all or part of the business of a pharmacy from or with another pharmacy, whether accomplished as a purchase and sale of stock or business assets;

(H) the sale, purchase, or trade of a drug, or the offer to sell, purchase, or trade a drug, for emergency medical reasons, including a transfer of a prescription drug by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(I) the delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's

usual course of business of transporting prescription drugs, if the common carrier does not store, warehouse, or take legal ownership of the prescription drug; or

(J) the sale or transfer from a retail pharmacy or pharmacy warehouse of expired, damaged, returned, or recalled prescription drugs to the original manufacturer or to a third-party returns processor.

(12) "Wholesale distributor" means a person engaged in the wholesale distribution of prescription drugs, including a manufacturer, repackager, own-label distributor, private-label distributor, jobber, broker, manufacturer warehouse, distributor warehouse, or other warehouse, manufacturer's exclusive distributor, authorized distributor of record, drug wholesaler or distributor, independent wholesale drug trader, specialty wholesale distributor, third-party logistics provider, retail pharmacy that conducts wholesale distribution, and pharmacy warehouse that conducts wholesale distribution.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 3, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1384 (S.B. 1645), Sec. 3, eff. June 19, 2009.

Sec. 431.4011. ONGOING RELATIONSHIP. In this subchapter, "ongoing relationship" means an association that exists when a manufacturer and distributor enter into a written agreement under which the distributor is authorized to distribute the manufacturer's products for a period of time or for a number of shipments. If the distributor is not authorized to distribute the manufacturer's entire product line, the agreement must identify the specific drug products that the distributor is authorized to distribute.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Sec. 431.4012. APPLICABILITY OF SUBCHAPTER. This subchapter

applies only to the wholesale distribution of prescription drugs.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Sec. 431.402. LICENSE REQUIRED. (a) A person may not engage in wholesale distribution of prescription drugs in this state unless the person holds a wholesale drug distribution license under this subchapter for each place of business.

(b) A license issued under this subchapter expires on the second anniversary of the date of issuance.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Sec. 431.403. EXEMPTION FROM LICENSING. (a) A person who engages in wholesale distribution of prescription drugs in this state for use in humans is exempt from this subchapter if the person is exempt under:

(1) the Prescription Drug Marketing Act of 1987 (21 U.S.C. Section 353(c)(3)(B));

(2) the regulations adopted by the secretary to administer and enforce that Act; or

(3) the interpretations of that Act set out in the compliance policy manual of the United States Food and Drug Administration.

(b) An exemption from the licensing requirements under this section does not constitute an exemption from the other provisions of this chapter or the rules adopted under this chapter to administer and enforce the other provisions of this chapter.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Sec. 431.4031. EXEMPTION FROM CERTAIN PROVISIONS FOR CERTAIN WHOLESALE DISTRIBUTORS. (a) A wholesale distributor that distributes prescription drugs that are medical gases or a wholesale distributor that is a manufacturer or a third-party logistics

provider on behalf of a manufacturer is exempt from Sections 431.404(a)(5) and (6), (b), and (c), 431.4045(2), 431.405, and 431.407.

(b) A state agency or a political subdivision of this state that distributes prescription drugs using federal or state funding to nonprofit health care facilities, local mental health authorities, or local intellectual and developmental disability authorities for distribution to a pharmacy, practitioner, or patient is exempt from Sections 431.405(b), 431.407, 431.412, and 431.413.

(c) The executive commissioner by rule may exempt specific purchases of prescription drugs by state agencies and political subdivisions of this state if the executive commissioner determines that the requirements of this subchapter would result in a substantial cost to the state or a political subdivision of the state.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 4, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1384 (S.B. 1645), Sec. 4, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1006, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 9, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.04, eff. September 1, 2023.

Sec. 431.404. LICENSE APPLICATION. (a) An applicant for a license under this subchapter must submit an application to the department on the form prescribed by the department. The application must contain:

(1) the name, full business address, and telephone number of the applicant;

(2) all trade or business names under which the business is conducted;

(3) the address, telephone number, and name of a contact

person for each of the applicant's places of business;

(4) the type of business entity and:

(A) if the business is a sole proprietorship, the name of the proprietor;

(B) if the business is a partnership, the name of the partnership and each of the partners; or

(C) if the business is a corporation, the name of the corporation, the place of incorporation, and the name and title of each corporate officer and director;

(5) the name and telephone number of, and any information necessary to complete a criminal history record check on, a designated representative of each place of business; and

(6) a list of all licenses and permits issued to the applicant by any other state under which the applicant is permitted to purchase or possess prescription drugs.

(b) Each person listed in Subsection (a)(5) shall provide the following to the department:

(1) the person's places of residence for the past seven years;

(2) the person's date and place of birth;

(3) the person's occupations, positions of employment, and offices held during the past seven years;

(4) the business name and address of any business, corporation, or other organization in which the person held an office under Subdivision (3) or in which the person conducted an occupation or held a position of employment;

(5) a statement of whether during the preceding seven years the person was the subject of a proceeding to revoke a license or a criminal proceeding and the nature and disposition of the proceeding;

(6) a statement of whether during the preceding seven years the person has been enjoined, either temporarily or permanently, by a court from violating any federal or state law regulating the possession, control, or distribution of prescription drugs, including the details concerning the event;

(7) a written description of any involvement by the person as an officer or director with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund during the past seven years, that manufactured, administered, prescribed, distributed, or stored pharmaceutical products and any lawsuits in which the businesses were

named as a party;

(8) a description of any misdemeanor or felony offense for which the person, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the person pled guilty or nolo contendere;

(9) a description of any criminal conviction of the person under appeal, a copy of the notice of appeal for that criminal offense, and a copy of the final written order of an appeal not later than the 15th day after the date of the appeal's disposition; and

(10) a photograph of the person taken not earlier than 180 days before the date the application was submitted.

(c) The information submitted under Subsection (b) must be attested to under oath.

(d) An applicant or license holder shall submit to the department any change in or correction to the information required under this section in the form and manner prescribed by department rule.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 5, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1007, eff. April 2, 2015.

Sec. 431.4045. INSPECTION REQUIRED. The department may not issue a wholesale distributor license to an applicant under this subchapter unless the department:

(1) conducts a physical inspection of the place of business at the address provided by the applicant under Section 431.404 or determines that an inspection is unnecessary after thoroughly evaluating the information in the application, the compliance history of the applicant and the applicant's principals, and the risk of counterfeiting in the applicant's product; and

(2) determines that the designated representative of the place of business meets the qualifications required by Section 431.405.

Added by Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 6, eff.

September 1, 2007.

Sec. 431.405. QUALIFICATIONS FOR LICENSE. (a) The department may not issue a wholesale distributor license to an applicant without considering the minimum federal information and related qualification requirements published in federal regulations at 21 C.F.R. Part 205, including:

(1) factors in reviewing the qualifications of persons who engage in wholesale distribution, 21 C.F.R. Section 205.6;

(2) appropriate education and experience for personnel employed in wholesale distribution, 21 C.F.R. Section 205.7; and

(3) the storage and handling of prescription drugs and the establishment and maintenance of prescription drug distribution records, 21 C.F.R. Section 205.50.

(b) In addition to meeting the minimum federal requirements as provided by Subsection (a), to qualify for the issuance or renewal of a wholesale distributor license under this subchapter, the designated representative of an applicant or license holder must:

(1) be at least 21 years of age;

(2) have been employed full-time for at least three years by a pharmacy or a wholesale distributor in a capacity related to the dispensing or distributing of prescription drugs, including recordkeeping for the dispensing or distributing of prescription drugs;

(3) be employed by the applicant full-time in a managerial-level position;

(4) be actively involved in and aware of the actual daily operation of the wholesale distributor;

(5) be physically present at the applicant's place of business during regular business hours, except when the absence of the designated representative is authorized, including sick leave and vacation leave;

(6) serve as a designated representative for only one applicant at any one time, except in a circumstance, as the department determines reasonable, in which more than one licensed wholesale distributor is colocated in the same place of business and the wholesale distributors are members of an affiliated group, as defined by Section 1504, Internal Revenue Code of 1986;

(7) not have been convicted of a violation of any federal,

state, or local laws relating to wholesale or retail prescription drug distribution or the distribution of controlled substances; and

(8) not have been convicted of a felony under a federal, state, or local law.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 7, eff. September 1, 2007.

Sec. 431.406. EFFECT OF OPERATION IN OTHER JURISDICTIONS; REPORTS. (a) A person who engages in the wholesale distribution of drugs outside this state may engage in the wholesale distribution of drugs in this state if the person holds a license issued by the department.

(b) The department may accept reports from authorities in other jurisdictions to determine the extent of compliance with this subchapter and the minimum standards adopted under this subchapter.

(c) The department may issue a license to a person who engages in the wholesale distribution of drugs outside this state to engage in the wholesale distribution of drugs in this state if, after an examination of the reports of the person's compliance history and current compliance record, the department determines that the person is in compliance with this subchapter and the rules adopted under this subchapter.

(d) The department shall consider each license application and any related documents or reports filed by or in connection with a person who wishes to engage in wholesale distribution of drugs in this state on an individual basis.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Sec. 431.407. CRIMINAL HISTORY RECORD INFORMATION. The department shall submit to the Department of Public Safety the fingerprints provided by a person with an initial or a renewal license application to obtain the person's criminal history record information and may forward the fingerprints to the Federal Bureau of

Investigation for a federal criminal history check.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Sec. 431.409. FEES. (a) The department shall collect fees for:

(1) a license that is filed or renewed;

(2) a license that is amended, including a notification of a change in the location of a licensed place of business required under Section 431.410; and

(3) an inspection performed in enforcing this subchapter and rules adopted under this subchapter.

(b) The executive commissioner by rule shall set the fees in amounts that are reasonable and necessary and allow the department to recover the biennial expenditures of state funds by the department in:

(1) reviewing and acting on a license;

(2) amending and renewing a license;

(3) inspecting a licensed facility; and

(4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

(c) Fees collected under this section shall be deposited to the credit of the food and drug registration fee account of the general revenue fund and appropriated to the department to carry out this chapter.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1008, eff. April 2, 2015.

Sec. 431.4095. RENEWAL NOTIFICATION; CHANGE OR RENEWAL. (a) Before the expiration of a license issued under this subchapter, the department shall send to each licensed wholesale distributor a form containing a copy of the information the distributor provided to the department under Section 431.404.

(b) Not later than the 30th day after the date the wholesale

distributor receives the form under Subsection (a), the wholesale distributor shall identify and state under oath to the department any change in or correction to the information.

Added by Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 9, eff. September 1, 2007.

Sec. 431.410. CHANGE OF LOCATION OF PLACE OF BUSINESS. (a) Not fewer than 30 days in advance of the change, the license holder shall notify the department in writing of the license holder's intent to change the location of a licensed place of business.

(b) The notice shall include the address of the new location and the name and residence address of the individual in charge of the business at the new location.

(c) Not more than 10 days after the completion of the change of location, the license holder shall notify the department in writing to confirm the completion of the change of location and provide verification of the information previously provided or correct and confirm any information that has changed since providing the notice of intent.

(d) The notice and confirmation required by this section are considered adequate if the license holder sends the notices by certified mail, return receipt requested, to the central office of the department or submits the notices electronically through the state electronic Internet portal.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 973 (H.B. 1504), Sec. 30, eff. June 17, 2011.

Sec. 431.411. MINIMUM RESTRICTIONS ON TRANSACTIONS. (a) A wholesale distributor shall receive prescription drug returns or exchanges from a pharmacy or pharmacy warehouse in accordance with the terms and conditions of the agreement between the wholesale distributor and the pharmacy or pharmacy warehouse. An expired, damaged, recalled, or otherwise nonsalable prescription drug that is returned to the wholesale distributor may be distributed by the

wholesale distributor only to either the original manufacturer or a third-party returns processor. The returns or exchanges, salable or otherwise, received by the wholesale distributor as provided by this subsection, including any redistribution of returns or exchanges by the wholesale distributor, are not subject to the pedigree requirement under Section 431.412 if the returns or exchanges are exempt from pedigree under:

(1) Section 4, Prescription Drug Marketing Act of 1987 (21 U.S.C. Section 353(c)(3)(B));

(2) the regulations adopted by the secretary to administer and enforce that Act; or

(3) the interpretations of that Act set out in the compliance policy guide of the United States Food and Drug Administration.

(a-1) Each wholesale distributor and pharmacy shall administer the process of drug returns and exchanges to ensure that the process is secure and does not permit the entry of adulterated or counterfeit drugs into the distribution channel.

(a-2) Notwithstanding any provision of state or federal law to the contrary, a person that has not otherwise been required to obtain a wholesale license under this subchapter and that is a pharmacy engaging in the sale or transfer of expired, damaged, returned, or recalled prescription drugs to the originating wholesale distributor or manufacturer and pursuant to federal statute, rules, and regulations, including the United States Food and Drug Administration's applicable guidances implementing the Prescription Drug Marketing Act of 1987 (Pub. L. No. 100-293), is exempt from wholesale licensure requirements under this subchapter.

(b) A manufacturer or wholesale distributor may distribute prescription drugs only to a person licensed by the appropriate state licensing authorities or authorized by federal law to receive the drug. Before furnishing prescription drugs to a person not known to the manufacturer or wholesale distributor, the manufacturer or wholesale distributor must verify that the person is legally authorized by the appropriate state licensing authority to receive the prescription drugs or authorized by federal law to receive the drugs.

(c) Except as otherwise provided by this subsection, prescription drugs distributed by a manufacturer or wholesale distributor may be delivered only to the premises listed on the

license. A manufacturer or wholesale distributor may distribute prescription drugs to an authorized person or agent of that person at the premises of the manufacturer or wholesale distributor if:

(1) the identity and authorization of the recipient is properly established; and

(2) delivery is made only to meet the immediate needs of a particular patient of the authorized person.

(d) Prescription drugs may be distributed to a hospital pharmacy receiving area if a pharmacist or an authorized receiving person signs, at the time of delivery, a receipt showing the type and quantity of the prescription drug received. Any discrepancy between the receipt and the type and quantity of the prescription drug actually received shall be reported to the delivering manufacturer or wholesale distributor not later than the next business day after the date of delivery to the pharmacy receiving area.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 10, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1009, eff. April 2, 2015.

Sec. 431.412. PEDIGREE REQUIRED. (a) A person who is engaged in the wholesale distribution of a prescription drug, including a repackager but excluding the original manufacturer, shall provide a pedigree for each prescription drug for human consumption that leaves or at any time has left the normal distribution channel and is sold, traded, or transferred to any other person.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 980, Sec. 14.

(b-1) A retail pharmacy or pharmacy warehouse is required to comply with this section only if the pharmacy or warehouse engages in the wholesale distribution of a prescription drug.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 980, Sec. 14.

(d) A person who is engaged in the wholesale distribution of a prescription drug, including a repackager, but excluding the original manufacturer of the finished form of a prescription drug, and who is in possession of a pedigree for a prescription drug must verify

before distributing the prescription drug that each transaction listed on the pedigree has occurred.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 11, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 14 eff. September 1, 2007.

Sec. 431.413. PEDIGREE CONTENTS. (a) A pedigree must include all necessary identifying information concerning each sale in the product's chain of distribution from the manufacturer, through acquisition and sale by a wholesale distributor or repackager, until final sale to a pharmacy or other person dispensing or administering the drug. At a minimum, the chain of distribution information must include:

(1) the name, address, telephone number, and, if available, the e-mail address of each person who owns the prescription drug and each wholesale distributor of the prescription drug;

(2) the name and address of each location from which the product was shipped, if different from the owner's name and address;

(3) the transaction dates; and

(4) certification that each recipient has authenticated the pedigree.

(b) The pedigree must include, at a minimum, the:

(1) name of the prescription drug;

(2) dosage form and strength of the prescription drug;

(3) size of the container;

(4) number of containers;

(5) lot number of the prescription drug; and

(6) name of the manufacturer of the finished dosage form.

(c) Each pedigree statement must be:

(1) maintained by the purchaser and the wholesale distributor for at least three years; and

(2) available for inspection and photocopying not later than the second business day after the date a request is submitted by the department or a peace officer in this state.

(d) The executive commissioner shall adopt rules to implement this section.

(e-1) If, after consulting with manufacturers, distributors, and pharmacies responsible for the sale and distribution of prescription drugs in this state, the department determines that electronic track and trace pedigree technology is universally available across the entire prescription pharmaceutical supply chain, the department shall establish a targeted implementation date for electronic track and trace pedigree technology. After the department has established a targeted implementation date, the department may revise the date. The targeted implementation date may not be earlier than July 1, 2010.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 12, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1010, eff. April 2, 2015.

Sec. 431.414. REFUSAL TO LICENSE; SUSPENSION OR REVOCATION OF LICENSE. (a) The department may refuse an application for a license or may suspend or revoke a license if the applicant or license holder:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude;

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their

compounds or derivatives, or any other dangerous or habit-forming drugs;

(5) has not complied with this subchapter or the rules implementing this subchapter;

(6) has violated Section 431.021(l)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(7) has violated Chapter 481 or 483; or

(8) has violated the rules of the public safety director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or license holder to maintain.

(a-1) The department may suspend or revoke a license if the license holder no longer meets the qualifications for obtaining a license under Section 431.405.

(b) The executive commissioner by rule shall establish minimum standards required for the issuance or renewal of a license under this subchapter.

(c) The department shall deny a license application that is incomplete, contains false, misleading, or incorrect information, or contains information that cannot be verified by the department.

(d) The refusal to license an applicant or the suspension or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 13, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1011, eff. April 2, 2015.

Sec. 431.415. ORDER TO CEASE DISTRIBUTION. (a) The department shall issue an order requiring a person, including a manufacturer, distributor, or retailer of a prescription drug, to immediately cease distribution of the drug if the department determines there is a reasonable probability that:

(1) a wholesale distributor has:

(A) violated this subchapter;

(B) falsified a pedigree; or

(C) sold, distributed, transferred, manufactured, repackaged, handled, or held a counterfeit prescription drug intended for human use that could cause serious adverse health consequences or death; and

(2) other procedures would result in unreasonable delay.

(b) An order under Subsection (a) must provide the person subject to the order with an opportunity for an informal hearing on the actions required by the order to be held not later than the 10th day after the date of issuance of the order.

(c) If, after providing an opportunity for a hearing, the department determines that inadequate grounds exist to support the actions required by the order, the commissioner shall vacate the order.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1012, eff. April 2, 2015.

CHAPTER 432. FOOD, DRUG, DEVICE, AND COSMETIC SALVAGE ACT

Sec. 432.001. SHORT TITLE. This chapter may be cited as the Texas Food, Drug, Device, and Cosmetic Salvage Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.002. PURPOSE. The purpose of this chapter is to protect the health of the people of this state by preventing the sale or distribution of adulterated or misbranded food, drugs, devices, or cosmetics.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.003. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec.

3.1639(76), eff. April 2, 2015.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(76), eff. April 2, 2015.

(3) "Cosmetic" means an article or a substance, or a component of an article or substance, that is intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance. The term does not include soap.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(76), eff. April 2, 2015.

(5) "Device" means an instrument, apparatus, or contrivance, or a component, part, or accessory of an instrument, apparatus, or contrivance, that is designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals, or that is designed or intended to affect the structure or any function of the body of a human or other animal.

(6) "Distressed merchandise" means any food, drug, device, or cosmetic that is adulterated or misbranded for purposes of Section 431.081 (Adulterated Food), 431.082 (Misbranded Food), 431.111 (Adulterated Drug or Device), 431.112 (Misbranded Drug or Device), 431.141 (Adulterated Cosmetic), or 431.142 (Misbranded Cosmetic), as interpreted by department rule and judicial decision. The term includes a food, drug, device, or cosmetic that:

(A) has lost its label or is otherwise unidentified;

(B) has been subjected to prolonged or improper storage;

(C) has been subjected for any reason to abnormal environmental conditions, including temperature extremes, humidity, smoke, water, fumes, pressure, or radiation;

(D) has been subjected to conditions that result in either its strength, purity, or quality falling below that which it purports or is represented to possess; or

(E) may have been rendered unsafe or unsuitable for human consumption or use for any reason other than those specified by this subdivision.

(7) "Drug" means an article or substance, other than a device, that is:

(A) recognized in The United States Pharmacopeia and The National Formulary (USP-NF) or the Homoeopathic Pharmacopoeia of

the United States (HPUS), or a supplement to those publications;

(B) designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(C) intended to affect the structure or any function of the body of a human or other animal, excluding food; or

(D) intended for use as a component of an article or substance specified by this subdivision.

(8) "Food" means an article or a component of an article of human food or drink, and includes chewing gum.

(9) "Manufacture" means the combining, purifying, processing, packing, or repacking of food, drugs, devices, or cosmetics for wholesale or retail sale.

(10) "Manufacturer" includes a person who represents himself as responsible for the purity and proper labeling of a food, drug, device, or cosmetic.

(11) "Nonprofit organization" means an organization that has received an exemption from federal taxation under 26 U.S.C. Section 501 and is described by Subsection (c)(3) of that section.

(12) "Reconditioning" means any appropriate process or procedure by which distressed merchandise can be brought into compliance with departmental standards for the consumption or use of that merchandise by the public.

(13) "Sale or distribution" means the act of selling or distributing, whether or not for compensation. The term includes delivery, holding or offering for sale, transfer, auction, storage, or any other means of handling or trafficking.

(14) "Salvage broker" means a person who engages in the business of selling, distributing, or otherwise trafficking in distressed or salvaged merchandise, but who does not operate a salvage establishment.

(15) "Salvage establishment" means a place of business that is engaged in reconditioning or otherwise salvaging distressed merchandise, or that buys, sells, or distributes salvaged merchandise for human use.

(16) "Salvage operator" means a person who is engaged in the business of operating a salvage establishment.

(17) "Salvage warehouse" means a separate storage facility used by a salvage broker or salvage establishment to hold distressed or salvaged merchandise.

(18) "Salvaged merchandise" means distressed merchandise that has been reconditioned.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 265, Sec. 5, eff. May 22, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1013, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(76), eff. April 2, 2015.

Sec. 432.004. EXEMPTIONS. (a) This chapter does not apply to:

(1) a manufacturer, distributor, or processor of a food, drug, device, or cosmetic who, in the normal course of business, reconditions the items manufactured, distributed, or processed by or for that person and not purchased by that person solely for the purpose of reconditioning and sale;

(2) a common carrier, or the common carrier's agent, who disposes of or otherwise transfers undamaged or distressed food, drugs, devices, or cosmetics to a person who is exempt under this section or to a licensed salvage broker or salvage operator;

(3) a person who transfers distressed merchandise to a licensed salvage broker or salvage operator; or

(4) a nonprofit organization that distributes food to the needy under Chapter 76, Civil Practice and Remedies Code (Good Faith Donor Act), but that does not recondition the food.

(b) In this chapter, a pharmacist licensed under the law of this state is not considered a manufacturer when the pharmacist fills a prescription from a licensed practitioner or when the pharmacist compounds or mixes drugs or medicine in the pharmacist's professional capacity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.005. LICENSE REQUIRED. (a) A person may not operate a salvage establishment in this state without a salvage operator license issued by the department.

(b) A person may not act as a salvage broker in this state without a salvage broker license issued by the department.

(c) A salvage operator or salvage broker who is engaging only within the scope of the license issued under this chapter is not required to also be licensed under Chapter 431.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 265, Sec. 6, eff. May 22, 2001.

Sec. 432.006. LICENSE APPLICATION. An applicant for a salvage broker license or salvage operator license must:

(1) file a license application on a form prescribed by the department;

(2) pay a nonrefundable license fee to the department; and

(3) cooperate with the department in any required prelicensing inspections.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.007. ISSUANCE OF LICENSE. (a) The department shall issue a license to an applicant who complies with Section 432.006 and who meets the minimum qualifications established by department rule.

(b) A license issued under this chapter expires two years after the date of issuance.

(c) A separate license is required for each salvage establishment.

(d) A license may not be transferred from one person to another or from one location to another.

(e) A salvage operator or salvage broker shall display the license in accordance with department rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1014, eff. April 2, 2015.

Sec. 432.008. LICENSE RENEWAL. (a) A license holder under this chapter may renew the license by filing with the department, before the expiration date of the current license, a renewal application on a form prescribed by the department, accompanied by a

nonrefundable renewal fee.

(b) After an inspection to determine the license holder's compliance with department rules, the department shall renew the license of a license holder who submits a renewal application and pays the renewal fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1015, eff. April 2, 2015.

Sec. 432.009. FEES. (a) The executive commissioner by rule shall adopt, and the department shall collect, fees for each license application or renewal application submitted under this chapter and for inspections performed to enforce this chapter and the department rules adopted under this chapter.

(b) The executive commissioner by rule shall set the fees in amounts that are reasonable and necessary and allow the department to recover the biennial expenditures of state funds by the department to:

(1) review and act on licenses;

(2) amend and renew licenses;

(3) inspect establishments operated by license holders; and

(4) implement and enforce this chapter and rules and orders adopted and licenses issued under this chapter.

(c) A nonprofit organization is exempt from the payment of a fee imposed under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1016, eff. April 2, 2015.

Sec. 432.0095. PROCESSING OF FOOD SALVAGE ESTABLISHMENT LICENSING FEES. (a) The commissioner shall establish a system for processing food salvage establishment licensing fees.

(b) Under the fee processing system, the maximum time for processing a fee payment made by a negotiable instrument may not exceed 48 hours, beginning at the time that the negotiable instrument

is first received by the department and ending at the time that the fee payment is submitted for deposit by the department to the treasury division of the office of the comptroller.

(c) The comptroller shall cooperate with the commissioner in developing the fee processing system.

Added by Acts 1999, 76th Leg., ch. 697, Sec. 2, eff. Aug. 30, 1999.

Sec. 432.010. DEPOSIT OF FEES. A fee collected by the department under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1017, eff. April 2, 2015.

Sec. 432.011. MINIMUM STANDARDS. (a) The executive commissioner shall adopt rules prescribing minimum standards or related requirements for:

(1) the operation of salvage establishments and salvage warehouses; and

(2) qualifications for licenses issued under this chapter.

(b) The rules shall prescribe standards for food, drugs, devices, and cosmetics in separate subchapters.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 265, Sec. 7, eff. May 22, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1018, eff. April 2, 2015.

Sec. 432.012. POWERS OF DEPARTMENT. The department may:

(1) enter into contracts or agreements necessary to implement this chapter;

(2) conduct inspections and secure samples;

(3) establish and maintain educational programs for salvage operators and salvage brokers; and

(4) compile and publish statistical and other studies on the nature and scope of the salvage industry in this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.013. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke the license of an applicant or license holder who fails to comply with this chapter or the rules adopted under this chapter.

(b) When there is an imminent threat to the health or safety of the public, the department may suspend a license without notice in accordance with rules adopted by the executive commissioner for the emergency suspension of licenses.

(c) The department's hearing rules and the applicable provisions of Chapter 2001, Government Code, govern a hearing for the denial, suspension, emergency suspension, or revocation of a license and any appeal from that hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1019, eff. April 2, 2015.

Sec. 432.014. REINSTATEMENT OF LICENSE. (a) Not later than the 30th day after the date of the denial or emergency suspension, a person whose license application has been denied or whose license has been placed under an emergency suspension may request a reinspection for the purpose of granting or reinstating the license.

(b) The department shall perform the reinspection not later than the 10th day after the date of receipt of a written request for reinspection from the applicant or license holder.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.015. EFFECT OF OPERATION IN OTHER JURISDICTION; REPORTS. (a) A person who operates a salvage establishment or acts as a salvage broker outside this state may sell, distribute, or

otherwise traffic in distressed or salvaged merchandise in this state if the person holds a license issued by the department.

(b) The department may accept reports from authorities in other jurisdictions to determine the extent of compliance with the minimum standards adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.016. MUNICIPAL REGULATION. A municipality by ordinance may regulate salvage operators, salvage brokers, and salvage establishments. An ordinance may be stricter than the minimum standards established under this chapter or by rules adopted under this chapter, but it may not be less strict.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.017. USE OF SALVAGE WAREHOUSE. A person may not use a salvage warehouse to recondition merchandise or to sell to consumers.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.018. CIVIL PENALTY; INJUNCTION. (a) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted or order issued under this chapter, the commissioner may request the attorney general or a district, county, or municipal attorney of the municipality or county in which the violation has occurred, is occurring, or may occur to institute a civil suit for:

(1) an order enjoining the act or an order directing compliance;

(2) a permanent or temporary injunction, restraining order, or other appropriate order if the department shows that the person is engaged in or is about to engage in any of the acts;

(3) the assessment and recovery of a civil penalty; or

(4) both the injunctive relief and civil penalty.

(b) The penalty may be in an amount not to exceed $25,000 for each violation. Each day a violation continues is a separate violation.

(c) In determining the amount of the penalty, the court shall consider:

(1) the person's history of previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the demonstrated good faith of the person charged; and

(5) other matters as justice may require.

(d) Venue for a suit brought under this section is in the municipality or county in which the violation occurred or in Travis County.

(e) A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

(f) The commissioner and the attorney general may each recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both under this section, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.019. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) operates a salvage establishment or acts as a salvage broker without a license issued under this chapter; or

(2) fails to comply with a rule adopted under Section 432.011.

(b) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.020. EMERGENCY ORDER. (a) The commissioner or the commissioner's designee may issue an emergency order, either mandatory or prohibitory, concerning the sale or distribution of distressed foods, drugs, devices, or cosmetics in the department's jurisdiction if the commissioner or the commissioner's designee determines that:

(1) the sale or distribution of those foods, drugs,

devices, or cosmetics creates or poses an immediate and serious threat to human life or health; and

(2) other procedures available to the department to remedy or prevent the occurrence of the situation will result in unreasonable delay.

(b) The commissioner or the commissioner's designee may issue the emergency order without notice and hearing if the commissioner or the commissioner's designee determines it is necessary under the circumstances.

(c) If an emergency order is issued without a hearing, the department, not later than the 30th day after the date on which the emergency order is issued, shall determine a time and place for a hearing at which the emergency order will be affirmed, modified, or set aside. The hearing shall be held under departmental formal hearing rules.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.021. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates a rule adopted under Section 432.011 or an order adopted or license issued under this chapter.

(b) In determining the amount of the penalty, the department shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) other matters as justice may require.

(c) The penalty may not exceed $25,000 for each violation. Each day a violation continues is a separate violation.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1020, eff. April 2, 2015.

Sec. 432.022. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a person charged

with a violation is given an opportunity for a hearing.

(b) If a hearing is held, an administrative law judge of the State Office of Administrative Hearings shall make findings of fact and shall issue a written proposal for decision regarding the occurrence of the violation and the amount of the penalty.

(c) If the person charged with the violation does not request a hearing, the department may assess a penalty after determining that a violation has occurred and the amount of the penalty.

(d) After making a determination under this section that a penalty is to be assessed, the department shall issue an order requiring that the person pay the penalty.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(76), eff. April 2, 2015.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1021, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(76), eff. April 2, 2015.

Sec. 432.023. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date of issuance of an order finding that a violation has occurred, the department shall inform the person against whom the order is issued of the amount of the penalty.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

(1) pay the penalty in full; or

(2) file a petition for judicial review of the department's order contesting the amount of the penalty, the fact of the violation, or both.

(b-1) Within the period prescribed by Subsection (b), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) posting with the court a supersedeas bond for the

amount of the penalty; or

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(b-2) If the department receives a copy of an affidavit under Subsection (b-1)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(c) A bond posted under this section must be in a form approved by the court and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to, post the bond with, or file the affidavit with the court within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1022, eff. April 2, 2015.

Sec. 432.024. REFUND OF ADMINISTRATIVE PENALTY. On the date the court's judgment that an administrative penalty against a person should be reduced or not assessed becomes final, the court shall order that:

(1) the appropriate amount of any penalty payment plus accrued interest be remitted to the person not later than the 30th day after that date; or

(2) the bond be released, if the person has posted a bond.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1023, eff. April 2, 2015.

Sec. 432.025. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general, at the request of the commissioner, may bring a civil action to recover an administrative penalty under this chapter.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.026. DETAINED OR EMBARGOED ARTICLE. In accordance with Subchapter C, Chapter 431, the department may detain or embargo an article, including an article that is distressed merchandise, that is in the possession of a person licensed under this chapter and that is being held for the purpose of reconditioning in accordance with this chapter if the department makes the finding required by Section 431.048(e).

Added by Acts 2001, 77th Leg., ch. 265, Sec. 8, eff. May 22, 2001.

CHAPTER 433. TEXAS MEAT AND POULTRY INSPECTION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 433.001. SHORT TITLE. This chapter may be cited as the Texas Meat and Poultry Inspection Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.002. POLICY. (a) Meat and meat food products are an important source of the nation's total food supply. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, unadulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded meat or meat food products:

(1) injure the public welfare;

(2) destroy markets for wholesome, unadulterated, and properly labeled and packaged meat and meat food products;

(3) cause losses to livestock producers and processors of meat and meat food products;

(4) cause injury to consumers; and

(5) can be sold at lower prices and compete unfairly with wholesome, unadulterated, and properly labeled and packaged articles, to the detriment of consumers and the public.

(b) Regulation by the department and cooperation by this state and the United States as provided by this chapter are appropriate to protect the health and welfare of consumers and otherwise accomplish the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1024, eff. April 2, 2015.

Sec. 433.003. DEFINITIONS. In this chapter:

(1) "Animal food manufacturer" means a person in the business of manufacturing or processing animal food any part of which is derived from a carcass, or a part or product of a carcass, of livestock.

(2) "Capable of use as human food" means:

(A) not naturally inedible by humans; or

(B) not denatured or otherwise identified as required by department rule to deter its use as human food.

(3) "Color additive" has the meaning given by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(77), eff. April 2, 2015.

(5) "Exotic animal" means a member of a species of game not indigenous to this state, including an axis deer, nilgai antelope, red sheep, or other cloven-hooved ruminant animal.

(6) "Food additive" has the meaning given by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(7) "Inedible animal product" means a product, other than a meat food product, any part of which is made from a carcass, or a part or product of a carcass, of livestock.

(8) "Interstate commerce" means commerce between this state and:

(A) another state of the United States; or

(B) a foreign country.

(9) "Label" means a display of written, printed, or other graphic matter on the product or the immediate container, other than a package liner, of an article.

(10) "Labeling" means:

(A) a label; or

(B) other written, printed, or graphic material on an article or any container or wrapper of an article, or accompanying an article.

(11) "Livestock" means cattle, bison, sheep, swine, goats, horses, mules, other equines, poultry, domestic rabbits, exotic animals, or domesticated game birds.

(12) "Meat broker" means a person in the business of buying or selling, on commission, carcasses, parts of carcasses, meat, or meat food products of livestock, or otherwise negotiating purchases or sales of those articles other than for the person's own account or as an employee of another person.

(13) "Meat food product" means a product that is capable of use as human food and that is made in whole or part from meat or other portion of the carcass of livestock, except a product that:

(A) contains meat or other portions of the carcass only in a relatively small proportion or that historically has not been considered by consumers as a product of the meat food industry; and

(B) is exempted from the definition of meat food product by department rule under conditions assuring that the meat or other portions of the carcass contained in the product are unadulterated and that the product is not represented as a meat food product.

(14) "Official certificate" means a certificate prescribed by department rule for issuance by an inspector or other person performing official functions under this chapter.

(15) "Official marking device" means a device prescribed or authorized by department rule for use in applying an official mark.

(16) "Official establishment" means an establishment designated by the department at which inspection of the slaughter of livestock or the preparation of livestock products is maintained under this chapter.

(17) "Official inspection legend" means a symbol prescribed by department rule showing that an article was inspected and passed

as provided by this chapter.

(18) "Official mark" means the official inspection legend or other symbol prescribed by department rule to identify the status of an article or animal under this chapter.

(19) "Pesticide chemical" has the meaning given by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(20) "Poultry" means a live or dead domesticated bird.

(21) "Poultry product" means a poultry carcass, part of a poultry carcass, or a product any part of which is made from a poultry carcass or part of a poultry carcass, except a product that:

(A) contains poultry ingredients only in a relatively small proportion or that historically has not been considered by consumers as a product of the poultry food industry; and

(B) is exempted from the definition of poultry product by department rule under conditions assuring that the poultry ingredients in the product are unadulterated and that the product is not represented as a poultry product.

(22) "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, stuffed, or manufactured or processed in any other manner.

(23) "Processing establishment" means a slaughtering, packing, meat-canning, or rendering establishment or a similar establishment.

(24) "Raw agricultural commodity" has the meaning given by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(25) "Renderer" means a person in the business of rendering carcasses, or parts or products of carcasses, of livestock, other than rendering conducted under inspection under Subchapter B.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 41, Sec. 2, eff. May 15, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1025, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(77), eff. April 2, 2015.

Sec. 433.004. ADULTERATION. A carcass, part of a carcass,

meat, or a meat food product is adulterated if:

(1) it bears or contains a poisonous or deleterious substance that may render it injurious to health unless:

(A) the substance is not an added substance; and

(B) the quantity of the substance in or on the article does not ordinarily render it injurious to health;

(2) it bears or contains, because of administration of a substance to a live animal or otherwise, an added poisonous or deleterious substance that the department has reason to believe makes the article unfit for human food, other than a:

(A) pesticide chemical in or on a raw agricultural commodity;

(B) food additive; or

(C) color additive;

(3) any part of it is a raw agricultural commodity that bears or contains a pesticide chemical that is unsafe under Section 408, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 346a);

(4) it bears or contains a food additive that is unsafe under Section 409, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 348) or a color additive that is unsafe for purposes of Section 721 of that Act (21 U.S.C. Section 379e);

(5) it is not adulterated under Subdivision (3) or (4), but use of the pesticide chemical, food additive, or color additive that the article bears or contains is prohibited by department rule in establishments at which inspection is maintained under Subchapter B;

(6) any part of it consists of a filthy, putrid, or decomposed substance or is for another reason unsound, unhealthy, unwholesome, or otherwise unfit for human food;

(7) it is prepared, packed, or held under unsanitary conditions that may have caused it to become contaminated with filth or rendered injurious to health;

(8) any part of it is the product of an animal, including an exotic animal, that has died in a manner other than slaughter;

(9) any part of its container is composed of a poisonous or deleterious substance that may render the contents injurious to health;

(10) it is intentionally subjected to radiation, unless the use of the radiation is in conformity with a regulation or exemption under Section 409, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 348);

(11) any part of a valuable constituent is omitted or abstracted from it, or a substance is substituted for all or part of it;

(12) damage or inferiority is concealed;

(13) a substance has been added to or mixed or packed with it in a manner that:

(A) increases its bulk or weight;

(B) reduces its quality or strength; or

(C) makes it appear better or of greater value than it is; or

(14) it is margarine containing animal fat and any part of the raw material used in it consists of a filthy, putrid, or decomposed substance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1026, eff. April 2, 2015.

Sec. 433.005. MISBRANDING. (a) A livestock or poultry product is misbranded if:

(1) any part of its labeling is false or misleading;

(2) it is offered for sale under the name of another food;

(3) it is an imitation of another food, unless its label bears, in prominent type of uniform size, the word "imitation" immediately followed by the name of the food imitated;

(4) its container is made, formed, or filled so as to be misleading;

(5) except as provided by Subsection (b), it does not bear a label showing:

(A) the manufacturer's, packer's, or distributor's name and place of business; and

(B) an accurate statement of the quantity of the product by weight, measure, or numerical count;

(6) a word, statement, or other information required by or under the authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling in sufficient terms and with sufficient conspicuousness, compared with other words, statements, designs, or devices in the label or

labeling, to make it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by department rule under Section 433.043 unless:

(A) it conforms to the definition and standard; or

(B) its label bears:

(i) the name of the food specified in the definition and standard; and

(ii) to the extent required by department rule, the common names of optional ingredients present in the food, other than spices, flavoring, and coloring;

(8) it purports to be or is represented as a food for which a standard of fill of container has been prescribed by department rule under Section 433.043 and the food does not meet the standard of fill of container, unless its label bears, in the manner and form prescribed by department rule, a statement that it does not meet the standard;

(9) except as provided by Subsection (c), it does not purport to be or is not represented as a food for which a standard of identity or composition has been prescribed by department rule unless its label bears:

(A) any common or usual name of the food; and

(B) if it is fabricated from two or more ingredients, the common or usual name of each ingredient;

(10) it purports to be or is represented for special dietary uses and its label does not bear the information concerning its vitamin, mineral, and other dietary properties that the department, after the executive commissioner or department consults with the United States Secretary of Agriculture, has determined, and the executive commissioner has prescribed by rule, to be necessary to fully inform purchasers of its value for those uses;

(11) it bears or contains artificial flavoring, artificial coloring, or a chemical preservative unless it bears labeling stating that fact, except as otherwise prescribed by department rule for situations in which compliance with this subdivision is impracticable; or

(12) it does not bear on itself or its container, as prescribed by department rule:

(A) the inspection legend and establishment number of

the establishment in which the product was prepared; and

(B) notwithstanding any other provision of this section, other information required by department rule to assure that the product will not have false or misleading labeling and that the public will be informed of the manner of handling required to keep the product in wholesome condition.

(b) The executive commissioner may adopt rules:

(1) exempting from Subsection (a)(5) livestock products not in containers; and

(2) providing reasonable variations from Subsection (a)(5)(B) and exempting from that subsection small packages of livestock products or poultry products.

(c) For products subject to Subsection (a)(9), the department may authorize the designation of spices, flavorings, and colorings without naming them. The executive commissioner may adopt rules establishing exemptions from Subsection (a)(9)(B) to the extent that compliance with that subsection is impracticable or would result in deception or unfair competition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1027, eff. April 2, 2015.

Sec. 433.006. EXEMPTION FOR PERSONAL USE OR DONATION TO NONPROFIT FOOD BANK. (a) The provisions of this chapter requiring inspection of the slaughter of livestock and the preparation of carcasses, parts of carcasses, meat, and meat food products at establishments conducting those operations do not apply to the slaughtering of livestock or the preparation and transportation in intrastate commerce of those articles if:

(1) the articles are:

(A) livestock exclusively for personal use by the owner of the livestock, a member of the owner's family, or a nonpaying guest of the owner; or

(B) exotic animals exclusively for donation by a hunter to a nonprofit food bank, as defined by Section 418.026(a), Government Code;

(2) the slaughter or preparation is conducted at the

owner's premises, the premises where the hunter killed the exotic animal, or at a processing establishment; and

(3) the transportation is limited to moving the carcasses, parts of carcasses, meat, and meat food products to and from:

(A) the owner's premises and a processing establishment; or

(B) the premises where the hunter killed the exotic animal, the processing establishment, and the nonprofit food bank.

(b) The adulteration and misbranding provisions of this chapter, other than the requirement of an inspection legend, apply to articles prepared by a processing establishment under Subsection (a).

(c) This section does not grant a personal use exemption to an owner who intends to give carcasses, parts of carcasses, meat, or meat food products to any person other than a person listed in Subsection (a)(1).

(d) An article described by Subsection (a)(1)(B) may not be combined with:

(1) a meat food product regulated under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.); or

(2) a poultry product regulated under the federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 539, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 338 (H.B. 2213), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 338 (H.B. 2213), Sec. 2, eff. September 1, 2021.

Sec. 433.0065. ANIMAL SHARE EXEMPTION; CIVIL PENALTY. (a) In this section, "animal share" means an ownership interest in one or more identified livestock animals created by a contract between a farmer or rancher who owns the livestock and a prospective co-owner of the livestock.

(b) An animal share executed by a co-owner and a farmer or rancher under this section must include:

(1) a bill of sale the farmer or rancher provides to the co-owner conveying an ownership interest in the livestock;

(2) a provision authorizing the farmer or rancher to board the livestock and arrange preparation of the livestock as meat and meat food products for the co-owner; and

(3) a provision entitling the co-owner to a share of meat and meat food products derived from the livestock.

(c) The provisions of this chapter requiring inspection of livestock before slaughter and inspection of the preparation of meat and meat food products do not apply to the slaughter of livestock and preparation of meat and meat food products if:

(1) ownership of the livestock under an animal share is established before the livestock is slaughtered and the meat and meat food products are prepared;

(2) the meat and meat food products are:

(A) prepared from livestock subject to an animal share and delivered to the establishment preparing the products by the farmer or rancher boarding the livestock; and

(B) following preparation, delivered directly to the co-owner;

(3) on delivery of the meat or meat food products to the co-owner, the establishment provides to the co-owner notice that the department has not inspected the meat or meat food products in:

(A) a separate written statement that prominently displays the warning; or

(B) a warning statement prominently displayed on a label affixed to the meat or meat food product packaging;

(4) the label affixed to the meat or meat food product clearly and conspicuously states "Not for Sale"; and

(5) the farmer or rancher provides to the co-owner information describing the standards the farmer or rancher followed in maintaining livestock health and preparing the meat and meat food products derived from the livestock.

(d) A person may not sell, donate, or commercially redistribute meat or meat food products produced in accordance with this section. A person who violates this subsection is liable to this state for a civil penalty in the amount of $10,000 for each violation. The attorney general may bring an action to recover a civil penalty authorized under this subsection and may recover reasonable expenses incurred in obtaining the civil penalty, including court costs, attorney's fees, investigative costs, witness fees, and deposition expenses.

(e) A farmer or rancher may not publish a statement that implies department approval or endorsement regarding meat or meat food products delivered pursuant to an animal share.

(f) The adulteration and misbranding provisions of this chapter, other than the requirement of an inspection legend, apply to meat or meat food products prepared by a processing establishment under this section.

(g) This section does not authorize the preparation of meat or meat food products in violation of the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.).

Added by Acts 2023, 88th Leg., R.S., Ch. 1137 (S.B. 691), Sec. 1, eff. September 1, 2023.

Sec. 433.007. CONSTRUCTION WITH OTHER LAW. (a) This chapter prevails over any other law, including Chapter 431 (Texas Food, Drug, and Cosmetic Act), to the extent of any conflict.

(b) This chapter applies to a person, establishment, animal, or article regulated under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.) or the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 539, Sec. 2, eff. Sept. 1, 1997.

Sec. 433.008. RULES. (a) The executive commissioner shall adopt rules necessary for the efficient execution of this chapter.

(b) The executive commissioner shall adopt and use federal rules, regulations, and procedures for meat and poultry inspection, as applicable.

(c) The executive commissioner may adopt rules requiring a processing establishment that processes livestock under Section 433.006(a)(2) to obtain a grant of custom exemption for that activity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 539, Sec. 3, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1028, eff.

April 2, 2015.

Sec. 433.009. FEES. The department may collect fees for overtime and special services rendered to establishments, and may collect a fee for services required to be performed under this chapter relating to the inspection of animals, birds, or products that are not regulated under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.) or the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.). The executive commissioner by rule shall set the inspection fee in an amount sufficient to recover the department's costs of providing those services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1029, eff. April 2, 2015.

SUBCHAPTER B. INSPECTION AND OTHER REGULATION

Sec. 433.021. INSPECTION BEFORE SLAUGHTER. (a) To prevent the use in intrastate commerce of adulterated meat and meat food products, the department shall examine and inspect each livestock animal before it is allowed to enter a processing establishment in this state in which slaughtering and preparation of meat and meat food products of livestock are conducted solely for intrastate commerce.

(b) Any livestock animal found on inspection to show symptoms of disease shall be set apart and slaughtered separately from other livestock. The carcass of the animal shall be carefully examined and inspected as provided by department rule.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1030, eff. April 2, 2015.

Sec. 433.022. INSPECTION OF CARCASSES. (a) To prevent the use in intrastate commerce of adulterated meat and meat food products,

the department shall inspect each livestock carcass or part of a carcass capable of use as human food that is to be prepared at a processing establishment in this state in which those articles are prepared solely for intrastate commerce. If a carcass or part of a carcass is brought into the processing establishment, the inspection shall be made before a carcass or part of a carcass is allowed to enter a department in which it is to be treated and prepared for meat food products. The department shall also inspect products that have left a processing establishment and are returned to a processing establishment in which inspection is maintained.

(b) The inspector shall mark, stamp, tag, or label a carcass or part of a carcass found on inspection to be unadulterated as "inspected and passed," and one found adulterated as "inspected and condemned."

(c) If an inspector considers a subsequent inspection necessary, the inspector may reinspect any carcass or part of a carcass and condemn it if it has become adulterated.

(d) The processing establishment, in the presence of an inspector, shall destroy for food purposes each condemned carcass or part of a carcass. If the establishment fails to destroy a condemned carcass or part of a carcass, the department may remove the inspectors from the establishment.

(e) The executive commissioner may adopt rules that limit the entry of carcasses, parts of carcasses, meat, or meat food products into an establishment in which inspection under this chapter is maintained to assure that entry of the article into the establishment is consistent with the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1031, eff. April 2, 2015.

Sec. 433.023. INVESTIGATION OF DISEASE FINDINGS; QUARANTINE. (a) The department may investigate a disease finding by a livestock inspector if the department determines that the investigation is in the best interest of public health.

(b) If a disease adverse to the public health is found under this chapter, the commissioner may quarantine the premises where an

animal is located that is afflicted with any stage of a disease that may be transmitted to man or other animals. A quarantined animal may be removed from a quarantined area only on permission from and under supervision by the commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1032, eff. April 2, 2015.

Sec. 433.024. INSPECTION OF PROCESSING AND SLAUGHTERING ESTABLISHMENTS. (a) The department shall inspect each processing establishment in which livestock is slaughtered and meat and meat food products of the livestock are prepared solely for intrastate commerce as necessary to obtain information about the establishment's sanitary conditions.

(b) The department shall inspect each slaughtering establishment whose primary business is the selling of livestock to be slaughtered by the purchaser on premises owned or operated by the seller. This subsection does not nullify the provisions in Section 433.006 relating to exemptions or Section 433.0065 relating to an animal share exemption.

(c) The executive commissioner shall adopt rules governing sanitation maintenance in processing and slaughtering establishments as defined by this section.

(d) If sanitary conditions of a processing establishment render meat or meat food products adulterated, the department shall prohibit the meat or meat food products from being labeled, marked, stamped, or tagged as "Texas inspected and passed."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 308, Sec. 2, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1033, eff. April 2, 2015.
Acts 2021, 87th Leg., R.S., Ch. 338 (H.B. 2213), Sec. 3, eff. September 1, 2021.
Acts 2023, 88th Leg., R.S., Ch. 1137 (S.B. 691), Sec. 2, eff. September 1, 2023.

Sec. 433.0245. REQUIREMENTS FOR CERTAIN LOW-VOLUME LIVESTOCK PROCESSING ESTABLISHMENTS. (a) Except as provided by this section, the inspection and regulatory provisions of this chapter do not apply to a low-volume livestock processing establishment that is exempt from federal inspection.

(a-1) For purposes of this section, a low-volume livestock processing establishment:

(1) includes an establishment that processes fewer than 10,000 domestic rabbits or more than 1,000 but fewer than 10,000 poultry in a calendar year; and

(2) does not include an establishment that processes 1,000 or fewer poultry raised by the operator of the establishment in a calendar year.

(b) Except as provided by Subsections (e) and (f), a low-volume livestock processing establishment that is exempt from federal inspection shall register with the department in accordance with rules adopted by the executive commissioner for registration.

(c) Except as provided by Subsections (e) and (f), a low-volume livestock processing establishment that is exempt from federal inspection shall develop a sanitary operation procedures plan.

(d) Except as provided by Subsection (f), if contaminated livestock can be reasonably traced to a low-volume livestock processing establishment that is exempt from federal inspection, the department may request the attorney general or the district or county attorney in the jurisdiction where the facility is located to institute a civil suit to enjoin the operation of the establishment until the department determines that the establishment has been sanitized and is operating safely.

(e) A low-volume livestock processing establishment that is exempt from federal inspection and processes fewer than 500 domestic rabbits in a calendar year is not required to comply with Subsection (b) or (c).

(f) An establishment described by Subsection (a-1)(2):

(1) is not subject to additional state regulation; and

(2) may sell poultry products directly to consumers.

Added by Acts 2001, 77th Leg., ch. 730, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1034, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1032 (H.B. 410), Sec. 1, eff. September 1, 2019.

Sec. 433.025. INSPECTION OF MEAT FOOD PRODUCTS. (a) To prevent the use in intrastate commerce of adulterated meat food products, the department shall examine and inspect all meat food products prepared in a processing establishment solely for intrastate commerce. To make the examination and inspection, an inspector shall be given access at all times to each part of the establishment, regardless of whether the establishment is being operated.

(b) The inspector shall mark, stamp, tag, or label products found unadulterated as "Texas inspected and passed" and those found adulterated as "Texas inspected and condemned."

(c) The establishment shall, in the manner provided for condemned livestock or carcasses, destroy for food purposes each condemned meat food product. If the establishment does not destroy a condemned meat food product, the department may remove inspectors from the establishment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1035, eff. April 2, 2015.

Sec. 433.026. NIGHT INSPECTION; HOURS OF OPERATION. (a) The department shall provide for inspection at night of livestock slaughtered at night and food products prepared at night for the purposes of intrastate commerce.

(b) If the department determines that a person's operating hours are capricious or unnecessarily difficult, the department may set the person's time and duration of operation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1036, eff. April 2, 2015.

Sec. 433.027. INSPECTORS. (a) The department shall hire

inspectors of livestock that is subject to inspection under this chapter, and of carcasses, parts of carcasses, meat, meat food products, and sanitary conditions of establishments in which meat and meat food products are prepared. An inspector is an employee of the department and is under supervision of the chief officer in charge of inspection.

(b) The department shall designate at least one state inspector for each state representative district.

(c) The chief officer in charge of inspection is responsible for animal health as it relates to public health. The chief officer in charge of inspection must be licensed to practice veterinary medicine in this state or must be eligible for such a license when employed and must obtain the license not later than two years after the date of employment.

(d) An inspector shall perform the duties provided by this chapter and department rules. An inspection or examination must be performed as provided by department rules.

(e) An inspector may not stamp, mark, tag, or label a carcass, part of a carcass, or a meat food product unless it has been inspected and found unadulterated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1037, eff. April 2, 2015.

Sec. 433.028. REFUSAL TO INSPECT. (a) The department may withdraw or refuse to provide inspection service under this subchapter from an establishment for the period the department determines necessary to carry out the purposes of this chapter if the department determines after opportunity for hearing that the applicant for or recipient of the service is unfit to engage in a business requiring inspection under this subchapter because the applicant or recipient, or a person responsibly connected with the applicant or recipient, has been convicted in a federal or state court of a felony or more than one violation of another law based on:

(1) acquiring, handling, or distributing unwholesome, mislabeled, or deceptively packaged food; or

(2) fraud in connection with a transaction in food.

(b) The department's determination and order under this section is final unless, not later than the 30th day after the effective date of the order, the affected applicant or recipient files an application for judicial review in the appropriate court as provided by Section 433.082. Judicial review of the order is on the record from which the determination and order was made.

(c) This section does not affect the provisions of this subchapter relating to withdrawal of inspection services from establishments failing to maintain sanitary conditions or to destroy condemned carcasses, parts of carcasses, meat, or meat food products.

(d) For the purposes of this section, a person is responsibly connected with the business if the person is a partner, officer, director, holder or owner of 10 percent or more of the business's voting stock, or managerial or executive employee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1038, eff. April 2, 2015.

Sec. 433.029. ARTICLES NOT INTENDED FOR HUMAN CONSUMPTION. (a) Under this subchapter, the department may not inspect an establishment for the slaughter of livestock or the preparation of carcasses, parts of carcasses, or products of livestock if the articles are not intended for use as human food. Before offered for sale or transportation in intrastate commerce, those articles, unless naturally inedible by humans, shall be denatured or identified as provided by department rule to deter their use for human food.

(b) A person may not buy, sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce a carcass, part of a carcass, meat, or a meat food product that is not intended for use as human food unless the article is naturally inedible by humans, denatured, or identified as required by department rule.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1039, eff. April 2, 2015.

Sec. 433.030. DETENTION. (a) The department may detain a carcass, part of a carcass, meat, a meat food product of livestock, a product exempted from the definition of meat food product, or a dead, dying, disabled, or diseased livestock animal if the department finds the article on premises where it is held for purposes of intrastate commerce, or during or after distribution in intrastate commerce, and there is reason to believe that the article:

(1) is adulterated or misbranded and is capable of use as human food; or

(2) has not been inspected as required by, or has been or is intended to be distributed in violation of:

(A) this subchapter;

(B) the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.);

(C) the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.); or

(D) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(b) An article may be detained for not more than 20 days and only pending action under Section 433.031 or notification of a federal authority having jurisdiction over the article.

(c) A person may not move a detained article from the place where it is detained until the article is released by the department.

(d) The department may require that each official mark be removed from the article before it is released, unless the department determines that the article is eligible to bear the official mark.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1040, eff. April 2, 2015.

Sec. 433.031. SEIZURE. (a) A carcass, part of a carcass, meat, or a meat food product of livestock, or a dead, dying, disabled, or diseased livestock animal, that is being transported in intrastate commerce or held for sale after transportation in intrastate commerce may be proceeded against, seized, and condemned if the article:

(1) is or has been prepared, sold, transported, or

otherwise distributed or offered or received for distribution in violation of this chapter;

(2) is capable of use as human food and is adulterated or misbranded; or

(3) is otherwise in violation of this chapter.

(b) An action against an article under this section must be on a complaint in the proper court in the county in which the article is found. To the extent possible, the law governing admiralty cases applies to a case under this section, except that:

(1) either party may demand trial by jury of an issue of fact in the case; and

(2) the proceedings must be brought by and in the name of this state.

(c) After entry of the decree, a condemned article shall be destroyed or sold as the court directs. If the article is sold, the proceeds, minus court costs, court fees, and storage and other proper expenses, shall be deposited in the state treasury. An article may not be sold in violation of this chapter, the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.), the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.), or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.). On execution and delivery of a good and sufficient bond conditioned that the article will not be disposed of in violation of this chapter or federal law, the court may direct the article to be delivered to its owner by the department subject to supervision as necessary to ensure compliance with applicable laws.

(d) If a decree of condemnation is entered against the article and it is released under bond or destroyed, the court shall award court costs, court fees, and storage and other proper expenses against any person intervening as claimant of the article.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1041, eff. April 2, 2015.

Sec. 433.032. STORAGE AND HANDLING. (a) The executive commissioner may adopt rules prescribing conditions under which carcasses, parts of carcasses, meat, and meat food products of

livestock must be stored and handled by a person in the business of buying, selling, freezing, storing, or transporting those articles in or for intrastate commerce if the executive commissioner considers the rules necessary to prevent adulterated or misbranded articles from being delivered to a consumer.

(b) A person may not violate a rule adopted under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1042, eff. April 2, 2015.

Sec. 433.033. EQUINE PRODUCTS. A person may not sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, a carcass, part of a carcass, meat, or a meat food product of a horse, mule, or other equine unless the article is plainly and conspicuously marked or labeled or otherwise identified, as required by department rule, to show the kind of animal from which the article was derived. The department may require an establishment at which inspection is maintained under this chapter to prepare those articles in an establishment separate from one in which livestock other than equines is slaughtered or carcasses, parts of carcasses, meat, or meat food products of livestock other than equines are prepared.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1043, eff. April 2, 2015.

Sec. 433.034. RECORDS. (a) A person engaged for intrastate commerce in any of the following business activities shall keep records of each of the person's business transactions:

(1) slaughtering livestock;

(2) preparing, freezing, packaging, or labeling a livestock carcass or a part or product of a livestock carcass for use as human food or animal food;

(3) transporting, storing, buying, or selling, as a meat broker, wholesaler, or otherwise, a livestock carcass or a part or

product of a livestock carcass;

(4) rendering; or

(5) buying, selling, or transporting dead, dying, disabled, or diseased livestock, or a part of a carcass of a livestock animal that died in a manner other than slaughter.

(b) On notice by the department, a person required to keep records shall at all reasonable times give the department and any representative of the United States Secretary of Agriculture accompanying the department staff:

(1) access to the person's place of business; and

(2) an opportunity to:

(A) examine the facilities, inventory, and records;

(B) copy the records required by this section; and

(C) take a reasonable sample of the inventory, on payment of the fair market value of the sample.

(c) The person shall maintain a record required by this section for the period prescribed by department rule.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1044, eff. April 2, 2015.

Sec. 433.035. INSPECTION AND OTHER REGULATION OF EXOTIC ANIMALS IN INTERSTATE COMMERCE. (a) The department has the same rights of examination, inspection, condemnation, and detention of live exotic animals and carcasses, parts of carcasses, meat, and meat food products of exotic animals slaughtered and prepared for shipment in interstate commerce as the department has with respect to exotic animals slaughtered and prepared for shipment in intrastate commerce.

(b) The department has the same rights of inspection of establishments handling exotic animals slaughtered and prepared for shipment in interstate commerce as the department has with respect to establishments handling exotic animals slaughtered and prepared for intrastate commerce.

(c) The record-keeping requirements of Section 433.034 that apply to persons slaughtering, preparing, buying, selling, transporting, storing, or rendering in intrastate commerce apply to persons performing similar functions with exotic animals in

interstate commerce.

(d) A rulemaking power of the executive commissioner relating to animals in intrastate commerce applies to exotic animals in interstate commerce.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1045, eff. April 2, 2015.

SUBCHAPTER C. LABELING AND OTHER STANDARDS

Sec. 433.041. LABELING PASSED PRODUCTS. (a) When meat or a meat food product prepared for intrastate commerce that has been inspected as provided by this chapter and marked "Texas inspected and passed" is placed or packed in a container or covering in an establishment in which inspection is performed under this chapter, the person preparing the product shall attach a label to the container or covering stating that the contents have been "Texas inspected and passed" under this chapter. The inspector shall supervise the attachment of the label and the sealing or enclosing of the meat or meat food product in the container or covering.

(b) When an inspected carcass, part of a carcass, meat, or a meat food product is found to be unadulterated and leaves the establishment, it must bear legible information on itself or its container, as required by department rule, to prevent it from being misbranded.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1046, eff. April 2, 2015.

Sec. 433.0415. LABELING CELL-CULTURED PROTEIN. (a) In this section:

(1) "Cell-cultured protein" has the meaning assigned by Section 431.002.

(2) "Close proximity" means:

(A) immediately before or after the name of the product;

(B) in the line of the label immediately before or after the line containing the name of the product; or

(C) within the same phrase or sentence containing the name of the product.

(b) Cell-cultured protein must be labeled in prominent type equal to or greater in size than the surrounding type and in close proximity to the name of the protein using one of the following:

(1) "cell-cultured";

(2) "lab-grown"; or

(3) a similar qualifying term or disclaimer intended to clearly communicate to a consumer the contents of the protein.

(c) The provisions of this subchapter apply to cell-cultured protein, as applicable.

Added by Acts 2023, 88th Leg., R.S., Ch. 32 (S.B. 664), Sec. 3, eff. September 1, 2023.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 968 (S.B. 261), Sec. 4, eff. September 1, 2025.

Sec. 433.042. SALE OF MISLABELED ARTICLES PROHIBITED. A person may not sell an article subject to this chapter or offer the article for sale, in intrastate commerce, under a false or misleading name or other marking or in a container of a misleading form or size. An established trade name, other marking and labeling, or a container that is not false or misleading and that is approved by the department is permitted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1047, eff. April 2, 2015.

Sec. 433.043. STANDARDS OF LABELING, COMPOSITION, AND FILL. (a) If the executive commissioner determines that standards are necessary to protect the public, the executive commissioner may adopt rules prescribing:

(1) the style and type size that must be used for material required to be incorporated in labeling to avoid false or misleading

labeling of an article subject to this subchapter or Subchapter B; and

(2) subject to Subsection (b), a definition or standard of identity or composition or a standard of fill of container for an article subject to this subchapter.

(b) A standard prescribed under Subsection (a)(2) must be consistent with standards established under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.), the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.), and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.). To avoid inconsistency, the department shall consult with the United States Secretary of Agriculture before the standard is prescribed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1048, eff. April 2, 2015.

Sec. 433.044. ORDER TO CEASE FALSE OR MISLEADING PRACTICE. (a) If the department has reason to believe that a marking or labeling or the size or form of a container in use or proposed for use in relation to an article subject to this subchapter is false or misleading, the department may prohibit the use until the marking, labeling, or container is modified in the manner the department prescribes to prevent it from being false or misleading.

(b) The person using or proposing to use the marking, labeling, or container may request a hearing. The department may prohibit the use pending a final determination by the department.

(c) A hearing and any appeal under this section are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1049, eff. April 2, 2015.

Sec. 433.045. PROTECTION OF OFFICIAL DEVICE, MARK, AND CERTIFICATE. A person may not:

(1) cast, print, lithograph, or make in any other manner, except as authorized by the department in accordance with department rules:

(A) a device containing or label bearing an official mark or a simulation of an official mark; or

(B) a form of official certificate or simulation of an official certificate;

(2) forge an official device, mark, or certificate;

(3) without the department's authorization, use, alter, detach, deface, or destroy an official device, mark, or certificate or use a simulation of an official device, mark, or certificate;

(4) detach, deface, destroy, or fail to use an official device, mark, or certificate, in violation of a department rule;

(5) knowingly possess, without promptly notifying the department:

(A) an official device;

(B) a counterfeit, simulated, forged, or improperly altered official certificate; or

(C) a device, label, animal carcass, or part or product of an animal carcass, bearing a counterfeit, simulated, forged, or improperly altered official mark;

(6) knowingly make a false statement in a shipper's certificate or other certificate provided for by department rule; or

(7) knowingly represent that an article has been inspected and passed, when it has not, or is exempted, when it is not.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1050, eff. April 2, 2015.

SUBCHAPTER D. MISCELLANEOUS PROHIBITIONS

Sec. 433.051. SLAUGHTER OR PREPARATION NOT IN COMPLIANCE WITH CHAPTER. A person, at an establishment preparing articles only for intrastate commerce, may not slaughter a livestock animal or prepare a carcass, part of a carcass, meat, or a meat food product of a livestock animal, capable of use as human food, except in compliance with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.052. SALE, RECEIPT, OR TRANSPORTATION OF ARTICLES NOT IN COMPLIANCE WITH CHAPTER. A person may not:

(1) sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, livestock or a carcass, part of a carcass, meat, or a meat food product of livestock that is:

(A) capable of use as human food and is adulterated or misbranded when sold, offered, transported, or received for transportation; or

(B) required to be inspected by this chapter but has not been inspected and passed; or

(2) perform an act with respect to livestock or a carcass, part of a carcass, meat, or a meat food product of livestock, while the article is being transported in intrastate commerce or held for sale after transportation in intrastate commerce, that causes or is intended to cause the article to be adulterated or misbranded.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.053. SALE, RECEIPT, OR TRANSPORTATION OF POULTRY. A person may not sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce or from an official establishment, slaughtered poultry from which blood, feathers, feet, head, or viscera have not been removed as provided by department rule, except as authorized by department rule.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1051, eff. April 2, 2015.

Sec. 433.054. DEAD, DYING, DISABLED, AND DISEASED ANIMALS; ANIMALS DYING IN MANNER OTHER THAN SLAUGHTER. (a) If registration is required by department rule, a person may not engage in any of the following businesses, in or for intrastate commerce, unless the person has registered with the department:

(1) meat brokering or rendering;

(2) manufacturing animal food;

(3) wholesaling or warehousing for the public livestock or any part of a carcass of livestock, regardless of whether it is intended for human food; or

(4) buying, selling, or transporting dead, dying, disabled, or diseased livestock or part of a carcass of livestock.

(b) A registration must include the person's name, each of the person's places of business, and each trade name under which the person does business.

(c) A person may not engage in the business of selling, buying, or transporting in intrastate commerce dead, dying, disabled, or diseased livestock or part of the carcass of livestock that died otherwise than by slaughter unless the transaction or transportation complies with department rules adopted to assure that the animals or unwholesome parts or products of the animals are not used for human food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1052, eff. April 2, 2015.

Sec. 433.055. MISCELLANEOUS PROHIBITIONS APPLICABLE TO EXOTIC ANIMALS IN INTERSTATE COMMERCE. The prohibitions of Sections 433.051-433.054 that apply to intrastate commerce also apply to exotic animals in interstate commerce.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.056. INEDIBLE ANIMAL PRODUCTS. A person in the business of buying, selling, or transporting, in intrastate commerce, may not offer an inedible animal product for sale unless:

(1) the sale is for further sterilization processing; or

(2) the product has been processed in a manner that prevents the survival of disease-producing organisms or deleterious substances in the processed material.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

For expiration of this section, see Subsection (d).

Sec. 433.057. PROHIBITION ON CELL-CULTURED PROTEIN; TEMPORARY PROVISION. (a) In this section, "cell-cultured protein" has the meaning assigned by Section 431.002.

(b) A person may not offer for sale or sell cell-cultured protein for human consumption.

(c) To the extent another state law conflicts with this section, this section controls.

(d) This section expires September 1, 2027.

Added by Acts 2025, 89th Leg., R.S., Ch. 968 (S.B. 261), Sec. 5, eff. September 1, 2025.

SUBCHAPTER E. COOPERATION WITH FEDERAL GOVERNMENT

Sec. 433.071. RESPONSIBLE AGENCY. (a) The department is the state agency responsible for cooperating with the United States Secretary of Agriculture under Section 301, Federal Meat Inspection Act (21 U.S.C. Section 661), and Section 5, Federal Poultry Products Inspection Act (21 U.S.C. Section 454).

(b) The department shall cooperate with the secretary of agriculture in developing and administering the meat and poultry inspection program of this state under this chapter in a manner that will achieve the purposes of this chapter and federal law and that will ensure that the requirements will be at least equal to those imposed under Titles I and IV, Federal Meat Inspection Act (21 U.S.C. Sections 601 et seq. and 671 et seq.), and Sections 1-4, 6-10, and 12-22, Federal Poultry Products Inspection Act (21 U.S.C. Sections 451-453, 455-459, and 461-467d), not later than the dates prescribed by federal law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1053, eff. April 2, 2015.

Sec. 433.072. ADVISORY COMMITTEES. The commissioner may recommend to the United States Secretary of Agriculture state officials or employees for appointment to advisory committees provided for by Section 301, Federal Meat Inspection Act (21 U.S.C.

Section 661), and Section 5, Federal Poultry Products Inspection Act (21 U.S.C. Section 454). The commissioner shall serve as the representative of the governor for consultation with the secretary of agriculture under those Acts unless the governor selects another representative.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.073. TECHNICAL AND LABORATORY ASSISTANCE AND TRAINING PROGRAM. The department may accept from the United States Secretary of Agriculture:

(1) advisory assistance in planning and otherwise developing the state program;

(2) technical and laboratory assistance;

(3) training, including necessary curricular and instructional materials and equipment; and

(4) financial and other aid for administration of the program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1054, eff. April 2, 2015.

Sec. 433.074. FINANCING. The department may spend state funds appropriated for administration of this chapter to pay 50 percent of the estimated total cost of cooperation with the federal government under this subchapter, and all of the costs of performing services in relation to the inspection of animals or products not regulated under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.) or the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1055, eff. April 2, 2015.

SUBCHAPTER F. ENFORCEMENT

Sec. 433.081. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person violates a provision of this chapter for which this chapter does not provide another criminal penalty.

(b) Except as provided by Subsection (c), an offense under this section is punishable by a fine of not more than $1,000, imprisonment for not more than one year, or both.

(c) If an offense under this section involves intent to defraud or a distribution or attempted distribution of an adulterated article, except adulteration described by Section 433.004(11), (12), or (13), the offense is punishable by a fine of not more than $10,000, imprisonment for not more than three years, or both.

(d) A person does not commit an offense under this section by receiving for transportation an article in violation of this chapter if the receipt is in good faith and if the person furnishes, on request of the department:

(1) the name and address of the person from whom the article is received; and

(2) any document pertaining to the delivery of the article.

(e) This chapter does not require the department to report for prosecution, or for institution of complaint or injunction proceedings, a minor violation of this chapter if the department believes that the public interest will be adequately served by a suitable written warning notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1056, eff. April 2, 2015.

Sec. 433.0815. INTERFERENCE WITH INSPECTION; CRIMINAL PENALTIES. (a) A person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with a livestock inspector while the inspector is performing a duty under this chapter.

(b) An offense under this section is a Class B misdemeanor.

(c) It is a defense to prosecution under this section that the interruption, disruption, impediment, or interference alleged consisted of speech only.

Added by Acts 2001, 77th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2001.

Sec. 433.082. JURISDICTION FOR VIOLATION. The district court has jurisdiction of:

(1) an action to enforce and to prevent and restrain a violation of this chapter; and

(2) any other case arising under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.083. INVESTIGATION BY DEPARTMENT. The department may investigate and gather and compile information concerning the organization, business, conduct, practices, and management of a person engaged in intrastate commerce and the person's relation to other persons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1057, eff. April 2, 2015.

Sec. 433.084. EVIDENCE AND TESTIMONY. (a) For the purposes of this chapter, the department at all reasonable times shall be given access to documentary evidence of a person being investigated or proceeded against to examine or copy the evidence. The department by subpoena may require the attendance and testimony of a witness and the production of documentary evidence relating to a matter under investigation, at a designated place of hearing in a county in which the witness resides, is employed, or has a place of business.

(b) The commissioner or the commissioner's designee may sign subpoenas, administer oaths and affirmations, examine witnesses, and receive evidence. On disobedience of a subpoena, the department may request the district court to require attendance and testimony of a witness and the production of documentary evidence, and the district court having jurisdiction over the inquiry may order the compliance. Failure to obey the court's order is punishable as contempt.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1058, eff. April 2, 2015.

Sec. 433.085. REPORT TO DEPARTMENT. The department, by general or special order, may require a person engaged in intrastate commerce to file with the department an annual report, special report, or both, or answers in writing to specific questions furnishing the department information that the department requires concerning the person's organization, business, conduct, practices, management, and relation to other persons filing written answers and reports. The department may prescribe the form of the report or answers, require the report or answers to be given under oath, and prescribe a reasonable deadline for filing the report or answers, subject to the granting of additional time by the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1059, eff. April 2, 2015.

Sec. 433.086. MANDAMUS TO COMPEL COMPLIANCE. On application of the attorney general at the request of the department, the district court may issue a writ of mandamus ordering a person to comply with this chapter or an order under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1060, eff. April 2, 2015.

Sec. 433.087. DEPOSITIONS. (a) The department may order testimony to be taken before a person designated by the department and having power to administer oaths at any stage of a proceeding or investigation under this chapter. A person may be compelled to appear and depose or produce documentary evidence at a deposition in the same manner as a witness may be compelled to appear and testify and produce documentary evidence before the department under this

chapter.

(b) The person taking the deposition shall transcribe or supervise the transcription of the testimony. The transcript must be signed by the person deposed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1061, eff. April 2, 2015.

Sec. 433.088. COMPENSATION OF WITNESS OR REPORTER. A witness summoned before the department is entitled to the same fees and mileage paid a witness in a state court. A witness whose deposition is taken and the person taking the deposition are each entitled to the same fees paid for similar services in a state court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1062, eff. April 2, 2015.

Sec. 433.089. IMMUNITY. (a) A person is not excused from attending and testifying or producing documentary evidence before the department or in obedience to the department's subpoena, whether signed by the commissioner or the commissioner's designee, or in a cause or proceeding based on or growing out of an alleged violation of this chapter, on the ground that the required testimony or evidence may tend to incriminate the person or subject the person to penalty or forfeiture.

(b) A person may not be prosecuted or subjected to a penalty or forfeiture for or because of a transaction or matter concerning which the person is compelled to testify or produce evidence after having claimed a privilege against self-incrimination.

(c) The person testifying under this section is not exempt from prosecution and punishment for perjury committed in that testimony.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1063, eff.

April 2, 2015.

Sec. 433.090. CONTEMPT. (a) A person commits an offense if the person neglects or refuses to attend and testify or answer a lawful inquiry or to produce documentary evidence, if the person has the power to do so, in obedience to a subpoena or lawful requirement of the department.

(b) An offense under this section is punishable by a fine of not less than $1,000 or more than $5,000, imprisonment for not more than one year, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1064, eff. April 2, 2015.

Sec. 433.091. FALSE REPORT; FAILURE TO REPORT; CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally:

(1) makes or causes to be made a false entry in an account, record, or memorandum kept by a person subject to this chapter;

(2) neglects or fails to make or cause to be made full entries in an account, record, or memorandum kept by a person subject to this chapter of all facts and transactions pertaining to the person's business;

(3) removes from the jurisdiction of this state or mutilates, alters, or otherwise falsifies documentary evidence of a person subject to this chapter; or

(4) refuses to submit to the department, for inspection and copying, documentary evidence in the person's possession or control of a person subject to this chapter.

(b) An offense under this section is punishable by a fine of not less than $1,000 or more than $5,000, imprisonment for not more than three years, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1065, eff. April 2, 2015.

Sec. 433.092. FAILURE TO REPORT; CIVIL PENALTY. (a) If a person required by this chapter to file an annual or special report does not file the report before the deadline for filing set by the department and the failure continues for 30 days after notice of the default, the person forfeits to the state $100 for each day the failure continues.

(b) An amount due under this section is payable to the state treasury and is recoverable in a civil suit in the name of the state brought in the district court of the county in which the person's principal office is located or in which the person does business.

(c) Each district attorney, under the direction of the attorney general, shall prosecute for the recovery of an amount due under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1066, eff. April 2, 2015.

Sec. 433.093. UNLAWFUL DISCLOSURE; CRIMINAL PENALTY. (a) A state officer or employee commits an offense if the officer or employee, without the approval of the commissioner, makes public information obtained by the department.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $5,000, imprisonment for not more than one year, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1067, eff. April 2, 2015.

Sec. 433.094. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates this chapter, a rule adopted under the authority of this chapter, or an order or license issued under this chapter.

(b) In determining the amount of the penalty, the department

shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) such other matters as justice may require.

(c) The penalty may not exceed $25,000 a day for each violation.

(d) Each day a violation continues may be considered a separate violation.

Added by Acts 1991, 72nd Leg., ch. 388, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1068, eff. April 2, 2015.

Sec. 433.095. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a person charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the administrative law judge shall make findings of fact and shall issue to the department a written proposal for decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the person charged with the violation does not request a hearing, the department may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a person, the department shall issue an order requiring that the person pay the penalty.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(77), eff. April 2, 2015.

Added by Acts 1991, 72nd Leg., ch. 388, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1069, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(77), eff. April 2, 2015.

Sec. 433.096. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the department shall inform the person against whom the order is issued of the amount of the penalty for the violation.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

(1) pay the penalty in full; or

(2) file a petition for judicial review of the department's order contesting the amount of the penalty, the fact of the violation, or both.

(b-1) Within the period prescribed by Subsection (b), a person who files a petition for judicial review may:

(1) stay the enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) posting with the court a supersedeas bond for the amount of the penalty; or

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(b-2) If the department receives a copy of an affidavit under Subsection (b-1)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(c) A bond posted under this section must be in a form approved by the court and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to, post the bond with, or file the affidavit with the court within the period prescribed by Subsection (b) waives all rights to contest the violation or the

amount of the penalty.

Added by Acts 1991, 72nd Leg., ch. 388, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1070, eff. April 2, 2015.

Sec. 433.097. REFUND OF ADMINISTRATIVE PENALTY. On the date the court's judgment that an administrative penalty against a person should be reduced or not assessed becomes final, the court shall order that:

(1) the appropriate amount of any penalty payment plus accrued interest be remitted to the person not later than the 30th day after that date; or

(2) the bond be released if the person has posted a bond.

Added by Acts 1991, 72nd Leg., ch. 388, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1071, eff. April 2, 2015.

Sec. 433.098. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the department may bring a civil action to recover an administrative penalty under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 388, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1072, eff. April 2, 2015.

Sec. 433.099. INJUNCTION. (a) If it appears that a person has violated or is violating this chapter or a rule adopted under this chapter, the department may request the attorney general or the district attorney or county attorney in the jurisdiction where the violation is alleged to have occurred, is occurring, or may occur to institute a civil suit for:

(1) an order enjoining the violation; or

(2) a permanent or temporary injunction, a temporary restraining order, or other appropriate remedy, if the department shows that the person has engaged in or is engaging in a violation.

(b) Venue for a suit brought under this section is in the county in which the violation occurred or in Travis County.

(c) The department or the attorney general may recover reasonable expenses incurred in obtaining injunctive relief under this section, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses. The expenses recovered by the department under this section may be used for the administration and enforcement of this chapter. The expenses recovered by the attorney general may be used by the attorney general for any purpose.

Added by Acts 2001, 77th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1073, eff. April 2, 2015.

Sec. 433.100. EMERGENCY WITHDRAWAL OF MARK OR SUSPENSION OF INSPECTION SERVICES. (a) The department may immediately withhold the mark of inspection or suspend or withdraw inspection services if:

(1) the department determines that a violation of this chapter presents an imminent threat to public health and safety; or

(2) a person affiliated with the processing establishment impedes an inspection under this chapter.

(b) An affected person is entitled to a review of an action of the department under Subsection (a) in the same manner that a refusal or withdrawal of inspection services may be reviewed under Section 433.028.

Added by Acts 2001, 77th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1074, eff. April 2, 2015.

CHAPTER 434. PUBLIC HEALTH PROVISIONS RELATING TO PRODUCTION OF BAKED GOODS

SUBCHAPTER A. BAKERIES

Sec. 434.001. DEFINITION. In this subchapter "bakery" means a business producing, preparing, storing, or displaying bakery products intended for sale for human consumption.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.002. BAKERY REQUIREMENTS. (a) A building used or occupied as a bakery shall be clean and properly lighted, drained, and ventilated.

(b) A bakery shall have adequate plumbing and drainage facilities, including suitable wash sinks and restroom facilities. Restroom facilities shall be separate from the rooms in which the bakery products are produced or handled. Each wash sink area and restroom facility shall be clean, sanitary, well lit, and ventilated.

(c) The floors, walls, and ceilings of a room in which dough is mixed or handled, pastry is prepared for baking, or bakery products or the ingredients of those products are otherwise handled or stored shall be clean, wholesome, and sanitary. Each opening into the room, including a window or door, shall be properly screened or otherwise protected to exclude flies.

(d) A showcase, shelf, or other place from which bakery products are sold shall at all times be clean, wholesome, covered, properly ventilated, and protected from dust and flies.

(e) A workroom may not be used for purposes other than those directly connected with the preparation, baking, storage, or handling of food. A workroom may not be used as a washing, sleeping, or living room and shall at all times be kept separate and closed from living and sleeping rooms.

(f) Each bakery shall provide, separate from the workrooms, a dressing room for the changing and hanging of wearing apparel. Each dressing room shall be kept clean at all times.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.003. SANITARY REQUIREMENTS. (a) A person may not sit or lie on any table, bench, trough, or shelf intended for dough or bakery products.

(b) Animals or fowl may not be kept or allowed in any bakery or other place where bakery products are produced or stored.

(c) A person engaged in the preparation or handling of bakery products shall wash the person's arms and hands thoroughly before beginning the preparation, mixing, or handling of ingredients used in baking. A bakery shall provide sufficient soap, washbasins, and clean towels for that purpose.

(d) A person may not use tobacco in any form in any room in which a bakery product is manufactured, wrapped, or prepared for sale.

(e) A person with a communicable disease may not work in a bakery, handle any product in the bakery, or deliver a product from the bakery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.004. WHOLESOME INGREDIENTS REQUIRED. (a) Materials used in the production or preparation of bakery products shall be stored, handled, and maintained in a manner that protects the materials from spoiling and contamination. Materials may not be used if spoiled, contaminated, or otherwise likely to make the bakery product unwholesome or unfit as food.

(b) The ingredients used in the production of bakery products and the sale or offering for sale of those products shall comply with the laws relating to the adulteration and misbranding of food. Ingredients may not be used that may make the bakery product injurious to health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.005. REQUIREMENTS FOR TRANSPORTATION OF BAKERY PRODUCTS. A vehicle, box, basket, or other receptacle in which bakery products are transported shall at all times be kept clean and free from dust, flies, or other contaminants.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.006. STORAGE RECEPTACLE REQUIREMENTS. (a) A box or other receptacle for the storage or receipt of bakery products shall be:

(1) constructed and placed to be free from contamination from streets, alleys, and sidewalks;

(2) raised at least 10 inches above the level of the street or sidewalk; and

(3) clean and sanitary.

(b) Bread may not be placed in a storage box with other food except other bakery products.

(c) A storage box shall be equipped with a private lock and shall be kept locked except when opened to receive or remove bakery products or when being cleaned.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.007. WEIGHT STANDARDS FOR BREAD LOAVES. (a) Loaves of bread made by persons in the business of wholesaling and retailing bread must comply with the weight standards in this section.

(b) The standard weights for a loaf of bread are:

(1) one pound;

(2) 1-1/2 pounds; or

(3) any other multiple of one pound.

(c) This section does not prohibit the sale of bread slices in properly labeled packages weighing eight ounces or less.

(d) Variations in the weight standard may not exceed one ounce a pound within 24 hours after baking.

(e) This section does not affect the authority of the Department of Agriculture under Subchapter B, Chapter 13, Agriculture Code.

(f) This section does not apply to a food service establishment as defined under Chapter 437 or a food establishment licensed under Chapter 431 as a food manufacturer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1534, Sec. 1, eff. Sept. 1, 1999.

Sec. 434.008. CRIMINAL PENALTY. (a) A person who violates this subchapter commits an offense.

(b) An offense under this section is punishable by a fine of not less than $25 or more than $200.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. ADULTERATED INGREDIENTS

Sec. 434.021. BAKING POWDER. Baking powder that contains less than 10 percent of available carbon dioxide is adulterated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.022. SELF-RISING FLOUR. (a) In this section, "self-rising flour" means a combination of flour, salt, and chemical leavening ingredients. The flour must be at least of the "straight" grade, and the chemical leavening ingredients must be bicarbonate of soda and:

(1) calcium acid phosphate;

(2) sodium aluminum sulphate;

(3) cream of tartar;

(4) tartaric acid; or

(5) a combination of those ingredients.

(b) A self-rising flour or other compound by that name must produce when sold not less than one-half percent by weight of available carbon dioxide gas and may not contain more than 3-1/2 percent chemical leavening ingredients.

(c) A self-rising flour or other compound by that name that does not meet the requirements of Subsection (b) is adulterated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 435. DAIRY PRODUCTS

SUBCHAPTER A. MILK OFFERED FOR SALE AND MILK GRADING

Sec. 435.001. DEFINITIONS. In this subchapter:

(1) "Department" means the Department of State Health Services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Person" means an individual, plant operator, partnership, corporation, company, firm, trustee, or association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1075, eff. April 2, 2015.

Sec. 435.0015. APPLICABILITY OF OTHER LAW. Except as provided by Section 431.010(c), Chapter 431 applies to a person and milk or a milk product regulated under this chapter.

Added by Acts 2003, 78th Leg., ch. 757, Sec. 3, eff. Sept. 1, 2003.

Sec. 435.002. GRADING OF MILK AND MILK PRODUCTS. The executive commissioner may regulate the grading and labeling of milk and milk products. The department shall supervise the grading and labeling of milk and milk products according to the standards, specifications, and requirements adopted by the executive commissioner for each grade and in conformity with this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. 1714), Sec. 5, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1076, eff. April 2, 2015.

Sec. 435.003. MILK SPECIFICATIONS. (a) The executive commissioner by rule may:

(1) define what constitutes Grade "A" raw milk, Grade "A" raw milk products, Grade "A" pasteurized milk, Grade "A" pasteurized milk products, milk for manufacturing purposes, and dairy products; and

(2) provide specifications for the production and handling of milk and milk products listed in Subdivision (1) according to the safety and food value of the milk or milk products and the sanitary conditions under which they are produced and handled.

(b) The rules must be based on and consistent with the most recent federal definitions, specifications, rules, and regulations relating to milk and milk products.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. 1714), Sec. 1, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. 1714), Sec. 2, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1077, eff. April 2, 2015.

Sec. 435.004. INSPECTION OF MILK AND MILK PRODUCTS BY DEPARTMENT. (a) The department shall sample, test, or inspect Grade "A" pasteurized milk and milk products, Grade "A" raw milk and milk products for pasteurization, milk for manufacturing purposes, and dairy products that are offered for sale.

(b) Grade "A" pasteurized milk and milk products and Grade "A" raw milk and milk products for pasteurization that come from beyond the limits of state inspection shall be sampled, tested, or inspected to determine if department standards and requirements for milk and milk products are met.

(c) Sampling, testing, and inspection of Grade "A" pasteurized milk and milk products and Grade "A" raw milk and milk for pasteurization shall include, in addition to any other tests that may be required, tests for:

(1) plate count or direct microscopic count;

(2) antibiotics;

(3) sediments;

(4) phosphatase; and

(5) water and any elements foreign to the natural contents of Grade "A" pasteurized milk and milk products and Grade "A" raw milk and milk products for pasteurization.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1387, Sec. 5, eff. September 1, 2007.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. 1714), Sec. 3, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. 1714), Sec. 5, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1078, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1079, eff. April 2, 2015.

Sec. 435.005. INSPECTION OF MILK AND MILK PRODUCTS BY OTHER ENTITIES. (a) The department may contract with a county or municipality to act as the agent of the department to inspect milk and milk products and to perform other regulatory functions necessary to enforce this subchapter.

(b) A municipality, county, or other political subdivision may test and inspect milk or milk products. In the absence of a contract under Subsection (a), the municipality, county, or other political subdivision must pay the cost of the test or inspection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1080, eff. April 2, 2015.

Sec. 435.006. PERMIT TO SELL MILK. (a) A person who offers milk or milk products for sale or to be sold in this state must hold a permit issued by the department. The person must apply to the department for a permit.

(b) After receiving the application, the department may determine and award the grade of milk or milk products offered for sale by each applicant according to the specifications for grades established under this chapter.

(c) The department shall maintain a list of the names of all applicants to whom the department has awarded permission to use a Grade "A" label and remove from the list the name of a person whose permit is revoked.

(d) The department may not issue a producer dairy farm permit to a person for a bovine producer dairy farm located in an area infected with or at a high risk for bovine tuberculosis, as determined epidemiologically and defined by rule of the Texas Animal Health Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 2001, 77th Leg., ch. 445, Sec. 2, eff. June 4, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1081, eff. April 2, 2015.
Acts 2025, 89th Leg., R.S., Ch. 344 (H.B. 1275), Sec. 1, eff. June 20, 2025.

Sec. 435.007. USE OF MISLEADING LABEL. (a) A person may not use a label, device, or design marked Grade "A," or any other grade, statement, device, or design related to the safety, sanitary quality, or food value, on milk or milk products produced, offered for sale, or sold in this state that is misleading or does not conform to the requirements of this subchapter.

(b) A person may not represent, publish, label, or advertise milk or milk products as being Grade "A" unless the milk or milk products are:

(1) produced or processed by a person having a permit to use a Grade "A" label as provided by this subchapter; and

(2) produced, treated, and handled in accordance with the specifications and requirements adopted by the executive commissioner for Grade "A" milk and milk products.

(c) A person may not sell to a consumer milk or a milk product labeled Grade "A" that has not been produced or processed by a person who has a Grade "A" permit under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1082, eff. April 2, 2015.

Sec. 435.008. MILK FOR RESALE. A person is not required to hold a permit to resell or offer for resale in the same container any milk or milk products that are represented or advertised as a grade of milk or milk products and that are purchased from a person holding a permit authorizing that representation or advertisement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 435.009. FEES. (a) A political subdivision or agency of this state, other than the department, may not impose a fee on milk or a milk product, or on a person for the movement, distribution, or sale of milk or a milk product.

(b) The department shall impose the following fees only:

(1) a permit fee of $200 every two years for a producer dairy farm;

(2) a permit fee of $800 every two years for a processing or bottling plant;

(3) a permit fee of $800 every two years for a receiving and transfer station;

(4) a permit fee of $200 every two years for a milk transport tanker;

(5) a fee of 4-1/2 cents for each 100 pounds of milk or milk products processed and distributed in this state by a processing or bottling plant in this state, or processed by an out-of-state processing or bottling plant and sold in this state; and

(6) a fee of 1-1/2 cents for each 100 pounds of dairy products processed by a processing or bottling plant in this state.

(c) The executive commissioner shall adopt rules for the department to assess and collect the fees imposed by Subsections (b)(5) and (6) monthly, quarterly, semiannually, or annually according to amounts due by the plant. Monthly fees shall be assessed and collected in accordance with department rules.

(d) A permit issued under this chapter is valid for two years and must be renewed not later than September 1 of the year in which the permit expires.

(e) The department shall prorate fees paid for permits issued under this chapter after the beginning of a permit year.

(f) In this section:

(1) "Dairy farm" means a place where one or more cows or goats are kept and from which milk or milk products are provided, sold, or offered for sale to a milk plant or transfer station.

(2) "Transfer station" means a place where milk or milk products are transferred directly from one transport tank to another.

(g) Subject to legislative appropriation, the department may use money collected under Subsection (b)(5) only for milk inspection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 411, Sec. 1, eff. Sept. 1, 1997.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. 1714), Sec. 4, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1083, eff. April 2, 2015.

Sec. 435.010. RECORDS. The executive commissioner by rule shall establish minimum standards for recordkeeping by persons required to pay a fee under this subchapter. Those persons shall make the records available to the department on request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1084, eff. April 2, 2015.

Sec. 435.011. HEARING. (a) The executive commissioner shall establish a procedure by which a person aggrieved by the application of a department rule may receive a hearing under Chapter 2001, Government Code.
(b) The refusal or the suspension or revocation of a permit by the department and the appeal of that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 757, Sec. 4, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1085, eff. April 2, 2015.

Sec. 435.012. REFUSAL TO GRANT PERMIT; SUSPENSION OR REVOCATION OF PERMIT. (a) The department may refuse an application for a permit under this chapter or may suspend or revoke a permit issued under this chapter.
(b) The department may revoke and regrade permits if on inspection the department finds that the use of the grade label does

not conform to the specifications or requirements adopted by the executive commissioner under this chapter.

(c) The executive commissioner by rule shall:

(1) provide for the denial, suspension, or revocation of a permit; and

(2) establish reasonable minimum standards for granting and maintaining a permit issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 757, Sec. 5, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1086, eff. April 2, 2015.

Sec. 435.013. MUNICIPAL REGULATION AUTHORIZED. A municipality by ordinance may allow only pasteurized milk and pasteurized milk products to be sold at retail in that municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 435.014. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this section is punishable by a fine of not less than $25 or more than $200.

(c) Each violation constitutes a separate offense.

(d) The penalty prescribed by this section is subject to either the sanctions prescribed in the Grade A Pasteurized Milk Ordinance for products covered by the ordinance or any civil or administrative penalty or sanction otherwise imposed by Chapter 431 or other law for products not covered by the ordinance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 757, Sec. 6, eff. Sept. 1, 2003.

SUBCHAPTER B. SPECIAL REQUIREMENTS; SALE OF MILK

Sec. 435.021. IMPORTED MILK. (a) In this section:

(1) "Political subdivision" means a county or municipality or a school, junior college, water, hospital, reclamation, or other

special-purpose district.

(2) "State agency" means an agency, department, board, or commission of the state or a state eleemosynary, educational, rehabilitative, correctional, or custodial facility.

(b) A state agency or political subdivision may not purchase milk, cream, butter, or cheese, or a product consisting largely of one or more of those items, that has been imported from outside the United States.

(c) This section does not apply to the purchase of milk powder if domestic milk powder is not readily available in the normal course of business.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 435.022 by Acts 1989, 71st Leg., ch. 1100, Sec. 5.06(b), eff. Sept. 1, 1989.

CHAPTER 436. AQUATIC LIFE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 436.001. SHORT TITLE. This chapter may be cited as the Texas Aquatic Life Act.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.002. DEFINITIONS. In this chapter:

(1) "Approved area" means a molluscan shellfish growing area determined to be acceptable for harvesting of molluscan shellfish for direct marketing according to the National Shellfish Sanitation Program.

(2) "Approved source" means a source of molluscan shellfish acceptable to the department.

(3) "Aquatic life" means animals and plants that live in water.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(78), eff. April 2, 2015.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(78), eff. April 2, 2015.

(6) "Closed area" means a molluscan shellfish growing area where the taking including the harvesting for sale, the harvesting for transplant, or the gathering for depuration of molluscan

shellfish is temporarily or permanently not permitted. A closed area status may be placed on any one of the five classified area designations established by the National Shellfish Sanitation Program.

(7) "Conditionally approved area" means a molluscan shellfish growing area determined to meet approved area criteria for a predictable period conditioned on performance standards specified in a management plan. A conditionally approved area is a closed area when the area does not meet the approved area criteria.

(8) "Conditionally restricted area" means a molluscan shellfish growing area determined to meet restricted area criteria for a predictable period conditioned on performance standards specified in a management plan. A conditionally restricted area is open for transplanting or gathering for depuration only during the times it meets the restricted area criteria and is specified as a conditionally restricted area by the department. A conditionally restricted area is a closed area at all times for harvesting of molluscan shellfish for direct marketing.

(9) "Container" means the physical material in contact with or immediately surrounding molluscan shellfish or crabmeat that confines it into a single unit.

(10) "Crabmeat" means the edible meat of steamed or cooked crabs that has not been processed other than by picking, packing, and chilling.

(11) "Crabmeat processing license" means a numbered document issued by the department that authorizes a person to process crabmeat for sale.

(12) "Crabmeat processor" means a person who cooks and backs crabs and who picks, packs, or pasteurizes crabmeat.

(13) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(78), eff. April 2, 2015.

(14) "Depletion" means the removal of all existing commercial quantities of market-size molluscan shellfish.

(15) "Depuration" means the process of using any approved artificially controlled aquatic environment to reduce the level of bacteria and viruses in molluscan shellfish.

(16) "Depuration plant" means a place where depuration of molluscan shellfish occurs.

(17) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(78), eff. April 2, 2015.

(18) "Growing area" means an area that supports or could support live molluscan shellfish.

(19) "Health authority" means a physician authorized to administer state or local laws relating to public health.

(20) "Label" means written, printed, or graphic matter appearing on a container of molluscan shellfish or crabmeat, including any written, printed, or graphic matter on any wrappers or accompanying any molluscan shellfish or crabmeat.

(21) "Molluscan shellfish" means an edible species of oyster, clam, or mussel that is shucked, in the shell, fresh, or fresh frozen, in whole or in part, as defined by the National Shellfish Sanitation Program.

(22) "National Shellfish Sanitation Program" means the cooperative program by the states, the United States Food and Drug Administration, and the shellfish industry that classifies molluscan shellfish growing areas and certifies interstate molluscan shellfish shippers according to the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish or its successor program and documents.

(23) "Open area" means a molluscan shellfish growing area where harvesting for sale, harvesting for transplant, or gathering for depuration of molluscan shellfish is permitted. An open area status may be placed on any one of the classified area designations established by the National Shellfish Sanitation Program except for a prohibited area.

(24) "Pasteurization plant" means a place where crabmeat is heat-treated in compliance with department rules, without complete sterilization, to improve the keeping qualities of the meat.

(25) "Picking plant" means a place where crabs are cooked and edible meat is picked from the crabs.

(26) "Possess" means the act of having in possession or control, keeping, detaining, restraining, or holding as owner, agent, bailee, or custodian for another.

(27) "Prohibited area" means an area where the department finds, according to a sanitary, chemical, or bacteriological survey, that the area contains aquatic life that is unfit for human consumption. A prohibited area for molluscan shellfish means a molluscan shellfish growing area determined to be unacceptable for transplanting, gathering for depuration, or harvesting of molluscan shellfish. The only molluscan shellfish removal permitted from a

prohibited area is for the purpose of depletion.

(28) "Principal display panel" means the part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for sale.

(29) "Public water" means all bodies of water that are the property of the state under Section 1.011, Parks and Wildlife Code.

(30) "Restricted area" means a molluscan shellfish growing area that is determined to be unacceptable for harvesting of molluscan shellfish for direct marketing but that is acceptable for transplanting or gathering for depuration. A restricted area may be closed for transplanting or gathering for depuration when the area does not meet the restricted area criteria established by the National Shellfish Sanitation Program.

(31) "Sale" means the transfer of ownership or the right of possession of an item to a person for consideration and includes barter.

(32) "Shellfish certificate" means a numbered document issued by the department that authorizes a person to process molluscan shellfish for sale.

(33) "Shellfish processor" means a person who depurates, shucks, packs, or repacks molluscan shellfish.

(34) "Take" means catch, hook, net, snare, trap, kill, or capture by any means, including the attempt to take.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1087, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(78), eff. April 2, 2015.

Sec. 436.003. HEALTH AUTHORITY POWER TO DELEGATE. A health authority may delegate any power or duty imposed on the health authority in this chapter to an employee of the local health department, the local health unit, or the public health district in which the health authority serves, unless otherwise restricted by law.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1088, eff. April 2, 2015.

SUBCHAPTER B. PROHIBITED ACTS

Sec. 436.011. PROHIBITED ACTS. The following acts and the causing of the following acts within this state are unlawful and prohibited:

(1) taking, selling, offering for sale, or holding for sale molluscan shellfish from a closed area;

(2) taking, selling, offering for sale, or holding for sale molluscan shellfish from a restricted or conditionally restricted area without complying with a department rule to ensure that the molluscan shellfish have been purified, unless:

(A) permission is first obtained from the Parks and Wildlife Department and the transplanting is supervised by that department; and

(B) the Parks and Wildlife Department furnishes a copy of the transplant permit to the department before transplanting activities begin;

(3) possessing a species of aquatic life taken from a prohibited area while the area was prohibited for that species;

(4) operating as a molluscan shellfish processor without a shellfish certificate for each plant or place of business;

(5) operating as a crabmeat processor without a crabmeat processing license for each plant;

(6) selling, offering for sale, or holding for sale molluscan shellfish or crabmeat that has not been picked, handled, packaged, or pasteurized in accordance with department rules;

(7) selling, offering for sale, or holding for sale molluscan shellfish or crabmeat from facilities for the handling and packaging of molluscan shellfish or crabmeat that do not comply with department rules;

(8) selling, offering for sale, or holding for sale molluscan shellfish or crabmeat that is not labeled in accordance with department rules;

(9) selling, offering for sale, or holding for sale molluscan shellfish that is not in a container bearing a valid certificate number from a state or nation whose molluscan shellfish certification program conforms to the current National Shellfish

Sanitation Program Guide for the Control of Molluscan Shellfish issued by the Food and Drug Administration or its successor, except selling molluscan shellfish removed from a container bearing a valid certificate number for on-premises consumption; in the event the Texas Molluscan Shellfish Program is found to be out of conformity with the current guide, selling, offering for sale, or holding for sale molluscan shellfish in a container bearing a valid Texas certificate number shall not be considered a violation of this chapter provided all other requirements of this chapter are complied with and the shellfish have come from an approved source;

(10) processing, transporting, storing for sale, possessing with intent to sell, offering for sale, or selling molluscan shellfish or crabmeat for human consumption that is adulterated or misbranded;

(11) removing or disposing of a detained or embargoed article in violation of Section 436.028;

(12) altering, mutilating, destroying, obliterating, or removing all or part of the labeling of a container;

(13) adulterating or misbranding molluscan shellfish or crabmeat in commerce;

(14) refusing to permit entry or inspection, to permit the taking of a sample, or to permit access to or copying by the department as required by this chapter;

(15) failing to establish or maintain a record or report required by this chapter or by a department rule; or

(16) violating a department rule or order.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1089, eff. April 2, 2015.

SUBCHAPTER C. ENFORCEMENT

Sec. 436.021. DEFINITION. In this subchapter, "detained or embargoed article" means molluscan shellfish or crabmeat that has been detained or embargoed under Section 436.028.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.022. INSPECTION. (a) The department or a health authority may, on presenting appropriate credentials to the owner, operator, or agent in charge:

(1) enter at reasonable times, including when processing is conducted, an establishment or location in which molluscan shellfish or crabmeat is processed, packed, pasteurized, or held for introduction into commerce or held after introduction into commerce;

(2) enter a vehicle being used to transport or hold the molluscan shellfish or crabmeat in commerce; or

(3) inspect the establishment, location, or vehicle, including equipment, records, files, papers, materials, containers, labels, or other items, and obtain samples necessary for enforcement of this chapter.

(b) The inspection of an establishment or location is to determine whether the molluscan shellfish or crabmeat:

(1) is adulterated or misbranded;

(2) may not be processed, introduced into commerce, sold, or offered for sale under this chapter or department rules; or

(3) is otherwise in violation of this chapter.

(c) The department or a health authority may not inspect:

(1) financial data;

(2) sales data, other than shipment data;

(3) pricing data;

(4) personnel data, other than personnel data relating to the qualifications of technical and professional personnel; or

(5) research data.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1090, eff. April 2, 2015.

Sec. 436.023. ACCESS TO RECORDS. A person who is required to maintain records under this chapter or a department rule or a person who is in charge or custody of those records on request shall permit the department or health authority at all reasonable times to have access to and to copy the records.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1091, eff. April 2, 2015.

Sec. 436.024. ACCESS TO RECORDS SHOWING MOVEMENT IN COMMERCE. (a) A commercial carrier or other person receiving or holding molluscan shellfish or crabmeat in commerce on request shall permit the department or health authority at all reasonable times to have access to and to copy all records showing:

(1) the movement in commerce of the molluscan shellfish or crabmeat;

(2) the holding after movement in commerce of the molluscan shellfish or crabmeat; or

(3) the quantity, shipper, and consignee of the molluscan shellfish or crabmeat.

(b) The carrier or other person may not refuse access to and copying of the requested records if the request is accompanied by a written statement that specifies the nature or kind of molluscan shellfish or crabmeat to which the request relates.

(c) A carrier is not subject to other provisions of this chapter solely because of the carrier's receipt, carriage, holding, or delivery of molluscan shellfish or crabmeat in the usual course of business as a carrier.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1092, eff. April 2, 2015.

Sec. 436.025. EMERGENCY ORDER. (a) The department may issue an emergency order that mandates or prohibits the taking, processing, or sale of molluscan shellfish or crabmeat in the department's jurisdiction if:

(1) the processing or sale of the molluscan shellfish or crabmeat creates or poses an immediate threat to human life or health; and

(2) other procedures available to the department to remedy or prevent the threat will result in unreasonable delay.

(b) The department may issue the emergency order without notice

and hearing if the department or a person designated by the department determines that issuing the emergency order without notice and hearing is necessary under the circumstances.

(c) If an emergency order is issued without a hearing, the department shall determine the earliest time and place for a hearing at which the emergency order shall be affirmed, modified, or set aside. The hearing shall be held under department rules.

(d) This section prevails over Section 12.001.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1093, eff. April 2, 2015.

Sec. 436.026. VIOLATION; INJUNCTION. (a) The department or a health authority may petition the district court for a temporary restraining order to restrain a continuing violation or a threat of a continuing violation of Section 436.011 if the department or health authority believes that:

(1) a person has violated, is violating, or is threatening to violate a provision of Section 436.011; and

(2) the violation or threatened violation creates an immediate threat to the health and safety of the public.

(b) If the court finds that a person is violating or threatening to violate Section 436.011, the court shall grant injunctive relief.

(c) Venue for a suit brought under this section is in the county in which the violation or threat of violation is alleged to have occurred or in Travis County.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1094, eff. April 2, 2015.

Sec. 436.027. CIVIL PENALTY. (a) At the request of the department, the attorney general or a district, county, or municipal attorney shall institute an action in district or county court to collect a civil penalty from a person who has violated Section

436.011.

(b) A person who violates Section 436.011 is liable for a civil penalty not to exceed $25,000 a day for each violation. Each day of a continuing violation constitutes a separate violation for purposes of penalty assessment.

(c) In determining the amount of the penalty, the court shall consider:

(1) the person's history of previous violations under this chapter;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the demonstrated good faith of the person; and

(5) other matters as justice may require.

(d) A civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the state treasury to the credit of the general revenue fund. A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

(e) Venue for a suit to collect a civil penalty brought under this section is in the municipality or county in which the violation occurred or in Travis County.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1095, eff. April 2, 2015.

Sec. 436.028. DETAINED OR EMBARGOED ARTICLE. (a) The department may detain or embargo molluscan shellfish or crabmeat if the department believes or has probable cause to believe that the molluscan shellfish or crabmeat:

(1) is adulterated; or

(2) is misbranded so that the molluscan shellfish or crabmeat is dangerous or fraudulent under this chapter.

(b) The department shall affix to any molluscan shellfish or crabmeat a tag or other appropriate marking that gives notice that the molluscan shellfish or crabmeat is, or is suspected of being, adulterated or misbranded and that the molluscan shellfish or crabmeat has been detained or embargoed.

(c) The tag or marking on a detained or embargoed article must prohibit the removal or disposal of the article unless permission is given by the department or a court.

(d) A person may not remove a detained or embargoed article from the premises or dispose of it without permission of the department or a court. The department may permit perishable goods to be moved to a place suitable for proper storage.

(e) The department shall remove the tag or other marking from a detained or embargoed article if the department believes that the article is not adulterated or misbranded.

(f) The claimant of a detained or embargoed article may move the article to a secure storage area with the permission of the department.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1096, eff. April 2, 2015.

Sec. 436.029. REMOVAL ORDER FOR DETAINED OR EMBARGOED ARTICLE. (a) The department may order the claimant or the claimant's agent to move a detained or embargoed article to a secure place to prevent the unauthorized disposal or removal of the article.

(b) If the claimant fails to carry out the order, the department may move the article.

(c) If the department moves the article, the department shall assess the cost of removal against the claimant.

(d) The department may request the attorney general to bring an action in the district court in Travis County to recover the costs of removal. In a judgment in favor of the state, the court may award costs, attorney fees, and interest from the date the expense was incurred until the date the department is reimbursed.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1097, eff. April 2, 2015.

Sec. 436.030. RECALL FROM COMMERCE. (a) The department may

order a recall of molluscan shellfish or crabmeat with:

(1) the detention or embargo of molluscan shellfish or crabmeat;

(2) the issuance of an emergency order under Section 436.025; or

(3) both.

(b) The recall order may require that the molluscan shellfish or crabmeat be removed to one or more secure areas approved by the department.

(c) The recall order must be in writing and be signed by the commissioner and may be issued:

(1) before or in conjunction with a tag or other marking as provided by Section 436.028;

(2) with an emergency order authorized by Section 436.025; or

(3) both.

(d) The recall order is effective until it expires by its own terms, is withdrawn by the department, is reversed by a court in an order denying condemnation, or is set aside at a hearing authorized by Section 436.025.

(e) The claimant shall pay the costs of the removal and storage of a recalled product. If the claimant or the claimant's agent fails to carry out the recall order, the department may recall the product. The department shall assess the costs of the recall against the claimant.

(f) The department may request the attorney general to bring an action in a district court in Travis County to recover the costs of recall. In a judgment in favor of the state, the court may award costs, attorney fees, and interest from the date the expense was incurred until the date the department is reimbursed.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1098, eff. April 2, 2015.

Sec. 436.031. CONDEMNATION. If molluscan shellfish or crabmeat is adulterated or misbranded, an action for the condemnation of the molluscan shellfish or crabmeat may be filed in a district court in

whose jurisdiction the molluscan shellfish or crabmeat is located.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.032. DESTRUCTION OF MOLLUSCAN SHELLFISH OR CRABMEAT. (a) The court may order the destruction of sampled, detained, or embargoed molluscan shellfish or crabmeat if the court finds that the article is adulterated or misbranded.

(b) After entry of the court's order, the department shall supervise the destruction of the article.

(c) The claimant shall pay the cost of the destruction of the article.

(d) The court shall order the claimant or the claimant's agent to pay court costs, storage fees, and other proper expenses.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1099, eff. April 2, 2015.

Sec. 436.033. CORRECTION BY PROPER LABELING. (a) A court may order the delivery of sampled, detained, or embargoed molluscan shellfish or crabmeat that is misbranded to the claimant for relabeling under the supervision of the department if:

(1) the court costs and other expenses have been paid;

(2) proper labeling can correct the misbranding; and

(3) the claimant executes a bond, conditioned on the correction of the misbranding by proper labeling.

(b) The claimant shall pay the costs of the supervision.

(c) The court shall order the return of the molluscan shellfish or crabmeat to the claimant if the department represents to the court that the molluscan shellfish or crabmeat no longer violates this chapter and that the expenses of supervision are paid.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1100, eff. April 2, 2015.

Sec. 436.034. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates Section 436.011 or an order issued under this chapter.

(b) In determining the amount of the penalty, the department shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) the hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) other matters as justice may require.

(c) The penalty may not exceed $25,000 a day for each violation.

(d) Each day of a continuing violation constitutes a separate violation.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1101, eff. April 2, 2015.

Sec. 436.035. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) The department may assess an administrative penalty only after a person charged with a violation is given an opportunity for a hearing.

(b) If a hearing is to be held, the department shall refer the matter to the State Office of Administrative Hearings, and an administrative law judge of that office shall make findings of fact and shall issue a written proposal for decision regarding the violation and the amount of the penalty.

(c) If the person charged with the violation does not request a hearing, the department may assess a penalty after determining that a violation has occurred and the amount of the penalty.

(d) The department shall issue an order requiring a person to pay a penalty assessed under this section.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1102, eff. April 2, 2015.

Sec. 436.036. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order is issued under Section 436.035(d), the department shall notify the person against whom the penalty is assessed of the order and the amount of the penalty.

(b) Not later than the 30th day after the date notice of the order is given to the person, the person shall:

(1) pay the penalty in full; or

(2) file a petition for judicial review of the department's order contesting the amount of the penalty, the findings of the department, or both.

(c) If the person seeks judicial review within the period prescribed by Subsection (b), the person may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) posting with the court a supersedeas bond for the amount of the penalty; or

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(c-1) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(d) A bond posted under this section must be in a form approved by the court and must be effective until judicial review of the order or decision is final.

(e) A person who does not send the money to, post the bond with, or file the affidavit with the court within the period described by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

(f) The attorney general, at the request of the department, may bring a civil action to recover an administrative penalty assessed under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1103, eff. April 2, 2015.

Sec. 436.037. REFUND OF ADMINISTRATIVE PENALTY. On the date the court's judgment that an administrative penalty against a person should be reduced or not assessed becomes final, the court shall order that:

(1) the appropriate amount of any penalty payment plus accrued interest be remitted to the person not later than the 30th day after that date; or

(2) the bond be released, if the person has posted a bond.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1104, eff. April 2, 2015.

Sec. 436.038. CRIMINAL PENALTY; DEFENSES. (a) A person commits an offense if the person intentionally, knowingly, recklessly, or with criminal negligence commits an unlawful act under Section 436.011.

(b) A violation of Section 436.011(1), (2), or (3) is a Class B Parks and Wildlife Code misdemeanor under Section 12.405, Parks and Wildlife Code. Each day of a continuing violation constitutes a separate offense. Commissioned officers of the Parks and Wildlife Department shall enforce Sections 436.011(1), (2), and (3).

(c) If it is shown at trial that the defendant has been convicted once within five years before the trial date of a violation of Section 436.011(1) or (2), a violation by the defendant under Section 436.011(1) or (2) is a Class A Parks and Wildlife Code misdemeanor under Section 12.404, Parks and Wildlife Code.

(d) If it is shown at trial that the defendant has been convicted two or more times within five years before the trial date

of a violation of Section 436.011(1) or (2), a violation by the defendant under Section 436.011(1) or (2) is a Parks and Wildlife Code felony under Section 12.407, Parks and Wildlife Code.

(e) A violation of Section 436.011(4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) is a Class A misdemeanor. Each day of a continuing violation constitutes a separate offense.

(f) A person is not subject to the penalties of Subsection (e) if the person received molluscan shellfish or crabmeat in commerce and delivered or offered to deliver the molluscan shellfish or crabmeat in good faith, unless the person refuses to furnish on request of the department or a health authority the name and address of the person from whom the product was received and copies of any documents relating to the receipt of the product.

(g) A publisher, radiobroadcast licensee, or agency or medium for the publication or broadcast of an advertisement, except the harvester, processor, distributor, or seller of molluscan shellfish or crabmeat to which a false advertisement relates, is not liable under this section for the publication or broadcast of the false advertisement unless the person has refused to furnish, on the request of the department, the name and address of the harvester, processor, distributor, seller, or advertising agency residing in this state who caused the person to publish or broadcast the advertisement.

(h) A person is not subject to the penalties of Subsection (e) for a violation of Section 436.011 involving misbranded molluscan shellfish or crabmeat if the violation exists only because the product is misbranded because of a mistake in advertising, unless the violation is committed with intent to defraud or mislead.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1105, eff. April 2, 2015.

Sec. 436.039. INITIATION OF PROCEEDINGS. The attorney general or a district, county, or municipal attorney to whom the department or a health authority reports a violation of this chapter shall prosecute without delay.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1106, eff. April 2, 2015.

Sec. 436.040. MINOR VIOLATION. This chapter does not require the department or a health authority to report for prosecution a minor violation of this chapter if the department or health authority believes that the public interest is adequately served by a written warning.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1107, eff. April 2, 2015.

SUBCHAPTER D. ADULTERATED AQUATIC LIFE

Sec. 436.061. ADULTERATED AQUATIC LIFE. (a) A species of aquatic life is adulterated if it has been taken from an area declared prohibited for that species by the department.

(b) Molluscan shellfish or crabmeat is adulterated if:

(1) it bears or contains a poisonous or deleterious substance that may render it injurious to health unless the substance is a naturally occurring substance and the quantity of the substance in the molluscan shellfish or crabmeat does not ordinarily render the substance injurious to health;

(2) it consists in whole or in part of a diseased, contaminated, filthy, or putrid substance or if it is otherwise unfit for human consumption;

(3) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or may have been rendered diseased, unwholesome, or injurious to health;

(4) it is in whole or in part the product of diseased aquatic life or has died otherwise than by taking;

(5) its container is made in whole or in part of a poisonous or deleterious substance that may render the contents injurious to health;

(6) it has been intentionally exposed to radiation, unless

the use of the radiation complied with a regulation or an exemption under Section 409, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 348);

(7) a substance has been substituted in whole or in part for it;

(8) damage to or inferiority of the product has been concealed;

(9) a substance has been added, mixed, or packed to increase its bulk or weight, to reduce its quality or strength, or to make it appear better or of greater value than it is;

(10) it contains a chemical substance containing sulphites, sulphur dioxide, or any other chemical preservative that is not approved by the Animal and Plant Health Inspection Service or by department rules;

(11) the molluscan shellfish have been taken from a closed area;

(12) the molluscan shellfish have been taken from a restricted or conditionally restricted area and have not been purified under department rules;

(13) the molluscan shellfish have been processed by a person without a shellfish certificate;

(14) the molluscan shellfish have not been handled and packaged in accordance with department rules;

(15) the crabmeat has been processed by a person without a crabmeat processing license; or

(16) the crabmeat was not picked, packed, or pasteurized in accordance with department rules.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1108, eff. April 2, 2015.

SUBCHAPTER E. MISBRANDING

Sec. 436.071. MISBRANDED MOLLUSCAN SHELLFISH AND CRABMEAT. Molluscan shellfish or crabmeat is misbranded if:

(1) its labeling is false, misleading, or fails to conform with the requirements of Section 436.081;

(2) it is offered for sale under the name of another food;

(3) its container is made, formed, or filled so as to be misleading;

(4) a word, statement, or other information required by this chapter or a rule adopted under this chapter to appear on a label is not prominently and conspicuously placed on the label and is not likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

(5) it does not have a label containing:

(A) the name, address, and certification or license number of the processor;

(B) an accurate statement in a uniform location on the principal display panel of the quantity of the contents in terms of weight, measure, or numerical count; and

(C) a date as provided by department rules.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1109, eff. April 2, 2015.

SUBCHAPTER F. LABELING AND PACKAGING

Sec. 436.081. FAIR PACKAGING AND LABELING. (a) A label on molluscan shellfish or crabmeat shall conform to the requirements for the declaration of net quantity of contents under Section 1453, Fair Packaging and Labeling Act (15 U.S.C. Section 1453), and the regulations adopted under that Act.

(b) The label on a package of molluscan shellfish or crabmeat that represents the number of servings contained in the package shall state the net quantity in terms of weight, measure, or numerical count of each serving.

(c) A person may not distribute or cause to be distributed in commerce any molluscan shellfish or crabmeat if a qualifying word or phrase appears with the statement of the net quantity of contents required by Subsection (a). A supplemental statement at another place on the package may contain descriptions in nondeceptive terms of the net quantity of contents, except the supplemental statement of net quantity of contents may not include a term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the shellfish or crabmeat in the package.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.082. FALSE ADVERTISEMENT. An advertisement of molluscan shellfish or crabmeat is false if it is false or misleading in any manner.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.083. LABELING OF SHRIMP. (a) For purposes of this section, a shrimp is considered to be imported if the shrimp does not satisfy the United States country of origin requirements for wild or farm-raised shellfish established by 7 C.F.R. Section 60.128, or successor regulations.

(b) A food service supplier, wholesaler, distributor, or wholesale distributor may not sell shrimp in this state unless the shrimp's label includes a clear and conspicuous notice stating whether the shrimp is imported.

(c) A restaurant shall not label or represent imported shrimp as "Texas shrimp," "American shrimp," "Domestic shrimp," or "Gulf shrimp."

(d) The department, a public health district, a county, or a municipality that under Chapter 431 or 437 requires a restaurant, food service supplier, wholesaler, distributor, or wholesale distributor to hold a license or permit to operate in this state may impose an administrative penalty against the license or permit holder for a violation of this section or a rule adopted under this section.

(e) It is an affirmative defense to the imposition of an administrative penalty under this section that the license or permit holder believed in good faith the shrimp was not imported.

(f) This section does not create a private cause of action or change any common law or statutory duty.

(g) This section does not apply to foods served or prepared in similar retail food establishments, such as grocery stores or other food enterprises located within grocery stores, or properly labeled shrimp packaged by itself or as an ingredient in another packaged food product that is sold packaged.

Added by Acts 2025, 89th Leg., R.S., Ch. 990 (S.B. 823), Sec. 1, eff. September 1, 2025.

SUBCHAPTER G. AQUATIC LIFE FROM PROHIBITED AREAS

Sec. 436.091. DECLARATION OF PROHIBITED AREAS. (a) The department by order shall declare a body of public water to be a prohibited area if:

(1) the department finds, according to a sanitary, chemical, or bacteriological survey, that the area contains aquatic life that is unfit for human consumption; or

(2) aquatic life from a prohibited area may have been transferred to that body of public water.

(b) The department shall modify or revoke an order according to the results of a sanitary, chemical, or bacteriological survey conducted by the department. The department shall file the order in the department's office and shall furnish without charge a copy of the order describing prohibited areas on request.

(c) The department shall conspicuously outline prohibited areas on maps and shall furnish the maps without charge on request. The failure of a person to obtain that information does not relieve that person from liability under this chapter.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1110, eff. April 2, 2015.

SUBCHAPTER H. MOLLUSCAN SHELLFISH

Sec. 436.101. CLASSIFICATION OF GROWING AREAS. (a) The department by order shall designate an area that is coastal water according to the rules of the Parks and Wildlife Commission as an approved area, a conditionally approved area, a restricted area, a conditionally restricted area, or a prohibited area, according to the classification categories in the current National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish or its successor. Coastal water is a prohibited area for the taking of molluscan shellfish unless designated otherwise by the department.

(b) The department shall prohibit the taking of molluscan shellfish for a specified period from water to which molluscan shellfish may have been transferred from a restricted or

conditionally restricted area.

(c) The department by order shall designate growing areas as closed areas or open areas. The department shall modify or revoke an order according to the results of sanitary and bacteriological surveys conducted by the department. The department shall file the order in the department's office and shall furnish without charge a copy of the order describing the open or closed area on request.

(d) The department shall conspicuously outline the classifications of areas for the taking of molluscan shellfish on maps and shall furnish the maps without charge on request. The failure of a person to obtain that information does not relieve that person from liability under this chapter.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1111, eff. April 2, 2015.

Sec. 436.102. DEPURATION. (a) The department may allow depuration by artificial means of molluscan shellfish taken from a restricted or conditionally restricted area, subject to department rules and under the supervision the department considers necessary to protect public health.

(b) A molluscan shellfish plant operator may employ an off-duty peace officer to monitor the gathering of shellfish for depuration from a restricted or conditionally restricted area as provided by the rules adopted under Subsection (a). In this subsection, "peace officer" includes those persons listed in Article 2A.001, Code of Criminal Procedure.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1112, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.123, eff. January 1, 2025.

Sec. 436.103. FEE ON OYSTER SALES; PENALTIES. (a) The first certified shellfish dealer who harvests, purchases, handles, stores,

packs, labels, unloads at dockside, or holds oysters taken from the water of this state shall pay the state a fee of $1 for each barrel of oysters harvested, purchased, handled, or processed by the certified shellfish dealer.

(b) For purposes of assessing the fee required by this section, three 100-pound containers of oysters is the equivalent of one barrel of oysters. A certified shellfish dealer may not purchase or pack oysters in containers that, when packed, exceed 110 pounds in weight. A dealer who violates this subsection is liable for a penalty of $5 for each container that exceeds 110 pounds.

(c) A certified shellfish dealer shall pay a fee or penalty imposed by Subsection (a) or (b) not later than the 20th day of the month following the month in which the barrel of oysters was handled. A dealer who fails to pay the fee or penalty in full within the prescribed period is liable for the amount of the fee or penalty and an additional penalty of 10 percent of the amount of the fee or penalty due. On certification by the comptroller that a fee is past due, the department may suspend, until the fee, penalty, or additional penalty is paid, the shellfish certificate of a certified shellfish dealer who fails to timely pay the fee, penalty, or additional penalty in full. The department, on certification from the comptroller that a certified shellfish dealer has refused to pay a fee, penalty, or additional penalty on written demand, may revoke the shellfish certificate of a certified shellfish dealer who refuses to pay a fee, penalty, or additional penalty.

(d) The comptroller shall collect fees and penalties under this section and may adopt rules, forms, and procedures for submission of fees and penalties under this section. Each month the comptroller shall report to the department the fees and penalties that are submitted to the comptroller.

(e) Before any other disposition of the fees and penalties collected under this section is made, two percent of the amount of the fees and penalties shall be deposited in the state treasury for appropriation for the use of the comptroller in the administration and enforcement of this section. The remainder of the fees and penalties collected under this section shall be deposited to the credit of the oyster sales account in the general revenue fund to be allocated each year for oyster-related activities, including:

(1) collecting bay water and shellfish meat samples;

(2) contracting for sample analysis for classification and

opening or closing of oyster harvesting areas;

(3) marking the boundaries of areas that are designated open or closed under this subchapter;

(4) studying oyster diseases and other concerns affecting the availability of oysters for harvest;

(5) studying and analyzing organisms that may be associated with human illness and that can be transmitted through the consumption of oysters;

(6) contributing to the support of the oyster shell recovery and replacement program created under Section 76.020, Parks and Wildlife Code; and

(7) other oyster-related activities authorized or required by this chapter.

(f) After deducting the amount deposited into the state treasury for the comptroller's use under Subsection (e), the comptroller at the beginning of each state fiscal year shall allocate $100,000 of the unencumbered balance deposited to the credit of the oyster sales account in the general revenue fund to Texas A&M University at Galveston for use in performing the activities described by Subsection (e)(5). The remainder of the money in the oyster sales account may be allocated only for the purposes described by Subsection (e).

(g) Subtitles A and B, Title 2, Tax Code, apply to the comptroller's administration, collection, and enforcement of this section to the same extent as if the fee imposed under this section were a tax imposed under Title 2, Tax Code.

(h) In monitoring compliance with the payment of fees imposed under this section, the comptroller shall monthly or annually, as determined by the comptroller, compare records of fees collected under this section to data collected by the Parks and Wildlife Department relating to oyster barrel purchases. If the comptroller finds a discrepancy between the two sources of information, the comptroller may consult the dealer's log required by the National Shellfish Sanitation Program to resolve the discrepancy. The comptroller may use the process described by this subsection in place of any other administrative process used by the comptroller in determining compliance with this section.

(i) A finding by the comptroller under Subsection (h) of a discrepancy that reflects an underreporting of oysters harvested, purchased, handled, or processed by a dealer constitutes prima facie

evidence of a violation of this section in any administrative proceeding under this chapter.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1298, Sec. 2, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 28, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 965 (H.B. 1903), Sec. 1, eff. September 1, 2013.

Sec. 436.104. OYSTER PROGRAM. (a) The department shall conduct sanitary surveys, bay water and shellfish meat sampling, and any other activities that are necessary to classify the bays from which oysters are harvested from private leases or public reefs as authorized by Section 436.101.

(b) The department shall conduct reasonable and prudent sampling activities at the earliest possible time following the designation as a closed area of an area from which oysters are harvested from private leases or public reefs:

(1) if a question exists about the closure, to confirm the need for the closure; or

(2) if there is reason to believe that the sampling will result in opening the area.

(c) In implementing the oyster program, the department shall follow standards that are at least as stringent as the guidelines adopted by the National Shellfish Sanitation Program. The department's approach shall be consistent with the purpose and intent of the National Shellfish Sanitation Program and the federal Food and Drug Administration policy statements regarding the consumption of raw molluscan shellfish.

(d) Until Vibrio parahaemolyticus guidelines are formally adopted into the National Shellfish Sanitation Program, the department shall follow standards that are at least as stringent as guidelines of the Interim Control Plan for Vibrio parahaemolyticus of the Interstate Shellfish Sanitation Conference for the purpose of designating harvest areas as closed areas related to Vibrio parahaemolyticus.

(e) The department shall open harvest areas designated as closed areas due to excessive levels of Vibrio parahaemolyticus in

shellfish meat samples when the levels of Vibrio parahaemolyticus in the shellfish meat samples return to baseline levels.

(f) The department shall open harvest areas designated as closed areas due to sporadic non-outbreak illnesses as specified in the Interim Control Plan when the levels in shellfish meats return to baseline levels or, if tdh+ serotypes were confirmed as the cause of the illnesses, when the virulent serotypes of Vibrio parahaemolyticus are absent in two consecutive samples of shellfish meats collected from the Vibrio parahaemolyticus sample stations in the closed area.

(g) The department shall open harvest areas designated as closed areas due to a confirmed Vibrio parahaemolyticus outbreak when the department determines that Vibrio parahaemolyticus strains of virulent serotypes are absent in those situations where 03:K6 or other tdh+ serotypes were confirmed as the cause of the outbreak. For purposes of this subsection, in Galveston Bay, Vibrio parahaemolyticus virulent strains shall be considered absent when 25 shellfish meat samples from any delineated harvest area that has been designated as a closed area do not result in reporting of the virulent strain that caused the outbreak.

(h) If a second confirmed outbreak of Vibrio parahaemolyticus illness occurs in an area, the department shall open a harvest area designated as closed when 50 shellfish samples do not result in the reporting of the virulent strain that caused the outbreak.

(i) If harvest areas designated as closed areas as a result of Vibrio parahaemolyticus cannot be opened as a result of the sampling under Subsection (f) or (g), the areas may be opened when environmental conditions develop that are unfavorable for Vibrio parahaemolyticus growth or when environmental conditions shift to conditions that are historically unrelated to outbreaks of Vibrio parahaemolyticus.

Added by Acts 1999, 76th Leg., ch. 1298, Sec. 3, eff. June 18, 1999.

Sec. 436.105. TEMPERATURE REQUIREMENTS. Following initial refrigeration after unloading from a harvest boat, molluscan shellfish shall be refrigerated in air temperatures at or below 45 degrees Fahrenheit at all times except during transfer from one storage area or transportation vehicle to another. Except for an immediate transfer, molluscan shellfish may not remain unrefrigerated

during transfer from one storage area or transportation vehicle to another.

Added by Acts 1999, 76th Leg., ch. 1298, Sec. 3, eff. June 18, 1999.

Sec. 436.106. TEMPERATURE ABUSE. If temperature abuse of oysters associated with possible Vibrio parahaemolyticus illnesses is identified at any point in the market chain from harvest to consumer, the department may not designate a harvest area as a closed area if the temperature abuse is the probable cause of the illness. This section does not preclude closures for investigations conducted in accordance with the National Shellfish Sanitation Program that are necessary to protect public health. If a harvest area has been designated as a closed area because the investigation could not be completed within the time required in the National Shellfish Sanitation Program and temperature abuse is determined, as a result of the investigation, to be the probable cause of the illnesses, the harvest area must be immediately designated as an open area.

Added by Acts 1999, 76th Leg., ch. 1298, Sec. 3, eff. June 18, 1999.

Sec. 436.107. TEXAS OYSTER COUNCIL. (a) The Texas Oyster Council is created.

(b) The council is composed of:

(1) two members appointed by the executive commissioner as nominated by the Texas Oyster Growers and Dealers Association or a successor organization;

(2) one member appointed by the executive commissioner as nominated by the Coastal Oyster Leaseholder's Association;

(3) two members appointed by the executive commissioner from a list of oyster dealers who have held a shellfish certificate in this state for not less than six months of each of the three years preceding the nomination and who are certified at the time of appointment;

(4) one representative appointed by the chairman of the Interstate Shellfish Sanitation Conference; and

(5) three consumer members, including one person professionally licensed or with work experience in the field of environmental survey, environmental sanitation, environmental

engineering, or a similar field related to environmental or pollution conditions and their effect on molluscan shellfish harvest areas, appointed by the speaker of the house of representatives.

(c) Members of the Texas Oyster Council serve one-year terms expiring August 31 of each year and may be reappointed at the end of a term.

(d) A member of the Texas Oyster Council may not receive compensation for service on the council, but is entitled to reimbursement of expenses incurred by the member while conducting the business of the council, as provided by the General Appropriations Act.

(e) A person is not eligible for appointment as a consumer member of the Texas Oyster Council if the person or the person's spouse:

(1) is a harvester, processor, or wholesaler regulated under this chapter;

(2) is employed by a harvester, processor, or wholesaler regulated under this chapter;

(3) is a retailer of molluscan shellfish; or

(4) is employed by a retailer of molluscan shellfish.

(f) The Texas Oyster Council shall elect a presiding officer from among its members.

Added by Acts 1999, 76th Leg., ch. 1298, Sec. 3, eff. June 18, 1999. Amended by Acts 2001, 77th Leg., ch. 28, Sec. 2, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1113, eff. April 2, 2015.

Sec. 436.108. POWERS AND DUTIES OF TEXAS OYSTER COUNCIL. (a) The Texas Oyster Council shall:

(1) advise the department on the criteria used by the department under Section 436.101 to designate growing areas as open or closed areas;

(2) advise the department on the development of standards and procedures relating to the licensing of molluscan shellfish processors under this chapter;

(3) advise the department on the content of the rules adopted by the executive commissioner to implement the provisions of

this chapter relating to molluscan shellfish;

(4) perform any other functions requested by the department in implementing and administering the provisions of this chapter relating to molluscan shellfish; and

(5) review information brought before the council relating to molluscan shellfish.

(b) The Texas Oyster Council is entitled to:

(1) obtain information that is furnished to the department or developed by the department as part of an investigation of a food-borne illness that is suspected of being related to molluscan shellfish, including:

(A) location and handling practices where suspect food may have been served;

(B) product labeling and records;

(C) distribution agent, methods, and handling practices;

(D) sources of product;

(E) sample collection and laboratory analysis; and

(F) any other nonmedical information that may aid in determining causes or routes of transmission of food-borne illness or suspected food-borne illness; and

(2) review the information provided under Subdivision (1) and report to the department on any matter of concern.

(c) The Texas Oyster Council may establish procedures for:

(1) meetings of the council;

(2) submission, consideration, and resolution of issues before the council; and

(3) reporting relating to the council's activities.

(d) The Texas Oyster Council may meet at the request of the department, may meet periodically to review completed activities of the department, or may meet to review ongoing activities of the department if the department appears to have exceeded the guidelines established in the National Shellfish Sanitation Program.

(e) A member of the Texas Oyster Council who receives information under Subsection (b) from confidential communications or records, as identified by the department, may not disclose the information outside of the council or the department. The department, by providing to the council public information that is confidential or otherwise excepted from public disclosure under law, does not waive or affect the confidentiality of the information for

the purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information.

(f) The Texas Oyster Council is subject to Chapter 551, Government Code. The Texas Oyster Council is not required to conduct an open meeting to deliberate confidential communications and records provided under this section relating to the investigation of a food-borne illness that is suspected of being related to molluscan shellfish.

(g) A report produced by the Texas Oyster Council is public information.

Added by Acts 1999, 76th Leg., ch. 1298, Sec. 3, eff. June 18, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1114, eff. April 2, 2015.

SUBCHAPTER I. GENERAL ADMINISTRATIVE PROVISIONS AND RULEMAKING AUTHORITY

Sec. 436.111. DEFINITIONS. In this subchapter:

(1) "Certificate" means a shellfish certificate issued by the department.

(2) "License" means a crabmeat processing license issued by the department.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.112. RULEMAKING AUTHORITY. The executive commissioner may adopt rules for the enforcement of this chapter. The executive commissioner shall adopt rules establishing specifications for molluscan shellfish processing and crabmeat processing, and the department shall furnish without charge printed copies of the rules on request.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1115, eff. April 2, 2015.

Sec. 436.113. CERTIFICATION AND LICENSING PROCEDURES. (a) A person may not operate as a molluscan shellfish or crabmeat processor unless the person submits an application for a certificate or a license to the department according to department rules and receives a certificate or license for each plant or place of business.

(b) When an application has been properly filed with the department, the department shall inspect the property identified in the application, including buildings and equipment, and the operating procedures under which the product is processed.

(c) The department shall issue a certificate or license to a person who operates a plant or place of business that conforms to the requirements of this chapter and department rules.

(d) A certificate is nontransferrable and expires at 11:59 p.m. on August 31 of the second year of issuance.

(e) A license is nontransferrable and expires at 11:59 p.m. on the last day of February of the second year of issuance.

(f) A person shall apply for a new certificate or license each year for each plant or place of business.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1116, eff. April 2, 2015.

Sec. 436.114. REFUSAL TO CERTIFY OR LICENSE; SUSPENSION OR REVOCATION OF CERTIFICATE OR LICENSE. (a) After notice to the applicant and opportunity for a hearing, the department may refuse an application for a certificate or a license or may suspend or revoke a certificate or license.

(b) The executive commissioner by rule shall establish minimum standards for a certificate or license and criteria for the refusal to issue a certificate or license and the suspension or revocation of a certificate or license.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1117, eff. April 2, 2015.

Sec. 436.115. HEARINGS AND APPEALS. (a) A hearing under this chapter is governed by the procedures for a contested case hearing under Chapter 2001, Government Code, and the department's formal hearing rules.

(b) An appeal from a final administrative decision under this chapter shall be conducted under Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1118, eff. April 2, 2015.

CHAPTER 437. REGULATION OF FOOD SERVICE ESTABLISHMENTS, RETAIL FOOD STORES, MOBILE FOOD UNITS, AND ROADSIDE FOOD VENDORS

Sec. 437.001. DEFINITIONS. In this chapter:

(1) "Acidified canned goods" means food with a finished equilibrium pH value of 4.6 or less that is thermally processed before being placed in an airtight container.

(1-a) "Beekeeper" has the meaning assigned by Section 131.001, Agriculture Code.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(79), eff. April 2, 2015.

(2-a) "Baked good" includes cookies, cakes, breads, Danish, donuts, pastries, pies, and other items that are prepared by baking the item in an oven.

(2-b) "Cottage food production operation" means an individual, operating out of the individual's home, or a nonprofit organization that:

(A) produces at the individual's home or the home of an individual who is a director or officer of the nonprofit organization, as applicable, any food other than:

(i) meat, meat products, poultry, or poultry products;

(ii) seafood, including seafood products, fish, fish products, shellfish, and shellfish products;

(iii) ice or ice products, including shaved ice, ice cream, frozen custard, popsicles, and gelato;

(iv) low-acid canned goods;

(v) products containing cannabidiol or tetrahydrocannabinol; or

(vi) raw milk and raw milk products;

(B) has an annual gross income of $150,000 or less from the sale of food described by Paragraph (A), as the department annually adjusts for inflation using the Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Bureau of Labor Statistics or its successor in function;

(C) sells the foods produced under Paragraph (A) directly to consumers or to a cottage food vendor; and

(D) delivers products to the consumer or cottage food vendor at the point of sale or another location designated by the consumer or cottage food vendor.

(3) "Cottage food vendor" means a person located in this state who:

(A) has a contractual relationship with a cottage food production operation; and

(B) sells directly to consumers located in this state on behalf of the cottage food production operation a food other than a time and temperature control for safety food.

(3-a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(79), eff. April 2, 2015.

(3-b) "Farm stand" means a premises owned and operated by a producer of agricultural food products at which the producer or other persons may offer for sale produce or foods described by Subdivision (2-b)(A).

(3-c) "Fermented vegetable product" means a low-acid vegetable food product subjected to the action of certain microorganisms that produce acid during their growth and reduce the pH value of the food to 4.6 or less.

(4) "Food," "food service establishment," "retail food store," "mobile food unit," "roadside food vendor," and "temporary food service establishment" have the meanings assigned to those terms by rules adopted under this chapter.

(5) "Home" means a primary residence that contains a kitchen and appliances designed for common residential usage.

(5-a) "Nonprofit organization" means an organization exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that

code.

(6) "Produce" means fresh fruits or vegetables.

(7) "Honey production operation" means a beekeeper that sells or distributes honey or honeycomb the beekeeper produces that is or from which is extracted pure honey as defined by Section 131.001, Agriculture Code, that is raw and not blended with any other product or otherwise adulterated.

(8) "Time and temperature control for safety food" means a food that requires time and temperature control for safety to limit pathogen growth or toxin production. The term includes a food that must be held under proper temperature controls, such as refrigeration, to prevent the growth of bacteria that may cause human illness. The term:

(A) may include a food that contains protein and moisture and is neutral or slightly acidic, such as meat, poultry, fish, and shellfish products, pasteurized and unpasteurized milk and dairy products, raw seed sprouts, baked goods that require refrigeration, including cream or custard pies or cakes, and ice products; and

(B) does not include a food that uses time and temperature control for safety food as ingredients if the final food product does not require time or temperature control for safety to limit pathogen growth or toxin production.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 617, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 5, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1275 (H.B. 1382), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1119, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(79), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 265 (S.B. 1766), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 590 (S.B. 572), Sec. 1, eff.

September 1, 2019.

Acts 2025, 89th Leg., R.S., Ch. 303 (S.B. 541), Sec. 1, eff. September 1, 2025.

Acts 2025, 89th Leg., R.S., Ch. 303 (S.B. 541), Sec. 2, eff. September 1, 2025.

Acts 2025, 89th Leg., R.S., Ch. 548 (H.B. 519), Sec. 1, eff. September 1, 2025.

Sec. 437.002. ENFORCEMENT OF STATE LAW BY COUNTY OR PUBLIC HEALTH DISTRICT. (a) A county or public health district may enforce state law and rules adopted under state law concerning food service establishments, retail food stores, mobile food units, and roadside food vendors.

(b) This chapter does not authorize a county or public health district to adopt orders establishing standards for the operation of food service establishments, retail food stores, mobile food units, or roadside food vendors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.003. COUNTY AUTHORITY TO REQUIRE PERMIT. Subject to Section 437.0045, to enforce state law and rules adopted under state law, the commissioners court of a county by order may require food service establishments, retail food stores, mobile food units, and roadside food vendors in unincorporated areas of the county, including areas in the extraterritorial jurisdiction of a municipality, to obtain a permit from the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 48 (S.B. 1008), Sec. 3, eff. September 1, 2025.

Sec. 437.004. PUBLIC HEALTH DISTRICT AUTHORITY TO REQUIRE PERMIT. (a) Subject to Section 437.0045, a public health district that is established by at least one county and one or more municipalities in the county by order may require food service establishments, retail food stores, mobile food units, and roadside

food vendors in the district to obtain a permit from the district.

(b) If the public health district has an administrative board, the administrative board must adopt the order in accordance with its procedures.

(c) If the district does not have an administrative board, the governing body of each member of the district must adopt the order. Subject to Section 437.009(b), the order is effective throughout the public health district on the 30th day after the first date on which the governing bodies of all members have adopted the order.

(d) This chapter does not restrict the authority of a municipality that is a member of a public health district to adopt ordinances or administer a permit system concerning food service establishments, retail food stores, mobile food units, and roadside food vendors, to the extent those ordinances or that system does not conflict with a provision of state law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 48 (S.B. 1008), Sec. 4, eff. September 1, 2025.

Sec. 437.0045. LOCAL PERMIT REQUIREMENT LIMITATION. Notwithstanding any other law, a county, municipality, or public health district, including an authorized agent, employee, or department, may only require a permit, license, certification, or other form of authority if the permit, license, certification, or other form of authority would be required of the food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment or an employee of any of those entities if the entity or person was located within the department's jurisdiction.

Added by Acts 2025, 89th Leg., R.S., Ch. 48 (S.B. 1008), Sec. 5, eff. September 1, 2025.

Sec. 437.005. PUBLIC HEARING. (a) A commissioners court, governing body, or administrative board, as applicable, may adopt an order under Section 437.003 or 437.004 only after conducting a public hearing on the proposed order.

(b) At least two weeks' public notice must be given before a public hearing may be held.

(c) The notice must be published in a newspaper of general circulation in the county or public health district on three consecutive days and be printed in 10 point bold-faced type.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.0055. PERMIT FROM DEPARTMENT REQUIRED IN AREAS NOT REGULATED BY COUNTY OR PUBLIC HEALTH DISTRICT.

Text of subsection effective until July 1, 2026

(a) A person may not operate a food service establishment, retail food store, mobile food unit, or temporary food service establishment located in an area in which a county or public health district does not require a permit or conduct inspections under this chapter unless the person has a permit issued by the department.

Text of subsection effective on July 1, 2026

(a) A person may not operate a food service establishment, retail food store, or temporary food service establishment located in an area in which a county or public health district does not require a permit or conduct inspections under this chapter unless the person has a permit issued by the department.

(b) A person required to obtain a permit under Subsection (a) must apply every two years for the permit and must pay any fees required by the department.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 2, eff. Jan. 1, 1994.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1120, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 3, eff. July 1, 2026.

Sec. 437.0056. RULEMAKING AUTHORITY. The executive commissioner may adopt rules for the efficient enforcement of this chapter by the department in an area not regulated under this chapter by a county or public health district. The executive commissioner by

rule shall establish minimum standards for granting and maintaining a permit in an area not regulated under this chapter by a county or public health district. The commissioner may refuse an application for a permit or suspend or revoke a permit in an area not regulated under this chapter by a county or public health district.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 2, eff. Jan. 1, 1994.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1121, eff. April 2, 2015.

Sec. 437.0057. REGULATION OF FOOD HANDLERS AND OTHER FOOD SERVICE EMPLOYEES BY COUNTIES, PUBLIC HEALTH DISTRICTS, AND THE DEPARTMENT. (a) A county, a public health district, or the department may require certification under Subchapter D, Chapter 438, for each food handler who is employed by a food service establishment in which food is prepared on-site for sale to the public and which holds a permit issued by the county, the public health district, or the department. This section applies without regard to whether the food service establishment is at a fixed location or is a mobile food unit.

(b) The requirements of certification under this section may not be more stringent than the requirements of Subchapter D, Chapter 438.

(c) A county, a public health district, or the department may not require an establishment that handles only prepackaged food and does not prepare or package food to employ certified food handlers under this section.

(d) A county, a public health district, or the department may exempt a food service establishment from the requirement that the county, public health district, or department has imposed under Subsection (a) if the county, the public health district, or the department determines that the application of Subsection (a) to that establishment is not necessary to protect public health and safety.

(e) A county, a public health district, or the department may require a food service establishment to:

(1) post a sign in a place conspicuous to employees, in a form adopted by the executive commissioner, describing a food service employee's responsibilities to report certain health conditions to

the permit holder under rules adopted by the executive commissioner; or

(2) require that each food service employee sign a written agreement in a form adopted by the executive commissioner to report those health conditions.

Added by Acts 2009, 81st Leg., R.S., Ch. 926 (H.B. 3012), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1122, eff. April 2, 2015.

Sec. 437.006. MORE THAN ONE PERMIT PROHIBITED. A food service establishment or retail food store may not be required under this chapter to obtain more than one permit for each location.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Text of section effective on July 1, 2026

Sec. 437.0063. SMALL-SCALE FOOD BUSINESS PERMIT EXEMPTIONS. (a) In this section:

(1) "Food producer" has the meaning assigned by Section 437.020.

(2) "Small-scale food business" means a legal entity established by a farmer or food producer with less than $1.5 million in annual gross revenue. The term includes a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company.

(b) A county, municipality, or public health district may not require a small-scale food business or an employee of a small-scale food business to obtain a permit or pay a permitting fee to operate a food service establishment, temporary food service establishment, retail food establishment, temporary retail food establishment, or retail food store if the business:

(1) holds a permit issued by the department for that purpose; or

(2) is licensed as a food manufacturer under Subchapter J,

Chapter 431.

(c) This section preempts a county's, municipality's, or public health district's authority to regulate a small-scale food business in a manner that conflicts with this section.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 1, eff. July 1, 2026.

Sec. 437.0065. PERMITS FOR CERTAIN FARMERS AND FOOD PRODUCERS. (a) In this section, "farmers' market" and "food producer" have the meanings assigned by Section 437.020.

(b) This section applies only to a permit issued under this chapter to:

(1) a farmer for the sale of food directly to consumers at a farmers' market, a farm stand, or the farmer's farm; and

(2) a food producer, other than a farmer, for the sale of food directly to consumers at a farmers' market.

(c) A permit issued under Section 437.003, 437.004, 437.0055, or 437.0201 to a person described by Subsection (b):

(1) must be valid for a term of not less than one year;

(2) may impose an annual fee in an amount not to exceed $100 for the issuance or renewal; and

(3) must cover sales at all locations the permit holder is authorized to sell food under Subsection (b), including farmers' markets, farm stands, and farms within the jurisdiction of the permitting authority.

(d) A farmer or food producer who is charged an annual fee in an amount that exceeds the amount authorized by Subsection (c)(2) or whose permit does not otherwise comply with this section may bring an action against the governmental entity that charged the fee or issued the permit to recover:

(1) the amount the farmer or food producer was charged in excess of the annual fee authorized by Subsection (c)(2); and

(2) reasonable and necessary attorney's fees incurred in bringing the action.

Added by Acts 2019, 86th Leg., R.S., Ch. 339 (S.B. 932), Sec. 1, eff. September 1, 2019.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 577 (S.B. 617), Sec. 1, eff. June

14, 2021.

Sec. 437.007. NONPROFIT ORGANIZATIONS EXEMPT. A county or public health district may not require a nonprofit organization to obtain a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.0073. MEDALLION FOR MOBILE FOOD UNITS IN CERTAIN POPULOUS MUNICIPALITIES. (a) This section applies only to a municipality with a population of 1.5 million or more.

(b) Any person desiring to operate one or more mobile food units in a municipality subject to this section other than restricted operations mobile food units shall obtain an individual medallion for each operating mobile food unit from the health officer of the municipality. Each medallion will be issued unit-by-unit only after an inspection reveals satisfactory compliance with the provisions of this chapter and applicable municipal regulations or ordinances relating to mobile food units. The medallions shall remain the property of the municipality.

(c) A person may not operate or cause to be operated any mobile food unit that does not possess a valid medallion issued by the health officer.

(d) A medallion shall be affixed by the health officer or the health officer's authorized agents on the mobile food unit in a conspicuous place where it can be viewed by patrons.

(e) Application for a medallion shall be made on forms provided by the health officer and must include:

(1) the applicant's full name and mailing address;

(2) the address of the location at which the mobile food unit is stationed when not in use;

(3) the business name and address of the commissary or other fixed food service establishment from which potentially hazardous food supplies are obtained;

(4) the address of the servicing area;

(5) a description of the mobile food unit that includes the manufacturer's make, model, and serial number;

(6) the vehicle's state registration number; and

(7) the signature of the applicant.

(f) All of the provisions of this chapter and applicable municipal regulations or ordinances pertaining to food service establishments apply to the commissary or other fixed food service establishment from which the food supplies are obtained. Any suspension or revocation of the food dealer's permit for a food service establishment is cause for suspension or revocation of the medallion of any mobile food unit that is supplied or serviced by the establishment.

Added by Acts 2009, 81st Leg., R.S., Ch. 403 (H.B. 1802), Sec. 1, eff. June 19, 2009.

Sec. 437.0074. MOBILE FOOD UNITS IN CERTAIN POPULOUS COUNTIES. (a) A county with a population of at least 2.8 million, or a municipality or public health district in the county, shall require a mobile food unit to:

(1) return to the food service establishment or commissary from which the unit operates within the 24-hour period preceding operation of the mobile food unit to have cleaning and other services performed on the unit; and

(2) obtain, on completion of an inspection following servicing, written documentation that the mobile food unit has been serviced daily as required by Subdivision (1).

(b) A county, municipality, or public health district that has installed an electronic tagging system shall register and record confirmation that the unit has been serviced as required by Subsection (a)(1).

(c) A municipality with a population of 1.5 million or more in a county with a population of 2.8 million or more shall require a mobile food unit, other than a mobile food unit that handles only prepackaged food and does not prepare or package food, to obtain a time and date stamp on the documentation required under Subsection (a)(2) from a time and date stamp unit that is constructed to prevent tampering and approved by the municipality's governing body. A record kept by the municipality regarding the time and date stamp on the documentation under Subsection (a)(2) by means of an electronic tagging system under Subsection (b) controls if that record is inconsistent with the record kept by the mobile food unit.

Added by Acts 2007, 80th Leg., R.S., Ch. 1276 (H.B. 3672), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 403 (H.B. 1802), Sec. 2, eff. January 1, 2010.

Sec. 437.0075. FOOD MANAGERS IN CERTAIN POPULOUS COUNTIES. (a) A county with a population of at least four million may require a certified or trained food manager to be on duty during the operating hours of a food establishment.

(b) The training required of food managers can be no more extensive than that specified under Subchapter D, Chapter 438.

(c) A food establishment that handles only prepackaged food and does not prepare or package food may not be required to have a certified food manager under this section.

Added by Acts 1999, 76th Leg., ch. 1378, Sec. 7, eff. June 19, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 911 (S.B. 1158), Sec. 1, eff. September 1, 2017.

Sec. 437.0076. CERTIFIED FOOD MANAGER. (a) A county or public health district may require each fixed or mobile location retail establishment in which food is prepared on-site for sale to the public that holds a permit issued by the county or public health district to employ a food manager certified under Subchapter G, Chapter 438.

(b) The executive commissioner may require each fixed or mobile location retail establishment in which food is prepared on-site for sale to the public that is required to be operated under a permit under Section 437.0055 to employ a food manager certified under Subchapter G, Chapter 438.

(c) An establishment that handles only prepackaged food and does not prepare or package food may not be required to have a certified food manager under this section.

(d) The executive commissioner by rule may exempt establishments other than the establishments described by Subsection (c) from the requirement imposed under this section if the executive

commissioner determines that the application of the requirement to those establishments is not necessary to protect public health and safety.

(e) A county or public health district may exempt establishments other than the establishments exempt under Subsections (c) and (d) from the requirement imposed by the county or public health district under this section if the county or public health district determines that the application of the requirement to those establishments is not necessary to protect public health and safety.

(f) A child-care facility, as that term is defined by Section 42.002, Human Resources Code, is exempt from the requirements imposed under this section.

Added by Acts 2001, 77th Leg., ch. 317, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1123, eff. April 2, 2015.

Sec. 437.008. PERMIT RENEWAL. A county or public health district may require the annual renewal of a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.009. INSPECTIONS; INSPECTION FOLLOWING ADOPTION OF CERTAIN LOCAL ORDERS; PROHIBITED DISCIPLINARY ACTION. (a) Authorized agents or employees of the department, a county, or a public health district may enter the premises of a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment under the department's, county's, or district's jurisdiction during normal operating hours to conduct inspections to determine compliance with:

(1) state law, including a requirement to hold and display written authorization under Section 437.021;

(2) rules adopted under state law; and

(3) orders adopted by the department, county, or district.

(b) A municipality or public health district of which the municipality is a member may not conduct an inspection to determine compliance with an ordinance the municipality adopts that differs from state law or department rules or orders before the 60th day

following the date the municipality or district submits a copy of the ordinance to the department for inclusion in the registry established under Section 437.0091.

(c) Notwithstanding any other law, the department, a county, a municipality, or a public health district, including an authorized agent or employee, that conducts an inspection authorized under this section may not take disciplinary action against or otherwise penalize a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment for failing to adhere to easily cleanable surface requirements for wall and ceiling surfaces, decorative items, or attachments in a consumer area, provided the surfaces, items, or attachments are kept clean. For purposes of this subsection, a consumer area includes a dining room, outdoor dining area, or bar seating area in which customers consume food but does not include a table, bar top, or other similar surface where food is regularly prepared or consumed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1402 (H.B. 3138), Sec. 1, eff. June 15, 2007.

Acts 2023, 88th Leg., R.S., Ch. 245 (S.B. 577), Sec. 1, eff. September 1, 2023.

Sec. 437.0091. LOCAL ORDINANCE AND FEE SCHEDULE REGISTRY. The department shall establish and maintain on the department's Internet website a registry for municipal ordinances submitted under Section 437.009(b) and fee schedules submitted under Section 437.0124(b). The department shall post in the registry each submitted ordinance or fee schedule not later than the 10th day after the date the department receives the ordinance or fee schedule.

Added by Acts 2023, 88th Leg., R.S., Ch. 245 (S.B. 577), Sec. 1, eff. September 1, 2023.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 48 (S.B. 1008), Sec. 6, eff. September 1, 2025.

Sec. 437.0095. DETENTION. The commissioner or an authorized agent may detain an article of food that is located on the premises of a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment and is adulterated or misbranded under Chapter 431.

Added by Acts 1999, 76th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1999.

Sec. 437.010. SUBMISSION OF PLANS AND SUBSEQUENT INSPECTION. (a) Before issuing a permit, a county or public health district may require an applicant to provide plans of the food preparation, storage, and sales areas to determine if the applicant is in compliance with state law and rules adopted under state law governing the applicant.

(b) The county or public health district may deny the permit after initial inspection only if the applicant is not in compliance with the plans approved by the county or district.

(c) If the county or public health district finds on inspection that an applicant is not in compliance with state law and rules adopted under state law, the county or public health district may reinspect the applicant at a later date to determine if the applicant is in compliance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.011. INSPECTION OF EXISTING ENTITIES ON ADOPTION OF ORDER. (a) When a county or public health district requires a permit, the county or district shall make an initial inspection of the facilities of any existing entity applying for the permit.

(b) An existing entity is entitled to continue to operate pending its initial inspection.

(c) If the county or public health district determines on inspection that an entity does not meet the standards established by state law or rules adopted under state law, the county or district may start revocation proceedings as if the entity had obtained a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.012. COUNTY AND PUBLIC HEALTH DISTRICT FEES. (a) A county or public health district may require the payment of a fee for issuing or renewing a permit.

(b) The fee charged by a county or public health district for issuing or renewing a permit may not exceed the amount necessary to recover the county's or district's cost under Subsection (d).

(c) Fees collected by a county under this chapter shall be deposited to the credit of a special fund of the county. Fees collected by a public health district under this chapter shall be deposited to the credit of a special fund created by the cooperative agreement under which the district operates.

(d) Fees deposited as provided by this section may be spent only for conducting inspections required by this chapter and issuing permits.

(e) This section does not apply to a county or public health district covered by Section 437.0123.

(f) A county or public health district may, by rule or order, adopt a variable scale to determine the fee charged for a permit under this section. In adopting a rule or order under this subsection, the county or public health district may consider:

(1) the size of the food service establishment, retail food store, mobile food unit, or roadside food vendor;

(2) the number of people employed at the food service establishment, retail food store, mobile food unit, or roadside food vendor; and

(3) the gross sales of the food service establishment, retail food store, mobile food unit, or roadside food vendor.

(g) Repealed by Acts 2019, 86th Leg., R.S., Ch. 458 (H.B. 2755), Sec. 4(1), eff. September 1, 2019.

(h) Repealed by Acts 2019, 86th Leg., R.S., Ch. 458 (H.B. 2755), Sec. 4(1), eff. September 1, 2019.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 617, Sec. 3, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 156, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 72, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 458 (H.B. 2755), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 458 (H.B. 2755), Sec. 4(1), eff.

September 1, 2019.

Sec. 437.0123. COUNTY AND PUBLIC HEALTH DISTRICT FEES IN CERTAIN POPULOUS COUNTIES. (a) A county that has a population of at least 2.8 million or a public health district at least part of which is in a county that has a population of at least 2.8 million may require the payment of a fee for issuing or renewing a permit or for performing an inspection to enforce this chapter or a rule adopted under this chapter. A county with a population of at least 2.8 million may require a trained food manager to be on duty during each day of operation of a food service establishment. The training required of food managers can be no more extensive than the training offered by an education or training program accredited under Subchapter D, Chapter 438. A food service establishment that handles only prepackaged food and does not prepare or package food may not be required to have a certified food manager under this section.

(b) A county or public health district that requires payment of a fee under Subsection (a) shall set the fee in an amount that does not exceed the amount necessary to recover the annual expenditures by the county or district for:

(1) reviewing and acting on a permit;

(2) amending and renewing a permit;

(3) inspecting a facility as provided by this chapter and rules adopted under this chapter; and

(4) otherwise administering this chapter and rules adopted under this chapter.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 458 (H.B. 2755), Sec. 4(2), eff. September 1, 2019.

(d) Fees collected by a county under this chapter shall be deposited to the credit of a special fund of the county. Fees collected by a public health district under this chapter shall be deposited to the credit of a special fund created by the cooperative agreement under which the district operates.

(e) Fees deposited as provided by this section may be spent only for a purpose described by Subsection (b).

Added by Acts 1997, 75th Leg., ch. 156, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 480, Sec. 1, eff. Aug. 30, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1124, eff. April 2, 2015.
Acts 2019, 86th Leg., R.S., Ch. 458 (H.B. 2755), Sec. 2, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 458 (H.B. 2755), Sec. 4(2), eff. September 1, 2019.

Sec. 437.01235. FEES FOR PREMISES WITH ALCOHOLIC BEVERAGE PERMIT OR LICENSE. Notwithstanding any other law, a county, municipality, or public health district, including an authorized agent, employee, or department, may not charge a fee under Section 11.38 or 61.36, Alcoholic Beverage Code, if the premises is a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment that has already paid a fee to operate to the department or to any county, municipality, or public health district.

Added by Acts 2023, 88th Leg., R.S., Ch. 245 (S.B. 577), Sec. 1, eff. September 1, 2023.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 48 (S.B. 1008), Sec. 7, eff. September 1, 2025.

Sec. 437.0124. COUNTY, MUNICIPALITY, AND PUBLIC HEALTH DISTRICT FEE SCHEDULE. (a) A county, municipality, or public health district shall establish a fee schedule for any fees collected under this chapter and revise the fee schedule as necessary.
(b) A county, municipality, or public health district shall submit a copy of the fee schedule to the department for inclusion in the registry established under Section 437.0091 not later than the 60th day before the date the fee schedule goes into effect.

Added by Acts 2019, 86th Leg., R.S., Ch. 458 (H.B. 2755), Sec. 3, eff. September 1, 2019.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 48 (S.B. 1008), Sec. 8, eff. September 1, 2025.

Sec. 437.0125. DEPARTMENT FEES. (a) The department shall collect fees for:

(1) filing, renewing, or amending a permit; and

(2) an inspection performed to enforce this chapter or a rule adopted under this chapter.

(b) The department may charge fees every two years.

(c) The executive commissioner by rule shall set the fees for issuing and renewing permits in amounts as prescribed by Section 12.0111 and other fees in amounts that allow the department to recover at least 50 percent of the expenditures by the department for:

(1) reviewing and acting on a permit;

(2) amending a permit;

(3) inspecting a facility as provided by this chapter and rules adopted under this chapter; and

(4) implementing and enforcing this chapter, including a department rule or an order adopted or a license issued by the department.

(d) The department shall spend not less than 50 percent of the permit fees collected to inspect facilities and to enforce and administer this chapter.

(e) All permit fees collected by the department under this chapter shall be deposited in the state treasury to the credit of the food and drug retail fee account.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 4, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1125, eff. April 2, 2015.

Sec. 437.0126. LOCAL FEE LIMITATION. (a) Notwithstanding any other law and except as provided by Subsections (c) and (d), a county, municipality, or public health district, including an authorized agent, employee, or department, may not charge a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment or an employee of any of those entities a fee, including any processing fees or added costs, that exceeds the maximum fee a food service establishment, retail food store, mobile food unit, roadside food

vendor, temporary food service establishment, or employee would pay to the department if the entity or employee were located within the department's jurisdiction.

(a-1) For purposes of Subsection (a), the maximum fee a county, municipality, or public health district may charge annually may not exceed the maximum fee that would be charged by the department biennially.

(b) A county, municipality, or public health district, including an authorized agent, employee, or department, may calculate and assess fees in accordance with Subsection (a):

(1) on an annual or biennial basis; and

(2) using a risk-based assessment.

(c) A county, municipality, or public health district, including an authorized agent, employee, or department, may assess a reinspection fee if:

(1) the reinspection is necessary to cure a violation that presents a direct and significant risk to public health;

(2) the reinspection fee does not exceed the lesser of the cost of an initial inspection or $200; and

(3) not more than one reinspection fee is charged within 60 days of the previous inspection, unless the entity on which the fee is imposed failed to make reasonable efforts to correct the violation.

(d) A county, municipality, or public health district may charge a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment up to 120 percent of the total fees authorized under Subsection (a) if the county, municipality, or public health district determines that the increased fee is necessary to protect public safety and maintain adequate food safety staffing levels in the county, municipality, or district. Before imposing the increased fees under this subsection, a county, municipality, or public health district shall hold at least one annual public meeting or hearing to demonstrate compliance with this subsection. This subsection applies only to:

(1) a county with a population of 2.5 million or more;

(2) a county with a population of more than 2 million within which are located two municipalities, each of which has a population of at least 350,000;

(3) a municipality with a population of 950,000 or more; or

(4) a public health district that regulates a county or municipality described by Subdivision (1), (2), or (3).

(e) This section does not prohibit a county, municipality, or public health district, including an authorized agent, employee, or department, from charging a fee that is necessary for the county, municipality, or public health district to comply with an active, legally binding federal consent decree, enforcement order, or administrative agreement mandating food service compliance inspections. Before imposing a fee under this subsection, a county, municipality, or public health district shall hold at least one annual public meeting or hearing to demonstrate that the fee is limited to the amount necessary to comply with a decree, order, or agreement.

Added by Acts 2025, 89th Leg., R.S., Ch. 48 (S.B. 1008), Sec. 9, eff. September 1, 2025.

Sec. 437.0127. STAKEHOLDER NOTICE. (a) A county, municipality, or public health district that charges fees, requires permits, or conducts inspections under this chapter shall provide an opportunity for stakeholders to sign up for e-mail updates from the entity.

(b) At least 60 days before a fee, permit, or inspection protocol or procedure is revised, the county, municipality, or public health district shall notify by e-mail all stakeholders who have signed up for e-mail updates under this section.

Added by Acts 2025, 89th Leg., R.S., Ch. 48 (S.B. 1008), Sec. 9, eff. September 1, 2025.

Sec. 437.013. AUDITED STATEMENT. (a) A county or public health district shall file an audited statement with the department on or before January 15 of each year.

(b) The statement must include the receipts of funds collected under this chapter, all expenditures of funds, and fund balances.

(c) A county or public health district that fails to timely file the statement may not require the payment of a fee for issuing or renewing a permit until the statement is filed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1126, eff. April 2, 2015.

Sec. 437.014. DENIAL, SUSPENSION, OR REVOCATION OF PERMIT. (a) A county or public health district may refuse to issue a permit or may suspend or revoke a permit if the county or district finds that the food service establishment, retail food store, mobile food unit, or roadside food vendor is not in compliance with state law, rules adopted under state law, or orders adopted by the county or district.

(b) A permit may be denied, suspended, or revoked only after notice and an opportunity for a hearing.

(c) A county or public health district that requires a permit to operate a food service establishment, retail food store, mobile food unit, or roadside food vendor shall adopt procedures for denying, suspending, or revoking a permit that afford due process to the applicant or permit holder.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.0145. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) The department shall suspend the license of a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment or order the immediate closing of the food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment if:

(1) the department finds the food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment is operating in violation of the standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of the public.

(b) An order suspending a license or closing a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment under this section is immediately effective on the date on which the license holder

receives written notice or a later date specified in the order.

(c) An order suspending a license or ordering an immediate closing of a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment is valid for 10 days after the effective date of the order.

Added by Acts 1999, 76th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1999.

Sec. 437.015. INJUNCTION. A city attorney, county attorney, or district attorney may sue in district court to enjoin a food service establishment, retail food store, mobile food unit, or roadside food vendor from operating without a permit if a permit is required.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.0155. DEPARTMENT INJUNCTION. (a) If it appears that a person has violated, is violating, or threatens to violate this chapter or a rule adopted under this chapter, the department may institute a civil suit in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation.

(b) The department may petition a district court for a temporary restraining order to immediately halt a violation or other action creating an emergency condition if it appears that:

(1) a person is violating or threatening to violate this chapter or a rule or order adopted under this chapter; and

(2) the violation or threatened violation creates an immediate threat to the health and safety of the public.

(c) On the department's request, the attorney general shall institute a suit in the name of the state for injunctive relief.

(d) In an action for injunctive relief under this section, the court may grant any prohibitory or mandatory injunction warranted by the facts, including temporary restraining orders, temporary injunctions, and permanent injunctions. The court shall grant injunctive relief without a bond or other undertaking by the department.

(e) Venue for a suit brought under this section is in the county in which the violation or threat of violation is alleged to

have occurred.

Added by Acts 1999, 76th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1999.

Sec. 437.016. CRIMINAL PENALTY: VIOLATION OF COUNTY AND PUBLIC HEALTH DISTRICT PERMIT REQUIREMENTS. (a) A person commits an offense if the person operates a food service establishment, retail food store, mobile food unit, or roadside food vendor without a permit required by the county or public health district in which the entity is operating.

(b) An offense under this section is a Class C misdemeanor.

(c) Each day on which a violation occurs constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 617, Sec. 5, eff. Sept. 1, 1993.

Sec. 437.0165. CRIMINAL PENALTY: VIOLATION OF DEPARTMENT PERMIT REQUIREMENT. (a) A person commits an offense if the person operates a food service establishment, retail food store, mobile food unit, or temporary food service establishment without a permit that is required by the department under Section 437.0055.

(b) An offense under this section is a Class A misdemeanor.

(c) Each day on which a violation occurs constitutes a separate offense.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 6, eff. Jan. 1, 1994.

Sec. 437.017. CONFLICT WITH ALCOHOLIC BEVERAGE CODE. The Alcoholic Beverage Code and rules adopted by the Texas Alcoholic Beverage Commission control to the extent of a conflict between this chapter or an order adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1127, eff. April 2, 2015.

Sec. 437.018. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty against a person who holds a permit or who is regulated under this chapter and who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty for a violation may be in an amount not to exceed $10,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the enforcement costs relating to the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the department determines that a violation has occurred, the department shall issue an order that states the facts on which the determination is based, including an assessment of the penalty.

(e) Within 14 days after the date the order is issued, the department shall give written notice of the order to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty, the department by order shall impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the department shall refer the matter to the State Office of Administrative Hearings and an administrative law judge of

that office shall hold the hearing. The department shall give written notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the department's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the department's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(l) The department on receipt of a copy of an affidavit under Subsection (k)(2) may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the department:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 6, eff. Jan. 1, 1994.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1128, eff. April 2, 2015.

Sec. 437.0185. ADMINISTRATIVE PENALTY BY PUBLIC HEALTH DISTRICT OR COUNTY. (a) The director of a public health district or the commissioners court of a county may impose an administrative penalty on a person the district or county requires to hold a permit under Section 437.003 or 437.004 if the person violates this chapter or a rule or order adopted under this chapter.

(b) The amount of the penalty may not exceed $500 per day, and each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter a future violation;

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

(c) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court. A person who cannot afford to pay the penalty may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs.

(d) Not later than the 20th day after the date the person receives notice of the penalty, the person in writing may:

(1) accept the determination and pay the recommended penalty of the director or commissioners court; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(e) The justice of the peace for the justice precinct in which the retail food store or food establishment is located or the mobile food establishment or roadside food vendor is based shall hold a hearing requested under Subsection (d).

(f) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty

and order the person to pay the full or reduced amount of the penalty.

(g) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(h) If the person paid the penalty to the clerk of the court and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount be remitted to the person.

Added by Acts 2007, 80th Leg., R.S., Ch. 1202 (H.B. 1585), Sec. 1, eff. September 1, 2007.

Sec. 437.0186. ASSESSMENT OF ADMINISTRATIVE PENALTY. An administrative penalty may be imposed for a violation of this chapter or a rule or order under this chapter by the state under Section 437.018 or by the director of a public health district or commissioners court of a county under Section 437.0185, but not both.

Added by Acts 2007, 80th Leg., R.S., Ch. 1202 (H.B. 1585), Sec. 1, eff. September 1, 2007.

Sec. 437.019. EXEMPTION FOR CERTAIN BED AND BREAKFAST ESTABLISHMENTS. (a) Except as provided by Subsection (c), a bed and breakfast establishment with seven or fewer rooms for rent that serves only breakfast to its overnight guests is not a food service establishment for purposes of this chapter. An owner or manager of a bed and breakfast establishment covered by this subsection shall successfully complete a food manager's certification course accredited by the department.

(b) Except as provided by Subsection (c), a bed and breakfast establishment that has more than seven rooms for rent, or that provides food service other than breakfast to its overnight guests, is a food service establishment for purposes of this chapter but may not be required to meet all criteria applicable to a larger food service establishment such as a restaurant. The executive commissioner, commissioners court, governing body, or administrative board, as applicable, shall adopt minimum standards for a bed and breakfast establishment covered by this subsection.

(c) A bed and breakfast establishment that provides food

service other than to overnight guests is a food service establishment for purposes of this chapter and is subject to all rules and regulations applicable to a food service establishment.

Added by Acts 1995, 74th Leg., ch. 689, Sec. 1, eff. June 15, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1129, eff. April 2, 2015.

Sec. 437.0191. EXEMPTION FOR COTTAGE FOOD PRODUCTION OPERATIONS. (a) A cottage food production operation is not a food service establishment for purposes of this chapter.

(b) The exemption provided by Subsection (a) does not affect the application of Sections 431.045, 431.0495, and 431.247 authorizing the department or other local health authority to act to prevent an immediate and serious threat to human life or health.

(c) Notwithstanding any other law, a cottage food production operation that manufactures and distributes at wholesale cottage food for resale by others is exempt from department licensing requirements under Chapter 431.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 6, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 2, eff. September 1, 2013.
Acts 2025, 89th Leg., R.S., Ch. 303 (S.B. 541), Sec. 3, eff. September 1, 2025.

Sec. 437.0192. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS BY LOCAL GOVERNMENT AUTHORITIES PROHIBITED; COMPLAINTS. (a) A local government authority, including a local health department, may not:

(1) regulate the production of food at a cottage food production operation; or

(2) require a cottage food production operation to obtain any type of license or permit or pay any fee to produce or sell directly to a consumer or cottage food vendor, or to provide samples directly to a consumer, a food other than a food described by Sections 437.001(2-b)(A)(i)-(vi).

(b) Each local health department and the department shall maintain a record of a complaint made by a person against a cottage food production operation.

(c) A local government authority, including a local health department, may not employ or continue to employ a person who knowingly requires or attempts to require a cottage food production operation to obtain a license or permit in violation of Subsection (a)(2).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 6, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 3, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 4, eff. September 1, 2013.
Acts 2025, 89th Leg., R.S., Ch. 303 (S.B. 541), Sec. 4, eff. September 1, 2025.

Sec. 437.0193. PACKAGING AND LABELING REQUIREMENTS FOR COTTAGE FOOD PRODUCTION OPERATIONS. (a) Food sold by a cottage food production operation must be packaged in a manner that prevents product contamination, except that a food item is not required to be packaged if it is too large or bulky for conventional packaging.

(b) The executive commissioner shall adopt rules requiring a cottage food production operation to label all of the foods the operation sells to consumers. The label must include:

(1) the name and address of the cottage food production operation; and

(2) the following disclosure:

"THIS PRODUCT WAS PRODUCED IN A PRIVATE RESIDENCE THAT IS NOT SUBJECT TO GOVERNMENTAL LICENSING OR INSPECTION."

(b-1) Notwithstanding Subsection (b)(1), a cottage food production operation is not required to include on a food label the address of the operation if the operation registers with the department in the form and manner the department prescribes, and includes on the label a unique identification number provided by the department. The executive commissioner may adopt rules to implement this subsection.

(c) For foods not required to be packaged under Subsection (a), the information required to be included on the label under Subsection (b) must be provided to the consumer on an invoice or receipt.

(d) Repealed by Acts 2025, 89th Leg., R.S., Ch. 303 (S.B. 541), Sec. 8(1), eff. September 1, 2025.

(e) A cottage food production operation that sells a time and temperature control for safety food must include:

(1) on the food label the date the food was made; and

(2) on the food label or on an invoice or receipt provided with the food when sold the following statement in at least 12-point font: "SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria, keep this food refrigerated or frozen until the food is prepared for consumption."

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 6, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 5, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 590 (S.B. 572), Sec. 2, eff. September 1, 2019.

Acts 2025, 89th Leg., R.S., Ch. 303 (S.B. 541), Sec. 5, eff. September 1, 2025.

Acts 2025, 89th Leg., R.S., Ch. 303 (S.B. 541), Sec. 8(1), eff. September 1, 2025.

Sec. 437.0194. CERTAIN SALES BY COTTAGE FOOD PRODUCTION OPERATIONS PROHIBITED OR RESTRICTED. (a) Except as provided by Subsection (a-1), a cottage food production operation may not sell food at wholesale.

(a-1) A cottage food production operation may sell to a cottage food vendor at wholesale food other than a food described by Sections 437.002(2-b)(A)(i)-(vi) or a time and temperature control for safety food.

(b) A cottage food production operation may sell a food other than a food described by Sections 437.002(2-b)(A)(i)-(vi) in this state through the Internet only if:

(1) the consumer purchases the food through the Internet from the operation and the operator or operator's employee or

household member personally delivers the food to the consumer; and

(2) subject to Subsection (c), before the operator accepts payment for the food, the operator provides all labeling information required by Section 437.0193(e) and department rules to the consumer by posting a legible statement on the operation's Internet website.

(c) The operator of a cottage food production operation that sells a food in this state in the manner described by Subsection (b):

(1) is not required to include the address of the operation in the labeling information required under Subsection (b)(2) before the operator accepts payment for the food; and

(2) shall provide the address or unique identification number of the operation on the label of the food in the manner required by Section 437.0193(b) or (b-1) after the operator accepts payment for the food.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 6, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 5, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 590 (S.B. 572), Sec. 3, eff. September 1, 2019.

Acts 2025, 89th Leg., R.S., Ch. 303 (S.B. 541), Sec. 6, eff. September 1, 2025.

Sec. 437.0195. PRODUCTION OF COTTAGE FOOD PRODUCTS. (a) An individual who operates a cottage food production operation must have successfully completed a basic food safety education or training program for food handlers accredited under Subchapter D, Chapter 438.

(b) An individual may not process, prepare, package, or handle cottage food products unless the individual:

(1) meets the requirements of Subsection (a);

(2) is directly supervised by an individual described by Subsection (a); or

(3) is a member of the household in which the cottage food products are produced.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 6, eff. September 1, 2013.

Sec. 437.01951. REQUIREMENTS FOR SALE OF CERTAIN COTTAGE FOODS. (a) A cottage food production operation that sells to consumers pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods shall:

(1) use a recipe that:

(A) is from a source approved by the department under Subsection (d);

(B) has been tested by an appropriately certified laboratory that confirmed the finished fruit or vegetable, product, or good has an equilibrium pH value of 4.6 or less; or

(C) is approved by a qualified process authority; or

(2) if the operation does not use a recipe described by Subdivision (1), test each batch of the recipe with a calibrated pH meter to confirm the finished fruit or vegetable, product, or good has an equilibrium pH value of 4.6 or less.

(b) A cottage food production operation may not sell to consumers pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods before the operator complies with Subsection (a).

(c) For each batch of pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods, a cottage food production operation must:

(1) label the batch with a unique number; and

(2) for a period of at least 12 months, keep a record that includes:

(A) the batch number;

(B) the recipe used by the producer;

(C) the source of the recipe or testing results, as applicable; and

(D) the date the batch was prepared.

(d) The department shall:

(1) approve sources for recipes that a cottage food production operation may use to produce pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods; and

(2) semiannually post on the department's Internet website a list of the approved sources for recipes, appropriately certified laboratories, and qualified process authorities.

(e) The department shall develop and implement a process by which an individual may request that the department approve an

additional source for recipes under Subsection (d). The process must allow an individual to submit with the individual's request documentation supporting the request.

(f) A source for recipes approved by the department under Subsection (d) must be scientifically validated and may be from a government entity, academic institution, state extension service, or other qualified source with:

(1) expert knowledge of processing requirements for pickled fruit or vegetables, fermented vegetable products, or acidified canned goods; and

(2) adequate facilities for scientifically validating recipes for pickled fruit or vegetables, fermented vegetable products, or acidified canned goods.

(g) This section does not apply to pickled cucumbers.

(h) For purposes of this section, "process authority" means a person who has expert knowledge acquired through appropriate training and experience in the pickling, fermenting, or acidification and processing of pickled, fermented, or acidified foods.

Added by Acts 2019, 86th Leg., R.S., Ch. 590 (S.B. 572), Sec. 4, eff. September 1, 2019.

Sec. 437.01953. REQUIREMENTS FOR SALE OF CERTAIN FOOD. (a) A cottage food production operation that sells to consumers a time and temperature control for safety food shall:

(1) register with the department in the form and manner prescribed by the department;

(2) store and deliver the food at the air temperature necessary to prevent the growth of bacteria that may cause human illness; and

(3) label the food in accordance with Section 437.0193.

(b) The executive commissioner may adopt rules to implement this section.

Added by Acts 2025, 89th Leg., R.S., Ch. 303 (S.B. 541), Sec. 7, eff. September 1, 2025.

Sec. 437.01955. SAMPLING AND DONATION OF COTTAGE FOOD. (a) A cottage food production operation may provide samples of its products

to consumers at any location in this state in accordance with the standards provided by Section 437.020(c).

(b) A cottage food production operation may donate food other than time and temperature control for safety food for sale or service at an event, including a religious or charitable organization's bake sale, to the same extent an individual is allowed by law to donate food.

Added by Acts 2025, 89th Leg., R.S., Ch. 303 (S.B. 541), Sec. 7, eff. September 1, 2025.

Sec. 437.01965. COTTAGE FOOD VENDOR. (a) A cottage food vendor may sell food produced by a cottage food production operation in accordance with Section 437.0194(a-1) directly to consumers at a farmers' market, a farm stand, a food service establishment, or any retail store.

(b) A cottage food vendor who sells food described by Subsection (a) must display in a prominent place near the location where the food is offered for sale a sign with the following disclosure:

"THIS PRODUCT WAS PRODUCED IN A PRIVATE RESIDENCE THAT IS NOT SUBJECT TO GOVERNMENTAL LICENSING OR INSPECTION."

(c) Food produced by a cottage food production operation and sold by a cottage food vendor must include on the label the date the food was made.

(d) A cottage food vendor that purchases food from a cottage food production operation at wholesale shall register with the department in the form and manner the department prescribes. The executive commissioner may adopt rules to implement this subsection.

Added by Acts 2025, 89th Leg., R.S., Ch. 303 (S.B. 541), Sec. 7, eff. September 1, 2025.

Sec. 437.0197. EXEMPTION FOR HONEY PRODUCTION OPERATION. A honey production operation is not a food service establishment for purposes of this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 265 (S.B. 1766), Sec. 2, eff. September 1, 2015.

Amended by:
Acts 2025, 89th Leg., R.S., Ch. 548 (H.B. 519), Sec. 2, eff. September 1, 2025.

Sec. 437.0198. REGULATION OF HONEY PRODUCTION OPERATION PROHIBITED. A local government authority, including a local health department, may not regulate the production of honey or honeycomb at a honey production operation.

Added by Acts 2015, 84th Leg., R.S., Ch. 265 (S.B. 1766), Sec. 2, eff. September 1, 2015.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 548 (H.B. 519), Sec. 2, eff. September 1, 2025.

Sec. 437.0199. LABELING REQUIREMENTS FOR HONEY PRODUCTION OPERATION. Honey or honeycomb sold or distributed by a honey production operation must be labeled in accordance with Subchapter E, Chapter 131, Agriculture Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 265 (S.B. 1766), Sec. 2, eff. September 1, 2015.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 548 (H.B. 519), Sec. 2, eff. September 1, 2025.

Sec. 437.01991. HONEY AS RAW AGRICULTURAL COMMODITY. (a) In this section, "raw agricultural commodity" has the meaning assigned by Section 431.002.
(b) For purposes of this subtitle and other applicable law, a honey production operation that:
(1) extracts honey from honeycomb is harvesting a raw agricultural commodity; and
(2) bottles extracted honey and packages cut honeycomb is packaging a raw agricultural commodity without necessitating any additional manufacturing or processing.

Added by Acts 2025, 89th Leg., R.S., Ch. 548 (H.B. 519), Sec. 3, eff.

September 1, 2025.

Sec. 437.020. REGULATION OF FOOD SAMPLES AT FARMS AND FARMERS' MARKETS. (a) In this section:

(1) "Farmers' market" means a designated location used for a recurring event at which a majority of the vendors are farmers or other food producers who sell food directly to consumers.

(2) "Food" means an agricultural, apicultural, horticultural, silvicultural, viticultural, or vegetable product for human consumption, in either its natural or processed state, that has been produced or processed or otherwise has had value added to the product in this state. The term includes:

(A) fish or other aquatic species;

(B) livestock, a livestock product, or a livestock by-product;

(C) planting seed;

(D) poultry, a poultry product, or a poultry by-product;

(E) wildlife processed for food or by-products;

(F) a product made from a product described by this subdivision by a farmer or other producer, including a cottage food production operation, who grew or processed the product; or

(G) produce.

(3) "Food producer" means a person who grew, raised, processed, prepared, manufactured, or otherwise added value to the food product the person is selling. The term does not include a person who only packaged or repackaged a food product.

(b) Except as provided by this section and Sections 437.0065, 437.0201, 437.0202, and 437.0203:

(1) this chapter does not regulate the provision of samples of food or the sale of food to consumers at a farm or farmers' market; and

(2) a rule adopted under state law may not regulate the provision of samples of food or the sale of food to consumers at a farm or farmers' market.

(b-1) The department or a local government authority, including a local health department, may not require a person to obtain a permit under this chapter to provide samples of food at a farm or farmers' market under this section.

(b-2) A local government authority, including a local health department, may not regulate the provision of samples of food at a farm or farmers' market except as provided by this chapter.

(b-3) The department or a local government authority, including a local health department, may:

(1) perform an inspection to enforce the requirements of this section for preparing and distributing samples of food at a farm or farmers' market; and

(2) require a person to obtain a permit under this chapter to offer for sale or distribution to consumers food cooked at a farm or farmers' market.

(c) Samples of food may be prepared and distributed at a farm or farmers' market if the following sanitary conditions exist:

(1) samples must be distributed in a sanitary manner;

(2) a person preparing produce samples on-site must:

(A) wear clean, disposable plastic gloves when preparing samples; or

(B) observe proper hand washing techniques immediately before preparing samples;

(3) produce intended for sampling must be washed in potable water to remove any soil or other visible material;

(4) potable water must be available for washing;

(5) except as provided by Section 437.0202(b), potentially hazardous food, as determined by rule of the department, must be maintained at or below 41 degrees Fahrenheit or disposed of within two hours after cutting or preparing; and

(6) utensils and cutting surfaces used for cutting samples must be smooth, nonabsorbent, and easily cleaned or disposed of.

(d) A person who sells or provides a sample of meat or poultry or food containing meat or poultry must comply with Chapter 433.

(e) This section does not authorize the sale of or provision of samples of raw milk or raw milk products at a farmers' market.

(f) A cottage food production operation may only provide samples of food described by Section 437.001(2-b)(A) produced by the operation.

(g) This section does not apply to a person who:

(1) provides samples of food at a farm or farmers' market; and

(2) does not sell food directly to consumers at the farm or farmers' market.

Added by Acts 2005, 79th Leg., Ch. 191 (H.B. 894), Sec. 1, eff. May 27, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1275 (H.B. 1382), Sec. 2, eff. September 1, 2013.
Acts 2019, 86th Leg., R.S., Ch. 339 (S.B. 932), Sec. 2, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 373 (H.B. 1694), Sec. 1, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 373 (H.B. 1694), Sec. 2, eff. September 1, 2019.
Acts 2021, 87th Leg., R.S., Ch. 577 (S.B. 617), Sec. 2, eff. June 14, 2021.

Sec. 437.0201. REGULATION OF FOOD AT FARMERS' MARKETS UNDER TEMPORARY FOOD ESTABLISHMENT PERMITS. (a) In this section, "farmers' market" and "food" have the meanings assigned by Section 437.020.

(b) The department or a local health department may issue a temporary food establishment permit to a person who sells food at a farmers' market, subject to Section 437.0065.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 339 (S.B. 932), Sec. 4, eff. September 1, 2019.

(d) This section does not apply to a farmers' market in a county:

(1) that has a population of less than 50,000; and

(2) over which no local health department has jurisdiction.

(e) The executive commissioner, a state enforcement agency, or a local government authority, including a local health department, may not adopt a rule requiring a farmers' market to pay a permit fee for:

(1) conducting a cooking demonstration if the demonstration is conducted for a bona fide educational purpose; or

(2) providing samples of food.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 7, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1275 (H.B. 1382), Sec. 3, eff.

September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 339 (S.B. 932), Sec. 3, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 339 (S.B. 932), Sec. 4, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 373 (H.B. 1694), Sec. 3, eff. September 1, 2019.

Sec. 437.0202. TEMPERATURE REQUIREMENTS FOR FOOD AT FARMERS' MARKETS. (a) In this section, "farmers' market" and "food" have the meanings assigned by Section 437.020.

(b) The executive commissioner by rule may adopt temperature requirements for food sold at, prepared on-site at, or transported to or from a farmers' market under Section 437.020, 437.0201, or 437.0203. Food prepared on-site at a farmers' market may be sold or distributed at the farmers' market only if the food is prepared in compliance with the temperature requirements adopted under this section.

(c) Except as provided by Subsection (d), the executive commissioner or a state or local enforcement agency may not mandate a specific method for complying with the temperature control requirements adopted under Subsection (b).

(d) The municipality in which a municipally owned farmers' market is located may adopt rules specifying the method or methods that must be used to comply with the temperature control requirements adopted under Subsection (b).

(e) This section does not apply to a farmers' market in a county:

(1) that has a population of less than 50,000; and

(2) over which no local health department has jurisdiction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 7, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1275 (H.B. 1382), Sec. 4, eff. September 1, 2013.

Sec. 437.0203. REGULATION OF COOKING DEMONSTRATIONS AT FARMERS'

MARKETS. (a) In this section, "farmers' market" and "food" have the meanings assigned by Section 437.020.

(b) Except as provided by this section and Sections 437.020, 437.0201, and 437.0202:

(1) this chapter does not regulate cooking demonstrations at a farmers' market; and

(2) a rule adopted under state law may not regulate cooking demonstrations at a farmers' market.

(c) A person may conduct a cooking demonstration at a farmers' market only if:

(1) regardless of whether the demonstrator provides a sample of food to consumers, the farmers' market that hosts the demonstration:

(A) has an establishment operator with a valid certification under Subchapter D, Chapter 438, supervising the demonstration; and

(B) complies with Sections 437.020 and 437.0202, the requirements of a temporary food establishment under this chapter, and rules adopted under this chapter; and

(2) when the demonstrator provides a sample of food to consumers:

(A) the demonstrator provides a sample only and not a full serving; and

(B) samples of food prepared during a demonstration are disposed of not later than two hours after the beginning of the demonstration.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1275 (H.B. 1382), Sec. 5, eff. September 1, 2013.

Sec. 437.021. AUTHORITY TO OPERATE ON CERTAIN PROPERTY. A person operating a mobile food unit, roadside food vendor, or temporary food service establishment in a county with a population of more than 3.3 million shall acquire written authorization from the owner of the property on which the unit, vendor, or establishment is operating. The written authorization must:

(1) be notarized;

(2) provide that the operator has the property owner's permission to operate the unit, vendor, or establishment on the

property; and

(3) be prominently displayed in the unit, vendor, or establishment in plain view of the public at all times.

Added by Acts 2007, 80th Leg., R.S., Ch. 1402 (H.B. 3138), Sec. 2, eff. June 15, 2007.

Sec. 437.023. SERVICE ANIMALS. (a) A food service establishment, retail food store, or other entity regulated under this chapter may not deny a service animal admittance into an area of the establishment or store or of the physical space occupied by the entity that is open to customers and is not used to prepare food if:

(1) the service animal is accompanied and controlled by a person with a disability; or

(2) the service animal is in training and is accompanied and controlled by an approved trainer.

(b) If a service animal is accompanied by a person whose disability is not readily apparent, for purposes of admittance to a food service establishment, retail food store, or physical space occupied by another entity regulated under this chapter, a staff member of the establishment, store, or entity may only inquire about:

(1) whether the service animal is required because the person has a disability; and

(2) what type of work the service animal is trained to perform.

(c) In this section, "service animal" means a canine that is specially trained or equipped to help a person with a disability. An animal that provides only comfort or emotional support to a person is not a service animal under this section. The tasks that a service animal may perform in order to help a person with a disability must be directly related to the person's disability and may include:

(1) guiding a person who has a visual impairment;

(2) alerting a person who has a hearing impairment or who is deaf;

(3) pulling a wheelchair;

(4) alerting and protecting a person who has a seizure disorder;

(5) reminding a person who has a mental illness to take prescribed medication; and

(6) calming a person who has post-traumatic stress disorder.

Added by Acts 2013, 83rd Leg., R.S., Ch. 838 (H.B. 489), Sec. 1, eff. January 1, 2014.

Sec. 437.025. REQUIREMENTS FOR DOGS IN OUTDOOR DINING AREAS; MUNICIPAL PREEMPTION. (a) A food service establishment may permit a customer to be accompanied by a dog in an outdoor dining area if:

(1) the establishment posts a sign in a conspicuous location in the area stating that dogs are permitted;

(2) the customer and dog access the area directly from the exterior of the establishment;

(3) the dog does not enter the interior of the establishment;

(4) the customer keeps the dog on a leash and controls the dog;

(5) the customer does not allow the dog on a seat, table, countertop, or similar surface; and

(6) in the area, the establishment does not:

(A) prepare food; or

(B) permit open food other than food that is being served to a customer.

(b) A municipality may not adopt or enforce an ordinance, rule, or similar measure that imposes a requirement on a food service establishment for a dog in an outdoor dining area that is more stringent than the requirements described by Subsection (a).

(c) The requirements described by Subsection (a) do not apply to a service animal, as defined by Section 437.023(c).

Added by Acts 2019, 86th Leg., R.S., Ch. 423 (S.B. 476), Sec. 1, eff. September 1, 2019.

Sec. 437.026. SALE OF CERTAIN FOOD BY FOOD SERVICE ESTABLISHMENT. (a) Except as provided by Subsection (b), a food service establishment that holds a permit under this chapter may sell directly to an individual consumer food, other than prepared food, that:

(1) is labeled, which may include a handwritten label, with

any information required by the department's food service establishment rules;

(2) for a meat product or poultry product, is obtained from a source that is appropriately inspected and bears an official mark of inspection from the department or the United States Department of Agriculture; and

(3) for food requiring refrigeration other than whole, uncut produce, is:

(A) maintained at or below 41 degrees Fahrenheit until the establishment sells or donates the food; and

(B) protected from contamination.

(b) A food service establishment described by Subsection (a) may not sell directly to an individual consumer food that is:

(1) in a package exhibiting damage; or

(2) distressed because the food:

(A) has been subjected to fire, flooding, excessive heat, smoke, radiation, or another environmental contamination;

(B) is not held at the correct temperature for the food type; or

(C) is not in good condition.

(c) A municipality or public health district may not require a food service establishment that sells food directly to an individual consumer under this section to obtain a food manufacturer license or permit if the establishment:

(1) complies with this section; and

(2) is not required to hold a food manufacturer license or permit under other state law.

Added by Acts 2021, 87th Leg., R.S., Ch. 242 (H.B. 1276), Sec. 1, eff. June 4, 2021.

Sec. 437.027. FOOD ALLERGEN AWARENESS POSTER. (a) A food service establishment shall display a poster relating to food allergen awareness in an area of the establishment regularly accessible to the establishment's food service employees. The department shall:

(1) collaborate with individuals with expertise and knowledge regarding food allergies to determine the form and content of the poster;

(2) post a sample poster on the department's Internet website; and

(3) update the poster as necessary to ensure the poster contains current information about food allergens and remains consistent with standards promulgated by the United States Food and Drug Administration.

(b) The poster must include information regarding:

(1) the risk of an allergic reaction to a food allergen;

(2) symptoms of an allergic reaction;

(3) the major food allergens, as determined by federal law and regulations of the United States Food and Drug Administration;

(4) the procedures for preventing an allergic reaction; and

(5) appropriate responses for assisting an individual who is having an allergic reaction.

(c) The executive commissioner shall adopt rules necessary to implement this section.

(d) This section does not create a private cause of action or change any common law or statutory duty.

(e) Notwithstanding any other law, a county, municipality, or public health district may not adopt or enforce an order, ordinance, rule, or other measure related to food allergens that is inconsistent with or exceeds the requirements of this section or Chapter 438.

Added by Acts 2023, 88th Leg., R.S., Ch. 1031 (S.B. 812), Sec. 2, eff. September 1, 2023.

Sec. 437.028. PROHIBITED RESTRICTIONS ON PACKAGING, UTENSILS, AND STRAWS. Notwithstanding any other law, the department, a county, a municipality, or a public health district may not restrict the type or quantity of packaging, utensils, or straws a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment provides to customers.

Added by Acts 2023, 88th Leg., R.S., Ch. 245 (S.B. 577), Sec. 1, eff. September 1, 2023.
Redesignated from Health and Safety Code, Section 437.027 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(21), eff. September 1, 2025.

Sec. 437.029. SOUND REGULATIONS. (a) Notwithstanding any other law, the department, a county, a municipality, or a public health district, including an authorized agent, employee, or department, may not require a food service establishment to obtain a sound regulation permit, charge a sound regulation fee to an establishment, or otherwise prohibit sound-related activity at an establishment if the establishment:

(1) accepts delivery of supplies or other items, provided that if the delivery occurs between 10 p.m. and 5 a.m., then:

(A) the delivery lasts for one hour or less;

(B) the delivery is only for food, nonalcoholic beverages, food service supplies, or ice; and

(C) the delivery sound level when measured from the residential property closest in proximity to the establishment does not exceed 65 dBA, excluding traffic and other background noise that can be reasonably excluded; or

(2) is a restaurant, as defined by Section 1.04, Alcoholic Beverage Code, that limits the use of amplified sound for playing music or amplifying human speech within the establishment's indoor or outside property boundaries to ensure:

(A) the amplified sound is not used after 10 p.m. on Sunday through Thursday and 11 p.m. on Friday and Saturday; and

(B) the amplified sound level does not exceed 70 dBA or 75 dBC when measured at the establishment's property perimeter, excluding traffic and other background noise that can be reasonably excluded.

(b) Subsection (a)(2) does not apply to a food service establishment on property that is located within 300 feet of a residence that was occupied before any food service establishment was located on the property.

(c) This section does not restrict the authority of a municipality or county to enforce the limitations described by Subsection (a) or an ordinance or order the municipality or county adopts, to the extent the ordinance or order does not conflict with that subsection.

Added by Acts 2025, 89th Leg., R.S., Ch. 48 (S.B. 1008), Sec. 9, eff. September 1, 2025.

Sec. 437.030. TRANSPORTING, DELIVERING, AND SERVING FOOD AT WORKPLACE BY FOOD SERVICE ESTABLISHMENT OR MOBILE FOOD UNIT. (a) This section applies only to a permitted food service establishment or permitted mobile food unit transporting and delivering to the premises of a workplace food to be served by an employee or contractor of the establishment or unit.

(b) Notwithstanding any other law, a county, a municipality, a public health district, or the department may not require a permitted food service establishment or permitted mobile food unit or an employee or contractor of an establishment or unit to obtain an additional permit or certification to transport, deliver, and serve food at the premises of a workplace if:

(1) in the event that the food is assembled at the workplace, the employees or contractors of the establishment or unit comply with applicable food handler and food manager certification requirements;

(2) an employee or contractor of the establishment or unit serves the prepared food at the workplace premises;

(3) the prepared food is sold to employees or guests of the workplace;

(4) the food is prepared, transported, delivered, and served in accordance with local catering food safety rules, including time and temperature requirements;

(5) adequate bathrooms and handwashing stations, whether plumbed or portable, are available on the workplace premises; and

(6) the establishment or unit transports, delivers, and serves food to the workplace premises not more than three days in a seven-day period.

(c) Notwithstanding any other law, a county, a municipality, a public health district, or the department may not require an owner or operator of a workplace to which food is transported, delivered, or served under Subsection (b) to obtain a permit or certification.

Added by Acts 2025, 89th Leg., R.S., Ch. 48 (S.B. 1008), Sec. 9, eff. September 1, 2025.

CHAPTER 437A. MOBILE FOOD SERVICE ESTABLISHMENTS OPERATING IN CERTAIN COUNTIES IN MORE THAN ONE MUNICIPALITY

Sec. 437A.001. DEFINITIONS. In this chapter:

(1) "Food," "mobile food unit," and "roadside food vendor" have the meanings assigned by rules adopted under Chapter 437.

(2) "Mobile food service establishment" means one or more mobile food units or roadside food vendors operating from a single preparation facility under the managerial authority of a single permit or license holder.

Added by Acts 2023, 88th Leg., R.S., Ch. 845 (H.B. 2878), Sec. 1, eff. September 1, 2023.

Sec. 437A.002. APPLICABILITY. This chapter applies only to a county:

(1) with a population of more than 2.1 million; and

(2) in which is located partly or wholly:

(A) an airport operating under Subchapter D, Chapter 22, Transportation Code; and

(B) an airport owned by the principal municipality in the county that does not offer commercial air service.

Added by Acts 2023, 88th Leg., R.S., Ch. 845 (H.B. 2878), Sec. 1, eff. September 1, 2023.

Text of section effective until July 1, 2026

Sec. 437A.003. COUNTY PERMIT REQUIRED. (a) Notwithstanding any other law, a mobile food service establishment may not operate in a county to which this chapter applies unless the establishment obtains a permit from the county.

(b) A permit issued by a county under this chapter must authorize a mobile food service establishment to operate in any municipality located in the county.

(c) A permit issued by a county under this chapter is considered a permit issued by a county under Chapter 437 for purposes of that chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 845 (H.B. 2878), Sec. 1, eff. September 1, 2023.
Repealed by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 4, eff. July 1, 2026.

Sec. 437A.004. COUNTY RESPONSE TO PERMIT APPLICATION. A county shall approve or deny a mobile food service establishment's application for a permit to operate in the county not later than the third business day after the date the county receives the application and all information necessary for the county to consider the application.

Added by Acts 2023, 88th Leg., R.S., Ch. 845 (H.B. 2878), Sec. 1, eff. September 1, 2023.

Sec. 437A.005. REFUSAL TO ISSUE PERMIT. (a) A county may refuse to issue a permit for a mobile food service establishment to operate in the county if the establishment is not in good standing in another jurisdiction or if the county has previously imposed on the establishment a citation or fine that raises public health and safety concerns.

(b) If a county refuses to issue a permit authorizing a mobile food service establishment to operate in the county, the county shall provide the establishment with written notice regarding the basis for the county's refusal and advise the establishment of any remedial actions the establishment may take to become eligible for a permit.

Added by Acts 2023, 88th Leg., R.S., Ch. 845 (H.B. 2878), Sec. 1, eff. September 1, 2023.

Sec. 437A.006. INSPECTION BY COUNTY. (a) A mobile food service establishment is subject to periodic and unannounced inspections by the county that issues the permit to operate in the county under this chapter.

(b) A mobile food service establishment shall allow the county access to the establishment for an inspection.

(c) If an inspection by the county determines a mobile food service establishment committed a violation, the county may issue a fine to the establishment or suspend the establishment's permit.

Added by Acts 2023, 88th Leg., R.S., Ch. 845 (H.B. 2878), Sec. 1, eff. September 1, 2023.

Sec. 437A.007. PERMIT RENEWAL; NOTICE. A mobile food service establishment annually shall renew the establishment's permit under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 845 (H.B. 2878), Sec. 1, eff. September 1, 2023.

Sec. 437A.008. RULES. The executive commissioner may adopt the rules necessary to implement this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 845 (H.B. 2878), Sec. 1, eff. September 1, 2023.

CHAPTER 437B. MOBILE FOOD VENDORS
SUBCHAPTER A. GENERAL PROVISIONS

Text of section effective on July 1, 2026

Sec. 437B.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person who applies to the department to receive a license to operate as a mobile food vendor.

(2) "Food vending vehicle" means any vehicle that operates as a food service establishment and is designed to be readily movable.

(3) "License holder" means a person who holds a mobile food vendor license issued under this chapter.

(4) "Local authority" means a municipality, county, public health authority, special purpose district or authority, or any other political subdivision of this state.

(5) "Mobile food vendor" means any person who dispenses food or beverages from a food vending vehicle for immediate service or consumption.

(6) "Prepackaged food" means any commercially labeled and processed food that is prepackaged to prevent direct human contact with the food product on distribution from the manufacturer, food facility, or other approved source.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.002. CONSTRUCTION OF CHAPTER. This chapter may not be construed to require a local authority to enter into a collaborative agreement with the department to conduct health inspections, adopt a program regulating mobile food vendors, or modify a local authority's existing mobile food vendor regulation program, provided the local authority's regulations do not conflict with this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.003. LOCAL PREEMPTION. This chapter preempts a local authority's power to prohibit or regulate mobile food vendors in a manner that conflicts with this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Sec. 437B.004. RULES. The executive commissioner may adopt rules to implement this chapter. The rules must be narrowly tailored to address a demonstrable health or safety risk and may not:

(1) limit the number of mobile food vendor licenses the department may issue;

(2) address the hours of operation for mobile food vendors;

(3) restrict a mobile food vendor's propane capacity below the capacity state law allows for commercial vehicles; or

(4) require a mobile food vendor to:

(A) operate outside a specific perimeter of a commercial establishment or restaurant;

(B) enter into any agreement with a commercial establishment or restaurant, except as necessary to properly dispose of grease and other cooking waste;

(C) have an operational handwashing sink in the vehicle of a vendor who sells only prepackaged food;

(D) associate with a commissary if the vehicle carries the equipment necessary to comply with state law and properly

disposes of grease and other cooking waste;

(E) provide the vendor's fingerprints as a condition of holding a mobile food vendor license;

(F) install a global positioning system tracking device on the vehicle;

(G) keep the vehicle in constant motion except when serving customers;

(H) submit to an additional fire inspection a vehicle the vendor demonstrates has passed a state or local fire inspection within the preceding 12 months; or

(I) submit to health inspections other than an inspection the department, or a local authority under a collaborative agreement, conducts unless the department is investigating a reported foodborne illness.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. September 1, 2025.

Text of subchapter effective on July 1, 2026

SUBCHAPTER B. LICENSE

Text of section effective on July 1, 2026

Sec. 437B.051. LICENSE REQUIRED. (a) A person may not operate as a mobile food vendor in this state unless the person holds a mobile food vendor's license issued by the department. A separate license is required for each food vending vehicle a mobile food vendor operates.

(b) A local authority may not prohibit the operation in its jurisdiction of a mobile food vendor who holds a mobile food vendor license and complies with all other state and local laws not in conflict with this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.052. FORM OF APPLICATION. The department shall prescribe a written application for a mobile food vendor license. The department shall make the application available to applicants in

person and on the department's Internet website.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.053. APPLICATION REQUIREMENTS. (a) An applicant for a mobile food vendor license must submit an application to the department on the form the department prescribes. The application must contain:

(1) the applicant's name, address, and telephone number;

(2) the name, address, and telephone number of any associated entity or organization the applicant is representing and copies of documents verifying that relationship;

(3) the applicant's primary residences and business addresses during the 12 months preceding the date of the application;

(4) the food or beverages the applicant proposes to sell to enable the department to establish the applicant's food type classification;

(5) a statement of whether the applicant has previously been denied a mobile food vendor license or had a mobile food vendor license suspended or revoked in another state or local jurisdiction and the reasons for any denial, suspension, or revocation; and

(6) for each motorized food vending vehicle the applicant is applying for a license to operate:

(A) the vehicle license number, description, identification number, and registration;

(B) proof of vehicle insurance; and

(C) a copy or proof of any additional commercial vehicle licenses or permits required by this state.

(b) An applicant must attest to the information submitted under Subsection (a).

(c) The department may require an applicant to submit additional information.

(d) An applicant may submit one application for all food vending vehicles to be licensed under this subchapter.

(e) An applicant's failure to submit a complete application may result in denial of a license.

(f) A person may not intentionally provide false information or

intentionally omit requested information on an application.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.054. HEALTH INSPECTION. (a) Not later than the 14th day after the date the department receives a complete mobile food vendor license application, the department or a governmental entity acting under a collaborative agreement as provided by Subchapter D shall conduct a health inspection of each of the applicant's food vending vehicles listed on the application. The department may not issue a license to an applicant whose vehicle does not pass a health inspection.

(b) The department shall ensure that:

(1) an applicant's food vending vehicle is safe for preparing, handling, and selling food; and

(2) an applicant is in compliance with all applicable laws and the rules adopted under those laws.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.055. ISSUANCE OF LICENSE. (a) The department shall issue a mobile food vendor license to an applicant who submits a complete application, pays any required fee, and meets the department's licensing requirements and whose food vending vehicle passes a health inspection.

(b) A license issued under this section expires on the first anniversary of the date of issuance.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.056. LICENSE RENEWAL. (a) Before expiration of a

license, the department shall send notice of the expiration to the mobile food vendor. The vendor shall submit a renewal application before the date the license expires.

(b) A mobile food vendor may continue to operate while the vendor's application for renewal is pending with the department.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.057. LICENSE NOT TRANSFERABLE; SUBSTITUTION OF VEHICLE. (a) A mobile food vendor license issued under this subchapter is not transferable and does not authorize the activities of any person other than the person who holds the license.

(b) The sale of one food vending vehicle identified in a mobile food vendor license application, when replaced by another food vending vehicle, does not invalidate the license or require issuance of a new license.

(c) A license holder who replaces a food vending vehicle with another vehicle must provide to the department for the replacement vehicle the information required by Section 437B.053 and have the replacement vehicle inspected as required by Section 437B.054. The health inspection shall be conducted as soon as practicable but not later than the 14th calendar day after the date the department receives the information required under this section.

(d) The recipient of transferred mobile food vendor business assets must apply for and obtain a new mobile food vendor license before operating as a mobile food vendor.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.058. FEES. (a) The department may charge a fee for each mobile food vendor license application submitted and each license issued or renewed under this chapter. The department may establish a schedule of fees based on the license classifications described by Section 437B.151. The department may set the fees in

amounts necessary to cover the costs of administering this chapter.

(b) The department may charge a fee for a health inspection of an applicant's food vending vehicle required under Section 437B.054. The department shall set the fee in an amount that covers the cost of conducting a health inspection under that section.

(c) At the time the department issues or renews a mobile food vendor license, the department shall charge a fee for a health inspection required under Subchapter D. The department shall set the fee in an amount based on the average cost of conducting a health inspection multiplied by the number of annual health inspections required during the next year for the mobile food vendor classification type as described by Section 437B.151.

(d) All fees collected by the department under this chapter shall be deposited in the state treasury to the credit of the food and drug retail fee account.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.059. MOBILE FOOD VENDOR GUIDE. (a) The department shall develop a guide on the mobile food vendor licensing procedures. The guide must include:

(1) instructions for obtaining, maintaining, and renewing a mobile food vendor license; and

(2) a description of the department's standards for inspecting a food vending vehicle.

(b) The department shall make the guide available at the department's office and on the department's Internet website.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.060. DEPARTMENT DATABASE. (a) The department shall establish and maintain a statewide database for use by the department and local authorities that includes the:

(1) names of mobile food vendors licensed under this

chapter;

(2) results of health inspections of mobile food vendors' food vending vehicles, including inspection reports;

(3) public complaints made against mobile food vendors resulting in disciplinary or corrective action; and

(4) itineraries of mobile food vendors submitted under Subsection (b).

(b) A mobile food vendor may periodically submit to the department an itinerary of the locations of the mobile food vendor's food vending vehicles.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of subchapter effective on July 1, 2026

SUBCHAPTER C. MOBILE FOOD VENDOR OPERATIONS

Text of section effective on July 1, 2026

Sec. 437B.101. COMPLIANCE WITH STATE AND LOCAL LAW. A mobile food vendor shall comply with all state and local laws in the jurisdiction in which the mobile food vendor operates, including all fire codes, location restrictions, and zoning codes.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.102. FOOD VENDING VEHICLE DRIVER REQUIREMENTS. A person who drives a motorized food vending vehicle must hold a current commercial driver's license if a commercial driver's license is required for the vehicle's class under Chapter 522, Transportation Code.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.103. OPERATIONAL STANDARDS. A mobile food vendor shall:

(1) submit to and pass any required health inspection conducted under Subchapter D; and

(2) display the mobile food vendor license and health inspection certificate in a conspicuous location for public view.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.104. FOOD SAFETY. A mobile food vendor shall comply with all laws and rules regarding food safety, including any food safety and food manager certifications required under Chapter 438.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of subchapter effective on July 1, 2026

SUBCHAPTER D. HEALTH INSPECTIONS

Text of section effective on July 1, 2026

Sec. 437B.151. MOBILE FOOD VENDOR CLASSIFICATIONS. (a) The executive commissioner by rule shall establish classifications of mobile food vendors for purposes of conducting health inspections as follows:

(1) mobile food type I vendor for a vendor who dispenses prepackaged foods, does not dispense time or temperature control for safety beverages, or poses a low risk of harm to the public;

(2) mobile food type II vendor for a vendor who dispenses food that requires limited handling and preparation; and

(3) mobile food type III vendor for a vendor who prepares, cooks, holds, and serves food from a food vending vehicle.

(b) The rules adopted under Subsection (a) shall specify the categories of foods or beverages that mobile food vendors in each classification may serve.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.152. CHANGING CLASSIFICATIONS. A mobile food vendor who seeks to serve food or beverages that may require the vendor's reclassification shall notify the department of the nature of the food or beverages to be sold. The department, or a local authority in a collaborative agreement with the department under Section 437B.153, may conduct a health inspection and reclassify the vendor in accordance with the rules adopted under Section 437B.151.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.153. INSPECTIONS; COLLABORATIVE AGREEMENT WITH LOCAL AUTHORITY. (a) To protect public health and safety, the department shall ensure ongoing, randomized inspections are conducted on each mobile food vendor based on the mobile food vendor's classification and previous health inspection results.

(b) On request by a local authority, the department may enter into a collaborative agreement with the local authority for conducting health inspections. The department shall reimburse the local authority acting under a collaborative agreement for the cost of conducting a health inspection using money collected for health inspection fees under Section 437B.058(c).

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.154. NOTICE OF LOCATION FOR INSPECTIONS. A mobile food vendor shall make available to the department a list of all locations at which the vendor intends to operate, to the best of the vendor's knowledge. A vendor may provide the list of locations through the vendor's social media or on the vendor's Internet website. If the vendor does not provide the list of operating locations on social media or the vendor's Internet website, the

vendor shall submit to the department in the form and manner the department prescribes a list of the locations at which the vendor intends to operate, to the best of the vendor's knowledge.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.155. REIMBURSEMENT OF INSPECTION FEE. On request of a mobile food vendor, the department shall reimburse the vendor the portion of the fee charged for each health inspection required under this subchapter that was not conducted by the department or local authority under a collaborative agreement during the time the vendor's license was valid. The department shall reimburse the vendor not later than the 30th day after the date the department receives the vendor's request.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of subchapter effective on July 1, 2026

SUBCHAPTER E. INVESTIGATION; ENFORCEMENT

Text of section effective on July 1, 2026

Sec. 437B.201. INVESTIGATION. (a) The department or a local authority may investigate a mobile food vendor on reasonable suspicion the vendor is violating the law or on receipt of a health or safety complaint. The department must record a complaint in the state's mobile food vendor database. The local authority shall report suspected violations of state law to the department and may recommend the department suspend or revoke a mobile food vendor license.

(b) The mobile food vendor shall cooperate with the department or local authority during an investigation. Failure to cooperate with the department or local authority may result in suspension or revocation of a license.

(c) This chapter may not be construed to impede the department or local authority when conducting an investigation of a reported foodborne illness.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.202. LICENSE DENIAL, SUSPENSION, OR REVOCATION. The department may deny, suspend, or revoke a mobile food vendor license only if:

(1) the applicant or license holder:

(A) violates this chapter, a rule adopted under this chapter, or a department order;

(B) obtains a license by means of fraud, misrepresentation, or concealment of a material fact;

(C) commits fraud or makes a misrepresentation or false statement in connection with the sale of food or beverages while operating as a mobile food vendor; or

(D) is cited three or more times during a 12-month period for a violation of this chapter or rules adopted under this chapter; or

(2) the department determines that material facts or conditions related to the applicant or application provide reasonable justification for the denial, suspension, or revocation of the license.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.203. NOTICE AND HEARING. (a) The department shall provide written notice to an applicant or license holder that the applicant's mobile food vendor application has been denied or that the license may be suspended or revoked. Not later than 14 calendar days after the date an applicant or license holder receives notice from the department of a denial, suspension, or revocation of a license, the applicant or license holder may request a hearing in the form and manner the department prescribes.

(b) If the applicant for or holder of a mobile food vendor license requests a hearing as prescribed by the department, the department shall promptly refer the matter to the State Office of

Administrative Hearings for a contested case hearing.

(c) Following a hearing or on conclusion of the involvement of the State Office of Administrative Hearings in the matter under this section, the department shall promptly issue an order that includes findings of fact and conclusions of law.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.204. EMERGENCY SUSPENSION. (a) The department may issue an emergency order to suspend a mobile food vendor license if the department has reasonable cause to believe a license holder's operations pose an imminent threat to the public's health and safety. An emergency suspension order is effective immediately without a hearing on notice to the license holder and must state the length of the suspension.

(b) Not later than the 14th day after the date a mobile food vendor license holder receives notice from the department of an emergency suspension of a license under this section, the license holder may request a preliminary hearing on the emergency order in a form and manner the department prescribes.

(c) On receipt of a license holder's request for hearing under Subsection (b), the department shall promptly refer the matter to the State Office of Administrative Hearings for a preliminary hearing before an administrative law judge.

(d) An administrative law judge for the State Office of Administrative Hearings shall:

(1) conduct a preliminary hearing to affirm, modify, or set aside the emergency suspension order issued by the department under Subsection (b) not later than the 17th day after the date the office receives the hearing request;

(2) make findings of fact and conclusions of law; and

(3) issue a written proposal for decision on the department's reasonable cause to believe a continuing and imminent threat to the public's health and safety exists.

(e) A final hearing on the matter shall be held not later than the 61st day after the date of the emergency suspension.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.2045. RIGHT TO APPEAL. The department's suspension or revocation of a mobile food vendor license under this chapter and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

Text of section effective on July 1, 2026

Sec. 437B.205. ADMINISTRATIVE PENALTY. A license holder who continues to operate after the department suspends or revokes the license holder's mobile food vendor license is subject to an administrative penalty in an amount the department determines.

Added by Acts 2025, 89th Leg., R.S., Ch. 744 (H.B. 2844), Sec. 2, eff. July 1, 2026.

CHAPTER 438. PUBLIC HEALTH MEASURES RELATING TO FOOD

SUBCHAPTER A. UNPACKAGED FOODS

Sec. 438.001. DEFINITIONS. In this subchapter:

(1) "Gravity feed type container" means a self-service container in which food is dispensed by operating a mechanism that permits the food to drop into a receptacle.

(2) "Scoop utensil type container" means a self-service container from which food is dispensed by using a utensil provided with the container.

(3) "Unpackaged food" means food that is:

(A) not in individual packaging or wrapping;

(B) offered for sale by a retail food store; and

(C) sold in bulk from a container that permits a customer to dispense the food directly into a receptacle.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.002. EXEMPTIONS. This subchapter does not apply to:

(1) a beverage;

(2) fresh fruit or vegetables;

(3) food that is intended to be shelled or cooked before consumption; or

(4) food, such as milk products, eggs, meat, poultry, fish, or shellfish, that is capable of supporting rapid and progressive growth of infectious or toxic microorganisms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.003. SALE FROM SELF-SERVICE CONTAINERS. (a) A person may sell unpackaged food that is displayed and sold in bulk from a self-service container if:

(1) the self-service container has a tight-fitting lid that is securely attached to the container; and

(2) the container, lid, and any utensil are constructed of nontoxic materials that provide for easy cleaning and proper repair.

(b) The lid of a gravity feed type container shall be kept closed except when the container is being serviced or refilled.

(c) The lid of a scoop utensil type container shall be kept closed except during customer service. The container must have a utensil, equipped with a handle, to be used in dispensing the food.

(d) The seller shall:

(1) keep the container, lid, and any utensil sanitary to prevent spoilage and insect infestation; and

(2) post in the immediate display area a conspicuous sign that instructs the customer on the proper procedure for dispensing the food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.004. STRICTER RULES. (a) The executive commissioner by rule may establish requirements stricter than the requirements prescribed by Section 438.003 for the display and sale of unpackaged foods if the transmission of a disease infestation or contamination is directly related to a method of displaying and selling unpackaged

food authorized by this subchapter.

(b) The stricter requirement must be:

(1) adopted according to laboratory evidence supporting the specific relationship between the disease infestation or contamination and the method of dispensing the unpackaged food; and

(2) applied uniformly to all nonexempted food sources and dispensing methods.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1130, eff. April 2, 2015.

Sec. 438.005. SALE OF UNPACKAGED FOOD; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly or intentionally sells unpackaged food in a manner that does not comply with Section 438.003 or a rule adopted under Section 438.004.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.006. EFFECT ON OTHER LAWS. (a) This subchapter supersedes an ordinance or rule adopted by a political subdivision to regulate the method of dispensing unpackaged food.

(b) This subchapter does not affect an ordinance or rule adopted and enforced by a political subdivision to require the maintenance of sanitary conditions in the sale of unpackaged food dispensed in a manner authorized by this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. CLEANING AND STERILIZATION OF FOOD SERVICE ITEMS

Sec. 438.011. DEFINITIONS. In this subchapter:

(1) "Dish" includes a vessel of any shape or size, made of any type of material, commonly used in eating or drinking.

(2) "Food factory" includes a place in which, as a business, food is manufactured or prepared for human consumption.

(3) "Receptacle" includes a vessel, tray, pot, pan, or

other article used for holding food.

(4) "Utensil" includes a vessel or article of any shape or size, made of any material, commonly used in preparing, holding, storing, transporting, serving, or eating food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.012. USE OF UNCLEAN DISHES. A person who operates or manages a food factory may not use or keep for use a dish or utensil or a food-grinding machine or implement that after its previous use has not been cleaned in the manner required by Section 438.013(a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.013. CLEANING DISHES, RECEPTACLES, AND UTENSILS. (a) A person who operates or manages a hotel, cafe, restaurant, dining car, drugstore, soda fountain, meat market, bakery, confectionery, liquor dispensary, or other establishment where food or drink is served to the public may not furnish to a person a dish, receptacle, or utensil that after its previous use has not been washed in warm water containing soap or alkali cleanser until the item is clean to the sight and touch.

(b) A dish or utensil that has been cleaned or polished with a poisonous substance may not be offered for use to a person or used in the manufacturing of food unless all traces of the poisonous substance have been removed from the dish or utensil.

(c) In this section, "liquor dispensary" means a place where malt beverages, wine, or any other alcoholic beverage is stored, prepared, labeled, bottled, served, or handled.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 393, eff. September 1, 2021.

Sec. 438.014. STERILIZATION OF FOOD SERVICE ITEMS. (a) After cleaning dishes, receptacles, utensils, food-grinding machines, and implements as required by Section 438.012 or 438.013, the items shall

be:

(1) placed in a wire cage and immersed in a still bath of clear water for at least:

(A) three minutes in water heated to a minimum temperature of 170 degrees Fahrenheit; or

(B) two minutes in water heated to a minimum temperature of 180 degrees Fahrenheit;

(2) immersed for at least two minutes in a lukewarm chlorine bath made up at a strength of 100 parts per milliliter or more of hypochlorites and not reduced to less than 50 parts per milliliter available chlorine, or a concentration of equal bacteriacidal strength if chloramines are used; or

(3) sterilized by any other chemical method approved by the department.

(b) A three-compartment vat shall be used to sterilize dishes, receptacles, and utensils if a chlorine solution is used. The first compartment of the vat shall be used for washing, the second compartment for plain rinsing, and the third compartment for chlorine immersion. A satisfactory rinsing or spraying device may be substituted for the second rinsing compartment on an existing installation.

(c) The same chlorine solution may not be used as bacteriacidal treatment for more than one day.

(d) After sterilization, all dishes, receptacles, and utensils shall be stored in a manner that protects the food service items from contaminants.

(e) Subsections (a)-(d) do not apply to an establishment that uses electrically operated dishwashing and glasswashing machines that clean and sterilize mechanically.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1131, eff. April 2, 2015.

Sec. 438.015. USE OF DAMAGED DISHES, RECEPTACLES, OR UTENSILS. A public eating or drinking establishment or a person who operates or manages a food factory may not use or keep for use a dish, receptacle, or utensil that is made or damaged in a manner that makes

cleaning or sterilizing the item impossible or doubtful.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.016. NAPKINS. A napkin, cloth, or other article used by a person shall be laundered or sterilized before it is furnished for use to another person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.017. PROTECTION OF OTHER FOOD SERVICE ITEMS. (a) A paper receptacle, ice cream cone, or other single service utensil to be used for serving food or drink shall be kept in a sanitary manner, protected from dust, flies, and other contaminants.

(b) A napkin, straw, toothpick, or other article may not be offered for the use of a person unless the article has been securely protected from dust, dirt, insects, rodents, and, as necessary and by all reasonable means, other contaminants.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.018. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter.

(b) An offense under this subchapter is punishable by a fine of not less than $5 or more than $100.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. FOOD SERVICE EMPLOYEES

Sec. 438.031. DEFINITION. In this subchapter, "food" includes simple, mixed, or compounded articles used for food, drink, flavoring, confectionery, and condiment for human consumption.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.032. INFECTED PERSONS; FOOD HANDLING PROHIBITED. (a)

A person may not handle food, utensils, dishes, or serving implements that are for public sale or for the consumption or use by another if the person:

(1) is infected with a disease that is transmissible through the handling of food;

(2) resides in a household in which there is a transmissible case of a communicable disease that may be food borne;

(3) is known to be a carrier of the organisms causing a communicable disease that may be food borne; or

(4) has a local infection that is commonly transmitted through the handling of food.

(b) A person, firm, corporation, or organization operating or managing a public eating place or vehicle or other place where food is manufactured, processed, prepared, dispensed, or handled in a manner or under circumstances that would permit the probable transmission of disease from a handler to a consumer may not employ a person described in Subsection (a) to handle the food, utensils, dishes, or serving implements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.033. PHYSICAL EXAMINATION; DOCTOR'S CERTIFICATE. (a) On the request of an employer, the department or the department's representative, or the local health authority or the local health authority's representative, a person employed or seeking employment in an activity regulated under Section 438.032:

(1) shall be examined by a licensed physician; and

(2) must receive a certificate signed by the physician stating that the examination has been performed and that to the best of the physician's knowledge the person examined did not have on the date of the examination a transmissible condition of a communicable disease or a local infection commonly transmitted through the handling of food.

(b) The examination must be actual and thorough and conducted with practical scientific procedures to determine the existence of a communicable disease that may be transmitted through the handling of food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1132, eff. April 2, 2015.

Sec. 438.034. EMPLOYEE CLEANLINESS. (a) A person handling food or unsealed food containers shall:

(1) maintain personal cleanliness;

(2) wear clean outer garments;

(3) keep the person's hands clean; and

(4) wash the person's hands and exposed portions of the person's arms with soap and water:

(A) before starting work;

(B) during work as often as necessary to avoid cross-contaminating food; and

(C) to maintain cleanliness, after smoking, eating, and each visit to the toilet.

(b) A person handling food or unsealed food containers may not contact with bare hands exposed ready-to-eat food unless:

(1) documentation is maintained at the food service establishment listing the foods and food handling activities that involve bare-hand contact; and

(2) the food service establishment uses two or more of the following contamination control measures:

(A) requiring employees to perform double hand washing;

(B) requiring employees to use fingernail brushes while hand washing;

(C) requiring employees to use a hand sanitizer after hand washing;

(D) implementing an incentive program that encourages employees not to come to work when ill; and

(E) any other contamination control measure approved by the regulatory authority.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1068, Sec. 2, eff. Sept. 1, 1997. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 926 (H.B. 3012), Sec. 2, eff. September 1, 2009.

Sec. 438.035. USE OF UNLAUNDERED TOWELS. A person at a place where food for public consumption is handled or sold may not use a towel unless the towel has been thoroughly laundered after it has been previously used by another person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.036. CRIMINAL PENALTY. (a) A person, firm, corporation, or organization commits an offense if the person, firm, corporation, or organization violates this subchapter.

(b) An offense under this section is punishable by a fine of not less than $10 or more than $200.

(c) Each day of a violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.037. MUNICIPAL ORDINANCES. This subchapter does not affect the authority granted under Section 5, Article XI, Texas Constitution, Subchapter F of this chapter, and the applicable chapters of the Local Government Code to a Type A general-law municipality or a home-rule municipality to adopt an ordinance relating to this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 18.002(c), eff. September 1, 2019.

SUBCHAPTER D. FOOD SERVICE PROGRAMS

Sec. 438.041. DEFINITION. In this subchapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(80), eff. April 2, 2015.

(2) "Food handler" means a food service employee who works with unpackaged food, food equipment or utensils, or food-contact surfaces.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1299 (S.B. 552), Sec. 1, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(80), eff. April 2, 2015.

Sec. 438.042. DUTIES OF EXECUTIVE COMMISSIONER. (a) The executive commissioner shall adopt standards and procedures for the accreditation of education and training programs for persons employed in the food service industry.

(b) The executive commissioner shall adopt standards and procedures for the accreditation of education and training programs for recertification of persons employed in the food service industry who have previously completed a program accredited in accordance with this subchapter or have been certified by a local health jurisdiction and have completed training and testing requirements substantially similar to those required by this subchapter for program accreditation. The requirements for accreditation in Section 438.043 need not be met by an education or training program for recertification.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 15, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 885, Sec. 1, eff. Aug. 26, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1133, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1134, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1135, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(81), eff. April 2, 2015.

Sec. 438.043. REQUIREMENTS FOR ACCREDITATION. (a) The department may not accredit an education or training program unless the program includes:

(1) four hours of training on the subject of food, including:

(A) a description of food-borne disease and its cause and prevention;

(B) protection of food in location, receipt, storage, preparation, service, and transportation; and

(C) the food allergen awareness information described by Section 437.027(b);

(2) four hours of training on the subject of food service facilities, including:

(A) waste disposal and sanitary plumbing and water;

(B) cleaning and sanitization of dishes and utensils;

(C) storage of equipment and utensils;

(D) housekeeping procedures and schedules;

(E) proper handling of nonfood supplies, including single service items, linens, and toxic materials; and

(F) cleanliness of the physical plant, including building construction, ventilation, lighting, pest control, and general safety of the environment;

(3) two hours of training on the subject of sanitary habits for food handlers, including:

(A) personal hygiene, including proper dress, handwashing, personal habits, and illness;

(B) food handling practices, including minimum handling and proper use of food service utensils; and

(C) operational problems, including identification and correction of commonly occurring deficiencies; and

(4) four hours of training on the subject of management in the food service industry, including:

(A) self-inspection promotion and techniques;

(B) motivation, including safety, the economics of safe food handling, and planning to meet sanitation guidelines; and

(C) personnel training, including management responsibility, resources, and methods.

(b) In addition to the course requirements in Subsection (a), the department shall require that, to receive accreditation, a course include an examination of at least one hour to allow the instructor to evaluate the students' comprehension of the subject matter covered.

(c) The department shall ensure that each accredited program may be presented in not less than 15 hours.

(d) The course requirements in Subsection (a) do not apply to

an education or training program for recertification.

(e) The department may modify the requirements of Subsection (a), (b), or (c) for a course used in training employees under the common control of a single entity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 885, Sec. 2, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 822, Sec. 1, eff. Aug. 28, 1995.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1031 (S.B. 812), Sec. 3, eff. September 1, 2023.

Sec. 438.0431. BASIC FOOD SAFETY ACCREDITATION. (a) Notwithstanding Section 438.043, the department may accredit an education or training program for basic food safety for food handlers as provided by this section.

(b) The executive commissioner shall by rule define the basic food safety training or education required to be included in a course curriculum. The course curriculum must include the food allergen awareness information described by Section 437.027(b). The course length may not exceed two hours.

(c) A training or education program accredited under this section may require a participant to achieve a passing score on an examination to successfully complete the course for certification.

(d) A program accredited under this section may be delivered through the Internet.

Added by Acts 2007, 80th Leg., R.S., Ch. 1299 (S.B. 552), Sec. 2, eff. September 1, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1136, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1031 (S.B. 812), Sec. 4, eff. September 1, 2023.

Sec. 438.044. APPLICATION FOR ACCREDITATION. (a) A person seeking accreditation for an education or training program must apply to the department for accreditation. The applicant must demonstrate to the department the contents of the course.

(b) The department shall accredit a course that meets the minimum requirements of this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.045. AUDIT OF EDUCATION AND TRAINING PROGRAMS. The department shall conduct a regular audit of each program accredited under this subchapter to ensure compliance with this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.046. LIST OF ACCREDITED PROGRAMS. (a) The department shall maintain a registry of course programs accredited under this subchapter.

(b) A food service worker trained in a course for the employees of a single entity is considered to have met a local health jurisdiction's training, testing, and permitting requirements only as to food service performed for that entity.

(b-1) A food service worker trained in a food handler training course that is accredited by the American National Standards Institute or that is accredited by the department and listed with the registry is considered to have met a local health jurisdiction's training, testing, and permitting requirements. A local health jurisdiction may require a food establishment, as that term is defined by Section 438.101, to maintain on the premises of the food establishment a certificate of completion of the training course for employees of the food establishment.

(c) A local health jurisdiction may not charge a fee or require or issue a local food handler card for a certificate issued to a food service worker who provides proof of completion of an accredited course described by Subsection (b-1).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 16, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 822, Sec. 2, eff. Aug. 28, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 843 (S.B. 582), Sec. 1, eff. June 17, 2015.

Acts 2017, 85th Leg., R.S., Ch. 728 (S.B. 1089), Sec. 1, eff.

June 12, 2017.

Sec. 438.047. FEES. The department in accordance with department rules shall charge an application fee and an audit fee sufficient to cover the entire cost of accreditation, audit, and maintenance of the registry.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1137, eff. April 2, 2015.

SUBCHAPTER F. FOOD INSPECTIONS

Sec. 438.061. FOOD INSPECTIONS BY TYPE A GENERAL-LAW MUNICIPALITY. (a) The governing body of a Type A general-law municipality may regulate the inspection of beef, pork, flour, meal, salt, and other provisions.

(b) The governing body of a Type A general-law municipality may appoint weighers, gaugers, and inspectors, and may prescribe their duties and regulate their fees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER G. CERTIFICATION OF FOOD MANAGERS

Sec. 438.101. DEFINITIONS. In this subchapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(82), eff. April 2, 2015.

(2) "Food establishment" means a fixed or mobile location retail establishment in which food is prepared on-site for sale to the public.

(3) "Food manager" means an individual who conducts, manages, or operates a food establishment.

Added by Acts 2001, 77th Leg., ch. 317, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(82), eff. April 2, 2015.

Sec. 438.102. CERTIFICATION PROGRAM. (a) The executive commissioner shall establish a certification program for food managers in accordance with this subchapter.

(b) The executive commissioner by rule shall prescribe the requirements for issuance and renewal of a food manager certificate under this subchapter.

Added by Acts 2001, 77th Leg., ch. 317, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1138, eff. April 2, 2015.

Sec. 438.103. CERTIFICATION AND RENEWAL OF CERTIFICATION; EXAMINATION REQUIRED. (a) A person who satisfies the requirements of this subchapter may receive and renew a food manager certificate by passing a state-approved examination.

(b) A state-approved examination for issuance or renewal of a food manager certificate must test an applicant on the food allergen awareness information described by Section 437.027(b).

Added by Acts 2001, 77th Leg., ch. 317, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1031 (S.B. 812), Sec. 5, eff. September 1, 2023.

Sec. 438.104. APPROVAL OF EXAMINATIONS; SELECTION OF EXAMINATION SITES. (a) The executive commissioner shall adopt criteria to approve examinations.

(b) In administering this subchapter, the department shall consider the impact of the traveling distance and time required for a food manager to obtain certification. The department shall give particular consideration to mitigating the impact of this subchapter on food managers in rural areas. The department shall use the Internet to implement the certification and may develop a system to permit administration of the examination using the Internet.

Added by Acts 2001, 77th Leg., ch. 317, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1139, eff.

April 2, 2015.

Sec. 438.105. CERTIFICATE AS EVIDENCE OF COMPLIANCE WITH OTHER LAW. A food manager certificate, including a renewal certificate, obtained under this subchapter shall be accepted as meeting the training and testing requirements under Section 438.046(b).

Added by Acts 2001, 77th Leg., ch. 317, Sec. 2, eff. Sept. 1, 2001.

Sec. 438.1055. PROHIBITED REQUIREMENT OF LOCAL FOOD MANAGER CARD OR LOCAL FEE. Notwithstanding any other law, a local health jurisdiction may not require a food manager who holds a food manager certificate issued under this subchapter to pay a fee for or to hold a local food manager card, license, permit, or certification or any other credential or paperwork.

Added by Acts 2023, 88th Leg., R.S., Ch. 245 (S.B. 577), Sec. 2, eff. September 1, 2023.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 48 (S.B. 1008), Sec. 10, eff. September 1, 2025.

Sec. 438.106. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER; FEES. (a) The executive commissioner by rule may adopt a fee for issuance or renewal of a food manager certificate under this subchapter in amounts reasonable and necessary to administer this subchapter, but not to exceed $35.

(b) The executive commissioner by rule may adopt a fee, in an amount not to exceed $10, for an examination administered by the department under this subchapter.

(c) The executive commissioner may adopt rules for the denial, suspension, and revocation of a food manager certificate issued under this subchapter.

(d) The executive commissioner by rule may prescribe standards for:

(1) examination sites;

(2) expenses of administration of examinations under this subchapter; and

(3) site audits for administration of this subchapter.

Added by Acts 2001, 77th Leg., ch. 317, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1140, eff. April 2, 2015.

SUBCHAPTER H. INFORMATION ON DEPARTMENT OR LOCAL HEALTH JURISDICTION FOOD REGULATION

Sec. 438.151. DEFINITION. In this subchapter, "local health jurisdiction" means a public health district, county, or municipality that regulates food service establishments, retail food stores, mobile food units, temporary food service establishments, or roadside food vendors.

Added by Acts 2019, 86th Leg., R.S., Ch. 309 (H.B. 2107), Sec. 2, eff. September 1, 2019.

Sec. 438.152. REQUEST FOR INFORMATION. Unless otherwise prohibited by state or federal law, on receipt of a written request for information pertaining to the regulation of food under this subtitle, the department or a local health jurisdiction shall provide a reasonable and substantial response to the request not later than the 30th day after the date the department or local health jurisdiction receives the request.

Added by Acts 2013, 83rd Leg., R.S., Ch. 918 (H.B. 1392), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 309 (H.B. 2107), Sec. 3, eff. September 1, 2019.

Sec. 438.153. REQUEST FOR OFFICIAL DETERMINATION. (a) On receipt of a written request regarding the applicability to a specific circumstance of a regulation or the requirements for compliance with the regulation, the department or local health jurisdiction shall provide an official written determination regarding the applicability of the regulation or the requirements for

compliance with the regulation to the requestor not later than the 30th day after the date the department or local health jurisdiction receives the request.

(b) An official determination made under this section is valid until the regulation that is the subject of the determination is amended by statute, department rule, or local health jurisdiction regulation.

Added by Acts 2013, 83rd Leg., R.S., Ch. 918 (H.B. 1392), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 309 (H.B. 2107), Sec. 4, eff. September 1, 2019.

Sec. 438.154. EFFECT OF OFFICIAL DETERMINATION. An inspector may not issue to a person a citation for a violation of a food regulation governed by this subtitle if the person provides the inspector with an official determination made under Section 438.153 that contradicts the opinion of the inspector.

Added by Acts 2013, 83rd Leg., R.S., Ch. 918 (H.B. 1392), Sec. 1, eff. September 1, 2013.

Sec. 438.155. RULES. (a) The executive commissioner shall adopt rules to implement this subchapter.

(b) The executive commissioner periodically shall evaluate the department's food safety rules and modify the rules as necessary to improve consistency and communication in food regulation in this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 918 (H.B. 1392), Sec. 1, eff. September 1, 2013.

SUBCHAPTER I. MISCELLANEOUS PROVISIONS

Sec. 438.201. NO PRIVATE CAUSE OF ACTION. The provisions of this chapter related to food allergens do not create a private cause of action or change any common law or statutory duty.

Added by Acts 2023, 88th Leg., R.S., Ch. 1031 (S.B. 812), Sec. 6, eff. September 1, 2023.

Sec. 438.202. CERTAIN REGULATIONS PROHIBITED. Notwithstanding any other law, a county, municipality, or public health district may not adopt or enforce an order, ordinance, rule, or other measure related to food allergens that is inconsistent with or exceeds the requirements of this chapter or Section 437.027.

Added by Acts 2023, 88th Leg., R.S., Ch. 1031 (S.B. 812), Sec. 6, eff. September 1, 2023.

CHAPTER 439. MANUFACTURE AND DISTRIBUTION OF CERTAIN DRUGS

SUBCHAPTER A. LAETRILE

Sec. 439.001. DEFINITION. In this chapter, "laetrile" means amygdalin.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.002. MANUFACTURE AND SALE. Unless prohibited by federal law, laetrile may be manufactured in this state in accordance with Chapter 431 (Texas Food, Drug, and Cosmetic Act) and may be sold in this state for distribution by licensed physicians.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1141, eff. April 2, 2015.

Sec. 439.003. PRESCRIPTION AND ADMINISTRATION. (a) Unless prohibited by federal law, a licensed physician may prescribe or administer laetrile in the treatment of cancer.

(b) A physician acting in accordance with federal and state law is not subject to disciplinary action by the Texas Medical Board for prescribing or administering laetrile to a patient under the physician's care who has requested the substance unless that board makes a formal finding that the substance is harmful.

(c) A finding under Subsection (b) must be made in a hearing conducted as provided by Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1142, eff. April 2, 2015.

Sec. 439.005. RECORDS; DISCIPLINARY ACTIONS. (a) A physician shall keep records of the physician's purchases and disposals, including sales and dispensations, of laetrile. The records shall include the date of each purchase or disposal by the physician, the name and address of the person receiving laetrile, and the reason for the disposal of laetrile to that person.

(b) The Texas Medical Board may suspend, cancel, or revoke the license of any physician who:

(1) fails to keep complete and accurate records of purchases and disposals of laetrile;

(2) prescribes or dispenses laetrile to a person known to be a habitual user of narcotic or dangerous drugs or to a person who the physician should have known was a habitual user of narcotic or dangerous drugs;

(3) uses any advertising that tends to mislead or deceive the public; or

(4) is unable to practice medicine with reasonable skill and safety to patients because of any mental or physical condition, including age, illness, or drunkenness, or because of excessive use of drugs, narcotics, chemicals, or any other type of material.

(c) Subsection (b)(2) does not apply to a person being treated by the physician for narcotic use after the physician notifies the Texas Medical Board in writing of the name and address of the patient being treated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1143, eff. April 2, 2015.

SUBCHAPTER B. DIMETHYL SULFOXIDE

Sec. 439.011. DEFINITION. In this subchapter, "DMSO" means sterile and pyrogen-free dimethyl sulfoxide.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.012. MANUFACTURE AND SALE. DMSO may be manufactured in this state and may be sold in this state for human use when prescribed or administered by a licensed physician or dispensed by a licensed pharmacist as prescribed by a licensed physician.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.013. PRESCRIPTION, ADMINISTRATION, AND DISPENSATION. (a) Except as prohibited by Subsection (b), a licensed physician may prescribe or administer DMSO.

(b) A physician may not prescribe or administer DMSO in a formulation not approved for human use by the Food and Drug Administration of the United States Department of Health and Human Services unless the physician:

(1) provides a written statement to the patient informing the patient that DMSO, in the formulation to be prescribed or administered, has not been approved for human use by the United States Food and Drug Administration; and

(2) informs the patient of the alternative methods of treatment for the patient's disorder and the potential of alternative methods for cure.

(c) A licensed pharmacist may dispense DMSO on the written prescription of a licensed physician.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.014. REGULATION BY HEALTH CARE FACILITY. (a) A hospital or health care facility may not forbid or restrict the use of DMSO prescribed or administered by a licensed physician having staff privileges at that hospital or facility unless the hospital or facility:

(1) makes a formal finding that the DMSO as prescribed or

administered by the physician is or will be harmful to the patient; or

(2) determines that the prescription or administration of DMSO creates an immediate danger to the public.

(b) A hospital or health care facility that forbids or restricts the use of DMSO under Subsection (a)(2) shall conduct a hearing on the restriction or prohibition as soon as practicable after its determination.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.015. RECORDS; DISCIPLINARY ACTIONS. (a) A physician shall keep records of the physician's purchases and disposals, including sales and dispensations, of DMSO. The records shall include the date of each purchase or disposal by the physician, the name and address of the person receiving DMSO, and the reason for the disposal of DMSO to that person.

(b) The Texas Medical Board may suspend, cancel, or revoke the license of any physician who:

(1) fails to keep complete and accurate records of purchases and disposals of DMSO in a formulation not approved for human use; or

(2) prescribes or administers DMSO in a manner that has been proven, in a formal hearing held by the board, to be harmful to the patient.

(c) The Texas Medical Board may temporarily suspend the license of a physician who prescribes or administers DMSO in a manner that, in the board's opinion, creates an immediate danger to the public. The board must conduct a hearing on the temporary suspension as soon as practicable after the suspension.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1144, eff. April 2, 2015.

Sec. 439.016. MISREPRESENTATION; CRIMINAL PENALTY. (a) A person commits an offense if, in connection with advertising or promoting the sale of DMSO, the person knowingly or intentionally

represents DMSO as a cure for any human disease, ailment, or disorder.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.017. RESTRICTIONS ON MANUFACTURE, DISTRIBUTION, AND SALE; CRIMINAL PENALTY. (a) A person commits an offense if the person manufactures, distributes, or sells a dimethyl sulfoxide formulation that is not sterile and pyrogen-free unless the substance is packaged in a container with a label that includes:

(1) information about the concentration of the dimethyl sulfoxide; and

(2) the following statement: "Avoid contact with your skin. This dimethyl sulfoxide is not sterile and pyrogen-free DMSO approved for human use. It may contain harmful impurities that can be absorbed through the skin. Dimethyl sulfoxide is a potent solvent that may have adverse effects on fabrics, plastics, and other materials."

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. PRESERVATION AND DISTRIBUTION OF CERTAIN UNUSED DRUGS

Sec. 439.021. SHIPMENT TO FOREIGN COUNTRIES. (a) A consulting pharmacist of a nursing home may select, from a supply of drugs due for destruction, certain drugs to be used for shipment to a foreign country as provided by this subchapter.

(b) The supply of drugs due for destruction are those drugs accumulated because of the death of a resident of the nursing home or because a physician has ordered the use of the drug to be discontinued.

(c) Quarterly, before the drugs are destroyed, the consulting pharmacist may, in the pharmacist's professional judgment, select the drugs to be used under this subchapter and seal them in a box for shipment.

(d) The consulting pharmacist shall account to the department for all drugs selected for shipment under this subchapter.

(e) This subchapter does not apply if the unused drug is a

controlled substance as defined by Chapter 481 (Texas Controlled Substances Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1145, eff. April 2, 2015.

Sec. 439.022. ADMINISTRATION. (a) The executive commissioner shall adopt rules consistent with federal and state law to implement this subchapter, including rules relating to:

(1) the packaging and inventory of drugs for shipment;

(2) the manner of shipment of the drugs from original shipment under this subchapter until the final destination; and

(3) safeguards to ensure the proper handling of and accounting for all drugs shipped.

(b) The executive commissioner by rule shall determine, in consultation with the United States Department of State and other appropriate federal agencies, the foreign countries to receive the drugs.

(c) The salvaging of drugs under this subchapter is not subject to Chapter 431 (Texas Food, Drug, and Cosmetic Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1146, eff. April 2, 2015.

Sec. 439.023. CONTRACTS; FUNDS. (a) The department may contract with other entities, including local governments and civic organizations, to implement this subchapter.

(b) The department may accept gifts, grants, and any other funds to implement this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1147, eff. April 2, 2015.

SUBCHAPTER D. INSULIN

Sec. 439.101. DEFINITION. In this subchapter, "manufacturer" has the meaning assigned by Section 531.070, Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 244 (S.B. 241), Sec. 1, eff. September 1, 2024.

Sec. 439.102. WRITTEN VERIFICATION REQUIRED FOR BRAND NAME INSULIN DRUG MANUFACTURER. (a) The manufacturer of a brand name insulin prescription drug for which a generic or biosimilar prescription drug is not available and that is included in the Medicaid vendor drug program formulary must submit to the Health and Human Services Commission a written verification stating whether or not the unavailability of the generic or biosimilar prescription drug is the result, wholly or partly, of:

(1) a scheme by the manufacturer to pay a generic or biosimilar prescription drug manufacturer to delay manufacturing or marketing the generic or biosimilar drug;

(2) a legal or business strategy to extend the life of a patent on the brand name prescription drug;

(3) the manufacturer directly manipulating a patent on the brand name prescription drug; or

(4) the manufacturer facilitating an action described by Subdivisions (1)-(3) on behalf of another entity.

(b) The executive commissioner shall adopt rules prescribing the form and manner for submission of the written verification required under Subsection (a).

Added by Acts 2023, 88th Leg., R.S., Ch. 244 (S.B. 241), Sec. 1, eff. September 1, 2024.

CHAPTER 440. FROZEN DESSERTS MANUFACTURER LICENSING ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 440.001. SHORT TITLE. This chapter may be cited as the Frozen Desserts Manufacturer Licensing Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.002. PURPOSE. The legislature finds that a statewide licensing act is needed to:

(1) regulate manufacturers of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products;

(2) provide for uniformity of inspections of the premises of frozen dessert manufacturers;

(3) protect the health and safety of consumers by preventing the manufacture or distribution of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products that do not meet state standards or related requirements of purity or labeling; and

(4) assist manufacturers in meeting state standards or related requirements.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.003. DEFINITIONS. In this Act:

(1) "Adulterated or misbranded frozen desserts mix" means any frozen dessert or mix that contains an unwholesome substance or, if defined in this standard, that does not conform with its definition or that does not comply with Chapter 431 (Texas Food, Drug, and Cosmetic Act) or any other applicable regulation.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(85), eff. April 2, 2015.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(85), eff. April 2, 2015.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(85), eff. April 2, 2015.

(5) "Frozen dessert" means any of the following: ice cream, ice milk, fruit sherbet, water ice, nonfruit sherbet, nonfruit water ice, frozen dietary dairy desserts, frozen yogurt, quiescently frozen confection, quiescently frozen dairy confection, mellorine, lorine, parevine, freezer-made milk shake, freezer-made shake, or nondairy frozen dessert. The term includes the mix used in the freezing of one of those frozen desserts.

(6) "Frozen desserts manufacturer" means a person who manufactures, processes, converts, partially freezes, or freezes any mix (regardless of whether it is dairy, nondairy, imitation,

pasteurized or unpasteurized), frozen desserts, imitation frozen desserts, or nondairy frozen desserts for distribution or sale at wholesale. The term does not include a frozen desserts retail establishment.

(7) "Frozen desserts plant" means premises where a frozen dessert or mix is manufactured, processed, or frozen for sale.

(8) "Frozen desserts retail establishment" means premises, including a retail store, approved type stand, hotel, restaurant, vehicle, or mobile unit, where frozen dessert mixes are frozen or partially frozen and dispensed for retail sale or distribution.

(9) "Health authority" means the department, the municipal or county health officer or the officer's representative, or any other agency having jurisdiction or control over the matters embraced within the specifications and requirements of this chapter.

(10) "Imitation frozen dessert" means any frozen substance, mixture, or compound, regardless of the name under which it is represented, that is made in imitation or semblance of any of the following products or is prepared or frozen in the manner in which any of the following products is customarily prepared or frozen and that is not the product: ice cream, ice milk, fruit sherbet, water ice, nonfruit sherbet, nonfruit ice, frozen low fat yogurt, nonfat yogurt, frozen yogurt, quiescently frozen confection, quiescently frozen dairy confection, mellorine, lorine, parevine, freezer-made milk shake, freezer-made shake, or nondairy frozen dessert.

(11) "Manufacture" means the processing, freezing, or packaging of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products for sale at wholesale. The term does not include a retailer purchasing those products from a manufacturer displaying the retailer's brand name.

(12) "Mix" means the pasteurized or unpasteurized, liquid or dry, unfrozen combination of the ingredients permitted in a frozen dessert with or without fruits, fruit juices, candy, baked goods and confections, nutmeats, or other harmless flavor or color.

(13) "Official laboratory" means a biological, chemical, or physical laboratory that is under the supervision of a state or local health authority.

(14) "Sale" means the:

(A) manufacture, production, processing, packing, exposure, offer, or holding of any frozen dessert product for sale;

(B) sale, dispensing, or giving of any frozen dessert product; or

(C) supplying or applying of any frozen dessert product in the conduct of any frozen desserts retail establishment.

(15) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(85), eff. April 2, 2015.

(16) "Wholesale" means the exposing, offering, possessing, selling, dispensing, holding, or giving of any frozen dessert, imitation frozen dessert, product sold in semblance of frozen dessert, or a mix for one of those products to other than the ultimate consumer. The term does not include sale by a retail store.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1148, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(85), eff. April 2, 2015.

Sec. 440.004. EXEMPTIONS. This chapter does not apply to:

(1) a person operating a frozen desserts retail establishment; or

(2) a person operating a retail store unless the person is also a manufacturer.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.005. HEARINGS. A hearing conducted in the administration of this chapter is governed by Chapter 2001, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1149, eff. April 2, 2015.

Sec. 440.006. POWERS OF EXECUTIVE COMMISSIONER. The executive commissioner may:

(1) adopt rules prescribing standards or related requirements for the operation of establishments for the manufacture of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products, including standards or requirements for the:

(A) health, cleanliness, education, and training of personnel who are employed in the establishments;

(B) protection of raw materials, manufactured merchandise, and merchandise held for sale;

(C) design, construction, installation, and cleanliness of equipment and utensils;

(D) sanitary facilities and controls of the establishments;

(E) establishment construction and maintenance, including vehicles;

(F) production processes and controls; and

(G) institution and content of a system of records to be maintained by the establishment; and

(2) adopt rules prescribing procedures for the enforcement of the standards or related requirements prescribed under Subdivision (1), including procedures for the:

(A) requirement of a valid license to operate an establishment;

(B) issuance, suspension, revocation, and reinstatement of licenses;

(C) administrative hearings held under this chapter;

(D) institution of certain court proceedings by the department or its designee;

(E) inspection of establishments and securing of samples of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products;

(F) access to the establishments and to the vehicles used in operations;

(G) compliance by manufacturers outside the jurisdiction of the state; and

(H) review of plans for future construction.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1150, eff. April 2, 2015.

Sec. 440.007. APPLICABILITY OF OTHER LAW. Except as provided by Section 431.009(c), Chapter 431 applies to a person or product regulated under this chapter, including a frozen dessert manufacturer, a frozen dessert, an imitation frozen dessert, a product sold in semblance of a frozen dessert, and a mix for one of those products.

Added by Acts 2003, 78th Leg., ch. 112, Sec. 3, eff. Sept. 1, 2003.

SUBCHAPTER B. LICENSING

Sec. 440.011. PROHIBITED ACT. (a) A person may not operate an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products in this state unless the person has a valid license issued under this chapter.

(b) A political subdivision or agency of the state, other than the department, may not impose a license fee on any manufacturer covered by this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.012. LICENSE. (a) A person desiring to operate an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products may apply to the department for a license. A license shall be granted under the department's procedural rules and shall be issued only for the purpose and use as stated on the application for a license.

(b) The department shall inspect the establishment under Section 440.031 before issuing a license.

(c) A license may not be issued to a person who does not comply with the standards prescribed by department rule under this chapter.

(d) A license issued under this chapter must be renewed every two years in accordance with department rules.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1151, eff. April 2, 2015.

Sec. 440.013. FEES. (a) A nonrefundable fee for each establishment in an amount set by the executive commissioner by rule as prescribed by Section 12.0111 must accompany each application for a license.

(b) The department also shall assess the following fees in the amounts set by the executive commissioner by rule as prescribed by Section 12.0111:

(1) a fee for a frozen dessert manufacturer located in this state in an amount per 100 pounds of manufactured or processed frozen dessert manufactured or processed and distributed in this state by that manufacturer;

(2) a fee for a frozen dessert manufacturer not located in this state in an amount per 100 pounds of frozen desserts manufactured or processed by the manufacturer in another state and imported for sale in this state; and

(3) a fee for the actual cost of analyzing samples of frozen desserts for a frozen dessert manufacturer not located in this state.

(c) The executive commissioner shall adopt rules to collect fees imposed under this section monthly based on amounts due by the frozen dessert manufacturer.

(d) The department may revoke a license to operate a frozen desserts plant if the licensee fails to make a timely payment of the monthly fees required under this section. The department's rules of procedure for a contested case hearing and Chapter 2001, Government Code govern the revocation of a license.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1152, eff. April 2, 2015.

Sec. 440.014. RECORDKEEPING. The executive commissioner shall adopt rules establishing minimum standards for recordkeeping by persons required to pay fees under this chapter and the records shall be made available to the department on request.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1153, eff. April 2, 2015.

Sec. 440.015. ESTABLISHMENTS OUTSIDE STATE. A frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products from a manufacturer located outside this state may be sold or distributed in this state if the manufacturer complies with this chapter or complies with other regulatory requirements that are substantially equivalent to those of this state. To determine the extent of the manufacturer's compliance, the department may accept reports from responsible authorities in the jurisdiction in which the manufacturer is located.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.016. TEMPORARY PERMIT. The department may issue a temporary permit to continue the operation of an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or mix for one of those products until the department performs the inspection required by this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.017. REFUSAL TO GRANT LICENSE; SUSPENSION OR REVOCATION OF LICENSE. In accordance with rules adopted under Section 440.006, the department may refuse an application for a license under this chapter or may suspend or revoke a license issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 112, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1154, eff. April 2, 2015.

SUBCHAPTER C. ENFORCEMENT

Sec. 440.031. INSPECTION BY DEPARTMENT. (a) Under rules adopted by the executive commissioner, the department's authorized representatives have free access at all reasonable hours to any establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products or to any vehicle being used to transport in commerce a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products for the purpose of:

(1) inspecting the establishment or vehicle to determine compliance with the standards or related requirements prescribed under this chapter; or

(2) securing samples of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or a mix for one of those products for the purpose of making or causing to be made an examination of the samples to determine compliance with the standards or related requirements prescribed under this chapter.

(b) A political subdivision or an agency other than the department that collects samples described by Subsection (a)(2) shall bear the cost of the samples and any analyses of the samples.

(c) The inspection procedures provided by this section are in addition to the procedures provided by Chapter 431.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991. Amended by Acts 2003, 78th Leg., ch. 112, Sec. 5, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1155, eff. April 2, 2015.

Sec. 440.032. PENALTIES. (a) A person commits an offense if the person knowingly or intentionally violates Section 440.011 or a rule adopted under this chapter.

(b) An offense under this section is a Class C misdemeanor.

(c) The penalty prescribed by this section is in addition to any civil or administrative penalty or sanction otherwise imposed under Chapter 431 or other law.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991. Amended by Acts 2003, 78th Leg., ch. 112, Sec. 6, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1156, eff. April 2, 2015.

CHAPTER 441. DRUG COST TRANSPARENCY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 441.0001. DEFINITIONS. In this chapter:

(1) "Animal health product" means a medical product approved and licensed for use in animal or veterinary medicine, including a pharmaceutical, a biologic, an insecticide, and a parasiticide.

(2) "Pharmaceutical drug manufacturer" means a person engaged in the business of producing, preparing, propagating, compounding, converting, processing, packaging, labeling, or distributing a drug. The term does not include a wholesale distributor or retailer of prescription drugs or a pharmacist licensed under Subtitle J, Title 3, Occupations Code.

(3) "Prescription drug" and "drug" have the meanings assigned by Section 551.003, Occupations Code, except that the term "prescription drug" does not include a device or an animal health product.

(4) "Wholesale acquisition cost" means, with respect to a drug, the pharmaceutical drug manufacturer's list price for the drug charged to wholesalers or direct purchasers in the United States, as reported in wholesale price guides or other publications of drug pricing data. The cost does not include any rebates, prompt pay or other discounts, or other reductions in price.

Added by Acts 2019, 86th Leg., R.S., Ch. 1291 (H.B. 2536), Sec. 1, eff. September 1, 2019.

Sec. 441.0003. RULES. The executive commissioner may adopt rules to implement this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. PRESCRIPTION DRUG PRICE DISCLOSURE

Sec. 441.0051. ANNUAL REPORT. Not later than the 15th day of each calendar year, a pharmaceutical drug manufacturer shall submit a report to the department stating the current wholesale acquisition cost information for the United States Food and Drug Administration-approved prescription drugs sold in or into this state by that manufacturer.

Added by Acts 2019, 86th Leg., R.S., Ch. 1291 (H.B. 2536), Sec. 1, eff. September 1, 2019.
Transferred, redesignated and amended from Health and Safety Code, Section 441.0002 by Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 3, eff. September 1, 2021.

Sec. 441.0052. PRESCRIPTION DRUG PRICE INFORMATION INTERNET WEBSITE. The department shall develop an Internet website to provide to the general public prescription drug price information submitted under Section 441.0051. The Internet website shall be made available on the department's Internet website with a dedicated link that is prominently displayed on the home page or by a separate easily identifiable Internet address.

Added by Acts 2019, 86th Leg., R.S., Ch. 1291 (H.B. 2536), Sec. 1, eff. September 1, 2019.
Transferred, redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 3, eff. September 1, 2021.

Sec. 441.0053. PRESCRIPTION DRUG COST INCREASE REPORT AND INFORMATION. (a) This subsection applies only to a prescription drug with a wholesale acquisition cost of at least $100 for a 30-day supply before the effective date of an increase described by this subsection. Not later than the 30th day after the effective date of an increase of 40 percent or more over the preceding three calendar years or 15 percent or more in the preceding calendar year in the wholesale acquisition cost of a prescription drug to which this

subsection applies, a pharmaceutical drug manufacturer shall submit a report to the executive commissioner. The report must include the following information:

(1) the name of the prescription drug;

(2) whether the prescription drug is a brand name or generic;

(3) the effective date of the change in wholesale acquisition cost; and

(4) a statement regarding the factor or factors that caused the increase in the wholesale acquisition cost and an explanation of the role of each factor's impact on the cost.

(b) If during a calendar year a prescription drug with a wholesale acquisition cost of at least $100 for a 30-day supply increases in price by 40 percent or more over the preceding three calendar years or 15 percent or more in the preceding calendar year in the wholesale acquisition cost of the prescription drug, the pharmaceutical drug manufacturer must include in the annual report submitted under Section 441.0051 the following information:

(1) aggregate, company-level research and development costs for the most recent year for which final audit data is available;

(2) the name of each of the manufacturer's prescription drugs approved by the United States Food and Drug Administration in the previous three calendar years; and

(3) the name of each of the manufacturer's prescription drugs that lost patent exclusivity in the United States in the previous three calendar years.

(c) The quality and types of information and data that a pharmaceutical drug manufacturer submits to the department under Subsections (a) and (b) must be consistent with the quality and types of information and data that the manufacturer includes in the manufacturer's annual consolidated report on Securities and Exchange Commission Form 10-K or any other public disclosure.

Added by Acts 2019, 86th Leg., R.S., Ch. 1291 (H.B. 2536), Sec. 1, eff. September 1, 2019.
Transferred, redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 3, eff. September 1, 2021.

Sec. 441.0054. PUBLICATION OF COST INCREASE INFORMATION. Not

later than the 60th day after receipt of the report submitted under Section 441.0051 or 441.0053(a), the department shall publish the cost increase information required by Section 441.0053 on the department's prescription drug price information Internet website.

Added by Acts 2019, 86th Leg., R.S., Ch. 1291 (H.B. 2536), Sec. 1, eff. September 1, 2019.
Transferred, redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 3, eff. September 1, 2021.

Sec. 441.0055. FEE. (a) A pharmaceutical drug manufacturer shall submit a fee in the amount provided by department rule with each report submitted under this subchapter.

(b) The executive commissioner by rule shall set the fee in the amount necessary for the department to administer this chapter, not to exceed $400.

Added by Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 4, eff. September 1, 2021.

SUBCHAPTER C. ENFORCEMENT

Sec. 441.0101. RIGHT TO CORRECT. (a) If the department determines that a pharmaceutical drug manufacturer failed to submit a report or fee required under, or failed to submit the report or fee in the manner prescribed by, Subchapter B and the rules adopted under this chapter, the department shall provide written notice of the failure to the manufacturer.

(b) On receipt of notice described by Subsection (a), a pharmaceutical drug manufacturer shall submit, as applicable:

(1) a report that:

(A) complies with Subchapter B and rules adopted under this chapter; and

(B) addresses the issues raised in the notice; or

(2) the fee required by Section 441.0055.

(c) The department may not assess an administrative penalty under Section 441.0102 against a pharmaceutical drug manufacturer that submits to the department the required report or fee, as applicable, on or before the 45th day after the date the manufacturer receives notice under Subsection (a).

Added by Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 5, eff. September 1, 2021.

Sec. 441.0102. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

(b) In determining the amount of the penalty, the department shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) the person's demonstrated good faith; and

(4) any other matters as justice may require.

(c) The penalty may not exceed $1,000 a day for each violation.

(d) Each day a violation continues may be considered a separate violation.

(e) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the board to contest the affidavit as provided by those rules.

(f) The attorney general may sue to collect the penalty. Money collected under this section shall be deposited in the state treasury and may be appropriated only to the department for the purposes of administrating this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 5, eff. September 1, 2021.

Sec. 441.0103. ADMINISTRATIVE PROCEDURE. A proceeding to impose an administrative penalty under Section 441.0102 is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 5, eff. September 1, 2021.

CHAPTER 442. DONATION OF PRESCRIPTION DRUGS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 442.001. DEFINITIONS. In this chapter:

(1) "Donor" means an individual, a prescription drug manufacturer, or a health care facility, including a pharmacy, that donates unused prescription drugs under this chapter to a participating provider.

(2) "Health care facility" means a facility that provides health care services to patients and maintains a pharmacy in the facility. The term includes the following facilities if a pharmacy is maintained in the facility:

(A) a general or special hospital as defined by Chapter 241;

(B) an ambulatory surgical center licensed under Chapter 243; and

(C) an institution licensed under Chapter 242.

(3) "Health care professional" means an individual licensed, certified, or otherwise authorized to administer health care and prescribe prescription drugs, for profit or otherwise, in the ordinary course of business or professional practice. The term does not include a health care facility.

(4) "Participating provider" means a health care facility or pharmacy, or a pharmacist who is an employee of the facility or pharmacy, that elects to participate in the collection and redistribution of donated prescription drugs under this chapter.

(5) "Pharmacist" means a person licensed under Chapter 558, Occupations Code.

(6) "Pharmacy" means an entity licensed under Chapter 560, Occupations Code.

(6-a) "Prepackage" means the act of repackaging and relabeling varying quantities of prescription drugs from a manufacturer's original commercial container into a prescription container, unit-dose packaging, or a multi-compartment container for a pharmacist to dispense to a consumer.

(7) "Prescription drug" has the meaning assigned by Section 551.003, Occupations Code.

(8) "Recipient" means an individual who voluntarily receives donated prescription drugs under this chapter.

(9) "Tamper-evident" means packaging that allows for detection of unauthorized access to a prescription drug.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 761 (H.B. 4331), Sec. 1, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 762 (H.B. 4332), Sec. 1, eff. September 1, 2023.

Sec. 442.002. RULEMAKING AUTHORITY. The executive commissioner may adopt rules to implement this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.

Sec. 442.003. CONSTRUCTION WITH OTHER LAW. This chapter does not limit the authority of this state or a political subdivision of this state to regulate or prohibit a prescription drug.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.

SUBCHAPTER B. DONATION AND REDISTRIBUTION OF UNUSED PRESCRIPTION DRUGS

Sec. 442.051. DONATION AND REDISTRIBUTION OF PRESCRIPTION DRUGS. (a) A donor may donate unused prescription drugs to a participating provider in accordance with this chapter and rules adopted under this chapter.

(b) A participating provider may dispense donated prescription drugs to a recipient in accordance with this chapter and rules adopted under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.

Sec. 442.0515. REDISTRIBUTION OF DONATED PREPACKAGED PRESCRIPTION DRUGS. (a) A participating provider may dispense to a recipient donated prescription drugs that are prepackaged and labeled

in accordance with this section and rules adopted by the Texas State Board of Pharmacy.

(b) A prepackaged prescription drug a participating provider dispenses to a recipient must contain a label that includes:

(1) the drug's brand name or, for a generic version of the drug, the drug's generic name and the manufacturer or distributor of the drug;

(2) the amount of the drug in a given dose;

(3) the drug's lot number;

(4) the earliest expiration date of the drug for that drug lot number; and

(5) the quantity of any drug the provider dispenses in more than one dose.

(c) A participating provider shall maintain a record of each prepackaged prescription drug dispensed to a recipient. The record must include:

(1) the drug's name, the amount of the drug in a given dose, and the dosage size or frequency;

(2) the provider's lot number for that drug;

(3) the drug's manufacturer or distributor;

(4) the manufacturer's lot number for that drug;

(5) the expiration dates of the drug from that drug's lot number;

(6) the quantity of the drug in each prepackaged unit;

(7) the number of prepackaged units that include the drug;

(8) the date the drug was prepackaged;

(9) the name, initials, or written or electronic signature of the individual who prepackaged the drug; and

(10) the written or electronic signature of the pharmacist responsible for the drug's prepackaging.

Added by Acts 2023, 88th Leg., R.S., Ch. 762 (H.B. 4332), Sec. 2, eff. September 1, 2023.

Sec. 442.052. STANDARDS FOR DONATION AND REDISTRIBUTION. (a) The executive commissioner by rule shall adopt standards and procedures for:

(1) accepting, storing, labeling, and dispensing donated prescription drugs; and

(2) inspecting donated prescription drugs to determine whether the drugs are adulterated and whether the drugs are safe and suitable for redistribution.

(b) In adopting standards and procedures under this section, the executive commissioner shall ensure that the donation and redistribution process is consistent with public health and safety standards.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.

Sec. 442.053. REQUIREMENTS FOR DONATED PRESCRIPTION DRUGS. (a) A donated prescription drug may be accepted or dispensed under this chapter only if the drug is in its original, unopened, sealed, and tamper-evident bottle, container, or unit-dose packaging. A drug packaged in single unit doses may be accepted and dispensed if the outside packaging is opened but the single unit-dose packaging is unopened.

(b) A donated prescription drug may not be accepted or dispensed under this chapter if:

(1) the drug is a controlled substance;

(2) the drug is adulterated or misbranded;

(3) the drug is not stored in compliance with the drug's product label; or

(4) the United States Food and Drug Administration requires the drug to have a risk evaluation or mitigation strategy.

(c) A participating provider shall comply with all applicable provisions of state and federal law relating to the inspection, storage, labeling, and dispensing of prescription drugs.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 758 (H.B. 4166), Sec. 1, eff. September 1, 2023.

Sec. 442.054. DONATION PROCESS. (a) Before being dispensed to a recipient, a prescription drug donated under this chapter must be inspected by the participating provider in accordance with federal

law, laws of this state, and department rule to determine whether the drug is adulterated or misbranded and whether the drug has been stored in compliance with the requirements of the product label.

(b) A donated prescription drug dispensed to a recipient under this chapter must be prescribed by a health care professional for use by the recipient.

(c) A participating provider may charge a handling fee not to exceed $20 to a recipient to cover the costs of inspecting, storing, labeling, and dispensing the donated prescription drug. A participating provider may not resell a prescription drug donated under this chapter. A donor may not sell a prescription drug to a participating provider.

(d) A participating provider may not submit a claim or otherwise seek reimbursement from any public or private third-party payor for donated prescription drugs dispensed to a recipient under this chapter. A public or private third-party payor is not required to provide reimbursement for donated drugs dispensed to a recipient under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.

Sec. 442.055. DONOR FORM. Before donating a prescription drug under this chapter, a donor shall sign a form prescribed by the department stating that:

(1) the donor is the owner of the donated prescription drug;

(2) the donated prescription drug has been properly stored and the container has not been opened or tampered with;

(3) the donated prescription drug has not been adulterated or misbranded; and

(4) the donor is voluntarily donating the prescription drug.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.

Sec. 442.056. RECIPIENT FORM. Before accepting a donated prescription drug under this chapter, a recipient shall sign a form

prescribed by the department stating that:

(1) the recipient acknowledges that if the donor is an individual, prescription drug manufacturer, or health care facility other than a pharmacy, the donor is not a pharmacist and the donor took ordinary care of the prescription drug;

(2) the recipient acknowledges that the donor is known to the participating provider and that there is no reason to believe that the prescription drug was improperly handled or stored;

(3) by accepting the prescription drug, the recipient accepts any risk that an accidental mishandling could create; and

(4) the recipient releases the donor, participating provider, and manufacturer of the drug from liability related to the prescription drug.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 761 (H.B. 4331), Sec. 2, eff. September 1, 2023.

Sec. 442.057. LIMITATION OF LIABILITY. (a) A donor or participating provider who acts in good faith in donating, accepting, storing, labeling, distributing, or dispensing prescription drugs under this chapter:

(1) is not criminally liable and is not subject to professional disciplinary action for those activities; and

(2) is not civilly liable for damages for bodily injury, death, or property damage that arises from those activities unless the injury, death, or damage arises from the donor or participating provider's recklessness or intentional conduct.

(b) A manufacturer of a prescription drug that donates a drug under this chapter is not, in the absence of bad faith, criminally or civilly liable for bodily injury, death, or property damage arising from the donation, acceptance, or dispensing of the drug, including the manufacturer's failure to communicate to a donor or other person:

(1) product or consumer information about the donated prescription drug; or

(2) the expiration date of the donated prescription drug.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a),

eff. September 1, 2017.

Sec. 442.058. DATABASE OF PARTICIPATING PROVIDERS. The department shall establish and maintain an electronic database that lists each participating provider. The department shall post the database on its Internet website.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.

For expiration of this chapter, see Section 442A.201.

CHAPTER 442A. PRESCRIPTION DRUG SAFE DISPOSAL PILOT PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 442A.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Pharmacy.

(2) "Controlled substance" has the meaning assigned by Section 481.002.

(3) "Pharmacy" means a facility licensed under Chapter 560, Occupations Code.

(4) "Pilot program" means the prescription drug safe disposal pilot program established under this chapter.

(5) "Prescription drug" has the meaning assigned by Section 551.003, Occupations Code.

(6) "Ultimate user" has the meaning assigned by 21 U.S.C. Section 802.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

Sec. 442A.002. PRESCRIPTION DRUG SAFE DISPOSAL PILOT PROGRAM. The board by rule shall develop and implement a prescription drug safe disposal pilot program to increase the number of locations in this state where unused, unwanted, or expired prescription drugs are collected from the public for safe disposal.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

SUBCHAPTER B. PHARMACY PARTICIPATION

Sec. 442A.051. PHARMACY ELIGIBILITY. A pharmacy operating in this state may apply to the board to participate in the pilot program if the pharmacy:

(1) is registered as an authorized drug collection site with the United States Drug Enforcement Administration;

(2) is not the subject of state or federal opioid litigation; and

(3) meets the eligibility requirements established by 21 C.F.R. Section 1317.40 and board rules.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

Sec. 442A.052. APPLICATION AND SELECTION PROCESSES. (a) The board shall adopt rules prescribing:

(1) the form and manner for a pharmacy to apply for participation in the pilot program; and

(2) evaluation and selection criteria and processes.

(b) The board shall give priority to a pharmacy applicant that:

(1) does not collect unused ultimate user prescription drugs under 21 C.F.R. Part 1317 at the time the applicant submits the application; or

(2) is located in a rural or underserved area the board designates.

(c) A pharmacy that operates multiple locations must submit an application for each location.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

Sec. 442A.053. COLLECTION RECEPTACLE REQUIREMENTS. (a) A participating pharmacy that provides a collection receptacle for the safe disposal of prescription drugs shall ensure the receptacle:

(1) meets the requirements of 21 C.F.R. Section 1317.75;

(2) is accessible during the pharmacy's regular hours of operation;

(3) allows for the anonymous deposit of unused controlled substance prescription drugs listed in Schedules II, III, IV, and V;

and

(4) provides disposal of unused prescription drugs at no cost to the ultimate user.

(b) Controlled substance prescription drugs and noncontrolled substance prescription drugs may be collected together and comingled.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

Sec. 442A.054. MAIL-BACK PROGRAM REQUIREMENTS. (a) A participating pharmacy that provides a collection receptacle for the safe disposal of prescription drugs may, under limited circumstances as the pharmacy determines necessary, provide at the time the pharmacy dispenses a controlled substance prescription drug to the ultimate user a vendor's mail-back envelope, at no cost to the ultimate user. The mail-back envelope must:

(1) be pre-addressed and return postage paid; and

(2) meet the requirements of 21 C.F.R. Section 1317.70.

(b) A participating pharmacy may provide not more than 250 mail-back envelopes during the duration of the pilot program to encourage use of the pharmacy's collection receptacle.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

Sec. 442A.055. PHARMACY MANAGEMENT; RECORDS. A participating pharmacy is responsible for the daily management and recordkeeping of the pharmacy's prescription drug safe disposal program in accordance with the pharmacy's United States Drug Enforcement Administration registration and board rules.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

Sec. 442A.056. TEXAS PREMIER PHARMACY DESIGNATION. (a) The board shall designate each pharmacy participating in the pilot program as a Texas premier pharmacy provider committed to safe prescription drug disposal.

(b) A participating pharmacy may use the designation for marketing purposes.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

SUBCHAPTER C. BOARD DUTIES

Sec. 442A.101. PILOT PROGRAM INCENTIVES. (a) The board shall assist each pharmacy participating in the pilot program, including by paying the costs of:

(1) maintaining one collection receptacle at each participating pharmacy location and destroying through incineration of the receptacle's full inner liner the prescription drugs deposited in the receptacle;

(2) ordering and distributing pre-addressed, return postage paid mail-back envelopes from a third-party mail-back program and destroying through incineration the returned mail-back envelopes containing the collected prescription drugs; and

(3) other operational needs the board determines appropriate.

(b) The board:

(1) shall directly reimburse a participating pharmacy for costs the pharmacy incurs under Subsection (a); and

(2) may not reimburse a participating pharmacy for the cost of using a third-party incineration facility unless the facility is appropriately registered with the United States Drug Enforcement Administration.

(c) Subject to money available for purposes of this chapter, the board may provide financial incentives to a pharmacy to continue providing prescription drug collection services or expand those services to accommodate controlled substance prescriptions. The board may provide financial incentives to a chain retail pharmacy for not more than 15 locations.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

Sec. 442A.102. COMMUNITY OUTREACH. (a) The board shall:

(1) develop and distribute educational outreach materials

for the public about the availability of safe prescription drug disposal in this state;

(2) post the materials on the board's Internet website; and

(3) provide the materials to other state agencies for those agencies to conduct the community outreach.

(b) The educational outreach materials must be in English, Spanish, and for specific areas of this state as the board determines appropriate, another language spoken by a substantial portion of the area's residents.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

Sec. 442A.103. REPORT. Not later than December 1 of each even-numbered year, the board shall submit to the governor and the legislature a report that:

(1) summarizes the results of the pilot program, including:

(A) the number and geographic distribution of collection receptacles at participating pharmacies;

(B) the estimated amount of prescription drugs collected by participating pharmacies under the program, measured by:

(i) the number of inner liners fully filled with collected prescription drugs and sent for incineration by the pharmacies;

(ii) the number of mail-back envelopes distributed by the pharmacies; and

(iii) the weight, measured in pounds, of:

(a) inner liners described by Subparagraph (i); and

(b) returned mail-back envelopes filled with collected prescription drugs;

(C) the amount of money distributed under the pilot program and the identity of each participating pharmacy to which money is distributed; and

(D) a description of the board's educational efforts and outcomes; and

(2) recommends whether the pilot program should continue, be expanded, or terminate or whether the board should permanently implement a prescription drug safe disposal program.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

SUBCHAPTER D. FUNDING

Sec. 442A.151. FUNDING. (a) Money contained in the opioid abatement account established under Section 403.505, Government Code, as added by Chapter 781 (S.B. 1827), Acts of the 87th Legislature, Regular Session, 2021, may be appropriated to the board to fund the pilot program established under this chapter.

(b) The board may collect gifts, grants, and donations to fund the program.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

SUBCHAPTER E. EXPIRATION

Sec. 442A.201. EXPIRATION. This chapter expires on the second anniversary of the date that all money appropriated for the pilot program has been expended.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

CHAPTER 443. MANUFACTURE, DISTRIBUTION, AND SALE OF CONSUMABLE HEMP PRODUCTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 443.001. DEFINITIONS. In this chapter:

(1) "Consumable hemp product" means food, a drug, a device, or a cosmetic, as those terms are defined by Section 431.002, that contains hemp or one or more hemp-derived cannabinoids, including cannabidiol.

(2) "Department" means the Department of State Health Services.

(3) "Establishment" means each location where a person processes hemp or manufactures a consumable hemp product.

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Hemp" has the meaning assigned by Section 121.001,

Agriculture Code.

(6) "License" means a consumable hemp product manufacturer's license issued under this chapter.

(7) "License holder" means an individual or business entity holding a license.

(8) "Manufacture" has the meaning assigned by Section 431.002.

(9) "Process" means to extract a component of hemp, including cannabidiol or another cannabinoid, that is:

(A) sold as a consumable hemp product;

(B) offered for sale as a consumable hemp product;

(C) incorporated into a consumable hemp product; or

(D) intended to be incorporated into a consumable hemp product.

(10) "QR code" means a quick response machine-readable code that can be read by a camera, consisting of an array of black and white squares used for storing information or directing or leading a user to additional information.

(11) "Smoking" means burning or igniting a substance and inhaling the smoke or heating a substance and inhaling the resulting vapor or aerosol.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.002. APPLICABILITY OF OTHER LAW. Except as provided by Section 431.011(c), Chapter 431 applies to a license holder and a consumable hemp product regulated under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.003. LOCAL REGULATION PROHIBITED. A municipality, county, or other political subdivision of this state may not enact, adopt, or enforce a rule, ordinance, order, resolution, or other regulation that prohibits the processing of hemp or the manufacturing or sale of a consumable hemp product as authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff.

June 10, 2019.

Sec. 443.004. SEVERABILITY. (a) A provision of this chapter or its application to any person or circumstance is invalid if the secretary of the United States Department of Agriculture determines that the provision or application conflicts with 7 U.S.C. Chapter 38, Subchapter VII, and prevents the approval of the state plan submitted under Chapter 121, Agriculture Code.

(b) The invalidity of a provision or application under Subsection (a) does not affect the other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 443.051. RULEMAKING AUTHORITY OF EXECUTIVE COMMISSIONER. The executive commissioner shall adopt rules and procedures necessary to administer and enforce this chapter. Rules and procedures adopted under this section must be consistent with:

(1) an approved state plan submitted to the United States Department of Agriculture under Chapter 121, Agriculture Code; and

(2) 7 U.S.C. Chapter 38, Subchapter VII, and federal regulations adopted under that subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

SUBCHAPTER C. CONSUMABLE HEMP PRODUCT MANUFACTURER LICENSE

Sec. 443.101. LICENSE REQUIRED; EXCEPTIONS. A person may not process hemp or manufacture a consumable hemp product in this state unless the person holds a license under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.102. LICENSE INELIGIBILITY. (a) An individual who is or has been convicted of a felony relating to a controlled substance under federal law or the law of any state may not, before the 10th anniversary of the date of the conviction:

(1) hold a license under this subchapter; or

(2) be a governing person of an establishment that holds a license under this subchapter.

(b) The department may not issue a license under this subchapter to a person who materially falsifies any information contained in an application submitted to the department under Section 443.103.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.103. APPLICATION; ISSUANCE. An individual or establishment may apply for a license under this subchapter by submitting an application to the department on a form and in the manner prescribed by the department. The application must be accompanied by:

(1) a legal description of each location where the applicant intends to process hemp or manufacture consumable hemp products and the global positioning system coordinates for the perimeter of each location;

(2) written consent from the applicant or the property owner if the applicant is not the property owner allowing the department, the Department of Public Safety, and any other state or local law enforcement agency to enter onto all premises where hemp is processed or consumable hemp products are manufactured to conduct a physical inspection or to ensure compliance with this chapter and rules adopted under this chapter;

(3) any fees required by the department to be submitted with the application; and

(4) any other information required by department rule.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.104. TERM; RENEWAL. (a) A license is valid for one

year and may be renewed as provided by this section.

(b) The department shall renew a license if the license holder:

(1) is not ineligible to hold the license under Section 443.102;

(2) submits to the department any license renewal fee; and

(3) does not owe any outstanding fees to the department.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.105. REVOCATION. The department shall revoke a license if the license holder is convicted of a felony relating to a controlled substance under federal law or the law of any state.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

SUBCHAPTER D. TESTING OF CONSUMABLE HEMP PRODUCTS

Sec. 443.151. TESTING REQUIRED. (a) A consumable hemp product must be tested as provided by:

(1) Subsections (b) and (c); or

(2) Subsection (d).

(b) Before a hemp plant is processed or otherwise used in the manufacture of a consumable hemp product, a sample representing the plant must be tested, as required by the executive commissioner, to determine:

(1) the concentration of various cannabinoids; and

(2) the presence or quantity of heavy metals, pesticides, and any other substance prescribed by the department.

(c) Before material extracted from hemp by processing is sold as, offered for sale as, or incorporated into a consumable hemp product, the material must be tested, as required by the executive commissioner, to determine:

(1) the presence of harmful microorganisms; and

(2) the presence or quantity of:

(A) any residual solvents used in processing, if applicable; and

(B) any other substance prescribed by the department.

(d) Except as otherwise provided by Subsection (e), before a

consumable hemp product is sold at retail or otherwise introduced into commerce in this state, a sample representing the hemp product must be tested:

(1) by a laboratory that is accredited by an accreditation body in accordance with International Organization for Standardization ISO/IEC 17025 or a comparable or successor standard to determine the delta-9 tetrahydrocannabinol concentration of the product; and

(2) by an appropriate laboratory to determine that the product does not contain a substance described by Subsection (b) or (c) in a quantity prohibited for purposes of those subsections.

(e) A consumable hemp product is not required to be tested under Subsection (d) if each hemp-derived ingredient of the product:

(1) has been tested in accordance with:

(A) Subsections (b) and (c); or

(B) Subsection (d); and

(2) does not have a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.152. PROVISIONS RELATED TO TESTING. (a) A consumable hemp product that has a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent may not be sold at retail or otherwise introduced into commerce in this state.

(b) A person licensed under Chapter 122, Agriculture Code, shall provide to a license holder who is processing hemp harvested by the person or otherwise using that hemp to manufacture a consumable hemp product the results of a test conducted under that chapter, if available, as proof that the delta-9 tetrahydrocannabinol concentration of the hemp does not exceed 0.3 percent, including for purposes of Section 443.151(b)(1).

(c) A license holder shall make available to a seller of a consumable hemp product processed or manufactured by the license holder the results of testing required by Section 443.151. The results may accompany a shipment to the seller or be made available to the seller electronically. If the results are not able to be made available, the seller may have the testing required under Section

443.151 performed on the product and shall make the results available to a consumer.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

SUBCHAPTER E. RETAIL SALE OF CONSUMABLE HEMP PRODUCTS

Sec. 443.201. POSSESSION, TRANSPORTATION, AND SALE OF CONSUMABLE HEMP PRODUCTS. (a) A person may possess, transport, sell, or purchase a consumable hemp product processed or manufactured in compliance with this chapter.

(b) The executive commissioner by rule must provide to a retailer of consumable hemp products fair notice of a potential violation concerning consumable hemp products sold by the retailer and an opportunity to cure a violation made unintentionally or negligently.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.202. REGULATION OF CERTAIN CANNABINOID OILS. (a) This section does not apply to low-THC cannabis regulated under Chapter 487.

(b) Notwithstanding any other law, a person may not sell, offer for sale, possess, distribute, or transport a cannabinoid oil, including cannabidiol oil, in this state:

(1) if the oil contains any material extracted or derived from the plant Cannabis sativa L., other than from hemp produced in compliance with 7 U.S.C. Chapter 38, Subchapter VII; and

(2) unless a sample representing the oil has been tested by a laboratory that is accredited by an independent accreditation body in accordance with International Organization for Standardization ISO/IEC 17025 or a comparable or successor standard and found to have a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent.

(c) The department and the Department of Public Safety shall establish a process for the random testing of cannabinoid oil, including cannabidiol oil, at various retail and other establishments that sell, offer for sale, distribute, or use the oil to ensure that

the oil:

(1) does not contain harmful ingredients;

(2) is produced in compliance with 7 U.S.C. Chapter 38, Subchapter VII; and

(3) has a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.2025. REGISTRATION REQUIRED FOR RETAILERS OF CERTAIN PRODUCTS. (a) This section does not apply to low-THC cannabis regulated under Chapter 487.

(b) A person may not sell consumable hemp products containing cannabidiol at retail in this state unless the person registers with the department each location owned, operated, or controlled by the person at which those products are sold. A person is not required to register a location associated with an employee or independent contractor described by Subsection (d).

(c) The department may issue a single registration under Subsection (b) covering multiple locations owned, operated, or controlled by a person.

(d) A person is not required to register with the department under Subsection (b) if the person is:

(1) an employee of a registrant; or

(2) an independent contractor of a registrant who sells the registrant's products at retail.

(e) A registration is valid for one year and may be renewed as prescribed by department rule.

(f) The department by rule may adopt a registration fee schedule that establishes reasonable fee amounts for the registration of:

(1) a single location at which consumable hemp products containing cannabidiol are sold; and

(2) multiple locations at which consumable hemp products containing cannabidiol are sold under a single registration.

(g) The department shall adopt rules to implement and administer this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff.

June 10, 2019.

Sec. 443.203. DECEPTIVE TRADE PRACTICE. (a) A person who sells, offers for sale, or distributes a cannabinoid oil, including cannabidiol oil, that the person claims is processed or manufactured in compliance with this chapter commits a false, misleading, or deceptive act or practice actionable under Subchapter E, Chapter 17, Business & Commerce Code, if the oil is not processed or manufactured in accordance with this chapter.

(b) A person who sells, offers for sale, or distributes a cannabinoid oil commits a false, misleading, or deceptive act or practice actionable under Subchapter E, Chapter 17, Business & Commerce Code, if the oil:

(1) contains harmful ingredients;

(2) is not produced in compliance with 7 U.S.C. Chapter 38, Subchapter VII; or

(3) has a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.204. RULES RELATED TO SALE OF CONSUMABLE HEMP PRODUCTS. Rules adopted by the executive commissioner regulating the sale of consumable hemp products must to the extent allowable by federal law reflect the following principles:

(1) hemp-derived cannabinoids, including cannabidiol, are not considered controlled substances or adulterants;

(2) products containing one or more hemp-derived cannabinoids, such as cannabidiol, intended for ingestion are considered foods, not controlled substances or adulterated products;

(3) consumable hemp products must be packaged and labeled in the manner provided by Section 443.205; and

(4) the processing or manufacturing of a consumable hemp product for smoking is prohibited.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.205. PACKAGING AND LABELING REQUIREMENTS. (a) Before a consumable hemp product that contains or is marketed as containing more than trace amounts of cannabinoids may be distributed or sold, the product must be labeled in the manner provided by this section with the following information:

(1) batch identification number;

(2) batch date;

(3) product name;

(4) a uniform resource locator (URL) that provides or links to a certificate of analysis for the product or each hemp-derived ingredient of the product;

(5) the name of the product's manufacturer; and

(6) a certification that the delta-9 tetrahydrocannabinol concentration of the product or each hemp-derived ingredient of the product is not more than 0.3 percent.

(b) The label required by Subsection (a) may be in the form of:

(1) a uniform resource locator (URL) for the manufacturer's Internet website that provides or links to the information required by that subsection; and

(2) a QR code or other bar code that may be scanned and that leads to the information required by that subsection.

(c) The label required by Subsection (a) must appear on each unit of the product intended for individual retail sale. If that unit includes inner and outer packaging, the label may appear on any of that packaging.

(d) This section does not apply to sterilized seeds incapable of beginning germination.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.206. RETAIL SALE OF OUT-OF-STATE CONSUMABLE HEMP PRODUCTS. Retail sales of consumable hemp products processed or manufactured outside of this state may be made in this state when the products were processed or manufactured in another state or jurisdiction in compliance with:

(1) that state or jurisdiction's plan approved by the United States Department of Agriculture under 7 U.S.C. Section 1639p;

(2) a plan established under 7 U.S.C. Section 1639q if that

plan applies to the state or jurisdiction; or

(3) the laws of that state or jurisdiction if the products are tested in accordance with, or in a manner similar to, Section 443.151.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.207. TRANSPORTATION AND EXPORTATION OF CONSUMABLE HEMP PRODUCTS OUT OF STATE. Consumable hemp products may be legally transported across state lines and exported to foreign jurisdictions in a manner that is consistent with federal law and the laws of respective foreign jurisdictions.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

CHAPTER 444. WHOLESALE PRESCRIPTION DRUG IMPORTATION PROGRAM

Sec. 444.001. DEFINITIONS. In this chapter:

(1) "Canadian supplier" means a manufacturer, wholesale distributor, or pharmacy that is appropriately licensed or permitted under Canadian federal or provincial laws and rules to manufacture, distribute, or dispense prescription drugs.

(2) "Commission" means the Health and Human Services Commission.

(3) "Prescription drug wholesaler" means a person licensed as a wholesale distributor under Subchapter N, Chapter 431, that contracts with this state to import prescription drugs under the program.

(4) "Program" means the wholesale prescription drug importation program established under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 655 (H.B. 25), Sec. 2, eff. September 1, 2023.

Sec. 444.002. ESTABLISHMENT OF WHOLESALE PRESCRIPTION DRUG IMPORTATION PROGRAM. (a) The commission shall establish the wholesale prescription drug importation program to provide lower cost

prescription drugs available outside of the United States to consumers in this state at the lower cost.

(b) The commission shall implement the program by:

(1) contracting with one or more prescription drug wholesalers and Canadian suppliers to import prescription drugs and provide prescription drug cost savings to consumers in this state;

(2) developing a registration process for health benefit plan issuers, health care providers, and pharmacies to obtain and dispense prescription drugs imported under the program;

(3) developing a list of prescription drugs, including the prices of those drugs, that meet the requirements of Section 444.003 and publishing the list on the commission's Internet website;

(4) establishing an outreach and marketing plan to generate program awareness;

(5) establishing and administering a telephone call center or electronic portal to provide information about the program;

(6) ensuring the program and the prescription drug wholesalers that contract with this state under Subdivision (1) comply with the tracking, tracing, verification, and identification requirements of 21 U.S.C. Section 360eee-1;

(7) prohibiting the distribution, dispensing, or sale of prescription drugs imported under this chapter outside the boundaries of this state; and

(8) performing any other duties the executive commissioner determines necessary to implement the program.

(c) The commission shall ensure that the program meets the requirements of 21 U.S.C. Section 384.

(d) In developing the program, the commission may consult with interested parties.

Added by Acts 2023, 88th Leg., R.S., Ch. 655 (H.B. 25), Sec. 2, eff. September 1, 2023.

Sec. 444.003. ELIGIBLE PRESCRIPTION DRUGS. A prescription drug may be imported into this state under the program only if the drug:

(1) meets the United States Food and Drug Administration's standards related to prescription drug safety, effectiveness, misbranding, and adulteration;

(2) does not violate any federal patent laws through its

importation;

(3) is expected to generate cost savings for consumers; and

(4) is not:

(A) listed as a controlled substance under state or federal law;

(B) a biological product;

(C) an infused drug;

(D) an intravenously injected drug;

(E) a drug that is inhaled during surgery; or

(F) a parenteral drug.

Added by Acts 2023, 88th Leg., R.S., Ch. 655 (H.B. 25), Sec. 2, eff. September 1, 2023.

Sec. 444.004. ANTICOMPETITIVE BEHAVIOR MONITORING. The commission, in consultation with the attorney general, shall identify and monitor any potential anticompetitive activities in industries affected by the program.

Added by Acts 2023, 88th Leg., R.S., Ch. 655 (H.B. 25), Sec. 2, eff. September 1, 2023.

Sec. 444.005. PROGRAM FUNDING. In addition to money appropriated by the legislature, the commission may impose a fee on each prescription drug sold under the program or establish another funding method to administer the program.

Added by Acts 2023, 88th Leg., R.S., Ch. 655 (H.B. 25), Sec. 2, eff. September 1, 2023.

Sec. 444.006. AUDIT PROCEDURES. The executive commissioner by rule shall develop procedures to effectively audit a prescription drug wholesaler participating in the program.

Added by Acts 2023, 88th Leg., R.S., Ch. 655 (H.B. 25), Sec. 2, eff. September 1, 2023.

Sec. 444.007. ANNUAL REPORTING. Not later than December 1 of each year, the commission shall submit a report to the governor and the legislature regarding the operation of the program during the preceding state fiscal year, including:

(1) which prescription drugs and Canadian suppliers are included in the program;

(2) the number of health benefit plan issuers, health care providers, and pharmacies participating in the program;

(3) the number of prescriptions dispensed through the program;

(4) the estimated cost savings to consumers, health plans, employers, and this state since the establishment of the program and during the preceding state fiscal year;

(5) information regarding the implementation of the audit procedures under Section 444.006; and

(6) any other information:

(A) the governor or the legislature requests; or

(B) the commission considers necessary.

Added by Acts 2023, 88th Leg., R.S., Ch. 655 (H.B. 25), Sec. 2, eff. September 1, 2023.

CHAPTER 445. MANUFACTURE, DISTRIBUTION, AND SALE OF KRATOM PRODUCTS

Sec. 445.001. DEFINITIONS. In this chapter:

(1) "Food" has the meaning assigned by Section 431.002.

(2) "Kratom" means any part of the leaf of the plant Mitragyna speciosa.

(3) "Kratom processor" means a person who:

(A) manufactures, prepares, distributes, or maintains kratom products for sale;

(B) advertises, represents, or holds oneself out as a manufacturer, preparer, or seller of kratom products;

(C) is responsible for ensuring the purity and proper labeling of kratom products; or

(D) packages or labels kratom products.

(4) "Kratom product" means a food, including an extract, capsule, or pill, containing any form of kratom.

(5) "Kratom retailer" means a kratom processor who sells kratom products to consumers or who advertises, represents, or holds

oneself out as a person who sells kratom products to consumers.

Added by Acts 2023, 88th Leg., R.S., Ch. 2 (S.B. 497), Sec. 2, eff. September 1, 2023.
Redesignated from Health and Safety Code, Chapter 444 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(22), eff. September 1, 2025.

Sec. 445.002. LABEL REQUIRED. (a) A kratom processor shall label each kratom product with the product use directions necessary to ensure safe use of the product by a consumer, including the recommended serving size for the product.

(b) A kratom retailer may only sell a kratom product that is properly labeled in accordance with this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 2 (S.B. 497), Sec. 2, eff. September 1, 2023.
Redesignated from Health and Safety Code, Chapter 444 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(22), eff. September 1, 2025.

Sec. 445.003. ADULTERATED, CONTAMINATED, AND PROHIBITED KRATOM PRODUCTS. A kratom processor or kratom retailer may not prepare, distribute, sell, or offer to sell a kratom product that:

(1) is adulterated with a dangerous non-kratom substance affecting the quality or strength of the product to a degree that renders the product injurious to a consumer;

(2) is contaminated with a poisonous or otherwise deleterious non-kratom substance, including any substance designated as a controlled substance by Chapter 481 (Texas Controlled Substances Act);

(3) contains a level of 7-hydroxymitragynine in the alkaloid fraction that is greater than two percent of the overall alkaloid composition of the product; or

(4) contains any synthetic alkaloids, including synthetic 7-hydroxymitragynine and synthetically derived compounds from a kratom plant.

Added by Acts 2023, 88th Leg., R.S., Ch. 2 (S.B. 497), Sec. 2, eff.

September 1, 2023.
Redesignated from Health and Safety Code, Chapter 444 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(22), eff. September 1, 2025.

Sec. 445.004. OFFENSE FOR DISTRIBUTION OR SALE OF KRATOM PRODUCT TO MINOR. (a) A person commits an offense if the person distributes, sells, or exposes for sale a kratom product to an individual younger than 18 years of age.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2023, 88th Leg., R.S., Ch. 2 (S.B. 497), Sec. 2, eff. September 1, 2023.
Redesignated from Health and Safety Code, Chapter 444 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(22), eff. September 1, 2025.

Sec. 445.005. CIVIL PENALTY. (a) A person who violates this chapter is subject to a civil penalty in the amount of:

(1) $250 for the first violation;

(2) $500 for the second violation; and

(3) $1,000 for each subsequent violation.

(b) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section.

(c) A kratom retailer is not liable for a civil penalty under this section for a violation of Section 445.002 or 445.003 if the kratom retailer proves by a preponderance of the evidence that the violation was unintentional and due to the kratom retailer's good faith reliance on the representation of another kratom processor.

(d) The attorney general or the district or county attorney for the county or municipal attorney for the municipality in which the violation is alleged to have occurred may bring an action to recover a civil penalty under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 2 (S.B. 497), Sec. 2, eff. September 1, 2023.
Redesignated from Health and Safety Code, Chapter 444 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(22), eff. September 1, 2025.

Amended by:

Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.002(5), eff. September 1, 2025.

Sec. 445.006. PENALTIES UNDER OTHER LAW. The penalties prescribed by this chapter are in addition to any other penalties prescribed by law, including penalties prescribed by Chapters 431 and 481.

Added by Acts 2023, 88th Leg., R.S., Ch. 2 (S.B. 497), Sec. 2, eff. September 1, 2023.
Redesignated from Health and Safety Code, Chapter 444 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(22), eff. September 1, 2025.

Sec. 445.007. RULES. The executive commissioner may adopt rules consistent with this chapter as necessary to ensure the safe consumption and distribution of kratom and kratom products.

Added by Acts 2023, 88th Leg., R.S., Ch. 2 (S.B. 497), Sec. 2, eff. September 1, 2023.
Redesignated from Health and Safety Code, Chapter 444 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(22), eff. September 1, 2025.

CHAPTER 446. IVERMECTIN

Sec. 446.001. SALE OF IVERMECTIN WITHOUT A PRESCRIPTION; ESTABLISHING PROTECTIONS. (a) A pharmacist may dispense ivermectin to a person, without requiring a prescription order from a licensed health care practitioner, in accordance with any written standardized procedures or protocols issued by the Texas State Board of Pharmacy, including, if required, providing the person with instructions on the proper use of ivermectin.

(b) Notwithstanding any other law, a pharmacist acting in a reasonably prudent manner is not criminally or civilly liable or subject to professional disciplinary action for dispensing ivermectin in accordance with this section.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 11 (H.B. 25), Sec. 1, eff. December 4, 2025.

Sec. 446.002. RULES. The Texas State Board of Pharmacy may adopt the rules necessary to implement this chapter.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 11 (H.B. 25), Sec. 1, eff. December 4, 2025.

SUBTITLE B. ALCOHOL AND SUBSTANCE ABUSE PROGRAMS

CHAPTER 461A. DEPARTMENT OF STATE HEALTH SERVICES: CHEMICAL DEPENDENCY SERVICES AND RELATED PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 461A.001. POLICY. Chemical dependency is a preventable and treatable illness and public health problem affecting the general welfare and the economy of this state. The legislature recognizes the need for proper and sufficient facilities, programs, and procedures for prevention, intervention, treatment, and rehabilitation. It is the policy of this state that a person with a chemical dependency shall be offered a continuum of services that will enable the person to lead a normal life as a productive member of society.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.002. DEFINITIONS. In this chapter:

(1) "Chemical dependency" means:

(A) abuse of alcohol or a controlled substance;

(B) psychological or physical dependence on alcohol or a controlled substance; or

(C) addiction to alcohol or a controlled substance.

(2) "Commission" means the Health and Human Services Commission.

(3) "Commissioner" means the commissioner of state health services.

(4) "Controlled substance" means a:

(A) toxic inhalant; or

(B) substance designated as a controlled substance by Chapter 481.

(5) "Department" means the Department of State Health Services.

(6) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(7) "Intervention" means the interruption of the onset or progression of chemical dependency in the early stages.

(8) "Prevention" means the reduction of a person's risk of abusing alcohol or a controlled substance or becoming chemically dependent.

(9) "Rehabilitation" means the reestablishment of the social and vocational life of a person after treatment.

(10) "Toxic inhalant" means a gaseous substance that is inhaled by a person to produce a desired physical or psychological effect and that may cause personal injury or illness to the person.

(11) "Treatment" means the initiation and promotion, in a planned, structured, and organized manner, of a person's chemical-free status or the maintenance of a person free of illegal drugs.

(12) "Treatment facility" means a public or private hospital, a detoxification facility, a primary care facility, an intensive care facility, a long-term care facility, an outpatient care facility, a community mental health center, a health maintenance organization, a recovery center, a halfway house, an ambulatory care facility, another facility that is required to be licensed and approved by the department under Chapter 464, or a facility licensed or operated under Title 7 that provides treatment services. The term does not include an educational program for intoxicated drivers or the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.003. IMPLEMENTATION BY DEPARTMENT. The department shall implement this chapter for the purpose of preventing broken homes and the loss of lives.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.004. COOPERATION WITH DEPARTMENT. (a) Each department, agency, officer, and employee of the state, when requested by the department, shall cooperate with the department in appropriate activities to implement this chapter.

(b) This section does not give the department control over existing facilities, institutions, or agencies or require the facilities, institutions, or agencies to serve the department in a manner that is inconsistent with the functions, the authority, or the laws and rules governing the activities of the facilities, institutions, or agencies.

(c) This section does not authorize the department to use a private institution or agency without its consent or to pay a private institution or agency for services that a public institution or agency is willing and able to provide.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.005. CONFLICT WITH OTHER LAW. To the extent a power or duty given to the department or commissioner by this chapter conflicts with any of the following provisions of the Government Code, the Government Code provision controls:

(1) Subchapter A, Chapter 524;

(2) Section 524.0101;

(3) Sections 524.0151(a)(2) and (b);

(4) Section 524.0202; and

(5) Section 525.0254.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.50, eff. April 1, 2025.

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT, COMMISSIONER, AND

EXECUTIVE COMMISSIONER

Sec. 461A.051. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER. The executive commissioner shall:

(1) adopt rules governing the functions of the department in relation to chemical dependency services and related programs, including rules that prescribe the policies and procedures followed by the department in administering chemical dependency services and related programs; and

(2) by rule and based on criteria proposed by the department, establish minimum criteria that peer assistance programs must meet to be governed by and entitled to the benefits of a law that authorizes licensing and disciplinary authorities to establish or approve peer assistance programs for impaired professionals.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.052. POWERS AND DUTIES OF DEPARTMENT. (a) The department shall:

(1) provide for research and study of the problems of chemical dependency in this state and seek to focus public attention on those problems through public information and education programs;

(2) plan, develop, coordinate, evaluate, and implement constructive methods and programs for the prevention, intervention, treatment, and rehabilitation of chemical dependency in cooperation with federal and state agencies, local governments, organizations, and persons, and provide technical assistance, funds, and consultation services for statewide and community-based services;

(3) cooperate with and enlist the assistance of:

(A) other state, federal, and local agencies;

(B) hospitals and clinics;

(C) public health, welfare, and criminal justice system authorities;

(D) educational and medical agencies and organizations; and

(E) other related public and private groups and persons;

(4) expand chemical dependency services for children when funds are available because of the long-term benefits of those

services to this state and its citizens;

(5) sponsor, promote, and conduct educational programs on the prevention and treatment of chemical dependency, and maintain a public information clearinghouse to purchase and provide books, literature, audiovisuals, and other educational material for the programs;

(6) sponsor, promote, and conduct training programs for persons delivering prevention, intervention, treatment, and rehabilitation services and for persons in the criminal justice system or otherwise in a position to identify the service needs of persons with a chemical dependency and their families;

(7) require programs rendering services to persons with a chemical dependency to safeguard those persons' legal rights of citizenship and maintain the confidentiality of client records as required by state and federal law;

(8) maximize the use of available funds for direct services rather than administrative services;

(9) consistently monitor the expenditure of funds and the provision of services by all grant and contract recipients to assure that the services are effective and properly staffed and meet the standards adopted under this chapter;

(10) make the monitoring reports prepared under Subdivision (9) a matter of public record;

(11) license treatment facilities under Chapter 464;

(12) use funds appropriated to the department for purposes of providing chemical dependency services and related programs to carry out those purposes and maximize the overall state allotment of federal funds;

(13) plan, develop, coordinate, evaluate, and implement constructive methods and programs to provide healthy alternatives for youth at risk of selling controlled substances; and

(14) submit to the federal government reports and strategies necessary to comply with Section 1926 of the federal Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, Pub. L. No. 102-321 (42 U.S.C. Section 300x-26), and coordinate the reports and strategies with appropriate state governmental entities.

(b) The department may establish regional alcohol advisory committees consistent with the regions established under Section 525.0151, Government Code.

(c) The department may appoint advisory committees to assist the department in performing its duties under this chapter. A member of an advisory committee appointed under this subsection may receive reimbursement for travel expenses as provided by Section 2110.004, Government Code.

(d) The department shall comply with federal and state laws related to program and facility accessibility.

(e) The commissioner shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the department's programs and services under this chapter.

(f) Subsection (a)(15) does not apply to a 12-step or similar self-help alcohol dependency recovery program:

(1) that does not offer or purport to offer an alcohol dependency treatment program;

(2) that does not charge program participants; and

(3) in which program participants may maintain anonymity.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 948 (S.B. 1480), Sec. 14, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.51, eff. April 1, 2025.

Sec. 461A.053. EMERGENCY TREATMENT RESOURCES. The commissioner may develop emergency treatment resources for persons who appear to be:

(1) chemically dependent;

(2) under the influence of alcohol or a controlled substance and in need of medical attention; or

(3) undergoing withdrawal or experiencing medical complications related to a chemical dependency.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.054. REFERRAL SERVICES FOR PERSONS FROM CRIMINAL

JUSTICE SYSTEM. (a) The commissioner may establish programs for the referral, treatment, or rehabilitation of persons from the criminal justice system within the terms of bail, probation, conditional discharge, parole, or other conditional release.

(b) A referral may not be inconsistent with medical or clinical judgment or conflict with this chapter or Chapter 462 or applicable federal regulations.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.055. REPORTING OF CHILDREN INVOLVED IN SUBSTANCE ABUSE OR FROM FAMILY INVOLVED IN SUBSTANCE ABUSE. (a) The department in the context of mental health services, the commission, the Department of Aging and Disability Services, and the Texas Juvenile Justice Department shall:

(1) attempt to determine whether a child under the agency's jurisdiction is involved in substance abuse or is from a substance-abusing family;

(2) record its determination in the case record of the child; and

(3) record the information for statistical reporting purposes.

(b) The agencies shall revise their assessment forms, as needed, to include a determination under this section.

(c) The department shall coordinate the efforts of the agencies described by Subsection (a) in complying with this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.056. STATEWIDE SERVICE DELIVERY PLAN. (a) The department shall develop and adopt a statewide service delivery plan. The department shall update the plan not later than February 1 of each even-numbered year. The plan must include:

(1) a statement of the department's mission, goals, and objectives regarding chemical dependency prevention, intervention, and treatment;

(2) a statement of how chemical dependency services and

chemical dependency case management services should be organized, managed, and delivered;

(3) a comprehensive assessment of:

(A) chemical dependency services available in this state at the time the plan is prepared; and

(B) future chemical dependency services needs;

(4) a service funding process that ensures equity in the availability of chemical dependency services across this state and within each service region established under Section 525.0151, Government Code;

(5) a provider selection and monitoring process that emphasizes quality in the provision of services;

(6) a description of minimum service levels for each region;

(7) a mechanism for the department to obtain and consider local public participation in identifying and assessing regional needs for chemical dependency services;

(8) a process for coordinating and assisting administration and delivery of services among federal, state, and local public and private chemical dependency programs that provide similar services; and

(9) a process for coordinating the department's activities with those of other state health and human services agencies and criminal justice agencies to avoid duplications and inconsistencies in the efforts of the agencies in chemical dependency prevention, intervention, treatment, rehabilitation, research, education, and training.

(b) The department shall gather information needed for the development of the plan through systematic methods designed to include local, regional, and statewide perspectives.

(c) In developing the plan, the department shall analyze the costs of implementation of proposed features of the plan by both the department and service providers. The department shall use the analysis to maximize the efficiency of service delivery under the final plan.

(d) The plan must provide a priority for obtaining treatment services for individuals in need of treatment who are parents of a child in foster care.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158,

eff. April 2, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.52, eff. April 1, 2025.

Sec. 461A.057. STATE AGENCY SERVICES STANDARDS. (a) The executive commissioner by rule shall develop model program standards for substance abuse services for use by each state agency that provides or pays for substance abuse services. The department shall provide the model standards to each agency that provides substance abuse services as identified by the commission.

(b) Model standards developed under Subsection (a) must be designed to improve the consistency of substance abuse services provided by or through a state agency.

(c) Biennially the department shall review the model standards developed under Subsection (a) and determine whether each standard contributes effectively to the consistency of service delivery by state agencies.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.059. OPIOID ANTAGONIST PROGRAM. (a) In this section, "opioid antagonist" has the meaning assigned by Section 483.101.

(b) From funds available for that purpose, the executive commissioner shall operate a program to provide opioid antagonists for the prevention of opioid overdoses in a manner determined by the executive commissioner to best accomplish that purpose.

(c) The executive commissioner may provide opioid antagonists under the program to emergency medical services personnel, first responders, public schools, institutions of higher education as defined by Section 481.134, community centers, and other persons likely to be in a position to respond to an opioid overdose.

(d) The commission may accept gifts, grants, and donations to be used in administering this section.

(e) The executive commissioner shall adopt rules as necessary to implement this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 1167 (H.B. 3285), Sec. 6, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 924 (S.B. 867), Sec. 1, eff. June 17, 2023.

Sec. 461A.060. BIENNIAL REPORT ON OPIOID ANTAGONIST PROGRAMS FOR OPIOID OVERDOSE REVERSAL AND PREVENTION. (a) In this section, "opioid antagonist" has the meaning assigned by Section 483.101.

(b) Not later than October 1 of each even-numbered year, the commission shall:

(1) prepare a report evaluating the distribution of opioid antagonists in this state to reverse and prevent opioid overdoses; and

(2) submit the report to the governor, the lieutenant governor, and the speaker of the house of representatives.

(c) The report described by Subsection (b) must:

(1) include a needs assessment for the opioid antagonist programs established by state agencies and institutions of higher education;

(2) establish a statewide saturation goal for opioid antagonists and include:

(A) a description of the data sources and methodology used to estimate insufficiencies in the current supply of opioid antagonists; and

(B) a communications plan to address opioid overdoses in areas of this state at higher risk for increased numbers of overdoses;

(3) include a description of all state and federal money appropriated to governmental opioid antagonist programs;

(4) establish opioid antagonist distribution strategies for this state;

(5) list and describe all available state and federally funded purchase and distribution programs for opioid antagonists; and

(6) recommend improvements for addressing opioid overdoses among high-risk populations, including school-aged children, pregnant and postpartum women, and individuals residing in rural areas of this state.

(d) In preparing the report under this section, the commission

shall coordinate and consult with each state agency and institution of higher education that receives funding or other resources for the distribution of opioid antagonists.

Added by Acts 2025, 89th Leg., R.S., Ch. 465 (H.B. 4783), Sec. 1, eff. September 1, 2025.

SUBCHAPTER C. SERVICES AND PROGRAMS

Sec. 461A.101. LOCAL BEHAVIORAL HEALTH AUTHORITIES. The department may designate and provide services through local behavioral health authorities as provided by Section 533.0356 and rules adopted by the executive commissioner.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.102. EDUCATION AND RESEARCH PROGRAMS CONCERNING CONTROLLED SUBSTANCES. (a) In this section, "controlled substances" means those substances designated as controlled substances by Chapter 481.

(b) The department, in cooperation with other appropriate state agencies, shall carry out educational programs designed to prevent or deter misuse and abuse of controlled substances. In connection with those programs the department may:

(1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid those groups in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of problems that exist and ways to combat those problems; and

(6) assist in educating and training state and local law

enforcement officials in their efforts to control misuse and abuse of controlled substances.

(c) The department shall encourage research on misuse and abuse of controlled substances. In connection with research, and in furtherance of the enforcement of Chapter 481, the commissioner may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(A) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of Chapter 481;

(B) determine patterns and social effects of misuse and abuse of controlled substances; and

(C) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances; and

(3) contract with public agencies, institutions of higher education, and private organizations or individuals to conduct research, demonstrations, or special projects that directly pertain to the misuse and abuse of controlled substances.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.103. OUTREACH PROGRAMS FOR INTRAVENOUS DRUG USERS. (a) In this section, "HIV" means human immunodeficiency virus.

(b) The department may fund community outreach programs that have direct contact with intravenous drug users.

(c) An outreach program funded by the department must:

(1) provide education on HIV infection based on the model education program developed by the department;

(2) encourage behavior changes to reduce the possibility of HIV transmission;

(3) promote other HIV risk reduction activities; and

(4) encourage behavior consistent with state criminal laws.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.104. MINIMUM PROGRAM REQUIREMENTS. (a) In this section, "coping skills training" means instruction in the elements and practice of and reasons for the skills of communication, stress management, problem solving, daily living, and decision making.

(b) A chemical dependency intensive intervention, outpatient, residential treatment, or rehabilitation program that is provided by the department or that is funded wholly or partly by funds allocated through the department must include:

(1) coping skills training;

(2) education regarding the manifestations and dynamics of dysfunctional relationships within the family; and

(3) support group opportunities for children and adults.

(c) This section does not apply to:

(1) a detoxification program or that part of a program that provides detoxification; or

(2) a program provided by the Texas Juvenile Justice Department.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.105. RELAPSE RATE REPORTING. (a) A treatment program provided or funded by the department shall report to the department on the effectiveness of the chemical dependency treatment program.

(b) The report must show to the extent possible, without violating the confidentiality of information received by the program, the rate of relapse of persons who have received treatment services.

(c) The executive commissioner by rule may provide for the content of a report and the procedure for reporting under this section. Reports must be uniform in classifications of persons receiving treatment according to the severity of addiction, substance abused, age of person treated, and modality of treatment. A report may not reveal the name of an individual subject to treatment or of a family member or acquaintance of an individual treated and may not describe circumstances from which any of those individuals may be identified.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.106. COMPULSIVE GAMBLING PROGRAM. (a) The department shall establish a program for:

(1) public education, research, and training regarding problem or compulsive gambling; and

(2) the treatment and prevention of problem or compulsive gambling.

(b) The department's program under Subsection (a) must include:

(1) establishing and maintaining a list of Internet sites and toll-free "800" telephone numbers of nonprofit entities that provide crisis counseling and referral services to families experiencing difficulty as a result of problem or compulsive gambling;

(2) promoting public awareness regarding the recognition and prevention of problem or compulsive gambling;

(3) facilitating, through in-service training and other means, the availability of effective assistance programs for problem or compulsive gamblers; and

(4) conducting studies to identify adults and juveniles in this state who are, or who are at risk of becoming, problem or compulsive gamblers.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

SUBCHAPTER D. SERVICE CONTRACTS

Sec. 461A.151. CLIENT SERVICE CONTRACT STANDARDS. (a) In each contract for the purchase of chemical dependency program-related client services, the department shall include:

(1) clearly defined contract goals, outputs, and measurable outcomes that relate directly to program objectives;

(2) clearly defined sanctions or penalties for failure to comply with or perform contract terms or conditions; and

(3) clearly specified accounting, reporting, and auditing requirements applicable to money received under the contract.

(b) Contract goals must include a standard developed by the department that is based on a percentage of program clients who maintain long-term recovery for an extended period as defined by the

department.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.152. CONTRACT MONITORING. The department shall establish a formal program to monitor program-related client services contracts made by the department. The department must:

(1) monitor compliance with financial and performance requirements using a risk assessment methodology; and

(2) obtain and evaluate program cost information to ensure that each cost, including an administrative cost, is reasonable and necessary to achieve program objectives.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.153. TECHNICAL ASSISTANCE PROGRAM. The department shall adopt technical assistance policies and procedures for a technical assistance program that:

(1) is clearly separate from the department's contract monitoring activities;

(2) has a single office for technical assistance requests; and

(3) includes explicit response time frames.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

SUBCHAPTER E. FUNDING

Sec. 461A.201. FINANCES. (a) The department may accept gifts and grants for the purposes of providing chemical dependency services and related programs.

(b) The department is the state agency that receives and administers federal funds for alcohol and drug abuse, including applying for, administering, and disbursing funds under the federal Drug Abuse Prevention, Treatment, and Rehabilitation Act (21 U.S.C. Section 1101 et seq.). The executive commissioner prescribes all

necessary department policies relating to alcohol and drug abuse.

(c) An organization or other entity is not eligible for a grant of state funds from the department under this chapter unless the organization or entity provides matching funds in either cash or in-kind contributions equal to at least five percent of the total grant of state funds from the department. The department may waive that requirement if the department determines that the requirement may jeopardize the provision of needed services.

(d) In allocating grant funds, the department shall consider the state facility hospitalization rate of substance abusers who are from the service area of the entity requesting the grant. An organization or other entity is not eligible for a grant of state funds for a treatment or rehabilitation program unless the program will, at a minimum, reduce state facility hospitalization of substance abusers by a percentage established by the department.

(e) As a condition to receiving contract or grant funds under this chapter, a public or private organization or entity must provide to the department information relating to:

(1) the number of persons with a chemical dependency the organization or entity served, if any, during the preceding year, the municipalities and counties of residence of those persons, and the number of persons served from each municipality and county; and

(2) the number of persons with a chemical dependency the organization or entity expects to serve during the term of the requested grant or contract, the expected municipalities and counties of residence for those persons, and the expected number of persons served from each municipality and county.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.202. SERVICES FUNDING. (a) The executive commissioner by rule shall adopt a system of funding the provision of chemical dependency services that includes competitive and noncompetitive procedures to:

(1) maximize the range of treatment services available in each service region;

(2) provide reasonable access in each region to available services; and

(3) include local public participation in making regional funding decisions and formal funding recommendations.

(b) The system must require that the department award each proposed chemical dependency services contract to the applicant that the department determines has made the bid that provides the best value.

(c) In determining the best value bid for a contract under this section, the department shall consider:

(1) the quality of the proposed service;

(2) cost;

(3) the applicant's ability to:

(A) perform the contract;

(B) provide the required services; and

(C) provide continuity of service;

(4) whether the applicant can perform the contract or provide the services within the period required, without delay or interference;

(5) the applicant's history of:

(A) contract performance; and

(B) compliance with the laws relating to the applicant's business operations and the affected services;

(6) whether the applicant's financial resources are sufficient to perform the contract and to provide the services;

(7) whether necessary or desirable support and ancillary services are available to the applicant;

(8) the degree of community support for the applicant;

(9) the quality of the facilities and equipment available to or proposed by the applicant;

(10) the ability of the applicant to meet all applicable written department policies, principles, and rules;

(11) state investment in the applicant; and

(12) other factors the department determines relevant.

(d) Rules adopted under this section must set out the department's provider selection processes, including:

(1) service purchase methods;

(2) eligibility criteria;

(3) provider selection criteria; and

(4) selection determination procedures.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158,

eff. April 2, 2015.

Sec. 461A.203. FUNDING POLICY MANUAL. (a) The department shall publish a funding policy manual that explains:

(1) the department's funding priorities and provider selection criteria; and

(2) the methods the department used to develop funding policies.

(b) The department shall update the manual annually.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.204. UNIT RATE REIMBURSEMENT. (a) In this section, "unit rate reimbursement" means reimbursement for a service paid at a specified rate for a unit of the service provided to a client multiplied by the number of units provided.

(b) The department shall study the procurement of and payment for chemical dependency treatment services on a unit rate reimbursement basis.

(c) If the department determines, after consideration of the study, that procurement of and payment for chemical dependency treatment services on a unit rate reimbursement basis in appropriate areas of the state would result in obtaining the highest quality treatment services at the best price and the lowest administrative cost to the department, the department shall adopt a unit rate reimbursement system for those services. The system must:

(1) include competitive procurement;

(2) monitor provider performance;

(3) monitor the reasonableness of provider costs and expenditures;

(4) verify provider costs before and after a contract term to ensure rates are set appropriately;

(5) ensure accountability of providers; and

(6) contain costs.

(d) The department may procure and pay for chemical dependency prevention and intervention services under a unit rate reimbursement system when the department determines it is appropriate.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

CHAPTER 462. TREATMENT OF PERSONS WITH CHEMICAL DEPENDENCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 462.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person who files an application for emergency detention, protective custody, or commitment of a person with a chemical dependency.

(2) "Certificate" means a sworn certificate of medical examination for chemical dependency executed under this chapter.

(3) "Chemical dependency" means:

(A) the abuse of alcohol or a controlled substance;

(B) psychological or physical dependence on alcohol or a controlled substance; or

(C) addiction to alcohol or a controlled substance.

(4) "Commission" means the Health and Human Services Commission.

(5) "Controlled substance" means a:

(A) toxic inhalant; or

(B) substance designated as a controlled substance by Chapter 481 (Texas Controlled Substances Act).

(5-a) "Department" means the Department of State Health Services.

(5-b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "Legal holiday" means a state holiday listed in Section 662.021, Government Code, or an officially declared county holiday applicable to a court in which proceedings under this chapter are held.

(7) "Proposed patient" means a person named in an application for emergency detention, protective custody, or commitment under this chapter.

(8) "Toxic inhalant" means a gaseous substance that is inhaled by a person to produce a desired physical or psychological effect and that may cause personal injury or illness to the inhaler.

(9) "Treatment" means the initiation and promotion of a person's chemical-free status or the maintenance of a person free of illegal drugs.

(10) "Treatment facility" means a public or private hospital, a detoxification facility, a primary care facility, an intensive care facility, a long-term care facility, an outpatient care facility, a community mental health center, a health maintenance organization, a recovery center, a halfway house, an ambulatory care facility, another facility that is required to be licensed by the department under Chapter 464, a facility licensed by the department under Title 7, or a facility operated by the department under Title 7 that has been designated by the department to provide chemical dependency treatment. The term does not include an educational program for intoxicated drivers or the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 671, Sec. 1, eff. June 15, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(15), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1160, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(88), eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 716 (H.B. 171), Sec. 2, eff. September 1, 2025.

Sec. 462.002. FILING REQUIREMENTS. (a) Each application, petition, certificate, or other paper permitted or required to be filed in a court having original jurisdiction under this chapter must be filed with the county clerk of the proper county.

(b) The county clerk shall file each paper after endorsing on it:

(1) the date on which the paper is filed;

(2) the docket number; and

(3) the clerk's official signature.

(c) A person may initially file a paper with the county clerk by the use of reproduced, photocopied, or electronically transmitted paper if the person files the original signed copies of the paper with the clerk not later than the 72nd hour after the hour on which

the initial filing is made. If the 72-hour period ends on a Saturday, Sunday, or legal holiday, the filing period is extended until 4 p.m. on the first succeeding business day. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the filing period until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster. If a person detained under this chapter would otherwise be released because the original signed copy of a paper is not filed within the 72-hour period but for the extension of the filing period under this section, the person may be detained until the expiration of the extended filing period. This subsection does not affect another provision of this chapter requiring the release or discharge of a person.

(d) If the clerk does not receive the original signed copy of a paper within the period prescribed by this section, the judge may dismiss the proceeding on the court's own motion or on the motion of a party and, if the proceeding is dismissed, shall order the immediate release of a proposed patient who is not at liberty.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 8, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 107, Sec. 5.03, eff. Aug. 30, 1993.

Sec. 462.0025. COURT HOURS. (a) The probate court or court having probate jurisdiction shall be open for proceedings under this chapter during normal business hours.

(b) The probate judge or magistrate shall be available at all times at the request of a person taken into custody or detained under Subchapter C or a proposed patient under Subchapter D.

Amended by Acts 1991, 72nd Leg., ch. 567, Sec. 9, eff. Sept. 1, 1991.
Amended by:

Acts 2005, 79th Leg., Ch. 14 (S.B. 348), Sec. 1, eff. May 3, 2005.

Sec. 462.003. INSPECTION OF COURT RECORDS. (a) Each paper in a docket for commitment proceedings in the county clerk's office,

including the docket book, indexes, and judgment books, is a public record of a private nature that may be used, inspected, or copied only under a written order issued by the:

(1) county judge;

(2) judge of a court that has probate jurisdiction; or

(3) judge of a district court having jurisdiction in the county.

(b) A judge may not issue an order under Subsection (a) unless the judge enters a finding that:

(1) the use, inspection, or copying is justified and in the public interest; or

(2) the paper is to be released to the person to whom it relates or to a person designated in a written release signed by the person to whom the paper relates.

(c) In addition to the finding required by Subsection (b), if a law relating to confidentiality of mental health information or physician-patient privilege applies, the judge must find that the reasons for the use, inspection, or copying fall within the statutory exemptions.

(d) The papers shall be released to an attorney representing the proposed patient in a proceeding held under this chapter.

(e) This section does not affect access of law enforcement personnel to necessary information in the execution of a writ or warrant.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.004. REPRESENTATION OF STATE. In a hearing on court-ordered treatment held under this chapter:

(1) the county attorney shall represent the state; or

(2) if the county has no county attorney, the district attorney shall represent the state.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.005. COSTS. (a) The laws relating to the payment of the costs of commitment, support, maintenance, and treatment and to

the securing of reimbursement for the actual costs applicable to court-ordered mental health, probation, or parole services apply to each item of expense incurred by the state or the county in connection with the commitment, care, custody, treatment, and rehabilitation of a person receiving care and treatment under this chapter.

(b) A county that enters an order of commitment or detention under this chapter is liable for payment of the costs of any proceedings related to that order, including:

(1) court-appointed attorney fees;

(2) physician examination fees;

(3) compensation for language or sign interpreters;

(4) compensation for masters; and

(5) expenses to transport a patient to a hearing or to a treatment facility.

(c) A county or the state is entitled to reimbursement from any of the following persons for costs actually paid by the county or state and that relate to an order of commitment or detention:

(1) the patient;

(2) the applicant; or

(3) a person or estate liable for the patient's support in a treatment facility.

(d) On a motion of the county or district attorney or on the court's own motion, the court may require an applicant to file a cost bond with the court.

(e) The state shall pay the costs of transporting a discharged patient to the patient's home or of returning to a treatment facility a patient absent without permission unless the patient or a person responsible for the patient is able to pay the costs.

(f) The state or the county may not pay any costs for a patient committed to a private hospital unless no public facilities are available and unless authorized by the department or the commissioners court of the county, as appropriate.

(g) Notwithstanding Subsection (c), a person who files an application for the commitment of another while acting in the person's capacity as an employee of a local mental health authority is not liable for the payment of any costs under this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 10, eff. Sept. 1, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1161, eff. April 2, 2015.

Sec. 462.006. WRIT OF HABEAS CORPUS. This chapter does not limit a person's right to obtain a writ of habeas corpus.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.007. LIMITATION OF LIABILITY. (a) A person who participates in the examination, certification, apprehension, custody, transportation, detention, commitment, treatment, or discharge of a proposed patient or in the performance of any act required or authorized by this chapter and who acts in good faith, reasonably, and without malice or negligence is not civilly or criminally liable for that action.

(b) A physician performing a medical examination or providing information to a court in a court proceeding under this chapter or providing information to a peace officer to demonstrate the necessity to apprehend a person under Section 462.041 is considered an officer of the court and is not civilly or criminally liable for the examination or testimony when acting without malice.

(c) A physician or inpatient mental health facility that discharges a voluntary patient is not liable for the discharge if:

(1) a written request for the patient's release was filed and not withdrawn; and

(2) the person who filed the written request for release is notified that the person assumes all responsibility for the patient on discharge.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 11, eff. Sept. 1, 1991.

Sec. 462.008. CRIMINAL PENALTY; ENFORCEMENT. (a) A person commits an offense if the person intentionally causes, conspires with another person to cause, or assists another to cause the unwarranted commitment of a person to a treatment facility.

(b) A person commits an offense if the person knowingly violates this chapter.

(c) An individual who commits an offense under this section is subject on conviction to:

(1) a fine of not less than $50 or more than $25,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than two years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

(d) A person other than an individual who commits an offense under this section is subject on conviction to a fine of not less than $500 or more than $100,000 for each violation and each day of a continuing violation.

(e) If it is shown on the trial of an individual that the individual has previously been convicted of an offense under this section, the offense is punishable by:

(1) a fine of not less than $100 or more than $50,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than four years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

(f) If it is shown on the trial of a person other than an individual that the person previously has been convicted of an offense under this section, the offense is punishable by a fine of not less than $1,000 or more than $200,000 for each violation and each day of a continuing violation.

(g) The appropriate district or county attorney shall prosecute violations of this chapter.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 12, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 705, Sec. 3.05, eff. Sept. 1, 1993.

Sec. 462.009. CONSENT TO TREATMENT. (a) A patient receiving treatment in a treatment facility is entitled to refuse a medication, therapy, or treatment unless:

(1) the patient is younger than 18 years of age, the patient is admitted under Section 462.022(a)(3)(A), and the patient's parent, managing conservator, or guardian consents to the medication,

therapy, or treatment on behalf of the patient;

(2) the patient has been adjudicated to be incompetent to manage the patient's personal affairs or to make a decision to refuse the medication, therapy, or treatment and the patient's guardian of the person or another person legally authorized to consent to medical treatment consents to the medication, therapy, or treatment on behalf of the patient; or

(3) a physician treating the patient determines that the medication is necessary to prevent imminent serious physical harm to the patient or to another individual and the physician issues a written order, or a verbal order if authenticated in writing by the physician within 24 hours, to administer the medication to the patient.

(b) The decision of a guardian or of a person legally authorized to consent to medical treatment on the patient's behalf under Subsection (a)(2) must be based on knowledge of what the patient would desire, if known.

(c) A patient's refusal to receive medication, therapy, or treatment under Subsection (a), or a patient's attempt to refuse if the patient's right to refuse is limited by that subsection, shall be documented in the patient's clinical record together with the patient's expressed reason for refusal.

(d) If a physician orders a medication to be administered to a patient under Subsection (a)(3), the physician shall document in the patient's clinical record in specific medical and behavioral terms the reasons for the physician's determination of the necessity of the order.

(e) Consent given by a patient or by a person authorized by law to consent to treatment on the patient's behalf for the administration of a medication, therapy, or treatment is valid only if:

(1) for consent to therapy or treatment:

(A) the consent is given voluntarily and without coercive or undue influence; and

(B) before administration of the therapy or treatment, the treating physician or the psychologist, social worker, professional counselor, or chemical dependency counselor explains to the patient and to the person giving consent, in simple, nontechnical language:

(i) the specific condition to be treated;

(ii) the beneficial effects on that condition expected from the therapy or treatment;

(iii) the probable health and mental health consequences of not consenting to the therapy or treatment;

(iv) the side effects and risks associated with the therapy or treatment;

(v) the generally accepted alternatives to the therapy or treatment, if any, and whether an alternative might be appropriate for the patient; and

(vi) the proposed course of the therapy or treatment;

(2) for consent to the administration of medication:

(A) the consent is given voluntarily and without coercive or undue influence; and

(B) the treating physician provides each explanation required by Subdivision (1)(B) to the patient and to the person giving consent in simple, nontechnical language; and

(3) for consent to medication, therapy, or treatment, the informed consent is evidenced in the patient's clinical record by a signed form prescribed by the department for this purpose or by a statement of the treating physician or the psychologist, social worker, professional counselor, or chemical dependency counselor who obtained the consent that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(f) A person who consents to the administration of a medication, therapy, or treatment may revoke the consent at any time and for any reason, regardless of the person's capacity. Revocation of consent is effective immediately and further medication, therapy, or treatment may not be administered unless new consent is obtained in accordance with this section.

(g) Consent given by a patient or by a person authorized by law to consent to treatment on the patient's behalf applies to a series of doses of medication or to multiple therapies or treatments for which consent was previously granted. If the treating physician or the psychologist, social worker, professional counselor, or chemical dependency counselor obtains new information relating to a therapy or treatment for which consent was previously obtained, the physician or the psychologist, social worker, professional counselor, or chemical dependency counselor must explain the new information and obtain new

consent. If the treating physician obtains new information relating to a medication for which consent was previously obtained, the physician must explain the new information and obtain new consent.

(h) This section does not apply to a treatment facility licensed by the department under Chapter 464.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.14, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 1216, Sec. 2, eff. June 15, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 345 (H.B. 3146), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1162, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1211 (S.B. 1560), Sec. 2, eff. June 19, 2015.

Sec. 462.010. CONSENT TO TREATMENT AT CERTAIN FACILITIES. (a) A treatment facility licensed by the department under Chapter 464 may not provide treatment to a patient without the patient's legally adequate consent.

(b) The executive commissioner by rule shall prescribe standards for obtaining a patient's legally adequate consent under this section, including rules prescribing reasonable efforts to obtain a patient's consent and requiring documentation for those efforts.

Added by Acts 2015, 84th Leg., R.S., Ch. 1211 (S.B. 1560), Sec. 3, eff. June 19, 2015.

Sec. 462.011. CONSENT TO MEDICATION. Consent to the administration of prescription medication given by a patient receiving treatment in a treatment facility licensed by the department under Chapter 464 or by a person authorized by law to consent on behalf of the patient is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;

(2) the patient and, if appropriate, the patient's representative authorized by law to consent on behalf of the patient

are informed in writing that consent may be revoked; and

(3) the consent is evidenced in the patient's clinical record by a signed form prescribed by the treatment facility or by a statement of the treating physician or a person designated by the physician that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

Added by Acts 2015, 84th Leg., R.S., Ch. 1211 (S.B. 1560), Sec. 3, eff. June 19, 2015.

Sec. 462.012. RIGHT TO REFUSE MEDICATION. (a) Each patient receiving treatment in a treatment facility licensed by the department under Chapter 464 has the right to refuse unnecessary or excessive medication.

(b) Medication may not be used by the treatment facility:

(1) as punishment; or

(2) for the convenience of the staff.

Added by Acts 2015, 84th Leg., R.S., Ch. 1211 (S.B. 1560), Sec. 3, eff. June 19, 2015.

Sec. 462.013. MEDICATION INFORMATION. (a) The executive commissioner by rule shall require the treating physician of a patient admitted to a treatment facility licensed by the department under Chapter 464 or a person designated by the physician to provide to the patient in the patient's primary language, if possible, information relating to prescription medications ordered by the physician.

(b) At a minimum, the required information must:

(1) identify the major types of prescription medications; and

(2) specify for each major type:

(A) the conditions the medications are commonly used to treat;

(B) the beneficial effects on those conditions generally expected from the medications;

(C) side effects and risks associated with the medications;

(D) commonly used examples of medications of the major

type; and

(E) sources of detailed information concerning a particular medication.

(c) If the treating physician designates another person to provide the information under Subsection (a), then, not later than two working days after that person provides the information, excluding weekends and legal holidays, the physician shall meet with the patient and, if appropriate, the patient's representative who provided consent for the administration of the medications under Section 462.011, to review the information and answer any questions.

(d) The treating physician or the person designated by the physician shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

Added by Acts 2015, 84th Leg., R.S., Ch. 1211 (S.B. 1560), Sec. 3, eff. June 19, 2015.

Sec. 462.014. LIST OF MEDICATIONS. (a) On the request of a patient, a person designated by the patient, or the patient's legal guardian or managing conservator, if any, the facility administrator of a treatment facility licensed by the department under Chapter 464 shall provide to the patient, the person designated by the patient, and the patient's legal guardian or managing conservator, a list of the medications prescribed for administration to the patient while the patient is in the treatment facility. The list must include for each medication:

(1) the name of the medication;

(2) the dosage and schedule prescribed for the administration of the medication; and

(3) the name of the physician who prescribed the medication.

(b) The list must be provided before the expiration of four hours after the facility administrator receives a written request for the list from the patient, a person designated by the patient, or the patient's legal guardian or managing conservator, if any. If sufficient time to prepare the list before discharge is not available, the list may be mailed before the expiration of 24 hours after discharge to the patient, the person designated by the patient,

and the patient's legal guardian or managing conservator.

(c) A patient or the patient's legal guardian or managing conservator, if any, may waive the right of any person to receive the list of medications while the patient is participating in a research project if release of the list would jeopardize the results of the project.

Added by Acts 2015, 84th Leg., R.S., Ch. 1211 (S.B. 1560), Sec. 3, eff. June 19, 2015.

Sec. 462.015. OUTPATIENT TREATMENT SERVICES PROVIDED USING TELECOMMUNICATIONS OR INFORMATION TECHNOLOGY. (a) An outpatient chemical dependency treatment program provided by a treatment facility licensed under Chapter 464 may provide services under the program to adult and adolescent clients, consistent with commission rule, using telecommunications or information technology.

(b) The executive commissioner shall adopt rules to implement this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 624 (H.B. 4), Sec. 8, eff. June 15, 2021.

SUBCHAPTER B. VOLUNTARY TREATMENT OR REHABILITATION

Sec. 462.021. VOLUNTARY ADMISSION OF ADULT. A facility may admit an adult who requests admission for emergency or nonemergency treatment or rehabilitation if:

(1) the facility is:

(A) a treatment facility licensed by the department to provide the necessary services;

(B) a facility licensed by the department under Title 7; or

(C) a facility operated by the department under Title 7 that has been designated by the department to provide chemical dependency treatment; and

(2) the admission is appropriate under the facility's admission policies.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 671, Sec. 2, eff. June 15, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1163, eff. April 2, 2015.

Sec. 462.022. VOLUNTARY ADMISSION OF MINOR. (a) A facility may admit a minor for treatment and rehabilitation if:

(1) the facility is:

(A) a treatment facility licensed by the department to provide the necessary services to minors;

(B) a facility licensed by the department under Title 7; or

(C) a facility operated by the department under Title 7 that has been designated by the department to provide chemical dependency treatment;

(2) the admission is appropriate under the facility's admission policies; and

(3) the admission is requested by:

(A) a parent, managing conservator, or guardian of the minor; or

(B) the minor, without parental consent, if the minor is 16 years of age or older.

(b) The admission of a minor under Subsection (a) is considered a voluntary admission.

(c) A person or agency appointed as the guardian or a managing conservator of a minor and acting as an employee or agent of the state or a political subdivision of the state may request admission of the minor only with the minor's consent.

(d) In this section, "minor" means an individual younger than 18 years of age for whom the disabilities of minority have not been removed.

(e) A facility that refuses to admit a minor for voluntary treatment and rehabilitation under this section shall provide to the minor's parent, managing conservator, or guardian requesting the minor's admission to the facility written notice of the parent's, managing conservator's, or guardian's right to seek voluntary treatment and rehabilitation of the minor at another facility.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 573, Sec. 3.03(a), eff. Sept. 1,

1993; Acts 1993, 73rd Leg., ch. 671, Sec. 3, eff. June 15, 1993; Acts 2001, 77th Leg., ch. 1216, Sec. 3, eff. June 15, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1164, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 731 (H.B. 2035), Sec. 1, eff. September 1, 2025.

Sec. 462.023. DISCHARGE OR RELEASE. (a) Except as provided by Subsection (b), a facility shall release a voluntary patient within a reasonable time, not to exceed 96 hours, after the patient requests in writing to be released.

(b) A facility is not required to release the patient if before the end of the 96-hour period:

(1) the patient files a written withdrawal of the request;

(2) an application for court-ordered treatment or emergency detention is filed and the patient is detained in accordance with this chapter; or

(3) the patient is a minor under the age of 16 admitted with the consent of a parent, guardian, or conservator and that person, after consulting with facility personnel, objects in writing to the release of the patient.

(c) Subsection (a) applies to a minor admitted under Section 462.022 if the request for release is made in writing to the facility by the person who requested the initial admission.

(d) If extremely hazardous weather conditions exist or a disaster occurs, the facility administrator may request the judge of a court that has jurisdiction over proceedings brought under Subchapter D to extend the period during which the person may be detained. The judge or a magistrate appointed by the judge may by written order made each day extend the period during which the person may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 13, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1216, Sec. 4, eff. June 15, 2001.

Sec. 462.0235. DISCHARGE OR RELEASE OF MINOR 16 OR 17 YEARS OF AGE. (a) Except as provided by this section, a facility shall release a minor who is 16 or 17 years of age within a reasonable time, not to exceed 96 hours, after:

(1) the minor requests in writing to be released; or

(2) for a minor admitted under Section 462.022(a)(3)(A), the minor's parent, managing conservator, or guardian requests the release in writing.

(b) A facility is not required to release a minor who is 16 or 17 years of age within the period described by Subsection (a) if:

(1) the request is filed with the facility by the minor before the 15th day after the date of the minor's admission to the facility; or

(2) the request is filed with the facility by the minor on or after the 15th day after the minor's date of admission to the facility and, not later than 96 hours after the request is filed:

(A) the minor files with the facility a written withdrawal of the minor's request; or

(B) an examining physician places in the minor's medical record a certificate of medical examination described by Subsection (c).

(c) The certificate of medical examination placed in a minor's medical record under Subsection (b)(2)(B) must include:

(1) the name and address of the examining physician;

(2) the name and address of the examined minor;

(3) the date and place of the examination;

(4) a brief diagnosis of the examined minor's physical and mental condition;

(5) the period, if any, during which the examined minor has been under the care of the examining physician;

(6) an accurate description of the chemical dependency treatment, if any, administered to the examined minor by or under the direction of the examining physician; and

(7) the examining physician's opinion that:

(A) the examined minor is a person with a chemical dependency;

(B) there is no reasonable alternative to the treatment the physician recommends for the examined minor; and

(C) as a result of the examined minor's chemical dependency, the minor, if released, is likely to cause serious harm

to the minor or others or:

(i) would suffer severe and abnormal mental, emotional, or physical distress;

(ii) would experience a substantial mental or physical deterioration of the minor's ability to function independently that would be manifested by the minor's inability, for reasons other than indigence, to provide for the minor's basic needs, including food, clothing, health, and safety; and

(iii) would not be able to make a rational and informed decision as to whether to submit to treatment.

(d) A facility shall release a minor whose release was postponed under Subsection (b)(2)(B) on the 15th day after the date of the most recent examination for which a certificate described by Subsection (c) is performed unless the physician conducts an additional examination of the minor and places another certificate of examination described by Subsection (c) in the minor's medical record.

(e) If a minor who is 16 or 17 years of age requests to be released from a facility on or after the 60th day after the date of the minor's admission to the facility, the facility shall release the minor within a reasonable time, not to exceed 96 hours, unless:

(1) an application for court-ordered treatment of the minor or for emergency detention of the minor is filed; and

(2) the minor is detained in accordance with this chapter.

(f) If extremely hazardous weather conditions exist or a disaster occurs, the facility administrator may request the judge of a court that has jurisdiction over proceedings brought under Subchapter D to extend the period during which a minor may be detained under this section. The judge or a magistrate appointed by the judge may, by written order made each day, extend the period during which the minor may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Added by Acts 2001, 77th Leg., ch. 1216, Sec. 5, eff. June 15, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1165, eff. April 2, 2015.

Sec. 462.024. APPLICATION FOR COURT-ORDERED TREATMENT DURING VOLUNTARY INPATIENT CARE. (a) An application for court-ordered treatment may not be filed against a patient receiving voluntary care under this subchapter unless:

(1) a request for release of the patient has been filed; or

(2) in the opinion of the physician responsible for the patient's treatment, the patient meets the criteria for court-ordered treatment and:

(A) is absent from the facility without authorization;

(B) is unable to consent to appropriate and necessary treatment; or

(C) refuses to consent to necessary and appropriate treatment recommended by the physician responsible for the patient's treatment and that physician completes a certificate of medical examination for chemical dependency that, in addition to the information required by Section 462.064, includes the opinion of the physician that:

(i) there is no reasonable alternative to the treatment recommended by the physician; and

(ii) the patient will not benefit from continued inpatient care without the recommended treatment.

(b) The physician responsible for the patient's treatment shall notify the patient if the physician intends to file an application for court-ordered treatment.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 903, Sec. 1.15, eff. Aug. 30, 1993.

Sec. 462.025. INTAKE, SCREENING, ASSESSMENT, AND ADMISSION. (a) The executive commissioner shall adopt rules governing the voluntary admission of a patient to a treatment facility, including rules governing the intake, screening, and assessment procedures of the admission process.

(b) The rules governing the intake process shall establish minimum standards for:

(1) reviewing a prospective patient's finances and insurance benefits;

(2) explaining to a prospective patient the patient's

rights; and

(3) explaining to a prospective patient the facility's services and treatment process.

(b-1) The rules governing the screening process shall establish minimum standards for determining whether a prospective patient presents sufficient signs, symptoms, or behaviors indicating a potential chemical dependency disorder to warrant a more in-depth assessment by a qualified professional. The screening must be reviewed and approved by a qualified professional.

(c) The assessment provided for by the rules may be conducted only by a professional who meets the qualifications prescribed by department rules.

(d) The rules governing the assessment process shall prescribe:

(1) the types of professionals who may conduct an assessment;

(2) the minimum credentials each type of professional must have to conduct an assessment; and

(3) the type of assessment that professional may conduct.

(d-1) The rules governing the intake, screening, and assessment procedures shall establish minimum standards for providing intake, screening, and assessment using telecommunications or information technology.

(e) In accordance with department rule, a treatment facility shall provide annually a minimum of two hours of inservice training regarding intake and screening for persons who will be conducting an intake or screening for the facility. A person may not conduct intake or screenings without having completed the initial and applicable annual inservice training.

(f) A prospective voluntary patient may not be formally accepted for chemical dependency treatment in a treatment facility unless the facility's administrator or a person designated by the administrator has agreed to accept the prospective patient and has signed a statement to that effect.

(g) An assessment conducted as required by rules adopted under this section does not satisfy a statutory or regulatory requirement for a personal evaluation of a patient or a prospective patient by a qualified professional before admission.

(h) In this section:

(1) "Admission" means the formal acceptance of a prospective patient to a treatment facility.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1211 , Sec. 5, eff. June 19, 2015.

(3) "Intake" means the administrative process for gathering information about a prospective patient and giving a prospective patient information about the treatment facility and the facility's treatment and services.

(4) "Screening" means the process a treatment facility uses to determine whether a prospective patient presents sufficient signs, symptoms, or behaviors to warrant a more in-depth assessment by a qualified professional after the patient is admitted.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 4.08, eff. Aug. 30, 1993.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 345 (H.B. 3146), Sec. 2, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 345 (H.B. 3146), Sec. 3, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 345 (H.B. 3146), Sec. 4, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1166, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1211 (S.B. 1560), Sec. 4, eff. June 19, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1211 (S.B. 1560), Sec. 5, eff. June 19, 2015.
Acts 2021, 87th Leg., R.S., Ch. 624 (H.B. 4), Sec. 9, eff. June 15, 2021.

SUBCHAPTER C. EMERGENCY DETENTION

Sec. 462.041. APPREHENSION BY PEACE OFFICER WITHOUT WARRANT. (a) A peace officer, without a warrant, may take a person into custody if the officer:

(1) has reason to believe and does believe that:

(A) the person is chemically dependent; and

(B) because of that chemical dependency there is a substantial risk of harm to the person or to others unless the person is immediately restrained; and

(2) believes that there is not sufficient time to obtain a

warrant before taking the person into custody.

(b) A substantial risk of serious harm to the person or others under Subsection (a)(1)(B) may be demonstrated by:

(1) the person's behavior; or

(2) evidence of severe emotional distress and deterioration in the person's mental or physical condition to the extent that the person cannot remain at liberty.

(c) The peace officer may form the belief that the person meets the criteria for apprehension:

(1) from a representation of a credible person; or

(2) on the basis of the conduct of the apprehended person or the circumstances under which the apprehended person is found.

(d) A peace officer who takes a person into custody under Subsection (a) shall immediately transport the apprehended person to:

(1) the nearest appropriate inpatient treatment facility; or

(2) if an appropriate inpatient treatment facility is not available, a facility considered suitable by the county's health authority.

(e) A person may not be detained in a jail or similar detention facility except in an extreme emergency. A person detained in a jail or a nonmedical facility shall be kept separate from any person who is charged with or convicted of a crime.

(f) A peace officer shall immediately file an application for detention after transporting a person to a facility under this section. The application for detention must contain:

(1) a statement that the officer has reason to believe and does believe that the person evidences chemical dependency;

(2) a statement that the officer has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;

(3) a specific description of the risk of harm;

(4) a statement that the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) a statement that the officer's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by or reliably reported to the officer;

(6) a detailed description of the specific behavior, acts, attempts, or threats; and

(7) the name and relationship to the apprehended person of any person who reported or observed the behavior, acts, attempts, or threats.

(g) The person shall be released on completion of a preliminary examination conducted under Section 462.044 unless the examining physician determines that emergency detention is necessary and provides the statement prescribed by Section 462.044(b). If a person is not admitted to a facility, is not arrested, and does not object, arrangements shall be made to immediately return the person to:

(1) the location of the person's apprehension;

(2) the person's residence in this state; or

(3) another suitable location.

(h) The county in which the person was apprehended shall pay the costs of the person's return.

(i) A treatment facility may provide to a person medical assistance regardless of whether the facility admits the person or refers the person to another facility.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.042. JUDGE'S OR MAGISTRATE'S ORDER FOR EMERGENCY DETENTION. (a) An adult may file a written application for emergency detention of a minor or another adult.

(b) The application must state:

(1) that the applicant has reason to believe and does believe that the person who is the subject of the application is a person with a chemical dependency;

(2) that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to the person or others;

(3) a specific description of the risk of harm;

(4) that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) that the applicant's beliefs are derived from specific recent behavior, overt acts, attempts, or threats;

(6) a detailed description of the specific behavior, acts, attempts, or threats; and

(7) the relationship, if any, of the applicant to the person.

(c) The application may be accompanied by any relevant information.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1167, eff. April 2, 2015.

Sec. 462.043. ISSUANCE OF WARRANT. (a) An applicant for emergency detention must present the application personally to a judge or magistrate. The judge or magistrate shall examine the application and may interview the applicant. Except as provided by Subsection (f), the judge of a court with probate jurisdiction by administrative order may provide that the application must be:

(1) presented personally to the court; or

(2) retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge of the court is not available at the time the application is presented.

(b) The judge or magistrate shall deny the application unless the judge or magistrate finds that there is reasonable cause to believe that:

(1) the person who is the subject of the application is a person with a chemical dependency;

(2) the person evidences a substantial risk of serious harm to the person or others;

(3) the risk of harm is imminent unless the person is immediately restrained; and

(4) the necessary restraint cannot be accomplished without emergency detention.

(c) The judge or magistrate shall issue a warrant for the person's immediate apprehension if the judge or magistrate finds that each criteria under Subsection (b) is satisfied.

(d) A person apprehended under this section shall be transported for a preliminary examination in accordance with Section 462.044 to:

(1) a treatment facility; or

(2) another appropriate facility if a treatment facility is not readily available.

(e) The warrant and copies of the application for the warrant shall be served on the person as soon as possible and transmitted to the facility.

(f) If there is more than one court with probate jurisdiction in a county, an administrative order regarding presentation of an application must be jointly issued by all of the judges of those courts.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 243, Sec. 1, eff. Aug. 28, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1168, eff. April 2, 2015.

Sec. 462.044. PRELIMINARY EXAMINATION. (a) A physician shall conduct a preliminary examination of the apprehended person as soon as possible within 24 hours after the time the person is apprehended under Section 462.041 or 462.043.

(b) The person shall be released on completion of the preliminary examination unless the examining physician or the physician's designee provides a written opinion that the person meets the criteria specified by Section 462.043(b).

(c) A person released under Subsection (b) is entitled to reasonably prompt return to the location of apprehension or other suitable place unless the person is arrested or objects to the return.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.045. DETENTION PERIOD. (a) A person apprehended under this subchapter may be detained for not longer than 24 hours after the time that the person is presented to the facility unless an application for court-ordered treatment is filed and a written order for further detention is obtained under Section 462.065.

(b) If the 24-hour period ends on a Saturday, Sunday, or legal holiday, the person may be detained until 4 p.m. on the next day that

is not a Saturday, Sunday, or legal holiday. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may, by written order made each day, extend by an additional 24 hours the period during which the person may be detained. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.046. INFORMATION TO BE PROVIDED ON ADMISSION. (a) The personnel of a treatment facility shall immediately advise a person admitted under Section 462.044 that:

(1) the person may be detained for treatment for not longer than 24 hours after the time of the initial detention unless an order for further detention is obtained;

(2) if the administrator finds that the statutory criteria for emergency detention no longer apply, the administrator shall release the person;

(3) not later than the 24th hour after the hour of the initial detention, the facility administrator may file in a court having original jurisdiction under this chapter a petition to have the person committed for court-ordered treatment under Subchapter D;

(4) if the administrator files a petition for court-ordered treatment, the person is entitled to a judicial probable cause hearing not later than the 72nd hour after the hour the detention begins under an order of protective custody to determine whether the person should remain detained in the facility;

(5) when the application for court-ordered services is filed, the person has the right to have counsel appointed if the person does not have an attorney;

(6) the person has the right to communicate with counsel at any reasonable time and to have assistance in contacting the counsel;

(7) the person's communications to the personnel of the treatment facility may be used in making a determination relating to detention, may result in the filing of a petition for court-ordered treatment, and may be used at a court hearing;

(8) the person is entitled to present evidence and to cross-examine witnesses who testify on behalf of the petitioner at a

hearing;

(9) the person may refuse medication unless there is an imminent likelihood of serious physical injury to the person or others if the medication is refused;

(10) beginning on the 24th hour before a hearing for court-ordered treatment, the person may refuse to take medication unless the medication is necessary to save the person's life; and

(11) the person is entitled to request that a hearing be held in the county of the person's residence, if the county is in the state.

(b) The personnel of the treatment facility shall provide the information required by Subsection (a) to the person orally, in writing, and in simple, nontechnical terms.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.047. RELEASE FROM EMERGENCY DETENTION. (a) A person detained under this subchapter shall be released if the facility administrator or the administrator's designee determines at any time during the emergency detention period that one of the criteria prescribed by Section 462.043(b) no longer applies.

(b) If a person is released from emergency detention and is not arrested and does not object, arrangements shall be made to return the person to the location of apprehension or other suitable place.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.048. RIGHTS OF PERSON APPREHENDED OR DETAINED. (a) A person apprehended or detained under this subchapter has the right:

(1) to be advised of the location of detention, the reasons for the detention, and the fact that detention could result in a longer period of involuntary commitment;

(2) to contact an attorney of the person's choice and to a reasonable opportunity to contact that attorney;

(3) to be transported to the location of apprehension or other suitable place if the person is not admitted for emergency detention, unless the person is arrested or objects to the return;

(4) to be released from a facility as provided by Section 462.047; and

(5) to be advised that communications to a chemical dependency treatment professional may be used in proceedings for further detention.

(b) Within 24 hours after the time of admission, a person apprehended or detained under this subchapter shall be advised, orally, in writing, and in simple, nontechnical terms, of the rights provided by this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

SUBCHAPTER D. COURT-ORDERED TREATMENT

Sec. 462.061. COURT-ORDERED TREATMENT; JURISDICTION. (a) A proceeding for court-ordered treatment under this chapter shall be held in a constitutional county court, a statutory county court having probate jurisdiction, or a statutory probate court in the county in which the proposed patient resides, is found, or is receiving court-ordered treatment or treatment under Section 462.041 when the application is filed unless otherwise specifically designated.

(b) If the hearing is to be held in a constitutional county court in which the judge is not a licensed attorney, the proposed patient may request that the proceeding be transferred to a statutory court having probate jurisdiction or to a district court. The county judge shall transfer the case after receiving the request and the receiving court shall hear the case as if it had been originally filed in that court.

(c) The commitment of a juvenile under this subchapter must be heard in a district court or statutory court that has juvenile or probate jurisdiction. The commitment of a juvenile under Section 462.081 may be heard only in a court that has juvenile jurisdiction.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.062. APPLICATION FOR COURT-ORDERED TREATMENT. (a) A county or district attorney or other adult may file a sworn written

application for court-ordered treatment of another person. Only the district or county attorney may file an application that is not accompanied by a certificate of medical examination for chemical dependency.

(b) The application must be filed with the county clerk in the county in which the proposed patient:

(1) resides;

(2) is found; or

(3) is receiving treatment services by court order or under Section 462.041.

(c) If the application is not filed in the county in which the proposed patient resides, the court may, on request of the proposed patient or the proposed patient's attorney and if good cause is shown, transfer the application to that county.

(d) The application must be styled using the initials of the proposed patient and not the proposed patient's full name.

(e) The application must contain the following information according to the applicant's information and belief:

(1) the proposed patient's name and address, including the county in which the proposed patient resides, if known;

(2) a statement that the proposed patient is a person with a chemical dependency who:

(A) is likely to cause serious harm to the person or others; or

(B) will continue to suffer abnormal mental, emotional, or physical distress, will continue to deteriorate in ability to function independently if not treated, and is unable to make a rational and informed choice as to whether to submit to treatment; and

(3) a statement that the proposed patient is not charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(f) Subsection (e)(3) does not apply if the proposed patient is a juvenile alleged to be a child engaged in delinquent conduct or conduct indicating a need for supervision as defined by Section 51.03, Family Code.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1169, eff. April 2, 2015.

Sec. 462.063. PREHEARING PROCEDURE. (a) When the application is filed, the court shall set a date for a hearing on the merits of the application to be held within 14 days after the date on which the application is filed. The hearing may not be held during the first three days after the application is filed if the proposed patient or the proposed patient's attorney objects. The court may grant one or more continuances of the hearing on motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is filed.

(b) Immediately after the date for the hearing is set, the clerk shall give written notice of the hearing and a copy of the application to the proposed patient and the proposed patient's attorney in the manner the court directs.

(c) The court shall appoint an attorney to represent the proposed patient if the proposed patient does not retain an attorney of the proposed patient's choice.

(d) The court shall appoint an attorney for a proposed patient who is a minor, regardless of the ability of the proposed patient or the proposed patient's family to afford an attorney.

(e) The court shall allow a court-appointed attorney a reasonable fee for services. The fee shall be collected as costs of the court.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.064. CERTIFICATE OF MEDICAL EXAMINATION FOR CHEMICAL DEPENDENCY. (a) A hearing on court-ordered treatment may not be held unless there are on file with the court at least two certificates of medical examination for chemical dependency completed by different physicians each of whom has examined the proposed patient not earlier than the 30th day before the date the final hearing is held.

(b) If the certificates are not filed with the application, the

court may appoint the necessary physicians to examine the proposed patient and file the certificates. The court may order the proposed patient to submit to the examinations and may issue a warrant authorizing a peace officer to take the proposed patient into custody for the examinations.

(c) A certificate must be dated and signed by the examining physician. The certificate must include:

(1) the name and address of the examining physician;

(2) the name and address of the proposed patient;

(3) the date and place of the examination;

(4) the period, if any, during which the proposed patient has been under the care of the examining physician;

(5) an accurate description of the treatment, if any, given by or administered under the direction of the examining physician; and

(6) the examining physician's opinion stating the proposed patient is a person with a chemical dependency and, as a result of that chemical dependency:

(A) is likely to cause serious harm to the person;

(B) is likely to cause serious harm to others; or

(C) will continue to suffer abnormal mental, emotional, or physical distress and to deteriorate in ability to function independently if not treated and is unable to make a rational and informed choice as to whether or not to submit to treatment.

(d) The certificate must include the detailed reason for each of the examining physician's opinions under this section.

(e) If the certificates required under this section are not on file at the time set for the hearing on the application, the judge shall dismiss the application and order the immediate release of the proposed patient if that person is not at liberty. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the period during which the two certificates of medical examination for chemical dependency may be filed, and the person may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 14, eff. Sept. 1, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1170, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 716 (H.B. 171), Sec. 3, eff. September 1, 2025.

Sec. 462.065. ORDER OF PROTECTIVE CUSTODY. (a) A motion for an order of protective custody may be filed only in the court in which an application for court-ordered treatment is pending. The motion may be filed by the county or district attorney or on the court's own motion.

(b) The motion must state that:

(1) the judge or county or district attorney has reason to believe and does believe that the proposed patient meets the criteria authorizing the court to order protective custody; and

(2) the belief is derived from:

(A) the representations of a credible person;

(B) the proposed patient's conduct; or

(C) the circumstances under which the proposed patient is found.

(c) The motion must be accompanied by a certificate of medical examination for chemical dependency prepared by a physician who has examined the proposed patient not earlier than the fifth day before the date the motion is filed.

(d) The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders in the judge's absence.

(e) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines that:

(1) a physician has stated the physician's opinion and the detailed basis for the physician's opinion that the proposed patient is a person with a chemical dependency; and

(2) the proposed patient presents a substantial risk of serious harm to the person or others if not immediately restrained pending the hearing.

(f) The determination that the proposed patient presents a substantial risk of serious harm may be demonstrated by the proposed patient's behavior or by evidence that the proposed patient cannot remain at liberty. The judge or magistrate may make a determination

that the proposed patient meets the criteria prescribed by this subsection from the application and certificate alone if the judge or magistrate determines that the conclusions of the applicant and certifying physician are adequately supported by the information provided. The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and certificate only.

(g) The judge or magistrate may issue a protective custody order for a proposed patient who is charged with a criminal offense if the proposed patient meets the requirements of this section and the administrator of the facility designated to detain the proposed patient agrees to the detention.

(h) A protective custody order shall direct a peace officer or other designated person to take the proposed patient into protective custody and transport the proposed patient immediately to a treatment facility or other suitable place for detention. The proposed patient shall be detained in the facility until a hearing is held under Section 462.066.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1171, eff. April 2, 2015.

Sec. 462.066. PROBABLE CAUSE HEARING AND DETENTION. (a) The court shall set a hearing to determine if there is probable cause to believe that a proposed patient under a protective custody order presents a substantial risk of serious harm to himself or others if not restrained until the hearing on the application. The hearing must be held not later than 72 hours after the protective custody order is signed unless the proposed patient waives the right to a hearing. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the hearing each day for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions or on the occurrence of a disaster that threatens the safety of the proposed patient or another

essential party to the hearing.

(b) The hearing shall be held before a magistrate or, at the discretion of the presiding judge, before a master appointed by the presiding judge. The master is entitled to reasonable compensation.

(c) The proposed patient and the proposed patient's attorney are entitled to an opportunity at the hearing to appear and present evidence on any allegation or statement in the certificate of medical examination for chemical dependency. The magistrate or master may consider any evidence. The state may prove its case on the certificate.

(d) The magistrate or master shall order the release of a person under a protective custody order if the magistrate or master determines after the hearing that no probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to himself or others.

(e) The magistrate shall order that a proposed patient be detained until the hearing on the court-ordered treatment or until the administrator of the facility determines that the proposed patient no longer meets the criteria for detention under this section if the magistrate or master determines that probable cause does exist to believe that the proposed patient presents a substantial risk of serious harm to himself or others to the extent that the proposed patient cannot be at liberty pending the hearing on court-ordered treatment.

(f) The magistrate or master shall arrange for a proposed patient detained under Subsection (e) to be returned to the treatment facility or other suitable place, along with a copy of the certificate of medical examination for chemical dependency, any affidavits or other material submitted as evidence in the hearing, and the notification prepared as prescribed by Subsection (g). A copy of the notification of probable cause hearing and the supporting evidence shall be filed with the court that entered the original order of protective custody.

(g) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the _____ day of _____, 20___, the undersigned hearing officer heard evidence concerning the need for protective custody of _____ (hereinafter referred to as proposed patient).

The proposed patient was given the opportunity to challenge the allegations that the proposed patient presents a substantial risk of serious harm to self or others.

The proposed patient and the proposed patient's attorney _____ have been given written notice that the proposed
(attorney)
patient was placed under an order of protective custody and the reasons for such order on _____.
(date of notice)

I have examined the certificate of medical examination for chemical dependency and _____. Based on
(other evidence considered)
this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to self (yes ___ or no ___) or others (yes ___ or no ___) such that the proposed patient cannot be at liberty pending final hearing because _____
(reasons for finding; type of risk found)

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1172, eff. April 2, 2015.

Sec. 462.067. HEARING ON APPLICATION FOR COURT-ORDERED TREATMENT. (a) A hearing on court-ordered treatment must be before a jury unless the proposed patient and the proposed patient's attorney waive the right to a jury. The waiver may be filed at any time after the proposed patient is served with the application and receives notice of the hearing. The waiver must be in writing, under oath, and signed and sworn to by the proposed patient and the proposed patient's attorney.

(b) The proposed patient is entitled to a hearing and to be present at the hearing, but the proposed patient or the proposed patient's attorney may waive either right.

(c) A court hearing may be held at any suitable location in the county. On the request of the proposed patient or the proposed patient's attorney, the hearing shall be held in the county

courthouse.

(d) The Texas Rules of Civil Procedure and Texas Rules of Evidence apply to a hearing unless the rules are inconsistent with this chapter. The hearing is on the record, and the state must prove each issue by clear and convincing evidence.

(e) In addition to the rights prescribed by this chapter, the proposed patient is entitled to:

(1) present evidence on the proposed patient's own behalf;

(2) cross-examine witnesses who testify on behalf of the applicant;

(3) view and copy all petitions and reports in the court file of the cause; and

(4) elect to have the hearing open or closed to the public.

(f) The proposed patient or the proposed patient's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and, if that right is waived, the court may admit as evidence the certificates of medical examination for chemical dependency. The certificates admitted under this subsection constitute competent medical or psychiatric testimony, and the court may make its findings solely from the certificates. If the proposed patient or the proposed patient's attorney does not waive the right to cross-examine witnesses, the court shall hear testimony. The testimony must include competent medical or psychiatric testimony.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 15, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1420, Sec. 10.0031, eff. Sept. 1, 2001.

Sec. 462.068. RELEASE AFTER HEARING. (a) The court shall enter an order denying an application for court-ordered treatment if after a hearing the court or jury fails to find, from clear and convincing evidence, that the proposed patient is a person with a chemical dependency and meets the criteria for court-ordered treatment.

(b) If the court denies the application, the court shall order the discharge of a proposed patient who is not at liberty.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1173, eff. April 2, 2015.

Sec. 462.069. COURT ORDER AND PLACE OF TREATMENT. (a) Except as provided by Section 462.080(b), the court shall commit the proposed patient to a treatment facility approved by the commission to accept court commitments for at least 30 days but not more than 90 days if:

(1) the proposed patient admits the allegations of the application; or

(2) at the hearing on the merits, the court or jury finds that the material allegations in the application have been proved by clear and convincing evidence.

(b) The judge may, on request by the proposed patient, enter an order requiring the proposed patient to participate in a licensed outpatient treatment facility or services provided by a private licensed physician, psychologist, social worker, or professional counselor if the judge finds that the participation is in the proposed patient's best interest considering the proposed patient's impairment.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1174, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 716 (H.B. 171), Sec. 4, eff. September 1, 2025.

Sec. 462.070. MOTION FOR MODIFICATION OF ORDER FOR OUTPATIENT TREATMENT. (a) The court that entered an order directing a patient to participate in outpatient care or services may set a hearing to determine if the order should be modified to specifically require inpatient treatment. The court may set the hearing on its own motion, at the request of the person responsible for the care or treatment, or at the request of any other interested person.

(b) The court shall appoint an attorney to represent the patient if a hearing is held. The patient shall be given notice of

the matters to be considered at the hearing. The notice must comply with the requirements of Section 462.063 for notice before a hearing on court-ordered treatment.

(c) The hearing shall be held before the court, without a jury, and as prescribed by Section 462.067. The patient shall be represented by an attorney and receive proper notice.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.071. ORDER FOR TEMPORARY DETENTION. (a) The person responsible for a patient's court-ordered outpatient care or treatment or the administrator of the outpatient treatment facility in which a patient receives care or treatment shall file a sworn application for the patient's temporary detention pending the modification hearing.

(b) The application must state the applicant's opinion and detail the basis for the applicant's opinion that:

(1) the patient meets the criteria described by Section 462.072; and

(2) detention in an approved inpatient treatment facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) The court may issue an order for temporary detention if the court finds from the information in the application that there is probable cause to believe that the opinions stated in the application are valid.

(d) At the time the order for temporary detention is signed, the court shall appoint an attorney to represent a patient who does not have an attorney.

(e) Within 72 hours after the time the detention begins, the court that issued the temporary detention order shall provide to the patient and the patient's attorney a written notice that states:

(1) that the patient has been placed under a temporary detention order;

(2) the grounds for the order; and

(3) the time and place of the modification hearing.

(f) A temporary detention order shall direct a peace officer or other designated person to take the patient into custody and

transport the patient immediately to:

(1) the nearest appropriate approved inpatient treatment facility; or

(2) a suitable facility if an appropriate approved inpatient treatment facility is not available.

(g) A patient may be detained under a temporary detention order for not more than 72 hours. The exceptions applicable to the 72-hour limitation for holding a probable cause hearing for an order of protective custody under Section 462.066(a) apply to detention under this section.

(h) A facility administrator shall immediately release a patient held under a temporary detention order if the facility administrator does not receive notice that the patient's continued detention was authorized after a modification hearing was held within the period prescribed by Subsection (g).

(i) A patient released from an inpatient treatment facility under Subsection (h) continues to be subject to the order committing the person to an approved outpatient treatment facility, if the order has not expired.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.072. MODIFICATION OF ORDER FOR OUTPATIENT SERVICES. (a) The court may modify an order for outpatient services at the modification hearing if the court determines that the patient continues to meet the applicable criteria for court-ordered treatment prescribed by this chapter and that:

(1) the patient has not complied with the court's order; or

(2) the patient's condition has deteriorated to the extent that outpatient care or services are no longer appropriate.

(b) A court may refuse to modify the order and may direct the patient to continue to participate in outpatient care or treatment in accordance with the original order even if the criteria prescribed by Subsection (a) have been met.

(c) The court's decision to modify an order must be supported by at least one certificate of medical examination for chemical dependency signed by a physician who examined the patient not earlier

than the seventh day before the date the hearing is held.

(d) A modification may include:

(1) incorporating in the order a revised treatment program and providing for continued outpatient care or treatment under the modified order, if a revised general program of treatment was submitted to and accepted by the court; or

(2) providing for commitment to an approved treatment facility for inpatient care.

(e) A court may not extend the provision of court-ordered treatment beyond the period prescribed in the original order.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.073. MODIFICATION OF ORDER FOR INPATIENT TREATMENT. (a) The administrator of a facility to which a patient is committed for inpatient treatment may request the court that entered the commitment order to modify the order to require the patient to participate in outpatient care or services.

(b) The facility administrator's request must explain in detail the reason for the request. The request must be accompanied by a certificate of medical examination for chemical dependency signed by a physician who examined the patient during the preceding seven days.

(c) The patient shall be given notice of the request.

(d) On request of the patient or any other interested person, the court shall hold a hearing on the request. The court shall appoint an attorney to represent the patient at the hearing. The hearing shall be held before the court without a jury and as prescribed by Section 462.067. The patient shall be represented by an attorney and receive proper notice.

(e) If a hearing is not requested, the court may make the decision solely from the request and the supporting certificate.

(f) If the court modifies the order, the court shall identify a person to be responsible for the outpatient care or services.

(g) The person responsible for the care or services shall submit to the court within two weeks after the court enters the order a general program of the treatment to be provided. The program must be incorporated into the court order.

(h) A modified order may not extend beyond the term of the

original order.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.0731. OUTPATIENT CARE IN CERTAIN COUNTIES. (a) This section applies to a chemically dependent patient who is a resident of a county with a population of more than 3.3 million, according to the most recent federal decennial census, and whose inpatient commitment is modified to an outpatient commitment, who is furloughed from an inpatient facility, or who is committed to treatment on an outpatient basis.

(b) The department shall arrange and furnish alternative settings for outpatient care, treatment, and supervision in the patient's county of residence. The services must be provided as close as possible to the patient's residence.

(c) A patient receiving services under this section shall report at least weekly to the person responsible for the patient's outpatient care and services.

(d) The person responsible for the patient's outpatient care or treatment shall notify the committing court of the patient's treatment plan and condition at least monthly until the end of the commitment period.

Added by Acts 1991, 72nd Leg., ch. 567, Sec. 16, eff. Sept. 1, 1991. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 48, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1175, eff. April 2, 2015.

Sec. 462.074. HOSPITALIZATION OUTSIDE TREATMENT FACILITY. (a) A patient receiving court-ordered treatment in a treatment facility may be transferred to a hospital if, in the opinion of a licensed physician, the patient requires immediate medical care and treatment.

(b) The hospital may, with the patient's consent, provide any necessary medical treatment, including surgery. The hospital may provide medical treatment without the patient's consent to the extent provided by other law.

(c) The patient shall be returned to the treatment facility if the order for court-ordered treatment has not expired at the completion of the hospital treatment.

(d) An order for court-ordered treatment may be renewed while the person is in the hospital.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.075. RENEWAL OF ORDER FOR COURT-ORDERED TREATMENT. (a) A court may renew an order for court-ordered treatment entered under this subchapter.

(b) An applicant who has reasonable cause to believe that a patient remains chemically dependent and that, because of the chemical dependency, the patient is likely to cause serious physical harm to himself or others may file an application to renew the original order for court-ordered treatment. The application must comply with the requirements of Section 462.062. The applicant must file the application not later than the 14th day before the date on which the previous order expires.

(c) The application must be accompanied by two new certificates of medical examination for chemical dependency. The certificates must comply with the requirements of Section 462.064.

(d) An application for renewal is considered an original application for court-ordered treatment. The provisions of this subchapter relating to notice, hearing procedure, and the proposed patient's rights apply to the application for renewal.

(e) The court shall enter an order denying an application for court-ordered treatment if the court or jury fails to find, from clear and convincing evidence, that the proposed patient is a person with a chemical dependency and meets the criteria for court-ordered treatment. If the court denies the application, the court shall order the discharge of a proposed patient who is not at liberty.

(f) Except as provided by Section 462.080(b), the court shall commit the proposed patient to a treatment facility approved by the commission to accept commitments for at least 30 days but not more than 90 days if:

(1) the proposed patient admits the allegations of the application; or

(2) at the hearing on the merits, the court or jury finds that the material allegations in the application have been proved by clear and convincing evidence.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1176, eff. April 2, 2015.
Acts 2025, 89th Leg., R.S., Ch. 716 (H.B. 171), Sec. 5, eff. September 1, 2025.

Sec. 462.076. APPEAL. (a) The appeal of an order requiring court-ordered treatment must be filed in the court of appeals for the county in which the order is issued.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When the notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) Pending the appeal, the trial judge in whose court the case is pending may:

(1) stay the order and release the person from custody pending the appeal if the judge is satisfied that the person does not meet the criteria for protective custody under Section 462.065; and

(2) if the person is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend any rule concerning the time for filing briefs and docketing cases.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.077. PASS OR FURLOUGH FROM INPATIENT CARE. (a) The facility administrator may permit a patient admitted to the facility under an order for inpatient services to leave the facility under a pass or furlough.

(b) A pass authorizes the patient to leave the facility for not more than 72 hours. A furlough authorizes the patient to leave for a longer period.

(c) The pass or furlough may be subject to specified conditions.

(d) When a patient is furloughed, the facility administrator shall notify the court that issued the commitment order.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.078. RETURN TO FACILITY UNDER FACILITY ADMINISTRATOR'S CERTIFICATE OR COURT ORDER. (a) The administrator of a facility to which a patient was admitted for court-ordered inpatient services may have an absent patient taken into custody, detained, and returned to the facility by:

(1) signing a certificate authorizing the patient's return; or

(2) filing the certificate with a magistrate and requesting the magistrate to order the patient's return.

(b) A magistrate may issue an order directing a peace or health officer to take a patient into custody and return the patient to the facility if the facility administrator files the certificate as prescribed by this section. The facility head may sign or file the certificate if the facility head reasonably believes that:

(1) the patient is absent without authority from the facility;

(2) the patient has violated the conditions of a pass or furlough; or

(3) the patient's condition has deteriorated to the extent that the patient's continued absence from the facility under a pass or furlough is inappropriate.

(c) A peace or health officer shall take the patient into custody and return the patient to the facility as soon as possible if the patient's return is authorized by the facility administrator's certificate or the court order. The peace or health officer may take the patient into custody without having the certificate or court order in the officer's possession.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1,

1991.

Sec. 462.079. REVOCATION OF FURLOUGH. (a) A furlough may be revoked only after an administrative hearing held in accordance with department rules. The hearing must be held within 72 hours after the patient is returned to the facility.

(b) A hearing officer shall conduct the hearing. The hearing officer may be a mental health or chemical dependency professional if the person is not directly involved in treating the patient.

(c) The hearing is informal, and the patient is entitled to present information and argument.

(d) The hearing officer may revoke the furlough if the officer determines that the revocation is justified under Section 462.078(b)(1) or (2).

(e) A hearing officer who revokes a furlough shall place in the patient's file:

(1) a written notation of the decision; and

(2) a written explanation of the reasons for the decision and the information on which the hearing officer relied.

(f) The patient shall be permitted to leave the facility under the furlough if the hearing officer determines that the furlough should not be revoked.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1177, eff. April 2, 2015.

Sec. 462.080. RELEASE FROM COURT-ORDERED TREATMENT. (a) The administrator of a facility to which a person has been committed for treatment shall discharge the person when the court order expires.

(b) The administrator may discharge a patient before the court order expires if the administrator or physician treating the patient determines that the patient no longer meets the criteria for court-ordered treatment.

(c) The administrator of a facility to which the patient has been committed for inpatient services shall consider before

discharging the patient whether the patient should receive outpatient court-ordered care or services in accordance with:

(1) a furlough under Section 462.077; or

(2) a modified order under Section 462.073 that directs the patient to participate in outpatient treatment.

(d) A discharge terminates the court order, and the person discharged may not be compelled to submit to involuntary treatment unless a new order is issued in accordance with this subchapter.

(e) When a person is discharged under this section, the administrator shall prepare a certificate of discharge and file it with the court that issued the order.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 716 (H.B. 171), Sec. 6, eff. September 1, 2025.

Sec. 462.081. COMMITMENT BY COURTS IN CRIMINAL PROCEEDINGS; ALTERNATIVE SENTENCING. (a) Except as provided by Section 462.080(b), the judge of a court with jurisdiction of misdemeanor cases may remand the defendant to a treatment facility approved by the commission to accept court commitments for care and treatment for at least 30 days but not more than 90 days, instead of incarceration or fine, if:

(1) the court or a jury has found the defendant guilty of an offense classified as a Class A or B misdemeanor;

(2) the court finds that the offense resulted from or was related to the defendant's chemical dependency;

(3) a treatment facility approved by the commission is available to treat the defendant; and

(4) the treatment facility agrees in writing to admit the defendant under this section.

(b) A defendant who, in the opinion of the court, is a person with mental illness is not eligible for sentencing under this section.

(c) The court's sentencing order is a final conviction, and the order may be appealed in the same manner as appeals are made from other judgments of that court.

(d) Except as provided by Section 462.080(b), a juvenile court may remand a child to a treatment facility for care and treatment for at least 30 days but not more than 90 days after the date on which the child is remanded if:

(1) the court finds that the child has engaged in delinquent conduct or conduct indicating a need for supervision and that the conduct resulted from or was related to the child's chemical dependency;

(2) a treatment facility approved by the commission to accept court commitments is available to treat the child; and

(3) the facility agrees in writing to receive the child under this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1178, eff. April 2, 2015.
Acts 2025, 89th Leg., R.S., Ch. 716 (H.B. 171), Sec. 7, eff. September 1, 2025.

CHAPTER 464. FACILITIES TREATING PERSONS WITH A CHEMICAL DEPENDENCY
SUBCHAPTER A. REGULATION OF CHEMICAL DEPENDENCY TREATMENT FACILITIES

Sec. 464.001. DEFINITIONS. In this subchapter:

(1) "Chemical dependency" means:

(A) abuse of alcohol or a controlled substance;

(B) psychological or physical dependence on alcohol or a controlled substance; or

(C) addiction to alcohol or a controlled substance.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(90), eff. April 2, 2015.

(3) "Controlled substance" has the meaning assigned by Chapter 481 (Texas Controlled Substances Act).

(3-a) "Department" means the Department of State Health Services.

(3-b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Treatment" means a planned, structured, and organized program designed to initiate and promote a person's chemical-free

status or to maintain the person free of illegal drugs.

(5) "Treatment facility" means:

(A) a public or private hospital;

(B) a detoxification facility;

(C) a primary care facility;

(D) an intensive care facility;

(E) a long-term care facility;

(F) an outpatient care facility;

(G) a community mental health center;

(H) a health maintenance organization;

(I) a recovery center;

(J) a halfway house;

(K) an ambulatory care facility; or

(L) any other facility that offers or purports to offer treatment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 180, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1180, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(90), eff. April 2, 2015.

Sec. 464.002. LICENSE REQUIRED. A person may not offer or purport to offer chemical dependency treatment without a license issued under this subchapter, unless the person is exempted under Subchapter C or is working for or providing counseling with a program exempted under Subchapter C.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 180, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 663, Sec. 3, eff. Sept. 1, 1997.

Sec. 464.003. EXEMPTIONS. This subchapter does not apply to:

(1) a facility maintained or operated by the federal government;

(2) a facility directly operated by the state;

(3) a facility licensed by the department under Chapter

241, 243, 248, 466, or 577;

(4) an educational program for intoxicated drivers;

(5) the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office;

(6) an individual who personally provides counseling or support services to a person with a chemical dependency but does not offer or purport to offer a chemical dependency treatment program;

(7) a 12-step or similar self-help chemical dependency recovery program:

(A) that does not offer or purport to offer a chemical dependency treatment program;

(B) that does not charge program participants; and

(C) in which program participants may maintain anonymity;

(8) a juvenile justice facility or juvenile justice program, as defined by Section 261.405, Family Code; or

(9) a satellite office or location in which the person providing services is operating under the supervision of a licensed outpatient care facility and the services delivered at the satellite site fall within the scope of the licensure of the outpatient care facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 180, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 410, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 577, Sec. 8, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1181, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 747 (S.B. 1314), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1323 (H.B. 4298), Sec. 1, eff. September 1, 2019.

Sec. 464.004. LICENSE APPLICATION AND ISSUANCE. (a) To receive a license to operate a treatment facility to treat persons with a chemical dependency, a person must:

(1) file a written application on a form prescribed by the department;

(2) cooperate with the review of the facility; and

(3) comply with the licensing standards.

(b) The department shall issue a license to an applicant:

(1) whose application meets the content requirements prescribed by the department and by department rules;

(2) who receives approval of the facility after the department's review; and

(3) who timely complies with the licensing standards.

(c) The license is issued only for the person named in the license and not the legal successors of that person.

(d) The license expires two years after the date on which the license is issued.

(e) A license may be issued without prior notice and an opportunity for a hearing. A person other than the applicant or the department may not contest the issuance of a license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 181, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1182, eff. April 2, 2015.

Sec. 464.005. LICENSE RENEWAL. (a) The department shall provide renewal application forms and information relating to renewal procedures to each license holder.

(b) The department may require an inspection before renewing a license, unless the applicant submits an accreditation review from the Commission on Accreditation of Rehabilitation Facilities, The Joint Commission, or another national accreditation organization recognized by the department in accordance with Section 464.0055.

(c) The executive commissioner may establish deadlines for receiving and acting on renewal applications.

(d) A license may be renewed without prior notice and an opportunity for a hearing. A person other than the applicant or the department may not contest the renewal of a license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 181, eff. Sept. 1, 1991.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1096 (S.B. 1449), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1183, eff. April 2, 2015.

Sec. 464.0055. ACCREDITATION REVIEW TO SATISFY INSPECTION REQUIREMENTS. (a) In this section, "accreditation commission" means the Commission on Accreditation of Rehabilitation Facilities, The Joint Commission, or another national accreditation organization recognized by the department.

(b) The department shall accept an accreditation review from an accreditation commission for a treatment facility instead of an inspection by the department for renewal of a license under Section 464.005, but only if:

(1) the treatment facility is accredited by that accreditation commission;

(2) the accreditation commission maintains and updates an inspection or review program that, for each treatment facility, meets the department's applicable minimum standards;

(3) the accreditation commission conducts a regular on-site inspection or review of the treatment facility according to the accreditation commission's guidelines; and

(4) the treatment facility submits to the department a copy of its most recent accreditation review from the accreditation commission in addition to the application, fee, and any report or other document required for renewal of a license.

(c) This section does not limit the department in performing any duties, investigations, or inspections authorized by this chapter, including authority to take appropriate action relating to a treatment facility, such as closing the treatment facility.

(d) This section does not require a treatment facility to obtain accreditation from an accreditation commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1096 (S.B. 1449), Sec. 2, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1184, eff. April 2, 2015.

Sec. 464.006. INSPECTIONS. The department or its representative may without notice enter the premises of a treatment facility at reasonable times, including any time treatment services are provided, to conduct an inspection or investigation the department considers necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 182, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1185, eff. April 2, 2015.

Sec. 464.007. APPLICATION AND INSPECTION FEES. (a) The department shall collect nonrefundable application and review fees for a license or renewal license. The department may collect a fee for approving a facility to treat court committed clients.

(b) If the General Appropriations Act does not specify the amount of the fee, the executive commissioner by rule shall establish reasonable fees to administer this subchapter in amounts necessary for the fees to cover at least 50 percent of the costs of the licensing program.

(c) The department may not maintain unnecessary fund balances under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 183, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1186, eff. April 2, 2015.

Sec. 464.008. APPLICABILITY OF OTHER LAW TO APPLICATION AND INSPECTION FEES. All application and inspection fees collected by the department under this subchapter are subject to Subchapter F, Chapter 404, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 577, Sec. 8, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1187, eff. April 2, 2015.

Sec. 464.009. RULES AND STANDARDS. (a) The department shall license treatment facilities in a manner consistent with state and federal law and rules, including department licensing standards.

(b) The executive commissioner shall adopt rules for:

(1) a treatment facility's organization and structure, policies and procedures, and minimum staffing requirements;

(2) the services to be provided by a facility, including:

(A) the categories of services the facility may provide;

(B) the client living environment the facility requires; and

(C) the requirement that a facility provide discharge planning and client follow-up contact;

(3) client rights and standards for medication, nutrition, and emergency situations;

(4) the client records kept by a facility;

(5) the general physical plant requirements for a facility, including environmental considerations, fire protection, safety, and other conditions to ensure the health and comfort of the clients;

(6) standards necessary to protect the client, including standards required or authorized by federal or other state law; and

(7) the approval of a facility to treat adult or minor clients who are referred by the criminal justice system or by a court order for involuntary civil or criminal commitment or detention.

(c) The executive commissioner shall adopt rules to protect the rights of individuals receiving services from a treatment facility and to maintain the confidentiality of client records as required by state and federal law.

(d) The executive commissioner by rule may not restrict competitive bidding or advertising by a facility regulated by the department under this chapter except to prohibit false, misleading, or deceptive practices by the facility. However, those rules may not:

(1) restrict the facility's use of any medium for advertising;

(2) restrict in an advertisement the personal appearance of a person representing the facility or the use of that person's voice;

(3) regulate the size or duration of an advertisement by the facility; or

(4) restrict the facility's advertisement under a trade name.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 184, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1188, eff. April 2, 2015.

Sec. 464.0095. RESTRAINT AND SECLUSION. A person providing services to a client at a treatment facility shall comply with Chapter 322 and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 5, eff. September 1, 2005.

Sec. 464.010. REPORTS OF ABUSE OR NEGLECT. (a) A person, including treatment facility personnel, who believes that a client's physical or mental health or welfare has been, is, or will be adversely affected by abuse or neglect caused by any person shall report the facts underlying that belief to the department. This requirement is in addition to the requirements prescribed by Chapter 261, Family Code, and Chapter 48, Human Resources Code.

(b) The executive commissioner shall prescribe procedures for the investigation of reports under Subsection (a) and for coordination with law enforcement agencies or other agencies.

(c) An individual who in good faith reports to the department under this section is immune from civil or criminal liability based on the report. That immunity extends to participation in a judicial proceeding resulting from the report but does not extend to an individual who caused the abuse or neglect.

(d) The department may request the attorney general's office to file a petition for temporary care and protection of a client of a residential treatment facility if it appears that immediate removal of the client is necessary to prevent further abuse.

(e) All records made by the department during its investigation of alleged abuse or neglect are confidential and may not be released except that the release may be made:

(1) on court order;

(2) on written request and consent of the person under investigation or that person's authorized attorney; or

(3) as provided by Section 464.011.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 185, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 7.44, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1189, eff. April 2, 2015.

Sec. 464.011. DISCLOSURE OF DEPARTMENT RECORDS. Unless prohibited or limited by federal or other state law, the department may make its licensing and investigatory records that identify a client available to a state or federal agency or law enforcement authority on request and for official purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 186, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1190, eff. April 2, 2015.

Sec. 464.012. HIV INFECTION EDUCATION, TESTING, AND COUNSELING. (a) A treatment facility licensed under this chapter shall provide to employees of the facility education regarding methods of transmitting and preventing human immunodeficiency virus infection based on the model education program developed by the department and shall make the education available to facility clients.

(b) Employees of the facility who counsel clients shall provide counseling in accordance with the model protocol for counseling related to HIV infection developed by the department.

(c) A treatment facility licensed under this chapter shall make available or make referrals to voluntary, anonymous, and affordable counseling and testing services concerning human immunodeficiency

virus infection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 187, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1191, eff. April 2, 2015.

Sec. 464.014. DENIAL, REVOCATION, SUSPENSION, OR NONRENEWAL OF LICENSE. (a) The department shall deny, revoke, suspend, or refuse to renew a license, place on probation a person whose license has been suspended, or reprimand a license holder if the applicant or license holder or the owner, director, administrator, or a clinical staff member of the facility:

(1) has a documented history of client abuse or neglect; or

(2) violates this subchapter or a department rule.

(b) If a license suspension is probated, the department may establish the conditions for completion or violation of the probation.

(c) The denial, revocation, suspension, probation, or nonrenewal takes effect on the 30th day after the date on which the notice was mailed unless:

(1) the department secures an injunction under Section 464.015; or

(2) an administrative appeal is requested.

(d) The department may restrict attendance at an appeals hearing to the parties and their agents. A license holder whose license is suspended or revoked may not admit new clients until the license is reissued.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 3.06, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 577, Sec. 9, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1192, eff. April 2, 2015.

Sec. 464.0145. DISCIPLINARY ACTION HEARING. (a) If the

department proposes to suspend, revoke, or refuse to renew a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) Procedures for a disciplinary action are governed by the administrative procedure law, Chapter 2001, Government Code.

(c) Rules of practice adopted by the executive commissioner under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Added by Acts 1997, 75th Leg., ch. 577, Sec. 11, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1193, eff. April 2, 2015.

Sec. 464.015. INJUNCTION. (a) The department may petition a district court to restrain a person or facility that violates the rules, standards, or licensing requirements provided under this subchapter in a manner that causes immediate threat to the health and safety of individual clients.

(b) A suit for injunctive relief, civil penalties authorized by Section 464.017, or both, must be brought in Travis County or the county in which the violation occurs.

(c) A district court, on petition of the department, the attorney general, or a district or county attorney, and on a finding by the court that a person or facility is violating or has violated this subchapter or a standard adopted under this subchapter, shall grant any prohibitory or mandatory injunctive relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

(d) The court granting injunctive relief shall order the person or facility to reimburse the department and the party bringing the suit for all costs of investigation and litigation, including reasonable attorney's fees, reasonable investigative expenses, court costs, witness fees, deposition expenses, and civil administrative costs.

(e) At the request of the department, the attorney general or the appropriate district or county attorney shall institute and conduct a suit authorized by Subsection (a) in the name of this

state.

(f) On his own initiative, the attorney general or a district attorney or county attorney may maintain an action for injunctive relief in the name of the state for a violation of this subchapter or a standard adopted under this subchapter.

(g) The injunctive relief and civil penalty authorized by this section and Section 464.017 are in addition to any other civil, administrative, or criminal penalty provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 188, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 705, Sec. 3.07, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1194, eff. April 2, 2015.

Sec. 464.016. CRIMINAL PENALTY. (a) A person commits an offense if the person establishes, conducts, manages, or operates a treatment facility without a license. Each day of violation constitutes a separate offense.

(b) A person commits an offense if the person intentionally, maliciously, or recklessly makes a false report under Section 464.010.

(c) A person commits an offense if the person has reasonable grounds to suspect that abuse or neglect of a client may have occurred and does not report the suspected or possible abuse or neglect to the department as required by Section 464.010.

(d) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 189, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1195, eff. April 2, 2015.

Sec. 464.017. CIVIL PENALTY. (a) A person or facility is subject to a civil penalty of not more than $25,000 for each day of violation and for each act of violation of this subchapter or a rule adopted under this subchapter. In determining the amount of the

civil penalty, the court shall consider:

(1) the person's or facility's previous violations;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) whether the health and safety of the public was threatened by the violation;

(4) the demonstrated good faith of the person or facility;

(5) the amount necessary to deter future violations;

(6) the person's or facility's ability to pay the penalty; and

(7) if the person's or facility's license is not revoked under Section 464.014 because of the violation, the ability of the person or facility to continue providing services under this chapter after paying the penalty.

(b) The department may:

(1) combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 464.015; or

(2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(c) At the request of the department, the attorney general or the appropriate district or county attorney shall institute and conduct the suit authorized by Subsection (b) in the name of this state. The department and the party bringing the suit may recover reasonable expenses incurred in obtaining civil penalties, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

(d) The civil penalty authorized by this section is in addition to any other civil, administrative, or criminal penalty provided by law.

(e) On his own initiative, the attorney general, a district attorney, or a county attorney may maintain an action for civil penalties in the name of the state for a violation of this subchapter or a standard adopted under this subchapter.

(f) Penalties collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. Penalties collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

(g) The department and the party bringing the suit may recover reasonable expenses incurred in obtaining civil penalties, including

investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 3.08, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 577, Sec. 10, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1196, eff. April 2, 2015.
Acts 2025, 89th Leg., R.S., Ch. 970 (S.B. 437), Sec. 2, eff. September 1, 2025.

Sec. 464.018. NOTICE OF SUIT. Not later than the seventh day before the date on which the attorney general intends to bring suit on the attorney general's own initiative under Section 464.015 or 464.017, the attorney general shall provide to the department notice of the suit. The attorney general is not required to provide notice of a suit if the attorney general determines that waiting to bring suit until the notice is provided will create an immediate threat to the health and safety of a client. This section does not create a requirement that the attorney general obtain the permission of or a referral from the department before filing suit.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.09, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1197, eff. April 2, 2015.

Sec. 464.019. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty for a violation may be in an amount not to exceed $25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the

hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) enforcement costs relating to the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation;

(6) the person's ability to pay the penalty;

(7) if the person's license is not revoked under Section 464.014 because of the violation, the person's ability to continue providing services under this chapter after paying the penalty;

(8) the degree of the person's culpability in causing the violation; and

(9) any other matter that justice may require.

(d) If the department determines that a violation has occurred, the department may issue a report that states the facts on which the determination is based and the department's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the department shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the department, the department by order shall impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, an administrative law judge shall set a hearing and the department shall give notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a proposal for a decision

about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the department's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the department's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(l) The department on receipt of a copy of an affidavit under Subsection (k)(2) may file with the court within five days after the date the copy is received a contest to the affidavit. The court

shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the department:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

(s) The commission shall post on the commission's Internet website current administrative penalty schedules applicable to a person licensed or regulated under this chapter. The commission shall ensure that the administrative penalties listed in the posted schedules are accurate. The administrative penalty schedules must

consider the economic impact of an assessed penalty on a person licensed or regulated under this chapter and the factors described by Subsection (c).

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.09, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1198, eff. April 2, 2015.
Acts 2021, 87th Leg., R.S., Ch. 970 (S.B. 2013), Sec. 2, eff. September 1, 2021.
Acts 2025, 89th Leg., R.S., Ch. 970 (S.B. 437), Sec. 3, eff. September 1, 2025.

Sec. 464.0195. RECOVERY OF COSTS. If the attorney general brings an action to enforce an administrative penalty assessed under Section 464.019 and the court orders the payment of the penalty, the attorney general may recover reasonable expenses incurred in the investigation, initiation, or prosecution of the enforcement suit, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.091, eff. Sept. 1, 1993.

Sec. 464.020. ADDITIONAL REQUIREMENTS FOR DISCIPLINARY ALTERNATIVE EDUCATION TREATMENT PROGRAMS. (a) A disciplinary alternative education program under Section 37.008, Education Code, may apply for a license under this chapter to offer chemical dependency treatment services.

(b) The board of trustees of a school district with a disciplinary alternative education program, or the board's designee, shall employ a mental health professional, as defined by Section 164.003, to provide the services authorized by a license issued under this chapter to the disciplinary alternative education program.

(c) The department may not issue a license that authorizes a disciplinary alternative education program to provide detoxification or residential services.

(d) The board of trustees of a school district with a disciplinary alternative education program, or the board's designee, may contract with a private treatment facility or a person employed by or under contract with a private treatment facility to provide chemical dependency treatment services. The contract may not permit the services to be provided at a site that offers detoxification or residential services. Section 164.006 applies to a contract made under this section.

Added by Acts 1999, 76th Leg., ch. 1112, Sec. 2, eff. June 18, 1999. Amended by Acts 2003, 78th Leg., ch. 1055, Sec. 29, eff. June 20, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1199, eff. April 2, 2015.

SUBCHAPTER B. COUNTY CONTRACTS WITH ALCOHOLISM PROGRAMS AND CENTERS

Sec. 464.031. DEFINITIONS. In this subchapter:

(1) "Alcoholism program or center" means a public or private alcoholism prevention, intervention, treatment, or rehabilitation program or center.

(2) "Department" means the Department of State Health Services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1200, eff. April 2, 2015.

Sec. 464.032. COUNTY CONTRACTS WITH ALCOHOLISM PROGRAMS OR CENTERS. (a) A county or a group of counties acting together may contract with an alcoholism program or center to provide prevention, treatment, and rehabilitation services to persons suffering from alcoholism or at risk of becoming alcoholics.

(b) The county or group of counties may contract only with a program or center included in a list submitted under Section 464.034.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 464.033. APPLICATION FOR CONTRACT. (a) To be eligible to contract with a county, an alcoholism program or center providing prevention or intervention services must submit an application to the regional alcoholism advisory committee established by the department to serve the area in which the program or center is located or in which the program or center will provide services.

(b) To be eligible to contract with a county, an alcoholism program or center providing treatment or rehabilitation services must:

(1) submit an application as provided by Subsection (a); and

(2) be licensed by the department.

(c) A regional alcoholism advisory committee shall adopt rules governing the procedure for submitting an application.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1201, eff. April 2, 2015.

Sec. 464.034. REVIEW OF CONTRACT APPLICATIONS; LIST. (a) A regional alcoholism advisory committee shall:

(1) review each application received; and

(2) rank the applications using guidelines for reviewing funding applications established by the department in accordance with department rules.

(b) At least twice each year, each regional alcoholism advisory committee shall submit a ranked list of all applications received during the preceding six months to each county in the region the committee serves.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1202, eff. April 2, 2015.

Sec. 464.035. PAYMENT OF CONTRACT AMOUNTS. To pay for services provided under a contract with an alcoholism program or center, the commissioners court by order may dedicate for payment to the program

or center a percentage of the money received by the county as fines for alcohol-related offenses committed while operating a motor vehicle under Sections 49.04 and 49.07, Penal Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.41, eff. Sept. 1, 1995.

SUBCHAPTER C. FAITH-BASED CHEMICAL DEPENDENCY TREATMENT PROGRAMS

Sec. 464.051. DEFINITIONS. In this subchapter:

(1) "Chemical dependency" has the meaning assigned by Section 464.001.

(2) "Department" has the meaning assigned by Section 464.001.

(2-a) "Executive commissioner" has the meaning assigned by Section 464.001.

(3) "Religious organization" means a church, synagogue, mosque, or other religious institution:

(A) the purpose of which is the propagation of religious beliefs; and

(B) that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)) by being listed as an exempt organization under Section 501(c) of that code (26 U.S.C. Section 501(c)).

(4) "Treatment" has the meaning assigned by Section 464.001.

(5) "Treatment facility" has the meaning assigned by Section 464.001.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1203, eff. April 2, 2015.

Sec. 464.052. EXEMPTION FOR FAITH-BASED CHEMICAL DEPENDENCY TREATMENT PROGRAM. (a) Subchapter A does not apply to a chemical dependency treatment program that:

(1) is conducted by a religious organization;

(2) is exclusively religious, spiritual, or ecclesiastical in nature;

(3) does not treat minors; and

(4) is registered under Section 464.053.

(b) The department may not prohibit the use, by a program exempted under this subchapter, of the term "counseling," "treatment," or "rehabilitation."

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1204, eff. April 2, 2015.

Sec. 464.053. EXEMPT PROGRAM REGISTRATION. The executive commissioner by rule shall establish a simple procedure for a faith-based chemical dependency treatment program to register the program's exemption under Section 464.052.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1205, eff. April 2, 2015.

Sec. 464.054. MEDICAL SERVICES PROHIBITED. A program exempted under this subchapter may not provide medical care, medical detoxification, or medical withdrawal services.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

Sec. 464.055. REPRESENTATIONS IN PROGRAM ADVERTISING OR LITERATURE. A program exempted under this subchapter shall conspicuously include in any advertisement or literature that promotes or describes the program or the program's chemical dependency treatment services the following statement:

"The treatment and recovery services at (name of program) are exclusively religious in nature and are not subject to licensure or regulation by the Department of State Health Services. This program offers only nonmedical treatment and recovery methods such as prayer, moral guidance, spiritual counseling, and scriptural study."

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1206, eff. April 2, 2015.

Sec. 464.056. DECLARATION ON ADMISSION. (a) A program exempted under this subchapter may not admit a person unless the person signs the following statement on admission:

"DECLARATION:

"I understand that:

(1) the treatment and recovery services at (name of program) are exclusively religious in nature and are not subject to licensure or regulation by the Department of State Health Services; and

(2) (name of program) offers only nonmedical treatment and recovery methods, such as prayer, moral guidance, spiritual counseling, and scriptural study."

signed _____ date _____

(b) The program shall:

(1) keep the original signed statement on file; and

(2) provide a copy of the signed statement to the person admitted.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1207, eff. April 2, 2015.

Sec. 464.057. REVOCATION OF EXEMPTION. The department may revoke the exemption after notice and hearing if:

(1) the organization conducting the program fails to timely inform the department of any material change in the program's registration information;

(2) any program advertisement or literature fails to include the statements required by Section 464.055; or

(3) the organization violates this subchapter or a department rule adopted under this subchapter.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1208, eff. April 2, 2015.

Sec. 464.058. GENERAL DIRECTIVE TO STATE AGENCIES. A state agency may not deny to an individual a state or federal social service benefit on the basis that the individual is participating in a faith-based residential chemical dependency treatment program.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

Sec. 464.059. RELIGION NOT ENDORSED. This subchapter is not intended to aid religion. This subchapter is intended to aid persons with a chemical dependency by supporting programs that serve the valid public purpose of combating chemical dependency, regardless of whether the programs are religious, spiritual, or ecclesiastical in nature. The exemption of faith-based chemical dependency treatment programs from licensure and regulation is not an endorsement or sponsorship by the state of the religious character, expression, beliefs, doctrines, or practices of the treatment programs.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1209, eff. April 2, 2015.

Sec. 464.060. DIRECT PUBLIC FUNDING PROHIBITED. A program exempted under this subchapter is not eligible to compete against a licensed program for direct federal or state treatment funding.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

Sec. 464.061. EFFECT ON HEALTH AND SAFETY DUTIES OR POWERS. This subchapter does not affect the authority of a local, regional, or state health department official, the state fire marshal, or a local fire prevention official to inspect a facility used by a program exempted under this subchapter.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 465. LOCAL DRUG AND ALCOHOL EDUCATION PROGRAMS

Sec. 465.001. COMMISSION. A municipality or county may create and support with public funds a commission to:

(1) educate the public on drug and alcohol abuse;

(2) promote drug and alcohol education at all levels of the schools;

(3) study the effectiveness of efforts, including the commission's efforts, in reducing drug and alcohol abuse; and

(4) create and administer a program to counsel or treat drug and alcohol abusers or to provide both counseling and treatment.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 191.

Sec. 465.002. INDIVIDUAL OR JOINT ACTION. The municipality or county may create the commission by its own action or jointly by agreement with another municipality or county or a private foundation, nonprofit organization, church, or other entity. If the commission is created by agreement, all matters regarding the creation and operation of the commission are governed as provided by the agreement.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 191.

Sec. 465.003. REPORT. The commission shall report annually to each entity that participates in the creation of the commission regarding the commission's activities.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 191.

CHAPTER 466. REGULATION OF NARCOTIC DRUG TREATMENT PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 466.001. LEGISLATIVE INTENT. (a) It is the intent of the legislature that the department exercise its administrative powers and regulatory authority to ensure the proper use of approved narcotic drugs in the treatment of persons with a narcotic

dependency.

(b) Treatment of narcotic addiction by permitted treatment programs is recognized as a specialty chemical dependency treatment area using the medical model.

(c) Short-term goals should have an emphasis of personal and public health, crime prevention, reintegration of persons with a narcotic addiction into the public work force, and social and medical stabilization. Narcotic treatment programs are an important component of the state's effort to prevent the further proliferation of the AIDS virus. Total drug abstinence is recognized as a long-term goal of treatment, subject to medical determination of the medical appropriateness and prognosis of the person with a narcotic addiction.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.12, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1210, eff. April 2, 2015.

Sec. 466.002. DEFINITIONS. In this chapter:

(1) "Approved narcotic drug" means a drug approved by the United States Food and Drug Administration for maintenance or detoxification of a person physiologically addicted to the opiate class of drugs.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(91), eff. April 2, 2015.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(91), eff. April 2, 2015.

(4) "Commissioner" means the commissioner of state health services.

(5) "Department" means the Department of State Health Services.

(5-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "Facility" includes a medical office, an outpatient clinic, a general or special hospital, a community mental health center, and any other location in which a structured narcotic dependency program is conducted.

(7) "Narcotic drug" has the meaning assigned by Chapter 481 (Texas Controlled Substances Act).

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.13, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1211, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(91), eff. April 2, 2015.

Sec. 466.003. EXCLUSION OF COCAINE. Cocaine is excluded for the purpose of this chapter.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.004. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND DEPARTMENT. (a) The executive commissioner shall adopt and the department shall administer and enforce rules to ensure the proper use of approved narcotic drugs in the treatment of persons with a narcotic drug dependency, including rules that:

(1) require an applicant or a permit holder to make annual, periodic, and special reports that the department determines are necessary;

(2) require an applicant or permit holder to keep records that the department determines are necessary;

(3) provide for investigations that the department determines are necessary; and

(4) provide for the coordination of the approval of narcotic drug treatment programs by the United States Food and Drug Administration and the United States Drug Enforcement Administration.

(b) The executive commissioner shall adopt rules for the issuance of permits to operate narcotic drug treatment programs including rules:

(1) governing the submission and review of applications;

(2) establishing the criteria for the issuance and renewal of permits; and

(3) establishing the criteria for the suspension and

revocation of permits.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.14, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1212, eff. April 2, 2015.

SUBCHAPTER B. PERMIT

Sec. 466.021. PERMIT REQUIRED. A person may not operate a narcotic drug treatment program unless the person has a permit issued under this chapter.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.022. LIMITATION ON PRESCRIPTION, ORDER, OR ADMINISTRATION OF NARCOTIC DRUG. A physician may not prescribe, order, or administer a narcotic drug for the purpose of treating drug dependency unless the physician prescribes, orders, or administers an approved narcotic drug for the maintenance or detoxification of persons with a drug dependency as part of a program permitted by the department.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.15, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1213, eff. April 2, 2015.

Sec. 466.023. APPLICATION FOR PERMIT; FEES. (a) The department shall issue a permit to an applicant who qualifies under rules and standards adopted by the executive commissioner.

(b) A permit issued under this section is valid until suspended or revoked by the department or surrendered by the permit holder in accordance with department rules.

(c) A person must obtain a permit for each facility that the person operates.

(d) A permit issued by the department is not transferable from one facility to another facility and must be returned to the department if the permit holder sells or otherwise conveys the facility to another person.

(e) The executive commissioner by rule shall establish and the department shall collect a nonrefundable application fee to defray the cost to the department of processing each application for a permit. The application fee must be submitted with the application. An application may not be considered unless the application is accompanied by the application fee.

(f) The executive commissioner shall adopt rules that set permit fees in amounts sufficient for the department to recover not less than half of the actual annual expenditures of state funds by the department to:

(1) amend permits;

(2) inspect facilities operated by permit holders; and

(3) implement and enforce this chapter.

(g) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(92), eff. April 2, 2015.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1214, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(92), eff. April 2, 2015.

Sec. 466.024. PERMIT LIMITATIONS. (a) The department may issue a permit to:

(1) a person constituting a legal entity organized and operating under the laws of this state; or

(2) a physician.

(b) The department may issue a permit to a person other than a physician only if the person provides health care services under the supervision of one or more physicians licensed by the Texas Medical Board.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1215, eff. April 2, 2015.

Sec. 466.025. INSPECTION. (a) The department may enter the facility of a person who is an applicant for a permit or who is a permit holder during any hours in which the facility is in operation for the purpose of inspecting the facility to determine:

(1) if the person meets the standards set in department rules for the issuance of a permit; or

(2) if a person who holds a permit is in compliance with this chapter, the standards set in department rules for the operation of a facility, any special provisions contained in the permit, or an order of the commissioner or the department.

(b) The inspection may be conducted without prior notice to the applicant or the permit holder.

(c) The department shall provide the applicant or permit holder with a copy of the inspection report. An inspection report shall be made a part of the applicant's submission file or the permit holder's compliance record.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1216, eff. April 2, 2015.

Sec. 466.026. MULTIPLE ENROLLMENT PREVENTION. The department shall work with representatives from permitted narcotic treatment programs in this state to develop recommendations for a plan to prevent the simultaneous multiple enrollment of persons in narcotic treatment programs. The executive commissioner may adopt rules to implement these recommendations.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1217, eff. April 2, 2015.

Sec. 466.027. DENIAL, SUSPENSION, OR REVOCATION OF PERMIT. (a) After notice to an applicant or a permit holder and after the opportunity for a hearing, the department may:

(1) deny an application of the person if the person fails to comply with this chapter or the rules establishing minimum standards for the issuance of a permit adopted under this chapter; or

(2) suspend or revoke the permit of a person who has violated this chapter, an order issued under this chapter, or a minimum standard required for the issuance of a permit.

(b) The executive commissioner may adopt rules that establish the criteria for the denial, suspension, or revocation of a permit.

(c) Hearings, appeals from, and judicial review of final administrative decisions under this section shall be conducted according to the contested case provisions of Chapter 2001, Government Code, and the department's formal hearing rules.

(d) This section does not prevent the informal reconsideration of a case before the setting of a hearing or before the issuance of the final administrative decision under this section. The program rules must contain provisions establishing the procedures for the initiation and conduct of the informal reconsideration by the department.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1218, eff. April 2, 2015.

SUBCHAPTER C. ENFORCEMENT

Sec. 466.041. EMERGENCY ORDERS. (a) The department may issue an emergency order, either mandatory or prohibitory in nature, in relation to the operation of a permitted facility or the treatment of patients by the facility staff, in the department's jurisdiction. The order may be issued if the department determines that the treatment of patients by the staff of the permit holder creates or

poses an immediate and serious threat to human life or health and other procedures available to the department to remedy or prevent the occurrence of the situation will result in an unreasonable delay.

(b) The department may issue the emergency order, including an emergency order suspending or revoking a permit issued by the department, without notice and hearing, if the department determines that action to be practicable under the circumstances.

(c) If an emergency order is issued without a hearing, the department shall determine a time and place for a hearing at which the emergency order is affirmed, modified, or set aside. The hearing shall be held under the contested case provisions of Chapter 2001, Government Code, and the department's formal hearing rules.

(d) If an emergency order is issued to suspend or revoke the permit, the department shall ensure that treatment services for the patients are maintained at the same location until appropriate referrals to an alternate treatment program are made.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1219, eff. April 2, 2015.

Sec. 466.042. INJUNCTION. (a) The department may request the attorney general or a district, county, or municipal attorney to petition the district court for a temporary restraining order to restrain:

(1) a continuing violation of this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter; or

(2) a threat of a continuing violation of this chapter, a rule, or an order or permit.

(b) To request a temporary restraining order, the department must find that a person has violated, is violating, or is threatening to violate this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter and:

(1) the violation or threatened violation creates an immediate threat to the health and safety of the public; or

(2) there is reasonable cause to believe that the permit holder or the staff of the permit holder is party to the diversion of a narcotic drug or drugs in violation of Chapter 481 (Texas Controlled Substances Act).

(c) On finding by the court that a person is violating or threatening to violate this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter, the court shall grant the injunctive relief warranted by the facts.

(d) Venue for a suit brought under this section is in the county in which the violation or threat of violation is alleged to have occurred or in Travis County.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1220, eff. April 2, 2015.

Sec. 466.043. ADMINISTRATIVE PENALTY. If a person violates this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter, the department may assess an administrative penalty against the person as provided by Chapter 431 (Texas Food, Drug, and Cosmetic Act).

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1221, eff. April 2, 2015.

Sec. 466.044. CRIMINAL PENALTY. (a) A person commits an offense if the person operates a narcotic drug treatment program without a permit issued by the department.

(b) An offense under this section is a Class A misdemeanor.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.045. CIVIL PENALTY. (a) If it appears that a person has violated this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter, the department may request the attorney general or the district, county, or municipal attorney of the municipality or county in which the violation occurred to institute a civil suit for the assessment and recovery of a civil penalty.

(b) The penalty may be in an amount not to exceed $10,000 for each violation.

(c) In determining the amount of the penalty, the court shall consider:

(1) the person's history of previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public; and

(4) the demonstrated good faith of the person charged.

(d) A civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the state treasury to the credit of the General Revenue Fund. A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1222, eff. April 2, 2015.

CHAPTER 467. PEER ASSISTANCE PROGRAMS

Sec. 467.001. DEFINITIONS. In this chapter:

(1) "Approved peer assistance program" means a program that is designed to help an impaired professional and that is:

(A) established by a licensing or disciplinary authority; or

(B) approved by a licensing or disciplinary authority as meeting the criteria established by the executive commissioner and any additional criteria established by that licensing or disciplinary authority.

(2) "Department" means the Department of State Health Services.

(2-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Impaired professional" means an individual whose ability to perform a professional service is impaired by chemical dependency on drugs or alcohol or by mental illness.

(4) "Licensing or disciplinary authority" means a state agency or board that licenses or has disciplinary authority over professionals.

(5) "Professional" means an individual who:

(A) may incorporate under The Texas Professional Corporation Law as described by Section 1.008(m), Business Organizations Code; or

(B) is licensed, registered, certified, or otherwise authorized by the state to practice as a licensed vocational nurse, social worker, chemical dependency counselor, occupational therapist, speech-language pathologist, audiologist, licensed dietitian, or dental or dental hygiene school faculty member.

(6) "Professional association" means a national or statewide association of professionals, including any committee of a professional association and any nonprofit organization controlled by or operated in support of a professional association.

(7) "Student" means an individual enrolled in an educational program or course of study leading to initial licensure as a professional as such program or course of study is defined by the appropriate licensing or disciplinary authority.

(8) "Impaired student" means a student whose ability to perform the services of the profession for which the student is preparing for licensure would be, or would reasonably be expected to be, impaired by chemical dependency on drugs or alcohol or by mental illness.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 570, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 17, Sec. 27, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 892, Sec. 26, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 21, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1223, eff. April 2, 2015.

Sec. 467.002. OTHER PEER ASSISTANCE PROGRAMS. This chapter does not apply to a peer assistance program for licensed physicians or pharmacists or for any other profession that is authorized under other law to establish a peer assistance program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 467.003. PROGRAMS. (a) A professional association or licensing or disciplinary authority may establish a peer assistance program to identify and assist impaired professionals in accordance with the minimum criteria established by the executive commissioner and any additional criteria established by the appropriate licensing or disciplinary authority.

(b) A peer assistance program established by a professional association is not governed by or entitled to the benefits of this chapter unless the association submits evidence to the appropriate licensing or disciplinary authority showing that the association's program meets the minimum criteria established by the executive commissioner and any additional criteria established by that authority.

(c) If a licensing or disciplinary authority receives evidence showing that a peer assistance program established by a professional association meets the minimum criteria established by the executive commissioner and any additional criteria established by that authority, the authority shall approve the program.

(d) A licensing or disciplinary authority may revoke its approval of a program established by a professional association under this chapter if the authority determines that:

(1) the program does not comply with the criteria established by the executive commissioner or by that authority; and

(2) the professional association does not bring the program into compliance within a reasonable time, as determined by that authority.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 22, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1224, eff. April 2, 2015.

Sec. 467.0035. PROVISION OF SERVICES TO STUDENTS. (a) An approved peer assistance program may provide services to impaired students. A program that elects to provide services to impaired students is not required to provide the same services to those students that it provides to impaired professionals.

(b) An approved peer assistance program that provides services to students shall comply with any criteria for those services that are adopted by the appropriate licensing or disciplinary authority.

Added by Acts 1995, 74th Leg., ch. 570, Sec. 2, eff. Sept. 1, 1995.

Sec. 467.004. FUNDING. (a) Except as provided by Section 467.0041(b) of this code and Section 504.058, Occupations Code, a licensing or disciplinary authority may add a surcharge of not more than $10 to its license or license renewal fee to fund an approved peer assistance program. The authority must adopt the surcharge in accordance with the procedure that the authority uses to initiate and adopt an increase in its license or license renewal fee.

(b) A licensing or disciplinary authority may accept, transfer, and expend funds made available by the federal or state government or by another public or private source to fund an approved peer assistance program.

(c) A licensing or disciplinary authority may contract with, provide grants to, or make other arrangements with an agency, professional association, institution, or individual to implement this chapter.

(d) Money collected under this section may be used only to implement this chapter and may not be used to pay for the actual treatment and rehabilitation costs required by an impaired professional.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 194, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 493, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1314, Sec. 24, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 564 (H.B. 3145), Sec. 1, eff. June 17, 2011.

Sec. 467.0041. FUNDING FOR STATE BOARD OF DENTAL EXAMINERS. (a) Except as provided by this section, the State Board of Dental Examiners is subject to Section 467.004.

(b) The board may add a surcharge of not more than $10 to its license or license renewal fee to fund an approved peer assistance program.

(c) The board may collect a fee of not more than $50 each month from a participant in an approved peer assistance program.

(d) Subject to the General Appropriations Act, the board may use the fees and surcharges collected under this section and fines collected in the enforcement of Subtitle D, Title 3, Occupations Code, to fund an approved program and to pay the administrative costs incurred by the board that are related to the program.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 195, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 2, Sec. 19, eff. Feb. 6, 1995; Acts 1997, 75th Leg., ch. 493, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1314, Sec. 25, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch; 1423, Sec. 10.07, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1225, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1226, eff. April 2, 2015.

Sec. 467.005. REPORTS. (a) A person who knows or suspects that a professional is impaired by chemical dependency on alcohol or drugs or by mental illness may report the professional's name and any relevant information to an approved peer assistance program.

(b) A person who is required by law to report an impaired professional to a licensing or disciplinary authority satisfies that requirement if the person reports the professional to an approved peer assistance program. The program shall notify the person making the report and the appropriate licensing or disciplinary authority if the person fails to participate in the program as required by the

appropriate licensing or disciplinary authority.

(c) An approved peer assistance program may report in writing to the appropriate licensing or disciplinary authority the name of a professional who the program knows or suspects is impaired and any relevant information concerning that professional.

(d) A licensing or disciplinary authority that receives a report made under Subsection (c) shall treat the report in the same manner as it treats an initial allegation of misconduct against a professional.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 414, Sec. 1, eff. Sept. 1, 1997.

Sec. 467.006. ASSISTANCE TO IMPAIRED PROFESSIONALS. (a) A licensing or disciplinary authority that receives an initial complaint concerning an impaired professional may:

(1) refer the professional to an approved peer assistance program; or

(2) require the professional to participate in or successfully complete a course of treatment or rehabilitation.

(b) A licensing or disciplinary authority that receives a second or subsequent complaint or a report from a peer assistance program concerning an impaired professional may take the action permitted by Subsection (a) in addition to any other action the authority is otherwise authorized to take in disposing of the complaint.

(c) An approved peer assistance program that receives a report or referral under Subsection (a) or (b) or a report under Section 467.005(a) may intervene to assist the impaired professional to obtain and successfully complete a course of treatment and rehabilitation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 467.007. CONFIDENTIALITY. (a) Any information, report, or record that an approved peer assistance program or a licensing or disciplinary authority receives, gathers, or maintains under this chapter is confidential. Except as prescribed by Subsection (b) or by Section 467.005(c), a person may not disclose that information,

report, or record without written approval of the impaired professional or other interested person. An order entered by a licensing or disciplinary authority may be confidential only if the licensee subject to the order agrees to the order and there is no previous or pending action, complaint, or investigation concerning the licensee involving malpractice, injury, or harm to any member of the public. It is the intent of the legislature to encourage impaired professionals to seek treatment for their impairments.

(b) Information that is confidential under Subsection (a) may be disclosed:

(1) at a disciplinary hearing before a licensing or disciplinary authority in which the authority considers taking disciplinary action against an impaired professional whom the authority has referred to a peer assistance program under Section 467.006(a) or (b);

(2) at an appeal from a disciplinary action or order imposed by a licensing or disciplinary authority;

(3) to qualified personnel for bona fide research or educational purposes only after information that would identify a person is removed;

(4) to health care personnel to whom an approved peer assistance program or a licensing or disciplinary authority has referred the impaired professional; or

(5) to other health care personnel to the extent necessary to meet a health care emergency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 245, Sec. 1, eff. Sept. 1, 1991.

Sec. 467.0075. CONSENT TO DISCLOSURE. An impaired professional who is reported to a peer assistance program by a third party shall, as a condition of participation in the program, give consent to the program that at a minimum authorizes the program to disclose the impaired professional's failure to successfully complete the program to the appropriate licensing or disciplinary authority.

Added by Acts 1997, 75th Leg., ch. 414, Sec. 2, eff. Sept. 1, 1997.

Sec. 467.008. CIVIL IMMUNITY. (a) A person who in good faith

reports information or takes action in connection with a peer assistance program is immune from civil liability for reporting the information or taking the action.

(b) The civil immunity provided by this section shall be liberally construed to accomplish the purposes of this chapter.

(c) The persons entitled to immunity under this section include:

(1) an approved peer assistance program;

(2) the professional association or licensing or disciplinary authority operating the peer assistance program;

(3) a member, employee, or agent of the program, association, or authority;

(4) a person who reports or provides information concerning an impaired professional;

(5) a professional who supervises or monitors the course of treatment or rehabilitation of an impaired professional; and

(6) a person who employs an impaired professional in connection with the professional's rehabilitation, unless the person:

(A) knows or should have known that the professional is incapable of performing the job functions involved; or

(B) fails to take reasonable precautions to monitor the professional's job performance.

(d) A professional association, licensing or disciplinary authority, program, or person acting under this chapter is presumed to have acted in good faith. A person alleging a lack of good faith has the burden of proof on that issue.

(e) The immunity provided by this section is in addition to other immunity provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 468. PROGRAMS AND INITIATIVES TO PREVENT THE MANUFACTURE AND USE OF METHAMPHETAMINE

SUBCHAPTER B. PREVENTION AND EDUCATION PROGRAMS

Sec. 468.051. PROGRAMS DESIGNED TO HELP STUDENTS. In administering human services programs as required by Section 1001.073, the Department of State Health Services shall:

(1) administer, coordinate, and contract for the delivery of programs designed to prevent the use of methamphetamine among

students enrolled in a public or private school in this state; and

(2) provide education to appropriate school personnel and parents of school-age children on identifying and helping children who use methamphetamine or who are exposed to chemicals and other hazardous materials used in the manufacture of methamphetamine.

Added by Acts 2005, 79th Leg., Ch. 283 (S.B. 66), Sec. 1, eff. June 15, 2005.

Sec. 468.052. EDUCATION REGARDING ANHYDROUS AMMONIA. (a) In cooperation with other state agencies, the Office of the Texas State Chemist of the Texas Agricultural Experiment Station shall distribute materials used to educate distributors, farmers, retail dealers, cooperatives, and other appropriate persons regarding:

(1) the use of anhydrous ammonia in the illicit manufacture of methamphetamine; and

(2) practices and equipment that can be used to deter the theft of anhydrous ammonia.

(b) In the materials distributed under this section, the Office of the Texas State Chemist shall encourage local law enforcement and community groups to cooperate in deterring the theft of anhydrous ammonia.

Added by Acts 2005, 79th Leg., Ch. 283 (S.B. 66), Sec. 1, eff. June 15, 2005.

CHAPTER 469. VOLUNTARY ACCREDITATION OF RECOVERY HOUSING

Sec. 469.001. DEFINITIONS. In this chapter:

(1) "Accrediting organization" means a nonprofit organization the commission approves under Section 469.002 that develops and administers recovery housing accreditation programs.

(2) "Commission" means the Health and Human Services Commission.

(3) "Recovery house" means a shared living environment that:

(A) promotes sustained recovery from substance use disorders by integrating residents into the surrounding community and providing a setting that connects residents to supports and services promoting sustained recovery from substance use disorders;

(B) is centered on peer support; and

(C) is free from alcohol and drug use.

(4) "State health care regulatory agency" has the meaning assigned by Section 161.131.

Added by Acts 2023, 88th Leg., R.S., Ch. 1113 (H.B. 299), Sec. 1, eff. September 1, 2023.

Sec. 469.002. VOLUNTARY ACCREDITATION OF RECOVERY HOUSING. (a) The commission shall adopt minimum standards for accreditation as a recovery house that are consistent with the quality standards established by the National Alliance for Recovery Residences and the Oxford House Incorporated. The standards must prohibit an accredited recovery house from providing personal care services, as defined by Section 247.002.

(b) The commission may approve only the National Alliance for Recovery Residences or the Oxford House Incorporated to serve as an accrediting organization in the development and administration of a voluntary accreditation program for recovery housing in accordance with this chapter.

(c) An accrediting organization the commission approves under this section must:

(1) establish recovery house accreditation requirements that at a minimum include the accreditation standards the commission adopts;

(2) establish procedures to:

(A) administer the issuance of recovery house accreditation under this chapter, including application, accreditation, reaccreditation, and disciplinary procedures; and

(B) assess application accreditation and reaccreditation fees;

(3) provide training to recovery house responsible parties designated under Section 469.004 and staff concerning the accreditation standards the commission adopts;

(4) develop a code of ethics; and

(5) provide information to the commission for the commission to compile the annual report required under Section 469.005.

Added by Acts 2023, 88th Leg., R.S., Ch. 1113 (H.B. 299), Sec. 1,

eff. September 1, 2023.

Sec. 469.003. PLACES INELIGIBLE FOR ACCREDITATION AS RECOVERY HOUSE. The following places are ineligible for accreditation as a recovery house:

(1) a home and community support services agency licensed under Chapter 142;

(2) a nursing facility licensed under Chapter 242;

(3) a continuing care facility regulated under Chapter 246;

(4) an assisted living facility licensed under Chapter 247;

(5) an intermediate care facility for individuals with an intellectual disability licensed under Chapter 252;

(6) a boarding home facility as defined by Section 260.001;

(7) a chemical dependency treatment facility licensed under Subchapter A, Chapter 464;

(8) a child-care facility licensed under Chapter 42, Human Resources Code;

(9) a family violence shelter center as defined by Section 51.002, Human Resources Code;

(10) an entity qualified as a community home under Chapter 123, Human Resources Code; and

(11) a hotel, as defined by Section 156.001, Tax Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 1113 (H.B. 299), Sec. 1, eff. September 1, 2023.

Sec. 469.004. REQUIRED DESIGNATION OF RECOVERY HOUSE RESPONSIBLE PARTY BY CERTAIN RECOVERY HOUSES. (a) This section does not apply to a recovery house accredited by Oxford House Incorporated.

(b) The standards the commission adopts must require at least one individual to be designated to serve as the responsible party of an accredited recovery house.

(c) A designated individual:

(1) must satisfactorily complete training the accrediting organization provides concerning the commission's accreditation standards and the organization's accreditation requirements; and

(2) is responsible for administering the recovery house in

accordance with the accreditation standards and requirements.

(d) An accredited recovery house required to designate a responsible party under this section must notify the accrediting organization that issued the recovery house's accreditation before the 30th business day after the date of any change to the designated responsible party.

Added by Acts 2023, 88th Leg., R.S., Ch. 1113 (H.B. 299), Sec. 1, eff. September 1, 2023.

Sec. 469.005. ANNUAL REPORT. The commission shall prepare an annual report that includes information on:

(1) the total number of accredited recovery houses;

(2) the number of recovery houses accredited during the preceding year;

(3) any issues concerning the accreditation or reaccreditation process;

(4) the number of accredited recovery houses that had an accreditation revoked during the preceding year; and

(5) the reasons for the revocation.

Added by Acts 2023, 88th Leg., R.S., Ch. 1113 (H.B. 299), Sec. 1, eff. September 1, 2023.

Sec. 469.006. SOLICITING. A recovery house responsible party designated under Section 469.004 or a recovery house's employee or agent may not offer to pay or agree to accept, directly or indirectly, overtly or covertly, remuneration in cash or in kind to or from another for securing or soliciting a patient or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency.

Added by Acts 2023, 88th Leg., R.S., Ch. 1113 (H.B. 299), Sec. 1, eff. September 1, 2023.

Sec. 469.007. CERTAIN ADVERTISING PROHIBITED. (a) A recovery house may not advertise or otherwise communicate that the recovery house is accredited by an accrediting organization unless the

recovery house is accredited by an accrediting organization in accordance with this chapter.

(b) A recovery house may not advertise or cause to be advertised in any manner any false, misleading, or deceptive information about the recovery house.

Added by Acts 2023, 88th Leg., R.S., Ch. 1113 (H.B. 299), Sec. 1, eff. September 1, 2023.

Sec. 469.008. ENFORCEMENT. If an accredited recovery house violates this chapter, the accrediting organization that issued the accreditation to the recovery house may suspend the accreditation for a period not to exceed six months while the accrediting organization conducts an audit of the recovery house. After the audit is complete, the accrediting organization may implement a corrective action plan or revoke the accreditation.

Added by Acts 2023, 88th Leg., R.S., Ch. 1113 (H.B. 299), Sec. 1, eff. September 1, 2023.

Sec. 469.009. FUNDING. A recovery house that is not accredited by an accrediting organization in accordance with this chapter is ineligible for and may not receive state money.

Added by Acts 2023, 88th Leg., R.S., Ch. 1113 (H.B. 299), Sec. 1, eff. September 1, 2025.

SUBTITLE C. SUBSTANCE ABUSE REGULATION AND CRIMES

CHAPTER 481. TEXAS CONTROLLED SUBSTANCES ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 481.001. SHORT TITLE. This chapter may be cited as the Texas Controlled Substances Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.002. DEFINITIONS. In this chapter:

(1) "Administer" means to directly apply a controlled

substance by injection, inhalation, ingestion, or other means to the body of a patient or research subject by:

(A) a practitioner or an agent of the practitioner in the presence of the practitioner; or

(B) the patient or research subject at the direction and in the presence of a practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. The term does not include a common or contract carrier, public warehouseman, or employee of a carrier or warehouseman acting in the usual and lawful course of employment.

(3) "Commissioner" means the commissioner of state health services or the commissioner's designee.

(4) "Controlled premises" means:

(A) a place where original or other records or documents required under this chapter are kept or are required to be kept; or

(B) a place, including a factory, warehouse, other establishment, or conveyance, where a person registered under this chapter may lawfully hold, manufacture, distribute, dispense, administer, possess, or otherwise dispose of a controlled substance or other item governed by the federal Controlled Substances Act (21 U.S.C. Section 801 et seq.) or this chapter, including a chemical precursor and a chemical laboratory apparatus.

(5) "Controlled substance" means a substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Group 1, 1-A, 1-B, 2, 2-A, 3, or 4. The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance. The term does not include hemp, as defined by Section 121.001, Agriculture Code, or the tetrahydrocannabinols in hemp.

(6) "Controlled substance analogue" means:

(A) a substance with a chemical structure substantially similar to the chemical structure of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, 1-B, 2, or 2-A; or

(B) a substance specifically designed to produce an effect substantially similar to, or greater than, the effect of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, 1-B, 2, or 2-A.

(7) "Counterfeit substance" means a controlled substance

that, without authorization, bears or is in a container or has a label that bears an actual or simulated trademark, trade name, or other identifying mark, imprint, number, or device of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(8) "Deliver" means to transfer, actually or constructively, to another a controlled substance, counterfeit substance, or drug paraphernalia, regardless of whether there is an agency relationship. The term includes offering to sell a controlled substance, counterfeit substance, or drug paraphernalia.

(9) "Delivery" or "drug transaction" means the act of delivering.

(10) "Designated agent" means an individual designated under Section 481.074(b-2) to communicate a practitioner's instructions to a pharmacist in an emergency.

(11) "Director" means the director of the Department of Public Safety or an employee of the department designated by the director.

(12) "Dispense" means the delivery of a controlled substance in the course of professional practice or research, by a practitioner or person acting under the lawful order of a practitioner, to an ultimate user or research subject. The term includes the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for delivery.

(13) "Dispenser" means a practitioner, institutional practitioner, pharmacist, or pharmacy that dispenses a controlled substance.

(14) "Distribute" means to deliver a controlled substance other than by administering or dispensing the substance.

(15) "Distributor" means a person who distributes.

(16) "Drug" means a substance, other than a device or a component, part, or accessory of a device, that is:

(A) recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or a supplement to either pharmacopoeia or the formulary;

(B) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(C) intended to affect the structure or function of the body of man or animals but is not food; or

(D) intended for use as a component of a substance described by Paragraph (A), (B), or (C).

(17) "Drug paraphernalia" means equipment, a product, or material that is used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing a controlled substance in violation of this chapter or in injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. The term includes:

(A) a kit used or intended for use in planting, propagating, cultivating, growing, or harvesting a species of plant that is a controlled substance or from which a controlled substance may be derived;

(B) a material, compound, mixture, preparation, or kit used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(C) an isomerization device used or intended for use in increasing the potency of a species of plant that is a controlled substance;

(D) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance;

(E) a scale or balance used or intended for use in weighing or measuring a controlled substance;

(F) a dilutant or adulterant, such as quinine hydrochloride, mannitol, inositol, nicotinamide, dextrose, lactose, or absorbent, blotter-type material, that is used or intended to be used to increase the amount or weight of or to transfer a controlled substance regardless of whether the dilutant or adulterant diminishes the efficacy of the controlled substance;

(G) a separation gin or sifter used or intended for use in removing twigs and seeds from or in otherwise cleaning or refining marihuana;

(H) a blender, bowl, container, spoon, or mixing device used or intended for use in compounding a controlled substance;

(I) a capsule, balloon, envelope, or other container used or intended for use in packaging small quantities of a controlled substance;

(J) a container or other object used or intended for use in storing or concealing a controlled substance;

(K) a hypodermic syringe, needle, or other object used or intended for use in parenterally injecting a controlled substance into the human body; and

(L) an object used or intended for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, including:

(i) a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;

(ii) a water pipe;

(iii) a carburetion tube or device;

(iv) a smoking or carburetion mask;

(v) a chamber pipe;

(vi) a carburetor pipe;

(vii) an electric pipe;

(viii) an air-driven pipe;

(ix) a chillum;

(x) a bong; or

(xi) an ice pipe or chiller.

(18) "Federal Controlled Substances Act" means the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.) or its successor statute.

(19) "Federal Drug Enforcement Administration" means the Drug Enforcement Administration of the United States Department of Justice or its successor agency.

(20) "Hospital" means:

(A) a general or special hospital as defined by Section 241.003;

(B) an ambulatory surgical center licensed under Chapter 243 and approved by the federal government to perform surgery paid by Medicaid on patients admitted for a period of not more than 24 hours; or

(C) a freestanding emergency medical care facility licensed under Chapter 254.

(21) "Human consumption" means the injection, inhalation, ingestion, or application of a substance to or into a human body.

(22) "Immediate precursor" means a substance the director finds to be and by rule designates as being:

(A) a principal compound commonly used or produced primarily for use in the manufacture of a controlled substance;

(B) a substance that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(C) a substance the control of which is necessary to prevent, curtail, or limit the manufacture of a controlled substance.

(23) "Institutional practitioner" means an intern, resident physician, fellow, or person in an equivalent professional position who:

(A) is not licensed by the appropriate state professional licensing board;

(B) is enrolled in a bona fide professional training program in a base hospital or institutional training facility registered by the Federal Drug Enforcement Administration; and

(C) is authorized by the base hospital or institutional training facility to administer, dispense, or prescribe controlled substances.

(24) "Lawful possession" means the possession of a controlled substance that has been obtained in accordance with state or federal law.

(25) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance other than marihuana, directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes the packaging or repackaging of the substance or labeling or relabeling of its container. However, the term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

(A) by a practitioner as an incident to the practitioner's administering or dispensing a controlled substance in the course of professional practice; or

(B) by a practitioner, or by an authorized agent under the supervision of the practitioner, for or as an incident to research, teaching, or chemical analysis and not for delivery.

(26) "Marihuana" means the plant Cannabis sativa L., whether growing or not, the seeds of that plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant or its seeds. The term does not include:

(A) the resin extracted from a part of the plant or a compound, manufacture, salt, derivative, mixture, or preparation of the resin;

(B) the mature stalks of the plant or fiber produced from the stalks;

(C) oil or cake made from the seeds of the plant;

(D) a compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake;

(E) the sterilized seeds of the plant that are incapable of beginning germination; or

(F) hemp, as that term is defined by Section 121.001, Agriculture Code.

(27) "Medical purpose" means the use of a controlled substance for relieving or curing a mental or physical disease or infirmity.

(28) "Medication order" means an order from a practitioner to dispense a drug to a patient in a hospital for immediate administration while the patient is in the hospital or for emergency use on the patient's release from the hospital.

(29) "Narcotic drug" means any of the following, produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) opium and opiates, and a salt, compound, derivative, or preparation of opium or opiates;

(B) a salt, compound, isomer, derivative, or preparation of a salt, compound, isomer, or derivative that is chemically equivalent or identical to a substance listed in Paragraph (A) other than the isoquinoline alkaloids of opium;

(C) opium poppy and poppy straw; or

(D) cocaine, including:

(i) its salts, its optical, position, or geometric isomers, and the salts of those isomers;

(ii) coca leaves and a salt, compound, derivative, or preparation of coca leaves; and

(iii) a salt, compound, derivative, or preparation of a salt, compound, or derivative that is chemically equivalent or identical to a substance described by Subparagraph (i) or (ii), other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine.

(30) "Opiate" means a substance that has an addiction-forming or addiction-sustaining liability similar to morphine or is capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes its racemic and levorotatory forms. The term does not include, unless specifically designated as controlled under Subchapter B, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).

(31) "Opium poppy" means the plant of the species Papaver somniferum L., other than its seeds.

(32) "Patient" means a human for whom or an animal for which a drug:

(A) is administered, dispensed, delivered, or prescribed by a practitioner; or

(B) is intended to be administered, dispensed, delivered, or prescribed by a practitioner.

(33) "Person" means an individual, corporation, government, business trust, estate, trust, partnership, association, or any other legal entity.

(34) "Pharmacist" means a person licensed by the Texas State Board of Pharmacy to practice pharmacy and who acts as an agent for a pharmacy.

(35) "Pharmacist-in-charge" means the pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for the pharmacy's compliance with this chapter and other laws relating to pharmacy.

(36) "Pharmacy" means a facility licensed by the Texas State Board of Pharmacy where a prescription for a controlled substance is received or processed in accordance with state or federal law.

(37) "Poppy straw" means all parts, other than the seeds, of the opium poppy, after mowing.

(38) "Possession" means actual care, custody, control, or management.

(39) "Practitioner" means:

(A) a physician, dentist, veterinarian, podiatrist, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state;

(B) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state;

(C) a person practicing in and licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current Federal Drug Enforcement Administration registration number, who may legally prescribe Schedule II, III, IV, or V controlled substances in that state; or

(D) an advanced practice registered nurse or physician assistant to whom a physician has delegated the authority to prescribe or order a drug or device under Section 157.0511, 157.0512, or 157.054, Occupations Code.

(40) "Prescribe" means the act of a practitioner to authorize a controlled substance to be dispensed to an ultimate user.

(41) "Prescription" means an order by a practitioner to a pharmacist for a controlled substance for a particular patient that specifies:

(A) the date of issue;

(B) the name and address of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner;

(C) the name and quantity of the controlled substance prescribed with the quantity shown numerically followed by the number written as a word if the order is written or, if the order is communicated orally or telephonically, with the quantity given by the practitioner and transcribed by the pharmacist numerically;

(D) directions for the use of the drug;

(E) the intended use of the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient; and

(F) the legibly printed or stamped name, address, Federal Drug Enforcement Administration registration number, and telephone number of the practitioner at the practitioner's usual place of business.

(42) "Principal place of business" means a location where a person manufactures, distributes, dispenses, analyzes, or possesses a controlled substance. The term does not include a location where a practitioner dispenses a controlled substance on an outpatient basis

unless the controlled substance is stored at that location.

(43) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(44) "Raw material" means a compound, material, substance, or equipment used or intended for use, alone or in any combination, in manufacturing a controlled substance.

(45) "Registrant" means a person who has a current Federal Drug Enforcement Administration registration number.

(46) "Substitution" means the dispensing of a drug or a brand of drug other than that which is ordered or prescribed.

(47) "Official prescription form" means a prescription form that is used for a Schedule II controlled substance under Section 481.0755 and contains the prescription information required by Section 481.0755(e).

(48) "Ultimate user" means a person who has lawfully obtained and possesses a controlled substance for the person's own use, for the use of a member of the person's household, or for administering to an animal owned by the person or by a member of the person's household.

(49) "Adulterant or dilutant" means any material that increases the bulk or quantity of a controlled substance, regardless of its effect on the chemical activity of the controlled substance.

(50) "Abuse unit" means:

(A) except as provided by Paragraph (B):

(i) a single unit on or in any adulterant, dilutant, or similar carrier medium, including marked or perforated blotter paper, a tablet, gelatin wafer, sugar cube, or stamp, or other medium that contains any amount of a controlled substance listed in Penalty Group 1-A, if the unit is commonly used in abuse of that substance; or

(ii) each 10 milligrams of paper, calculated by rounding the weight down to the nearest whole number, if the adulterant, dilutant, or carrier medium is paper not marked or perforated into individual abuse units; or

(B) if the controlled substance is in liquid or solid form, 40 micrograms of the controlled substance including any adulterant or dilutant.

(51) "Chemical precursor" means:

(A) Methylamine;

(B) Ethylamine;

(C) D-lysergic acid;
(D) Ergotamine tartrate;
(E) Diethyl malonate;
(F) Malonic acid;
(G) Ethyl malonate;
(H) Barbituric acid;
(I) Piperidine;
(J) N-acetylanthranilic acid;
(K) Pyrrolidine;
(L) Phenylacetic acid;
(M) Anthranilic acid;
(N) Ephedrine;
(O) Pseudoephedrine;
(P) Norpseudoephedrine; or
(Q) Phenylpropanolamine.

(52) "Department" means the Department of Public Safety.

(53) "Chemical laboratory apparatus" means any item of equipment designed, made, or adapted to manufacture a controlled substance or a controlled substance analogue, including:

(A) a condenser;
(B) a distilling apparatus;
(C) a vacuum drier;
(D) a three-neck or distilling flask;
(E) a tableting machine;
(F) an encapsulating machine;
(G) a filter, Buchner, or separatory funnel;
(H) an Erlenmeyer, two-neck, or single-neck flask;
(I) a round-bottom, Florence, thermometer, or filtering flask;
(J) a Soxhlet extractor;
(K) a transformer;
(L) a flask heater;
(M) a heating mantel; or
(N) an adaptor tube.

(54) "Health information exchange" means an organization that:

(A) assists in the transmission or receipt of health-related information among organizations transmitting or receiving the information according to nationally recognized standards and under an express written agreement;

(B) as a primary business function, compiles or organizes health-related information that is designed to be securely transmitted by the organization among physicians, health care providers, or entities within a region, state, community, or hospital system; or

(C) assists in the transmission or receipt of electronic health-related information among physicians, health care providers, or entities within:

(i) a hospital system;

(ii) a physician organization;

(iii) a health care collaborative, as defined by Section 848.001, Insurance Code;

(iv) an accountable care organization participating in the Pioneer Model under the initiative by the Innovation Center of the Centers for Medicare and Medicaid Services; or

(v) an accountable care organization participating in the Medicare shared savings program under 42 U.S.C. Section 1395jjj.

Text of subdivision as added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1227, eff. April 2, 2015

(55) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Text of subdivision as added by Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 2

(55) "Board" means the Texas State Board of Pharmacy.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(b), eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 351, Sec. 27, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 789, Sec. 15, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 2.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 745, Sec. 1, 2, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 145, Sec. 1, 5(1), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 251, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1188, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 88, Sec. 9, eff. May 20, 2003; Acts 2003, 78th Leg., ch. 1099, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 23, eff. November 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1227, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 64 (S.B. 172), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 65 (S.B. 173), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 712 (H.B. 1212), Sec. 3, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 2, eff. September 1, 2016.

Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 8, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 2, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 1, eff. September 1, 2021.

Acts 2025, 89th Leg., R.S., Ch. 1011 (S.B. 1936), Sec. 1, eff. September 1, 2025.

Sec. 481.003. RULES. (a) The director may adopt rules to administer and enforce this chapter, other than Sections 481.074, 481.075, 481.0755, 481.0756, 481.076, 481.0761, 481.0762, 481.0763, 481.07635, 481.07636, 481.0764, 481.0765, 481.0766, 481.0767, 481.0768, and 481.0769. The board may adopt rules to administer Sections 481.074, 481.075, 481.0755, 481.0756, 481.076, 481.0761, 481.0762, 481.0763, 481.07635, 481.07636, 481.0764, 481.0765, 481.0766, 481.0767, 481.0768, and 481.0769.

(b) The director by rule shall prohibit a person in this state, including a person regulated by the Texas Department of Insurance under the Insurance Code or the other insurance laws of this state, from using a practitioner's Federal Drug Enforcement Administration number for a purpose other than a purpose described by federal law or by this chapter. A person who violates a rule adopted under this subsection commits a Class C misdemeanor.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 3, eff. Jan. 1, 1998. Amended by Acts 1999, 76th Leg., ch. 1266, Sec. 1, eff. Sept. 1,

1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 3, eff. June 20, 2015.
Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 1, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 3, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 5, eff. September 1, 2019.

SUBCHAPTER B. SCHEDULES

Sec. 481.031. NOMENCLATURE. Controlled substances listed in Schedules I through V and Penalty Groups 1 through 4 are included by whatever official, common, usual, chemical, or trade name they may be designated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 4, eff. Jan. 1, 1998.

Sec. 481.032. SCHEDULES. (a) The commissioner shall establish and modify the following schedules of controlled substances under this subchapter: Schedule I, Schedule II, Schedule III, Schedule IV, and Schedule V.
(b) A reference to a schedule in this chapter means the most current version of the schedule established or altered by the commissioner under this subchapter and published in the Texas Register on or after January 1, 1998.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 4, eff. Jan. 1, 1998. Amended by Acts 2001, 77th Leg., ch. 251, Sec. 2, eff. Sept. 1, 2001.

Sec. 481.033. EXCLUSION FROM SCHEDULES AND APPLICATION OF ACT. (a) A nonnarcotic substance is excluded from Schedules I through V if the substance may lawfully be sold over the counter without a prescription, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).
(b) The commissioner may not include in the schedules:

(1) a substance described by Subsection (a); or

(2) distilled spirits, wine, malt beverages, or tobacco.

(c) A compound, mixture, or preparation containing a stimulant substance listed in Schedule II and having a potential for abuse associated with a stimulant effect on the central nervous system is excepted from the application of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportions, or concentrations that vitiate the potential for abuse of the substance having a stimulant effect on the central nervous system.

(d) A compound, mixture, or preparation containing a depressant substance listed in Schedule III or IV and having a potential for abuse associated with a depressant effect on the central nervous system is excepted from the application of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportions, or concentrations that vitiate the potential for abuse of the substance having a depressant effect on the central nervous system.

(e) A nonnarcotic prescription substance is exempted from Schedules I through V and the application of this chapter to the same extent that the substance has been exempted from the application of the Federal Controlled Substances Act, if the substance is listed as an exempt prescription product under 21 C.F.R. Section 1308.32 and its subsequent amendments.

(f) A chemical substance that is intended for laboratory, industrial, educational, or special research purposes and not for general administration to a human being or other animal is exempted from Schedules I through V and the application of this chapter to the same extent that the substance has been exempted from the application of the Federal Controlled Substances Act, if the substance is listed as an exempt chemical preparation under 21 C.F.R. Section 1308.24 and its subsequent amendments.

(g) An anabolic steroid product, which has no significant potential for abuse due to concentration, preparation, mixture, or delivery system, is exempted from Schedules I through V and the application of this chapter to the same extent that the substance has

been exempted from the application of the Federal Controlled Substances Act, if the substance is listed as an exempt anabolic steroid product under 21 C.F.R. Section 1308.34 and its subsequent amendments.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 532, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 481.037 and amended by Acts 1997, 75th Leg., ch. 745, Sec. 4, eff. Jan. 1, 1998.

Sec. 481.034. ESTABLISHMENT AND MODIFICATION OF SCHEDULES BY COMMISSIONER. (a) The commissioner shall annually establish the schedules of controlled substances. These annual schedules shall include the complete list of all controlled substances from the previous schedules and modifications in the federal schedules of controlled substances as required by Subsection (g). Any further additions to and deletions from these schedules, any rescheduling of substances and any other modifications made by the commissioner to these schedules of controlled substances shall be made:

(1) in accordance with Section 481.035;

(2) in a manner consistent with this subchapter; and

(3) with approval of the executive commissioner.

(b) Except for alterations in schedules required by Subsection (g), the commissioner may not make an alteration in a schedule unless the commissioner holds a public hearing on the matter in Austin and obtains approval from the executive commissioner.

(c) The commissioner may not:

(1) add a substance to the schedules if the substance has been deleted from the schedules by the legislature;

(2) delete a substance from the schedules if the substance has been added to the schedules by the legislature; or

(3) reschedule a substance if the substance has been placed in a schedule by the legislature.

(d) In making a determination regarding a substance, the commissioner shall consider:

(1) the actual or relative potential for its abuse;

(2) the scientific evidence of its pharmacological effect, if known;

(3) the state of current scientific knowledge regarding the

substance;

(4) the history and current pattern of its abuse;

(5) the scope, duration, and significance of its abuse;

(6) the risk to the public health;

(7) the potential of the substance to produce psychological or physiological dependence liability; and

(8) whether the substance is a controlled substance analogue, chemical precursor, or an immediate precursor of a substance controlled under this chapter.

(e) After considering the factors listed in Subsection (d), the commissioner shall make findings with respect to those factors. If the commissioner finds the substance has a potential for abuse, the executive commissioner shall adopt a rule controlling the substance.

(f) Repealed by Acts 2003, 78th Leg., ch. 1099, Sec. 17.

(g) Except as otherwise provided by this subsection, if a substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice of that fact is given to the commissioner, the commissioner similarly shall control the substance under this chapter. After the expiration of a 30-day period beginning on the day after the date of publication in the Federal Register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, the commissioner similarly shall designate, reschedule, or delete the substance, unless the commissioner objects during the period. If the commissioner objects, the commissioner shall publish the reasons for the objection and give all interested parties an opportunity to be heard. At the conclusion of the hearing, the commissioner shall publish a decision, which is final unless altered by statute. On publication of an objection by the commissioner, control as to that particular substance under this chapter is stayed until the commissioner publishes the commissioner's decision.

(h) Not later than the 10th day after the date on which the commissioner designates, deletes, or reschedules a substance under Subsection (a), the commissioner shall give written notice of that action to the director and to each state licensing agency having jurisdiction over practitioners.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 481.038 and amended by Acts 1997, 75th Leg., ch. 745, Sec. 4, eff. Jan. 1, 1998; Acts 2003, 78th

Leg., ch. 1099, Sec. 5, 17, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1228, eff. April 2, 2015.

Sec. 481.035. FINDINGS. (a) The commissioner shall place a substance in Schedule I if the commissioner finds that the substance:

(1) has a high potential for abuse; and

(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

(b) The commissioner shall place a substance in Schedule II if the commissioner finds that:

(1) the substance has a high potential for abuse;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to severe psychological or physical dependence.

(c) The commissioner shall place a substance in Schedule III if the commissioner finds that:

(1) the substance has a potential for abuse less than that of the substances listed in Schedules I and II;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(d) The commissioner shall place a substance in Schedule IV if the commissioner finds that:

(1) the substance has a lower potential for abuse than that of the substances listed in Schedule III;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to a more limited physical or psychological dependence than that of the substances listed in Schedule III.

(e) The commissioner shall place a substance in Schedule V if the commissioner finds that the substance:

(1) has a lower potential for abuse than that of the substances listed in Schedule IV;

(2) has currently accepted medical use in treatment in the United States; and

(3) may lead to a more limited physical or psychological dependence liability than that of the substances listed in Schedule IV.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 481.039 and amended by Acts 1997, 75th Leg., ch. 745, Sec. 4, eff. Jan. 1, 1998.

Sec. 481.0355. EMERGENCY SCHEDULING; LEGISLATIVE REPORT. (a) Except as otherwise provided by Subsection (b) and subject to Subsection (c), the commissioner may emergency schedule a substance as a controlled substance if the commissioner determines the action is necessary to avoid an imminent hazard to the public safety.

(b) The commissioner may not emergency schedule a substance as a controlled substance under this section if:

(1) the substance is already scheduled;

(2) an exemption or approval is in effect for the substance under Section 505, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355); or

(3) the substance is an over-the-counter drug that qualifies for recognition as safe and effective under conditions established by federal regulations of the United States Food and Drug Administration governing over-the-counter drugs.

(c) Before emergency scheduling a substance as a controlled substance under this section, the commissioner shall consult with the Department of Public Safety and may emergency schedule the substance only in accordance with any recommendations provided by the department.

(d) In determining whether a substance poses an imminent hazard to the public safety, the commissioner shall consider:

(1) the scope, duration, symptoms, or significance of abuse;

(2) the degree of detriment that abuse of the substance may cause;

(3) whether the substance has been temporarily scheduled under federal law; and

(4) whether the substance has been temporarily or

permanently scheduled under the law of another state.

(e) If the commissioner emergency schedules a substance as a controlled substance under this section, an emergency exists for purposes of Section 481.036(c) and the action takes effect on the date the schedule is published in the Texas Register.

(f) Except as otherwise provided by Subsection (f-1), an emergency scheduling under this section expires on September 1 of each odd-numbered year for any scheduling that occurs before January 1 of that year.

(f-1) The commissioner may extend the emergency scheduling of a substance under this section not more than once and for a period not to exceed one year by publishing the extension in the Texas Register. If the commissioner extends the emergency scheduling of a substance, an emergency exists for purposes of Section 481.036(c) and the action takes effect on the date the extension is published in the Texas Register.

(g) The commissioner shall post notice about each emergency scheduling of a substance or each extension of an emergency scheduling of a substance under this section on the Internet website of the Department of State Health Services.

(h) Not later than December 1 of each even-numbered year, the commissioner shall submit a report about each emergency scheduling action taken under this section during the preceding two-year period to the governor, the lieutenant governor, the speaker of the house of representatives, and each legislative standing committee with primary jurisdiction over the department and each legislative standing committee with primary jurisdiction over criminal justice matters.

Added by Acts 2015, 84th Leg., R.S., Ch. 712 (H.B. 1212), Sec. 4, eff. September 1, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 499 (H.B. 2804), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 499 (H.B. 2804), Sec. 2, eff. September 1, 2017.

Sec. 481.036. PUBLICATION OF SCHEDULES. (a) The commissioner shall publish the schedules by filing a certified copy of the schedules with the secretary of state for publication in the Texas

Register not later than the fifth working day after the date the commissioner takes action under this subchapter.

(b) Each published schedule must show changes, if any, made in the schedule since its latest publication.

(c) An action by the commissioner that establishes or modifies a schedule under this subchapter may take effect not earlier than the 21st day after the date on which the schedule or modification is published in the Texas Register unless an emergency exists that necessitates earlier action to avoid an imminent hazard to the public safety.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 481.040 and amended by Acts 1997, 75th Leg., ch. 745, Sec. 4, eff. Jan. 1, 1998.

Sec. 481.037. CARISOPRODOL. Schedule IV includes carisoprodol.

Added by Acts 2009, 81st Leg., R.S., Ch. 774 (S.B. 904), Sec. 4, eff. June 19, 2009.

SUBCHAPTER C. REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSATION OF CONTROLLED SUBSTANCES, CHEMICAL PRECURSORS, AND CHEMICAL LABORATORY APPARATUS

Sec. 481.061. FEDERAL REGISTRATION REQUIRED. (a) Except as otherwise provided by this chapter, a person who is not registered with or exempt from registration with the Federal Drug Enforcement Administration may not manufacture, distribute, prescribe, possess, analyze, or dispense a controlled substance in this state.

(b) A person who is registered with the Federal Drug Enforcement Administration to manufacture, distribute, analyze, dispense, or conduct research with a controlled substance may possess, manufacture, distribute, analyze, dispense, or conduct research with that substance to the extent authorized by the person's registration and in conformity with this chapter.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1268 , Sec. 25(1), eff. September 1, 2016.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1268 , Sec. 25(1), eff. September 1, 2016.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 5, eff. Jan. 1, 1998. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1228 (S.B. 594), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 4, eff. September 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 5, eff. September 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 25(1), eff. September 1, 2016.

Sec. 481.062. EXEMPTIONS. (a) The following persons may possess a controlled substance under this chapter without registering with the Federal Drug Enforcement Administration:

(1) an agent or employee of a manufacturer, distributor, analyzer, or dispenser of the controlled substance who is registered with the Federal Drug Enforcement Administration and acting in the usual course of business or employment;

(2) a common or contract carrier, a warehouseman, or an employee of a carrier or warehouseman whose possession of the controlled substance is in the usual course of business or employment;

(3) an ultimate user or a person in possession of the controlled substance under a lawful order of a practitioner or in lawful possession of the controlled substance if it is listed in Schedule V;

(4) an officer or employee of this state, another state, a political subdivision of this state or another state, or the United States who is lawfully engaged in the enforcement of a law relating to a controlled substance or drug or to a customs law and authorized to possess the controlled substance in the discharge of the person's official duties;

(5) if the substance is tetrahydrocannabinol or one of its derivatives:

(A) a Department of State Health Services official, a medical school researcher, or a research program participant possessing the substance as authorized under Subchapter G; or

(B) a practitioner or an ultimate user possessing the

substance as a participant in a federally approved therapeutic research program that the commissioner has reviewed and found, in writing, to contain a medically responsible research protocol; or

(6) a dispensing organization licensed under Chapter 487 that possesses low-THC cannabis.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1268 , Sec. 25(1), eff. September 1, 2016.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 6, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(79), eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1229, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 2, eff. June 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 6, eff. September 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 25(1), eff. September 1, 2016.

Sec. 481.0621. EXCEPTIONS. (a) This subchapter does not apply to an educational or research program of a school district or a public or private institution of higher education. This subchapter does not apply to a manufacturer, wholesaler, retailer, or other person who sells, transfers, or furnishes materials covered by this subchapter to those educational or research programs.

(b) The department and the Texas Higher Education Coordinating Board shall adopt a memorandum of understanding that establishes the responsibilities of the board, the department, and the public or private institutions of higher education in implementing and maintaining a program for reporting information concerning controlled substances, controlled substance analogues, chemical precursors, and chemical laboratory apparatus used in educational or research activities of institutions of higher education.

(c) The department and the Texas Education Agency shall adopt a memorandum of understanding that establishes the responsibilities of the agency, the department, and school districts in implementing and

maintaining a program for reporting information concerning controlled substances, controlled substance analogues, chemical precursors, and chemical laboratory apparatus used in educational or research activities of those schools and school districts.

Added by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(e), eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.45, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 745, Sec. 7, eff; Jan. 1, 1998.

Sec. 481.065. AUTHORIZATION FOR CERTAIN ACTIVITIES. (a) The director may authorize the possession, distribution, planting, and cultivation of controlled substances by a person engaged in research, training animals to detect controlled substances, or designing or calibrating devices to detect controlled substances. A person who obtains an authorization under this subsection does not commit an offense involving the possession or distribution of controlled substances to the extent that the possession or distribution is authorized.

(b) A person may conduct research with or analyze substances listed in Schedule I in this state only if the person is a practitioner registered under federal law to conduct research with or analyze those substances and the person provides the director with evidence of federal registration.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.067. RECORDS. (a) A person who is registered with the Federal Drug Enforcement Administration to manufacture, distribute, analyze, or dispense a controlled substance shall keep records and maintain inventories in compliance with recordkeeping and inventory requirements of federal law and with additional rules the board or director adopts.

(b) The pharmacist-in-charge of a pharmacy shall maintain the records and inventories required by this section.

(c) A record required by this section must be made at the time of the transaction that is the basis of the record. A record or inventory required by this section must be kept or maintained for at least two years after the date the record or inventory is made.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 251, Sec. 7, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 7, eff. September 1, 2016.

Sec. 481.068. CONFIDENTIALITY. (a) The director may authorize a person engaged in research on the use and effects of a controlled substance to withhold the names and other identifying characteristics of individuals who are the subjects of the research. A person who obtains the authorization may not be compelled in a civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of the research for which the authorization is obtained.

(b) Except as provided by Sections 481.074 and 481.075, a practitioner engaged in authorized medical practice or research may not be required to furnish the name or identity of a patient or research subject to the department, the Department of State Health Services, or any other agency, public official, or law enforcement officer. A practitioner may not be compelled in a state or local civil, criminal, administrative, legislative, or other proceeding to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

(c) The director may not provide to a federal, state, or local law enforcement agency the name or identity of a patient or research subject whose identity could not be obtained under Subsection (b).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 251, Sec. 8, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1230, eff. April 2, 2015.

Sec. 481.070. ADMINISTERING OR DISPENSING SCHEDULE I CONTROLLED SUBSTANCE. Except as permitted by this chapter, a person may not administer or dispense a controlled substance listed in Schedule I.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.071. MEDICAL PURPOSE REQUIRED BEFORE PRESCRIBING, DISPENSING, DELIVERING, OR ADMINISTERING CONTROLLED SUBSTANCE. (a) A practitioner defined by Section 481.002(39)(A) may not prescribe, dispense, deliver, or administer a controlled substance or cause a controlled substance to be administered under the practitioner's direction and supervision except for a valid medical purpose and in the course of medical practice.

(b) An anabolic steroid or human growth hormone listed in Schedule III may only be:

(1) dispensed, prescribed, delivered, or administered by a practitioner, as defined by Section 481.002(39)(A), for a valid medical purpose and in the course of professional practice; or

(2) dispensed or delivered by a pharmacist according to a prescription issued by a practitioner, as defined by Section 481.002(39)(A) or (C), for a valid medical purpose and in the course of professional practice.

(c) For the purposes of Subsection (b), bodybuilding, muscle enhancement, or increasing muscle bulk or strength through the use of an anabolic steroid or human growth hormone listed in Schedule III by a person who is in good health is not a valid medical purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.03(b), eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 745, Sec. 11, eff. Jan. 1, 1998.

Sec. 481.072. MEDICAL PURPOSE REQUIRED BEFORE DISTRIBUTING OR DISPENSING SCHEDULE V CONTROLLED SUBSTANCE. A person may not distribute or dispense a controlled substance listed in Schedule V except for a valid medical purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.074. PRESCRIPTIONS. (a) A pharmacist may not:

(1) dispense or deliver a controlled substance or cause a controlled substance to be dispensed or delivered under the pharmacist's direction or supervision except under a valid prescription and in the course of professional practice;

(2) dispense a controlled substance if the pharmacist knows or should have known that the prescription was issued without a valid

patient-practitioner relationship;

(3) fill a prescription that is not prepared or issued as prescribed by this chapter;

(4) permit or allow a person who is not a licensed pharmacist or pharmacist intern to dispense, distribute, or in any other manner deliver a controlled substance even if under the supervision of a pharmacist, except that after the pharmacist or pharmacist intern has fulfilled his professional and legal responsibilities, a nonpharmacist may complete the actual cash or credit transaction and delivery; or

(5) permit the delivery of a controlled substance to any person not known to the pharmacist, the pharmacist intern, or the person authorized by the pharmacist to deliver the controlled substance without first requiring identification of the person taking possession of the controlled substance, except as provided by Subsection (n).

(b) Except in an emergency as defined by board rule under Subsection (b-1) or as otherwise provided by Section 481.075(j) or (m) or 481.0755, a person may not dispense or administer a controlled substance without an electronic prescription that meets the requirements of and is completed by the practitioner in accordance with Section 481.075.

(b-1) In an emergency as defined by board rule, a person may dispense or administer a controlled substance on the oral or telephonically communicated prescription of a practitioner. The person who administers or dispenses the substance shall:

(1) if the person is a prescribing practitioner or a pharmacist, promptly comply with Subsection (c); or

(2) if the person is not a prescribing practitioner or a pharmacist, promptly write the oral or telephonically communicated prescription and include in the written record of the prescription the name, address, and Federal Drug Enforcement Administration number issued for prescribing a controlled substance in this state of the prescribing practitioner, all information required to be provided by a practitioner under Section 481.075(e)(1), and all information required to be provided by a dispensing pharmacist under Section 481.075(e)(2).

(b-2) In an emergency described by Subsection (b-1), an agent designated in writing by a practitioner defined by Section 481.002(39)(A) may communicate a prescription by telephone. A

practitioner who designates a different agent shall designate that agent in writing and maintain the designation in the same manner in which the practitioner initially designated an agent under this subsection. On the request of a pharmacist, a practitioner shall furnish a copy of the written designation. This subsection does not relieve a practitioner or the practitioner's designated agent from the requirement of Subchapter A, Chapter 562, Occupations Code. A practitioner is personally responsible for the actions of the designated agent in communicating a prescription to a pharmacist.

(c) Not later than the seventh day after the date a prescribing practitioner authorizes an emergency oral or telephonically communicated prescription, the prescribing practitioner shall cause an electronic prescription, completed in the manner required by Section 481.075, to be delivered to the dispensing pharmacist at the pharmacy where the prescription was dispensed. On receipt of the electronic prescription, the pharmacist shall annotate the electronic prescription record with the original authorization and date of the emergency oral or telephonically communicated prescription.

(d) Except as specified in Subsections (e) and (f), the board, by rule and in consultation with the Texas Medical Board, shall establish the period after the date on which the prescription is issued that a person may fill a prescription for a controlled substance listed in Schedule II. A person may not refill a prescription for a substance listed in Schedule II.

(d-1) Notwithstanding Subsection (d), a prescribing practitioner may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled substance if:

(1) each separate prescription is issued for a legitimate medical purpose by a prescribing practitioner acting in the usual course of professional practice;

(2) the prescribing practitioner provides instructions on each prescription to be filled at a later date indicating the earliest date on which a pharmacy may fill each prescription;

(3) the prescribing practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse; and

(4) the issuance of multiple prescriptions complies with other applicable state and federal laws.

(e) The partial filling of a prescription for a controlled

substance listed in Schedule II is permissible in accordance with applicable federal law.

(f) A prescription for a Schedule II controlled substance for a patient in a long-term care facility (LTCF) or for a hospice patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units. If there is any question about whether a hospice patient may be classified as having a terminal illness, the pharmacist must contact the practitioner before partially filling the prescription. Both the pharmacist and the practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill hospice patient. The pharmacist must record the prescription in the electronic prescription record and must indicate in the electronic prescription record whether the patient is a "terminally ill hospice patient" or an "LTCF patient." A prescription that is partially filled and does not contain the notation "terminally ill hospice patient" or "LTCF patient" is considered to have been filled in violation of this chapter. For each partial filling, the dispensing pharmacist shall record in the electronic prescription record the date of the partial filling, the quantity dispensed, the remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. Before any subsequent partial filling, the pharmacist must determine that the additional partial filling is necessary. The total quantity of Schedule II controlled substances dispensed in all partial fillings may not exceed the total quantity prescribed. Schedule II prescriptions for patients in a long-term care facility or hospice patients with a medical diagnosis documenting a terminal illness are valid for a period not to exceed 60 days following the issue date unless sooner terminated by discontinuance of the medication.

(g) A person may not dispense a controlled substance in Schedule III or IV that is a prescription drug under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) without a prescription of a practitioner defined by Section 481.002(39)(A) or (D), except that the practitioner may dispense the substance directly to an ultimate user. A prescription for a controlled substance listed in Schedule III or IV may not be filled or refilled later than six months after the date on which the prescription is issued and may not be refilled more than five times, unless the prescription is renewed by the practitioner. A prescription under this subsection

must comply with other applicable state and federal laws.

(h) A pharmacist may dispense a controlled substance listed in Schedule III, IV, or V under a prescription issued by a practitioner defined by Section 481.002(39)(C) only if the pharmacist determines that the prescription was issued for a valid medical purpose and in the course of professional practice. A prescription described by this subsection may not be filled or refilled later than six months after the date the prescription is issued and may not be refilled more than five times, unless the prescription is renewed by the practitioner.

(i) A person may not dispense a controlled substance listed in Schedule V and containing 200 milligrams or less of codeine, or any of its salts, per 100 milliliters or per 100 grams, or containing 100 milligrams or less of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams, without the prescription of a practitioner defined by Section 481.002(39)(A), except that a practitioner may dispense the substance directly to an ultimate user. A prescription issued under this subsection may not be filled or refilled later than six months after the date the prescription is issued and may not be refilled more than five times, unless the prescription is renewed by the practitioner.

(j) A practitioner or institutional practitioner may not allow a patient, on the patient's release from the hospital, to possess a controlled substance prescribed by the practitioner unless:

(1) the substance was dispensed under a medication order while the patient was admitted to the hospital;

(2) the substance is in a properly labeled container; and

(3) the patient possesses not more than a seven-day supply of the substance.

(k) A prescription for a controlled substance must show:

(1) the quantity of the substance prescribed:

(A) numerically, if the prescription is electronic; or

(B) if the prescription is communicated orally or telephonically, as transcribed by the receiving pharmacist;

(2) the date of issue;

(2-a) if the prescription is issued for a Schedule II controlled substance to be filled at a later date under Subsection (d-1), the earliest date on which a pharmacy may fill the prescription;

(3) the name, address, and date of birth or age of the

patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner;

(4) the name and strength of the controlled substance prescribed;

(5) the directions for use of the controlled substance;

(6) the intended use of the substance prescribed unless the practitioner determines the furnishing of this information is not in the best interest of the patient; and

(7) the name, address, Federal Drug Enforcement Administration number, and telephone number of the practitioner at the practitioner's usual place of business.

(l) A pharmacist may exercise his professional judgment in refilling a prescription for a controlled substance in Schedule III, IV, or V without the authorization of the prescribing practitioner provided:

(1) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(2) either:

(A) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(B) the pharmacist is unable to contact the practitioner after reasonable effort;

(3) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(4) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills; and

(5) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time.

(l-1) Notwithstanding Subsection (l), in the event of a natural or manmade disaster, a pharmacist may dispense not more than a 30-day supply of a prescription drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner if:

(1) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(2) the natural or manmade disaster prohibits the pharmacist from being able to contact the practitioner;

(3) the governor has declared a state of disaster under Chapter 418, Government Code; and

(4) the Texas State Board of Pharmacy, through its executive director, has notified pharmacies in this state that pharmacists may dispense up to a 30-day supply of a prescription drug.

(l-2) The prescribing practitioner is not liable for an act or omission by a pharmacist in dispensing a prescription drug under Subsection (l-1).

(m) A pharmacist may permit the delivery of a controlled substance by an authorized delivery person, by a person known to the pharmacist, a pharmacist intern, or the authorized delivery person, or by mail to the person or address of the person authorized by the prescription to receive the controlled substance. If a pharmacist permits delivery of a controlled substance under this subsection, the pharmacist shall retain in the records of the pharmacy for a period of not less than two years:

(1) the name of the authorized delivery person, if delivery is made by that person;

(2) the name of the person known to the pharmacist, a pharmacist intern, or the authorized delivery person if delivery is made by that person; or

(3) the mailing address to which delivery is made, if delivery is made by mail.

(n) A pharmacist may permit the delivery of a controlled substance to a person not known to the pharmacist, a pharmacist intern, or the authorized delivery person without first requiring the identification of the person to whom the controlled substance is delivered if the pharmacist determines that an emergency exists and that the controlled substance is needed for the immediate well-being of the patient for whom the controlled substance is prescribed. If a pharmacist permits delivery of a controlled substance under this subsection, the pharmacist shall retain in the records of the pharmacy for a period of not less than two years all information relevant to the delivery known to the pharmacist, including the name, address, and date of birth or age of the person to whom the controlled substance is delivered.

(o) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 16, eff. September 1, 2019.

(p) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B.

2174), Sec. 16, eff. September 1, 2019.

(q) Each dispensing pharmacist shall send all required information to the board by electronic transfer or another form approved by the board not later than the next business day after the date the prescription is completely filled.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(h), eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 615, Sec. 10, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 761, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 351, Sec. 28, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 789, Sec. 16, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 745, Sec. 12, 13, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 145, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 251, Sec. 10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1254, Sec. 10, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 349 (S.B. 1188), Sec. 21(a), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 44(a), eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 535 (S.B. 994), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 567 (S.B. 1658), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 2, eff. September 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 2.

Acts 2009, 81st Leg., R.S., Ch. 774 (S.B. 904), Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.007, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1228 (S.B. 594), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1342 (S.B. 1273), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 9, eff. September 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 4, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 16, eff. September 1, 2019.

Sec. 481.075. SCHEDULE II PRESCRIPTIONS. (a) A practitioner who prescribes a controlled substance listed in Schedule II shall, except as provided by Section 481.074(b-1) or 481.0755 or a rule adopted under Section 481.0761, record the prescription in an electronic prescription that includes the information required by this section.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 16, eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 16, eff. September 1, 2019.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 16, eff. September 1, 2019.

(e) Each prescription used to prescribe a Schedule II controlled substance must contain:

(1) information provided by the prescribing practitioner, including:

(A) the date the prescription is issued;

(B) the controlled substance prescribed;

(C) the quantity of controlled substance prescribed, shown numerically;

(D) the intended use of the controlled substance, or the diagnosis for which the controlled substance is prescribed, and the instructions for use of the substance;

(E) the practitioner's name, address, and Federal Drug Enforcement Administration number issued for prescribing a controlled substance in this state;

(F) the name, address, and date of birth or age of the person for whom the controlled substance is prescribed; and

(G) if the prescription is issued to be filled at a later date under Section 481.074(d-1), the earliest date on which a pharmacy may fill the prescription;

(2) information provided by the dispensing pharmacist,

including the date the prescription is filled; and

(3) the prescribing practitioner's electronic signature or other secure method of validation authorized by federal law.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 16, eff. September 1, 2019.

(g) Except for an emergency oral or telephonically communicated prescription described by Section 481.074(b-1), the prescribing practitioner shall:

(1) record or direct a designated agent to record in the electronic prescription each item of information required to be provided by the prescribing practitioner under Subsection (e)(1), unless the practitioner determines that:

(A) under rule adopted by the board for this purpose, it is unnecessary for the practitioner or the practitioner's agent to provide the patient identification number; or

(B) it is not in the best interest of the patient for the practitioner or practitioner's agent to provide information regarding the intended use of the controlled substance or the diagnosis for which it is prescribed; and

(2) electronically sign or validate the electronic prescription as authorized by federal law and transmit the prescription to the dispensing pharmacy.

(h) In the case of an emergency oral or telephonically communicated prescription described by Section 481.074(b-1), the prescribing practitioner shall give the dispensing pharmacy the information needed to complete the electronic prescription record.

(i) Each dispensing pharmacist shall:

(1) note in the electronic prescription record each item of information given orally to the dispensing pharmacy under Subsection (h) and the date the prescription is filled and appropriately record the identity of the dispensing pharmacist in the electronic prescription record;

(2) retain with the records of the pharmacy for at least two years:

(A) the electronic prescription record; and

(B) the name or other patient identification required by Section 481.074(m) or (n);

(3) send all required information, including any information required to complete an electronic prescription record, to the board by electronic transfer or another form approved by the

board not later than the next business day after the date the prescription is completely filled; and

(4) if the pharmacy does not dispense any controlled substance prescriptions during a period of seven consecutive days, send a report to the board indicating that the pharmacy did not dispense any controlled substance prescriptions during that period, unless the pharmacy has obtained a waiver or permission to delay reporting to the board.

(j) A medication order written for a patient who is admitted to a hospital at the time the medication order is written and filled is not required to be recorded in an electronic prescription record that meets the requirements of this section.

(k) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 16, eff. September 1, 2019.

(l) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 16, eff. September 1, 2019.

(m) A pharmacy in this state may fill a prescription for a controlled substance listed in Schedule II issued by a practitioner in another state if:

(1) a share of the pharmacy's business involves the dispensing and delivery or mailing of controlled substances;

(2) the prescription is issued by a prescribing practitioner in the other state in the ordinary course of practice; and

(3) the prescription is filled in compliance with a written plan providing the manner in which the pharmacy may fill a Schedule II prescription issued by a practitioner in another state that:

(A) is submitted by the pharmacy to the board; and

(B) is approved by the board.

(n) A person dispensing a Schedule II controlled substance under a prescription shall provide written notice, as defined by board rule adopted under Subsection (o), on the safe disposal of controlled substance prescription drugs, unless:

(1) the Schedule II controlled substance prescription drug is dispensed at a pharmacy or other location that:

(A) is authorized to take back those drugs for safe disposal; and

(B) regularly accepts those drugs for safe disposal; or

(2) the dispenser provides to the person to whom the Schedule II controlled substance prescription drug is dispensed, at

the time of dispensation and at no cost to the person:

(A) a mail-in pouch for surrendering unused controlled substance prescription drugs; or

(B) chemicals to render any unused drugs unusable or non-retrievable.

(o) The board shall adopt rules to prescribe the form of the written notice on the safe disposal of controlled substance prescription drugs required under Subsection (n). The notice must include information on locations at which Schedule II controlled substance prescription drugs are accepted for safe disposal. The notice, in lieu of listing those locations, may provide the address of an Internet website specified by the board that provides a searchable database of locations at which Schedule II controlled substance prescription drugs are accepted for safe disposal.

(p) The board may take disciplinary action against a person who fails to comply with Subsection (n).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(i), eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 789, Sec. 17, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 745, Sec. 14, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 145, Sec. 3, 5(2), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 251, Sec. 11, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 774 (S.B. 904), Sec. 2, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1228 (S.B. 594), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1342 (S.B. 1273), Sec. 3, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 10, eff. September 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 3, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 798 (H.B. 2088), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 965 (S.B. 683), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 5, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 6, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 16, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 4.001, eff. September 1, 2019.

Sec. 481.0755. WRITTEN, ORAL, AND TELEPHONICALLY COMMUNICATED PRESCRIPTIONS. (a) Notwithstanding Sections 481.074 and 481.075, a prescription for a controlled substance is not required to be issued electronically and may be issued in writing if the prescription is issued:

(1) by a veterinarian;

(2) in circumstances in which electronic prescribing is not available due to temporary technological or electronic failure, as prescribed by board rule;

(3) by a practitioner to be dispensed by a pharmacy located outside this state, as prescribed by board rule;

(4) when the prescriber and dispenser are in the same location or under the same license;

(5) in circumstances in which necessary elements are not supported by the most recently implemented national data standard that facilitates electronic prescribing;

(6) for a drug for which the United States Food and Drug Administration requires additional information in the prescription that is not possible with electronic prescribing;

(7) for a non-patient-specific prescription pursuant to a standing order, approved protocol for drug therapy, collaborative drug management, or comprehensive medication management, in response to a public health emergency or in other circumstances in which the practitioner may issue a non-patient-specific prescription;

(8) for a drug under a research protocol;

(9) by a practitioner who has received a waiver under Section 481.0756 from the requirement to use electronic prescribing;

(10) under circumstances in which the practitioner has the present ability to submit an electronic prescription but reasonably determines that it would be impractical for the patient to obtain the drugs prescribed under the electronic prescription in a timely manner and that a delay would adversely impact the patient's medical

condition; or

(11) before January 1, 2021.

(b) A dispensing pharmacist who receives a controlled substance prescription in a manner other than electronically is not required to verify that the prescription is exempt from the requirement that it be submitted electronically. The pharmacist may dispense a controlled substance pursuant to an otherwise valid written, oral, or telephonically communicated prescription consistent with the requirements of this subchapter.

(c) Except in an emergency, a practitioner must use a written prescription to submit a prescription described by Subsection (a). In an emergency, the practitioner may submit an oral or telephonically communicated prescription as authorized under Section 481.074(b-1).

(d) A written prescription for a controlled substance other than a Schedule II controlled substance must include the information required under Section 481.074(k) and the signature of the prescribing practitioner.

(e) A written prescription for a Schedule II controlled substance must be on an official prescription form and include the information required for an electronic prescription under Section 481.075(e), the signature of the practitioner, and the signature of the dispensing pharmacist after the prescription is filled.

(f) The board by rule shall authorize a practitioner to determine whether it is necessary to obtain a particular patient identification number and to provide that number on the official prescription form.

(g) On request of a practitioner, the board shall issue official prescription forms to the practitioner for a fee covering the actual cost of printing, processing, and mailing the forms. Before mailing or otherwise delivering prescription forms to a practitioner, the board shall print on each form the number of the form and any other information the board determines is necessary.

(h) Each official prescription form must be sequentially numbered.

(i) A person may not obtain an official prescription form unless the person is a practitioner as defined by Section 481.002(39)(A) or an institutional practitioner.

(j) Not more than one Schedule II prescription may be recorded on an official prescription form.

(k) Not later than the 30th day after the date a practitioner's Federal Drug Enforcement Administration number or license to practice has been denied, suspended, canceled, surrendered, or revoked, the practitioner shall return to the board all official prescription forms in the practitioner's possession that have not been used for prescriptions.

(l) Each prescribing practitioner:

(1) may use an official prescription form only to submit a prescription described by Subsection (a);

(2) shall date or sign an official prescription form only on the date the prescription is issued; and

(3) shall take reasonable precautionary measures to ensure that an official prescription form issued to the practitioner is not used by another person to violate this subchapter or a rule adopted under this subchapter.

(m) In the case of an emergency oral or telephonically communicated prescription described by Section 481.074(b-1), the prescribing practitioner shall give the dispensing pharmacy the information needed to complete the official prescription form if the pharmacy is not required to use the electronic prescription record.

(n) Each dispensing pharmacist receiving an oral or telephonically communicated prescription under Subsection (m) shall:

(1) fill in on the official prescription form each item of information given orally to the dispensing pharmacy under Subsection (m) and the date the prescription is filled and fill in the dispensing pharmacist's signature;

(2) retain with the records of the pharmacy for at least two years:

(A) the official prescription form; and

(B) the name or other patient identification required by Section 481.074(m) or (n); and

(3) send all required information, including any information required to complete an official prescription form, to the board by electronic transfer or another form approved by the board not later than the next business day after the date the prescription is completely filled.

Added by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 7, eff. September 1, 2019.

Sec. 481.0756. WAIVERS FROM ELECTRONIC PRESCRIBING. (a) The appropriate regulatory agency that issued the license, certification, or registration to a prescriber is authorized to grant a prescriber a waiver from the electronic prescribing requirement under the provisions of this section.

(b) The board shall convene an interagency workgroup that includes representatives of each regulatory agency that issues a license, certification, or registration to a prescriber.

(c) The work group described by Subsection (b) shall establish recommendations and standards for circumstances in which a waiver from the electronic prescribing requirement is appropriate and a process under which a prescriber may request and receive a waiver.

(d) The board shall adopt rules establishing the eligibility for a waiver, including:

(1) economic hardship;

(2) technological limitations not reasonably within the control of the prescriber; or

(3) other exceptional circumstances demonstrated by the prescriber.

(e) Each regulatory agency that issues a license, certification, or registration to a prescriber shall adopt rules for the granting of waivers consistent with the board rules adopted under Subsection (d).

(f) A waiver may be issued to a prescriber for a period of one year. A prescriber may reapply for a subsequent waiver not earlier than the 30th day before the date the waiver expires if the circumstances that necessitated the waiver continue.

Added by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 7, eff. September 1, 2019.

Sec. 481.076. OFFICIAL PRESCRIPTION INFORMATION; DUTIES OF TEXAS STATE BOARD OF PHARMACY. (a) The board may not permit any person to have access to information submitted to the board under Section 481.074(q) or 481.075 except:

(1) the board, the Texas Medical Board, the Texas Department of Licensing and Regulation, with respect to the regulation of podiatrists, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, the Texas Board of

Nursing, or the Texas Optometry Board for the purpose of:

(A) investigating a specific license holder; or

(B) monitoring for potentially harmful prescribing or dispensing patterns or practices under Section 481.0762;

(2) an authorized employee of the board engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state;

(3) the department or other law enforcement or prosecutorial official engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state, if the board is provided a warrant, subpoena, or other court order compelling the disclosure;

(4) a medical examiner conducting an investigation;

(5) provided that accessing the information is authorized under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and regulations adopted under that Act:

(A) a pharmacist or a pharmacist-intern, pharmacy technician, or pharmacy technician trainee, as defined by Section 551.003, Occupations Code, acting at the direction of a pharmacist, who is inquiring about a recent Schedule II, III, IV, or V prescription history of a particular patient of the pharmacist; or

(B) a practitioner who:

(i) is a physician, dentist, veterinarian, podiatrist, optometrist, or advanced practice nurse or is a physician assistant described by Section 481.002(39)(D) or an employee or other agent of a practitioner acting at the direction of a practitioner; and

(ii) is inquiring about a recent Schedule II, III, IV, or V prescription history of a particular patient of the practitioner;

(6) a pharmacist or practitioner who is inquiring about the person's own dispensing or prescribing activity or a practitioner who is inquiring about the prescribing activity of an individual to whom the practitioner has delegated prescribing authority;

(7) one or more states or an association of states with which the board has an interoperability agreement, as provided by Subsection (j);

(8) a health care facility certified by the federal Centers for Medicare and Medicaid Services; or

(9) the patient, the patient's parent or legal guardian, if

the patient is a minor, or the patient's legal guardian, if the patient is an incapacitated person, as defined by Section 1002.017(2), Estates Code, inquiring about the patient's prescription record, including persons who have accessed that record.

(a-1) A person authorized to receive information under Subsection (a)(4), (5), or (6) may access that information through a health information exchange, subject to proper security measures to ensure against disclosure to unauthorized persons.

(a-2) A person authorized to receive information under Subsection (a)(5) may include that information in any form in the medical or pharmacy record of the patient who is the subject of the information. Any information included in a patient's medical or pharmacy record under this subsection is subject to any applicable state or federal confidentiality or privacy laws.

(a-3) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 10, eff. September 1, 2019.

(a-4) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 10, eff. September 1, 2019.

(a-5) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 10, eff. September 1, 2019.

(a-6) A patient, the patient's parent or legal guardian, if the patient is a minor, or the patient's legal guardian, if the patient is an incapacitated person, as defined by Section 1002.017(2), Estates Code, is entitled to a copy of the patient's prescription record as provided by Subsection (a)(9), including a list of persons who have accessed that record, if a completed patient data request form and any supporting documentation required by the board is submitted to the board. The board may charge a reasonable fee for providing the copy. The board shall adopt rules to implement this subsection, including rules prescribing the patient data request form, listing the documentation required for receiving a copy of the prescription record, and setting the fee.

(b) This section does not prohibit the board from creating, using, or disclosing statistical data about information submitted to the board under this section if the board removes any information reasonably likely to reveal the identity of each patient, practitioner, or other person who is a subject of the information.

(c) The board by rule shall design and implement a system for submission of information to the board by electronic or other means and for retrieval of information submitted to the board under this

section and Sections 481.074 and 481.075. The board shall use automated information security techniques and devices to preclude improper access to the information. The board shall submit the system design to the director and the Texas Medical Board for review and comment a reasonable time before implementation of the system and shall comply with the comments of those agencies unless it is unreasonable to do so.

(d) Information submitted to the board under this section may be used only for:

(1) the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state;

(2) investigatory, evidentiary, or monitoring purposes in connection with the functions of an agency listed in Subsection (a)(1);

(3) the prescribing and dispensing of controlled substances by a person listed in Subsection (a)(5); or

(4) dissemination by the board to the public in the form of a statistical tabulation or report if all information reasonably likely to reveal the identity of each patient, practitioner, or other person who is a subject of the information has been removed.

(e) The board shall remove from the information retrieval system, destroy, and make irretrievable the record of the identity of a patient submitted under this section to the board not later than the end of the 36th calendar month after the month in which the identity is entered into the system. However, the board may retain a patient identity that is necessary for use in a specific ongoing investigation conducted in accordance with this section until the 30th day after the end of the month in which the necessity for retention of the identity ends.

(f) If the board accesses information under Subsection (a)(2) relating to a person licensed or regulated by an agency listed in Subsection (a)(1), the board shall notify and cooperate with that agency regarding the disposition of the matter before taking action against the person, unless the board determines that notification is reasonably likely to interfere with an administrative or criminal investigation or prosecution.

(g) If the board provides access to information under Subsection (a)(3) relating to a person licensed or regulated by an agency listed in Subsection (a)(1), the board shall notify that

agency of the disclosure of the information not later than the 10th working day after the date the information is disclosed.

(h) If the board withholds notification to an agency under Subsection (f), the board shall notify the agency of the disclosure of the information and the reason for withholding notification when the board determines that notification is no longer likely to interfere with an administrative or criminal investigation or prosecution.

(i) Information submitted to the board under Section 481.074(q) or 481.075 is confidential and remains confidential regardless of whether the board permits access to the information under this section.

(j) The board may enter into an interoperability agreement with one or more states or an association of states authorizing the board to access prescription monitoring information maintained or collected by the other state or states or the association, including information maintained on a central database such as the National Association of Boards of Pharmacy Prescription Monitoring Program InterConnect. Pursuant to an interoperability agreement, the board may authorize the prescription monitoring program of one or more states or an association of states to access information submitted to the board under Sections 481.074(q) and 481.075, including by submitting or sharing information through a central database such as the National Association of Boards of Pharmacy Prescription Monitoring Program InterConnect.

(k) A person authorized to access information under Subsection (a)(4) or (5) who is registered with the board for electronic access to the information is entitled to directly access the information available from other states pursuant to an interoperability agreement described by Subsection (j).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 965, Sec. 81, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 745, Sec. 15, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 145, Sec. 4, 5(3), eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1342 (S.B. 1273), Sec. 4, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 11, eff. September 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 12, eff. June 20, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 12, eff. September 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 4, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.009, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 965 (S.B. 683), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 4.002, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 10, eff. September 1, 2019.

Sec. 481.0761. RULES; AUTHORITY TO CONTRACT. (a) The board shall by rule establish and revise as necessary a standardized database format that may be used by a pharmacy to transmit the information required by Sections 481.074(q) and 481.075(i) to the board electronically or to deliver the information on storage media, including disks, tapes, and cassettes.

(b) The director shall consult with the Department of State Health Services, the Texas State Board of Pharmacy, and the Texas Medical Board and by rule may:

(1) remove a controlled substance listed in Schedules II through V from the official prescription program, if the director determines that the burden imposed by the program substantially outweighs the risk of diversion of the particular controlled substance; or

(2) return a substance previously removed from Schedules II through V to the official prescription program, if the director determines that the risk of diversion substantially outweighs the burden imposed by the program on the particular controlled substance.

(c) The board by rule may:

(1) establish a procedure for the issuance of multiple prescriptions of a Schedule II controlled substance under Section 481.074(d-1);

(2) remove from or return to the official prescription program any aspect of a practitioner's or pharmacist's hospital practice, including administering or dispensing;

(3) waive or delay any requirement relating to the time or manner of reporting;

(4) establish compatibility protocols for electronic data transfer hardware, software, or format, including any necessary modifications for participation in a database described by Section 481.076(j);

(5) establish a procedure to control the release of information under Sections 481.074, 481.075, and 481.076; and

(6) establish a minimum level of prescription activity below which a reporting activity may be modified or deleted.

(d) The board by rule shall authorize a practitioner to determine whether it is necessary to obtain a particular patient identification number and to provide that number in the electronic prescription record.

(e) In adopting a rule relating to the electronic transfer of information under this subchapter, the board shall consider the economic impact of the rule on practitioners and pharmacists and, to the extent permitted by law, act to minimize any negative economic impact, including the imposition of costs related to computer hardware or software or to the transfer of information.

(f) The board may authorize a contract between the board and another agency of this state or a private vendor as necessary to ensure the effective operation of the official prescription program.

(g) The board may adopt rules providing for a person authorized to access information under Section 481.076(a)(5) to be enrolled in electronic access to the information described by Section 481.076(a) at the time the person obtains or renews the person's applicable professional or occupational license or registration.

(h) The board, in consultation with the department and the regulatory agencies listed in Section 481.076(a)(1), shall identify prescribing practices that may be potentially harmful and patient prescription patterns that may suggest drug diversion or drug abuse. The board shall determine the conduct that constitutes a potentially harmful prescribing pattern or practice and develop indicators for levels of prescriber or patient activity that suggest a potentially harmful prescribing pattern or practice may be occurring or drug diversion or drug abuse may be occurring.

(i) The board, based on the indicators developed under Subsection (h), may send an electronic notification to a dispenser or prescriber if the information submitted under Section 481.074(q) or 481.075 indicates a potentially harmful prescribing pattern or practice may be occurring or drug diversion or drug abuse may be occurring.

(j) The board by rule may develop guidelines identifying behavior suggesting a patient is obtaining controlled substances that indicate drug diversion or drug abuse is occurring. A pharmacist who observes behavior described by this subsection by a person who is to receive a controlled substance shall access the information under Section 481.076(a)(5) regarding the patient for whom the substance is to be dispensed.

(k) The board by rule may develop guidelines identifying patterns that may indicate that a particular patient to whom a controlled substance is prescribed or dispensed is engaging in drug abuse or drug diversion. These guidelines may be based on the frequency of prescriptions issued to and filled by the patient, the types of controlled substances prescribed, and the number of prescribers who prescribe controlled substances to the patient. The board may, based on the guidelines developed under this subsection, send a prescriber or dispenser an electronic notification if there is reason to believe that a particular patient is engaging in drug abuse or drug diversion.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 16, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 145, Sec. 5(4), eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 4, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 774 (S.B. 904), Sec. 3, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1228 (S.B. 594), Sec. 5, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 13, eff. June 20, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 13, eff. September 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 5, eff.

September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 8, eff. September 1, 2019.

Sec. 481.0762. MONITORING BY REGULATORY AGENCY. (a) Each regulatory agency that issues a license, certification, or registration to a prescriber shall promulgate specific guidelines for prescribers regulated by that agency for the responsible prescribing of opioids, benzodiazepines, barbiturates, or carisoprodol.

(b) A regulatory agency that issues a license, certification, or registration to a prescriber shall periodically access the information submitted to the board under Sections 481.074(q) and 481.075 to determine whether a prescriber is engaging in potentially harmful prescribing patterns or practices.

(c) If the board sends a prescriber an electronic notification authorized under Section 481.0761(i), the board shall immediately send an electronic notification to the appropriate regulatory agency.

(d) In determining whether a potentially harmful prescribing pattern or practice is occurring, the appropriate regulatory agency, at a minimum, shall consider:

(1) the number of times a prescriber prescribes opioids, benzodiazepines, barbiturates, or carisoprodol; and

(2) for prescriptions described by Subdivision (1), patterns of prescribing combinations of those drugs and other dangerous combinations of drugs identified by the board.

(e) If, during a periodic check under this section, the regulatory agency finds evidence that a prescriber may be engaging in potentially harmful prescribing patterns or practices, the regulatory agency may notify that prescriber.

(f) A regulatory agency may open a complaint against a prescriber if the agency finds evidence during a periodic check under this section that the prescriber is engaging in conduct that violates this subchapter or any other statute or rule.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 6, eff. September 1, 2017.

Sec. 481.0763. REGISTRATION BY REGULATORY AGENCY. A regulatory

agency that issues a license, certification, or registration to a prescriber or dispenser shall provide the board with any necessary information for each prescriber or dispenser, including contact information for the notifications described by Sections 481.0761(i) and (k), to register the prescriber or dispenser with the system by which the prescriber or dispenser receives information as authorized under Section 481.076(a)(5).

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 6, eff. September 1, 2017.

Sec. 481.07635. CONTINUING EDUCATION. (a) A person authorized to receive information under Section 481.076(a)(5) shall, not later than the first anniversary after the person is issued a license, certification, or registration to prescribe or dispense controlled substances under this chapter, complete two hours of professional education related to approved procedures of prescribing and monitoring controlled substances.

(b) A person authorized to receive information may annually take the professional education course under this section to fulfil hours toward the ethics education requirement of the person's license, certification, or registration.

(c) The regulatory agency that issued the license, certification, or registration to a person authorized to receive information under Section 481.076(a)(5) shall approve professional education to satisfy the requirements of this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 9, eff. September 1, 2019.

Sec. 481.07636. OPIOID PRESCRIPTION LIMITS. (a) In this section, "acute pain" means the normal, predicted, physiological response to a stimulus such as trauma, disease, and operative procedures. Acute pain is time limited. The term does not include:

(1) chronic pain;

(2) pain being treated as part of cancer care;

(3) pain being treated as part of hospice or other end-of-life care; or

(4) pain being treated as part of palliative care.

(b) For the treatment of acute pain, a practitioner may not:

(1) issue a prescription for an opioid in an amount that exceeds a 10-day supply; or

(2) provide for a refill of an opioid.

(c) Subsection (b) does not apply to a prescription for an opioid approved by the United States Food and Drug Administration for the treatment of substance addiction that is issued by a practitioner for the treatment of substance addiction.

(d) A dispenser is not subject to criminal, civil, or administrative penalties for dispensing or refusing to dispense a controlled substance under a prescription that exceeds the limits provided by Subsection (b).

Added by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 9, eff. September 1, 2019.

Sec. 481.0764. DUTIES OF PRESCRIBERS, PHARMACISTS, AND RELATED HEALTH CARE PRACTITIONERS. (a) A person authorized to receive information under Section 481.076(a)(5), other than a veterinarian, shall access that information with respect to the patient before prescribing or dispensing opioids, benzodiazepines, barbiturates, or carisoprodol.

(b) A person authorized to receive information under Section 481.076(a)(5) may access that information with respect to the patient before prescribing or dispensing any controlled substance.

(c) A veterinarian authorized to access information under Subsection (b) regarding a controlled substance may access the information for prescriptions dispensed only for the animals of an owner and may not consider the personal prescription history of the owner.

(d) A violation of Subsection (a) is grounds for disciplinary action by the regulatory agency that issued a license, certification, or registration to the person who committed the violation.

(e) This section does not grant a person the authority to issue prescriptions for or dispense controlled substances.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 6, eff. September 1, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1167 (H.B. 3285), Sec. 7, eff.

September 1, 2019.

Sec. 481.0765. EXCEPTIONS. (a) A prescriber is not subject to the requirements of Section 481.0764(a) if:

(1) the patient has been diagnosed with cancer or sickle cell disease or the patient is receiving hospice care; and

(2) the prescriber clearly notes in the prescription record that the patient was diagnosed with cancer or sickle cell disease or is receiving hospice care, as applicable.

(b) A dispenser is not subject to the requirements of Section 481.0764(a) if it is clearly noted in the prescription record that the patient has been diagnosed with cancer or sickle cell disease or is receiving hospice care.

(c) A prescriber or dispenser is not subject to the requirements of Section 481.0764(a) and a dispenser is not subject to a rule adopted under Section 481.0761(j) if the prescriber or dispenser makes a good faith attempt to comply but is unable to access the information under Section 481.076(a)(5) because of circumstances outside the control of the prescriber or dispenser.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 6, eff. September 1, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 640 (S.B. 1564), Sec. 1, eff. June 10, 2019.

Sec. 481.0766. REPORTS OF WHOLESALE DISTRIBUTORS. (a) A wholesale distributor shall report to the board the distribution of all Schedules II, III, IV, and V controlled substances by the distributor to a person in this state. The distributor shall report the information to the board in the same format and with the same frequency as the information is reported to the Federal Drug Enforcement Administration.

(b) Information reported to the board under Subsection (a) is confidential and not subject to disclosure under Chapter 552, Government Code.

(c) The board shall make the information reported under Subsection (a) available to the State Board of Veterinary Medical

Examiners for the purpose of routine inspections and investigations.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 6, eff. September 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 449 (S.B. 1947), Sec. 1, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 965 (S.B. 683), Sec. 3, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 4.003, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 2, eff. September 1, 2019.

Sec. 481.0767. ADVISORY COMMITTEE. (a) The board shall establish an advisory committee to make recommendations regarding information submitted to the board and access to that information under Sections 481.074, 481.075, 481.076, and 481.0761, including recommendations for:

(1) operational improvements to the electronic system that stores the information, including implementing best practices and improvements that address system weaknesses and workflow challenges;

(2) resolutions to identified data concerns;

(3) methods to improve data accuracy, integrity, and security and to reduce technical difficulties; and

(4) the addition of any new data set or service to the information submitted to the board or the access to that information.

(b) The board shall appoint the following members to the advisory committee:

(1) a physician licensed in this state who practices in pain management;

(2) a physician licensed in this state who practices in family medicine;

(3) a physician licensed in this state who performs surgery;

(4) a physician licensed in this state who practices in emergency medicine at a hospital;

(5) a physician licensed in this state who practices in psychiatry;

(6) an oral and maxillofacial surgeon;

(7) a physician assistant or advanced practice registered nurse to whom a physician has delegated the authority to prescribe or order a drug;

(8) a pharmacist working at a chain pharmacy;

(9) a pharmacist working at an independent pharmacy;

(10) an academic pharmacist; and

(11) two representatives of the health information technology industry, at least one of whom is a representative of a company whose primary line of business is electronic medical records.

(c) Members of the advisory committee serve three-year terms. Each member shall serve until the member's replacement has been appointed.

(d) The advisory committee shall annually elect a presiding officer from its members.

(e) The advisory committee shall meet at least two times a year and at the call of the presiding officer or the board.

(f) A member of the advisory committee serves without compensation but may be reimbursed by the board for actual expenses incurred in performing the duties of the advisory committee.

Added by Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 3, eff. September 1, 2019.

Sec. 481.0768. ADMINISTRATIVE PENALTY: DISCLOSURE OR USE OF INFORMATION. (a) A person authorized to receive information under Section 481.076(a) may not disclose or use the information in a manner not authorized by this subchapter or other law.

(b) A regulatory agency that issues a license, certification, or registration to a prescriber or dispenser shall periodically update the administrative penalties, or any applicable disciplinary guidelines concerning the penalties, assessed by that agency for conduct that violates Subsection (a).

(c) The agency shall set the penalties in an amount sufficient to deter the conduct.

Added by Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 3, eff. September 1, 2019.

Sec. 481.0769. CRIMINAL OFFENSES RELATED TO PRESCRIPTION INFORMATION. (a) A person authorized to receive information under Section 481.076(a) commits an offense if the person discloses or uses the information in a manner not authorized by this subchapter or other law.

(b) A person requesting information under Section 481.076(a-6) commits an offense if the person makes a material misrepresentation or fails to disclose a material fact in the request for information under that subsection.

(c) An offense under Subsection (a) is a Class A misdemeanor.

(d) An offense under Subsection (b) is a Class C misdemeanor.

Added by Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 3, eff. September 1, 2019.

Sec. 481.077. CHEMICAL PRECURSOR RECORDS AND REPORTS. (a) Except as provided by Subsection (l), a person who sells, transfers, or otherwise furnishes a chemical precursor to another person shall make an accurate and legible record of the transaction and maintain the record for at least two years after the date of the transaction.

(b) The director by rule may:

(1) name an additional chemical substance as a chemical precursor for purposes of Subsection (a) if the director determines that public health and welfare are jeopardized by evidenced proliferation or use of the chemical substance in the illicit manufacture of a controlled substance or controlled substance analogue; or

(2) exempt a chemical precursor from the requirements of Subsection (a) if the director determines that the chemical precursor does not jeopardize public health and welfare or is not used in the illicit manufacture of a controlled substance or a controlled substance analogue.

(b-1) If the director names a chemical substance as a chemical precursor for purposes of Subsection (a) or designates a substance as an immediate precursor, a substance that is a precursor of the chemical precursor or the immediate precursor is not subject to control solely because it is a precursor of the chemical precursor or the immediate precursor.

(c) This section does not apply to a person to whom a

registration has been issued by the Federal Drug Enforcement Agency or who is exempt from such registration.

(d) Before selling, transferring, or otherwise furnishing to a person in this state a chemical precursor subject to Subsection (a), a manufacturer, wholesaler, retailer, or other person shall:

(1) if the recipient does not represent a business, obtain from the recipient:

(A) the recipient's driver's license number or other personal identification certificate number, date of birth, and residential or mailing address, other than a post office box number, from a driver's license or personal identification certificate issued by the department that contains a photograph of the recipient;

(B) the year, state, and number of the motor vehicle license of the motor vehicle owned or operated by the recipient;

(C) a complete description of how the chemical precursor is to be used; and

(D) the recipient's signature; or

(2) if the recipient represents a business, obtain from the recipient:

(A) a letter of authorization from the business that includes the business license or comptroller tax identification number, address, area code, and telephone number and a complete description of how the chemical precursor is to be used; and

(B) the recipient's signature; and

(3) for any recipient, sign as a witness to the signature and identification of the recipient.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.011(1), eff. September 1, 2019.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.011(1), eff. September 1, 2019.

(g) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.011(1), eff. September 1, 2019.

(h) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.011(1), eff. September 1, 2019.

(i) A manufacturer, wholesaler, retailer, or other person who discovers a loss or theft of a chemical precursor subject to Subsection (a) shall:

(1) submit a report of the transaction to the director in accordance with department rule; and

(2) include in the report:

(A) any difference between the amount of the chemical precursor actually received and the amount of the chemical precursor shipped according to the shipping statement or invoice; or

(B) the amount of the loss or theft.

(j) A report under Subsection (i) must:

(1) be made not later than the third day after the date that the manufacturer, wholesaler, retailer, or other person learns of the discrepancy, loss, or theft; and

(2) if the discrepancy, loss, or theft occurred during a shipment of the chemical precursor, include the name of the common carrier or person who transported the chemical precursor and the date that the chemical precursor was shipped.

(k) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any chemical precursor subject to Subsection (a), or a commercial purchaser or other person who receives a chemical precursor subject to Subsection (a):

(1) shall maintain records and inventories in accordance with rules established by the director;

(2) shall allow a member of the department or a peace officer to conduct audits and inspect records of purchases and sales and all other records made in accordance with this section at any reasonable time; and

(3) may not interfere with the audit or with the full and complete inspection or copying of those records.

(l) This section does not apply to the sale or transfer of any compound, mixture, or preparation containing ephedrine, pseudoephedrine, or norpseudoephedrine that is in liquid, liquid capsule, or liquid gel capsule form.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(k), eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 745, Sec. 17, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 12, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 570, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1099, Sec. 6, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 4, eff. August 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 14, eff. September 1, 2016.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.001, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.011(1), eff. September 1, 2019.

Sec. 481.0771. RECORDS AND REPORTS ON PSEUDOEPHEDRINE. (a) A wholesaler who sells, transfers, or otherwise furnishes a product containing ephedrine, pseudoephedrine, or norpseudoephedrine to a retailer shall:

(1) before delivering the product, obtain from the retailer the retailer's address, area code, and telephone number; and

(2) make an accurate and legible record of the transaction and maintain the record for at least two years after the date of the transaction.

(b) The wholesaler shall make all records available to the director in accordance with department rule, including:

(1) the information required by Subsection (a)(1);

(2) the amount of the product containing ephedrine, pseudoephedrine, or norpseudoephedrine delivered; and

(3) any other information required by the director.

(c) Not later than 10 business days after receipt of an order for a product containing ephedrine, pseudoephedrine, or norpseudoephedrine that requests delivery of a suspicious quantity of the product as determined by department rule, a wholesaler shall submit to the director a report of the order in accordance with department rule.

(d) A wholesaler who, with reckless disregard for the duty to report, fails to report as required by Subsection (c) may be subject to disciplinary action in accordance with department rule.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 5, eff. August 1, 2005.

Sec. 481.080. CHEMICAL LABORATORY APPARATUS RECORD-KEEPING REQUIREMENTS. (a) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes a chemical laboratory apparatus shall make an accurate and legible record of the transaction and maintain the record for at least two years after the

date of the transaction.

(b) The director may adopt rules to implement this section.

(c) The director by rule may:

(1) name an additional item of equipment as a chemical laboratory apparatus for purposes of Subsection (a) if the director determines that public health and welfare are jeopardized by evidenced proliferation or use of the item of equipment in the illicit manufacture of a controlled substance or controlled substance analogue; or

(2) exempt a chemical laboratory apparatus from the requirement of Subsection (a) if the director determines that the apparatus does not jeopardize public health and welfare or is not used in the illicit manufacture of a controlled substance or a controlled substance analogue.

(d) This section does not apply to a person to whom a registration has been issued by the Federal Drug Enforcement Agency or who is exempt from such registration.

(d-1) This section does not apply to a chemical manufacturer engaged in commercial research and development:

(1) whose primary business is the manufacture, use, storage, or transportation of hazardous, combustible, or explosive materials;

(2) that operates a secure, restricted location that contains a physical plant not open to the public, the ingress into which is constantly monitored by security personnel; and

(3) that holds:

(A) a Voluntary Protection Program Certification under Section (2)(b)(1), Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 et seq.); or

(B) a Facility Operations Area authorization under the Texas Risk Reduction Program (30 T.A.C. Chapter 350).

(e) Before selling, transferring, or otherwise furnishing to a person in this state a chemical laboratory apparatus subject to Subsection (a), a manufacturer, wholesaler, retailer, or other person shall:

(1) if the recipient does not represent a business, obtain from the recipient:

(A) the recipient's driver's license number or other personal identification certificate number, date of birth, and residential or mailing address, other than a post office box number,

from a driver's license or personal identification certificate issued by the department that contains a photograph of the recipient;

(B) the year, state, and number of the motor vehicle license of the motor vehicle owned or operated by the recipient;

(C) a complete description of how the apparatus is to be used; and

(D) the recipient's signature; or

(2) if the recipient represents a business, obtain from the recipient:

(A) a letter of authorization from the business that includes the business license or comptroller tax identification number, address, area code, and telephone number and a complete description of how the apparatus is to be used; and

(B) the recipient's signature; and

(3) for any recipient, sign as a witness to the signature and identification of the recipient.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.011(3), eff. September 1, 2019.

(g) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.011(3), eff. September 1, 2019.

(h) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.011(3), eff. September 1, 2019.

(i) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.011(3), eff. September 1, 2019.

(j) A manufacturer, wholesaler, retailer, or other person who discovers a loss or theft of such an apparatus shall:

(1) submit a report of the transaction to the director in accordance with department rule; and

(2) include in the report:

(A) any difference between the number of the apparatus actually received and the number of the apparatus shipped according to the shipping statement or invoice; or

(B) the number of the loss or theft.

(k) A report under Subsection (j) must:

(1) be made not later than the third day after the date that the manufacturer, wholesaler, retailer, or other person learns of the discrepancy, loss, or theft; and

(2) if the discrepancy, loss, or theft occurred during a shipment of the apparatus, include the name of the common carrier or person who transported the apparatus and the date that the apparatus

was shipped.

(l) This subsection applies to a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any chemical laboratory apparatus subject to Subsection (a) and to a commercial purchaser or other person who receives such an apparatus. A person covered by this subsection:

(1) shall maintain records and inventories in accordance with rules established by the director;

(2) shall allow a member of the department or a peace officer to conduct audits and inspect records of purchases and sales and all other records made in accordance with this section at any reasonable time; and

(3) may not interfere with the audit or with the full and complete inspection or copying of those records.

Added by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(l), eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 19, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 14, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 83 (S.B. 1666), Sec. 1, eff. May 22, 2015.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.002, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.003, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.011(3), eff. September 1, 2019.

SUBCHAPTER D. OFFENSES AND PENALTIES

Sec. 481.101. CRIMINAL CLASSIFICATION. For the purpose of establishing criminal penalties for violations of this chapter, controlled substances, including a material, compound, mixture, or preparation containing the controlled substance, are divided into Penalty Groups 1 through 4.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(n), eff. Sept. 1, 1989.

Sec. 481.102. PENALTY GROUP 1. Penalty Group 1 consists of:

(1) the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Allylprodine;
Alphacetylmethadol;
Benzethidine;
Betaprodine;
Clonitazene;
Diampromide;
Diethylthiambutene;
Difenoxin not listed in Penalty Group 3 or 4;
Dimenoxadol;
Dimethylthiambutene;
Dioxaphetyl butyrate;
Dipipanone;
Ethylmethylthiambutene;
Etonitazene;
Etoxeridine;
Furethidine;
Hydroxypethidine;
Ketobemidone;
Levophenacylmorphan;
Meprodine;
Methadol;
Moramide;
Morpheridine;
Noracymethadol;
Norlevorphanol;
Normethadone;
Norpipanone;
Phenadoxone;
Phenampromide;
Phenomorphan;
Phenoperidine;
Piritramide;
Proheptazine;
Properidine;
Propiram;

Tilidine; and
Trimeperidine;

(2) the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

Acetorphine;
Acetyldihydrocodeine;
Benzylmorphine;
Codeine methylbromide;
Codeine-N-Oxide;
Cyprenorphine;
Desomorphine;
Dihydromorphine;
Drotebanol;
Etorphine, except hydrochloride salt;
Heroin;
Hydromorphinol;
Methyldesorphine;
Methyldihydromorphine;
Monoacetylmorphine;
Morphine methylbromide;
Morphine methylsulfonate;
Morphine-N-Oxide;
Myrophine;
Nicocodeine;
Nicomorphine;
Normorphine;
Pholcodine; and
Thebacon;

(3) the following substances, however produced, except those narcotic drugs listed in another group:

(A) Opium and opiate not listed in Penalty Group 3 or 4, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine derived butorphanol, nalmefene and its salts, naloxone and its salts, and naltrexone and its salts, but including:

Codeine not listed in Penalty Group 3 or 4;
Dihydroetorphine;
Ethylmorphine not listed in Penalty Group 3 or 4;

Granulated opium;
Hydrocodone not listed in Penalty Group 3;
Hydromorphone;
Metopon;
Morphine not listed in Penalty Group 3;
Opium extracts;
Opium fluid extracts;
Oripavine;
Oxycodone;
Oxymorphone;
Powdered opium;
Raw opium;
Thebaine; and
Tincture of opium;

(B) a salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by Paragraph (A), other than the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Cocaine, including:

(i) its salts, its optical, position, and geometric isomers, and the salts of those isomers;

(ii) coca leaves and a salt, compound, derivative, or preparation of coca leaves; and

(iii) a salt, compound, derivative, or preparation of a salt, compound, or derivative that is chemically equivalent or identical to a substance described by Subparagraph (i) or (ii), other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine; and

(E) concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrine alkaloids of the opium poppy;

(4) the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Alphaprodine;
Anileridine;
Bezitramide;
Dihydrocodeine not listed in Penalty Group 3 or 4;

Diphenoxylate not listed in Penalty Group 3 or 4;
Isomethadone;
Levomethorphan;
Levorphanol;
Metazocine;
Methadone;
Methadone-Intermediate, 4-cyano-2-dimethylamino- 4, 4-diphenyl butane;
Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
PEPAP (1-(2-phenethyl)-4-phenyl-4- acetoxypiperidine);
Pethidine (Meperidine);
Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
Pethidine-Intermediate-B, ethyl-4- phenylpiperidine-4 carboxylate;
Pethidine-Intermediate-C, 1-methyl-4- phenylpiperidine-4-carboxylic acid;
Phenazocine;
Piminodine;
Racemethorphan; and
Racemorphan;

(5) Flunitrazepam (trade or other name: Rohypnol);

(6) Methamphetamine, including its salts, optical isomers, and salts of optical isomers;

(7) Phenylacetone and methylamine, if possessed together with intent to manufacture methamphetamine;

(8) Phencyclidine, including its salts;

(9) Gamma hydroxybutyric acid (some trade or other names: gamma hydroxybutyrate, GHB), including its salts;

(10) Ketamine;

(11) Phenazepam;

(12) U-47700;

(13) AH-7921;

(14) ADB-FUBINACA;

(15) AMB-FUBINACA; and

(16) MDMB-CHMICA.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(n), eff. Sept. 1, 1989;

Acts 1991, 72nd Leg., ch. 761, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 21, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 16, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 459, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1099, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 739 (S.B. 449), Sec. 1, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 491 (H.B. 2671), Sec. 1, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 2, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 2, eff. September 1, 2023.

Sec. 481.1021. PENALTY GROUP 1-A. (a) Penalty Group 1-A consists of:

(1) lysergic acid diethylamide (LSD), including its salts, isomers, and salts of isomers; and

(2) compounds structurally derived from 2,5-dimethoxyphenethylamine by substitution at the 1-amino nitrogen atom with a benzyl substituent, including:

(A) compounds further modified by:

(i) substitution in the phenethylamine ring at the 4-position to any extent (including alkyl, alkoxy, alkylenedioxy, haloalkyl, or halide substituents); or

(ii) substitution in the benzyl ring to any extent (including alkyl, alkoxy, alkylenedioxy, haloalkyl, or halide substituents); and

(B) by example, compounds such as:

4-Bromo-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (trade or other names: 25B-NBOMe, 2C-B-NBOMe);

4-Chloro-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (trade or other names: 25C-NBOMe, 2C-C-NBOMe);

2,5-Dimethoxy-4-methyl-N-(2-methoxybenzyl)phenethylamine (trade or other names: 25D-NBOMe, 2C-D-NBOMe);

4-Ethyl-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (trade or other names: 25E-NBOMe, 2C-E-NBOMe);

2,5-Dimethoxy-N-(2- methoxybenzyl)phenethylamine (some trade and other names: 25H-NBOMe, 2C-H-NBOMe);

4-Iodo-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (some trade and other names: 25I-NBOMe, 2C-I-NBOMe);

4-Iodo-2,5-dimethoxy-N- benzylphenethylamine (trade or other name: 25I-NB);

4-Iodo-2,5-dimethoxy-N-(2,3-methylenedioxybenzyl)phenethylamine (trade or other name: 25I-NBMD);

4-Iodo-2,5-dimethoxy-N-(2-fluorobenzyl)phenethylamine (trade or other name: 25I-NBF);

4-Iodo-2,5-dimethoxy-N-(2-hydroxybenzyl)phenethylamine (trade or other name: 25I-NBOH);

2,5-Dimethoxy-4-nitro-N-(2-methoxybenzyl)phenethylamine (trade or other names: 25N-NBOMe, 2C-N-NBOMe); and

2,5-Dimethoxy-4-(n)-propyl-N-(2-methoxybenzyl)phenethylamine (some trade and other names: 25P-NBOMe, 2C-P-NBOMe).

(b) To the extent Subsection (a)(2) conflicts with another provision of this subtitle or another law, the other provision or the other law prevails.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 22, eff. Jan. 1, 1998.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 64 (S.B. 172), Sec. 2, eff. September 1, 2015.

Sec. 481.1022. PENALTY GROUP 1-B. Penalty Group 1-B consists of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

Alfentanil;

Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2- phenethyl)-4-piperidinyl] -N-phenylpropanamide);
Beta-hydroxy-3-methylfentanyl;
Carfentanil;
Fentanyl, alpha-methylfentanyl, and any other derivative of fentanyl;
3-methylfentanyl(N-[3-methyl-1-(2-phenylethyl)- 4-piperidyl]-N-phenylpropanamide);
3-methylthiofentanyl(N-[3-methyl-1-(2-thienyl) ethyl-4-piperidinyl]-N-phenylpropanamide);
Para-fluorofentanyl(N-(4-fluorophenyl)-N-1-(2-phenylethyl)-4-piperidinylpropanamide);
Remifentanil;
Sufentanil; and
Thiofentanyl(N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide).

Added by Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 3, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 3, eff. September 1, 2023.

Sec. 481.103. PENALTY GROUP 2. (a) Penalty Group 2 consists of:

(1) any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

5-(2-aminopropyl)benzofuran (5-APB);
6-(2-aminopropyl)benzofuran (6-APB);
5-(2-aminopropyl)-2,3-dihydrobenzofuran (5-APDB);
6-(2-aminopropyl)-2,3-dihydrobenzofuran (6-APDB);
5-(2-aminopropyl)indole (5-IT,5-API);
6-(2-aminopropyl)indole (6-IT,6-API);
1-(benzofuran-5-yl)-N-methylpropan-2-amine (5-MAPB);

1-(benzofuran-6-yl)-N-methylpropan-2-amine (6-MAPB);

Benzothiophenylcyclohexylpiperidine (BTCP);

8-bromo-alpha-methyl-benzo[1,2-b:4,5-b']difuran- 4-ethanamine (trade or other name: Bromo-DragonFLY);

Desoxypipradrol (2-benzhydrylpiperidine);

2, 5-dimethoxyamphetamine (some trade or other names: 2, 5-dimethoxy-alpha-methylphenethylamine; 2, 5-DMA);

Diphenylprolinol (diphenyl(pyrrolidin-2-yl) methanol, D2PM);

Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product (some trade or other names for Dronabinol: (a6aR-trans)-6a,7,8,10a-tetrahydro- 6,6, 9- trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol or (-)-delta-9- (trans)-tetrahydrocannabinol);

Ethylamine Analog of Phencyclidine (some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1- phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE);

2-ethylamino-2-(3-methoxyphenyl)cyclohexanone (trade or other name: methoxetamine);

Ibogaine (some trade or other names: 7-Ethyl-6, 6, beta 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H- pyrido [1', 2':1, 2] azepino [5, 4-b] indole; tabernanthe iboga.);

5-iodo-2-aminoindane (5-IAI);

Mescaline;

5-methoxy-3, 4-methylenedioxy amphetamine;

4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

4-methoxymethamphetamine (PMMA);

2-(2-methoxyphenyl)-2-(methylamino)cyclohexanone (some trade and other names: 2-MeO-ketamine; methoxyketamine);

1-methyl- 4-phenyl-4-propionoxypiperidine (MPPP, PPMP);

4-methyl-2, 5-dimethoxyamphetamine (some trade and other names: 4-methyl-2, 5-dimethoxy-alpha- methylphenethylamine; "DOM"; "STP");

3,4-methylenedioxy methamphetamine (MDMA, MDM);

3,4-methylenedioxy amphetamine;

3,4-methylenedioxy N-ethylamphetamine (Also known as N-ethyl MDA);

5,6-methylenedioxy-2-aminoindane (MDAI);

Nabilone (Another name for nabilone: (+)-trans- 3-(1,1-dimethylheptyl)- 6,6a, 7,8,10,10a-hexahydro-1-hydroxy- 6, 6-dimethyl-9H-dibenzo[b,d] pyran-9-one;

N-benzylpiperazine (some trade or other names: BZP; 1-benzylpiperazine);

N-ethyl-3-piperidyl benzilate;

N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA);

4-methylaminorex;

N-methyl-3-piperidyl benzilate;

Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b, d] pyran; Synhexyl);

1-Phenylcyclohexylamine;

1-Piperidinocyclohexanecarbonitrile (PCC);

Pyrrolidine Analog of Phencyclidine (some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);

Tetrahydrocannabinols, other than marihuana, and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers; or

compounds of these structures, regardless of numerical designation of atomic positions, since nomenclature of these substances is not internationally standardized;

Thiophene Analog of Phencyclidine (some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl Analog of Phencyclidine; TPCP, TCP);

1-pyrrolidine (some trade or other name: TCPy);

1-(3-trifluoromethylphenyl)piperazine (trade or other name: TFMPP); and

3,4,5-trimethoxy amphetamine;

(2) Phenylacetone (some trade or other names: Phenyl-2-propanone; P2P, Benzymethyl ketone, methyl benzyl ketone);

(3) unless specifically excepted or unless listed in another Penalty Group, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant or stimulant effect on the central nervous system:

Aminorex (some trade or other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5- phenyl-2-oxazolamine);

Amphetamine, its salts, optical isomers, and salts of optical isomers;

Cathinone (some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2- aminopropiophenone);

Etaqualone and its salts;

Etorphine Hydrochloride;

Fenethylline and its salts;

Lisdexamfetamine, including its salts, isomers, and salts of isomers;

Mecloqualone and its salts;

Methaqualone and its salts;

Methcathinone (some trade or other names: 2-methylamino-propiophenone; alpha-(methylamino)propriophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropriophenone; monomethylpropion; ephedrone, N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR 1431);

N-Ethylamphetamine, its salts, optical isomers, and salts of optical isomers; and

N,N-dimethylamphetamine (some trade or other names: N,N,alpha-trimethylbenzeneethanamine; N,N,alpha-trimethylphenethylamine), its salts, optical isomers, and salts of optical isomers;

(4) any compound structurally derived from 2-aminopropanal by substitution at the 1-position with any monocyclic or fused-polycyclic ring system, including:

(A) compounds further modified by:

(i) substitution in the ring system to any extent (including alkyl, alkoxy, alkylenedioxy, haloalkyl, or halide substituents), whether or not further substituted in the ring system by other substituents;

(ii) substitution at the 3-position with an alkyl substituent; or

(iii) substitution at the 2-amino nitrogen atom with alkyl, benzyl, dialkyl, or methoxybenzyl groups, or inclusion of the 2-amino nitrogen atom in a cyclic structure; and

(B) by example, compounds such as:

4-Methylmethcathinone (Also known as Mephedrone);

3,4-Dimethylmethcathinone (Also known as 3,4-DMMC);

3-Fluoromethcathinone (Also known as 3-FMC);

4-Fluoromethcathinone (Also known as Flephedrone);

3,4-Methylenedioxy-N-methylcathinone (Also known as Methylone);

3,4-Methylenedioxypyrovalerone (Also known as MDPV);

alpha-Pyrrolidinopentiophenone (Also known as alpha-PVP);

Naphthylpyrovalerone (Also known as Naphyrone);

alpha-Methylamino-valerophenone (Also known as Pentedrone);

beta-Keto-N-methylbenzodioxolylpropylamine (Also known as Butylone);

beta-Keto-N-methylbenzodioxolylpentanamine (Also known as Pentylone);

beta-Keto-Ethylbenzodioxolylbutanamine (Also known as Eutylone); and

3,4-methylenedioxy-N-ethylcathinone (Also known as Ethylone);

(5) any compound structurally derived from tryptamine (3-(2-aminoethyl)indole) or a ring-hydroxy tryptamine:

(A) by modification in any of the following ways:

(i) by substitution at the amine nitrogen atom of the sidechain to any extent with alkyl or alkenyl groups or by inclusion of the amine nitrogen atom of the side chain (and no other atoms of the side chain) in a cyclic structure;

(ii) by substitution at the carbon atom adjacent to the nitrogen atom of the side chain (alpha-position) with an alkyl or alkenyl group;

(iii) by substitution in the 6-membered ring to any extent with alkyl, alkoxy, haloalkyl, thioaklyl, alkylenedioxy, or halide substituents; or

(iv) by substitution at the 2-position of the tryptamine ring system with an alkyl substituent; and

(B) including:

(i) ethers and esters of the controlled substances listed in this subdivision; and

(ii) by example, compounds such as:

alpha-ethyltryptamine;

alpha-methyltryptamine;

Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)- 5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N- dimethyltryptamine; mappine);

Diethyltryptamine (some trade and other names: N, N-Diethyltryptamine, DET);

Dimethyltryptamine (trade or other name: DMT);

5-methoxy-N, N-diisopropyltryptamine (5-MeO-DiPT);

O-Acetylpsilocin (Trade or other name: 4-Aco-DMT);

Psilocin; and

Psilocybin;

(6) 2,5-Dimethoxyphenethylamine and any compound structurally derived from 2,5-Dimethoxyphenethylamine by substitution at the 4-position of the phenyl ring to any extent (including alkyl, alkoxy, alkylenedioxy, haloalkyl, or halide substituents), including, by example, compounds such as:

4-Bromo-2,5-dimethoxyphenethylamine (trade or other name: 2C-B);

4-Chloro-2,5-dimethoxyphenethylamine (trade or other name: 2C-C);

2,5-Dimethoxy-4-methylphenethylamine (trade or other name: 2C-D);

4-Ethyl-2,5-dimethoxyphenethylamine (trade or other name: 2C-E);

4-Iodo-2,5-dimethoxyphenethylamine (trade or other name: 2C-I);

2,5-Dimethoxy-4-nitrophenethylamine (trade or other name: 2C-N);

2,5-Dimethoxy-4-(n)-propylphenethylamine (trade or other name: 2C-P);

4-Ethylthio-2,5-dimethoxyphenethylamine (trade or other name: 2C-T-2);

4-Isopropylthio-2,5-dimethoxyphenethylamine (trade or

other name: 2C-T-4); and

2,5-Dimethoxy-4-(n)-propylthiophenethylamine (trade or other name: 2C-T-7); and

(7) 2,5-Dimethoxyamphetamine and any compound structurally derived from 2,5-Dimethoxyamphetamine by substitution at the 4-position of the phenyl ring to any extent (including alkyl, alkoxy, alkylenedioxy, haloalkyl, or halide substituents), including, by example, compounds such as:

4-Ethylthio-2,5-dimethoxyamphetamine (trade or other name: Aleph-2);

4-Isopropylthio-2,5-dimethoxyamphetamine (trade or other name: Aleph-4);

4-Bromo-2,5-dimethoxyamphetamine (trade or other name: DOB);

4-Chloro-2,5-dimethoxyamphetamine (trade or other name: DOC);

2,5-Dimethoxy-4-ethylamphetamine (trade or other name: DOET);

4-Iodo-2,5-dimethoxyamphetamine (trade or other name: DOI);

2,5-Dimethoxy-4-methylamphetamine (trade or other name: DOM);

2,5-Dimethoxy-4-nitroamphetamine (trade or other name: DON);

4-Isopropyl-2,5-dimethoxyamphetamine (trade or other name: DOIP); and

2,5-Dimethoxy-4-(n)-propylamphetamine (trade or other name: DOPR).

(b) For the purposes of Subsection (a)(1) only, the term "isomer" includes an optical, position, or geometric isomer.

(c) To the extent Subsection (a)(4), (5), (6), or (7) conflicts with another provision or this subtitle or another law, the other provision or the other law prevails. If a substance listed in this section is also listed in another penalty group, the listing in the other penalty group controls.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 384 (S.B. 227), Sec. 1, and Ch. 491 (H.B. 2671), Sec. 3, eff. September 1, 2017.

Amended by Acts 1997, 75th Leg., ch. 745, Sec. 23, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 17, eff. Sept. 1, 2001; Acts

2003, 78th Leg., ch. 1099, Sec. 8, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 739 (S.B. 449), Sec. 2, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 784 (H.B. 2118), Sec. 1, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 64 (S.B. 172), Sec. 3, eff. September 1, 2015.
Acts 2017, 85th Leg., R.S., Ch. 384 (S.B. 227), Sec. 1, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 491 (H.B. 2671), Sec. 3, eff. September 1, 2017.

Sec. 481.1031. PENALTY GROUP 2-A. (a) In this section:

(1) "Core component" is one of the following: azaindole, benzimidazole, benzothiazole, carbazole, imidazole, indane, indazole, indene, indole, pyrazole, pyrazolopyridine, pyridine, or pyrrole.

(2) "Group A component" is one of the following: adamantane, benzene, cycloalkylmethyl, isoquinoline, methylpiperazine, naphthalene, phenyl, quinoline, tetrahydronaphthalene, tetramethylcyclopropane, amino oxobutane, amino dimethyl oxobutane, amino phenyl oxopropane, methyl methoxy oxobutane, methoxy dimethyl oxobutane, methoxy phenyl oxopropane, or an amino acid.

(3) "Link component" is one of the following functional groups: carboxamide, carboxylate, hydrazide, methanone (ketone), ethanone, methanediyl (methylene bridge), or methine.

(b) Penalty Group 2-A consists of any material, compound, mixture, or preparation that contains any quantity of a natural or synthetic chemical substance, including its salts, isomers, and salts of isomers, listed by name in this subsection or contained within one of the structural classes defined in this subsection:

(1) WIN-55,212-2;

(2) Cyclohexylphenol: any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not substituted in the cyclohexyl ring to any extent, including:

JWH-337;

JWH-344;
CP-55,940;
CP-47,497; and
analogues of CP-47,497;

(3) Cannabinol derivatives, except where contained in marihuana, including tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives, such as:
Nabilone;
HU-210; and
HU-211;

(4) Tetramethylcyclopropyl thiazole: any compound structurally derived from 2,2,3,3-tetramethyl-N-(thiazol- 2-ylidene)cyclopropanecarboxamide by substitution at the nitrogen atom of the thiazole ring, whether or not further substituted in the thiazole ring to any extent, whether or not substituted in the tetramethylcyclopropyl ring to any extent, including:
A-836,339;

(5) any compound containing a core component substituted at the 1-position to any extent, and substituted at the 3-position with a link component attached to a group A component, whether or not the core component or group A component are further substituted to any extent, including:
Naphthoylindane;
Naphthoylindazole (THJ-018);
Naphthyl methyl indene (JWH-171);
Naphthoylindole (JWH-018);
Quinolinoyl pyrazole carboxylate (Quinolinyl fluoropentyl fluorophenyl pyrazole carboxylate);
Naphthoyl pyrazolopyridine; and
Naphthoylpyrrole (JWH-030);

(6) any compound containing a core component substituted at the 1-position to any extent, and substituted at the 2-position with a link component attached to a group A component, whether or not the core component or group A component are further substituted to any extent, including:
Naphthoylbenzimidazole (JWH-018 Benzimidazole); and
Naphthoylimidazole;

(7) any compound containing a core component substituted at the 3-position to any extent, and substituted at the 2-position with a link component attached to a group A component, whether or not the

core component or group A component are further substituted to any extent, including:

Naphthoyl benzothiazole; and

(8) any compound containing a core component substituted at the 9-position to any extent, and substituted at the 3-position with a link component attached to a group A component, whether or not the core component or group A component are further substituted to any extent, including:

Naphthoylcarbazole (EG-018).

Added by Acts 2011, 82nd Leg., R.S., Ch. 170 (S.B. 331), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 65 (S.B. 173), Sec. 2, eff. September 1, 2015.

Sec. 481.104. PENALTY GROUP 3. (a) Penalty Group 3 consists of:

(1) a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

Methylphenidate and its salts; and

Phenmetrazine and its salts;

(2) a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

a substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid not otherwise described by this subsection;

a compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt of any of these, and one or more active medicinal ingredients that are not listed in any penalty group;

a suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs, and approved by the United States Food and Drug Administration for marketing only as a suppository;

Alprazolam;
Amobarbital;
Bromazepam;
Camazepam;
Carisoprodol;
Chlordiazepoxide;
Chlorhexadol;
Clobazam;
Clonazepam;
Clorazepate;
Clotiazepam;
Cloxazolam;
Delorazepam;
Diazepam;
Estazolam;
Ethyl loflazepate;
Etizolam;
Fludiazepam;
Flurazepam;
Glutethimide;
Halazepam;
Haloxzolam;
Ketazolam;
Loprazolam;
Lorazepam;
Lormetazepam;
Lysergic acid, including its salts, isomers, and salts of isomers;
Lysergic acid amide, including its salts, isomers, and salts of isomers;
Mebutamate;
Medazepam;
Methyprylon;
Midazolam;
Nimetazepam;
Nitrazepam;
Nordiazepam;
Oxazepam;
Oxazolam;
Pentazocine, its salts, derivatives, or compounds or

mixtures thereof;

Pentobarbital;

Pinazepam;

Prazepam;

Quazepam;

Secobarbital;

Sulfondiethylmethane;

Sulfonethylmethane;

Sulfonmethane;

Temazepam;

Tetrazepam;

Tiletamine and zolazepam in combination, and its salts. (some trade or other names for a tiletamine-zolazepam combination product: Telazol, for tiletamine: 2-(ethylamino)- 2-(2-thienyl)-cyclohexanone, and for zolazepam: 4-(2- fluorophenyl)-6, 8-dihydro-1,3,8,-trimethylpyrazolo-[3,4- e](1,4)-d diazepin-7(1H)-one, flupyrazapon);

Tramadol;

Triazolam;

Zaleplon;

Zolpidem; and

Zopiclone;

(3) Nalorphine;

(4) a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs, or any of their salts:

not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more

than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) a material, compound, mixture, or preparation that contains any quantity of the following substances:

Barbital;

Chloral betaine;

Chloral hydrate;

Ethchlorvynol;

Ethinamate;

Meprobamate;

Methohexital;

Methylphenobarbital (Mephobarbital);

Paraldehyde;

Petrichloral; and

Phenobarbital;

(6) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as Lophophora, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(7) unless listed in another penalty group, a material, compound, mixture, or preparation that contains any quantity of the

following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

Benzphetamine;
Cathine [(+)-norpseudoephedrine];
Chlorphentermine;
Clortermine;
Diethylpropion;
Fencamfamin;
Fenfluramine;
Fenproporex;
Mazindol;
Mefenorex;
Modafinil;
Pemoline (including organometallic complexes and their chelates);
Phendimetrazine;
Phentermine;
Pipradrol;
Sibutramine; and
SPA [(-)-1-dimethylamino-1,2-diphenylethane];

(8) unless specifically excepted or unless listed in another penalty group, a material, compound, mixture, or preparation that contains any quantity of the following substance, including its salts:

Dextropropoxyphene (Alpha-(+)-4-dimethylamino- 1,2-diphenyl-3-methyl-2-propionoxybutane);

(9) an anabolic steroid, including any drug or hormonal substance, or any substance that is chemically or pharmacologically related to testosterone, other than an estrogen, progestin, dehydroepiandrosterone, or corticosteroid, and promotes muscle growth, including the following drugs and substances and any salt, ester, or ether of the following drugs and substances:

Androstanediol;
Androstanedione;
Androstenediol;
Androstenedione;
Bolasterone;

Boldenone;
Calusterone;
Clostebol;
Dehydrochlormethyltestosterone;
Delta-1-dihydrotestosterone;
Dihydrotestosterone (4-dihydrotestosterone);
Drostanolone;
Ethylestrenol;
Fluoxymesterone;
Formebulone;
Furazabol;
13beta-ethyl-17beta-hydroxygon-4-en-3-one;
4-hydroxytestosterone;
4-hydroxy-19-nortestosterone;
Mestanolone;
Mesterolone;
Methandienone;
Methandriol;
Methenolone;
17alpha-methyl-3beta, 17 beta-dihydroxy-5alpha-androstane;
17alpha-methyl-3alpha, 17 beta-dihydroxy-5alpha-androstane;
17alpha-methyl-3beta, 17beta-dihydroxyandrost-4- ene;
17alpha-methyl-4-hydroxynandrolone;
Methyldienolone;
Methyltestosterone;
Methyltrienolone;
17alpha-methyl-delta-1-dihydrotestosterone;
Mibolerone;
Nandrolone;
Norandrostenediol;
Norandrostenedione;
Norbolethone;
Norclostebol;
Norethandrolone;
Normethandrolone;
Oxandrolone;
Oxymesterone;
Oxymetholone;

Stanozolol;
Stenbolone;
Testolactone;
Testosterone;
Tetrahydrogestrinone; and
Trenbolone; and

(10) Salvia divinorum, unless unharvested and growing in its natural state, meaning all parts of that plant, whether growing or not, the seeds of that plant, an extract from a part of that plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant, its seeds, or extracts, including Salvinorin A.

(b) Penalty Group 3 does not include a compound, mixture, or preparation containing a stimulant substance listed in Subsection (a)(1) if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances that have a stimulant effect on the central nervous system.

(c) Penalty Group 3 does not include a compound, mixture, or preparation containing a depressant substance listed in Subsection (a)(2) or (a)(5) if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances that have a depressant effect on the central nervous system.

Amended by Acts 1997, 75th Leg., ch. 745, Sec. 24, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 18, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 739 (S.B. 449), Sec. 3, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1254 (H.B. 124), Sec. 1, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 491 (H.B. 2671), Sec. 2, eff. September 1, 2017.

Sec. 481.105. PENALTY GROUP 4. Penalty Group 4 consists of:

(1) a compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(2) unless specifically excepted or unless listed in another penalty group, a material, compound, mixture, or preparation containing any quantity of the narcotic drug Buprenorphine or Butorphanol or a salt of either; and

(3) unless specifically exempted or excluded or unless listed in another penalty group, any material, compound, mixture, or preparation that contains any quantity of pyrovalerone, a substance having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers.

Amended by Acts 1997, 75th Leg., ch. 745, Sec. 25, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 19, eff. Sept. 1, 2001.

Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE ANALOGUE. For the purposes of the prosecution of an offense under this subchapter involving the manufacture, delivery, or possession of a controlled substance, Penalty Groups 1, 1-A, 1-B, 2, and 2-A include a controlled substance analogue that:

(1) has a chemical structure substantially similar to the chemical structure of a controlled substance listed in the applicable

penalty group; or

(2) is specifically designed to produce an effect substantially similar to, or greater than, a controlled substance listed in the applicable penalty group.

Added by Acts 2003, 78th Leg., ch. 1099, Sec. 9, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 65 (S.B. 173), Sec. 3, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 712 (H.B. 1212), Sec. 5, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 4, eff. September 1, 2021.

Sec. 481.108. PREPARATORY OFFENSES. Title 4, Penal Code, applies to an offense under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 36, eff. Sept. 1, 1995.

Sec. 481.111. EXEMPTIONS. (a) The provisions of this chapter relating to the possession and distribution of peyote do not apply to the use of peyote by a member of the Native American Church in bona fide religious ceremonies of the church or to a person who supplies the substance to the church. An exemption granted to a member of the Native American Church under this section does not apply to a member with less than 25 percent Indian blood.

(b) The provisions of this chapter relating to the possession of denatured sodium pentobarbital do not apply to possession by personnel of a humane society or an animal control agency for the purpose of destroying injured, sick, homeless, or unwanted animals if the humane society or animal control agency is registered with the Federal Drug Enforcement Administration. The provisions of this chapter relating to the distribution of denatured sodium pentobarbital do not apply to a person registered as required by Subchapter C, who is distributing the substance for that purpose to a humane society or an animal control agency registered with the Federal Drug Enforcement Administration.

(c) A person does not violate Section 481.113, 481.116, 481.1161, 481.121, or 481.125 if the person possesses or delivers tetrahydrocannabinols or their derivatives, or drug paraphernalia to be used to introduce tetrahydrocannabinols or their derivatives into the human body, for use in a federally approved therapeutic research program.

(d) The provisions of this chapter relating to the possession and distribution of anabolic steroids do not apply to the use of anabolic steroids that are administered to livestock or poultry.

(e) Sections 481.120, 481.121, 481.122, and 481.125 do not apply to a person who engages in the acquisition, possession, production, cultivation, delivery, or disposal of a raw material used in or by-product created by the production or cultivation of low-THC cannabis if the person:

(1) for an offense involving possession only of marihuana or drug paraphernalia, is a patient for whom low-THC cannabis is prescribed under Chapter 169, Occupations Code, or the patient's legal guardian, and the person possesses low-THC cannabis obtained under a valid prescription from a dispensing organization; or

(2) is a director, manager, or employee of a dispensing organization and the person, solely in performing the person's regular duties at the organization, acquires, possesses, produces, cultivates, dispenses, or disposes of:

(A) in reasonable quantities, any low-THC cannabis or raw materials used in or by-products created by the production or cultivation of low-THC cannabis; or

(B) any drug paraphernalia used in the acquisition, possession, production, cultivation, delivery, or disposal of low-THC cannabis.

(f) For purposes of Subsection (e):

(1) "Dispensing organization" has the meaning assigned by Section 487.001.

(2) "Low-THC cannabis" has the meaning assigned by Section 169.001, Occupations Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.03(d), eff. Sept. 1, 1989. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 170 (S.B. 331), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 3, eff. June 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.004, eff. September 1, 2019.

Sec. 481.112. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 1.

(b) An offense under Subsection (a) is a state jail felony if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than one gram.

(c) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams.

(d) An offense under Subsection (a) is a felony of the first degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 200 grams.

(e) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(f) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed $250,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 1188, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.095, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 4, eff. September 1, 2023.

Sec. 481.1121. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1-A. (a) Except as provided by this chapter, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 1-A.

(b) An offense under this section is:

(1) a state jail felony if the number of abuse units of the controlled substance is fewer than 20;

(2) a felony of the second degree if the number of abuse units of the controlled substance is 20 or more but fewer than 80;

(3) a felony of the first degree if the number of abuse units of the controlled substance is 80 or more but fewer than 4,000; and

(4) a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 15 years and a fine not to exceed $250,000, if the number of abuse units of the controlled substance is 4,000 or more.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 26, eff. Jan. 1, 1998. Amended by Acts 2001, 77th Leg., ch. 1188, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.096, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 5, eff. September 1, 2023.

Sec. 481.1122. MANUFACTURE OF SUBSTANCE IN PENALTY GROUP 1: PRESENCE OF CHILD. If it is shown at the punishment phase of a trial for the manufacture of a controlled substance listed in Penalty Group 1 that when the offense was committed a child younger than 18 years

of age was present on the premises where the offense was committed:

(1) the punishments specified by Sections 481.112(b) and (c) are increased by one degree;

(2) the minimum term of imprisonment specified by Section 481.112(e) is increased to 15 years and the maximum fine specified by that section is increased to $150,000; and

(3) the minimum term of imprisonment specified by Section 481.112(f) is increased to 20 years and the maximum fine specified by that section is increased to $300,000.

Added by Acts 2007, 80th Leg., R.S., Ch. 840 (H.B. 946), Sec. 1, eff. September 1, 2007.

Sec. 481.1123. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1-B. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 1-B.

(b) An offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than one gram.

(c) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams.

(d) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $20,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 200 grams.

(e) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed $200,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but

less than 400 grams.

(f) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 20 years, and a fine not to exceed $500,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Added by Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 5, eff. September 1, 2021.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 6, eff. September 1, 2023.

Sec. 481.113. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 2 OR 2-A. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 2 or 2-A.

(b) An offense under Subsection (a) is a state jail felony if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than one gram.

(c) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams.

(d) An offense under Subsection (a) is a felony of the first degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 400 grams.

(e) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994;

Acts 2001, 77th Leg., ch. 1188, Sec. 4, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.097, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 170 (S.B. 331), Sec. 3, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 170 (S.B. 331), Sec. 4, eff. September 1, 2011.
Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 7, eff. September 1, 2023.

Sec. 481.1131. CAUSE OF ACTION FOR SALE OR PROVISION OF SYNTHETIC CANNABINOID. (a) In this section, "synthetic cannabinoid" means a substance included in Penalty Group 2-A under Section 481.1031.

(b) This section does not affect the right of a person to bring a common law cause of action against an individual whose consumption or ingestion of a synthetic cannabinoid resulted in causing the person bringing the suit to suffer personal injury or property damage.

(c) Providing, selling, or serving a synthetic cannabinoid may be made the basis of a statutory cause of action under this section on proof that the intoxication of the recipient of the synthetic cannabinoid was a proximate cause of the damages suffered.

(d) The liability provided under this section for the actions of a retail establishment's employees, customers, members, or guests who are or become intoxicated by the consumption or ingestion of a synthetic cannabinoid is in lieu of common law or other statutory law warranties and duties of retail establishments.

(e) This chapter does not impose obligations on a retail establishment other than those expressly stated in this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 539 (S.B. 341), Sec. 3, eff. September 1, 2017.

Sec. 481.114. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 3 OR 4. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly manufactures,

delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 3 or 4.

(b) An offense under Subsection (a) is a state jail felony if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than 28 grams.

(c) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 28 grams or more but less than 200 grams.

(d) An offense under Subsection (a) is a felony of the first degree, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(e) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 1188, Sec. 5, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.098, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 8, eff. September 1, 2023.

Sec. 481.115. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 1 OR 1-B. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 1 or 1-B, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under Subsection (a) is a state jail felony if the amount of the controlled substance possessed is, by aggregate

weight, including adulterants or dilutants, less than one gram.

(c) An offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams.

(d) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 200 grams.

(e) An offense under Subsection (a) is a felony of the first degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(f) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

(g) It is a defense to prosecution for an offense punishable under Subsection (b) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(h) The defense to prosecution provided by Subsection (g) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(i) The defense to prosecution provided by Subsection (g) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (g) is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.099, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 6, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 7, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 2, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 9, eff. September 1, 2023.

Sec. 481.1151. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 1-A. (a) Except as provided by this chapter, a person commits

an offense if the person knowingly possesses a controlled substance listed in Penalty Group 1-A.

(b) An offense under this section is:

(1) a state jail felony if the number of abuse units of the controlled substance is fewer than 20;

(2) a felony of the third degree if the number of abuse units of the controlled substance is 20 or more but fewer than 80;

(3) a felony of the second degree if the number of abuse units of the controlled substance is 80 or more but fewer than 4,000;

(4) a felony of the first degree if the number of abuse units of the controlled substance is 4,000 or more but fewer than 8,000; and

(5) a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 15 years and a fine not to exceed $250,000, if the number of abuse units of the controlled substance is 8,000 or more.

(c) It is a defense to prosecution for an offense punishable under Subsection (b)(1) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) The defense to prosecution provided by Subsection (c) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.116(b),

481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(e) The defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 26, eff. Jan. 1, 1998. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.100, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 3, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 10, eff. September 1, 2023.

Sec. 481.116. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 2. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 2, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under Subsection (a) is a state jail felony if the amount of the controlled substance possessed is, by aggregate

weight, including adulterants or dilutants, less than one gram.

(c) An offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams.

(d) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 400 grams.

(e) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than five years, and a fine not to exceed $50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

(f) It is a defense to prosecution for an offense punishable under Subsection (b) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(g) The defense to prosecution provided by Subsection (f) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a),

or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(h) The defense to prosecution provided by Subsection (f) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (f) is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.101, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 4, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 11, eff. September 1, 2023.

Sec. 481.1161. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 2-A. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly possesses a controlled substance listed in Penalty Group 2-A, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under this section is:

(1) a Class B misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, two ounces or less;

(2) a Class A misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, four ounces or less but more than two ounces;

(3) a state jail felony if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, five pounds or less but more than four ounces;

(4) a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 50 pounds or less but more than 5 pounds;

(5) a felony of the second degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 2,000 pounds or less but more than 50 pounds; and

(6) a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed $50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, more than 2,000 pounds.

(c) It is a defense to prosecution for an offense punishable under Subsection (b)(1) or (2) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) The defense to prosecution provided by Subsection (c) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(e) The defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

Added by Acts 2011, 82nd Leg., R.S., Ch. 170 (S.B. 331), Sec. 5, eff. September 1, 2011.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 5, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 12, eff. September 1, 2023.

Sec. 481.117. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 3. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 3, unless the person obtains the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under Subsection (a) is a Class A misdemeanor if

the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than 28 grams.

(c) An offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 28 grams or more but less than 200 grams.

(d) An offense under Subsection (a) is a felony of the second degree, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(e) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than five years, and a fine not to exceed $50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

(f) It is a defense to prosecution for an offense punishable under Subsection (b) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(g) The defense to prosecution provided by Subsection (f) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.118(b), or 481.121(b)(1) or

(2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.118(f), 481.119(c), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(h) The defense to prosecution provided by Subsection (f) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (f) is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.102, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 6, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 13, eff. September 1, 2023.

Sec. 481.118. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 4. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 4, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of practice.

(b) An offense under Subsection (a) is a Class B misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than 28 grams.

(c) An offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 28 grams or more but less than 200 grams.

(d) An offense under Subsection (a) is a felony of the second degree, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(e) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than five years, and a fine not to exceed $50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

(f) It is a defense to prosecution for an offense punishable under Subsection (b) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(g) The defense to prosecution provided by Subsection (f) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.119(c), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(h) The defense to prosecution provided by Subsection (f) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (f) is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.103, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 7, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 14, eff. September 1, 2023.

Sec. 481.119. OFFENSE: MANUFACTURE, DELIVERY, OR POSSESSION OF MISCELLANEOUS SUBSTANCES. (a) A person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in a schedule by an action of the commissioner under this chapter but not listed in a penalty group. An offense under this subsection is a Class A misdemeanor, except that the offense is:

(1) a state jail felony, if the person has been previously convicted of an offense under this subsection; or

(2) a felony of the third degree, if the person has been previously convicted two or more times of an offense under this

subsection.

(b) A person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in a schedule by an action of the commissioner under this chapter but not listed in a penalty group. An offense under this subsection is a Class B misdemeanor.

(c) It is a defense to prosecution for an offense under Subsection (b) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) The defense to prosecution provided by Subsection (c) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(e) The defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1188, Sec. 6, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1030 (H.B. 1424), Sec. 1, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 8, eff. September 1, 2021.

Sec. 481.1191. CIVIL LIABILITY FOR ENGAGING IN OR AIDING IN PRODUCTION, DISTRIBUTION, SALE, OR PROVISION OF SYNTHETIC SUBSTANCES. (a) In this section:

(1) "Minor" means a person younger than 18 years of age.

(2) "Synthetic substance" means an artificial substance that produces and is intended by the manufacturer to produce when consumed or ingested an effect similar to or in excess of the effect produced by the consumption or ingestion of a controlled substance or controlled substance analogue, as those terms are defined by Section 481.002.

(b) A person is liable for damages proximately caused by the consumption or ingestion of a synthetic substance by another person if the actor:

(1) produced, distributed, sold, or provided the synthetic substance to the other person; or

(2) aided in the production, distribution, sale, or provision of the synthetic substance to the other person.

(c) A person is strictly liable for all damages caused by the consumption or ingestion of a synthetic substance by a minor if the actor:

(1) produced, distributed, sold, or provided the synthetic

substance to the minor; or

(2) aided in the production, distribution, sale, or provision of the synthetic substance to the minor.

(d) A person who is found liable under this section or other law for any amount of damages arising from the consumption or ingestion by another of a synthetic substance is jointly and severally liable with any other person for the entire amount of damages awarded.

(e) Chapter 33, Civil Practice and Remedies Code, does not apply to an action brought under this section or an action brought under Section 17.50, Business & Commerce Code, based on conduct made actionable under Subsection (f) of this section.

(f) Conduct for which Subsection (b) or (c) creates liability is a false, misleading, or deceptive act or practice or an unconscionable action or course of action for purposes of Section 17.50, Business & Commerce Code, and that conduct is:

(1) actionable under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) subject to any remedy prescribed by that subchapter.

(g) An action brought under this section may include a claim for exemplary damages, which may be awarded in accordance with Section 41.003, Civil Practice and Remedies Code.

(h) Section 41.008, Civil Practice and Remedies Code, does not apply to the award of exemplary damages in an action brought under this section.

(i) Section 41.005, Civil Practice and Remedies Code, does not apply to a claim for exemplary damages in an action brought under this section.

(j) It is an affirmative defense to liability under this section that the synthetic substance produced, distributed, sold, or provided was approved for use, sale, or distribution by the United States Food and Drug Administration or other state or federal regulatory agency with authority to approve a substance for use, sale, or distribution.

(k) It is not a defense to liability under this section that a synthetic substance was in packaging labeled with "Not for Human Consumption" or other wording indicating the substance is not intended to be ingested.

Added by Acts 2017, 85th Leg., R.S., Ch. 861 (H.B. 2612), Sec. 1, eff.

September 1, 2017.

Sec. 481.120. OFFENSE: DELIVERY OF MARIHUANA. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally delivers marihuana.

(b) An offense under Subsection (a) is:

(1) a Class B misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense does not receive remuneration for the marihuana;

(2) a Class A misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense receives remuneration for the marihuana;

(3) a state jail felony if the amount of marihuana delivered is five pounds or less but more than one-fourth ounce;

(4) a felony of the second degree if the amount of marihuana delivered is 50 pounds or less but more than five pounds;

(5) a felony of the first degree if the amount of marihuana delivered is 2,000 pounds or less but more than 50 pounds; and

(6) a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of marihuana delivered is more than 2,000 pounds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.104, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 15, eff. September 1, 2023.

Sec. 481.121. OFFENSE: POSSESSION OF MARIHUANA. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a usable quantity of marihuana.

(b) An offense under Subsection (a) is:

(1) a Class B misdemeanor if the amount of marihuana

possessed is two ounces or less;

(2) a Class A misdemeanor if the amount of marihuana possessed is four ounces or less but more than two ounces;

(3) a state jail felony if the amount of marihuana possessed is five pounds or less but more than four ounces;

(4) a felony of the third degree if the amount of marihuana possessed is 50 pounds or less but more than 5 pounds;

(5) a felony of the second degree if the amount of marihuana possessed is 2,000 pounds or less but more than 50 pounds; and

(6) a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed $50,000, if the amount of marihuana possessed is more than 2,000 pounds.

(c) It is a defense to prosecution for an offense punishable under Subsection (b)(1) or (2) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) The defense to prosecution provided by Subsection (c) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), or 481.118(b), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or

485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(e) The defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.105, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 9, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 16, eff. September 1, 2023.

Sec. 481.122. OFFENSE: DELIVERY OF CONTROLLED SUBSTANCE OR MARIHUANA TO CHILD. (a) A person commits an offense if the person knowingly delivers a controlled substance listed in Penalty Group 1, 1-A, 1-B, 2, or 3 or knowingly delivers marihuana and the person delivers the controlled substance or marihuana to a person:

(1) who is a child;

(2) who is enrolled in a public or private primary or secondary school; or

(3) who the actor knows or believes intends to deliver the controlled substance or marihuana to a person described by

Subdivision (1) or (2).

(b) It is an affirmative defense to prosecution under this section that:

(1) the actor was a child when the offense was committed; or

(2) the actor:

(A) was younger than 21 years of age when the offense was committed;

(B) delivered only marihuana in an amount equal to or less than one-fourth ounce; and

(C) did not receive remuneration for the delivery.

(c) An offense under this section is a felony of the second degree.

(d) In this section, "child" means a person younger than 18 years of age.

(e) If conduct that is an offense under this section is also an offense under another section of this chapter, the actor may be prosecuted under either section or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 745, Sec. 27, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 20, eff. Sept. 1, 2001.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 8, eff. September 1, 2021.

Sec. 481.123. DEFENSE TO PROSECUTION FOR OFFENSE INVOLVING CONTROLLED SUBSTANCE ANALOGUE. (a) It is an affirmative defense to the prosecution of an offense under this subchapter involving the manufacture, delivery, or possession of a controlled substance analogue that the analogue:

(1) was a substance for which there is an approved new drug application under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355); or

(2) was a substance for which an exemption for investigational use has been granted under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355), if the actor's conduct with respect to the substance is in accord with the

exemption.

(b) For the purposes of this section, Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355) applies to the introduction or delivery for introduction of any new drug into intrastate, interstate, or foreign commerce.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 28, eff. Jan. 1, 1998; Acts 2003, 78th Leg., ch. 1099, Sec. 10, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 712 (H.B. 1212), Sec. 6, eff. September 1, 2015.

Sec. 481.124. OFFENSE: POSSESSION OR TRANSPORT OF CERTAIN CHEMICALS WITH INTENT TO MANUFACTURE CONTROLLED SUBSTANCE. (a) A person commits an offense if, with intent to unlawfully manufacture a controlled substance, the person possesses or transports:

(1) anhydrous ammonia;

(2) an immediate precursor; or

(3) a chemical precursor or an additional chemical substance named as a precursor by the director under Section 481.077(b)(1).

(b) For purposes of this section, an intent to unlawfully manufacture the controlled substance methamphetamine is presumed if the actor possesses or transports:

(1) anhydrous ammonia in a container or receptacle that is not designed and manufactured to lawfully hold or transport anhydrous ammonia;

(2) lithium metal removed from a battery and immersed in kerosene, mineral spirits, or similar liquid that prevents or retards hydration; or

(3) in one container, vehicle, or building, phenylacetic acid, or more than nine grams, three containers packaged for retail sale, or 300 tablets or capsules of a product containing ephedrine or pseudoephedrine, and:

(A) anhydrous ammonia;

(B) at least three of the following categories of substances commonly used in the manufacture of methamphetamine:

(i) lithium or sodium metal or red phosphorus,

iodine, or iodine crystals;

(ii) lye, sulfuric acid, hydrochloric acid, or muriatic acid;

(iii) an organic solvent, including ethyl ether, alcohol, or acetone;

(iv) a petroleum distillate, including naphtha, paint thinner, or charcoal lighter fluid; or

(v) aquarium, rock, or table salt; or

(C) at least three of the following items:

(i) an item of equipment subject to regulation under Section 481.080, if the person is not a registrant; or

(ii) glassware, a plastic or metal container, tubing, a hose, or other item specially designed, assembled, or adapted for use in the manufacture, processing, analyzing, storing, or concealing of methamphetamine.

(c) For purposes of this section, a substance is presumed to be anhydrous ammonia if the substance is in a container or receptacle that is:

(1) designed and manufactured to lawfully hold or transport anhydrous ammonia; or

(2) not designed and manufactured to lawfully hold or transport anhydrous ammonia, if:

(A) a properly administered field test of the substance using a testing device or instrument designed and manufactured for that purpose produces a positive result for anhydrous ammonia; or

(B) a laboratory test of a water solution of the substance produces a positive result for ammonia.

(d) An offense under this section is:

(1) a felony of the second degree if the controlled substance is listed in Penalty Group 1, 1-A, or 1-B;

(2) a felony of the third degree if the controlled substance is listed in Penalty Group 2;

(3) a state jail felony if the controlled substance is listed in Penalty Group 3 or 4; or

(4) a Class A misdemeanor if the controlled substance is listed in a schedule by an action of the commissioner under this chapter but not listed in a penalty group.

(e) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

(f) This section does not apply to a chemical precursor exempted by the director under Section 481.077(b)(2) from the requirements of that section.

Added by Acts 2001, 77th Leg., ch. 1188, Sec. 7, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 570, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 6, eff. August 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 16, eff. September 1, 2016.
Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 9, eff. September 1, 2021.

Sec. 481.1245. OFFENSE: POSSESSION OR TRANSPORT OF ANHYDROUS AMMONIA; USE OF OR TAMPERING WITH EQUIPMENT. (a) A person commits an offense if the person:

(1) possesses or transports anhydrous ammonia in a container or receptacle that is not designed or manufactured to hold or transport anhydrous ammonia;

(2) uses, transfers, or sells a container or receptacle that is designed or manufactured to hold anhydrous ammonia without the express consent of the owner of the container or receptacle; or

(3) tampers with equipment that is manufactured or used to hold, apply, or transport anhydrous ammonia without the express consent of the owner of the equipment.

(b) An offense under this section is a felony of the third degree.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 7, eff. August 1, 2005.

Sec. 481.125. OFFENSE: POSSESSION OR DELIVERY OF DRUG PARAPHERNALIA. (a) A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter or to inject, ingest, inhale,

or otherwise introduce into the human body a controlled substance in violation of this chapter.

(b) A person commits an offense if the person knowingly or intentionally delivers, possesses with intent to deliver, or manufactures with intent to deliver drug paraphernalia knowing that the person who receives or who is intended to receive the drug paraphernalia intends that it be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

(c) A person commits an offense if the person commits an offense under Subsection (b), is 18 years of age or older, and the person who receives or who is intended to receive the drug paraphernalia is younger than 18 years of age and at least three years younger than the actor.

(d) An offense under Subsection (a) is a Class C misdemeanor.

(e) An offense under Subsection (b) is a Class A misdemeanor, unless it is shown on the trial of a defendant that the defendant has previously been convicted under Subsection (b) or (c), in which event the offense is punishable by confinement in jail for a term of not more than one year or less than 90 days.

(f) An offense under Subsection (c) is a state jail felony.

(g) It is a defense to prosecution for an offense under Subsection (a) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(h) The defense to prosecution provided by Subsection (g) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(i) The defense to prosecution provided by Subsection (g) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (g) is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 10, eff. September 1, 2021.

Sec. 481.126. OFFENSE: ILLEGAL BARTER, EXPENDITURE, OR INVESTMENT. (a) A person commits an offense if the person:

(1) barters property or expends funds the person knows are derived from the commission of a first degree felony offense under this chapter punishable by imprisonment in the Texas Department of

Criminal Justice for life;

(2) barters property or expends funds the person knows are derived from the commission of an offense under Section 481.121(a) that is punishable under Section 481.121(b)(5);

(3) barters property or finances or invests funds the person knows or believes are intended to further the commission of an offense for which the punishment is described by Subdivision (1); or

(4) barters property or finances or invests funds the person knows or believes are intended to further the commission of an offense under Section 481.121(a) that is punishable under Section 481.121(b)(5).

(b) An offense under Subsection (a)(1) or (3) is a felony of the first degree. An offense under Subsection (a)(2) or (4) is a felony of the second degree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 37, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 251, Sec. 21, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 712, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.106, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 17, eff. September 1, 2023.

Sec. 481.127. OFFENSE: UNAUTHORIZED DISCLOSURE OF INFORMATION. (a) A person commits an offense if the person knowingly gives, permits, or obtains unauthorized access to information submitted to the board under Section 481.074(q) or 481.075.

(b) An offense under this section is a state jail felony.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 745, Sec. 29, eff. Jan. 1, 1998.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 3, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 17, eff. September 1, 2016.

Sec. 481.128. OFFENSE AND CIVIL PENALTY: COMMERCIAL MATTERS. (a) A registrant or dispenser commits an offense if the registrant or dispenser knowingly:

(1) distributes, delivers, administers, or dispenses a controlled substance in violation of Subchapter C;

(2) manufactures a controlled substance not authorized by the person's Federal Drug Enforcement Administration registration or distributes or dispenses a controlled substance not authorized by the person's registration to another registrant or other person;

(3) refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by this chapter;

(4) prints, manufactures, possesses, or produces an official prescription form without the approval of the board;

(5) delivers or possesses a counterfeit official prescription form;

(6) refuses an entry into a premise for an inspection authorized by this chapter;

(7) refuses or fails to return an official prescription form as required by Section 481.0755(k);

(8) refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by a rule adopted by the director or the board; or

(9) refuses or fails to maintain security required by this chapter or a rule adopted under this chapter.

(b) If the registrant or dispenser knowingly refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information or maintain security required by a rule adopted by the director or the board, the registrant or dispenser is liable to the state for a civil penalty of not more than $5,000 for each act.

(c) An offense under Subsection (a) is a state jail felony.

(d) If a person commits an act that would otherwise be an offense under Subsection (a) except that it was committed without the requisite culpable mental state, the person is liable to the state for a civil penalty of not more than $1,000 for each act.

(e) A district attorney of the county where the act occurred may file suit in district court in that county to collect a civil

penalty under this section, or the district attorney of Travis County or the attorney general may file suit in district court in Travis County to collect the penalty.

Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 745, Sec. 30, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 22, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 18, eff. September 1, 2016.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 10, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 6, eff. September 1, 2019.

Sec. 481.1285. OFFENSE: DIVERSION OF CONTROLLED SUBSTANCE BY REGISTRANTS, DISPENSERS, AND CERTAIN OTHER PERSONS. (a) This section applies only to a registrant, a dispenser, or a person who, pursuant to Section 481.062(a)(1) or (2), is not required to register under this subchapter.

(b) A person commits an offense if the person knowingly:

(1) converts to the person's own use or benefit a controlled substance to which the person has access by virtue of the person's profession or employment; or

(2) diverts to the unlawful use or benefit of another person a controlled substance to which the person has access by virtue of the person's profession or employment.

(c) An offense under Subsection (b)(1) is a state jail felony. An offense under Subsection (b)(2) is a felony of the third degree.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1200 (S.B. 158), Sec. 1, eff. September 1, 2011.

Sec. 481.129. OFFENSE: FRAUD. (a) A person commits an offense if the person knowingly:

(1) distributes as a registrant or dispenser a controlled

substance listed in Schedule I or II, unless the person distributes the controlled substance as authorized under the federal Controlled Substances Act (21 U.S.C. Section 801 et seq.);

(2) uses in the course of manufacturing, prescribing, or distributing a controlled substance a Federal Drug Enforcement Administration registration number that is fictitious, revoked, suspended, or issued to another person;

(3) issues a prescription bearing a forged or fictitious signature;

(4) uses a prescription issued to another person to prescribe a Schedule II controlled substance;

(5) possesses, obtains, or attempts to possess or obtain a controlled substance or an increased quantity of a controlled substance:

(A) by misrepresentation, fraud, forgery, deception, or subterfuge;

(B) through use of a fraudulent prescription form;

(C) through use of a fraudulent oral or telephonically communicated prescription; or

(D) through the use of a fraudulent electronic prescription; or

(6) furnishes false or fraudulent material information in or omits material information from an application, report, record, or other document required to be kept or filed under this chapter.

(a-1) A person commits an offense if the person, with intent to obtain a controlled substance or combination of controlled substances that is not medically necessary for the person or an amount of a controlled substance or substances that is not medically necessary for the person, obtains or attempts to obtain from a practitioner a controlled substance or a prescription for a controlled substance by misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact. For purposes of this subsection, a material fact includes whether the person has an existing prescription for a controlled substance issued for the same period of time by another practitioner.

(b) A person commits an offense if the person knowingly or intentionally:

(1) makes, distributes, or possesses a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce an actual or simulated trademark, trade name, or other identifying mark,

imprint, or device of another on a controlled substance or the container or label of a container for a controlled substance, so as to make the controlled substance a counterfeit substance; or

(2) manufactures, delivers, or possesses with intent to deliver a counterfeit substance.

(c) A person commits an offense if the person knowingly or intentionally:

(1) delivers a prescription or a prescription form for other than a valid medical purpose in the course of professional practice; or

(2) possesses a prescription for a controlled substance or a prescription form unless the prescription or prescription form is possessed:

(A) during the manufacturing or distribution process;

(B) by a practitioner, practitioner's agent, or an institutional practitioner for a valid medical purpose during the course of professional practice;

(C) by a pharmacist or agent of a pharmacy during the professional practice of pharmacy;

(D) under a practitioner's order made by the practitioner for a valid medical purpose in the course of professional practice; or

(E) by an officer or investigator authorized to enforce this chapter within the scope of the officer's or investigator's official duties.

(d) An offense under Subsection (a) is:

(1) a felony of the second degree if the controlled substance that is the subject of the offense is listed in Schedule I or II;

(2) a felony of the third degree if the controlled substance that is the subject of the offense is listed in Schedule III or IV; and

(3) a Class A misdemeanor if the controlled substance that is the subject of the offense is listed in Schedule V.

(d-1) An offense under Subsection (a-1) is:

(1) a felony of the second degree if any controlled substance that is the subject of the offense is listed in Schedule I or II;

(2) a felony of the third degree if any controlled substance that is the subject of the offense is listed in Schedule

III or IV; and

(3) a Class A misdemeanor if any controlled substance that is the subject of the offense is listed in Schedule V.

(e) An offense under Subsection (b) is a Class A misdemeanor.

(f) An offense under Subsection (c)(1) is:

(1) a felony of the second degree if the defendant delivers:

(A) a prescription form; or

(B) a prescription for a controlled substance listed in Schedule II; and

(2) a felony of the third degree if the defendant delivers a prescription for a controlled substance listed in Schedule III, IV, or V.

(g) An offense under Subsection (c)(2) is:

(1) a state jail felony if the defendant possesses:

(A) a prescription form; or

(B) a prescription for a controlled substance listed in Schedule II or III; and

(2) a Class B misdemeanor if the defendant possesses a prescription for a controlled substance listed in Schedule IV or V.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(p), eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 745, Sec. 31, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 23, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1200 (S.B. 158), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 19, eff. September 1, 2016.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 11, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 7, eff. September 1, 2019.

Sec. 481.130. PENALTIES UNDER OTHER LAW. A penalty imposed for an offense under this chapter is in addition to any civil or administrative penalty or other sanction imposed by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.131. OFFENSE: DIVERSION OF CONTROLLED SUBSTANCE PROPERTY OR PLANT. (a) A person commits an offense if the person intentionally or knowingly:

(1) converts to the person's own use or benefit a controlled substance property or plant seized under Section 481.152 or 481.153; or

(2) diverts to the unlawful use or benefit of another person a controlled substance property or plant seized under Section 481.152 or 481.153.

(b) An offense under this section is a state jail felony.

Added by Acts 1991, 72nd Leg., ch. 141, Sec. 2, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994.

Sec. 481.132. MULTIPLE PROSECUTIONS. (a) In this section, "criminal episode" means the commission of two or more offenses under this chapter under the following circumstances:

(1) the offenses are committed pursuant to the same transaction or pursuant to two or more transactions that are connected or constitute a common scheme, plan, or continuing course of conduct; or

(2) the offenses are the repeated commission of the same or similar offenses.

(b) A defendant may be prosecuted in a single criminal action for all offenses arising out of the same criminal episode. If a single criminal action is based on more than one charging instrument within the jurisdiction of the trial court, not later than the 30th day before the date of the trial, the state shall file written notice of the action.

(c) If a judgment of guilt is reversed, set aside, or vacated and a new trial is ordered, the state may not prosecute in a single criminal action in the new trial any offense not joined in the former prosecution unless evidence to establish probable guilt for that offense was not known to the appropriate prosecution official at the time the first prosecution began.

(d) If the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, sentence for each offense for which the accused has been found guilty shall be pronounced, and those sentences run concurrently.

(e) If it appears that a defendant or the state is prejudiced by a joinder of offenses, the court may order separate trials of the offenses or provide other relief as justice requires.

(f) This section provides the exclusive method for consolidation and joinder of prosecutions for offenses under this chapter. This section is not a limitation of Article 36.09 or 36.10, Code of Criminal Procedure.

Added by Acts 1991, 72nd Leg., ch. 193, Sec. 1, eff. Sept. 1, 1991. Renumbered from Health & Safety Code Sec. 481.131 by Acts 1991, 72nd Leg., 1st C.S., ch. 14, Sec. 8.01(17a), eff. Nov. 12, 1991.

Sec. 481.133. OFFENSE: FALSIFICATION OF DRUG TEST RESULTS. (a) A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use any substance or device designed to falsify drug test results.

(b) A person commits an offense if the person knowingly or intentionally delivers, possesses with intent to deliver, or manufactures with intent to deliver a substance or device designed to falsify drug test results.

(c) In this section, "drug test" means a lawfully administered test designed to detect the presence of a controlled substance or marihuana.

(d) An offense under Subsection (a) is a Class B misdemeanor.

(e) An offense under Subsection (b) is a Class A misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 274, Sec. 1, eff. Sept. 1, 1991. Renumbered from Health & Safety Code Sec. 481.131 by Acts 1991, 72nd Leg., 1st C.S., ch. 14, Sec. 8.01(17b), eff. Nov. 12, 1991.

Sec. 481.134. DRUG-FREE ZONES. (a) In this section:

(1) "Minor" means a person who is younger than 18 years of age.

(2) "Institution of higher education" means any public or

private technical institute, junior college, senior college or university, medical or dental unit, or other agency of higher education as defined by Section 61.003, Education Code.

(3) "Playground" means any outdoor facility that is not on the premises of a school and that:

(A) is intended for recreation;

(B) is open to the public; and

(C) contains three or more play stations intended for the recreation of children, such as slides, swing sets, and teeterboards.

(4) "Premises" means real property and all buildings and appurtenances pertaining to the real property.

(5) "School" means a private or public elementary or secondary school or a day-care center, as defined by Section 42.002, Human Resources Code.

(6) "Video arcade facility" means any facility that:

(A) is open to the public, including persons who are 17 years of age or younger;

(B) is intended primarily for the use of pinball or video machines; and

(C) contains at least three pinball or video machines.

(7) "Youth center" means any recreational facility or gymnasium that:

(A) is intended primarily for use by persons who are 17 years of age or younger; and

(B) regularly provides athletic, civic, or cultural activities.

(8) "General residential operation" has the meaning assigned by Section 42.002, Human Resources Code.

(b) An offense otherwise punishable as a state jail felony under Section 481.112, 481.1121, 481.1123, 481.113, 481.114, or 481.120 is punishable as a felony of the third degree, an offense otherwise punishable as a felony of the third degree under any of those sections is punishable as a felony of the second degree, and an offense otherwise punishable as a felony of the second degree under any of those sections is punishable as a felony of the first degree, if it is shown at the punishment phase of the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of premises owned, rented, or leased by an institution of higher learning, the premises of a

public or private youth center, or a playground;

(2) in, on, or within 300 feet of the premises of a public swimming pool or video arcade facility; or

(3) by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center.

(c) The minimum term of confinement or imprisonment for an offense otherwise punishable under Section 481.112(c), (d), (e), or (f), 481.1121(b)(2), (3), or (4), 481.1123(b), (c), (d), (e), or (f), 481.113(c), (d), or (e), 481.114(c), (d), or (e), 481.115(c)-(f), 481.1151(b)(2), (3), (4), or (5), 481.116(c), (d), or (e), 481.1161(b)(4), (5), or (6), 481.117(c), (d), or (e), 481.118(c), (d), or (e), 481.120(b)(4), (5), or (6), or 481.121(b)(4), (5), or (6) is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of the premises of a school, the premises of a public or private youth center, or a playground;

(2) on a school bus; or

(3) by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center.

(d) An offense otherwise punishable under Section 481.112(b), 481.1121(b)(1), 481.113(b), 481.114(b), 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.120(b)(3), or 481.121(b)(3) is a felony of the third degree if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground;

(2) on a school bus; or

(3) by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center.

(e) An offense otherwise punishable under Section 481.117(b), 481.119(a), 481.120(b)(2), or 481.121(b)(2) is a state jail felony if

it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground;

(2) on a school bus; or

(3) by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center.

(f) An offense otherwise punishable under Section 481.118(b), 481.119(b), 481.120(b)(1), or 481.121(b)(1) is a Class A misdemeanor if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground;

(2) on a school bus; or

(3) by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center.

(g) Subsection (f) does not apply to an offense if:

(1) the offense was committed inside a private residence; and

(2) no minor was present in the private residence at the time the offense was committed.

(h) Punishment that is increased for a conviction for an offense listed under this section may not run concurrently with punishment for a conviction under any other criminal statute.

Added by Acts 1993, 73rd Leg., ch. 888, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 260, Sec. 39, eff. May 30, 1995; Acts 1995, 74th Leg., ch. 318, Sec. 38, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1063, Sec. 9, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 570, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 452 (H.B. 2467), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 452 (H.B. 2467), Sec. 2, eff.

September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 170 (S.B. 331), Sec. 6, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 839 (S.B. 236), Sec. 1, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 10, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 16, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 17, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 11.002, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 18, eff. September 1, 2023.

Sec. 481.135. MAPS AS EVIDENCE OF LOCATION OR AREA. (a) In a prosecution under Section 481.134, a map produced or reproduced by a municipal or county engineer for the purpose of showing the location and boundaries of drug-free zones is admissible in evidence and is prima facie evidence of the location or boundaries of those areas if the governing body of the municipality or county adopts a resolution or ordinance approving the map as an official finding and record of the location or boundaries of those areas.

(b) A municipal or county engineer may, on request of the governing body of the municipality or county, revise a map that has been approved by the governing body of the municipality or county as provided by Subsection (a).

(c) A municipal or county engineer shall file the original or a copy of every approved or revised map approved as provided by Subsection (a) with the county clerk of each county in which the area is located.

(d) This section does not prevent the prosecution from:

(1) introducing or relying on any other evidence or testimony to establish any element of an offense for which punishment is increased under Section 481.134; or

(2) using or introducing any other map or diagram otherwise admissible under the Texas Rules of Evidence.

Added by Acts 1993, 73rd Leg., ch. 888, Sec. 3, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.004, eff. September 1, 2005.

Sec. 481.136. OFFENSE: UNLAWFUL TRANSFER OR RECEIPT OF CHEMICAL PRECURSOR. (a) A person commits an offense if the person sells, transfers, furnishes, or receives a chemical precursor subject to Section 481.077(a) and the person:

(1) does not comply with Section 481.077 or 481.0771;

(2) knowingly makes a false statement in a report or record required by Section 481.077 or 481.0771; or

(3) knowingly violates a rule adopted under Section 481.077 or 481.0771.

(b) An offense under this section is a state jail felony, unless it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section or Section 481.137, in which event the offense is a felony of the third degree.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 32, eff. Jan. 1, 1998.
Amended by Acts 2001, 77th Leg., ch. 251, Sec. 24, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 8, eff. August 1, 2005.
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.005, eff. September 1, 2019.

Sec. 481.137. OFFENSE: TRANSFER OF PRECURSOR SUBSTANCE FOR UNLAWFUL MANUFACTURE. (a) A person commits an offense if the person sells, transfers, or otherwise furnishes a chemical precursor subject to Section 481.077(a) with the knowledge or intent that the recipient will use the chemical precursor to unlawfully manufacture a controlled substance or controlled substance analogue.

(b) An offense under this section is a felony of the third degree.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 32, eff. Jan. 1, 1998.
Amended by Acts 2001, 77th Leg., ch. 251, Sec. 25, eff. Sept. 1,

2001.

Sec. 481.138. OFFENSE: UNLAWFUL TRANSFER OR RECEIPT OF CHEMICAL LABORATORY APPARATUS. (a) A person commits an offense if the person sells, transfers, furnishes, or receives a chemical laboratory apparatus subject to Section 481.080(a) and the person:

(1) does not comply with Section 481.080;

(2) knowingly makes a false statement in a report or record required by Section 481.080; or

(3) knowingly violates a rule adopted under Section 481.080.

(b) An offense under this section is a state jail felony, unless it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section, in which event the offense is a felony of the third degree.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 32, eff. Jan. 1, 1998. Amended by Acts 2001, 77th Leg., ch. 251, Sec. 26, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.006, eff. September 1, 2019.

Sec. 481.139. OFFENSE: TRANSFER OF CHEMICAL LABORATORY APPARATUS FOR UNLAWFUL MANUFACTURE. (a) A person commits an offense if the person sells, transfers, or otherwise furnishes a chemical laboratory apparatus with the knowledge or intent that the recipient will use the apparatus to unlawfully manufacture a controlled substance or controlled substance analogue.

(b) An offense under Subsection (a) is a felony of the third degree.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 32, eff. Jan. 1, 1998. Amended by Acts 2001, 77th Leg., ch. 251, Sec. 27, eff. Sept. 1, 2001.

Sec. 481.140. USE OF CHILD IN COMMISSION OF OFFENSE. (a) If it is shown at the punishment phase of the trial of an offense

otherwise punishable as a state jail felony, felony of the third degree, or felony of the second degree under Section 481.112, 481.1121, 481.1123, 481.113, 481.114, 481.120, or 481.122 that the defendant used or attempted to use a child younger than 18 years of age to commit or assist in the commission of the offense, the punishment is increased by one degree, unless the defendant used or threatened to use force against the child or another to gain the child's assistance, in which event the punishment for the offense is a felony of the first degree.

(b) Notwithstanding Article 42.08, Code of Criminal Procedure, if punishment for a defendant is increased under this section, the court may not order the sentence for the offense to run concurrently with any other sentence the court imposes on the defendant.

Added by Acts 2001, 77th Leg., ch. 786, Sec. 1, eff. June 14, 2001. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 11, eff. September 1, 2021.

Sec. 481.141. MANUFACTURE OR DELIVERY OF CONTROLLED SUBSTANCE CAUSING DEATH OR SERIOUS BODILY INJURY. (a) If at the guilt or innocence phase of the trial of an offense described by Subsection (b), the judge or jury, whichever is the trier of fact, determines beyond a reasonable doubt that a person died or suffered serious bodily injury as a result of injecting, ingesting, inhaling, or introducing into the person's body any amount of the controlled substance manufactured or delivered by the defendant, regardless of whether the controlled substance was used by itself or with another substance, including a drug, adulterant, or dilutant, the punishment for the offense is increased by one degree.

(b) This section applies to an offense otherwise punishable as a state jail felony, felony of the third degree, or felony of the second degree under Section 481.112, 481.1121, 481.1123, 481.113, 481.114, or 481.122.

(c) Notwithstanding Article 42.08, Code of Criminal Procedure, if punishment for a defendant is increased under this section, the court may not order the sentence for the offense to run concurrently with any other sentence the court imposes on the defendant.

(d) Punishment may not be increased under this section if the

defendant is also prosecuted under Section 19.02(b)(4), Penal Code, for conduct occurring during the same criminal episode.

Added by Acts 2003, 78th Leg., ch. 712, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 12, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 19, eff. September 1, 2023.

Sec. 481.142. USE OF SOCIAL MEDIA PLATFORM FOR DELIVERY OF CONTROLLED SUBSTANCE. (a) "Social media platform" has the meaning assigned by Section 120.001, Business & Commerce Code.

(b) If it is shown on the trial of an offense under Section 481.112, 481.1121, 481.1123, 481.113, 481.114, 481.119, 481.120, or 481.122, involving the delivery of a controlled substance that the defendant used a social media platform in furtherance of the offense, the punishment for the offense is increased to the punishment prescribed by the next higher category of offense, except that the punishment for a felony of the first degree is increased by five years and the maximum fine for the offense is doubled.

Added by Acts 2025, 89th Leg., R.S., Ch. 858 (S.B. 1833), Sec. 1, eff. September 1, 2025.

SUBCHAPTER E. FORFEITURE

Sec. 481.151. DEFINITIONS. In this subchapter:

(1) "Controlled substance property" means a controlled substance, mixture containing a controlled substance, controlled substance analogue, counterfeit controlled substance, drug paraphernalia, chemical precursor, chemical laboratory apparatus, or raw material.

(2) "Controlled substance plant" means a species of plant from which a controlled substance listed in Schedule I or II may be derived.

(2-a) "Crime laboratory" has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(2-b) "Criminal justice agency" has the meaning assigned by Section 411.082, Government Code, and includes a local government

corporation described by Section 411.0011 of that code.

(3) "Summary destruction" or "summarily destroy" means destruction without the necessity of any court action, a court order, or further proceedings.

(4) "Summary forfeiture" or "summarily forfeit" means forfeiture without the necessity of any court action, a court order, or further proceedings.

Amended by Acts 1991, 72nd Leg., ch. 141, Sec. 1, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 251, Sec. 28, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 152 (S.B. 722), Sec. 1, eff. May 21, 2007.

Acts 2021, 87th Leg., R.S., Ch. 603 (S.B. 1125), Sec. 1, eff. September 1, 2021.

Sec. 481.152. SEIZURE, SUMMARY FORFEITURE, AND SUMMARY DESTRUCTION OR OTHER DISPOSITION OF CONTROLLED SUBSTANCE PLANTS. (a) Controlled substance plants are subject to seizure and summary forfeiture to the state if:

(1) the plants have been planted, cultivated, or harvested in violation of this chapter;

(2) the plants are wild growths; or

(3) the owners or cultivators of the plants are unknown.

(b) Subsection (a) does not apply to unharvested peyote growing in its natural state.

(c) If a person who occupies or controls land or premises on which the plants are growing fails on the demand of a peace officer to produce an appropriate registration or proof that the person is the holder of the registration, the officer may seize and summarily forfeit the plants.

(d) If a controlled substance plant is seized and forfeited under this section, a court may order the disposition of the plant under Section 481.159, or the department, a criminal justice agency, or a peace officer may summarily destroy the property under the rules of the department or dispose of the property in lieu of destruction as provided by Section 481.161.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 141, Sec. 1, eff. Sept. 1, 1991.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 152 (S.B. 722), Sec. 2, eff. May 21, 2007.
Acts 2007, 80th Leg., R.S., Ch. 152 (S.B. 722), Sec. 3, eff. May 21, 2007.
Acts 2021, 87th Leg., R.S., Ch. 603 (S.B. 1125), Sec. 2, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 603 (S.B. 1125), Sec. 3, eff. September 1, 2021.

Sec. 481.153. SEIZURE, SUMMARY FORFEITURE, AND SUMMARY DESTRUCTION OR OTHER DISPOSITION OF CONTROLLED SUBSTANCE PROPERTY. (a) Controlled substance property that is manufactured, delivered, or possessed in violation of this chapter is subject to seizure and summary forfeiture to the state.

(b) If an item of controlled substance property is seized and forfeited under this section, a court may order the disposition of the property under Section 481.159, or the department, a criminal justice agency, or a peace officer may summarily destroy the property under the rules of the department or dispose of the property in lieu of destruction as provided by Section 481.161.

Amended by Acts 1991, 72nd Leg., ch. 141, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 152 (S.B. 722), Sec. 4, eff. May 21, 2007.
Acts 2007, 80th Leg., R.S., Ch. 152 (S.B. 722), Sec. 5, eff. May 21, 2007.
Acts 2021, 87th Leg., R.S., Ch. 603 (S.B. 1125), Sec. 4, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 603 (S.B. 1125), Sec. 5, eff. September 1, 2021.

Sec. 481.154. RULES. (a) The director may adopt reasonable rules and procedures, not inconsistent with the provisions of this chapter, concerning:

(1) summary forfeiture and summary destruction of controlled substance property or plants;

(2) establishment and operation of a secure storage area;

(3) delegation by a law enforcement agency head of the authority to access a secure storage area; and

(4) minimum tolerance for and the circumstances of loss or destruction during an investigation.

(b) The rules for the destruction of controlled substance property or plants must require:

(1) more than one person to witness the destruction of the property or plants;

(2) the preparation of an inventory of the property or plants destroyed; and

(3) the preparation of a statement that contains the names of the persons who witness the destruction and the details of the destruction.

(c) A document prepared under a rule adopted under this section must be completed, retained, and made available for inspection by the director.

Amended by Acts 1991, 72nd Leg., ch. 141, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 152 (S.B. 722), Sec. 6, eff. May 21, 2007.

Sec. 481.159. DISPOSITION OF CONTROLLED SUBSTANCE PROPERTY OR PLANT. (a) If a district court orders the forfeiture of a controlled substance property or plant under Chapter 59, Code of Criminal Procedure, or under this code, the court shall also order a law enforcement agency or a criminal justice agency to which the law enforcement agency transferred the property or plant for analysis and storage to:

(1) retain the property or plant for official law enforcement purposes, including use in the investigation of offenses under this code;

(2) deliver the property or plant to a government agency for official purposes;

(3) deliver the property or plant to a person authorized by the court to receive it;

(4) deliver the property or plant to a person authorized by the director to receive it; or

(5) destroy the property or plant that is not otherwise disposed of in the manner prescribed by this subchapter.

(b) The district court may not require the department to receive, analyze, or retain a controlled substance property or plant forfeited to a law enforcement agency other than the department.

(c) In order to ensure that a controlled substance property or plant is not diluted, substituted, diverted, or tampered with while being used in the investigation of offenses under this code, law enforcement agencies using the property or plant for this purpose shall:

(1) employ a qualified individual to conduct qualitative and quantitative analyses of the property or plant before and after their use in an investigation;

(2) maintain the property or plant in a secure storage area accessible only to the law enforcement agency head and the individual responsible for analyzing, preserving, and maintaining security over the property or plant; and

(3) maintain a log documenting:

(A) the date of issue, date of return, type, amount, and concentration of property or plant used in an investigation; and

(B) the signature and the printed or typed name of the peace officer to whom the property or plant was issued and the signature and the printed or typed name of the individual issuing the property or plant.

(d) A law enforcement agency may contract with another law enforcement agency to provide security that complies with Subsection (c) for controlled substance property or plants.

(e) A law enforcement agency may adopt a written policy with more stringent requirements than those required by Subsection (c). The director may enter and inspect, in accordance with Section 481.181, a location at which an agency maintains records or controlled substance property or plants as required by this section.

(f) If a law enforcement agency uses a controlled substance property or plant in the investigation of an offense under this code and the property or plant has been transported across state lines before the forfeiture, the agency shall cooperate with a federal agency in the investigation if requested to do so by the federal agency.

(g) Under the rules of the department, a law enforcement agency head may grant to another person access to a secure storage facility

under Subsection (c)(2).

(h) A county, justice, or municipal court may order forfeiture of a controlled substance property or plant, unless the lawful possession of and title to the property or plant can be ascertained. If the court determines that a person had lawful possession of and title to the controlled substance property or plant before it was seized, the court shall order the controlled substance property or plant returned to the person, if the person so desires. The court may only order the destruction of a controlled substance property or plant that is not otherwise disposed of in the manner prescribed by Section 481.160.

(i) If a controlled substance property or plant seized under this chapter was forfeited to an agency for the purpose of destruction or disposition under Section 481.161 in lieu of destruction or for any purpose other than investigation, the property or plant may not be used in an investigation unless a district court orders disposition under this section and permits the use of the property or plant in the investigation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., 1st C.S., ch. 12, Sec. 5(a), eff. Oct. 18, 1989; Acts 1991, 72nd Leg., ch. 141, Sec. 1, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 20, eff. September 1, 2016.

Acts 2021, 87th Leg., R.S., Ch. 603 (S.B. 1125), Sec. 6, eff. September 1, 2021.

Sec. 481.160. DISPOSITION OF EXCESS QUANTITIES. (a) If a controlled substance property or plant is forfeited under this code or under Chapter 59, Code of Criminal Procedure, the law enforcement agency that seized the property or plant or to which the property or plant is forfeited or a criminal justice agency to which the law enforcement agency transferred the property or plant for analysis and storage may summarily destroy the property or plant without a court order, or otherwise dispose of the property or plant in lieu of destruction in accordance with Section 481.161, before the disposition of a case arising out of the forfeiture if the agency ensures that:

(1) at least five random and representative samples are taken from the total amount of the property or plant and a sufficient quantity is preserved to provide for discovery by parties entitled to discovery;

(2) photographs are taken that reasonably depict the total amount of the property or plant; and

(3) the gross weight or liquid measure of the property or plant is determined, either by actually weighing or measuring the property or plant or by estimating its weight or measurement after making dimensional measurements of the total amount seized.

(b) If the property consists of a single container of liquid, taking and preserving one representative sample complies with Subsection (a)(1).

(c) A representative sample, photograph, or record made under this section is admissible in civil or criminal proceedings in the same manner and to the same extent as if the total quantity of the suspected controlled substance property or plant was offered in evidence, regardless of whether the remainder of the property or plant has been destroyed or otherwise disposed of. An inference or presumption of spoliation does not apply to a property or plant destroyed or otherwise disposed of under this section.

(d) If hazardous waste, residuals, contaminated glassware, associated equipment, or by-products from illicit chemical laboratories or similar operations that create a health or environmental hazard or are not capable of being safely stored are forfeited, those items may be disposed of under Subsection (a) or may be seized by and summarily forfeited to a law enforcement agency and destroyed by the law enforcement agency or by a criminal justice agency to which the law enforcement agency transferred the items for analysis and storage without a court order before the disposition of a case arising out of the forfeiture if current environmental protection standards are followed.

(e) A law enforcement agency seizing and destroying or disposing of materials described in Subsection (d) shall ensure that photographs are taken that reasonably depict the total amount of the materials seized and the manner in which the materials were physically arranged or positioned before seizure.

(f) Repealed by Acts 2005, 79th Leg., Ch. 1224, Sec. 19(2), eff. September 1, 2005.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(r), eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 199, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 141, Sec. 1, eff. Sept; 1, 1991; Acts 1991, 72nd Leg., ch. 285, Sec. 2, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 745, Sec. 33, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 29, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1224 (H.B. 1068), Sec. 19(2), eff. September 1, 2005.

Acts 2021, 87th Leg., R.S., Ch. 603 (S.B. 1125), Sec. 7, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 603 (S.B. 1125), Sec. 8, eff. September 1, 2021.

Sec. 481.161. DISPOSITION OF CONTROLLED SUBSTANCE PROPERTY OR PLANT IN LIEU OF DESTRUCTION. (a) Controlled substance property or plants subject to summary destruction or ordered destroyed by a court may be disposed of in accordance with this section.

(b) A law enforcement agency or criminal justice agency may transfer the controlled substance property or plants to a crime laboratory to be used for the purposes of laboratory research, testing results validation, and training of analysts.

(c) The crime laboratory to which the controlled substance property or plants are transferred under Subsection (b) shall destroy or otherwise properly dispose of any unused quantities of the controlled substance property or plants.

(d) This section does not apply to evidence described by Section 481.160(d).

(e) The director may adopt rules to implement this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 603 (S.B. 1125), Sec. 9, eff. September 1, 2021.

SUBCHAPTER F. INSPECTIONS, EVIDENCE, AND MISCELLANEOUS LAW ENFORCEMENT PROVISIONS

Sec. 481.181. INSPECTIONS. (a) The director may enter controlled premises at any reasonable time and inspect the premises

and items described by Subsection (b) in order to inspect, copy, and verify the correctness of a record, report, or other document required to be made or kept under this chapter and to perform other functions under this chapter. For purposes of this subsection, "reasonable time" means any time during the normal business hours of the person or activity regulated under this chapter or any time an activity regulated under this chapter is occurring on the premises. The director shall:

(1) state the purpose of the entry;

(2) display to the owner, operator, or agent in charge of the premises appropriate credentials; and

(3) deliver to the owner, operator, or agent in charge of the premises a written notice of inspection authority.

(b) The director may:

(1) inspect and copy a record, report, or other document required to be made or kept under this chapter;

(2) inspect, within reasonable limits and in a reasonable manner, the controlled premises and all pertinent equipment, finished and unfinished drugs, other substances, and materials, containers, labels, records, files, papers, processes, controls, and facilities as appropriate to verify a record, report, or document required to be kept under this chapter or to administer this chapter;

(3) examine and inventory stock of a controlled substance and obtain samples of the controlled substance;

(4) examine a hypodermic syringe, needle, pipe, or other instrument, device, contrivance, equipment, control, container, label, or facility relating to a possible violation of this chapter; and

(5) examine a material used, intended to be used, or capable of being used to dilute or adulterate a controlled substance.

(c) Unless the owner, operator, or agent in charge of the controlled premises consents in writing, the director may not inspect:

(1) financial data;

(2) sales data other than shipment data; or

(3) pricing data.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1099, Sec. 11, eff. Sept. 1, 2003.

Sec. 481.182. EVIDENTIARY RULES RELATING TO OFFER OF DELIVERY. For the purpose of establishing a delivery under this chapter, proof of an offer to sell must be corroborated by:

(1) a person other than the person to whom the offer is made; or

(2) evidence other than a statement of the person to whom the offer is made.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1099, Sec. 12, eff. Sept. 1, 2003.

Sec. 481.183. EVIDENTIARY RULES RELATING TO DRUG PARAPHERNALIA. (a) In considering whether an item is drug paraphernalia under this chapter, a court or other authority shall consider, in addition to all other logically relevant factors, and subject to rules of evidence:

(1) statements by an owner or person in control of the object concerning its use;

(2) the existence of any residue of a controlled substance on the object;

(3) direct or circumstantial evidence of the intent of an owner or other person in control of the object to deliver it to a person whom the person knows or should reasonably know intends to use the object to facilitate a violation of this chapter;

(4) oral or written instructions provided with the object concerning its use;

(5) descriptive material accompanying the object that explains or depicts its use;

(6) the manner in which the object is displayed for sale;

(7) whether the owner or person in control of the object is a supplier of similar or related items to the community, such as a licensed distributor or dealer of tobacco products;

(8) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(9) the existence and scope of uses for the object in the community;

(10) the physical design characteristics of the item; and

(11) expert testimony concerning the item's use.

(b) The innocence of an owner or other person in charge of an

object as to a direct violation of this chapter does not prevent a finding that the object is intended or designed for use as drug paraphernalia.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1099, Sec. 13, eff. Sept. 1, 2003.

Sec. 481.184. BURDEN OF PROOF; LIABILITIES. (a) The state is not required to negate an exemption or exception provided by this chapter in a complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this chapter. A person claiming the benefit of an exemption or exception has the burden of going forward with the evidence with respect to the exemption or exception.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, the person is presumed not to be the holder of the registration or form. The presumption is subject to rebuttal by a person charged with an offense under this chapter.

(c) This chapter does not impose a liability on an authorized state, county, or municipal officer engaged in the lawful performance of official duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1099, Sec. 14, eff. Sept. 1, 2003.

Sec. 481.185. ARREST REPORTS. (a) Each law enforcement agency in this state shall file monthly with the director a report of all arrests made for drug offenses and quantities of controlled substances seized during the preceding month. The agency shall make the report on a form provided by the director and shall provide the information required by the form.

(b) The director shall publish an annual summary of all drug arrests and controlled substances seized in the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.186. COOPERATIVE ARRANGEMENTS. (a) The director

shall cooperate with federal and state agencies in discharging the director's responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. The director may:

(1) arrange for the exchange of information among government officials concerning the use and abuse of controlled substances;

(2) cooperate in and coordinate training programs concerning controlled substances law enforcement at local and state levels;

(3) cooperate with the Federal Drug Enforcement Administration and state agencies by establishing a centralized unit to accept, catalog, file, and collect statistics, including records on drug-dependent persons and other controlled substance law offenders in this state and, except as provided by Section 481.068, make the information available for federal, state, and local law enforcement purposes; and

(4) conduct programs of eradication aimed at destroying wild or illegal growth of plant species from which controlled substances may be extracted.

(b) In the exercise of regulatory functions under this chapter, the director may rely on results, information, and evidence relating to the regulatory functions of this chapter received from the Federal Drug Enforcement Administration or a state agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1099, Sec. 15, eff. Sept. 1, 2003.

SUBCHAPTER G. THERAPEUTIC RESEARCH PROGRAM

Sec. 481.201. RESEARCH PROGRAM; REVIEW BOARD. (a) The executive commissioner may establish a controlled substance therapeutic research program for the supervised use of tetrahydrocannabinols for medical and research purposes to be conducted in accordance with this chapter.

(b) If the executive commissioner establishes the program, the executive commissioner shall create a research program review board. The review board members are appointed by the executive commissioner and serve at the will of the executive commissioner.

(c) The review board shall be composed of:

(1) a licensed physician certified by the American Board of Ophthalmology;

(2) a licensed physician certified by the American Board of Internal Medicine and certified in the subspecialty of medical oncology;

(3) a licensed physician certified by the American Board of Psychiatry;

(4) a licensed physician certified by the American Board of Surgery;

(5) a licensed physician certified by the American Board of Radiology; and

(6) a licensed attorney with experience in law pertaining to the practice of medicine.

(d) Members serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing official duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1232, eff. April 2, 2015.

Sec. 481.202. REVIEW BOARD POWERS AND DUTIES. (a) The review board shall review research proposals submitted and medical case histories of persons recommended for participation in a research program and determine which research programs and persons are most suitable for the therapy and research purposes of the program. The review board shall approve the research programs, certify program participants, and conduct periodic reviews of the research and participants.

(b) The review board, after approval of the executive commissioner, may seek authorization to expand the research program to include diseases not covered by this subchapter.

(c) The review board shall maintain a record of all persons in charge of approved research programs and of all persons who participate in the program as researchers or as patients.

(d) The executive commissioner may terminate the distribution of tetrahydrocannabinols and their derivatives to a research program as the executive commissioner determines necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1233, eff. April 2, 2015.

Sec. 481.203. PATIENT PARTICIPATION. (a) A person may not be considered for participation as a recipient of tetrahydrocannabinols and their derivatives through a research program unless the person is recommended to a person in charge of an approved research program and the review board by a physician who is licensed by the Texas Medical Board and is attending the person.

(b) A physician may not recommend a person for the research program unless the person:

(1) has glaucoma or cancer;

(2) is not responding to conventional treatment for glaucoma or cancer or is experiencing severe side effects from treatment; and

(3) has symptoms or side effects from treatment that may be alleviated by medical use of tetrahydrocannabinols or their derivatives.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1234, eff. April 2, 2015.

Sec. 481.204. ACQUISITION AND DISTRIBUTION OF CONTROLLED SUBSTANCES. (a) The executive commissioner shall acquire the tetrahydrocannabinols and their derivatives for use in the research program by contracting with the National Institute on Drug Abuse to receive tetrahydrocannabinols and their derivatives that are safe for human consumption according to the regulations adopted by the institute, the United States Food and Drug Administration, and the Federal Drug Enforcement Administration.

(b) The executive commissioner shall supervise the distribution of the tetrahydrocannabinols and their derivatives to program participants. The tetrahydrocannabinols and derivatives of tetrahydrocannabinols may be distributed only by the person in charge

of the research program to physicians caring for program participant patients, under rules adopted by the executive commissioner in such a manner as to prevent unauthorized diversion of the substances and in compliance with all requirements of the Federal Drug Enforcement Administration. The physician is responsible for dispensing the substances to patients.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1235, eff. April 2, 2015.

Sec. 481.205. RULES; REPORTS. (a) The executive commissioner shall adopt rules necessary for implementing the research program.

(b) If the executive commissioner establishes a program under this subchapter, the commissioner shall publish a report not later than January 1 of each odd-numbered year on the medical effectiveness of the use of tetrahydrocannabinols and their derivatives and any other medical findings of the research program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1236, eff. April 2, 2015.

SUBCHAPTER H. ADMINISTRATIVE PENALTY

Sec. 481.301. IMPOSITION OF PENALTY. The department may impose an administrative penalty on a person who violates Section 481.067, 481.077, 481.0771, or 481.080 or a rule or order adopted under any of those sections.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 21, eff. September 1, 2016.
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.007, eff. September 1, 2019.

Sec. 481.302. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed $1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed $20,000.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.303. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the department shall give written notice of the report to the person by certified mail, registered mail, personal delivery, or another manner of delivery that records the person's receipt of the notice.

(b) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.304. PENALTY TO BE PAID OR INFORMAL HEARING REQUESTED. (a) Before the 21st day after the date the person receives notice under Section 481.303, the person in writing may:

(1) accept the determination and recommended penalty; or

(2) make a request for an informal hearing held by the

department on the occurrence of the violation, the amount of the penalty, or both.

(b) At the conclusion of an informal hearing requested under Subsection (a), the department may modify the amount of the recommended penalty.

(c) If the person accepts the determination and recommended penalty, including any modification of the amount, or if the person fails to timely respond to the notice, the director by order shall approve the determination and impose the recommended penalty.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.305. FORMAL HEARING. (a) The person may request a formal hearing only after participating in an informal hearing.

(b) The request must be submitted in writing and received by the department before the 21st day after the date the person is notified of the decision from the informal hearing.

(c) If a timely request for a formal hearing is not received, the director by order shall approve the determination from the informal hearing and impose the recommended penalty.

(d) If the person timely requests a formal hearing, the director shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the director and to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(e) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the director a proposal for a decision about the occurrence of the violation and the amount of any proposed penalty.

(f) If a penalty is proposed under Subsection (e), the administrative law judge shall include in the proposal for a decision a finding setting out costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state in bringing the proceeding. The director may adopt the finding and impose the costs, fees, and expenses on the person as part of the final order entered in the proceeding.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5,

eff. September 1, 2007.

Sec. 481.306. DECISION. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the director by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the director's order under Subsection (a) that is sent to the person in the manner provided by Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Before the 31st day after the date the order under Section 481.306 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.308. STAY OF ENFORCEMENT OF PENALTY. (a) Within the period prescribed by Section 481.307, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the director by certified mail.

(b) Following receipt of a copy of an affidavit under Subsection (a)(2), the director may file with the court, before the sixth day after the date of receipt, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.309. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.310. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.311. REMITTANCE OF PENALTY AND INTEREST. (a) If the

person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person before the 31st day after the date that the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.312. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.313. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.314. DISPOSITION OF PENALTY. The department shall send any amount collected as a penalty under this subchapter to the comptroller for deposit to the credit of the general revenue fund.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

SUBCHAPTER I. INTERAGENCY PRESCRIPTION MONITORING WORK GROUP

Sec. 481.351. INTERAGENCY PRESCRIPTION MONITORING WORK GROUP. The interagency prescription monitoring work group is created to evaluate the effectiveness of prescription monitoring under this chapter and offer recommendations to improve the effectiveness and efficiency of recordkeeping and other functions related to the regulation of dispensing controlled substances by prescription.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 4, eff. September 1, 2013.

Sec. 481.352. MEMBERS. The work group is composed of:

(1) the executive director of the board or the executive director's designee, who serves as chair of the work group;

(2) the commissioner of state health services or the commissioner's designee;

(3) the executive director of the Texas Medical Board or the executive director's designee;

(4) the executive director of the Texas Board of Nursing or the executive director's designee;

(5) the executive director of the Texas Physician Assistant Board or the executive director's designee;

(6) the executive director of the State Board of Dental Examiners or the executive director's designee;

(7) the executive director of the Texas Optometry Board or the executive director's designee;

(8) the executive director of the Texas Department of Licensing and Regulation or the executive director's designee;

(9) the executive director of the State Board of Veterinary Medical Examiners or the executive director's designee; and

(10) a medical examiner appointed by the board.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 4, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 22, eff. June 20, 2015.

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 61, eff.

September 1, 2017.

Sec. 481.353. MEETINGS. (a) The work group shall meet when necessary as determined by the board.

(b) The work group is subject to Chapter 551, Government Code.

(c) The work group shall proactively engage stakeholders and solicit and take into account input from the public.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 4, eff. September 1, 2013.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 965 (S.B. 683), Sec. 4, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 4.004, eff. September 1, 2019.

Sec. 481.354. REPORT. Not later than December 1 of each even-numbered year, the work group shall submit to the legislature its recommendations relating to prescription monitoring.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 4, eff. September 1, 2013.

CHAPTER 482. SIMULATED CONTROLLED SUBSTANCES

Sec. 482.001. DEFINITIONS. In this chapter:

(1) "Controlled substance" has the meaning assigned by Sec. 481.002 (Texas Controlled Substances Act).

(2) "Deliver" means to transfer, actually or constructively, from one person to another a simulated controlled substance, regardless of whether there is an agency relationship. The term includes offering to sell a simulated controlled substance.

(3) "Manufacture" means to make a simulated controlled substance and includes the preparation of the substance in dosage form by mixing, compounding, encapsulating, tableting, or any other process.

(4) "Simulated controlled substance" means a substance that is purported to be a controlled substance, but is chemically different from the controlled substance it is purported to be.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 482.002. UNLAWFUL DELIVERY OR MANUFACTURE WITH INTENT TO DELIVER; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly or intentionally manufactures with the intent to deliver or delivers a simulated controlled substance and the person:

(1) expressly represents the substance to be a controlled substance;

(2) represents the substance to be a controlled substance in a manner that would lead a reasonable person to believe that the substance is a controlled substance; or

(3) states to the person receiving or intended to receive the simulated controlled substance that the person may successfully represent the substance to be a controlled substance to a third party.

(b) It is a defense to prosecution under this section that the person manufacturing with the intent to deliver or delivering the simulated controlled substance was:

(1) acting in the discharge of the person's official duties as a peace officer;

(2) manufacturing the substance for or delivering the substance to a licensed medical practitioner for use as a placebo in the course of the practitioner's research or practice; or

(3) a licensed medical practitioner, pharmacist, or other person authorized to dispense or administer a controlled substance, and the person was acting in the legitimate performance of the person's professional duties.

(c) It is not a defense to prosecution under this section that the person manufacturing with the intent to deliver or delivering the simulated controlled substance believed the substance to be a controlled substance.

(d) An offense under this section is a state jail felony.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.03, eff. Sept. 1, 1994.

Sec. 482.003. EVIDENTIARY RULES. (a) In determining whether a person has represented a simulated controlled substance to be a

controlled substance in a manner that would lead a reasonable person to believe the substance was a controlled substance, a court may consider, in addition to all other logically relevant factors, whether:

(1) the simulated controlled substance was packaged in a manner normally used for the delivery of a controlled substance;

(2) the delivery or intended delivery included an exchange of or demand for property as consideration for delivery of the substance and the amount of the consideration was substantially in excess of the reasonable value of the simulated controlled substance; and

(3) the physical appearance of the finished product containing the substance was substantially identical to a controlled substance.

(b) Proof of an offer to sell a simulated controlled substance must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 482.004. SUMMARY FORFEITURE. A simulated controlled substance seized as a result of an offense under this chapter is subject to summary forfeiture and to destruction or disposition in the same manner as is a controlled substance property under Subchapter E, Chapter 481.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 141, Sec. 3, eff. Sept. 1, 1991.

Sec. 482.005. PREPARATORY OFFENSES. Title 4, Penal Code, applies to an offense under this chapter.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 39, eff. Sept. 1, 1995.

CHAPTER 483. DANGEROUS DRUGS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 483.0001. SHORT TITLE. This Act may be cited as the Texas Dangerous Drug Act.

Added by Acts 1993, 73rd Leg., ch. 789, Sec. 18, eff. Sept. 1, 1993.

Sec. 483.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Pharmacy.

(2) "Dangerous drug" means a device or a drug that is unsafe for self-medication and that is not included in Schedules I through V or Penalty Groups 1 through 4 of Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend:

(A) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(B) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(3) "Deliver" means to sell, dispense, give away, or supply in any other manner.

(4) "Designated agent" means:

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner to communicate prescription drug orders to a pharmacist;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a prescription drug order; or

(C) a registered nurse or physician assistant authorized by a practitioner to carry out a prescription drug order for dangerous drugs under Subchapter B, Chapter 157, Occupations Code.

(5) "Dispense" means to prepare, package, compound, or label a dangerous drug in the course of professional practice for delivery under the lawful order of a practitioner to an ultimate user or the user's agent.

(6) "Manufacturer" means a person, other than a pharmacist, who manufactures dangerous drugs. The term includes a person who prepares dangerous drugs in dosage form by mixing, compounding, encapsulating, entableting, or any other process.

(7) "Patient" means:

(A) an individual for whom a dangerous drug is prescribed or to whom a dangerous drug is administered; or

(B) an owner or the agent of an owner of an animal for

which a dangerous drug is prescribed or to which a dangerous drug is administered.

(8) "Person" includes an individual, corporation, partnership, and association.

(9) "Pharmacist" means a person licensed by the Texas State Board of Pharmacy to practice pharmacy.

(10) "Pharmacy" means a facility where prescription drug or medication orders are received, processed, dispensed, or distributed under this chapter, Chapter 481 of this code, and Subtitle J, Title 3, Occupations Code. The term does not include a narcotic drug treatment program that is regulated by Chapter 466, Health and Safety Code.

(11) "Practice of pharmacy" means:

(A) provision of those acts or services necessary to provide pharmaceutical care;

(B) interpretation and evaluation of prescription drug orders or medication orders;

(C) participation in drug and device selection as authorized by law, drug administration, drug regimen review, or drug or drug-related research;

(D) provision of patient counseling;

(E) responsibility for:

(i) dispensing of prescription drug orders or distribution of medication orders in the patient's best interest;

(ii) compounding and labeling of drugs and devices, except labeling by a manufacturer, repackager, or distributor of nonprescription drugs and commercially packaged prescription drugs and devices;

(iii) proper and safe storage of drugs and devices; or

(iv) maintenance of proper records for drugs and devices. In this subdivision, "device" has the meaning assigned by Subtitle J, Title 3, Occupations Code; or

(F) performance of a specific act of drug therapy management for a patient delegated to a pharmacist by a written protocol from a physician licensed by the state under Subtitle B, Title 3, Occupations Code.

(12) "Practitioner" means:

(A) a person licensed by:

(i) the Texas Medical Board, State Board of Dental

Examiners, Texas Optometry Board, or State Board of Veterinary Medical Examiners to prescribe and administer dangerous drugs; or

(ii) the Texas Department of Licensing and Regulation, with respect to podiatry, to prescribe and administer dangerous drugs;

(B) a person licensed by another state in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs;

(C) a person licensed in Canada or Mexico in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs; or

(D) an advanced practice registered nurse or physician assistant to whom a physician has delegated the authority to prescribe or order a drug or device under Section 157.0511, 157.0512, or 157.054, Occupations Code.

(13) "Prescription" means an order from a practitioner, or an agent of the practitioner designated in writing as authorized to communicate prescriptions, or an order made in accordance with Subchapter B, Chapter 157, Occupations Code, or Section 203.353, Occupations Code, to a pharmacist for a dangerous drug to be dispensed that states:

(A) the date of the order's issue;

(B) the name and address of the patient;

(C) if the drug is prescribed for an animal, the species of the animal;

(D) the name and quantity of the drug prescribed;

(E) the directions for the use of the drug;

(F) the intended use of the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(G) the name, address, and telephone number of the practitioner at the practitioner's usual place of business, legibly printed or stamped; and

(H) the name, address, and telephone number of the licensed midwife, registered nurse, or physician assistant, legibly printed or stamped, if signed by a licensed midwife, registered nurse, or physician assistant.

(14) "Warehouseman" means a person who stores dangerous drugs for others and who has no control over the disposition of the drugs except for the purpose of storage.

(15) "Wholesaler" means a person engaged in the business of distributing dangerous drugs to a person listed in Sections 483.041(c)(1)-(6).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.03(h), 5.04(b), eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 200, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 237, Sec. 10, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 588, Sec. 26, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 351, Sec. 29, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 789, Sec. 18, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 965, Sec. 6, 82, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1095, Sec. 18, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1180, Sec. 22, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 112, Sec. 6, eff. May 11, 2001; Acts 2001, 77th Leg., ch. 1254, Sec. 11, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.795, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 88, Sec. 10, eff. May 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 54, eff. September 1, 2005.
Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 24, eff. November 1, 2013.
Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.010, eff. September 1, 2019.

Sec. 483.002. RULES. The board may adopt rules for the proper administration and enforcement of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.003. DEPARTMENT OF STATE HEALTH SERVICES HEARINGS REGARDING CERTAIN DANGEROUS DRUGS. (a) The Department of State Health Services may hold public hearings in accordance with Chapter 2001, Government Code, to determine whether there is compelling evidence that a dangerous drug has been abused, either by being prescribed for nontherapeutic purposes or by the ultimate user.
(b) On finding that a dangerous drug has been abused, the Department of State Health Services may limit the availability of the

abused drug by permitting its dispensing only on the prescription of a practitioner described by Section 483.001(12)(A), (B), or (D).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1180, Sec. 23, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 112, Sec. 7, eff. May 11, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1237, eff. April 2, 2015.

Sec. 483.004. COMMISSIONER OF STATE HEALTH SERVICES EMERGENCY AUTHORITY RELATING TO DANGEROUS DRUGS. If the commissioner of state health services has compelling evidence that an immediate danger to the public health exists as a result of the prescription of a dangerous drug by practitioners described by Section 483.001(12)(C), the commissioner may use the commissioner's existing emergency authority to limit the availability of the drug by permitting its prescription only by practitioners described by Section 483.001(12)(A), (B), or (D).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 112, Sec. 8, eff. May 11, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1238, eff. April 2, 2015.

SUBCHAPTER B. DUTIES OF PHARMACISTS, PRACTITIONERS, AND OTHER PERSONS

Sec. 483.021. DETERMINATION BY PHARMACIST ON REQUEST TO DISPENSE DRUG. (a) A pharmacist who is requested to dispense a dangerous drug under a prescription issued by a practitioner shall determine, in the exercise of the pharmacist's professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a dangerous drug if the pharmacist knows or should have known that the prescription was issued without a valid patient-practitioner relationship.

(b) A pharmacist who is requested to dispense a dangerous drug under a prescription issued by a therapeutic optometrist shall determine, in the exercise of the pharmacist's professional judgment,

whether the prescription is for a dangerous drug that a therapeutic optometrist is authorized to prescribe under Section 351.358, Occupations Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 588, Sec. 27, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1254, Sec. 12, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.796, eff. Sept. 1, 2001.

Sec. 483.022. PRACTITIONER'S DESIGNATED AGENT; PRACTITIONER'S RESPONSIBILITIES. (a) A practitioner shall provide in writing the name of each designated agent as defined by Section 483.001(4)(A) and (C), and the name of each healthcare facility which employs persons defined by Section 483.001(4)(B).

(b) The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents or healthcare facilities as defined by Section 483.001(4).

(c) The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a designated agent as defined by Section 483.001(4) on the pharmacist's request.

(d) This section does not relieve a practitioner or the practitioner's designated agent from the requirements of Subchapter A, Chapter 562, Occupations Code.

(e) A practitioner remains personally responsible for the actions of a designated agent who communicates a prescription to a pharmacist.

(f) A practitioner may designate a person who is a licensed vocational nurse or has an education equivalent to or greater than that required for a licensed vocational nurse to communicate prescriptions of an advanced practice nurse or physician assistant authorized by the practitioner to sign prescription drug orders under Subchapter B, Chapter 157, Occupations Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 201, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 237, Sec. 11, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 789, Sec. 19, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 428, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.797, eff. Sept. 1, 2001.

Sec. 483.023. RETENTION OF PRESCRIPTIONS. A pharmacy shall retain a prescription for a dangerous drug dispensed by the pharmacy for two years after the date of the initial dispensing or the last refilling of the prescription, whichever date is later.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.024. RECORDS OF ACQUISITION OR DISPOSAL. The following persons shall maintain a record of each acquisition and each disposal of a dangerous drug for two years after the date of the acquisition or disposal:

(1) a pharmacy;

(2) a practitioner;

(3) a person who obtains a dangerous drug for lawful research, teaching, or testing purposes, but not for resale;

(4) a hospital that obtains a dangerous drug for lawful administration by a practitioner; and

(5) a manufacturer or wholesaler licensed by the Department of State Health Services under Chapter 431 (Texas Food, Drug, and Cosmetic Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1239, eff. April 2, 2015.

Sec. 483.025. INSPECTIONS; INVENTORIES. A person required to keep records relating to dangerous drugs shall:

(1) make the records available for inspection and copying at all reasonable hours by any public official or employee engaged in enforcing this chapter; and

(2) allow the official or employee to inventory all stocks of dangerous drugs on hand.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. CRIMINAL PENALTIES

Sec. 483.041. POSSESSION OF DANGEROUS DRUG. (a) A person

commits an offense if the person possesses a dangerous drug unless the person obtains the drug from a pharmacist acting in the manner described by Section 483.042(a)(1) or a practitioner acting in the manner described by Section 483.042(a)(2).

(b) Except as permitted by this chapter, a person commits an offense if the person possesses a dangerous drug for the purpose of selling the drug.

(c) Subsection (a) does not apply to the possession of a dangerous drug in the usual course of business or practice or in the performance of official duties by the following persons or an agent or employee of the person:

(1) a pharmacy licensed by the board;

(2) a practitioner;

(3) a person who obtains a dangerous drug for lawful research, teaching, or testing, but not for resale;

(4) a hospital that obtains a dangerous drug for lawful administration by a practitioner;

(5) an officer or employee of the federal, state, or local government;

(6) a manufacturer or wholesaler licensed by the Department of State Health Services under Chapter 431 (Texas Food, Drug, and Cosmetic Act);

(7) a carrier or warehouseman;

(8) a home and community support services agency licensed under and acting in accordance with Chapter 142;

(9) a licensed midwife who obtains oxygen for administration to a mother or newborn or who obtains a dangerous drug for the administration of prophylaxis to a newborn for the prevention of ophthalmia neonatorum in accordance with Section 203.353, Occupations Code;

(10) a salvage broker or salvage operator licensed under Chapter 432; or

(11) a certified laser hair removal professional under Subchapter M, Chapter 401, who possesses and uses a laser or pulsed light device approved by and registered with the Department of State Health Services and in compliance with department rules for the sole purpose of cosmetic nonablative hair removal.

(d) An offense under this section is a Class A misdemeanor.

(e) It is a defense to prosecution for an offense under Subsection (a) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(f) The defense to prosecution provided by Subsection (e) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 481 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(g) The defense to prosecution provided by Subsection (e) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by

Subsection (e) is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.03(f), eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 16, Sec. 2, eff. April 2, 1993; Acts 1993, 73rd Leg., ch. 789, Sec. 20, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 307, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 318, Sec. 41, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1095, Sec. 19, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1129, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 265, Sec. 9, eff. May 22, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.798, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 55, eff. September 1, 2005.
Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 2, eff. September 1, 2010.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1240, eff. April 2, 2015.
Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 11, eff. September 1, 2021.

Sec. 483.042. DELIVERY OR OFFER OF DELIVERY OF DANGEROUS DRUG. (a) A person commits an offense if the person delivers or offers to deliver a dangerous drug:

(1) unless:

(A) the dangerous drug is delivered or offered for delivery by a pharmacist under:

(i) a prescription issued by a practitioner described by Section 483.001(12)(A) or (B);

(ii) a prescription signed by a registered nurse or physician assistant in accordance with Subchapter B, Chapter 157, Occupations Code; or

(iii) an original written prescription issued by a practitioner described by Section 483.001(12)(C); and

(B) a label is attached to the immediate container in which the drug is delivered or offered to be delivered and the label contains the following information:

(i) the name and address of the pharmacy from which

the drug is delivered or offered for delivery;

(ii) the date the prescription for the drug is dispensed;

(iii) the number of the prescription as filed in the prescription files of the pharmacy from which the prescription is dispensed;

(iv) the name of the practitioner who prescribed the drug and, if applicable, the name of the registered nurse or physician assistant who signed the prescription;

(v) the name of the patient and, if the drug is prescribed for an animal, a statement of the species of the animal; and

(vi) directions for the use of the drug as contained in the prescription; or

(2) unless:

(A) the dangerous drug is delivered or offered for delivery by:

(i) a practitioner in the course of practice; or

(ii) a registered nurse or physician assistant in the course of practice in accordance with Subchapter B, Chapter 157, Occupations Code; and

(B) a label is attached to the immediate container in which the drug is delivered or offered to be delivered and the label contains the following information:

(i) the name and address of the practitioner who prescribed the drug, and if applicable, the name and address of the registered nurse or physician assistant;

(ii) the date the drug is delivered;

(iii) the name of the patient and, if the drug is prescribed for an animal, a statement of the species of the animal; and

(iv) the name of the drug, the strength of the drug, and directions for the use of the drug.

(b) Subsection (a) does not apply to the delivery or offer for delivery of a dangerous drug to a person listed in Section 483.041(c) for use in the usual course of business or practice or in the performance of official duties by the person.

(c) Proof of an offer to sell a dangerous drug must be corroborated by a person other than the offeree or by evidence other than a statement by the offeree.

(d) An offense under this section is a state jail felony.

(e) The labeling provisions of Subsection (a) do not apply to a dangerous drug prescribed or dispensed for administration to a patient who is institutionalized. The board shall adopt rules for the labeling of such a drug.

(f) Provided all federal requirements are met, the labeling provisions of Subsection (a) do not apply to a dangerous drug prescribed or dispensed for administration to food production animals in an agricultural operation under a written medical directive or treatment guideline from a veterinarian licensed under Chapter 801, Occupations Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.03(g), eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 287, Sec. 34, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 789, Sec. 21, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 2.04, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 965, Sec. 7, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1180, Sec. 24, eff. Sept; 1, 1997; Acts 1999, 76th Leg., ch. 1404, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.799, eff. Sept. 1, 2001.

Sec. 483.043. MANUFACTURE OF DANGEROUS DRUG. (a) A person commits an offense if the person manufactures a dangerous drug and the person is not authorized by law to manufacture the drug.

(b) An offense under this section is a state jail felony.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.05, eff. Sept. 1, 1994.

Sec. 483.045. FORGING OR ALTERING PRESCRIPTION. (a) A person commits an offense if the person:

(1) forges a prescription or increases the prescribed quantity of a dangerous drug in a prescription;

(2) issues a prescription bearing a forged or fictitious signature;

(3) obtains or attempts to obtain a dangerous drug by using a forged, fictitious, or altered prescription;

(4) obtains or attempts to obtain a dangerous drug by means

of a fictitious or fraudulent telephone call; or

(5) possesses a dangerous drug obtained by a forged, fictitious, or altered prescription or by means of a fictitious or fraudulent telephone call.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.046. FAILURE TO RETAIN PRESCRIPTION. (a) A pharmacist commits an offense if the pharmacist:

(1) delivers a dangerous drug under a prescription; and

(2) fails to retain the prescription as required by Section 483.023.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.047. REFILLING PRESCRIPTION WITHOUT AUTHORIZATION. (a) Except as authorized by Subsections (b) and (b-1), a pharmacist commits an offense if the pharmacist refills a prescription unless:

(1) the prescription contains an authorization by the practitioner for the refilling of the prescription, and the pharmacist refills the prescription in the manner provided by the authorization; or

(2) at the time of refilling the prescription, the pharmacist is authorized to do so by the practitioner who issued the prescription.

(b) A pharmacist may exercise his professional judgment in refilling a prescription for a dangerous drug without the authorization of the prescribing practitioner provided:

(1) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(2) either:

(A) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(B) the pharmacist is unable to contact the practitioner after reasonable effort;

(3) the quantity of drug dispensed does not exceed a 72-hour supply;

(4) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills; and

(5) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time.

(b-1) Notwithstanding Subsection (b), in the event of a natural or manmade disaster, a pharmacist may dispense not more than a 30-day supply of a dangerous drug without the authorization of the prescribing practitioner if:

(1) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(2) the natural or manmade disaster prohibits the pharmacist from being able to contact the practitioner;

(3) the governor has declared a state of disaster under Chapter 418, Government Code; and

(4) the board, through the executive director, has notified pharmacies in this state that pharmacists may dispense up to a 30-day supply of a dangerous drug.

(b-2) The prescribing practitioner is not liable for an act or omission by a pharmacist in dispensing a dangerous drug under Subsection (b-1).

(c) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 789, Sec. 22, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 599 (S.B. 460), Sec. 1, eff. September 1, 2015.

Sec. 483.048. UNAUTHORIZED COMMUNICATION OF PRESCRIPTION. (a) An agent of a practitioner commits an offense if the agent communicates by telephone a prescription unless the agent is designated in writing under Section 483.022 as authorized by the practitioner to communicate prescriptions by telephone.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.049. FAILURE TO MAINTAIN RECORDS. (a) A person commits an offense if the person is required to maintain a record under Section 483.023 or 483.024 and the person fails to maintain the record in the manner required by those sections.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.050. REFUSAL TO PERMIT INSPECTION. (a) A person commits an offense if the person is required to permit an inspection authorized by Section 483.025 and fails to permit the inspection in the manner required by that section.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.051. USING OR REVEALING TRADE SECRET. (a) A person commits an offense if the person uses for the person's advantage or reveals to another person, other than to an officer or employee of the board or to a court in a judicial proceeding relevant to this

chapter, information relating to dangerous drugs required to be kept under this chapter, if that information concerns a method or process subject to protection as a trade secret.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.052. VIOLATION OF OTHER PROVISION. (a) A person commits an offense if the person violates a provision of this chapter other than a provision for which a specific offense is otherwise described by this chapter.

(b) An offense under this section is a Class B misdemeanor, unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.053. PREPARATORY OFFENSES. Title 4, Penal Code, applies to an offense under this subchapter.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 40, eff. Sept. 1, 1995.

SUBCHAPTER D. CRIMINAL AND CIVIL PROCEDURE

Sec. 483.071. EXCEPTIONS; BURDEN OF PROOF. (a) In a complaint, information, indictment, or other action or proceeding brought for the enforcement of this chapter, the state is not required to negate an exception, excuse, proviso, or exemption contained in this chapter.

(b) The defendant has the burden of proving the exception, excuse, proviso, or exemption.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.072. UNCORROBORATED TESTIMONY. A conviction under this chapter may be obtained on the uncorroborated testimony of a party to the offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.073. SEARCH WARRANT. A peace officer may apply for a search warrant to search for dangerous drugs possessed in violation of this chapter. The peace officer must apply for and execute the search warrant in the manner prescribed by the Code of Criminal Procedure.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.074. SEIZURE AND DESTRUCTION. (a) A dangerous drug that is manufactured, sold, or possessed in violation of this chapter is contraband and may be seized by an employee of the board or by a peace officer authorized to enforce this chapter and charged with that duty.

(b) If a dangerous drug is seized under Subsection (a), the board may direct an employee of the board or an authorized peace officer to destroy the drug. The employee or authorized peace officer directed to destroy the drug must act in the presence of another employee of the board or authorized peace officer and shall destroy the drug in any manner designated as appropriate by the board.

(c) Before the dangerous drug is destroyed, an inventory of the drug must be prepared. The inventory must be accompanied by a statement that the dangerous drug is being destroyed at the direction of the board, by an employee of the board or an authorized peace officer, and in the presence of another employee of the board or authorized peace officer. The statement must also contain the names of the persons in attendance at the time of destruction, state the capacity in which each of those persons acts, be signed by those persons, and be sworn to by those persons that the statement is correct. The statement shall be filed with the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 237, Sec. 12, eff. Sept. 1, 1991.

Sec. 483.075. INJUNCTION. The board may institute an action in its own name to enjoin a violation of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.076. LEGAL REPRESENTATION OF BOARD. (a) If the board institutes a legal proceeding under this chapter, the board may be represented only by a county attorney, a district attorney, or the attorney general.

(b) The board may not employ private counsel in any legal proceeding instituted by or against the board under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. OPIOID ANTAGONISTS

Sec. 483.101. DEFINITIONS. In this subchapter:

(1) "Emergency services personnel" includes firefighters, emergency medical services personnel as defined by Section 773.003, emergency room personnel, and other individuals who, in the course and scope of employment or as a volunteer, provide services for the benefit of the general public during emergency situations.

(2) "Opioid antagonist" means any drug that binds to opioid receptors and blocks or otherwise inhibits the effects of opioids acting on those receptors.

(3) "Opioid-related drug overdose" means a condition, evidenced by symptoms such as extreme physical illness, decreased level of consciousness, constriction of the pupils, respiratory depression, or coma, that a layperson would reasonably believe to be the result of the consumption or use of an opioid.

(4) "Prescriber" means a person authorized by law to prescribe an opioid antagonist.

Added by Acts 2015, 84th Leg., R.S., Ch. 958 (S.B. 1462), Sec. 1, eff. September 1, 2015.

Sec. 483.102. PRESCRIPTION OF OPIOID ANTAGONIST; STANDING

ORDER. (a) A prescriber may, directly or by standing order, prescribe an opioid antagonist to:

(1) a person at risk of experiencing an opioid-related drug overdose; or

(2) a family member, friend, or other person in a position to assist a person described by Subdivision (1).

(b) A prescription issued under this section is considered as issued for a legitimate medical purpose in the usual course of professional practice.

(c) A prescriber who, acting in good faith with reasonable care, prescribes or does not prescribe an opioid antagonist is not subject to any criminal or civil liability or any professional disciplinary action for:

(1) prescribing or failing to prescribe the opioid antagonist; or

(2) if the prescriber chooses to prescribe an opioid antagonist, any outcome resulting from the eventual administration of the opioid antagonist.

Added by Acts 2015, 84th Leg., R.S., Ch. 958 (S.B. 1462), Sec. 1, eff. September 1, 2015.

Sec. 483.103. DISPENSING OF OPIOID ANTAGONIST. (a) A pharmacist may dispense an opioid antagonist under a valid prescription to:

(1) a person at risk of experiencing an opioid-related drug overdose; or

(2) a family member, friend, or other person in a position to assist a person described by Subdivision (1).

(b) A prescription filled under this section is considered as filled for a legitimate medical purpose in the usual course of professional practice.

(c) A pharmacist who, acting in good faith and with reasonable care, dispenses or does not dispense an opioid antagonist under a valid prescription is not subject to any criminal or civil liability or any professional disciplinary action for:

(1) dispensing or failing to dispense the opioid antagonist; or

(2) if the pharmacist chooses to dispense an opioid

antagonist, any outcome resulting from the eventual administration of the opioid antagonist.

Added by Acts 2015, 84th Leg., R.S., Ch. 958 (S.B. 1462), Sec. 1, eff. September 1, 2015.

Sec. 483.104. DISTRIBUTION OF OPIOID ANTAGONIST; STANDING ORDER. A person or organization acting under a standing order issued by a prescriber may store an opioid antagonist and may distribute an opioid antagonist, provided the person or organization does not request or receive compensation for storage or distribution.

Added by Acts 2015, 84th Leg., R.S., Ch. 958 (S.B. 1462), Sec. 1, eff. September 1, 2015.

Sec. 483.105. POSSESSION OF OPIOID ANTAGONIST. Any person may possess an opioid antagonist, regardless of whether the person holds a prescription for the opioid antagonist.

Added by Acts 2015, 84th Leg., R.S., Ch. 958 (S.B. 1462), Sec. 1, eff. September 1, 2015.

Sec. 483.106. ADMINISTRATION OF OPIOID ANTAGONIST. (a) A person who, acting in good faith and with reasonable care, administers or does not administer an opioid antagonist to another person whom the person believes is suffering an opioid-related drug overdose is not subject to criminal prosecution, sanction under any professional licensing statute, or civil liability, for an act or omission resulting from the administration of or failure to administer the opioid antagonist.

(b) Emergency services personnel are authorized to administer an opioid antagonist to a person who appears to be suffering an opioid-related drug overdose, as clinically indicated.

Added by Acts 2015, 84th Leg., R.S., Ch. 958 (S.B. 1462), Sec. 1, eff. September 1, 2015.

Sec. 483.107. CONFLICT OF LAW. To the extent of a conflict between this subchapter and another law, this subchapter controls.

Added by Acts 2015, 84th Leg., R.S., Ch. 958 (S.B. 1462), Sec. 1, eff. September 1, 2015.

CHAPTER 484. ABUSABLE SYNTHETIC SUBSTANCES

Sec. 484.001. DEFINITIONS. In this chapter:

(1) "Abusable synthetic substance" means a substance that:

(A) is not otherwise regulated under this title or under federal law;

(B) is intended to mimic a controlled substance or controlled substance analogue; and

(C) when inhaled, ingested, or otherwise introduced into a person's body:

(i) produces an effect on the central nervous system similar to the effect produced by a controlled substance or controlled substance analogue;

(ii) creates a condition of intoxication, hallucination, or elation similar to a condition produced by a controlled substance or controlled substance analogue; or

(iii) changes, distorts, or disturbs the person's eyesight, thinking process, balance, or coordination in a manner similar to a controlled substance or controlled substance analogue.

(2) "Business" includes trade and commerce and advertising, selling, and buying service or property.

(3) "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by law or set by established commercial usage.

(4) "Sell" and "sale" include offer for sale, advertise for sale, expose for sale, keep for the purpose of sale, deliver for or after sale, solicit and offer to buy, and every disposition for value.

Added by Acts 2015, 84th Leg., R.S., Ch. 187 (S.B. 461), Sec. 1, eff. September 1, 2015.

Sec. 484.002. PROHIBITED ACTS. (a) A person commits an offense if in the course of business the person knowingly produces,

distributes, sells, or offers for sale a mislabeled abusable synthetic substance.

(b) An offense under this section is a Class C misdemeanor, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted of an offense under this section or of an offense under Section 32.42(b)(4), Penal Code, and the adulterated or mislabeled commodity was an abusable synthetic substance.

(c) If conduct constituting an offense under this section also constitutes an offense under another provision of law, the person may be prosecuted under either this section or the other provision.

Added by Acts 2015, 84th Leg., R.S., Ch. 187 (S.B. 461), Sec. 1, eff. September 1, 2015.

Sec. 484.003. CIVIL PENALTY. (a) The attorney general or a district, county, or city attorney may institute an action in district court to collect a civil penalty from a person who in the course of business produces, distributes, sells, or offers for sale a mislabeled abusable synthetic substance.

(b) The civil penalty may not exceed $25,000 a day for each offense. Each day an offense is committed constitutes a separate violation for purposes of the penalty assessment.

(c) The court shall consider the following in determining the amount of the penalty:

(1) the person's history of any previous offenses under Section 484.002 or under Section 32.42(b)(4), Penal Code, relating to the sale of a mislabeled abusable synthetic substance;

(2) the seriousness of the offense;

(3) any hazard posed to the public health and safety by the offense; and

(4) demonstrations of good faith by the person charged.

(d) Venue for a suit brought under this section is in the city or county in which the offense occurred or in Travis County.

(e) A civil penalty recovered in a suit instituted by a local government under this section shall be paid to that local government.

Added by Acts 2015, 84th Leg., R.S., Ch. 187 (S.B. 461), Sec. 1, eff. September 1, 2015.

Sec. 484.004. AFFIRMATIVE DEFENSE. It is an affirmative defense to prosecution or liability under this chapter that:

(1) the abusable synthetic substance was approved for use, sale, or distribution by the United States Food and Drug Administration or other state or federal regulatory agency with authority to approve the substance's use, sale, or distribution; and

(2) the abusable synthetic substance was lawfully produced, distributed, sold, or offered for sale by the person who is the subject of the criminal or civil action.

Added by Acts 2015, 84th Leg., R.S., Ch. 187 (S.B. 461), Sec. 1, eff. September 1, 2015.

Sec. 484.005. NO DEFENSE. In a prosecution or civil action under this chapter, the fact that the abusable synthetic substance was in packaging labeled with "Not for Human Consumption," or other wording indicating the substance is not intended to be ingested, is not a defense.

Added by Acts 2015, 84th Leg., R.S., Ch. 187 (S.B. 461), Sec. 1, eff. September 1, 2015.

CHAPTER 485. ABUSABLE VOLATILE CHEMICALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 485.001. DEFINITIONS. In this chapter:

(1) "Abusable volatile chemical" means:

(A) a chemical, including aerosol paint, that:

(i) is packaged in a container subject to the labeling requirements concerning precautions against inhalation established under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and regulations adopted under that Act and is labeled with the statement of principal hazard on the principal display panel "VAPOR HARMFUL" or other labeling requirement subsequently established under that Act or those regulations;

(ii) when inhaled, ingested, or otherwise introduced into a person's body, may:

(a) affect the person's central nervous system;

(b) create or induce in the person a condition of intoxication, hallucination, or elation; or

(c) change, distort, or disturb the person's eyesight, thinking process, balance, or coordination; and

(iii) is not:

(a) a pesticide subject to Chapter 76, Agriculture Code, or to the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. Section 136 et seq.), as amended;

(b) a food, drug, or cosmetic subject to Chapter 431 or to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended; or

(c) a beverage subject to the Federal Alcohol Administration Act (27 U. S.C. Section 201 et seq.), as amended; or

(B) nitrous oxide that is not:

(i) a pesticide subject to Chapter 76, Agriculture Code, or to the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. Section 136 et seq.), as amended;

(ii) a food, drug, or cosmetic subject to Chapter 431 or to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended; or

(iii) a beverage subject to the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.), as amended.

(2) "Aerosol paint" means an aerosolized paint product, including a clear or pigmented lacquer or finish.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(94), eff. April 2, 2015.

(4) "Commissioner" means the commissioner of state health services.

(5) "Deliver" means to make the actual or constructive transfer from one person to another of an abusable volatile chemical, regardless of whether there is an agency relationship. The term includes an offer to sell an abusable volatile chemical.

(6) "Delivery" means the act of delivering.

(7) "Department" means the Department of State Health Services.

(7-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(8) "Inhalant paraphernalia" means equipment or materials of any kind that are intended for use in inhaling, ingesting, or otherwise introducing into the human body an abusable volatile chemical. The term includes a tube, balloon, bag, fabric, bottle, or other container used to concentrate or hold in suspension an abusable

volatile chemical or vapors of the chemical.

(9) "Sell" includes a conveyance, exchange, barter, or trade.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1241, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(94), eff. April 2, 2015.

Sec. 485.002. RULES. The executive commissioner may adopt rules necessary to comply with any labeling requirements concerning precautions against inhalation of an abusable volatile chemical established under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, or under regulations adopted under that Act.

Added by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1242, eff. April 2, 2015.

SUBCHAPTER B. SALES PERMITS AND SIGNS

Sec. 485.011. PERMIT REQUIRED. A person may not sell an abusable volatile chemical at retail unless the person or the person's employer holds, at the time of the sale, a volatile chemical sales permit for the location of the sale.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 485.012 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.012. ISSUANCE AND RENEWAL OF PERMIT. (a) To be eligible for the issuance or renewal of a volatile chemical sales permit, a person must:

(1) hold a sales tax permit that has been issued to the

person;

(2) complete and return to the department an application as required by the department; and

(3) pay to the department the application fee established under Section 485.013 for each location at which an abusable volatile chemical may be sold by the person holding a volatile chemical sales permit.

(b) The executive commissioner shall adopt rules as necessary to administer this chapter, including application procedures and procedures by which the department shall give each permit holder reasonable notice of permit expiration and renewal requirements.

(c) The department shall issue or deny a permit and notify the applicant of the department's action not later than the 60th day after the date on which the department receives the complete application and appropriate fee. If the department denies an application, the department shall include in the notice the reasons for the denial.

(d) A permit issued or renewed under this chapter is valid for two years from the date of issuance or renewal.

(e) A permit is not valid if the permit holder has been convicted more than once in the preceding year of an offense committed:

(1) at a location for which the permit is issued; and

(2) under Section 485.031, 485.032, or 485.033.

(f) A permit issued by the department is the property of the department and must be surrendered on demand by the department.

(g) The department shall prepare an annual roster of permit holders.

(h) The department shall monitor and enforce compliance with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 203, eff. Sept. 1, 1991. Renumbered from Health & Safety Code Sec. 485.013 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1243, eff. April 2, 2015.

Sec. 485.013. FEE. The executive commissioner by rule may establish fees in amounts as prescribed by Section 12.0111.

Added by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1244, eff. April 2, 2015.

Sec. 485.014. PERMIT AVAILABLE FOR INSPECTION. A permit holder must have the volatile chemical sales permit or a copy of the permit available for inspection by the public at each location where the permit holder sells an abusable volatile chemical.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.015. REFUSAL TO ISSUE OR RENEW PERMIT. A proceeding for the failure to issue or renew a volatile chemical sales permit under Section 485.012 or for an appeal from that proceeding is governed by the contested case provisions of Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.016. DISPOSITION OF FUNDS; EDUCATION AND PREVENTION PROGRAMS. (a) The department shall account for all amounts received under Section 485.013 and send those amounts to the comptroller.

(b) The comptroller shall deposit the amounts received under Subsection (a) in the state treasury to the credit of the general revenue fund to be used only by the department to:

(1) administer, monitor, and enforce this chapter; and

(2) finance statewide education projects concerning the hazards of abusable volatile chemicals and the prevention of inhalant abuse.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., ch. 14, Sec. 204, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.017. SIGNS. A business establishment that sells an abusable volatile chemical at retail shall display a conspicuous sign, in English and Spanish, that states the following:

> It is unlawful for a person to sell or deliver an abusable volatile chemical to a person under 18 years of age. Except in limited situations, such an offense is a state jail felony.
>
> It is also unlawful for a person to abuse a volatile chemical by inhaling, ingesting, applying, using, or possessing with intent to inhale, ingest, apply, or use a volatile chemical in a manner designed to affect the central nervous system. Such an offense is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.018. PROHIBITED ORDINANCE AND RULE. (a) A political subdivision or an agency of this state may not enact an ordinance or rule that requires a business establishment to display an abusable volatile chemical, other than aerosol paint, in a manner that makes the chemical accessible to patrons of the business only with the assistance of personnel of the business.

(b) This section does not apply to an ordinance or rule that was enacted before September 1, 1989.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 205, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. 2086), Sec. 28, eff. September 1, 2009.

Sec. 485.019. RESTRICTION OF ACCESS TO AEROSOL PAINT. (a) A business establishment that holds a permit under Section 485.012 and

that displays aerosol paint shall display the paint:

(1) in a place that is in the line of sight of a cashier or in the line of sight from a workstation normally continuously occupied during business hours;

(2) in a manner that makes the paint accessible to a patron of the business establishment only with the assistance of an employee of the establishment; or

(3) in an area electronically protected, or viewed by surveillance equipment that is monitored, during business hours.

(b) This section does not apply to a business establishment that has in place a computerized checkout system at the point of sale for merchandise that alerts the cashier that a person purchasing aerosol paint must be over 18 years of age.

(c) A court may issue a warning to a business establishment or impose a civil penalty of $50 on the business establishment for a first violation of this section. After receiving a warning or penalty for the first violation, the business establishment is liable to the state for a civil penalty of $100 for each subsequent violation.

(d) For the third violation of this section in a calendar year, a court may issue an injunction prohibiting the business establishment from selling aerosol paint for a period of not more than two years. A business establishment that violates the injunction is liable to the state for a civil penalty of $100, in addition to any other penalty authorized by law, for each day the violation continues.

(e) If a business establishment fails to pay a civil penalty under this section, the court may issue an injunction prohibiting the establishment from selling aerosol paint until the establishment pays the penalty, attorney's fees, and court costs.

(f) The district or county attorney for the county in which a violation of this section is alleged to have occurred, or the attorney general, if requested by the district or county attorney for that county, may file suit for the issuance of a warning, the collection of a penalty, or the issuance of an injunction.

(g) A penalty collected under this section shall be sent to the comptroller for deposit in the state treasury to the credit of the general revenue fund.

(h) This section applies only to a business establishment that is located in a county with a population of 75,000 or more.

Added by Acts 1997, 75th Leg., ch. 593, Sec. 4, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

SUBCHAPTER C. CRIMINAL PENALTIES

Sec. 485.031. POSSESSION AND USE. (a) A person commits an offense if the person inhales, ingests, applies, uses, or possesses an abusable volatile chemical with intent to inhale, ingest, apply, or use the chemical in a manner:

(1) contrary to directions for use, cautions, or warnings appearing on a label of a container of the chemical; and

(2) designed to:

(A) affect the person's central nervous system;

(B) create or induce a condition of intoxication, hallucination, or elation; or

(C) change, distort, or disturb the person's eyesight, thinking process, balance, or coordination.

(b) An offense under this section is a Class B misdemeanor.

(c) It is a defense to prosecution for an offense under Subsection (a) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) The defense to prosecution provided by Subsection (c) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), or 483.041(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 481 or 483;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g), or 483.041(e); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(e) The defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 12, eff. September 1, 2021.

Sec. 485.032. DELIVERY TO A MINOR. (a) A person commits an offense if the person knowingly delivers an abusable volatile chemical to a person who is younger than 18 years of age.

(b) It is a defense to prosecution under this section that:

(1) the abusable volatile chemical that was delivered contains additive material that effectively discourages intentional abuse by inhalation; or

(2) the person making the delivery is not the manufacturer of the chemical and the manufacturer of the chemical failed to label the chemical with the statement of principal hazard on the principal

display panel "VAPOR HARMFUL" or other labeling requirement subsequently established under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, or regulations subsequently adopted under that Act.

(c) It is an affirmative defense to prosecution under this section that:

(1) the person making the delivery is an adult having supervisory responsibility over the person younger than 18 years of age and:

(A) the adult permits the use of the abusable volatile chemical only under the adult's direct supervision and in the adult's presence and only for its intended purpose; and

(B) the adult removes the chemical from the person younger than 18 years of age on completion of that use; or

(2) the person to whom the abusable volatile chemical was delivered presented to the defendant an apparently valid Texas driver's license or an identification certificate, issued by the Department of Public Safety of the State of Texas and containing a physical description consistent with the person's appearance, that purported to establish that the person was 18 years of age or older.

(d) Except as provided by Subsections (e) and (f), an offense under this section is a state jail felony.

(e) An offense under this section is a Class B misdemeanor if it is shown on the trial of the defendant that at the time of the delivery the defendant or the defendant's employer held a volatile chemical sales permit for the location of the sale.

(f) An offense under this section is a Class A misdemeanor if it is shown on the trial of the defendant that at the time of the delivery the defendant or the defendant's employer:

(1) did not hold a volatile chemical sales permit but did hold a sales tax permit for the location of the sale; and

(2) had not been convicted previously under this section for an offense committed after January 1, 1988.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.06, eff. Sept. 1, 1994. Renumbered from Health & Safety Code Sec. 485.033 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.033. INHALANT PARAPHERNALIA. (a) A person commits an offense if the person knowingly uses or possesses with intent to use inhalant paraphernalia to inhale, ingest, or otherwise introduce into the human body an abusable volatile chemical in violation of Section 485.031.

(b) A person commits an offense if the person:

(1) knowingly:

(A) delivers or sells inhalant paraphernalia;

(B) possesses, with intent to deliver or sell, inhalant paraphernalia; or

(C) manufactures, with intent to deliver or sell, inhalant paraphernalia; and

(2) at the time of the act described by Subdivision (1), knows that the person who receives or is intended to receive the paraphernalia intends that it be used to inhale, ingest, apply, use, or otherwise introduce into the human body a volatile chemical in violation of Section 485.031.

(c) An offense under Subsection (a) is a Class B misdemeanor, and an offense under Subsection (b) is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 206, eff. Sept. 1, 1991. Renumbered from Health & Safety Code Sec. 485.034 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.034. FAILURE TO POST SIGN. (a) A person commits an offense if the person sells an abusable volatile chemical in a business establishment and the person does not display the sign required by Section 485.017.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 485.035 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.035. SALE WITHOUT PERMIT. (a) A person commits an offense if the person sells an abusable volatile chemical in violation of Section 485.011 and the purchaser is 18 years of age or older.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 485.036 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.036. PROOF OF OFFER TO SELL. Proof of an offer to sell an abusable volatile chemical must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 485.037 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.037. SUMMARY FORFEITURE. An abusable volatile chemical or inhalant paraphernalia seized as a result of an offense under this chapter is subject to summary forfeiture and to destruction or disposition in the same manner as controlled substance property under Subchapter E, Chapter 481.

Added by Acts 1991, 72nd Leg., ch. 141, Sec. 5, eff. Sept. 1, 1991. Renumbered from Health & Safety Code Sec. 485.038 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.038. PREPARATORY OFFENSES. Title 4, Penal Code, applies to an offense under this subchapter.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 43, eff. Sept. 1, 1995. Renumbered from Health & Safety Code Sec. 485.039 by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

SUBCHAPTER D. ADMINISTRATIVE PENALTY

Sec. 485.101. IMPOSITION OF PENALTY. (a) The department may impose an administrative penalty on a person who sells abusable glue or aerosol paint at retail who violates this chapter or a rule or order adopted under this chapter.

(b) A penalty collected under this subchapter shall be deposited in the state treasury in the general revenue fund.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.102. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed $1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed $5,000.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.103. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(b) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.104. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 20 days after the date the person receives the notice sent under Section 485.103, the person in writing may:

(1) accept the determination and recommended penalty of the department; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the department by order shall impose the recommended penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1245, eff. April 2, 2015.

Sec. 485.105. HEARING. (a) If the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date. The department shall give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1246, eff. April 2, 2015.

Sec. 485.106. DECISION BY DEPARTMENT. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the department's order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1247, eff. April 2, 2015.

Sec. 485.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Within 30 days after the date the order of the department under Section 485.106 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the department's order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1248, eff. April 2, 2015.

Sec. 485.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 485.107, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department by certified mail.

(b) If the department receives a copy of an affidavit under Subsection (a)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1249, eff. April 2, 2015.

Sec. 485.109. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.110. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.111. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.112. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.113. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

CHAPTER 486. OVER-THE-COUNTER SALES OF EPHEDRINE, PSEUDOEPHEDRINE, AND NORPSEUDOEPHEDRINE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 486.001. DEFINITIONS. (a) In this chapter:

(1) "Commissioner" means the commissioner of state health

services.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(95), eff. April 2, 2015.

(3) "Department" means the Department of State Health Services.

(4) "Ephedrine," "pseudoephedrine," and "norpseudoephedrine" mean any compound, mixture, or preparation containing any detectable amount of that substance, including its salts, optical isomers, and salts of optical isomers. The term does not include any compound, mixture, or preparation that is in liquid, liquid capsule, or liquid gel capsule form.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Sale" includes a conveyance, exchange, barter, or trade.

(6) "Real-time electronic logging system" means a system intended to be used by law enforcement agencies and pharmacies or other business establishments that:

(A) is installed, operated, and maintained free of any one-time or recurring charge to the business establishment or to the state;

(B) is able to communicate in real time with similar systems operated in other states and similar systems containing information submitted by more than one state;

(C) complies with the security policy of the Criminal Justice Information Services division of the Federal Bureau of Investigation;

(D) complies with information exchange standards adopted by the National Information Exchange Model;

(E) uses a mechanism to prevent the completion of a sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine that would violate state or federal law regarding the purchase of a product containing those substances; and

(F) is equipped with an override of the mechanism described in Paragraph (E) that:

(i) may be activated by an employee of a business establishment; and

(ii) creates a record of each activation of the override.

(b) A term that is used in this chapter but is not defined by

Subsection (a) has the meaning assigned by Section 481.002.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 1, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1250, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(95), eff. April 2, 2015.

Sec. 486.002. APPLICABILITY. This chapter does not apply to the sale of any product dispensed or delivered by a pharmacist according to a prescription issued by a practitioner for a valid medical purpose and in the course of professional practice.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.003. RULES. The executive commissioner shall adopt rules necessary to implement and enforce this chapter.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1251, eff. April 2, 2015.

Sec. 486.004. FEES. (a) The department shall collect fees for an inspection performed in enforcing this chapter and rules adopted under this chapter.
(b) The executive commissioner by rule shall set the fees in amounts that allow the department to recover the biennial expenditures of state funds by the department in implementing and enforcing this chapter.
(c) Fees collected under this section shall be deposited to the credit of a special account in the general revenue fund and

appropriated to the department to implement and enforce this chapter.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1252, eff. April 2, 2015.
Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 4.001, eff. September 1, 2017.

Sec. 486.005. STATEWIDE APPLICATION AND UNIFORMITY. (a) To ensure uniform and equitable implementation and enforcement throughout this state, this chapter constitutes the whole field of regulation regarding over-the-counter sales of products that contain ephedrine, pseudoephedrine, or norpseudoephedrine.

(b) This chapter preempts and supersedes a local ordinance, rule, or regulation adopted by a political subdivision of this state pertaining to over-the-counter sales of products that contain ephedrine, pseudoephedrine, or norpseudoephedrine.

(c) This section does not preclude a political subdivision from imposing administrative sanctions on the holder of a business or professional license or permit issued by the political subdivision who engages in conduct that violates this chapter.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

SUBCHAPTER B. OVER-THE-COUNTER SALES

Sec. 486.011. SALES BY PHARMACIES. A business establishment that operates a pharmacy licensed by the Texas State Board of Pharmacy may engage in over-the-counter sales of ephedrine, pseudoephedrine, and norpseudoephedrine.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.013. RESTRICTION OF ACCESS TO EPHEDRINE, PSEUDOEPHEDRINE, AND NORPSEUDOEPHEDRINE. A business establishment

that engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine shall:

(1) if the establishment operates a pharmacy licensed by the Texas State Board of Pharmacy, maintain those products:

(A) behind the pharmacy counter; or

(B) in a locked case within 30 feet and in a direct line of sight from a pharmacy counter staffed by an employee of the establishment; or

(2) if the establishment does not operate a pharmacy licensed by the Texas State Board of Pharmacy, maintain those products:

(A) behind a sales counter; or

(B) in a locked case within 30 feet and in a direct line of sight from a sales counter continuously staffed by an employee of the establishment.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.014. PREREQUISITES TO AND RESTRICTIONS ON SALE. (a) Before completing an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine, a business establishment that engages in those sales shall:

(1) require the person making the purchase to:

(A) display a driver's license or other form of government-issued identification containing the person's photograph and indicating that the person is 16 years of age or older; and

(B) sign for the purchase;

(2) make a record of the sale, including the name and date of birth of the person making the purchase, the address of the purchaser, the date and time of the purchase, the type of identification displayed by the person and the identification number, and the item and number of grams purchased; and

(3) transmit the record of sale as required by Section 486.0141.

(b) A business establishment may not sell to a person who makes over-the-counter purchases of one or more products containing ephedrine, pseudoephedrine, or norpseudoephedrine:

(1) within any calendar day, more than 3.6 grams of

ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances; and

(2) within any 30-day period, more than nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 2, eff. September 1, 2011.

Sec. 486.0141. TRANSMISSION OF SALES INFORMATION TO REAL-TIME ELECTRONIC LOGGING SYSTEM. (a) Before completing an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine, a business establishment that engages in those sales shall transmit the information in the record made under Section 486.014(a)(2) to a real-time electronic logging system.

(b) Except as provided by Subsection (c), a business establishment may not complete an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine if the real-time electronic logging system returns a report that the completion of the sale would result in the person obtaining an amount of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances greater than the amount described by Section 486.014(b), regardless of whether all or some of the products previously obtained by the buyer were sold at the establishment or another business establishment.

(c) An employee of a business establishment may complete a sale prohibited by Subsection (b) by using the override mechanism described by Section 486.001(a)(6)(F) only if the employee has a reasonable fear of imminent bodily injury or death from the person attempting to obtain ephedrine, pseudoephedrine, or norpseudoephedrine.

(d) On request of the Department of Public Safety, the administrators of a real-time electronic logging system shall make available to the department a copy of each record of an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine that is submitted by a business establishment

located in this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 3, eff. September 1, 2011.

Sec. 486.0142. TEMPORARY EXEMPTION. (a) On application by a business establishment that operates a pharmacy and engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine as authorized by Section 486.011, the Texas State Board of Pharmacy may grant that business establishment a temporary exemption, not to exceed 180 days, from the requirement of using a real-time electronic logging system under this chapter.

(b) On application by a business establishment that engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine, the department may grant that business establishment a temporary exemption, not to exceed 180 days, from the requirement of using a real-time electronic logging system under this chapter.

(c) A business establishment granted a temporary exemption under this section must keep records of sales in the same manner required under Section 486.0143 for a business establishment that experiences a mechanical or electronic failure of the real-time electronic logging system.

(d) An exemption granted under this section does not relieve a business establishment of any duty under this chapter other than the duty to use a real-time electronic logging system.

Added by Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 3, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1254, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 4.002, eff. September 1, 2017.

Sec. 486.0143. WRITTEN LOG OR OTHER ELECTRONIC RECORDKEEPING. If a business establishment that engages in over-the-counter sales of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine experiences a mechanical or electronic failure of

the real-time electronic logging system, the business shall:

(1) maintain a written record or an electronic record made by any means that satisfies the requirements of Section 486.014(a)(2); and

(2) enter the information in the real-time electronic logging system as soon as practicable after the system becomes operational.

Added by Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 3, eff. September 1, 2011.

Sec. 486.0144. ONLINE PORTAL. The administrators of a real-time electronic logging system shall provide real-time access to the information in the system to the Department of Public Safety if the department executes a memorandum of understanding with the administrators.

Added by Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 3, eff. September 1, 2011.

Sec. 486.0145. LIMITATION ON CIVIL LIABILITY. A person is not liable for an act done or omission made in compliance with the requirements of Section 486.014 or 486.0141.

Added by Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 3, eff. September 1, 2011.

Sec. 486.0146. PRIVACY PROTECTIONS. (a) The privacy protections provided an individual under 21 C.F.R. Section 1314.45 apply to information entered or stored in a real-time electronic logging system.

(b) A business establishment that engages in over-the-counter sales of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine may disclose information entered or stored in a real-time electronic logging system only to the United States Drug Enforcement Administration and other federal, state, and local law enforcement agencies.

(c) A business establishment that engages in over-the-counter

sales of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine may not use information entered or stored in a real-time electronic logging system for any purpose other than for a disclosure authorized by Subsection (b) or to comply with the requirements of this chapter.

(d) Notwithstanding Subsection (c), a business establishment that engages in over-the-counter sales of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine or an employee or agent of the business establishment is not civilly liable for the release of information entered or stored in a real-time electronic logging system unless the release constitutes negligence, recklessness, or wilful misconduct.

Added by Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 3, eff. September 1, 2011.

Sec. 486.015. MAINTENANCE OF RECORDS. (a) Except as provided by Subsection (b), a business establishment shall maintain each record made under Section 486.014(a)(2) until at least the second anniversary of the date the record is made and shall make each record available on request by the department or any local, state, or federal law enforcement agency, including the United States Drug Enforcement Administration.

(b) Subsection (a) does not apply to a business establishment that has used a real-time electronic logging system for longer than two years.

(c) A business establishment that has used a real-time electronic logging system for longer than two years shall destroy all paper records maintained under this section unless the destruction is otherwise prohibited by law.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 4, eff. September 1, 2011.

SUBCHAPTER C. ADMINISTRATIVE PENALTY

Sec. 486.021. IMPOSITION OF PENALTY. The department may impose

an administrative penalty on a person who violates this chapter.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.022. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed $1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed $20,000.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.023. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(b) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.024. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Before the 21st day after the date the person receives notice under Section 486.023, the person in writing may:

(1) accept the determination and recommended penalty; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the department by order shall impose the penalty.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1255, eff. April 2, 2015.

Sec. 486.025. HEARING. (a) If the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date, and the department shall give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1256, eff. April 2, 2015.

Sec. 486.026. DECISION. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the department's order under Subsection (a)

that is sent to the person in the manner provided by Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1257, eff. April 2, 2015.

Sec. 486.027. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Before the 31st day after the date the order under Section 486.026 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.028. STAY OF ENFORCEMENT OF PENALTY. (a) Within the period prescribed by Section 486.027, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department

by certified mail.

(b) Following receipt of a copy of an affidavit under Subsection (a)(2), the department may file with the court, before the sixth day after the date of receipt, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1258, eff. April 2, 2015.

Sec. 486.029. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.030. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.031. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount

plus accrued interest be remitted to the person before the 31st day after the date that the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.032. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.033. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty under this subchapter is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

CHAPTER 487. TEXAS COMPASSIONATE-USE ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 487.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Public Safety.

(2) "Director" means the public safety director of the department.

(3) "Dispensing organization" means an organization licensed by the department to cultivate, process, and dispense low-THC cannabis to a patient for whom low-THC cannabis is prescribed

under Chapter 169, Occupations Code.

(4) "Low-THC cannabis" has the meaning assigned by Section 169.001, Occupations Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.

SUBCHAPTER B. DUTIES OF DEPARTMENT

Sec. 487.051. DUTIES OF DEPARTMENT. The department shall administer this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.

Sec. 487.052. RULES. The director shall adopt any rules necessary for the administration and enforcement of this chapter, including rules imposing fees under this chapter in amounts sufficient to cover the cost of administering this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.

Sec. 487.053. LICENSING OF DISPENSING ORGANIZATIONS AND REGISTRATION OF CERTAIN ASSOCIATED INDIVIDUALS. (a) The department shall:

(1) issue or renew a license to operate as a dispensing organization to each applicant who satisfies the requirements established under this chapter; and

(2) register directors, owners, managers, members, and employees of each dispensing organization.

(b) Subject to Section 411.503, Government Code, the department shall enforce compliance of licensees and registrants and shall adopt procedures for suspending or revoking a license or registration issued under this chapter and for renewing a license or registration issued under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.008, eff. September 1, 2019.

Acts 2025, 89th Leg., R.S., Ch. 710 (H.B. 46), Sec. 1, eff. September 1, 2025.

Sec. 487.054. COMPASSIONATE-USE REGISTRY. (a) The department shall establish and maintain a secure online compassionate-use registry that contains:

(1) the name of each physician who registers as the prescriber for a patient under Section 169.004, Occupations Code, the name and date of birth of the patient, the dosage prescribed, the means of administration ordered, and the total amount of low-THC cannabis required to fill the patient's prescription; and

(2) a record of each amount of low-THC cannabis dispensed by a dispensing organization to a patient under a prescription.

(b) The department shall ensure the registry:

(1) is designed to prevent more than one qualified physician from registering as the prescriber for a single patient;

(2) is accessible to law enforcement agencies and dispensing organizations for the purpose of verifying whether a patient is one for whom low-THC cannabis is prescribed and whether the patient's prescriptions have been filled; and

(3) allows a physician qualified to prescribe low-THC cannabis under Section 169.002, Occupations Code, to input safety and efficacy data derived from the treatment of patients for whom low-THC cannabis is prescribed under Chapter 169, Occupations Code.

(c) Information within the registry regarding patient identification, including the fact that a person is listed as a patient in the registry, is confidential and may only be accessed by the department, registered physicians, and dispensing organizations for the purposes of this chapter. Confidential information under this subsection may not be disclosed except as authorized under this chapter and is not subject to disclosure under Chapter 552, Government Code.

(d) Notwithstanding Subsection (c), on request by a patient, the department may release patient information contained in the registry to the patient or a person designated by the patient.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 710 (H.B. 46), Sec. 2, eff. September 1, 2025.

SUBCHAPTER C. LICENSE TO OPERATE AS DISPENSING ORGANIZATION

Sec. 487.101. LICENSE REQUIRED. (a) A license issued by the department under this chapter is required to operate a dispensing organization.

(b) A dispensing organization licensed under this chapter is not required to apply for an additional license for the use of a satellite location for secure storage of low-THC cannabis if:

(1) the address of the satellite location was included in the application; or

(2) the dispensing organization obtains approval from the department under Section 487.1035.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 710 (H.B. 46), Sec. 3, eff. September 1, 2025.

Sec. 487.102. ELIGIBILITY FOR LICENSE. An applicant for a license to operate as a dispensing organization is eligible for the license if:

(1) as determined by the department, the applicant possesses:

(A) the technical and technological ability to cultivate and produce low-THC cannabis;

(B) the ability to secure:

(i) the resources and personnel necessary to operate as a dispensing organization; and

(ii) premises reasonably located to allow patients listed on the compassionate-use registry access to the organization through existing infrastructure;

(C) the ability to maintain accountability for the raw

materials, the finished product, and any by-products used or produced in the cultivation or production of low-THC cannabis to prevent unlawful access to or unlawful diversion or possession of those materials, products, or by-products; and

(D) the financial ability to maintain operations for not less than two years from the date of application;

(2) each director, owner, manager, member, or employee of the applicant is registered under Subchapter D; and

(3) the applicant satisfies any additional criteria determined by the director to be necessary to safely implement this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 710 (H.B. 46), Sec. 4, eff. September 1, 2025.

Sec. 487.103. APPLICATION. (a) A person may apply for an initial or renewal license to operate as a dispensing organization by submitting a form prescribed by the department along with the application fee in an amount set by the director.

(b) The application must include:

(1) the name and address of the applicant;

(2) the name and address of each of the applicant's directors, owners, managers, members, and employees;

(3) the address of any satellite location that will be used by the applicant for secure storage of low-THC cannabis under Section 487.1035; and

(4) any other information considered necessary by the department to determine the applicant's eligibility for the license.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 710 (H.B. 46), Sec. 5, eff. September 1, 2025.

Sec. 487.1035. SATELLITE LOCATIONS. (a) A dispensing

organization licensed under this chapter may operate one or more satellite locations in addition to the organization's primary location to securely store low-THC cannabis for distribution.

(b) A satellite location must be approved by the department before a dispensing organization may operate the location. A dispensing organization may apply for approval in the form and manner prescribed by the department.

(c) The department must act on an application submitted under Subsection (b) not later than the 180th day after the date the application is submitted to the department.

(d) The director shall adopt rules regarding the design and security requirements for satellite locations.

(e) A dispensing organization may not operate more than one satellite location in a public health region designated under Section 121.007 until the dispensing organization operates one satellite location in each public health region.

(f) A location previously approved by the department as a patient pickup location before September 1, 2025, is considered to be approved as a satellite location under Subsection (b) for purposes of this section and is permitted to:

(1) operate as a patient pickup location; and

(2) securely store low-THC cannabis for distribution.

Added by Acts 2025, 89th Leg., R.S., Ch. 710 (H.B. 46), Sec. 6, eff. September 1, 2025.

Sec. 487.104. ISSUANCE, RENEWAL, OR DENIAL OF LICENSE. (a) The department shall issue or renew a license to operate as a dispensing organization only if:

(1) the department determines the applicant meets the eligibility requirements described by Section 487.102; and

(2) issuance or renewal of the license is necessary to ensure reasonable statewide access to, and the availability of, low-THC cannabis for patients registered in the compassionate-use registry and for whom low-THC cannabis is prescribed under Chapter 169, Occupations Code.

(b) Except as provided by Subsection (b-1), if the department denies the issuance or renewal of a license under Subsection (a), the applicant is entitled to a hearing. Chapter 2001, Government Code,

applies to a proceeding under this section.

(b-1) If the department denies the issuance of a license under this section to an applicant that has never held a license under this section, the applicant is not entitled to a hearing.

(c) A license issued or renewed under this section expires as determined by the department in accordance with Section 411.511, Government Code.

(d) The department shall issue 15 licenses under this section to dispensing organizations in this state provided that the department receives applications from a sufficient number of applicants meeting the requirements for eligibility under this subchapter.

(d-1) The department shall issue initial licenses to dispensing organizations under this section based on a competitive evaluation of applicant qualifications relative to other applicants.

(e) The department shall issue and renew licenses under this section in a manner that ensures adequate access to low-THC cannabis for patients registered in the compassionate-use registry in each public health region designated under Section 121.007.

(f) The director shall adopt rules to establish a timeline for reviewing and taking action on an application submitted under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.009, eff. September 1, 2019.

Acts 2025, 89th Leg., R.S., Ch. 710 (H.B. 46), Sec. 7, eff. September 1, 2025.

Sec. 487.1045. REQUIREMENT OF LICENSE HOLDER TO BEGIN AND MAINTAIN OPERATIONS. (a) An applicant issued a license to operate a dispensing organization must begin dispensing low-THC cannabis not later than 24 months after the date the license is issued and continue dispensing low-THC cannabis during the term of a license issued under this subchapter.

(b) The director shall adopt rules to:

(1) monitor whether a dispensing organization is using a

license issued under this subchapter to dispense low-THC cannabis; and

(2) revoke the license of a dispensing organization that does not dispense low-THC cannabis within the time required by this section or that discontinues dispensing low-THC cannabis during the term of a license.

Added by Acts 2025, 89th Leg., R.S., Ch. 710 (H.B. 46), Sec. 8, eff. September 1, 2025.

Sec. 487.105. CRIMINAL HISTORY BACKGROUND CHECK. (a) An applicant for the issuance or renewal of a license to operate as a dispensing organization shall provide the department with the applicant's name and the name of each of the applicant's directors, owners, managers, members, and employees.

(b) Before a dispensing organization licensee hires a manager or employee for the organization, the licensee must provide the department with the name of the prospective manager or employee. The licensee may not transfer the license to another person before that prospective applicant and the applicant's directors, owners, managers, members, and employees pass a criminal history background check and are registered as required by Subchapter D.

(c) The department shall conduct a criminal history background check on each individual whose name is provided to the department under Subsection (a) or (b). The director by rule shall:

(1) require each individual whose name is provided to the department under Subsection (a) or (b) to submit a complete set of fingerprints to the department on a form prescribed by the department for purposes of a criminal history background check under this section; and

(2) establish criteria for determining whether an individual passes the criminal history background check for the purposes of this section.

(c-1) This section does not apply to a director, owner, manager, member, or employee who does not exercise direct control over the daily operations of the dispensing organization.

(d) After conducting a criminal history background check under this section, the department shall notify the relevant applicant or organization and the individual who is the subject of the criminal

history background check as to whether the individual passed the criminal history background check.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.010, eff. September 1, 2019.
Acts 2025, 89th Leg., R.S., Ch. 710 (H.B. 46), Sec. 9, eff. September 1, 2025.

Sec. 487.106. DUTY TO MAINTAIN ELIGIBILITY. A dispensing organization must maintain compliance at all times with the eligibility requirements described by Section 487.102.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.

Sec. 487.107. DUTIES RELATING TO DISPENSING PRESCRIPTION. (a) Before dispensing low-THC cannabis to a person for whom the low-THC cannabis is prescribed under Chapter 169, Occupations Code, the dispensing organization must verify that the prescription presented:

(1) is for a person listed as a patient in the compassionate-use registry;

(2) matches the entry in the compassionate-use registry with respect to the total amount of low-THC cannabis required to fill the prescription; and

(3) has not previously been filled by a dispensing organization as indicated by an entry in the compassionate-use registry.

(b) After dispensing low-THC cannabis to a patient for whom the low-THC cannabis is prescribed under Chapter 169, Occupations Code, the dispensing organization shall record in the compassionate-use registry the form and quantity of low-THC cannabis dispensed and the date and time of dispensation.

(c) A dispensing organization may not dispense to a person low-THC cannabis in a:

(1) package or container that contains more than a total of one gram of tetrahydrocannabinols; or

(2) medical device for pulmonary inhalation that contains more than one gram of tetrahydrocannabinols.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 710 (H.B. 46), Sec. 10, eff. September 1, 2025.

Sec. 487.1071. CANNABINOIDS ELIGIBLE FOR DISPENSING. (a) In this section, "phytocannabinoid" means a chemical substance:

(1) created naturally by a plant of the species Cannabis sativa L. that is separated from the plant by a mechanical or chemical extraction process;

(2) created naturally by a plant of the species Cannabis sativa L. that binds to or interacts with the cannabinoid receptors of the endocannabinoid system; or

(3) produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a chemical catalyst.

(b) A dispensing organization may not dispense a low-THC cannabis product that contains a cannabinoid that is not a phytocannabinoid.

Added by Acts 2025, 89th Leg., R.S., Ch. 710 (H.B. 46), Sec. 11, eff. September 1, 2025.

Sec. 487.108. LICENSE SUSPENSION OR REVOCATION. (a) The department may at any time suspend or revoke a license issued under this chapter if the department determines that the licensee has not maintained the eligibility requirements described by Section 487.102 or has failed to comply with a duty imposed under this chapter.

(b) The director shall give written notice to the dispensing organization of a license suspension or revocation under this section and the grounds for the suspension or revocation. The notice must be sent by certified mail, return receipt requested.

(c) After suspending or revoking a license issued under this chapter, the director may seize or place under seal all low-THC cannabis and drug paraphernalia owned or possessed by the dispensing organization. If the director orders the revocation of the license,

a disposition may not be made of the seized or sealed low-THC cannabis or drug paraphernalia until the time for administrative appeal of the order has elapsed or until all appeals have been concluded. When a revocation order becomes final, all low-THC cannabis and drug paraphernalia may be forfeited to the state as provided under Subchapter E, Chapter 481.

(d) Chapter 2001, Government Code, applies to a proceeding under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.

SUBCHAPTER D. REGISTRATION OF CERTAIN INDIVIDUALS

Sec. 487.151. REGISTRATION REQUIRED. (a) An individual who is a director, owner, manager, member, or employee of a dispensing organization must apply for and obtain a registration under this section.

(b) An applicant for a registration under this section must:

(1) be at least 18 years of age;

(2) submit a complete set of fingerprints to the department in the manner required by department rule; and

(3) pass a fingerprint-based criminal history background check as required by Section 487.105.

(c) A registration expires on the second anniversary of the date of the registration's issuance, unless suspended or revoked under rules adopted under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 710 (H.B. 46), Sec. 12, eff. September 1, 2025.

SUBCHAPTER E. DUTIES OF COUNTIES AND MUNICIPALITIES

Sec. 487.201. COUNTIES AND MUNICIPALITIES MAY NOT PROHIBIT LOW-THC CANNABIS. A municipality, county, or other political subdivision may not enact, adopt, or enforce a rule, ordinance, order, resolution, or other regulation that prohibits the cultivation, production, storage, dispensing, or possession of low-THC cannabis,

as authorized by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 710 (H.B. 46), Sec. 13, eff. September 1, 2025.

SUBCHAPTER F. COMPASSIONATE-USE RESEARCH AND REPORTING

Sec. 487.251. DEFINITIONS. In this subchapter:

(1) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(2) "Institutional review board" means a compassionate-use institutional review board established under Section 487.253.

Added by Acts 2021, 87th Leg., R.S., Ch. 660 (H.B. 1535), Sec. 1, eff. September 1, 2021.

Sec. 487.252. RULES. (a) Except as otherwise provided by Subsection (b), the executive commissioner shall adopt all necessary rules to implement this subchapter, including rules designating the medical conditions for which a patient may be treated with low-THC cannabis as part of an approved research program conducted under this subchapter.

(b) The Texas Medical Board may adopt rules regarding the certification of a physician by an institutional review board.

Added by Acts 2021, 87th Leg., R.S., Ch. 660 (H.B. 1535), Sec. 1, eff. September 1, 2021.

Sec. 487.253. COMPASSIONATE-USE INSTITUTIONAL REVIEW BOARDS. (a) One or more compassionate-use institutional review boards may be established to:

(1) evaluate and approve proposed research programs to study the medical use of low-THC cannabis in treating a medical condition designated by rule of the executive commissioner under Section 487.252(a); and

(2) oversee patient treatment undertaken as part of an

approved research program, including the certification of treating physicians.

(b) An institutional review board must be affiliated with a dispensing organization and meet one of the following conditions:

(1) be affiliated with a medical school, as defined by Section 61.501, Education Code;

(2) be affiliated with a hospital licensed under Chapter 241 that has at least 150 beds;

(3) be accredited by the Association for the Accreditation of Human Research Protection Programs;

(4) be registered by the United States Department of Health and Human Services, Office for Human Research Protections, in accordance with 21 C.F.R. Part 56; or

(5) be accredited by a national accreditation organization acceptable to the Texas Medical Board.

Added by Acts 2021, 87th Leg., R.S., Ch. 660 (H.B. 1535), Sec. 1, eff. September 1, 2021.

Sec. 487.254. REPORTS BY INSTITUTIONAL REVIEW BOARDS. Each institutional review board shall submit written reports that describe and assess the research findings of each approved research program to:

(1) the Health and Human Services Commission, not later than October 1 of each year; and

(2) the legislature, not later than October 1 of each even-numbered year.

Added by Acts 2021, 87th Leg., R.S., Ch. 660 (H.B. 1535), Sec. 1, eff. September 1, 2021.

Sec. 487.255. PATIENT TREATMENT. (a) Patient treatment provided as part of an approved research program under this subchapter may be administered only by a physician certified by an institutional review board to participate in the program.

(b) A patient participating in a research program under this subchapter must be a permanent resident of this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 660 (H.B. 1535), Sec. 1, eff.

September 1, 2021.

Sec. 487.256. INFORMED CONSENT. (a) Before receiving treatment under an approved research program, each patient must sign a written informed consent form.

(b) If the patient is a minor or lacks the mental capacity to provide informed consent, a parent, guardian, or conservator may provide informed consent on the patient's behalf.

(c) An institutional review board overseeing a research program under this subchapter may adopt a form to be used for the informed consent required by this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 660 (H.B. 1535), Sec. 1, eff. September 1, 2021.

CHAPTER 488. OVER-THE-COUNTER SALES OF DEXTROMETHORPHAN

Sec. 488.001. DEFINITIONS. (a) In this chapter:

(1) "Dextromethorphan" means any compound, mixture, or preparation containing any detectable amount of that substance, including its salts, optical isomers, and salts of optical isomers.

(2) "Sale" includes a conveyance, exchange, barter, or trade.

(b) A term that is used in this chapter but is not defined by Subsection (a) has the meaning assigned by Section 481.002 if the term is defined in that section.

Added by Acts 2019, 86th Leg., R.S., Ch. 46 (H.B. 1518), Sec. 1, eff. September 1, 2019.

Sec. 488.002. NONAPPLICABILITY. (a) This chapter does not apply to the sale of any product dispensed or delivered by a pharmacist according to a prescription issued by a practitioner for a valid medical purpose within the scope of the practitioner's practice as authorized by the practitioner's license issued under Title 3, Occupations Code.

(b) This chapter does not require a business establishment to:

(1) keep specific records of transactions covered by this chapter; or

(2) store dextromethorphan in a specific location in a business establishment or otherwise restrict the availability of dextromethorphan to customers.

Added by Acts 2019, 86th Leg., R.S., Ch. 46 (H.B. 1518), Sec. 1, eff. September 1, 2019.

Sec. 488.003. DISTRIBUTION TO MINORS PROHIBITED; PREREQUISITE TO SALE. (a) A business establishment may not dispense, distribute, or sell dextromethorphan to a customer under 18 years of age.

(b) Before dispensing, distributing, or selling dextromethorphan over the counter, a business establishment must require the customer obtaining the drug to display a driver's license or other form of identification containing the customer's photograph and indicating that the customer is 18 years of age or older, unless from the customer's outward appearance the person making the sale may reasonably presume the customer to be 27 years of age or older.

Added by Acts 2019, 86th Leg., R.S., Ch. 46 (H.B. 1518), Sec. 1, eff. September 1, 2019.

Sec. 488.004. VIOLATION; CIVIL PENALTY. (a) A county or district attorney shall issue a warning to a business establishment for a first violation of this chapter.

(b) After receiving a warning for the first violation under Subsection (a), a business establishment is liable to the state for a civil penalty of:

(1) $150 for the second violation; and

(2) $250 for each subsequent violation.

(c) It is a defense in an action brought under this section that the person to whom the dextromethorphan was dispensed, distributed, or sold presented to the business establishment apparently valid proof of identification.

(d) A proof of identification satisfies the requirements of Subsection (c) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 18 years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport,

or an identification card issued by a state or the federal government.

(e) It is a defense in an action brought under this section that the business establishment made a good faith effort to comply with this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 46 (H.B. 1518), Sec. 1, eff. September 1, 2019.

Sec. 488.005. PROHIBITED LOCAL REGULATION. (a) A political subdivision of this state may not adopt or enforce an ordinance, order, rule, regulation, or policy that governs the sale, distribution, or possession of dextromethorphan.

(b) An ordinance, order, rule, regulation, or policy described by Subsection (a) is void and unenforceable.

Added by Acts 2019, 86th Leg., R.S., Ch. 46 (H.B. 1518), Sec. 1, eff. September 1, 2019.

CHAPTER 489. ACCESS TO INVESTIGATIONAL TREATMENTS FOR PATIENTS WITH TERMINAL ILLNESSES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 489.001. DEFINITIONS. In this chapter:

(1) "Investigational drug, biological product, or device" means a drug, biological product, or device that has successfully completed phase one of a clinical trial but has not yet been approved for general use by the United States Food and Drug Administration and remains under investigation in the clinical trial.

(2) "Terminal illness" means an advanced stage of a disease with an unfavorable prognosis that, without life-sustaining procedures, will soon result in death or a state of permanent unconsciousness from which recovery is unlikely.

Added by Acts 2015, 84th Leg., R.S., Ch. 502 (H.B. 21), Sec. 2, eff. June 16, 2015.

SUBCHAPTER B. ACCESS TO INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, AND DEVICES FOR PATIENTS WITH TERMINAL ILLNESSES

Sec. 489.051. PATIENT ELIGIBILITY. A patient is eligible to access and use an investigational drug, biological product, or device under this chapter if:

(1) the patient has a terminal illness, attested to by the patient's treating physician; and

(2) the patient's physician:

(A) in consultation with the patient, has considered all other treatment options currently approved by the United States Food and Drug Administration and determined that those treatment options are unavailable or unlikely to prolong the patient's life; and

(B) has recommended or prescribed in writing that the patient use a specific class of investigational drug, biological product, or device.

Added by Acts 2015, 84th Leg., R.S., Ch. 502 (H.B. 21), Sec. 2, eff. June 16, 2015.

Sec. 489.052. INFORMED CONSENT. (a) Before receiving an investigational drug, biological product, or device, an eligible patient must sign a written informed consent. If the patient is a minor or lacks the mental capacity to provide informed consent, a parent or legal guardian may provide informed consent on the patient's behalf.

(b) The executive commissioner of the Health and Human Services Commission by rule may adopt a form for the informed consent under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 502 (H.B. 21), Sec. 2, eff. June 16, 2015.

Sec. 489.053. PROVISION OF INVESTIGATIONAL DRUG, BIOLOGICAL PRODUCT, OR DEVICE BY MANUFACTURER. (a) A manufacturer of an investigational drug, biological product, or device may make available the manufacturer's investigational drug, biological product, or device to eligible patients in accordance with this chapter if the patient provides to the manufacturer the informed consent required under Section 489.052.

(b) This chapter does not require that a manufacturer make

available an investigational drug, biological product, or device to an eligible patient.

(c) If a manufacturer makes available an investigational drug, biological product, or device to an eligible patient under this subchapter, the manufacturer must provide the investigational drug, biological product, or device to the eligible patient without receiving compensation.

Added by Acts 2015, 84th Leg., R.S., Ch. 502 (H.B. 21), Sec. 2, eff. June 16, 2015.

Sec. 489.054. NO CAUSE OF ACTION CREATED. This chapter does not create a private or state cause of action against a manufacturer of an investigational drug, biological product, or device or against any other person or entity involved in the care of an eligible patient using the investigational drug, biological product, or device for any harm done to the eligible patient resulting from the investigational drug, biological product, or device.

Added by Acts 2015, 84th Leg., R.S., Ch. 502 (H.B. 21), Sec. 2, eff. June 16, 2015.

Sec. 489.055. STATE MAY NOT INTERFERE WITH ACCESS TO INVESTIGATIONAL DRUG, BIOLOGICAL PRODUCT, OR DEVICE. An official, employee, or agent of this state may not block or attempt to block an eligible patient's access to an investigational drug, biological product, or device under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 502 (H.B. 21), Sec. 2, eff. June 16, 2015.

SUBCHAPTER C. HEALTH INSURANCE

Sec. 489.101. EFFECT ON HEALTH CARE COVERAGE FOR CLINICAL TRIAL ENROLLEES. This chapter does not affect the coverage of enrollees in clinical trials under Chapter 1379, Insurance Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 502 (H.B. 21), Sec. 2, eff. June 16, 2015.

SUBCHAPTER D. PHYSICIANS

Sec. 489.151. ACTION AGAINST PHYSICIAN'S LICENSE PROHIBITED. Notwithstanding any other law, the Texas Medical Board may not revoke, fail to renew, suspend, or take any action against a physician's license under Subchapter B, Chapter 164, Occupations Code, based solely on the physician's recommendations to an eligible patient regarding access to or treatment with an investigational drug, biological product, or device, provided that the recommendations made to the patient meet the medical standard of care.

Added by Acts 2015, 84th Leg., R.S., Ch. 502 (H.B. 21), Sec. 2, eff. June 16, 2015.

CHAPTER 490. ACCESS TO INVESTIGATIONAL TREATMENTS FOR PATIENTS WITH SEVERE CHRONIC DISEASES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 490.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Investigational drug, biological product, or device" means a drug, biological product, or device that has successfully completed phase one of a clinical trial but the United States Food and Drug Administration or its international equivalent has not yet approved for general use and that remains under investigation in the clinical trial. The term does not include low-THC cannabis, as defined by Section 169.001, Occupations Code, or a product containing marihuana, as defined by Section 481.002, regardless of whether the cannabis or product successfully completed phase one of a clinical trial.

(4) "Severe chronic disease" means a condition, injury, or illness that:

(A) may be treated;

(B) may not be cured or eliminated; and

(C) entails significant functional impairment or severe

pain.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

Sec. 490.002. DESIGNATION OF SEVERE CHRONIC DISEASES. The commissioner shall designate the medical conditions considered to be severe chronic diseases under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

Sec. 490.003. RULES. The executive commissioner shall adopt rules necessary to administer this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

SUBCHAPTER B. ACCESS TO INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, AND DEVICES FOR PATIENTS WITH SEVERE CHRONIC DISEASES

Sec. 490.051. PATIENT ELIGIBILITY. A patient is eligible to access and use an investigational drug, biological product, or device under this chapter if:

(1) the patient has a severe chronic disease the commissioner designates under Section 490.002 that the patient's treating physician confirms in writing;

(2) the use of the investigational drug, biological product, or device is consistent with this chapter and rules adopted under this chapter; and

(3) the patient's physician:

(A) in consultation with the patient, considers all other treatment options the United States Food and Drug Administration has currently approved and determines those treatment options are unavailable or unlikely to provide relief for the significant impairment or severe pain associated with the patient's severe chronic disease; and

(B) recommends or prescribes in writing the patient's use of a specific class of investigational drug, biological product,

or device.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

Sec. 490.052. INFORMED CONSENT. (a) Before receiving an investigational drug, biological product, or device, an eligible patient must sign a written informed consent. If the patient is a minor or lacks the mental capacity to provide informed consent, a parent, guardian, or conservator may provide informed consent on the patient's behalf.

(b) The commissioner may prescribe a form for the informed consent required under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

Sec. 490.053. PROVISION OF INVESTIGATIONAL DRUG, BIOLOGICAL PRODUCT, OR DEVICE BY MANUFACTURER. (a) A manufacturer of an investigational drug, biological product, or device may make available the manufacturer's investigational drug, biological product, or device to eligible patients in accordance with this chapter if the patient provides to the manufacturer the informed consent required under Section 490.052.

(b) This chapter does not require a manufacturer to make available an investigational drug, biological product, or device to an eligible patient.

(c) If a manufacturer makes available an investigational drug, biological product, or device to an eligible patient under this subchapter, the manufacturer must provide the investigational drug, biological product, or device to the eligible patient without receiving compensation.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

Sec. 490.054. CAUSE OF ACTION NOT CREATED. This chapter does not create a private or state cause of action against a manufacturer

of an investigational drug, biological product, or device or against any other person or entity involved in the care of an eligible patient using the investigational drug, biological product, or device for any harm to the patient resulting from the investigational drug, biological product, or device.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

Sec. 490.055. STATE MAY NOT INTERFERE WITH ACCESS TO INVESTIGATIONAL DRUG, BIOLOGICAL PRODUCT, OR DEVICE. An official, employee, or agent of this state may not block or attempt to block an eligible patient's access to an investigational drug, biological product, or device under this chapter unless the drug, biological product, or device is considered adulterated or misbranded under Chapter 431. For purposes of this section, a governmental entity may not consider the drug, biological product, or device to be adulterated or misbranded based solely on the United States Food and Drug Administration not yet finally approving the drug, biological product, or device.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

SUBCHAPTER C. HEALTH INSURANCE

Sec. 490.101. EFFECT ON HEALTH CARE COVERAGE FOR CLINICAL TRIAL ENROLLEES. This chapter does not affect the coverage of enrollees in clinical trials under Chapter 1379, Insurance Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

SUBCHAPTER D. PHYSICIANS

Sec. 490.151. ACTION AGAINST PHYSICIAN'S LICENSE PROHIBITED. Notwithstanding any other law, the Texas Medical Board may not revoke, fail to renew, suspend, or take any action against a physician's license under Subchapter B, Chapter 164, Occupations Code, based solely on the physician's recommendations to an eligible

patient regarding access to or treatment with an investigational drug, biological product, or device, provided that the recommendations meet the requirements of this chapter and rules adopted under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

Chapter 491, consisting of Secs. 491.001 to 491.103, was added by Acts 2025, 89th Leg., R.S., Ch. 333 (S.B. 2308), Sec. 1.

For another Chapter 491, consisting of Secs. 491.001 to 491.151, added by Acts 2025, 89th Leg., R.S., Ch. 285 (S.B. 984), Sec. 1, see Sec. 491.001 et seq., post.

For another Chapter 491, consisting of Secs. 491.001 to 491.151, added by Acts 2025, 89th Leg., R.S., Ch. 352 (S.B. 670), Sec. 2, see Sec. 491.001 et seq., post.

CHAPTER 491. IBOGAINE TREATMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 491.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Comptroller" means the comptroller of public accounts.

(3) "Drug developer" means a pharmaceutical company, biotechnology company, or contract development and manufacturing organization engaged in drug development and manufacturing.

(4) "Hospital" has the meaning assigned by Section 241.003.

(5) "Ibogaine" means ibogaine and ibogaine-based therapeutics, including ibogaine analogs.

(6) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

Added by Acts 2025, 89th Leg., R.S., Ch. 333 (S.B. 2308), Sec. 1, eff. June 11, 2025.

SUBCHAPTER B. DRUG DEVELOPMENT OF IBOGAINE TREATMENT

Sec. 491.051. ESTABLISHMENT OF CONSORTIUM. (a) A consortium may be established under this section and apply for commission selection under this subchapter to conduct drug development clinical

trials with ibogaine and secure the United States Food and Drug Administration's approval of ibogaine as a medication for the treatment of:

(1) opioid use disorder;

(2) co-occurring substance use disorder; and

(3) any other neurological or mental health condition for which ibogaine demonstrates efficacy.

(b) A consortium established under this section must include one or more of each of the following entities:

(1) a drug developer;

(2) an institution of higher education; and

(3) a hospital.

Added by Acts 2025, 89th Leg., R.S., Ch. 333 (S.B. 2308), Sec. 1, eff. June 11, 2025.

Sec. 491.052. LEAD INSTITUTION; ADMINISTRATION; PERSONNEL. (a) A consortium established under this subchapter shall select a lead institution of higher education from among the consortium's members to represent the consortium and perform administrative functions under this subchapter, including contracting with and reporting to the commission as required by this subchapter.

(b) A consortium selected by the commission under this subchapter may employ personnel, including clinical, administrative, and data management personnel, necessary to support any consortium member's activities related to drug development clinical trials conducted under this subchapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 333 (S.B. 2308), Sec. 1, eff. June 11, 2025.

Sec. 491.053. CONSORTIUM PROPOSAL. (a) The lead institution of higher education of a consortium shall submit to the commission a proposal and request for funding on behalf of the consortium for purposes of conducting ibogaine drug development clinical trials in accordance with this subchapter.

(b) A proposal submitted under Subsection (a) must provide:

(1) the identity of all consortium members;

(2) a detailed description of the planned strategy for

obtaining approval for the drug development clinical trials from the United States Food and Drug Administration;

(3) a detailed drug development clinical trial design that includes:

(A) a description of the composition of the consortium's drug development clinical trial team and the expertise of the team members;

(B) a drug development clinical trial participant recruitment plan;

(C) patient screening criteria and cardiac safety protocols;

(D) administration protocols;

(E) an aftercare and post-acute treatment support plan; and

(F) a data integrity plan;

(4) a detailed plan to seek a breakthrough therapy designation for ibogaine from the United States Food and Drug Administration under 21 U.S.C. Section 356;

(5) a proposal to recognize this state's commercial interest in all intellectual property that may be generated over the course of the drug development clinical trials, including:

(A) the treatment that is the subject of the trials;

(B) administration protocols;

(C) treatment models or techniques; and

(D) technology used in the trials;

(6) a plan to establish a corporate presence in this state and to promote and maintain ibogaine-related biomedical research, development, treatment, manufacturing, and distribution in this state;

(7) a plan to secure third-party payor approval for ibogaine treatment following approval by the United States Food and Drug Administration through:

(A) private insurers;

(B) Medicare;

(C) Medicaid; and

(D) the TRICARE program of the United States Department of Defense;

(8) a plan to ensure ibogaine treatment access to uninsured individuals following approval by the United States Food and Drug Administration;

(9) a plan to train and credential medical providers to administer ibogaine treatment according to developed clinical standards; and

(10) financial disclosures that verify the consortium's capacity to fully match state funding with funds received from non-state sources.

Added by Acts 2025, 89th Leg., R.S., Ch. 333 (S.B. 2308), Sec. 1, eff. June 11, 2025.

Sec. 491.054. COMMISSION SELECTION. The commission, in the commission's sole discretion, shall select a consortium established in accordance with Section 491.051 for the purpose of conducting ibogaine drug development clinical trials under this subchapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 333 (S.B. 2308), Sec. 1, eff. June 11, 2025.

Sec. 491.055. CONTRACT WITH LEAD INSTITUTION. (a) As soon as practicable after selecting a consortium to conduct ibogaine drug development clinical trials under Section 491.054, the commission shall enter into an interagency contract, as provided by Chapter 771, Government Code, with the lead institution of higher education of the selected consortium to provide funding to implement the consortium's proposed ibogaine drug development clinical trials.

(b) The interagency contract described by Subsection (a) must specify:

(1) the goals and objectives of the proposed ibogaine drug development clinical trials;

(2) the proposed budget;

(3) the timeline for completing the proposed objectives;

(4) the for-profit, nonprofit, or public benefit corporate entities collaborating with the consortium in the drug development clinical trials under this subchapter;

(5) the percentage of the revenue arising from the drug development clinical trials to be paid to the state; and

(6) any other information required by the commission.

(c) As soon as practicable after entering into an interagency contract under Subsection (a), the commission shall report the

existence of the contract to the legislature.

(d) The commission may not disburse funds to or for a selected consortium under the interagency contract described by Subsection (a) until the consortium receives and the commission verifies the receipt of matching funds from sources other than the state.

Added by Acts 2025, 89th Leg., R.S., Ch. 333 (S.B. 2308), Sec. 1, eff. June 11, 2025.

Sec. 491.056. INVESTIGATIONAL NEW DRUG APPLICATION. On the commission's notification that a consortium is selected to conduct the drug development clinical trials under this subchapter, a drug developer or hospital member of the selected consortium or the lead institution of higher education of the consortium, as specified by written agreement of the consortium members, shall, as soon as practicable:

(1) submit an investigational new drug (IND) application to the United States Food and Drug Administration in accordance with 21 C.F.R. Part 312; and

(2) seek a breakthrough therapy designation for ibogaine from the United States Food and Drug Administration under 21 U.S.C. Section 356.

Added by Acts 2025, 89th Leg., R.S., Ch. 333 (S.B. 2308), Sec. 1, eff. June 11, 2025.

Sec. 491.057. DRUG DEVELOPMENT CLINICAL TRIAL SITES. For purposes of conducting a drug development clinical trial under this subchapter, only an institution of higher education or a hospital may serve as a trial site.

Added by Acts 2025, 89th Leg., R.S., Ch. 333 (S.B. 2308), Sec. 1, eff. June 11, 2025.

Sec. 491.058. FUNDING; DISBURSEMENT BY COMMISSION. (a) The commission and consortium members may solicit and accept gifts, grants, and donations of any kind received from sources other than the state for purposes of funding drug development clinical trials

under this subchapter.

(b) Disbursements of funds by the commission may be made incrementally based on the completion of clearly defined objectives as negotiated in the contract described by Section 491.055, including verifiable documentation demonstrating the efficient expenditure of both state and matching funds.

Added by Acts 2025, 89th Leg., R.S., Ch. 333 (S.B. 2308), Sec. 1, eff. June 11, 2025.

Sec. 491.059. REPORTING REQUIREMENTS. (a) A consortium selected to conduct ibogaine drug development clinical trials shall quarterly prepare and submit to the commission:

(1) a report on the progress of the drug development clinical trials conducted under this subchapter; and

(2) a financial status report, including information to verify expenditures of state funds and required matching funds.

(b) The commission shall submit a report to the legislature on the progress of the drug development clinical trials conducted under this subchapter not later than December 1 of each year.

Added by Acts 2025, 89th Leg., R.S., Ch. 333 (S.B. 2308), Sec. 1, eff. June 11, 2025.

Sec. 491.060. ALLOCATION OF REVENUE ATTRIBUTABLE TO INTELLECTUAL PROPERTY AND OTHER RIGHTS. (a) The revenue attributable to all intellectual property rights and other commercial rights arising from drug development clinical trials conducted by a consortium under this subchapter during the period for which the trials are funded and any following period of commercialization shall be allocated as follows:

(1) not less than 20 percent to the state as specified in the contract under Section 491.055; and

(2) the remainder to the members of the consortium in the amounts specified by written agreement of the members.

(b) For purposes of this section, intellectual property rights and other commercial rights arising from the drug development clinical trials conducted under this subchapter include any of the following as related to the trials:

(1) intellectual property, technology, and inventions;
(2) patents, trademarks, and licenses;
(3) proprietary and confidential information;
(4) trade secrets, data, and databases;
(5) tools, methods, and processes;
(6) treatment models or techniques;
(7) administration protocols; and
(8) works of authorship.

Added by Acts 2025, 89th Leg., R.S., Ch. 333 (S.B. 2308), Sec. 1, eff. June 11, 2025.

Sec. 491.061. USE OF STATE REVENUE. (a) The comptroller shall deposit the revenue received under Section 491.060 to the credit of the general revenue fund.

(b) Of the amount deposited under Subsection (a), 25 percent may be appropriated only to programs that assist veterans in this state.

(c) The comptroller shall develop accounting procedures for the purpose of implementing this section.

Added by Acts 2025, 89th Leg., R.S., Ch. 333 (S.B. 2308), Sec. 1, eff. June 11, 2025.

SUBCHAPTER C. IBOGAINE TREATMENT ADMINISTRATION

Sec. 491.101. APPLICABILITY. This subchapter applies only if ibogaine is approved by the United States Food and Drug Administration to treat a medical condition.

Added by Acts 2025, 89th Leg., R.S., Ch. 333 (S.B. 2308), Sec. 1, eff. June 11, 2025.

Sec. 491.102. MEDICAL SUPERVISION. A physician licensed under Subtitle B, Title 3, Occupations Code, who has prescribed ibogaine for a patient shall supervise the administration of ibogaine at a hospital or other licensed health care facility to ensure the patient's safety while the patient is under the influence of ibogaine.

Added by Acts 2025, 89th Leg., R.S., Ch. 333 (S.B. 2308), Sec. 1, eff. June 11, 2025.

Sec. 491.103. ADMINISTRATION UNDER FEDERAL LAW. This subchapter does not preclude a physician from administering ibogaine in accordance with federal law.

Added by Acts 2025, 89th Leg., R.S., Ch. 333 (S.B. 2308), Sec. 1, eff. June 11, 2025.

Chapter 491, consisting of Secs. 491.001 to 491.151, was added by Acts 2025, 89th Leg., R.S., Ch. 352 (S.B. 670), Sec. 2.

For another Chapter 491, consisting of Secs. 491.001 to 491.151, added by Acts 2025, 89th Leg., R.S., Ch. 285 (S.B. 984), Sec. 1, see Sec. 491.001 et seq., post.

For another Chapter 491, consisting of Secs. 491.001 to 491.103, added by Acts 2025, 89th Leg., R.S., Ch. 333 (S.B. 2308), Sec. 1, see Sec. 491.001 et seq., post.

CHAPTER 491. PATIENT ACCESS TO INVESTIGATIONAL SUN PROTECTION PRODUCTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 491.001. DEFINITION. In this chapter, "investigational sun protection product" means a sun protection product containing an ingredient that has successfully completed phase one of a clinical trial but has not yet been approved for general use by the United States Food and Drug Administration and remains under investigation in the clinical trial.

Added by Acts 2025, 89th Leg., R.S., Ch. 352 (S.B. 670), Sec. 2, eff. June 20, 2025.

SUBCHAPTER B. ELIGIBLE PATIENT ACCESS TO INVESTIGATIONAL SUN PROTECTION PRODUCTS

Sec. 491.051. PATIENT ELIGIBILITY. A patient is eligible to access and use an investigational sun protection product if the patient's physician:

(1) in consultation with the patient, has considered all

other sun protection products currently approved by the United States Food and Drug Administration and determined those products are less effective in comparison to an investigational sun protection product; and

(2) recommends or prescribes in writing an investigational sun protection product for the patient.

Added by Acts 2025, 89th Leg., R.S., Ch. 352 (S.B. 670), Sec. 2, eff. June 20, 2025.

Sec. 491.052. INFORMED CONSENT. (a) Before recommending or prescribing an investigational sun protection product, a physician must require an eligible patient to sign a written informed consent form.

(b) If the patient is a minor or lacks the mental capacity to provide informed consent, a parent or legal guardian may provide informed consent on the patient's behalf.

(c) The Texas Medical Board by rule may adopt a form for the informed consent required under this section.

Added by Acts 2025, 89th Leg., R.S., Ch. 352 (S.B. 670), Sec. 2, eff. June 20, 2025.

Sec. 491.053. PROVISION OF INVESTIGATIONAL SUN PROTECTION PRODUCT. (a) A manufacturer of an investigational sun protection product may make available in accordance with this chapter and any rules adopted under this chapter the manufacturer's product to eligible patients who provide to the manufacturer the informed consent required under Section 491.052.

(b) This chapter does not require a manufacturer to make available an investigational sun protection product to an eligible patient.

(c) A manufacturer may:

(1) provide an investigational sun protection product to an eligible patient without receiving compensation; or

(2) require an eligible patient to pay the manufacturer's costs of, or costs associated with, the manufacture of the product.

Added by Acts 2025, 89th Leg., R.S., Ch. 352 (S.B. 670), Sec. 2, eff.

June 20, 2025.

Sec. 491.054. NO CAUSE OF ACTION CREATED. This chapter does not create a private or state cause of action against a manufacturer of an investigational sun protection product or against any other person or entity involved in the care of an eligible patient using the product for any harm to the eligible patient resulting from the product.

Added by Acts 2025, 89th Leg., R.S., Ch. 352 (S.B. 670), Sec. 2, eff. June 20, 2025.

Sec. 491.055. STATE MAY NOT INTERFERE WITH ACCESS TO INVESTIGATIONAL SUN PROTECTION PRODUCTS. An official, employee, or agent of this state may not block or attempt to block an eligible patient's access to an investigational sun protection product under this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 352 (S.B. 670), Sec. 2, eff. June 20, 2025.

SUBCHAPTER C. HEALTH INSURANCE

Sec. 491.101. EFFECT ON HEALTH CARE COVERAGE FOR CLINICAL TRIAL ENROLLEES. This chapter does not affect the coverage of enrollees in clinical trials under Chapter 1379, Insurance Code.

Added by Acts 2025, 89th Leg., R.S., Ch. 352 (S.B. 670), Sec. 2, eff. June 20, 2025.

SUBCHAPTER D. PHYSICIANS

Sec. 491.151. PROHIBITED ACTION AGAINST PHYSICIAN'S LICENSE. Notwithstanding any other law, the Texas Medical Board may not revoke, fail to renew, suspend, or take any action against a physician's license under Subchapter B, Chapter 164, Occupations Code, based solely on the physician's recommendation to or prescription for an eligible patient regarding access to an investigational sun protection product, provided the recommendation

or prescription for the patient meets the medical standard of care and the requirements of this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 352 (S.B. 670), Sec. 2, eff. June 20, 2025.

Chapter 491, consisting of Secs. 491.001 to 491.151, was added by Acts 2025, 89th Leg., R.S., Ch. 285 (S.B. 984), Sec. 1.

For another Chapter 491, consisting of Secs. 491.001 to 491.103, added by Acts 2025, 89th Leg., R.S., Ch. 333 (S.B. 2308), Sec. 1, see Sec. 491.001 et seq., post.

For another Chapter 491, consisting of Secs. 491.001 to 491.151, added by Acts 2025, 89th Leg., R.S., Ch. 352 (S.B. 670), Sec. 2, see Sec. 491.001 et seq., post.

CHAPTER 491. ACCESS TO INDIVIDUALIZED INVESTIGATIONAL TREATMENTS FOR PATIENTS WITH LIFE-THREATENING OR SEVERELY DEBILITATING ILLNESSES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 491.001. DEFINITIONS. In this chapter:

(1) "Individualized investigational treatment" means a drug, biological product, or device unique to and produced exclusively for use by a patient, based on the patient's genetic profile. The term includes individualized gene therapy antisense oligonucleotides and individualized neoantigen vaccines.

(2) "Life-threatening illness" means a disease or condition with:

(A) a significantly increased likelihood of death unless the course of the disease or condition is interrupted; or

(B) potentially fatal outcomes and for which the goal of clinical trials is survival.

(3) "Severely debilitating illness" means a disease or condition that causes major irreversible morbidity.

Added by Acts 2025, 89th Leg., R.S., Ch. 285 (S.B. 984), Sec. 1, eff. September 1, 2025.

SUBCHAPTER B. ACCESS TO INDIVIDUALIZED INVESTIGATIONAL TREATMENT

Sec. 491.051. HEALTH CARE FACILITY ELIGIBILITY. A health care facility is eligible to provide an individualized investigational

treatment under this chapter if the facility is operating under a federal assurance for the protection of human subjects under 42 U.S.C. Section 289(a) and 45 C.F.R. Part 46 and is subject to the federal assurance laws, regulations, policies, and guidelines.

Added by Acts 2025, 89th Leg., R.S., Ch. 285 (S.B. 984), Sec. 1, eff. September 1, 2025.

Sec. 491.052. PATIENT ELIGIBILITY. A patient is eligible to access an individualized investigational treatment under this chapter if:

(1) the patient:

(A) has a life-threatening illness or severely debilitating illness;

(B) has considered all other treatment options currently approved by the United States Food and Drug Administration; and

(C) has given written informed consent for access to the treatment; and

(2) the patient's physician:

(A) attests to the patient's life-threatening illness or severely debilitating illness and the patient's eligibility under this section; and

(B) recommends the treatment for the patient based on analysis of the patient's genomic sequence, human chromosomes, deoxyribonucleic acid, ribonucleic acid, genes, gene products such as enzymes and other types of proteins, or metabolites.

Added by Acts 2025, 89th Leg., R.S., Ch. 285 (S.B. 984), Sec. 1, eff. September 1, 2025.

Sec. 491.053. INFORMED CONSENT. (a) An eligible patient may not access an individualized investigational treatment unless the patient provides written informed consent. If the patient is a minor or lacks the mental capacity to provide informed consent, a parent, legal guardian, managing conservator, or patient's agent as defined by Section 166.151 may provide written informed consent on the patient's behalf.

(b) Informed consent under this chapter must be attested to in

writing by the patient's physician and a witness.

(c) Informed consent under this chapter must include at a minimum:

(1) an explanation of the currently approved treatments for the patient's disease or condition;

(2) the patient's attestation that the patient concurs with the assessment of the patient's physician that all currently approved and conventionally recognized treatments are unlikely to prolong the patient's life;

(3) clear identification of the specific proposed individualized investigational drug, biological product, or device the patient's physician recommends;

(4) a description, based on the physician's knowledge of the proposed treatment in conjunction with an awareness of the patient's disease or condition, of the potentially best and worst outcomes of using the treatment, and of the most likely outcome, including the possibility that new, unanticipated, different, or worse symptoms might result and that death could be hastened by the treatment;

(5) a statement that the patient's health benefit plan issuer or third-party administrator and provider are not obligated to pay the cost of any care related to the use of the treatment unless payment is specifically required by law or contract;

(6) a statement that the patient's eligibility for hospice care may be withdrawn if the patient begins the treatment and that care may be reinstated if the treatment ends and the patient meets hospice eligibility requirements; and

(7) a statement that the patient understands the patient is liable for all expenses related to the use of the treatment and the liability extends to the patient's estate, unless a contract between the patient and the manufacturer of the treatment provides otherwise.

Added by Acts 2025, 89th Leg., R.S., Ch. 285 (S.B. 984), Sec. 1, eff. September 1, 2025.

Sec. 491.054. ACCESS TO TREATMENT; COSTS. (a) A manufacturer operating within an eligible health care facility and in compliance with all applicable federal assurance laws and regulations may make available an individualized investigational treatment, and an

eligible patient may request access to the treatment from an eligible health care facility or manufacturer operating within an eligible health care facility under this chapter.

(b) A manufacturer is not required under this chapter to make available an individualized investigational treatment to an eligible patient.

(c) An eligible health care facility or manufacturer operating within an eligible health care facility may:

(1) provide an individualized investigational treatment to an eligible patient without receiving compensation; or

(2) require an eligible patient to pay the costs of, or the costs associated with, the manufacture of the treatment.

Added by Acts 2025, 89th Leg., R.S., Ch. 285 (S.B. 984), Sec. 1, eff. September 1, 2025.

Sec. 491.055. DEBT LIABILITY ON DEATH OF PATIENT. If a patient dies while receiving an individualized investigational treatment, the patient's heirs are not liable for any outstanding debt related to the treatment or lack of health coverage due to the treatment.

Added by Acts 2025, 89th Leg., R.S., Ch. 285 (S.B. 984), Sec. 1, eff. September 1, 2025.

Sec. 491.056. NO PRIVATE CAUSE OF ACTION. This chapter does not create a private cause of action against a manufacturer of an individualized investigational treatment or against any other person involved in the care of an eligible patient using the treatment for any harm to the patient resulting from the treatment if the manufacturer or other person is complying in good faith with the terms of this chapter and has exercised reasonable care.

Added by Acts 2025, 89th Leg., R.S., Ch. 285 (S.B. 984), Sec. 1, eff. September 1, 2025.

Sec. 491.057. PROHIBITED STATE INTERFERENCE WITH ACCESS TO TREATMENT. (a) An officer, employee, or agent of this state may not block or attempt to block an eligible patient's access to an

individualized investigational treatment that complies with this chapter and rules adopted under this chapter.

(b) Notwithstanding Subsection (a), counseling, advice, or a recommendation consistent with medical standards of care from a licensed health care provider is not a violation of this section.

Added by Acts 2025, 89th Leg., R.S., Ch. 285 (S.B. 984), Sec. 1, eff. September 1, 2025.

SUBCHAPTER C. HEALTH COVERAGE, COSTS, AND SERVICES

Sec. 491.101. HEALTH COVERAGE. This chapter does not affect:

(1) the coverage required of an insurer under the Insurance Code; or

(2) health care coverage of enrollees in clinical trials under Chapter 1379, Insurance Code.

Added by Acts 2025, 89th Leg., R.S., Ch. 285 (S.B. 984), Sec. 1, eff. September 1, 2025.

Sec. 491.102. COVERAGE OPTIONAL. A health benefit plan issuer, third-party administrator, or governmental agency may, but is not required to, provide coverage for the cost of an individualized investigational treatment or the cost of services related to the use of an individualized investigational treatment under this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 285 (S.B. 984), Sec. 1, eff. September 1, 2025.

Sec. 491.103. HOSPITAL SERVICES. This chapter does not require a hospital or health care facility licensed under Subtitle B, Title 4, to provide new or additional services unless approved by the hospital or facility.

Added by Acts 2025, 89th Leg., R.S., Ch. 285 (S.B. 984), Sec. 1, eff. September 1, 2025.

Sec. 491.104. GOVERNMENTAL AGENCY NOT RESPONSIBLE FOR COSTS.

This chapter does not require a governmental agency to pay costs associated with the use, care, or treatment of a patient accessing an individualized investigational treatment.

Added by Acts 2025, 89th Leg., R.S., Ch. 285 (S.B. 984), Sec. 1, eff. September 1, 2025.

SUBCHAPTER D. HEALTH CARE PROVIDERS

Sec. 491.151. PROHIBITED ACTION AGAINST LICENSE HOLDER OR MEDICAID PARTICIPANT. (a) A state licensing board may not revoke, fail to renew, suspend, or take any action against a health care provider's license issued under Title 3, Occupations Code, based solely on the provider's recommendation to an eligible patient regarding access to or treatment with an individualized investigational treatment.

(b) The Health and Human Services Commission may not take action against a health care provider that adversely affects the provider's participation in Medicaid based solely on the provider's recommendation for a patient to access an individualized investigational treatment.

Added by Acts 2025, 89th Leg., R.S., Ch. 285 (S.B. 984), Sec. 1, eff. September 1, 2025.

SUBTITLE D. HAZARDOUS SUBSTANCES

CHAPTER 501. HAZARDOUS SUBSTANCES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(96), eff. April 2, 2015.

(2) "Commerce" includes the operation of a business or service establishment and other commerce in this state that is subject to the jurisdiction of this state.

(3) "Commissioner" means the commissioner of state health services.

(4) "Department" means the Department of State Health Services.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Label" means a display of written, printed, or other graphic matter:

(A) on the immediate container, excluding the package liner, of any substance; or

(B) directly on the article or on a tag or other suitable material affixed to the article, if the article is unpackaged or not packaged in an immediate container intended or suitable for delivery to the ultimate consumer.

(6) "Misbranded hazardous substance" means either of the following that is not properly packaged or does not bear a proper label required by this chapter:

(A) a hazardous substance; or

(B) a toy or other article intended for use by children that bears or contains a hazardous substance in a manner that is accessible by a child to whom the toy or other article is entrusted, intended, or packaged in a form suitable for use in a household or by children.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1259, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(96), eff. April 2, 2015.

Sec. 501.002. HAZARDOUS SUBSTANCE DESCRIBED. (a) A hazardous substance is:

(1) a substance or mixture of substances that is toxic, corrosive, extremely flammable, flammable, combustible, an irritant, or a strong sensitizer, or that generates pressure through decomposition, heat, or other means, if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;

(2) a toy or other article, other than clothing, that is intended for use by a child and that presents an electrical, mechanical, or thermal hazard; or

(3) a radioactive substance designated as a hazardous substance under Section 501.003.

(b) A substance is corrosive if, when in contact with living tissue, it causes destruction of that tissue by chemical action. A chemical action on an inanimate surface is not corrosive for the purpose of this section.

(c) An article is an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, it may cause, because of its design or manufacture, personal injury or illness by electric shock.

(d) A substance or article is extremely flammable, flammable, or combustible if it is defined as extremely flammable, flammable, or combustible by rule adopted by the executive commissioner. The executive commissioner shall define the terms as they are defined by the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and by federal regulations adopted under that Act. The terms each have the meaning assigned by the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) and by federal regulations adopted under that Act, as of September 1, 2001.

(e) A substance is an irritant if it is noncorrosive and if, on immediate, prolonged, or repeated contact with normal living tissue, it induces a local inflammatory reaction.

(f) An article is a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, it presents, because of its design or manufacture, an unreasonable risk of personal injury or illness:

(1) from fracture, fragmentation, or disassembly of the article;

(2) from propulsion of the article or a part or accessory of the article;

(3) from points or other protrusions, surfaces, edges, openings, or closures;

(4) from moving parts;

(5) from lack or insufficiency of controls to reduce or stop motion;

(6) as a result of self-adhering characteristics of the article;

(7) because the article or a part or accessory of the article may be aspirated or ingested;

(8) because of instability; or

(9) because of any other aspect of the article's design or manufacture.

(g) A substance is radioactive if it emits ionizing radiation.

(h) A substance is a strong sensitizer if, when on normal living tissue, it causes, through an allergic or photodynamic process, a hypersensitivity that becomes evident on reapplication of the same substance.

(i) An article is a thermal hazard if, in normal use or when subject to reasonably foreseeable damage or abuse, it presents, because of its design or manufacture, an unreasonable risk of personal injury or illness because of heat, including heat from heated parts, substances, or surfaces.

(j) A substance is toxic if it is capable of producing personal injury or illness to any person through ingestion, inhalation, or absorption through any body surface and it is not radioactive.

(k) The following are not hazardous substances:

(1) a pesticide subject to Chapter 76, Agriculture Code, or to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.);

(2) a food, drug, or cosmetic subject to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) or Chapter 431 (Texas Food, Drug, and Cosmetic Act);

(3) a beverage complying with or subject to the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.);

(4) a substance intended for use as fuel that is stored in a container and used in the heating, cooking, or refrigeration system of a private residence; and

(5) source material, special nuclear material, or by-product material as defined in the Atomic Energy Act of 1954 (42 U.S.C. Chapter 23) and regulations issued under that Act by the United States Nuclear Regulatory Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1260, eff. April 2, 2015.

Sec. 501.003. DESIGNATION OF RADIOACTIVE SUBSTANCE AS

HAZARDOUS. The executive commissioner by rule shall designate a radioactive substance to be a hazardous substance if, with respect to the substance as used in a particular class of article or as packaged, the executive commissioner finds that the substance is sufficiently hazardous as to require labeling as a hazardous substance under this chapter in order to protect the public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1261, eff. April 2, 2015.

Sec. 501.004. DESIGNATION OF STRONG SENSITIZER. Before designating a substance as a strong sensitizer, the department must determine that the substance has a significant potential for causing hypersensitivity considering the frequency of occurrence and the severity of the reaction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 501.005. EXCLUSION. This chapter does not apply to the manufacture, distribution, sale, or use of diapers.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. REGULATION OF SUBSTANCES

Sec. 501.021. FLAMMABILITY STANDARDS; DETERMINATION OF FLAMMABILITY. (a) The executive commissioner by rule shall establish the methods for determining the flammability of solids, fabrics, children's clothing, household furnishings, and the contents of self-pressurized containers that the executive commissioner finds are generally applicable to those materials or containers.

(b) The executive commissioner by rule shall establish flammability standards for articles described by Subsection (a). The standards must conform to standards prescribed by federal regulations adopted under the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), as amended, the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and the federal Consumer

Product Safety Act (15 U.S.C. Section 2051 et seq.), as amended. Until the executive commissioner adopts standards, the flammability standards for articles described by Subsection (a) are the standards prescribed by federal regulations adopted under the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), and the federal Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) as of September 1, 2001.

(c) The department may obtain samples of articles described by Subsection (a) and determine the flammability of the articles for compliance with applicable standards established under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 3, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1262, eff. April 2, 2015.

Sec. 501.022. DESIGNATION OF BANNED HAZARDOUS SUBSTANCES. (a) The executive commissioner by rule shall designate as a banned hazardous substance any article, including clothing intended for the use of children, that is not properly packaged or that does not comply with applicable flammability standards established by the executive commissioner. The executive commissioner's determination that articles of clothing of a specified range of sizes are intended for the use of a child 14 years of age or younger is conclusive.

(b) The executive commissioner by rule shall designate as a banned hazardous substance any toy or other article, other than clothing, intended for the use of children that is a hazardous substance or bears or contains a hazardous substance in a manner accessible by a child to whom the toy or other article is entrusted.

(c) The executive commissioner by rule shall designate as a banned hazardous substance any hazardous substance intended or packaged in a form suitable for use in a household that, notwithstanding cautionary labeling required by this chapter, is potentially so dangerous or hazardous when present or used in a household that the protection of the public health and safety may be adequately served only by keeping the substance out of commerce.

(d) The executive commissioner by rule shall designate as a

banned hazardous substance any article subject to this chapter that cannot be labeled adequately to protect the public health and safety or that presents an imminent danger to the public health and safety.

(e) This section does not apply to a toy or article such as a chemical set that because of its functional purpose requires the inclusion of a hazardous substance or necessarily presents an electrical, mechanical, or thermal hazard if the toy or article:

(1) bears labeling that in the judgment of the department gives adequate directions and warnings for safe use; and

(2) is intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed those directions and warnings.

(f) This section does not apply to the manufacture, sale, distribution, or use of fireworks of any class.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 4, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1263, eff. April 2, 2015.

Sec. 501.023. GENERAL LABELING AND PACKAGING REQUIREMENTS. (a) The department shall ensure that each hazardous substance is labeled sufficiently to inform its user of the dangers involved in using, storing, or handling the substance, of actions to be taken or avoided, and to give instructions as necessary for proper first aid treatment. The department shall develop labeling instructions consistent with and in conformity with federal requirements.

(b) A statement required by Subsection (a) must be located prominently and written in English in conspicuous and legible type that contrasts in typography, layout, or color with other printed matter on the label. The department may also require the statement to be written in Spanish.

(c) The statement must also appear:

(1) on the outside container or wrapper of a substance and on a container sold separately and intended for the storage of a hazardous substance unless the statement required by Subsection (a) is easily legible through the outside container or wrapper; and

(2) on all accompanying literature containing directions

for use, whether written or in other form.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 5, eff. Sept. 1, 2001.

Sec. 501.0231. LABELING OF CERTAIN TOYS AND GAMES. (a) Toys or games intended for use by children, including the parts of those toys or games, shall be labeled in the manner required by department rule. The rules adopted under this subsection shall be consistent with federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended. Until the executive commissioner adopts rules under this subsection, the toys, games, and parts shall be labeled in the manner required by federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) as of September 1, 2001.

(b) Latex balloons, small balls, marbles, and any toy or game that contains such a balloon, ball, or marble shall be labeled in the manner required by department rule. The rules adopted under this subsection shall be consistent with federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended. Until the executive commissioner adopts rules under this subsection, latex balloons, small balls, marbles, and any toy or game that contains such a balloon, ball, or marble shall be labeled in the manner required by federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) as of September 1, 2001.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 6, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1264, eff. April 2, 2015.

Sec. 501.0232. REVIEW AND LABELING OF HAZARDOUS ART MATERIALS. (a) Art materials shall be reviewed by a toxicologist.

(b) Art materials shall be labeled in the manner required by department rule. The rules adopted under this subsection shall be consistent with the Federal Hazardous Substances Act (15 U.S.C.

Section 1261 et seq.), as amended, and federal regulations adopted under that Act. Until the executive commissioner adopts rules under this subsection, art materials shall be labeled in the manner required by the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), and federal regulations adopted under that Act, as of September 1, 2001.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 6, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1265, eff. April 2, 2015.

Sec. 501.0233. PACKAGING OF HAZARDOUS SUBSTANCES. Hazardous substances shall be packaged in the manner required by special packaging rules adopted by the executive commissioner. The rules adopted under this section shall be consistent with federal special packaging regulations adopted under the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.), as amended. Until the executive commissioner adopts rules under this section, hazardous substances shall be packaged in the manner required by federal special packaging regulations adopted under the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.), as of September 1, 2001.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 6, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1266, eff. April 2, 2015.

Sec. 501.024. REGISTRATION. (a) A person who manufactures, imports, or repacks a hazardous substance that is distributed in this state or who distributes a hazardous substance in this state under the person's private brand name shall have on file with the department a registration statement as provided by this section.

(b) The executive commissioner by rule shall detail the registration requirements and prescribe the contents of the registration statement.

(c) The person must file the registration statement with the department:

(1) before beginning business in this state as a manufacturer, importer, repacker, or distributor of a hazardous substance; and

(2) in each succeeding year that the person continues the business in this state, not later than the anniversary of the initial filing.

(d) The initial registration statement and each annual registration statement must be accompanied by a fee prescribed by the executive commissioner by rule.

(e) The department, after notice and hearing, may refuse to register or may cancel, revoke, or suspend the registration of a person who manufactures, imports, repacks, or distributes a hazardous substance if the person fails to comply with the requirements of this chapter.

(f) A hazardous substance is subject to seizure and disposition under Section 501.033 if the person who manufactures, imports, repacks, or distributes the hazardous substance does not, after notice by the department, register with the department and make timely payment of the fee under this section.

(g) This section does not apply to a retailer who distributes a hazardous substance to the general public unless the retailer distributes a hazardous substance made to its specifications.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 7, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1267, eff. April 2, 2015.

Sec. 501.0245. NOTICE OF RADIOACTIVE SUBSTANCE RELEASE. (a) In this section, "radioactive substance" has the meaning assigned by Section 401.003.

(b) Notwithstanding Subchapter H, Chapter 418, Government Code, or any other law requiring confidentiality, the department or any other state agency that receives a required report of a release of a radioactive substance into the environment shall immediately provide notice to each political subdivision of this state into which the substance was released. The notice must include the name, quantity, and state of matter of the radioactive substance released, if known.

(c) The information contained in the notice provided to a political subdivision under Subsection (b) is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 311 (H.B. 2203), Sec. 1, eff. May 31, 2019.

Sec. 501.025. RULES. The executive commissioner may adopt reasonable rules necessary for the efficient administration and enforcement of this chapter. The rules must conform with regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, the federal Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.), as amended, the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), as amended, and the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.), as amended, as applicable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 8, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1268, eff. April 2, 2015.

Sec. 501.026. FEES. The executive commissioner by rule shall set reasonable registration fees in an amount as prescribed by Section 12.0111.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 9, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1269, eff. April 2, 2015.

SUBCHAPTER C. ENFORCEMENT

Sec. 501.031. EXAMINATIONS AND INVESTIGATIONS. (a) To enforce this chapter, an officer, employee, or agent of the department, on the presentation of appropriate credentials to the owner, operator, or agent, at reasonable times may enter a factory, warehouse, or establishment in which a hazardous substance is manufactured,

processed, packaged, or held for introduction into commerce in this state or in which a hazardous substance is held after introduction into commerce, or a vehicle used to transport or hold a hazardous substance in commerce, for the purpose of inspecting within reasonable limits and in a reasonable manner the factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, and labeling in the factory, warehouse, establishment, or vehicle.

(b) The officer, employee, or agent of the department may obtain samples of any materials, packaging, labeling, or finished product.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 10, eff. Sept. 1, 2001.

Sec. 501.032. RECORDS OF HAZARDOUS SUBSTANCE IN COMMERCE. (a) For the enforcement of this chapter, a carrier engaged in commerce, a person receiving a hazardous substance in commerce, or a person holding a hazardous substance received in commerce, on request of the department shall permit a representative of the department at reasonable times to have access to and to copy all records showing the movement in commerce or the holding after movement in commerce of any hazardous substance and the quantity, consignees, and shipper of the hazardous substance.

(b) Evidence obtained under this section may not be used in the criminal prosecution of the person from whom the evidence is obtained.

(c) A carrier is not subject to the other provisions of this chapter because of the carrier's receipt, carriage, holding, or delivery of a hazardous substance in the usual course of the carrier's business.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 501.033. SEIZURE AND DISPOSITION OF BANNED OR MISBRANDED HAZARDOUS SUBSTANCE. (a) If an authorized agent of the department has good reason to believe that a hazardous substance is a banned or misbranded hazardous substance, the agent shall affix to the article a tag or other appropriate marking giving notice that the article is

or is suspected to be a banned or misbranded hazardous substance and that the article has been detained, and warning all persons not to remove the article from the premises or dispose of the article by sale or in any other manner until permission to do so is given by the agent or a court.

(b) The department shall petition a district court of Travis County or of the county in which the article is located to authorize the destruction of the article. If the court determines that the article is a banned or misbranded hazardous substance, the department shall destroy the article, and the court shall impose all court costs and fees and storage and other proper expenses against the claimant of the article. However, if the court finds that misbranding occurred in good faith and can be corrected by proper labeling, the court may direct that the article be delivered to the claimant for proper labeling with the approval of the department.

(c) If the court finds that the article is not a banned or misbranded hazardous substance, the court shall order the department to remove the tags or other markings.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 11, eff. Sept. 1, 2001.

Sec. 501.034. PROHIBITED ACTS. (a) A person may not hold or offer for sale, sell, or introduce or deliver for introduction into commerce a misbranded hazardous substance or banned hazardous substance.

(b) A person may not alter, mutilate, destroy, or remove all or part of the label of a hazardous substance, or do any other act relating to a hazardous substance, when the substance is in commerce or is held for sale, whether or not the first sale, after shipment in commerce, if the act results in the hazardous substance being a banned or misbranded hazardous substance.

(c) A person may not receive a banned or misbranded hazardous substance in commerce or deliver or offer to deliver a banned or misbranded hazardous substance for pay or otherwise.

(d) A person may not fail to permit entry or inspection as authorized by this chapter or to provide records as required by this chapter.

(e) A person may not use to his own advantage or reveal to any

person other than the department or a court, if relevant to a judicial proceeding under this chapter, information acquired in an inspection authorized by this chapter and relating to a method or process that is entitled to protection as a trade secret.

(f) A person may not remove or dispose of a detained article or substance in violation of Section 501.035.

(g) A person may not manufacture, import, or repack a hazardous substance that is to be distributed in this state or otherwise distribute a hazardous substance in this state without complying with Section 501.024.

(h) A person may not package a hazardous substance in a new or reused food, drug, or cosmetic container that is identifiable as a food, drug, or cosmetic container by its labeling or other identification.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 12, eff. Sept. 1, 2001.

Sec. 501.035. OFFENSES; EXCEPTIONS. (a) A person commits an offense if the person intentionally, knowingly, or recklessly violates this chapter or a rule adopted under this chapter.

(b) An offense under this section is a Class A misdemeanor.

(c) This section does not apply to a person who delivers or receives a banned or misbranded hazardous substance if the delivery or receipt is made in good faith and if the person subsequently delivers on request:

(1) the name and address of the person from whom the substance was purchased or received; and

(2) copies of all documents, if any, relating to the original delivery of the substance to the person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 13, eff. Sept. 1, 2001.

Sec. 501.036. INJUNCTION. (a) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted or order issued under this chapter, the commissioner may request the attorney general or a district, county, or city attorney of the county or municipality in which the violation has

occurred, is occurring, or may occur to institute a civil suit for:

(1) an order enjoining the violation or an order directing compliance; or

(2) a permanent or temporary injunction, restraining order, or other appropriate order if the department shows that the person has engaged in, is engaging in, or is about to engage in a violation of this chapter or a rule adopted or order issued under this chapter.

(b) Venue for a suit brought under this section is in the county or municipality in which the violation occurred or in Travis County.

(c) The commissioner and either the attorney general or the district, county, or city attorney, as appropriate, may each recover from the violator reasonable expenses incurred in obtaining injunctive relief under this section, including investigative costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses. Expenses recovered by the commissioner may be appropriated only to the department to administer and enforce this chapter. Expenses recovered by the attorney general may be appropriated only to the attorney general.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 14, eff. Sept. 1, 2001.

Sec. 501.037. RECALL ORDERS. (a) In conjunction with the detention of an article under Section 501.033, the commissioner may order that a hazardous substance be recalled from commerce.

(b) The commissioner's recall order may require the articles to be removed to one or more secure areas approved by the commissioner or an authorized agent of the commissioner.

(c) The recall order must be in writing and signed by the commissioner.

(d) The recall order may be issued before or in conjunction with the affixing of the tag or other appropriate marking as provided by Section 501.033.

(e) The recall order is effective until the order:

(1) expires on its own terms;

(2) is withdrawn by the commissioner; or

(3) is reversed by a court in an order denying destruction under Section 501.033.

(f) The claimant of the articles or the claimant's agent shall

pay the costs of the removal and storage of the articles removed.

(g) If the claimant or the claimant's agent does not implement the recall order in a timely manner, the commissioner may provide for the recall of the articles. The costs of the recall shall be assessed against the claimant of the articles or the claimant's agent.

(h) The commissioner may request the attorney general to bring an action in a district court of Travis County to recover costs of the recall. In a judgment in favor of the state, the court may award costs, attorney's fees, and court costs related to the recall together with interest on those costs from the time an expense was incurred through the date the department is reimbursed.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 14, eff. Sept. 1, 2001.

SUBCHAPTER D. ADMINISTRATIVE PENALTY

Sec. 501.101. IMPOSITION OF PENALTY. (a) The department may impose an administrative penalty on a person:

(1) who manufactures or repacks a hazardous substance that is distributed in this state or who distributes a hazardous substance in this state; and

(2) who violates this chapter or a rule or order adopted under this chapter.

(b) A penalty collected under this subchapter shall be deposited in the state treasury in the general revenue fund.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.102. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed $1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed $5,000.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.103. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(b) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.104. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 20 days after the date the person receives the notice sent under Section 501.103, the person in writing may:

(1) accept the determination and recommended penalty of the department; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the department by order shall impose the recommended penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1270, eff. April 2, 2015.

Sec. 501.105. HEARING. (a) If the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date. The department shall give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1271, eff. April 2, 2015.

Sec. 501.106. DECISION BY DEPARTMENT. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the department's order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1272, eff. April 2, 2015.

Sec. 501.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Within 30 days after the date an order of the department under Section 501.106 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the department's order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1273, eff. April 2, 2015.

Sec. 501.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 501.107, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(b) If the department receives a copy of an affidavit under Subsection (a)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1,

1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1274, eff. April 2, 2015.

Sec. 501.109. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.
(b) The attorney general may sue to collect the penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.110. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.
(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.111. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.
(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.
(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.112. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.113. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

CHAPTER 502. HAZARD COMMUNICATION ACT

Sec. 502.001. SHORT TITLE. This chapter may be cited as the Hazard Communication Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.002. FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the health and safety of persons working in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during normal employment activities, during emergency situations, or as a result of proximity to the manufacture or use of those chemicals; and

(2) many employers in this state have established suitable information programs for their employees and that access to the information is required of most employers under the federal Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard.

(b) It is the intent and purpose of this chapter to assure that employers provide information regarding hazardous chemicals in the workplace to employees who may be exposed to those chemicals in their workplace.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.0021. FEDERAL LAWS AND REGULATIONS. In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.003. DEFINITIONS. In this chapter:

(1) "Article" means a manufactured item:

(A) that is formed to a specific shape or design during manufacture;

(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and

(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(97), eff. April 2, 2015.

(3) "Chemical manufacturer" means an employer in North American Industry Classification System (NAICS) Codes 31-33 with a workplace where chemicals are produced for use or distribution.

(4) "Chemical name" means:

(A) the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature; or

(B) a name that clearly identifies the chemical for the purpose of conducting a hazard classification.

(5) "Common name" means a designation of identification, such as a code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(6) "Department" means the Department of State Health Services.

(7) "Designated representative" means the individual or organization to whom an employee gives written authorization to exercise the employee's rights under this chapter, except that a recognized or certified collective bargaining agent is a designated representative regardless of written employee authorization.

(8) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(97), eff. April 2, 2015.

(9) "Distributor" means a business in North American Industry Classification System (NAICS) Code 424 or 425 that supplies hazardous chemicals to an employer who must comply with this chapter.

(10) "Employee" means a person who may be or may have been exposed to hazardous chemicals in the person's workplace under normal operating conditions or foreseeable emergencies, and includes a person working for this state, a person working for a political subdivision of this state, or a member of a volunteer emergency service organization or, if the applicable OSHA standard or MSHA standard is not in effect, a person working for a private employer. Workers such as office workers or accountants who encounter hazardous chemicals only in nonroutine, isolated instances are not employees for purposes of this chapter.

(11) "Employer" means a person engaged in private business who is regulated by the federal Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 et seq.) or the Federal Mine Safety and Health Act of 1977 (30 U.S.C. Section 801 et seq.) on September 1, 1993, or the state or a political subdivision of the state, including a state, county, or municipal agency, a public school, a college or university, a river authority or publicly owned utility, a volunteer emergency service organization, and other similar employers. The term does not include any person to whom the federal Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 et seq.) or the Federal Mine Safety and Health Act of 1977 (30 U.S.C. Section 801 et seq.) is applicable if that employer is covered by the OSHA standard or the other two federal laws.

(11-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(12) "Expose" or "exposure" means that an employee is subjected to a hazardous chemical in the course of employment through any route of entry, including inhalation, ingestion, skin contact, or absorption. The term includes potential, possible, or accidental exposure under normal conditions of use or in a reasonably

foreseeable emergency.

(13) "Hazardous chemical" or "chemical" means an element, compound, or mixture of elements or compounds that is a physical hazard or health hazard as defined by the OSHA standard in 29 CFR Section 1910.1200(c), or a hazardous substance as classified under the OSHA standard in 29 CFR Section 1910.1200(d)(3), or by OSHA's written interpretations. A hazard determination may be made by employers who choose not to rely on the evaluations made by their suppliers if there are relevant qualitative or quantitative differences. A hazard determination shall involve the best professional judgment.

(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).

(15) "Identity" means a chemical or common name, or alphabetical or numerical identification, that is indicated on the safety data sheet (SDS) for the chemical. The identity used must permit cross-references to be made among the workplace chemical list, the label, and the SDS.

(16) "Label" means any written, printed, or graphic material displayed on or affixed to a container of hazardous chemicals.

(18) "MSHA standard" means the Hazard Communication Standard issued by the Mine Safety and Health Administration.

(19) "OSHA standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration and codified as 29 CFR Section 1910.1200.

(20) "Physical hazard" means a chemical that is classified as posing one of the following hazardous effects: explosive; flammable (gases, aerosols, liquids, or solids); oxidizer (liquid, solid, or gas); self-reactive; pyrophoric (liquid or solid); self-heating; organic peroxide; corrosive to metal; gas under pressure; or in contact with water emits flammable gas.

(20-a) "Safety Data Sheet" ("SDS") means written or printed material concerning a hazardous chemical that is prepared in accordance with the requirements of the OSHA standard for that material.

(21) "Temporary workplace" means a stationary workplace that is staffed less than 20 hours a week. A temporary workplace may be considered to be a work area of the headquarters workplace from which employees are routinely dispatched. Temporary workplaces may

include pumping stations, emergency response sites, and similar workplaces.

(22) "Work area" means a room, a defined space, a utility structure, or an emergency response site in a workplace where hazardous chemicals are present, produced, or used and where employees are present.

(23) "Workplace" means an establishment, job site, or project, at one geographical location containing one or more work areas, with or without buildings, that is staffed 20 or more hours a week.

(24) "Workplace chemical list" means a list of hazardous chemicals developed under Section 502.005(a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1275, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1276, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(97), eff. April 2, 2015.

Sec. 502.004. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this chapter applies only to employers who are not required to comply with the OSHA standard, the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. No. 91-173), or the Federal Mine Safety and Health Amendments Act of 1977 (Pub. L. No. 95-164).

(b) Chemical manufacturers, importers, and distributors shall provide MSDSs as required by Section 502.006. Penalties provided by Sections 502.014, 502.015, and 502.016 may be assessed against chemical manufacturers, importers, and distributors for failure to provide MSDSs.

(c) If an employer is covered by both this chapter and Chapter 125, Agriculture Code, the employer is required to comply only with this chapter.

(d) This chapter, except Section 502.009, does not apply to a hazardous chemical in a sealed and labeled package that is received

and subsequently sold or transferred in that package if:

(1) the seal and label remain intact while the chemical is in the workplace; and

(2) the chemical does not remain in the workplace longer than five working days.

(e) This chapter does not require labeling of the following chemicals:

(1) any pesticide, as that term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.), when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency;

(2) any food, food additive, color additive, drug, cosmetic, or medical or veterinary device, including materials intended for use as ingredients in those products such as flavors and fragrances, as those terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) and regulations issued under that Act, when they are subject to the labeling requirements under that Act by the Food and Drug Administration;

(3) any distilled spirits that are beverage alcohols, wine, or malt beverages intended for nonindustrial use, as those terms are defined in the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.) and regulations issued under that Act, when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Bureau of Alcohol, Tobacco, and Firearms; and

(4) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, when subject to a consumer product safety standard or labeling requirement of those Acts or regulations issued under those Acts by the Consumer Product Safety Commission.

(f) This chapter does not apply to:

(1) any hazardous waste, as that term is defined by the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the Environmental Protection Agency;

(2) a chemical in a laboratory under the direct supervision or guidance of a technically qualified individual if:

(A) labels on incoming containers of chemicals are not

removed or defaced;

(B) the employer complies with Sections 502.006 and 502.009 with respect to laboratory employees; and

(C) the laboratory is not used primarily to produce hazardous chemicals in bulk for commercial purposes;

(3) tobacco or tobacco products;

(4) wood or wood products;

(5) articles;

(6) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(7) food, drugs, or cosmetics intended for personal consumption by an employee while in the workplace;

(8) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the workplace in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(9) any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.); and

(10) radioactive waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1277, eff. April 2, 2015.

Sec. 502.005. WORKPLACE CHEMICAL LIST. (a) For the purpose of worker right-to-know, an employer shall compile and maintain a workplace chemical list that contains the following information for each hazardous chemical normally present in the workplace or temporary workplace in excess of 55 gallons or 500 pounds or in excess of an amount that the executive commissioner determines by rule for certain highly toxic or dangerous hazardous chemicals:

(1) the identity used on the SDS and container label; and

(2) the work area in which the hazardous chemical is

normally present.

(b) The employer shall update the workplace chemical list as necessary but at least by December 31 of each year. Each workplace chemical list shall be dated and signed by the person responsible for compiling the information.

(c) The workplace chemical list may be prepared for the workplace as a whole or for each work area or temporary workplace and must be readily available to employees and their representatives. All employees shall be made aware of the workplace chemical list before working with or in a work area containing hazardous chemicals.

(d) An employer shall maintain a workplace chemical list for at least 30 years. The employer shall send complete records to the department if the employer ceases to operate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1278, eff. April 2, 2015.

Sec. 502.006. SAFETY DATA SHEET. (a) A chemical manufacturer or distributor shall provide appropriate safety data sheets to employers who acquire hazardous chemicals in this state with each initial shipment and with the first shipment after an SDS is updated. The SDSs must conform to the most current requirements of the OSHA standard.

(b) An employer shall maintain a legible copy of a current SDS for each hazardous chemical purchased. If the employer does not have a current SDS for a hazardous chemical when the chemical is received at the workplace, the employer shall request an SDS in writing from the manufacturer or distributor in a timely manner or shall otherwise obtain a current SDS. The manufacturer or distributor shall respond with an appropriate SDS in a timely manner.

(c) Safety data sheets shall be readily available, on request, for review by employees or designated representatives at each workplace.

(d) A copy of an SDS maintained by an employer under this section shall be provided to the department on request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1279, eff. April 2, 2015.

Sec. 502.007. LABEL. (a) A label on an existing container of a hazardous chemical may not be removed or defaced unless it is illegible, inaccurate, or does not conform to the OSHA standard or other applicable labeling requirement. Primary containers must be relabeled with at least the identity appearing on the SDS, the pertinent physical and health hazards, including the organs that would be affected, and the manufacturer's name and address. Except as provided by Subsection (b), secondary containers must be relabeled with at least the identity appearing on the SDS and appropriate hazard warnings.

(b) An employee may not be required to work with a hazardous chemical from an unlabeled container except for a portable container intended for the immediate use of the employee who performs the transfer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1280, eff. April 2, 2015.

Sec. 502.008. OUTREACH PROGRAM. (a) The department shall develop an outreach program that:

(1) consists of an education and training program in the form of instructional materials to assist employers in fulfilling the requirements of Section 502.009; and

(2) includes the development and distribution of a supply of informational leaflets concerning employer's duties, employee rights, the outreach program, and the effects of hazardous chemicals.

(b) The department may contract with a public institution of higher education or other public or private organization to develop and implement the outreach program.

(c) The department shall develop and provide to each employer a

suitable form of notice providing employees with information relating to employee rights under this chapter.

(d) The department shall publicize the availability of information to answer inquiries from employees, employers, or the public in this state concerning the effects of hazardous chemicals.

(e) In cooperation with the department, an employer may provide an outreach program in the community.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 502.009 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1281, eff. April 2, 2015.

Sec. 502.009. EMPLOYEE EDUCATION PROGRAM. (a) An employer shall provide an education and training program for employees who use or handle hazardous chemicals.

(b) An employer shall develop, implement, and maintain at the workplace a written hazard communication program for the workplace that describes how the criteria specified in this chapter will be met.

(c) An education and training program must include, as appropriate:

(1) information on interpreting labels and SDSs and the relationship between those two methods of hazard communication;

(2) the location by work area, acute and chronic effects, and safe handling of hazardous chemicals known to be present in the employees' work area and to which the employees may be exposed;

(3) the proper use of protective equipment and first aid treatment to be used with respect to the hazardous chemicals to which the employees may be exposed; and

(4) general safety instructions on the handling, cleanup procedures, and disposal of hazardous chemicals.

(d) Training may be conducted by categories of chemicals. An employer must advise employees that information is available on the specific hazards of individual chemicals through the MSDSs. Protective equipment and first aid treatment may be by categories of hazardous chemicals.

(e) An employer shall provide additional instruction to an employee when the potential for exposure to hazardous chemicals in the employee's work area increases significantly or when the employer receives new and significant information concerning the hazards of a chemical in the employee's work area. The addition of new chemicals alone does not necessarily require additional training.

(f) An employer shall provide training to a new or newly assigned employee before the employee works with or in a work area containing a hazardous chemical.

(g) An employer shall keep the written hazard communication program and a record of each training session given to employees, including the date, a roster of the employees who attended, the subjects covered in the training session, and the names of the instructors. Those records shall be maintained for at least five years by the employer. The department shall have access to those records and may interview employees during inspections.

(h) Emergency service organizations shall provide, to their members or employees who may encounter hazardous chemicals during an emergency, information on recognizing, evaluating, and controlling exposure to the chemicals.

(i) As part of an outreach program created in accordance with Section 502.008, the department shall develop an education and training assistance program to assist employers who are unable to develop the programs because of size or other practical considerations. The program shall be made available to those employers on request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 502.010 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1282, eff. April 2, 2015.

Sec. 502.010. LIABILITY UNDER OTHER LAW. Providing information to an employee does not affect:

(1) the liability of an employer with regard to the health and safety of an employee or other person exposed to hazardous chemicals;

(2) the employer's responsibility to take any action to prevent occupational disease as required under other law; or

(3) any other duty or responsibility of a manufacturer, producer, or formulator to warn ultimate users of a hazardous chemical under other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 502.011 and amended by Acts 1993, 73rd Leg., ch. 528, eff. Sept. 1, 1993.

Sec. 502.011. COMPLAINTS AND INVESTIGATIONS. (a) The department or the department's representative shall investigate in a timely manner a complaint received in writing from an employee or an employee's designated representative relating to an alleged violation of this chapter by an employer.

(b) A complaint received from a person relating to an alleged violation shall be referred to the federal Occupational Safety and Health Administration (OSHA) or to the federal Mine Safety and Health Administration (MSHA) if the complaint is related to an applicable OSHA or MSHA requirement and the applicable OSHA or MSHA standard is in effect. The department or the department's representative shall investigate the complaint if:

(1) the applicable OSHA or MSHA standard is not in effect; or

(2) the complaint is based on a requirement of this chapter.

(c) On presentation of appropriate credentials, a department representative may enter a workplace at reasonable times to inspect and investigate complaints.

(d) The department may find multiple violations by an employer based on distinct requirements of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 502.012 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1283, eff. April 2, 2015.

Sec. 502.012. REPORTING FATALITIES AND INJURIES. (a) Within 48 hours after the occurrence of an employee accident that directly or indirectly involves chemical exposure or that involves asphyxiation, and that is fatal to one or more employees or results in the hospitalization of five or more employees, the employer of any of the employees so injured or killed shall report the accident either orally or in writing to the department.

(b) The report to the department shall relate the circumstances of the accident, the number of fatalities, and the extent of any injuries. If it is necessary to complete the investigation of an incident, the department may require additional reports in writing as necessary.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.014. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against an employer who violates this chapter, department rules adopted under this chapter, or an order issued under this chapter.

(b) If the department finds one or more violations of this chapter, the department may issue a notice of violation to the employer. The notice of violation shall specifically describe the violation, refer to the applicable section or subsection of the chapter, and state the amount of the penalty, if any, to be assessed by the department.

(c) An employer who receives a notice of violation may respond to the department in writing within 15 days after the date of receipt of the notice of violation in one of the ways provided by Subsection (d), (e), or (f).

(d) If the employer disputes the validity of the violation and has reason to believe that the findings of the department were based on inaccurate or incomplete information, the employer may request an informal conference with representatives of the department. The purpose of an informal conference is to permit the employer to meet with department representatives to discuss the basis of the violation and to provide information to the department. The department shall schedule the informal conference. A request for an informal conference made in bad faith is a violation of this chapter.

(e) The employer may correct the violation and certify to the

department that the corrections have been made.

(f) The employer may request a hearing.

(g) Following an informal conference, the department shall respond in writing to the employer, stating whether the department intends to withdraw the notice of violation or pursue it. If the department intends to pursue the notice of violation, the employer may respond as provided by either Subsection (h) or (i) within 10 days after the date of receipt of the department's correspondence.

(h) The employer may correct the violation and certify to the department that the corrections have been made.

(i) The employer may request a hearing.

(j) A request for an informal conference or a statement by an employer that the employer is in compliance with the provision of this chapter does not waive the employer's right to a hearing.

(k) The department may not assess an administrative penalty for any violation that has been corrected within 15 days after the date of receipt of the notice of violation, the date of receipt of the department's response by the employer, or 10 days after the date of receipt by the employer of the department's response to the informal conference provided for in Subsection (g), whichever is later.

(l) In determining the amount of the penalty, the department shall consider:

(1) the employer's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the employee;

(4) the employer's demonstrated good faith;

(5) the duration of the violation; and

(6) other matters as justice may require.

(m) Each day a violation continues may be considered a separate violation.

(n) The penalty may not exceed $500 for each violation.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1284, eff. April 2, 2015.

Sec. 502.0141. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after an employer

charged with a violation is given an opportunity for a hearing.

(b) If a hearing is to be held, the department shall refer the matter to the State Office of Administrative Hearings and an administrative law judge of that office shall make findings of fact and shall issue to the department a written proposal for decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the employer charged with the violation does not request a hearing in a timely manner, the department may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against an employer, the department shall issue an order requiring that the employer pay the penalty.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(98), eff. April 2, 2015.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1285, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(98), eff. April 2, 2015.

Sec. 502.0142. PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the department shall inform the employer against whom the order is issued of the amount of the penalty for the violation.

(b) Within 30 days after the date the department's order is final as provided by Subchapter F, Chapter 2001, Government Code, the employer shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the

violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, an employer who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the employer stating that the employer is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(d) Subsection (c)(1) does not apply to the state or a political subdivision. The penalty may not be enforced against the state or a political subdivision until all judicial review has been exhausted.

(e) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The employer who files an affidavit has the burden of proving that the employer is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(f) If the employer does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(g) Judicial review of the order of the department:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(h) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the employer to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(i) When the judgment of the court becomes final, the court shall proceed under this subsection. If the employer paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the employer. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the employer gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the employer gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the employer pays the amount.

(j) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1286, eff. April 2, 2015.

Sec. 502.015. CIVIL PENALTY; INJUNCTION. (a) If it appears that an employer has violated, is violating, or is threatening to violate this chapter or any rule adopted or order issued under this chapter, the department may request the attorney general or the district, county, or city attorney of the municipality or county in which the violation has occurred, is occurring, or may occur to institute a civil suit for:

(1) injunctive relief to restrain the employer from continuing the violation or threat of violation;

(2) the assessment and recovery of a civil penalty for a violation; or

(3) both the injunctive relief and the civil penalty.

(b) The penalty may be in an amount not to exceed $2,000 a day for each violation, with a total not to exceed $20,000 for that violation.

(c) In determining the amount of the penalty, the court shall consider the employer's history of previous violations, the seriousness of the violation, any hazard to health and safety of the public, the demonstrated good faith of the employer charged, and other matters as justice may require.

(d) Any civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the state treasury to the credit of the general revenue fund. Any civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

(e) This section does not affect any other right of an employee or any other employer to receive compensation for damages under other law.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1287, eff. April 2, 2015.

Sec. 502.016. CRIMINAL PENALTY. An employer who is required to disclose hazard information under this chapter and who proximately causes an occupational disease or injury to an individual by knowingly disclosing false hazard information or knowingly failing to disclose hazard information provided on an MSDS commits an offense that is punishable by a fine of not more than $10,000 for each violation. Each day of violation constitutes a separate offense, except that the fine may not exceed $100,000 for that violation. This section does not affect any other right of an employee or any other employer to receive compensation for damages under other law.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.017. EMPLOYEE NOTICE; RIGHTS OF EMPLOYEES. (a) An employer shall post and maintain adequate notice, at locations where notices are normally posted, informing employees of their rights

under this chapter. If the department does not prepare the notice under Section 502.008, the employer shall prepare the notice.

(b) Employees who may be exposed to hazardous chemicals shall be informed of the exposure and shall have access to the workplace chemical list and MSDSs for the hazardous chemicals. Employees, on request, shall be provided a copy of a specific MSDS with any trade secret information deleted. In addition, employees shall receive training concerning the hazards of the chemicals and measures they can take to protect themselves from those hazards. Employees shall be provided with appropriate personal protective equipment. These rights are guaranteed.

(c) An employer may not discharge, cause to be discharged, otherwise discipline, or in any manner discriminate against an employee because the employee has:

(1) filed a complaint;

(2) assisted an inspector of the department who may make or is making an inspection under Section 502.011;

(3) instituted or caused to be instituted any proceeding under or related to this chapter;

(4) testified or is about to testify in a proceeding under this chapter; or

(5) exercised any rights afforded under this chapter on behalf of the employee or on behalf of others.

(d) Pay, position, seniority, or other benefits may not be lost as the result of the exercise of any right provided by this chapter.

(e) A waiver by an employee of the benefits or requirements of this chapter is void. An employer's request or requirement that an employee waive any rights under this chapter as a condition of employment is a violation of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 502.013 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1288, eff. April 2, 2015.

Sec. 502.018. STANDARD FOR PHYSICIAN TREATMENT. For the purposes of this chapter, the requirements in the OSHA standard for

physicians treating employees (29 CFR Section 1910.1200(i)) apply to physicians treating persons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 502.015 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1289, eff. April 2, 2015.

Sec. 502.019. RULES. The executive commissioner may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 502.016 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1290, eff. April 2, 2015.

Sec. 502.020. WORKPLACE SAFETY FOR INMATES. A person imprisoned in a facility operated by or for the Texas Department of Criminal Justice is not an employee for the purposes of this chapter. The Texas Department of Criminal Justice shall provide a person imprisoned in a facility operated by or for the Texas Department of Criminal Justice the protections from exposure to hazardous chemicals in the workplace as provided for in this chapter.

Added by Acts 1999, 76th Leg., ch. 1332, Sec. 1, eff. June 19, 1999; Acts 1999, 76th Leg., ch. 1501, Sec. 1, eff. June 19, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.004, eff. Sept. 1, 2001.

CHAPTER 503. HEALTH RISK ASSESSMENT OF TOXIC SUBSTANCES AND HARMFUL PHYSICAL AGENTS

Sec. 503.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(99), eff. April 2, 2015.

(2) "Committee" means the Toxic Substances Coordinating Committee.

(3) "Department" means the Department of State Health Services.

(4) "Harmful physical agent" means a physical phenomenon, other than a toxic substance, that has or may have carcinogenic, mutagenic, teratogenic, or other harmful effects on humans, and includes:

(A) ionizing radiation, X-rays, gamma rays, ultraviolet light, or other electromagnetic radiation; and

(B) acoustical, thermal, or mechanical vibration.

(5) "Health risk assessment" means the use of objective data to characterize the potential adverse health effects that exposure to a toxic substance or a harmful physical agent may have on a person.

(6) "Toxic substance" means a substance that has or may have toxic, carcinogenic, mutagenic, teratogenic, or other harmful effects on humans, and includes a product that contains a toxic substance that poses or may pose a substantial hazard to human health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1291, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(99), eff. April 2, 2015.

Sec. 503.002. TOXIC SUBSTANCES COORDINATING COMMITTEE. (a) The Toxic Substances Coordinating Committee is composed of one representative from the:

(1) department;

(2) Department of Agriculture;

(3) Texas Commission on Environmental Quality;

(4) Parks and Wildlife Department;

(5) Department of Public Safety of the State of Texas; and

(6) Railroad Commission of Texas.

(b) The chief administrative officer of each agency shall appoint the agency representative to the committee. A representative

serves at the will of the chief administrative officer or until the representative terminates employment with the agency, whichever occurs first.

(c) The representative of the department serves as chairman of the committee.

(d) The department shall provide administrative support to the committee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.250, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1292, eff. April 2, 2015.

Sec. 503.003. MEETINGS; NOTICE. (a) The committee shall meet:

(1) at the call of the chief administrative officer of any member agency; or

(2) at least once each quarter on a meeting date set by the committee.

(b) The committee must provide public notice of the meeting date not later than the 15th day before the date on which the committee holds the meeting.

(c) The committee shall adopt rules for the conduct of its meetings.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 503.004. DUTIES OF COMMITTEE. (a) The committee shall coordinate communication among member agencies concerning each agency's efforts to regulate toxic substances and harmful physical agents.

(b) The committee shall develop a plan that provides for:

(1) intergovernmental cooperation concerning regulations to prevent and control the adverse health effects of toxic substances and harmful physical agents;

(2) a health risk assessment of emergency responses to accidents involving toxic substances or harmful physical agents;

(3) the coordination of agency programs relating to the

prevention and control of adverse health effects resulting from exposure to toxic substances or harmful physical agents;

(4) the establishment of an integrated system to collect and manage information relating to toxic substances and harmful physical agents; and

(5) public education concerning the use of toxic substances and harmful physical agents and the potential adverse health effects.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 503.005. HEALTH RISK ASSESSMENTS. (a) In its capacity to protect the public health, the department shall coordinate health risk assessments conducted under this chapter.

(b) Each agency represented on the committee shall consult with and advise the department concerning health risk assessment activities when beginning a health risk assessment. The agency shall consult with and advise the department when taking the action in an emergency or as soon as possible after taking the action. This section does not require department approval of the agency's action or health risk assessment.

(c) Each agency represented on the committee shall use federal standards and health risk assessments, if appropriate, and avoid duplicating federal efforts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 503.006. POWERS OF DEPARTMENT. (a) The department may establish an information management system and may collect and evaluate information relating to the use of toxic substances and harmful physical agents.

(b) The department may enter into agreements or contracts with federal, state, or local governmental entities, planning regions, and other public or private entities to implement this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 503.007. EFFECT ON OTHER LAWS. This chapter does not amend or affect the regulatory activities or procedures authorized

under other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 505. MANUFACTURING FACILITY COMMUNITY RIGHT-TO-KNOW ACT

Sec. 505.001. SHORT TITLE. This chapter may be cited as the Manufacturing Facility Community Right-To-Know Act.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 505.002. FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the health and safety of persons living in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during emergency situations or as a result of proximity to the manufacture or use of those chemicals; and

(2) many facility operators in this state have established suitable information programs for their communities and that access to the information is required of most facility operators under the federal Emergency Planning and Community Right-To-Know Act (EPCRA).

(b) It is the intent and purpose of this chapter to ensure that accessibility to information regarding hazardous chemicals is provided to:

(1) fire departments responsible for dealing with chemical hazards during an emergency;

(2) local emergency planning committees and other emergency planning organizations; and

(3) the commission to make the information available to the public through specific procedures.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1293, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 3, eff. September 1, 2015.

Sec. 505.003. FEDERAL LAWS AND REGULATIONS; OTHER STANDARDS. (a) In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.

(b) In this chapter, a reference to North American Industry Classification System (NAICS), to nomenclature systems developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS), or to other information, including information such as classification codes, performance standards, systematic names, standards, and systems described in publications sponsored by private technical or trade organizations, means a reference to the most current version of the publication.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1294, eff. April 2, 2015.

Sec. 505.004. DEFINITIONS. In this chapter:

(1) "Article" means a manufactured item:

(A) that is formed to a specific shape or design during manufacture;

(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and

(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515 , Sec. 36(1), eff. September 1, 2015.

(3) "Chemical name" means:

(A) the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature; or

(B) a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.

(3-a) "Commission" means the Texas Commission on Environmental Quality.

(4) "Common name" means a designation of identification, such as a code name, code number, trade name, brand name, or generic

name, used to identify a chemical other than by its chemical name.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515 , Sec. 36(1), eff. September 1, 2015.

(6) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515 , Sec. 36(1), eff. September 1, 2015.

(7) "EPA" means the United States Environmental Protection Agency.

(8) "EPCRA" or "SARA Title III" means the federal Emergency Planning and Community Right-To-Know Act, also known as the Superfund Amendments and Reauthorization Act of 1986, Title III, Pub. L. No. 99-499 et seq.

(8-a) "Executive director" means the executive director of the commission.

(9) "Extremely hazardous substance" means any substance as defined in EPCRA, Section 302, or listed by the United States Environmental Protection Agency in 40 CFR Part 355, Appendices A and B.

(10) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites, that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with that person, and that is in North American Industry Classification System (NAICS) Codes 31-33.

(11) "Facility operator" or "operator" means the person who controls the day-to-day operations of the facility.

(12) "Fire chief" means the administrative head of a fire department, including a volunteer fire department.

(13) "Hazardous chemical" has the meaning given that term by 29 CFR 1910.1200(c), except that the term does not include:

(A) any food, food additive, color additive, drug, or cosmetic regulated by the United States Food and Drug Administration;

(B) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(C) any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the public;

(D) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the

direct supervision of a technically qualified individual; and

(E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).

(15) "Identity" means any chemical or common name, or alphabetical or numerical identification, that is indicated on the safety data sheet (SDS) for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the SDS.

(16) "Label" means any written, printed, or graphic material displayed on or affixed to a container of hazardous chemicals.

(17) "Local emergency planning committee" means a committee formed under the requirements of EPCRA, Section 301, and recognized by the state emergency response commission for the purposes of emergency planning and public information.

(19) "OSHA standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration and codified as 29 CFR Section 1910.1200.

(20) "Physical hazard" means a chemical that is classified as posing one of the following hazardous effects: explosive; flammable (gases, aerosols, liquids, or solids); oxidizer (liquid, solid, or gas); self-reactive; pyrophoric (liquid or solid); self-heating; organic peroxide; corrosive to metal; gas under pressure; or in contact with water emits flammable gas.

(20-a) "Safety data sheet" or "SDS" means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.

(21) "State emergency response commission" means the state emergency management council or other committee appointed by the governor in accordance with EPCRA.

(22) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as established by the EPA pursuant to EPCRA, Section 302.

(23) "Tier two form" means:

(A) a form specified by the commission under Section

505.006 for listing hazardous chemicals as required by EPCRA; or

(B) a form accepted by the EPA under EPCRA for listing hazardous chemicals together with additional information required by the commission for administering its functions related to EPCRA.

(24) "Workplace chemical list" means a list of hazardous chemicals developed under 29 CFR Section 1910.1200(e)(1)(i).

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1295, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1296, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(100), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 4, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(1), eff. September 1, 2015.

Sec. 505.005. APPLICABILITY OF CHAPTER. (a) Facility operators whose facilities are in NAICS Codes 31-33 shall comply with this chapter.

(b) This chapter does not apply to a hazardous chemical in a sealed package that is received and subsequently sold or transferred in that package if:

(1) the seal remains intact while the chemical is in the facility;

(2) the chemical does not remain in the facility longer than five working days; and

(3) the chemical is not an extremely hazardous substance at or above the threshold planning quantity or 500 pounds, whichever is less, as listed by the EPA in 40 CFR Part 355, Appendices A and B.

(c) This chapter does not apply to:

(1) any hazardous waste, as that term is defined by the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the EPA;

(2) tobacco or tobacco products;

(3) wood or wood products;

(4) articles;

(5) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(6) foods, drugs, or cosmetics intended for personal consumption by an employee while in the facility;

(7) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the facility in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(8) any drug, as that term is defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), when it is in solid, final form for direct administration to the patient, such as tablets or pills;

(9) the transportation, including storage incident to that transportation, of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas; and

(10) radioactive waste.

(d) The commission shall develop and implement an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1297, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 5, eff. September 1, 2015.

Sec. 505.006. FACILITY CHEMICAL LIST. (a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370,

or at any other reporting thresholds as determined by commission rule for certain highly toxic or extremely hazardous substances.

(b) Multiple facilities may be reported on the same tier two form, with appropriate facility identifiers, if the hazardous chemicals or hazardous chemical categories present at the multiple facilities are in the same ranges. In multiple facility reporting, the reporting thresholds must be applied to each facility rather than to the total quantities present at all facilities.

(c) Each tier two form shall be filed annually with the commission, along with the appropriate fee, according to the procedures specified by commission rules.

(d) The tier two form shall be used to comply with the updating requirements in EPCRA Section 311, but a fee may not be associated with filing the report.

(e) Except as provided by Section 505.0061(c), a facility operator shall file the tier two form with the commission not later than the 90th day after the date on which the operator begins operation or has a reportable addition, at the appropriate threshold, of a previously unreported hazardous chemical or extremely hazardous substance.

(e-1) Except as provided by Section 505.0061(c), a facility operator shall file an updated tier two form with the commission:

(1) not later than the 90th day after the date on which the operator has a change in the chemical weight range, as listed in 40 C.F.R. Part 370, of a previously reported hazardous chemical or extremely hazardous substance; and

(2) as otherwise required by commission rule.

(e-2) A facility operator shall furnish a copy of each tier two form and updated tier two form filed with the commission under this section to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(f) A facility operator shall file a safety data sheet with the commission on the commission's request.

(g) The commission shall maintain records of the tier two forms and other documents filed under this chapter or EPCRA for at least 30 years.

(h) Except as provided by Section 505.015, documents filed under this chapter are subject to Chapter 552, Government Code.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1298, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 6, eff. September 1, 2015.

Sec. 505.0061. REPORTING FOR FACILITIES STORING AMMONIUM NITRATE USED IN FERTILIZER. (a) In this section, "ammonium nitrate" and "ammonium nitrate storage facility" have the meanings assigned by Section 63.151, Agriculture Code.

(b) As soon as practicable but not later than 72 hours after the commission receives a tier two form reporting the presence of ammonium nitrate at an ammonium nitrate storage facility, the commission shall furnish a copy of the form to the state fire marshal and the Texas Division of Emergency Management. The state fire marshal shall furnish a copy of the form to the chief of the fire department having jurisdiction over the facility. The Texas Division of Emergency Management shall furnish a copy of the form to the appropriate local emergency planning committee.

(c) The operator of an ammonium nitrate storage facility shall file:

(1) a tier two form with the commission not later than 72 hours after the operator:

(A) begins operation; or

(B) has a reportable addition, at the appropriate threshold, of previously unreported ammonium nitrate; and

(2) an updated tier two form not later than 72 hours after the operator has a change in the chemical weight range, as listed in 40 C.F.R. Part 370, of previously reported ammonium nitrate.

Added by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 7, eff. September 1, 2015.

Sec. 505.007. DIRECT CITIZEN ACCESS TO INFORMATION. (a) Except as otherwise provided by this section, a person may request in

writing copies of the facility's existing workplace chemical list for community right-to-know purposes.

(b) Except as otherwise provided by this section, any facility covered by this chapter shall furnish or mail, within 10 working days of the date of receipt of a request under Subsection (a), either a copy of the facility's existing workplace chemical list or a modified version of the most recent tier two form using a 500-pound threshold.

(c) Any facility that has received five requests under Subsection (a) in a calendar month, four requests in a calendar month for two or more months in a row, or more than 10 requests in a year may elect to furnish the material to the commission.

(d) Any facility electing to furnish the material to the commission under Subsection (c) may during that same filing period inform persons making requests under Subsection (a) of the availability of the information at the commission and refer the request to the commission for that filing period. The notice to persons making requests shall state the address of the commission and shall be mailed within seven days of the date of receipt of the request, if by mail, and at the time of the request if in person.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 8, eff. September 1, 2015.

Sec. 505.008. EMERGENCY PLANNING INFORMATION. (a) The fire chief or the fire chief's representative, on request, may conduct on-site inspections of the chemicals on the tier two form for the sole purpose of planning fire department activities in case of an emergency.

(b) A facility operator, on request, shall give the fire chief or the local emergency planning committee such additional information on types and amounts of hazardous chemicals present at a facility as the requestor may need for emergency planning purposes. A facility operator, on request, shall give the executive director, the fire chief, or the local emergency planning committee a copy of the SDS for any chemical on the tier two form furnished under Section 505.006 or for any chemical present at the facility.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515 , Sec.

36(2), eff. September 1, 2015.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1299, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 9, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(2), eff. September 1, 2015.

Sec. 505.009. COMPLAINTS AND INVESTIGATIONS. On presentation of appropriate credentials, a commission representative may enter a facility at reasonable times to inspect and investigate complaints.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1300, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 10, eff. September 1, 2015.

Sec. 505.015. TRADE SECRETS. Facility operators must substantiate trade secret claims to the administrator of the EPA in accordance with EPCRA, Section 322.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 505.016. RULES; FEES. (a) The commission may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The commission by rule may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. Except as provided by Subsection (d), fees may be used only to fund activities under this chapter. The fee for facilities may not exceed:

(1) $100 for each required submission having no more than 25 hazardous chemicals or hazardous chemical categories;

(2) $200 for each required submission having no more than 50 hazardous chemicals or hazardous chemical categories;

(3) $300 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories;

(4) $400 for each required submission having no more than 100 hazardous chemicals or hazardous chemical categories; or

(5) $500 for each required submission having more than 100 hazardous chemicals or chemical categories.

(c) To minimize the fees, the commission by rule shall provide for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.

(d) The commission may use up to 20 percent of the fees collected under this section as grants to local emergency planning committees to assist them to fulfill their responsibilities under EPCRA. An amount not to exceed 15 percent of the fees collected under this chapter and Chapter 506, or 15 percent of the amount of fees paid by the state and its political subdivisions under Chapter 506, whichever is greater, may be used by the Department of State Health Services to administer Chapter 502.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1304, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 11, eff. September 1, 2015.

Sec. 505.017. NOTICE ISSUED UNDER EMERGENCIES. (a) When immediate notification of a release by a facility to the state emergency response commission is required in accordance with EPCRA, the state agency responsible for the information submitted to the state emergency response commission, on receipt of the required notification, shall make a determination as to whether the release reported will substantially endanger human health or the environment.

(b) If the responsible state agency determines that a release will substantially endanger human health or the environment, the agency shall, on request, notify the state senator or representative who represents the area in which the facility is located of the

release within four hours of receipt of the original notification.

Added by Acts 2011, 82nd Leg., R.S., Ch. 780 (H.B. 1981), Sec. 3, eff. September 1, 2011.

Sec. 505.018. ENFORCEMENT. (a) A facility operator may not violate this chapter, commission rules adopted under this chapter, or an order issued under this chapter.

(b) The commission may enforce this chapter under Chapter 7, Water Code, including by issuing an administrative order that assesses a penalty or orders a corrective action.

Added by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 12, eff. September 1, 2015.

CHAPTER 506. PUBLIC EMPLOYER COMMUNITY RIGHT-TO-KNOW ACT

Sec. 506.001. SHORT TITLE. This chapter may be cited as the Public Employer Community Right-To-Know Act.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 506.002. FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the health and safety of persons living in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during emergency situations or as a result of proximity to the manufacture or use of those chemicals; and

(2) many facility operators in this state have established suitable information programs for their communities and that access to the information is required of most facility operators under the federal Emergency Planning and Community Right-To-Know Act (EPCRA).

(b) It is the intent and purpose of this chapter to ensure that accessibility to information regarding hazardous chemicals is provided to:

(1) fire departments responsible for dealing with chemical hazards during an emergency;

(2) local emergency planning committees and other emergency

planning organizations; and

(3) the commission to make the information available to the public through specific procedures.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1305, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 13, eff. September 1, 2015.

Sec. 506.003. FEDERAL LAWS AND REGULATIONS; OTHER STANDARDS. (a) In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.

(b) In this chapter, a reference to nomenclature systems developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS), or to other information, including information such as classification codes, performance standards, systematic names, standards, and systems described in publications sponsored by private technical or trade organizations, means a reference to the most current version of the publication.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 506.004. DEFINITIONS. In this chapter:

(1) "Article" means a manufactured item:

(A) that is formed to a specific shape or design during manufacture;

(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and

(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(101), eff. April 2, 2015.

(3) "Chemical name" means:

(A) the scientific designation of a chemical in accordance with the nomenclature system developed by the

International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature; or

(B) a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.

(3-a) "Commission" means the Texas Commission on Environmental Quality.

(4) "Common name" means a designation of identification, such as a code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(3), eff. September 1, 2015.

(6) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(101), eff. April 2, 2015.

(7) "EPA" means the United States Environmental Protection Agency.

(8) "EPCRA" or "SARA Title III" means the federal Emergency Planning and Community Right-To-Know Act, also known as the Superfund Amendments and Reauthorization Act of 1986, Title III, Pub. L. No. 99-499 et seq.

(8-a) "Executive director" means the executive director of the commission.

(9) "Extremely hazardous substance" means any substance as defined in EPCRA, Section 302, or listed by the United States Environmental Protection Agency in 40 CFR Part 355, Appendices A and B.

(10) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites, that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with that person and that is operated by the state or a political subdivision of the state.

(11) "Facility operator" or "operator" means the person who controls the day-to-day operations of the facility.

(12) "Fire chief" means the administrative head of a fire department, including a volunteer fire department.

(13) "Hazardous chemical" has the meaning given that term by 29 CFR 1910.1200(c), except that the term does not include:

(A) any food, food additive, color additive, drug, or cosmetic regulated by the United States Food and Drug Administration;

(B) any substance present as a solid in any

manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(C) any substance to the extent that it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the public;

(D) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and

(E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).

(15) "Identity" means any chemical or common name, or alphabetical or numerical identification, that is indicated on the safety data sheet (SDS) for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the SDS.

(16) "Label" means any written, printed, or graphic material displayed on or affixed to a container of hazardous chemicals.

(17) "Local emergency planning committee" means a committee formed under the requirements of EPCRA, Section 301, and recognized by the state emergency response commission for the purposes of emergency planning and public information.

(19) "OSHA standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration and codified as 29 CFR Section 1910.1200.

(20) "Physical hazard" means a chemical that is classified as posing one of the following hazardous effects: explosive; flammable (gases, aerosols, liquids, or solids); oxidizer (liquid, solid, or gas); self-reactive; pyrophoric (liquid or solid); self-heating; organic peroxide; corrosive to metal; gas under pressure; or in contact with water emits flammable gas.

(21) "Public employer" means:

(A) the state and political subdivisions of the state, including state, county, and municipal agencies;

(B) public schools, colleges, and universities;

(C) river authorities and publicly owned utilities;

(D) volunteer emergency service organizations; and

(E) other similar employers who are not covered by the federal Occupational Safety and Health Act of 1970 (Pub. L. No. 91-596), the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. No. 91-173), or the Federal Mine Safety and Health Amendments Act of 1977 (Pub. L. No. 95-164).

(21-a) "Safety data sheet" or "SDS" means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.

(22) "State emergency response commission" means the state emergency management council or other committee appointed by the governor in accordance with EPCRA.

(23) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as established by the EPA pursuant to EPCRA, Section 302.

(24) "Tier two form" means:

(A) a form specified by the commission under Section 506.006 for listing hazardous chemicals as required by EPCRA; or

(B) a form accepted by the EPA under EPCRA for listing hazardous chemicals together with additional information required by the commission for administering its functions related to EPCRA.

(25) "Workplace chemical list" means a list of hazardous chemicals developed under Section 502.005(a).

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1306, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1307, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(101), eff. April 2, 2015.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 14, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(3), eff. September 1, 2015.

Sec. 506.005. APPLICABILITY OF CHAPTER. (a) Public employers shall comply with this chapter.

(b) This chapter does not apply to a hazardous chemical in a sealed package that is received and subsequently sold or transferred in that package if:

(1) the seal remains intact while the chemical is in the facility;

(2) the chemical does not remain in the facility longer than five working days; and

(3) the chemical is not an extremely hazardous substance at or above the threshold planning quantity or 500 pounds, whichever is less, as listed by the EPA in 40 CFR Part 355, Appendices A and B.

(c) This chapter does not apply to:

(1) any hazardous waste as that term is defined by the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the EPA;

(2) tobacco or tobacco products;

(3) wood or wood products;

(4) articles;

(5) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(6) food, drugs, or cosmetics intended for personal consumption by an employee while in the facility;

(7) any consumer product or hazardous substance, as those terms are defined by the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the facility in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(8) any drug, as that term is defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), when it is in solid, final form for direct administration to the patient, such as tablets or pills;

(9) the transportation, including storage incident to that transportation, of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas; and

(10) radioactive waste.

(d) The commission shall develop and implement an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1308, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 15, eff. September 1, 2015.

Sec. 506.006. FACILITY CHEMICAL LIST. (a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370, or at any other reporting thresholds as determined by commission rule for certain highly toxic or extremely hazardous substances.

(b) Multiple facilities may be reported on the same tier two form, with appropriate facility identifiers, if the hazardous chemicals or hazardous chemical categories present at the multiple facilities are in the same ranges. In multiple facility reporting, the reporting thresholds must be applied to each facility rather than to the total quantities present at all facilities.

(c) Each tier two form shall be filed annually with the commission, along with the appropriate fee, according to the procedures specified by commission rules.

(d) A facility operator shall file the tier two form with the commission not later than the 90th day after the date on which the operator begins operation or has a reportable addition, at the appropriate threshold, of a previously unreported hazardous chemical or extremely hazardous substance, but a fee may not be associated with filing this report.

(d-1) A facility operator shall file an updated tier two form with the commission:

(1) not later than the 90th day after the date on which the operator has a change in the chemical weight range, as listed in 40 C.F.R. Part 370, of a previously reported hazardous chemical or

extremely hazardous substance; and

(2) as otherwise required by commission rule.

(d-2) A facility operator shall furnish a copy of each tier two form and updated tier two form filed with the commission under this section to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(e) A facility operator shall file a safety data sheet with the commission on the commission's request.

(f) The commission shall maintain records of the tier two forms and other documents filed under this chapter or EPCRA for at least 30 years.

(g) Documents filed under this chapter are subject to Chapter 552, Government Code.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1309, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 16, eff. September 1, 2015.

Sec. 506.007. DIRECT CITIZEN ACCESS TO INFORMATION. (a) Except as otherwise provided by this section, a person may request in writing copies of the facility's existing workplace chemical list for community right-to-know purposes.

(b) Except as otherwise provided by this section, any facility covered by this chapter shall furnish or mail, within 10 working days of the date of receipt of a request under Subsection (a), either a copy of the facility's existing workplace chemical list or a modified version of the most recent tier two form using a 500-pound threshold.

(c) Any facility that has received five requests under Subsection (a) in a calendar month, four requests in a calendar month for two or more months in a row, or more than 10 requests in a year may elect to furnish the material to the commission.

(d) Any facility electing to furnish the material to the commission under Subsection (c) may during that same filing period

inform persons making requests under Subsection (a) of the availability of the information at the commission and refer the request to the commission for that filing period. The notice to persons making requests shall state the address of the commission and shall be mailed within seven days of the date of receipt of the request, if by mail, and at the time of the request if in person.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 17, eff. September 1, 2015.

Sec. 506.008. EMERGENCY PLANNING INFORMATION. (a) The fire chief or the fire chief's representative, on request, may conduct on-site inspections of the chemicals on the tier two form for the sole purpose of planning fire department activities in case of an emergency.

(b) A facility operator, on request, shall give the fire chief or the local emergency planning committee such additional information on types and amounts of hazardous chemicals present at a facility as the requestor may need for emergency planning purposes. A facility operator, on request, shall give the executive director, the fire chief, or the local emergency planning committee a copy of the SDS for any chemical on the tier two form furnished under Section 506.006 or for any chemical present at the facility.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515 , Sec. 36(4), eff. September 1, 2015.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1310, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 18, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(4), eff. September 1, 2015.

Sec. 506.009. COMPLAINTS AND INVESTIGATIONS. On presentation of appropriate credentials, a commission representative may enter a

facility at reasonable times to inspect and investigate complaints.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1311, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 19, eff. September 1, 2015.

Sec. 506.017. RULES; FEES. (a) The commission may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The commission by rule may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. The fee may not exceed:

(1) $50 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories; or

(2) $100 for each required submission having more than 75 hazardous chemicals or chemical categories.

(c) To minimize the fees, the commission by rule shall provide for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.

(d) The commission may use up to 20 percent of the fees collected under this section as grants to local emergency planning committees to assist them to fulfill their responsibilities under EPCRA. An amount not to exceed 15 percent of the fees collected under Chapter 505 and this chapter, or 15 percent of the amount of fees paid by the state and its political subdivisions under this chapter, whichever is greater, may be used by the Department of State Health Services to administer Chapter 502.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1317, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 20, eff. September 1, 2015.

Sec. 506.018. ENFORCEMENT. (a) A facility operator may not violate this chapter, commission rules adopted under this chapter, or an order issued under this chapter.

(b) The commission may enforce this chapter under Chapter 7, Water Code, including by issuing an administrative order that assesses a penalty or orders a corrective action.

Added by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 21, eff. September 1, 2015.

CHAPTER 507. NONMANUFACTURING FACILITIES COMMUNITY RIGHT-TO-KNOW ACT

Sec. 507.001. SHORT TITLE. This chapter may be cited as the Nonmanufacturing Facilities Community Right-To-Know Act.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 507.002. FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the health and safety of persons living in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during emergency situations or as a result of proximity to the use of those chemicals; and

(2) many facility operators in this state have established suitable information programs for their communities and that access to the information is required of most facility operators under the federal Emergency Planning and Community Right-To-Know Act (EPCRA).

(b) It is the intent and purpose of this chapter to ensure that accessibility to information regarding hazardous chemicals is provided to:

(1) fire departments responsible for dealing with chemical hazards during an emergency;

(2) local emergency planning committees and other emergency planning organizations; and

(3) the commission to make the information available to the public through specific procedures.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1318, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 22, eff. September 1, 2015.

Sec. 507.003. FEDERAL LAWS AND REGULATIONS. (a) In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.

(b) In this chapter, a reference to the North American Industry Classification System (NAICS) means a reference to the most current version of that system.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 23, eff. September 1, 2015.

Sec. 507.004. DEFINITIONS. In this chapter:

(1) "Article" means a manufactured item:

(A) that is formed to a specific shape or design during manufacture;

(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and

(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(102), eff. April 2, 2015.

(3) "Chemical name" means:

(A) the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature; or

(B) a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.

(3-a) "Commission" means the Texas Commission on Environmental Quality.

(4) "Common name" means a designation of identification, such as a code name, code number, trade name, brand name, or generic

name, used to identify a chemical other than by its chemical name.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(5), eff. September 1, 2015.

(6) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(102), eff. April 2, 2015.

(7) "EPA" means the United States Environmental Protection Agency.

(8) "EPCRA" or "SARA Title III" means the federal Emergency Planning and Community Right-To-Know Act, also known as the Superfund Amendments and Reauthorization Act of 1986, Title III, Pub. L. No. 99-499 et seq.

(8-a) "Executive director" means the executive director of the commission.

(9) "Extremely hazardous substance" means any substance as defined in EPCRA, Section 302, or listed by the United States Environmental Protection Agency in 40 CFR Part 355, Appendices A and B.

(10) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person or by any person who controls, is controlled by, or is under common control with that person, and that is in North American Industry Classification System (NAICS) Codes 11-23 or Codes 42-92. The term does not include a facility subject to Chapter 506.

(11) "Facility operator" or "operator" means the person who controls the day-to-day operations of the facility.

(12) "Fire chief" means the administrative head of a fire department, including a volunteer fire department.

(13) "Hazardous chemical" has the meaning given that term by 29 CFR 1910.1200(c), except that the term does not include:

(A) any food, food additive, color additive, drug, or cosmetic regulated by the United States Food and Drug Administration;

(B) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(C) any substance to the extent that it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;

(D) any substance to the extent it is used in a

research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and

(E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).

(15) "Identity" means a chemical or common name, or alphabetical or numerical identification, that is indicated on the safety data sheet (SDS) for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the SDS.

(16) "Label" means any written, printed, or graphic material displayed on or affixed to a container of hazardous chemicals.

(17) "Local emergency planning committee" means a committee formed under the requirements of EPCRA, Section 301, and recognized by the state emergency response commission for the purposes of emergency planning and public information.

(19) "OSHA standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration and codified as 29 CFR Section 1910.1200.

(20) "Physical hazard" means a chemical that is classified as posing one of the following hazardous effects: explosive; flammable (gases, aerosols, liquids, or solids); oxidizer (liquid, solid, or gas); self-reactive; pyrophoric (liquid or solid); self-heating; organic peroxide; corrosive to metal; gas under pressure; or in contact with water emits flammable gas.

(20-a) "Safety data sheet" or "SDS" means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.

(21) "State emergency response commission" means the state emergency management council or other committee appointed by the governor in accordance with EPCRA.

(22) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as established by the EPA pursuant to EPCRA, Section 302.

(23) "Tier two form" means:

(A) a form specified by the commission under Section 507.006 for listing hazardous chemicals as required by EPCRA; or

(B) a form accepted by the EPA under EPCRA for listing hazardous chemicals together with additional information required by the commission for administering its functions related to EPCRA.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1319, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1320, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(102), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 24, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(5), eff. September 1, 2015.

Sec. 507.005. APPLICABILITY OF CHAPTER. (a) Facility operators whose facilities are in North American Industry Classification System (NAICS) Codes 11-23 or NAICS Codes 42-92 and who are not subject to Chapter 506 shall comply with this chapter.

(b) This chapter does not apply to a hazardous chemical in a sealed package that is received and subsequently sold or transferred in that package if:

(1) the seal remains intact while the chemical is in the facility;

(2) the chemical does not remain in the facility longer than five working days; and

(3) the chemical is not an extremely hazardous substance at or above the threshold planning quantity or 500 pounds, whichever is less, as listed by the EPA in 40 CFR Part 355, Appendices A and B.

(c) This chapter does not apply to:

(1) any hazardous waste as that term is defined by the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the EPA;

(2) tobacco or tobacco products;

(3) wood or wood products;

(4) articles;

(5) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(6) food, drugs, or cosmetics intended for personal consumption by an employee while in the facility;

(7) any consumer product or hazardous substance, as those terms are defined by the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the facility in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(8) any drug, as that term is defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), when it is in solid, final form for direct administration to the patient, such as tablets or pills;

(9) the transportation, including storage incident to that transportation, of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas; and

(10) radioactive waste.

(d) The commission shall develop and implement an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1321, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 25, eff. September 1, 2015.

Sec. 507.006. FACILITY CHEMICAL LIST. (a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370,

or at any other reporting thresholds as determined by commission rule for certain highly toxic or extremely hazardous substances.

(b) Multiple facilities may be reported on the same tier two form, with appropriate facility identifiers, if the hazardous chemicals or hazardous chemical categories present at the multiple facilities are in the same ranges. In multiple facility reporting, the reporting thresholds must be applied to each facility rather than to the total quantities present at all facilities.

(c) Each tier two form shall be filed annually with the commission, along with the appropriate fee, according to the procedures specified by commission rules.

(d) The tier two form shall be used to comply with the updating requirements in EPCRA, Section 311, but a fee may not be associated with filing the report.

(e) Except as provided by Section 507.0061(c), a facility operator shall file the tier two form with the commission not later than the 90th day after the date on which the operator begins operation or has a reportable addition, at the appropriate threshold, of a previously unreported hazardous chemical or extremely hazardous substance.

(e-1) Except as provided by Section 507.0061(c), a facility operator shall file an updated tier two form with the commission:

(1) not later than the 90th day after the date on which the operator has a change in the chemical weight range, as listed in 40 C.F.R. Part 370, of a previously reported hazardous chemical or extremely hazardous substance; and

(2) as otherwise required by commission rule.

(e-2) A facility operator shall furnish a copy of each tier two form and updated tier two form filed with the commission under this section to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(f) A facility operator shall file a safety data sheet with the commission on the commission's request.

(g) The commission shall maintain records of the tier two forms and other documents filed under this chapter or EPCRA for at least 30 years.

(h) Except as provided by Section 507.012, documents filed under this chapter are subject to Chapter 552, Government Code.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1322, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 26, eff. September 1, 2015.

Sec. 507.0061. REPORTING FOR FACILITIES STORING AMMONIUM NITRATE USED IN FERTILIZER. (a) In this section, "ammonium nitrate" and "ammonium nitrate storage facility" have the meanings assigned by Section 63.151, Agriculture Code.

(b) As soon as practicable but not later than 72 hours after the commission receives a tier two form reporting the presence of ammonium nitrate at an ammonium nitrate storage facility, the commission shall furnish a copy of the form to the state fire marshal and the Texas Division of Emergency Management. The state fire marshal shall furnish a copy of the form to the chief of the fire department having jurisdiction over the facility. The Texas Division of Emergency Management shall furnish a copy of the form to the appropriate local emergency planning committee.

(c) The operator of an ammonium nitrate storage facility shall file:

(1) a tier two form with the commission not later than 72 hours after the operator:

(A) begins operation; or

(B) has a reportable addition, at the appropriate threshold, of previously unreported ammonium nitrate; and

(2) an updated tier two form with the commission not later than 72 hours after the operator has a change in the chemical weight range, as listed in 40 C.F.R. Part 370, of previously reported ammonium nitrate.

Added by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 27, eff. September 1, 2015.

Sec. 507.007. EMERGENCY PLANNING INFORMATION. (a) The fire

chief or the fire chief's representative, on request, may conduct on-site inspections of the chemicals on the tier two form for the sole purpose of planning fire department activities in case of an emergency.

(b) A facility operator, on request, shall give the fire chief or the local emergency planning committee such additional information on types and amounts of hazardous chemicals present at a facility as the requestor may need for emergency planning purposes. A facility operator, on request, shall give the executive director, the fire chief, or the local emergency planning committee a copy of the SDS for any chemical on the tier two form furnished under Section 507.006 or for any chemical present at the facility.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515 , Sec. 36(6), eff. September 1, 2015.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1323, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 28, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(6), eff. September 1, 2015.

Sec. 507.008. COMPLAINTS AND INVESTIGATIONS. On presentation of appropriate credentials, a commission representative may enter a facility at reasonable times to inspect and investigate complaints.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1324, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 29, eff. September 1, 2015.

Sec. 507.012. TRADE SECRETS. Facility operators must substantiate trade secret claims to the administrator of the EPA in accordance with EPCRA, Section 322.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 507.013. RULES; FEES. (a) The commission may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The commission by rule may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. Except as provided by Subsection (d), fees may be used only to fund activities under this chapter. The fee may not exceed:

(1) $50 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories; or

(2) $100 for each required submission having more than 75 hazardous chemicals or chemical categories.

(c) To minimize the fees, the commission by rule shall provide for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.

(d) The commission may use up to 20 percent of the fees collected under this section as grants to local emergency planning committees to assist them to fulfill their responsibilities under EPCRA.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1328, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 30, eff. September 1, 2015.

Sec. 507.014. ENFORCEMENT. (a) A facility operator may not violate this chapter, commission rules adopted under this chapter, or an order issued under this chapter.

(b) The commission may enforce this chapter under Chapter 7, Water Code, including by issuing an administrative order that assesses a penalty or orders a corrective action.

Added by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 31, eff. September 1, 2015.

CHAPTER 508. AREA QUARANTINE FOR ENVIRONMENTAL OR TOXIC AGENT

Sec. 508.001. DEFINITIONS. In this chapter:

(1) "Environmental or toxic agent" means any bacterium or other disease-producing organism, toxic substance, radioactive substance, or other hazardous substance capable of causing widespread human illness, death, or substantial negative economic impact.

(2) "Health authority" means a physician appointed as a health authority or a regional director under Chapter 121.

Added by Acts 2003, 78th Leg., ch. 1022, Sec. 1, eff. June 20, 2003.

Sec. 508.002. APPLICABILITY. This chapter applies to any circumstance in which an environmental or toxic agent is introduced into the environment, including an act of terrorism.

Added by Acts 2003, 78th Leg., ch. 1022, Sec. 1, eff. June 20, 2003.

Sec. 508.003. AREA QUARANTINE. (a) If the commissioner of state health services or one or more health authorities determine that the introduction of an environmental or toxic agent into the environment has occurred, the commissioner or authorities may impose an area quarantine in the manner and subject to the procedures provided for an area quarantine imposed under Section 81.085. The commissioner of state health services or a health authority may, with respect to an area quarantine imposed under this chapter, exercise any power for a response to the introduction of an environmental or toxic agent into the environment under this section that is authorized by Section 81.085 for a response to an outbreak of a communicable disease. The area quarantine must be accomplished by the least restrictive means necessary to protect public health considering the availability of resources.

(b) A quarantine imposed by a health authority under this section expires at the earlier of:

(1) the 24th hour after the time the quarantine is imposed; or

(2) the time that appropriate action to terminate the quarantine or impose superseding requirements is taken under Chapter

418, Government Code, or is taken by the commissioner of state health services under this section.

Added by Acts 2003, 78th Leg., ch. 1022, Sec. 1, eff. June 20, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1329, eff. April 2, 2015.

Sec. 508.004. CRIMINAL PENALTY. A person commits an offense if the person knowingly fails or refuses to obey an order or instruction of the commissioner of state health services or a health authority issued under this chapter and published during an area quarantine under this section. An offense under this subsection is a felony of the third degree.

Added by Acts 2003, 78th Leg., ch. 1022, Sec. 1, eff. June 20, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1330, eff. April 2, 2015.

TITLE 7. MENTAL HEALTH AND INTELLECTUAL DISABILITY
SUBTITLE A. SERVICES FOR PERSONS WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY
CHAPTER 531. PROVISIONS GENERALLY APPLICABLE TO MENTAL HEALTH AND INTELLECTUAL DISABILITY SERVICES

Sec. 531.001. PURPOSE; POLICY. (a) It is the purpose of this subtitle to provide for the effective administration and coordination of mental health and intellectual disability services at the state and local levels.

(b) Recognizing that a variety of alternatives for serving persons with mental illness or an intellectual disability exists, it is the purpose of this subtitle to ensure that a continuum of services is provided. The continuum of services includes:

(1) mental health facilities operated by the Department of State Health Services and community services for persons with mental illness provided by the department and other entities through contracts with the department; or

(2) state supported living centers operated by the Department of Aging and Disability Services and community services

for persons with an intellectual disability provided by the department and other entities through contracts with the department.

(c) It is the goal of this state to provide a comprehensive range of services for persons with mental illness or an intellectual disability who need publicly supported care, treatment, or habilitation. In providing those services, efforts will be made to coordinate services and programs with services and programs provided by other governmental entities to minimize duplication and to share with other governmental entities in financing those services and programs.

(d) It is the policy of this state that, when appropriate and feasible, persons with mental illness or an intellectual disability shall be afforded treatment in their own communities.

(e) It is the public policy of this state that mental health and intellectual disability services be the responsibility of local agencies and organizations to the greatest extent possible. The Department of State Health Services shall assist the local agencies and organizations by coordinating the implementation of a statewide system of mental health services. The Department of Aging and Disability Services shall assist the local agencies and organizations by coordinating the implementation of a statewide system of intellectual disability services. Each department shall ensure that mental health and intellectual disability services, as applicable, are provided. Each department shall provide technical assistance for and regulation of the programs that receive funding through contracts with that department.

(f) It is the public policy of this state to offer services first to those persons who are most in need. Therefore, funds appropriated by the legislature for mental health and intellectual disability services may be spent only to provide services to the priority populations identified in the applicable department's long-range plan.

(g) It is the goal of this state to establish at least one special officer for mental health assignment in each county. To achieve this goal, the Department of State Health Services shall assist a local law enforcement agency that desires to have an officer certified under Section 1701.404, Occupations Code.

(h) It is the policy of this state that the Department of State Health Services serves as the state's mental health authority and the Department of Aging and Disability Services serves as the state's

intellectual disability authority. The executive commissioner is responsible for the planning, policy development, and resource development and allocation for and oversight of mental health and intellectual disability services in this state. It is the policy of this state that, when appropriate and feasible, the executive commissioner may delegate the executive commissioner's authority to a single entity in each region of the state that may function as the local mental health or intellectual and developmental disability authority for one or more service areas in the region.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 19, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 14.800, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1333, eff. April 2, 2015.

Sec. 531.002. DEFINITIONS. In this subtitle:

(1) "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

(2) "Chemical dependency" means:

(A) abuse of alcohol or a controlled substance;

(B) psychological or physical dependence on alcohol or a controlled substance; or

(C) addiction to alcohol or a controlled substance.

(3) "Commission" means the Health and Human Services Commission.

(4) "Commissioner" means:

(A) the commissioner of state health services in relation to mental health services; and

(B) the commissioner of aging and disability services in relation to intellectual disability services.

(5) "Community center" means a center established under Subchapter A, Chapter 534.

(6) "Department" means:

(A) the Department of State Health Services in relation to mental health services; and

(B) the Department of Aging and Disability Services in relation to intellectual disability services.

(7) "Effective administration" includes continuous planning and evaluation within the system that result in more efficient fulfillment of the purposes and policies of this subtitle.

(8) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(9) "ICF-IID" means the medical assistance program serving individuals with an intellectual or developmental disability who receive care in intermediate care facilities.

(10) "Intellectual disability services" includes all services concerned with research, prevention, and detection of intellectual disabilities, and all services related to the education, training, habilitation, care, treatment, and supervision of persons with an intellectual disability, but does not include the education of school-age persons that the public educational system is authorized to provide.

(11) "Local agency" means:

(A) a municipality, county, hospital district, rehabilitation district, school district, state-supported institution of higher education, or state-supported medical school; or

(B) any organizational combination of two or more of those entities.

(12) "Local intellectual and developmental disability authority" means an entity to which the executive commissioner delegates the executive commissioner's authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of intellectual disability services to persons with intellectual and developmental disabilities in the most appropriate and available setting to meet individual needs in one or more local service areas.

(13) "Local mental health authority" means an entity to which the executive commissioner delegates the executive commissioner's authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental health services to persons with mental illness in the most

appropriate and available setting to meet individual needs in one or more local service areas.

(14) "Mental health services" includes all services concerned with research, prevention, and detection of mental disorders and disabilities, and all services necessary to treat, care for, supervise, and rehabilitate persons who have a mental disorder or disability, including persons whose mental disorders or disabilities result from a substance abuse disorder.

(15) "Person with a developmental disability" means an individual with a severe, chronic disability attributable to a mental or physical impairment or a combination of mental and physical impairments that:

(A) manifests before the person reaches 22 years of age;

(B) is likely to continue indefinitely;

(C) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of a lifelong or extended duration and are individually planned and coordinated; and

(D) results in substantial functional limitations in three or more of the following categories of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

(16) "Person with an intellectual disability" means a person, other than a person with a mental disorder, whose mental deficit requires the person to have special training, education, supervision, treatment, or care in the person's home or community or in a state supported living center.

(17) "Priority population" means those groups of persons with mental illness or an intellectual disability identified by the applicable department as being most in need of mental health or intellectual disability services.

(18) "Region" means the area within the boundaries of the local agencies participating in the operation of community centers

established under Subchapter A, Chapter 534.

(19) "State supported living center" means a state-supported and structured residential facility operated by the Department of Aging and Disability Services to provide to clients with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.01, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 2, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 367, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 17, eff. June 11, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1292 (H.B. 2303), Sec. 1, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1333, eff. April 2, 2015.

Sec. 531.0021. REFERENCE TO STATE SCHOOL OR SUPERINTENDENT. (a) A reference in law to a "state school" means a state supported living center.

(b) A reference in law to a "superintendent," to the extent the term is intended to refer to the person in charge of a state supported living center, means the director of a state supported living center.

(c) Repealed by Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 14.01(1), eff. September 1, 2023.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 18, eff. June 11, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1333, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.05, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 14.01(1), eff. September 1, 2023.

CHAPTER 532. GENERAL PROVISIONS RELATING TO DEPARTMENT OF STATE HEALTH SERVICES

Sec. 532.001. DEFINITIONS; MENTAL HEALTH COMPONENTS OF DEPARTMENT. (a) In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(b) The department includes community services operated by the department and the following facilities:

(1) the central office of the department;

(2) the Austin State Hospital;

(3) the Big Spring State Hospital;

(4) the Kerrville State Hospital;

(5) the Rusk State Hospital;

(6) the San Antonio State Hospital;

(7) the Terrell State Hospital;

(8) the Vernon State Hospital;

(9) the Rio Grande State Center;

(10) the Waco Center for Youth;

(11) the El Paso Psychiatric Center;

(12) the Wichita Falls State Hospital;

(13) the Panhandle State Hospital; and

(14) the Lubbock Psychiatric Center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 821, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 500, Sec. 1, eff. May 31, 1997; Acts 1999, 76th Leg., ch. 543, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 893, Sec. 1, eff. June 14, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 19, eff. June 11, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1334, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 214 (H.B. 913), Sec. 1, eff. September 1, 2025.

Sec. 532.002. MEDICAL DIRECTOR. (a) The commissioner shall appoint a medical director.

(b) To be qualified for appointment as the medical director under this section, a person must:

(1) be a physician licensed to practice in this state; and

(2) have proven administrative experience and ability in comprehensive health care or human service operations.

(c) The medical director reports to the commissioner and is responsible for the following duties under this title:

(1) oversight of the quality and appropriateness of clinical services delivered in department mental health facilities or under contract to the department in relation to mental health services; and

(2) leadership in physician recruitment and retention and peer review.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 4.07, eff. Nov. 12, 1991; Acts 1999, 76th Leg., ch. 1187, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.10, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1334, eff. April 2, 2015.

Sec. 532.003. HEADS OF DEPARTMENTAL MENTAL HEALTH FACILITIES. (a) The commissioner shall appoint the head of each mental health facility the department administers.

(b) The head of a facility serves at the will of the commissioner.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 208, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 821, Sec. 4, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1334, eff. April 2, 2015.

Sec. 532.004. ADVISORY COMMITTEES. (a) The executive commissioner shall appoint any advisory committees the executive commissioner considers necessary to assist in the effective administration of the department's mental health programs.

(b) The department may reimburse committee members for travel costs incurred in performing their duties as provided by Section 2110.004, Government Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1334, eff. April 2, 2015.

Sec. 532.013. FORENSIC DIRECTOR. (a) In this section:

(1) "Forensic patient" means a person with mental illness or a person with an intellectual disability who is:

(A) examined on the issue of competency to stand trial by an expert appointed under Subchapter B, Chapter 46B, Code of Criminal Procedure;

(B) found incompetent to stand trial under Subchapter C, Chapter 46B, Code of Criminal Procedure;

(C) committed to court-ordered mental health services under Subchapter E, Chapter 46B, Code of Criminal Procedure;

(D) found not guilty by reason of insanity under Chapter 46C, Code of Criminal Procedure;

(E) examined on the issue of fitness to proceed with juvenile court proceedings by an expert appointed under Chapter 51, Family Code; or

(F) found unfit to proceed under Subchapter C, Chapter 55, Family Code.

(2) "Forensic services" means a competency examination, competency restoration services, or mental health or intellectual disability services provided to a current or former forensic patient in the community or at a department facility.

(b) The commissioner shall appoint a forensic director.

(c) To be qualified for appointment as forensic director, a person must have proven expertise in the social, health, and legal systems for forensic patients, and in the intersection of those systems.

(d) The forensic director reports to the commissioner and is responsible for:

(1) statewide coordination and oversight of forensic services;

(2) coordination of programs operated by the department relating to evaluation of forensic patients, transition of forensic patients from inpatient to outpatient or community-based services, community forensic monitoring, or forensic research and training; and

(3) addressing issues with the delivery of forensic services in the state, including:

(A) significant increases in populations with serious mental illness and criminal justice system involvement;

(B) adequate availability of department facilities for civilly committed forensic patients;

(C) wait times for forensic patients who require competency restoration services;

(D) interruption of mental health services of recently released forensic patients;

(E) coordination of services provided to forensic patients by state agencies;

(F) provision of input regarding the regional allocation of mental health beds for certain forensic patients and other patients with mental illness under Section 533.0515; and

(G) provision of input regarding the development and maintenance of a training curriculum for judges and attorneys for treatment alternatives to inpatient commitment to a state hospital for certain forensic patients under Section 1001.086.

Added by Acts 2015, 84th Leg., R.S., Ch. 207 (S.B. 1507), Sec. 1, eff. May 28, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1212 (S.B. 562), Sec. 26, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 23, eff. September 1, 2019.

CHAPTER 532A. GENERAL PROVISIONS RELATING TO DEPARTMENT OF AGING AND DISABILITY SERVICES

Sec. 532A.001. DEFINITIONS; INTELLECTUAL DISABILITY COMPONENTS

OF DEPARTMENT. (a) In this chapter:

(1) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability Services.

(b) The department includes community services operated by the department and the following facilities:

(1) the central office of the department;

(2) the Abilene State Supported Living Center;

(3) the Austin State Supported Living Center;

(4) the Brenham State Supported Living Center;

(5) the Corpus Christi State Supported Living Center;

(6) the Denton State Supported Living Center;

(7) the Lubbock State Supported Living Center;

(8) the Lufkin State Supported Living Center;

(9) the Mexia State Supported Living Center;

(10) the Richmond State Supported Living Center;

(11) the San Angelo State Supported Living Center;

(12) the San Antonio State Supported Living Center; and

(13) the El Paso State Supported Living Center.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1334, eff. April 2, 2015.

Sec. 532A.002. MEDICAL DIRECTOR. (a) The commissioner shall appoint a medical director.

(b) To be qualified for appointment as the medical director under this section, a person must:

(1) be a physician licensed to practice in this state; and

(2) have proven administrative experience and ability in comprehensive health care or human service operations.

(c) The medical director reports to the commissioner and is responsible for the following duties under this title:

(1) oversight of the quality and appropriateness of clinical services delivered in state supported living centers or under contract to the department in relation to intellectual disability services; and

(2) leadership in physician recruitment and retention and peer review.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1334, eff. April 2, 2015.

Sec. 532A.003. HEADS OF STATE SUPPORTED LIVING CENTERS. (a) The commissioner shall appoint the head of each state supported living center the department administers.

(b) The head of a state supported living center serves at the will of the commissioner.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1334, eff. April 2, 2015.

Sec. 532A.004. ADVISORY COMMITTEES. (a) The executive commissioner shall appoint any advisory committees the executive commissioner considers necessary to assist in the effective administration of the department's intellectual disability programs.

(b) The department may reimburse committee members for travel costs incurred in performing their duties as provided by Section 2110.004, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1334, eff. April 2, 2015.

CHAPTER 533. POWERS AND DUTIES OF DEPARTMENT OF STATE HEALTH SERVICES

SUBCHAPTER A. GENERAL POWERS AND DUTIES

Sec. 533.0001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(3) "Department facility" means a facility listed in Section 532.001(b).

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.22, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff.

April 2, 2015.

Sec. 533.0002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner by this title or another law conflicts with any of the following provisions of the Government Code, the Government Code provision controls:

(1) Subchapter A, Chapter 524;
(2) Section 524.0101;
(3) Sections 524.0151(a)(2) and (b);
(4) Section 524.0202; and
(5) Section 525.0254.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.53, eff. April 1, 2025.

Sec. 533.001. GIFTS AND GRANTS. (a) The department may negotiate with a federal agency to obtain grants to assist in expanding and improving mental health services in this state.

(b) The department may accept gifts and grants of money, personal property, and real property to expand and improve the mental health services available to the people of this state.

(c) The department may accept gifts and grants of money, personal property, and real property on behalf of a department facility to expand and improve the mental health services available at the facility.

(d) The department shall use a gift or grant made for a specific purpose in accordance with the purpose expressly prescribed by the donor. The department may decline the gift or grant if the department determines that it cannot be economically used for that purpose.

(e) The department shall keep a record of each gift or grant in the department's central office in the city of Austin.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.003. USE OF FUNDS FOR VOLUNTEER PROGRAMS IN LOCAL AUTHORITIES AND COMMUNITY CENTERS. (a) To develop or expand a volunteer mental health program in a local mental health authority or a community center, the department may allocate available funds appropriated for providing volunteer mental health services.

(b) The department shall develop formal policies that encourage the growth and development of volunteer mental health services in local mental health authorities and community centers.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 1209, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.004. LIENS. (a) The department and each community center has a lien to secure reimbursement for the cost of providing support, maintenance, and treatment to a patient with mental illness in an amount equal to the amount of reimbursement sought.

(b) The amount of the reimbursement sought may not exceed:

(1) the amount the department is authorized to charge under Section 552.017 if the patient received the services in a department facility; or

(2) the amount the community center is authorized to charge under Section 534.017 if the patient received the services in a community center.

(c) The lien attaches to:

(1) all nonexempt real and personal property owned or later acquired by the patient or by a person legally responsible for the patient's support;

(2) a judgment of a court in this state or a decision of a public agency in a proceeding brought by or on behalf of the patient to recover damages for an injury for which the patient was admitted to a department facility or community center; and

(3) the proceeds of a settlement of a cause of action or a claim by the patient for an injury for which the patient was admitted to a department facility or community center.

(d) To secure the lien, the department or community center must file written notice of the lien with the county clerk of the county in which:

(1) the patient, or the person legally responsible for the patient's support, owns property; or

(2) the patient received or is receiving services.

(e) The notice must contain:

(1) the name and address of the patient;

(2) the name and address of the person legally responsible for the patient's support, if applicable;

(3) the period during which the department facility or community center provided services or a statement that services are currently being provided; and

(4) the name and location of the department facility or community center.

(f) Not later than the 31st day before the date on which the department files the notice of the lien with the county clerk, the department shall notify by certified mail the patient and the person legally responsible for the patient's support. The notice must contain a copy of the charges, the statutory procedures relating to filing a lien, and the procedures to contest the charges. The executive commissioner by rule shall prescribe the procedures to contest the charges.

(g) The county clerk shall record on the written notice the name of the patient, the name and address of the department facility or community center, and, if requested by the person filing the lien, the name of the person legally responsible for the patient's support. The clerk shall index the notice record in the name of the patient and, if requested by the person filing the lien, in the name of the person legally responsible for the patient's support.

(h) The notice record must include an attachment that contains an account of the charges made by the department facility or community center and the amount due to the facility or center. The superintendent or director of the facility or center must swear to the validity of the account. The account is presumed to be correct, and in a suit to cancel the debt and discharge the lien or to foreclose on the lien, the account is sufficient evidence to

authorize a court to render a judgment for the facility or center.

(i) To discharge the lien, the superintendent or director of the department facility or community center or a claims representative of the facility or center must execute and file with the county clerk of the county in which the lien notice is filed a certificate stating that the debt covered by the lien has been paid, settled, or released and authorizing the clerk to discharge the lien. The county clerk shall record a memorandum of the certificate and the date on which it is filed. The filing of the certificate and recording of the memorandum discharge the lien.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.005. EASEMENTS. The department, in coordination with the executive commissioner, may grant a temporary or permanent easement or right-of-way on land held by the department that relates to services provided under this title. The department, in coordination with the executive commissioner, must grant an easement or right-of-way on terms and conditions the executive commissioner considers to be in the state's best interest.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 1175, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.007. USE OF CRIMINAL HISTORY RECORD INFORMATION. (a) Subject to the requirements of Chapter 250, the department, in relation to services provided under this title, or a local mental health authority or community center, may deny employment or volunteer status to an applicant if:

(1) the department, authority, or community center determines that the applicant's criminal history record information indicates that the person is not qualified or suitable; or

(2) the applicant fails to provide a complete set of fingerprints if the department establishes that method of obtaining criminal history record information.

(b) The executive commissioner shall adopt rules relating to the use of information obtained under this section, including rules that prohibit an adverse personnel action based on arrest warrant or wanted persons information received by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.02, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 790, Sec. 46(26), eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1209, Sec. 4, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0075. EXCHANGE OF EMPLOYMENT RECORDS. The department, in relation to services provided under this title, or a local mental health authority or community center, may exchange with one another the employment records of an employee or former employee who applies for employment at the department, authority, or community center.

Added by Acts 1993, 73rd Leg., ch. 646, Sec. 2, eff. Aug. 30, 1993. Amended by Acts 1999, 76th Leg., ch. 1209, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.008. EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY. (a) Each department facility and community center shall annually assess the feasibility of converting entry level support positions into employment opportunities for individuals with mental illness or an intellectual disability in the facility's or center's service area.

(b) In making the assessment, the department facility or community center shall consider the feasibility of using an array of job opportunities that may lead to competitive employment, including sheltered employment and supported employment.

(c) Each department facility and community center shall annually submit to the department a report showing that the facility or center has complied with Subsection (a).

(d) The department shall compile information from the reports and shall make the information available to each designated provider in a service area.

(e) Each department facility and community center shall ensure that designated staff are trained to:

(1) assist clients through the Social Security Administration disability determination process;

(2) provide clients and their families information related to the Social Security Administration Work Incentive Provisions; and

(3) assist clients in accessing and utilizing the Social Security Administration Work Incentive Provisions to finance training, services, and supports needed to obtain career goals.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 655, Sec. 6.04, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.009. EXCHANGE OF PATIENT RECORDS. (a) Department facilities, local mental health authorities, community centers, other designated providers, and subcontractors of mental health services are component parts of one service delivery system within which patient records may be exchanged without the patient's consent.

(b) The executive commissioner shall adopt rules to carry out the purposes of this section.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 1209, Sec. 6, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0095. COLLECTION AND MAINTENANCE OF INFORMATION

REGARDING PERSONS FOUND NOT GUILTY BY REASON OF INSANITY. (a) The executive commissioner by rule shall require the department to collect information and maintain current records regarding a person found not guilty of an offense by reason of insanity under Chapter 46C, Code of Criminal Procedure, who is:

(1) ordered by a court to receive inpatient mental health services under Chapter 574 or under Chapter 46C, Code of Criminal Procedure; or

(2) ordered by a court to receive outpatient or community-based treatment and supervision.

(b) Information maintained by the department under this section must include the name and address of any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

(c) The department shall file annually with the presiding officer of each house of the legislature a written report containing the name of each person described by Subsection (a), the name and address of any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 3, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.010. INFORMATION RELATING TO CONDITION. (a) A person, including a hospital, nursing facility, medical society, or other organization, may provide to the department or a medical organization, hospital, or hospital committee any information, including interviews, reports, statements, or memoranda relating to a person's condition and treatment for use in a study to reduce mental illness and intellectual disabilities.

(b) The department or a medical organization, hospital, or hospital committee receiving the information may use or publish the information only to advance mental health and intellectual disability research and education in order to reduce mental illness and intellectual disabilities. A summary of the study may be released

for general publication.

(c) The identity of a person whose condition or treatment is studied is confidential and may not be revealed under any circumstances. Information provided under this section and any finding or conclusion resulting from the study is privileged information.

(d) A person is not liable for damages or other relief if the person:

(1) provides information under this section;

(2) releases or publishes the findings and conclusions of the person or organization to advance mental health and intellectual disability research and education; or

(3) releases or publishes generally a summary of a study.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.012. COOPERATION OF STATE AGENCIES. At the department's request and in coordination with the executive commissioner, all state departments, agencies, officers, and employees shall cooperate with the department in activities that are consistent with their functions and that relate to services provided under this title.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.134, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 13.05, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 4.03, eff. June 14, 2005.

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 32(f), eff. September 1, 2008.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.014. RESPONSIBILITY OF LOCAL MENTAL HEALTH AUTHORITIES

IN MAKING TREATMENT RECOMMENDATIONS. (a) The executive commissioner shall adopt rules that:

(1) relate to the responsibility of the local mental health authorities to make recommendations relating to the most appropriate and available treatment alternatives for individuals in need of mental health services, including individuals who are in contact with the criminal justice system and individuals detained in local jails and juvenile detention facilities;

(2) govern commitments to a local mental health authority;

(3) govern transfers of patients that involve a local mental health authority; and

(4) provide for emergency admission to a department mental health facility if obtaining approval from the authority could result in a delay that might endanger the patient or others.

(b) The executive commissioner's first consideration in developing rules under this section must be to satisfy individual patient treatment needs in the most appropriate setting. The executive commissioner shall also consider reducing patient inconvenience resulting from admissions and transfers between providers.

(c) The department shall notify each judge who has probate jurisdiction in the service area and any other person the local mental health authority considers necessary of the responsibility of the local mental health authority to make recommendations relating to the most appropriate and available treatment alternatives and the procedures required in the area.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 3, eff. Aug. 30, 1993; Acts 2001, 77th Leg., ch. 367, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1214, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.015. UNANNOUNCED INSPECTIONS. The department may make any inspection of a department facility or program under the department's jurisdiction under this title without announcing the inspection.

Added by Acts 1995, 74th Leg., ch. 531, Sec. 2, eff. Aug. 28, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.016. CERTAIN PROCUREMENTS OF GOODS AND SERVICES BY SERVICE PROVIDERS. (a) This section does not apply to a "health and human services agency," as that term is defined by Section 521.0001, Government Code.

(a-1) A state agency, local agency, or local mental health authority that expends public money to acquire goods or services in connection with providing or coordinating the provision of mental health services may satisfy the requirements of any state law requiring procurements by competitive bidding or competitive sealed proposals by procuring goods or services with the public money in accordance with Section 533.017 or in accordance with:

(1) Section 32.043 or 32.044, Human Resources Code, if the entity is a public hospital subject to those laws; or

(2) this section, if the entity is not covered by Subdivision (1).

(b) An agency or authority under Subsection (a-1)(2) may acquire goods or services by any procurement method that provides the best value to the agency or authority. The agency or authority shall document that the agency or authority considered all relevant factors under Subsection (c) in making the acquisition.

(c) Subject to Subsection (d), the agency or authority may consider all relevant factors in determining the best value, including:

(1) any installation costs;

(2) the delivery terms;

(3) the quality and reliability of the vendor's goods or services;

(4) the extent to which the goods or services meet the agency's or authority's needs;

(5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements;

(6) the impact on the ability of the agency or authority to comply with laws and rules relating to historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities;

(7) the total long-term cost to the agency or authority of acquiring the vendor's goods or services;

(8) the cost of any employee training associated with the acquisition;

(9) the effect of an acquisition on the agency's or authority's productivity;

(10) the acquisition price; and

(11) any other factor relevant to determining the best value for the agency or authority in the context of a particular acquisition.

(d) If a state agency to which this section applies acquires goods or services with a value that exceeds $100,000, the state agency shall consult with and receive approval from the commission before considering factors other than price and meeting specifications.

(e) The state auditor or the executive commissioner may audit the agency's or authority's acquisitions of goods and services under this section to the extent state money or federal money appropriated by the state is used to make the acquisitions.

(f) The agency or authority may adopt rules and procedures for the acquisition of goods and services under this section.

Added by Acts 1997, 75th Leg., ch. 1045, Sec. 5, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.54, eff. April 1, 2025.

Sec. 533.017. PARTICIPATION IN PURCHASING CONTRACTS OR GROUP PURCHASING PROGRAM. (a) This section does not apply to a "health and human services agency," as that term is defined by Section 521.0001, Government Code.

(b) The executive commissioner may allow a state agency, local agency, or local mental health authority that expends public money to

purchase goods or services in connection with providing or coordinating the provision of mental health services to purchase goods or services with the public money by participating in:

(1) a contract the executive commissioner has made to purchase goods or services; or

(2) a group purchasing program established or designated by the executive commissioner that offers discounts to providers of mental health services.

Added by Acts 1997, 75th Leg., ch. 1045, Sec. 5, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.55, eff. April 1, 2025.

SUBCHAPTER B. POWERS AND DUTIES RELATING TO PROVISION OF MENTAL HEALTH SERVICES

Sec. 533.031. DEFINITIONS. In this subchapter:

(1) "Elderly resident" means a person 65 years of age or older residing in a department facility.

(2) "Extended care unit" means a residential unit in a department facility that contains patients with chronic mental illness who require long-term care, maintenance, limited programming, and constant supervision.

(3) "Transitional living unit" means a residential unit that is designed for the primary purpose of facilitating the return of hard-to-place psychiatric patients with chronic mental illness from acute care units to the community through an array of services appropriate for those patients.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. 2439), Sec. 1, eff. June 16, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.032. LONG-RANGE PLANNING. (a) The department shall

have a long-range plan relating to the provision of services under this title covering at least six years that includes at least the provisions required by Section 525.0156, Government Code, and Chapter 2056, Government Code. The plan must cover the provision of services in and policies for state-operated institutions and ensure that the medical needs of the most medically fragile persons with mental illness the department serves are met.

(b) In developing the plan, the department shall:

(1) solicit input from:

(A) local mental health authorities;

(B) community representatives;

(C) consumers of mental health services, including consumers of campus-based and community-based services, and family members of consumers of those services; and

(D) other interested persons; and

(2) consider the report developed under Subsection (c).

(c) The department shall develop a report containing information and recommendations regarding the most efficient long-term use and management of the department's campus-based facilities. The report must:

(1) project future bed requirements for state hospitals;

(2) document the methodology used to develop the projection of future bed requirements;

(3) project maintenance costs for institutional facilities;

(4) recommend strategies to maximize the use of institutional facilities; and

(5) specify how each state hospital will:

(A) serve and support the communities and consumers in its service area; and

(B) fulfill statewide needs for specialized services.

(d) In developing the report under Subsection (c), the department shall:

(1) conduct two public meetings, one meeting to be held at the beginning of the process and the second meeting to be held at the end of the process, to receive comments from interested parties; and

(2) consider:

(A) the medical needs of the most medically fragile of its patients with mental illness; and

(B) input solicited from consumers of services of state hospitals.

(g) The department shall:

(1) attach the report required by Subsection (c) to the department's legislative appropriations request for each biennium;

(2) at the time the department presents its legislative appropriations request, present the report to the:

(A) governor;

(B) governor's budget office;

(C) lieutenant governor;

(D) speaker of the house of representatives;

(E) Legislative Budget Board; and

(F) commission; and

(3) update the department's long-range plan biennially and include the report in the plan.

(h) The department shall, in coordination with the commission, evaluate the current and long-term costs associated with serving inpatient psychiatric needs of persons living in counties now served by at least three state hospitals within 120 miles of one another. This evaluation shall take into consideration the condition of the physical plants and other long-term asset management issues associated with the operation of the hospitals, as well as other issues associated with quality psychiatric care. After such determination is made, the commission shall begin to take action to influence the utilization of these state hospitals in order to ensure efficient service delivery.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 4, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(103), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1187, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 12, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(8), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(91), eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(91), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 10.004, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.56, eff. April 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 1147 (S.B. 956), Sec. 3, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 9.003(a), eff. September 1, 2025.

Sec. 533.0325. CONTINUUM OF SERVICES IN CAMPUS FACILITIES. The executive commissioner by rule shall establish criteria regarding the uses of the department's campus-based facilities as part of a full continuum of services under this title.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 6, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.033. DETERMINATION OF REQUIRED RANGE OF MENTAL HEALTH SERVICES. (a) Consistent with the purposes and policies of this subtitle, the commissioner biennially shall determine:

(1) the types of mental health services that can be most economically and effectively provided at the community level for persons exhibiting various forms of mental disability; and

(2) the types of mental health services that can be most economically and effectively provided by department facilities.

(b) In the determination, the commissioner shall assess the limits, if any, that should be placed on the duration of mental health services provided at the community level or at a department facility.

(c) The department biennially shall review the types of services the department provides and shall determine if a community provider can provide services of a comparable quality at a lower cost than the department's costs.

(d) The commissioner's findings shall guide the department in planning and administering services for persons with mental illness.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(9), eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(92), eff. June 17, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED SERVICES. The department may cooperate, negotiate, and contract with local agencies, hospitals, private organizations and foundations, community centers, physicians, and other persons to plan, develop, and provide community-based mental health services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.73, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0345. STATE AGENCY SERVICES STANDARDS. (a) The executive commissioner by rule shall develop model program standards for mental health services for use by each state agency that provides or pays for mental health services. The department shall provide the model standards to each agency that provides mental health services as identified by the commission.
(b) Model standards developed under Subsection (a) must be designed to improve the consistency of mental health services provided by or through a state agency.
(c) Biennially the department shall review the model standards developed under Subsection (a) and determine whether each standard contributes effectively to the consistency of service delivery by state agencies.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 7, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.035. LOCAL MENTAL HEALTH AUTHORITIES. (a) The executive commissioner shall designate a local mental health authority in one or more local service areas. The executive commissioner may delegate to the local authority the authority and responsibility of the executive commissioner, the commission, or a department of the commission related to planning, policy development, coordination, including coordination with criminal justice entities, resource allocation, and resource development for and oversight of mental health services in the most appropriate and available setting to meet individual needs in that service area. The executive commissioner may designate a single entity as both the local mental health authority under this chapter and the local intellectual and developmental disability authority under Chapter 533A for a service area.

(b) The department by contract or other method of allocation, including a case-rate or capitated arrangement, may disburse to a local mental health authority department federal and department state funds to be spent in the local service area for:

(1) community mental health and intellectual disability services; and

(2) chemical dependency services for persons who are dually diagnosed as having both chemical dependency and mental illness or an intellectual disability.

(c) A local mental health authority, with the approval of the department, shall use the funds received under Subsection (b) to ensure mental health and chemical dependency services are provided in the local service area. The local authority shall consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money in:

(1) assembling a network of service providers;

(2) making recommendations relating to the most appropriate and available treatment alternatives for individuals in need of mental health services; and

(3) procuring services for a local service area, including a request for proposal or open-enrollment procurement method.

(d) A local mental health authority shall demonstrate to the department that the services that the authority provides directly or through subcontractors and that involve state funds comply with

relevant state standards.

(e) Subject to Section 533.0358, in assembling a network of service providers, a local mental health authority may serve as a provider of services only as a provider of last resort and only if the local authority demonstrates to the department in the local authority's local network development plan that:

(1) the local authority has made every reasonable attempt to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of consumers in its service area; and

(2) there is not a willing provider of the relevant services in the local authority's service area or in the county where the provision of the services is needed.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.03, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 8, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 869, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1209, Sec. 14, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 367, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.74, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. 2439), Sec. 2, eff. June 16, 2007.

Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. 2439), Sec. 7, eff. June 16, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0351. REQUIRED COMPOSITION OF LOCAL MENTAL HEALTH AUTHORITY GOVERNING BODY. (a) If a local mental health authority has a governing body, the governing body must include:

(1) for a local authority that serves only one county, the sheriff of the county as an ex officio nonvoting member;

(2) for a local authority that serves two or more counties, two sheriffs chosen in accordance with Subsection (b) as ex officio nonvoting members; and

(3) a veteran selected by a majority of the governing body members.

(b) A local mental health authority that serves two or more counties shall take the median population size of each of those counties and choose:

(1) one sheriff of a county with a population above the median population size to serve as an ex officio nonvoting member under Subsection (a); and

(2) one sheriff of a county with a population below the median population size to serve as an ex officio nonvoting member under Subsection (a).

(c) A sheriff may designate a representative to serve in the sheriff's place as an ex officio nonvoting member under Subsection (a). Except as provided by Subsection (c-1), a sheriff or representative of the sheriff serves as an ex officio nonvoting member under Subsection (a) for the duration of the applicable sheriff's term in office.

(c-1) A local mental health authority may rotate the positions of ex officio nonvoting members as chosen in accordance with Subsection (b) among the other sheriffs of the counties served by the local authority. A local authority shall consult with each sheriff of the counties served by the local authority in rotating the positions of ex officio nonvoting members under this subsection.

(d) A local mental health authority may not bar or restrict a sheriff or representative of a sheriff who serves as an ex officio nonvoting member under Subsection (a) from speaking or providing input at a meeting of the local authority's governing body.

(e) If a local mental health authority does not have a governing body, the local authority shall:

(1) for a local authority that serves only one county, consult with the sheriff of the county or a representative of the sheriff regarding the use of funds received under Section 533.035(b); or

(2) for a local authority that serves two or more counties, take the median population size of each of those counties and consult with both:

(A) a sheriff or a representative of a sheriff of a county with a population above the median population size regarding the use of funds received under Section 533.035(b); and

(B) a sheriff or a representative of a sheriff of a county with a population below the median population size regarding the use of funds received under Section 533.035(b).

(f) This section does not prevent a sheriff or representative of a sheriff from being included in the governing body of a local mental health authority as a voting member of the body.

Added by Acts 2019, 86th Leg., R.S., Ch. 962 (S.B. 632), Sec. 1, eff. September 1, 2019.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 843 (S.B. 1580), Sec. 1, eff. September 1, 2025.

Sec. 533.0352. LOCAL AUTHORITY PLANNING FOR LOCAL SERVICE AREA. (a) Each local mental health authority shall develop a local service area plan to maximize the authority's services by using the best and most cost-effective means of using federal, state, and local resources to meet the needs of the local community according to the relative priority of those needs. Each local mental health authority shall undertake to maximize federal funding.

(b) A local service area plan must be consistent with the purposes, goals, and policies stated in Section 531.001 and the department's long-range plan developed under Section 533.032.

(c) The department and a local mental health authority shall use the local authority's local service plan as the basis for contracts between the department and the local authority and for establishing the local authority's responsibility for achieving outcomes related to the needs and characteristics of the authority's local service area.

(d) In developing the local service area plan, the local mental health authority shall:

(1) solicit information regarding community needs from:

(A) representatives of the local community;

(B) consumers of community-based mental health services and members of the families of those consumers;

(C) local law enforcement agencies; and

(D) other interested persons; and

(2) consider:

(A) criteria for assuring accountability for, cost-effectiveness of, and relative value of service delivery options;

(B) goals to minimize the need for state hospital and community hospital care;

(C) goals to divert consumers of services from the criminal justice system;

(D) goals to ensure that a child with mental illness remains with the child's parent or guardian as appropriate to the child's care; and

(E) opportunities for innovation in services and service delivery.

(e) The department and the local mental health authority by contract shall enter into a performance agreement that specifies required standard outcomes for the programs administered by the local authority. Performance related to the specified outcomes must be verifiable by the department. The performance agreement must include measures related to the outputs, costs, and units of service delivered. Information regarding the outputs, costs, and units of service delivered shall be recorded in the local authority's automated data systems, and reports regarding the outputs, costs, and units of service delivered shall be submitted to the department at least annually as provided by department rule.

(f) The department and the local mental health authority shall provide an opportunity for community centers and advocacy groups to provide information or assistance in developing the specified performance outcomes under Subsection (e).

Added by Acts 2003, 78th Leg., ch. 358, Sec. 1, eff. June 18, 2003. Renumbered from Health and Safety Code, Section 533.0354 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(52), eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 962 (S.B. 632), Sec. 2, eff. September 1, 2019.

Sec. 533.03521. LOCAL NETWORK DEVELOPMENT PLAN CREATION AND APPROVAL. (a) A local mental health authority shall develop a local network development plan regarding the configuration and development of the local mental health authority's provider network. The plan must reflect local needs and priorities and maximize consumer choice and access to qualified service providers.

(b) The local mental health authority shall submit the local network development plan to the department for approval.

(c) On receipt of a local network development plan under this section, the department shall review the plan to ensure that the plan:

(1) complies with the criteria established by Section 533.0358 if the local mental health authority is providing services under that section; and

(2) indicates that the local mental health authority is reasonably attempting to solicit the development of a provider base that is:

(A) available and appropriate; and

(B) sufficient to meet the needs of consumers in the local authority's local service area.

(d) If the department determines that the local network development plan complies with Subsection (c), the department shall approve the plan.

(e) At least biennially, the department shall review a local mental health authority's local network development plan and determine whether the plan complies with Subsection (c).

(f) As part of a local network development plan, a local mental health authority annually shall post on the local authority's website a list of persons with whom the local authority had a contract or agreement in effect during all or part of the previous year, or on the date the list is posted, related to the provision of mental health services.

Added by Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. 2439), Sec. 4, eff. June 16, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0354. DISEASE MANAGEMENT PRACTICES AND JAIL DIVERSION MEASURES OF LOCAL MENTAL HEALTH AUTHORITIES. (a) A local mental health authority shall ensure the provision of assessment services, crisis services, and intensive and comprehensive services using disease management practices for adults with bipolar disorder, schizophrenia, or clinically severe depression and for children with

serious emotional illnesses. The local mental health authority shall ensure that individuals are engaged with treatment services that are:

(1) ongoing and matched to the needs of the individual in type, duration, and intensity;

(2) focused on a process of recovery designed to allow the individual to progress through levels of service;

(3) guided by evidence-based protocols and a strength-based paradigm of service; and

(4) monitored by a system that holds the local authority accountable for specific outcomes, while allowing flexibility to maximize local resources.

(a-1) In addition to the services required under Subsection (a) and using money appropriated for that purpose or money received under the Texas Health Care Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), a local mental health authority may ensure, to the extent feasible, the provision of assessment services, crisis services, and intensive and comprehensive services using disease management practices for children with serious emotional, behavioral, or mental disturbance not described by Subsection (a) and adults with severe mental illness who are experiencing significant functional impairment due to a mental health disorder not described by Subsection (a) that is defined by the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), including:

(1) major depressive disorder, including single episode or recurrent major depressive disorder;

(2) post-traumatic stress disorder;

(3) schizoaffective disorder, including bipolar and depressive types;

(4) obsessive-compulsive disorder;

(5) anxiety disorder;

(6) attention deficit disorder;

(7) delusional disorder;

(8) bulimia nervosa, anorexia nervosa, or other eating disorders not otherwise specified; or

(9) any other diagnosed mental health disorder.

(a-2) The local mental health authority shall ensure that individuals described by Subsection (a-1) are engaged with treatment services in a clinically appropriate manner.

(b) The department shall require each local mental health

authority to incorporate jail diversion strategies into the authority's disease management practices for managing adults with schizophrenia and bipolar disorder to reduce the involvement of those client populations with the criminal justice system.

(b-1) The department shall require each local mental health authority to incorporate jail diversion strategies into the authority's disease management practices to reduce the involvement of the criminal justice system in managing adults with the following disorders as defined by the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), who are not described by Subsection (b):

(1) post-traumatic stress disorder;

(2) schizoaffective disorder, including bipolar and depressive types;

(3) anxiety disorder; or

(4) delusional disorder.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.75, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(93), eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 2, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1310 (S.B. 7), Sec. 6.06, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0356. LOCAL BEHAVIORAL HEALTH AUTHORITIES. (a) The department may designate a local behavioral health authority in a local service area to provide mental health and chemical dependency services in that area. The department may delegate to an authority designated under this section the authority and responsibility for planning, policy development, coordination, resource allocation, and resource development for and oversight of mental health and chemical dependency services in that service area. An authority designated under this section has:

(1) all the responsibilities and duties of a local mental

health authority provided by Section 533.035 and by Subchapter B, Chapter 534; and

(2) the responsibility and duty to ensure that chemical dependency services are provided in the service area as described by the statewide service delivery plan adopted under Section 461A.056.

(c) In the planning and implementation of services, the authority shall give proportionate priority to mental health services and chemical dependency services that ensures that funds purchasing services are used in accordance with specific regulatory and statutory requirements that govern the respective funds.

(d) A local mental health authority may apply to the department for designation as a local behavioral health authority.

(e) The department, by contract or by a case-rate or capitated arrangement or another method of allocation, may disburse money, including federal money, to a local behavioral health authority for services.

(f) A local behavioral health authority, with the approval of the department as provided by contract, shall use money received under Subsection (e) to ensure that mental health and chemical dependency services are provided in the local service area at the same level as the level of services previously provided through:

(1) the local mental health authority; and

(2) the department.

(g) In determining whether to designate a local behavioral health authority for a service area and in determining the functions of the authority if designated, the department shall solicit and consider written comments from any interested person including community representatives, persons who are consumers of the proposed services of the authority, and family members of those consumers.

(h) An authority designated under this section shall demonstrate to the department that services involving state funds that the authority oversees comply with relevant state standards.

(i) The executive commissioner may adopt rules to govern the operations of local behavioral health authorities. The department may assign the local behavioral health authority the duty of providing a single point of entry for mental health and chemical dependency services.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 9, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0357. BEST PRACTICES CLEARINGHOUSE FOR LOCAL MENTAL HEALTH AUTHORITIES. (a) In coordination with local mental health authorities, the department shall establish an online clearinghouse of information relating to best practices of local mental health authorities regarding the provision of mental health services, development of a local provider network, and achievement of the best return on public investment in mental health services.

(b) The department shall solicit and collect from local mental health authorities that meet established outcome and performance measures, community centers, consumers and advocates with expertise in mental health or in the provision of mental health services, and other local entities concerned with mental health issues examples of best practices related to:

(1) developing and implementing a local network development plan;

(2) assembling and expanding a local provider network to increase consumer choice;

(3) creating and enforcing performance standards for providers;

(4) managing limited resources;

(5) maximizing available funding;

(6) producing the best client outcomes;

(7) ensuring consumers of mental health services have control over decisions regarding their health;

(8) developing procurement processes to protect public funds;

(9) achieving the best mental health consumer outcomes possible; and

(10) implementing strategies that effectively incorporate consumer and family involvement to develop and evaluate the provider network.

(c) The department may contract for the services of one or more contractors to develop, implement, and maintain a system of collecting and evaluating the best practices of local mental health authorities as provided by this section.

(d) The department shall encourage local mental health

authorities that successfully implement best practices in accordance with this section to mentor local mental health authorities that have service deficiencies.

(e) Before the executive commissioner may remove a local mental health authority's designation under Section 533.035(a) as a local mental health authority, the executive commissioner shall:

(1) assist the local mental health authority in attaining training and mentorship in using the best practices established in accordance with this section; and

(2) track and document the local mental health authority's improvements in the provision of service or continued service deficiencies.

(f) Subsection (e) does not apply to the removal of a local mental health authority's designation initiated at the request of a local government official who has responsibility for the provision of mental health services.

(g) The department shall implement this section using only existing resources.

(h) The department shall ensure that a local mental health authority providing best practices information to the department or mentoring another local mental health authority complies with Section 533.03521(f).

Added by Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. 2439), Sec. 6, eff. June 16, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0358. LOCAL MENTAL HEALTH AUTHORITY'S PROVISION OF SERVICES AS PROVIDER OF LAST RESORT. (a) A local mental health authority may serve as a provider of services under Section 533.035(e) only if, through the local network development plan process, the local authority determines that at least one of the following applies:

(1) interested qualified service providers are not available to provide services or no service provider meets the local authority's procurement requirements;

(2) the local authority's network of providers does not

provide a minimum level of consumer choice by:

(A) presenting consumers with two or more qualified service providers in the local authority's network for service packages; and

(B) presenting consumers with two or more qualified service providers in the local authority's network for specific services within a service package;

(3) the local authority's provider network does not provide consumers in the local service area with access to services at least equal to the level of access provided as of a date the executive commissioner specifies;

(4) the combined volume of services delivered by qualified service providers in the local network does not meet all of the local authority's service capacity for each service package identified in the local network development plan;

(5) the performance of the services by the local authority is necessary to preserve critical infrastructure and ensure continuous provision of services; or

(6) existing contracts or other agreements restrict the local authority from contracting with qualified service providers for services in the local network development plan.

(b) If a local mental health authority continues to provide services in accordance with this section, the local authority shall identify in the local authority's local network development plan:

(1) the proportion of its local network services that the local authority will provide; and

(2) the local authority's basis for its determination that the local authority must continue to provide services.

Added by Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. 2439), Sec. 6, eff. June 16, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0359. RULEMAKING FOR LOCAL MENTAL HEALTH AUTHORITIES. (a) In developing rules governing local mental health authorities under Sections 533.035, 533.03521, 533.0357, and 533.0358, the executive commissioner shall use rulemaking procedures under

Subchapter B, Chapter 2001, Government Code.

(b) The executive commissioner by rule shall prohibit a trustee or employee of a local mental health authority from soliciting or accepting from another person a benefit, including a security or stock, a gift, or another item of value, that is intended to influence the person's conduct of authority business.

Added by Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. 2439), Sec. 6, eff. June 16, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.05(b), eff. September 1, 2015.

Sec. 533.037. SERVICE PROGRAMS AND SHELTERED WORKSHOPS. (a) The department may provide mental health services through halfway houses, sheltered workshops, community centers, and other mental health services programs.

(b) The department may operate or contract for the provision of part or all of the sheltered workshop services and may contract for the sale of goods produced and services provided by a sheltered workshop program. The goods and services may be sold for cash or on credit.

(c) An operating fund may be established for each sheltered workshop the department operates. Each operating fund must be in a national or state bank that is a member of the Federal Deposit Insurance Corporation.

(d) Money derived from gifts or grants received for sheltered workshop purposes and the proceeds from the sale of sheltered workshop goods and services shall be deposited to the credit of the operating fund. The money in the fund may be spent only in the operation of the sheltered workshop to:

(1) purchase supplies, materials, services, and equipment;

(2) pay salaries of and wages to participants and employees;

(3) construct, maintain, repair, and renovate facilities and equipment; and

(4) establish and maintain a petty cash fund of not more

than $100.

(e) Money in an operating fund that is used to pay salaries of and wages to participants in the sheltered workshop program is money the department holds in trust for the participants' benefit.

(f) This section does not affect the authority or jurisdiction of a community center as prescribed by Chapter 534.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.040. SERVICES FOR CHILDREN AND YOUTH. (a) The department shall ensure the development of programs and the expansion of services at the community level for children with mental illness, or with a dual diagnosis of mental illness and an intellectual disability, and for their families. The department shall:

(1) prepare and review budgets for services for children;

(2) develop departmental policies relating to children's programs and service delivery; and

(3) increase interagency coordination activities to enhance the provision of services for children.

(b) The department shall designate an employee authorized in the department's schedule of exempt positions to be responsible for planning and coordinating services and programs for children and youth. The employee shall perform budget and policy review and provide interagency coordination of services for children and youth.

(c) The department shall designate an employee as a youth suicide prevention officer. The officer shall serve as a liaison to the Texas Education Agency and public schools on matters relating to the prevention of and response to suicide or attempted suicide by public school students.

(d) The department and the Department of Assistive and Rehabilitative Services shall:

(1) jointly develop:

(A) a continuum of care for children younger than seven years of age who have mental illness; and

(B) a plan to increase the expertise of the department's service providers in mental health issues involving

children younger than seven years of age; and

(2) coordinate, if practicable, the departments' activities and services involving children with mental illness and their families.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.46, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 57, Sec. 1, eff. May 15, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0415. MEMORANDUM OF UNDERSTANDING ON INTERAGENCY TRAINING. (a) The executive commissioner, the Texas Juvenile Justice Department, and the Texas Education Agency by rule shall adopt a joint memorandum of understanding to develop interagency training for the staffs of the department, the Texas Juvenile Justice Department, the Department of Family and Protective Services, and the Texas Education Agency who are involved in the functions of assessment, case planning, case management, and in-home or direct delivery of services to children, youth, and their families under this title. The memorandum must:

(1) outline the responsibility of each agency in coordinating and developing a plan for interagency training on individualized assessment and effective intervention and treatment services for children and dysfunctional families; and

(2) provide for the establishment of an interagency task force to:

(A) develop a training program to include identified competencies, content, and hours for completion of the training with at least 20 hours of training required each year until the program is completed;

(B) design a plan for implementing the program, including regional site selection, frequency of training, and selection of experienced clinical public and private professionals or consultants to lead the training; and

(C) monitor, evaluate, and revise the training program, including the development of additional curricula based on future training needs identified by staff and professionals.

(b) The task force consists of:

(1) one clinical professional and one training staff member from each agency, appointed by that agency; and

(2) 10 private sector clinical professionals with expertise in dealing with troubled children, youth, and dysfunctional families, two of whom are appointed by each agency.

(c) The task force shall meet at the call of the department.

(d) The commission shall act as the lead agency in coordinating the development and implementation of the memorandum.

(e) The executive commissioner and the agencies shall review and by rule revise the memorandum not later than August each year.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.04, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.47, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 13, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 15, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.042. EVALUATION OF ELDERLY RESIDENTS. (a) The department shall evaluate each elderly resident at least annually to determine if the resident can be appropriately served in a less restrictive setting.

(b) The department shall consider the proximity to the resident of family, friends, and advocates concerned with the resident's well-being in determining whether the resident should be moved from a department facility or to a different department facility. The department shall recognize that a nursing facility may not be able to meet the special needs of an elderly resident.

(c) In evaluating an elderly resident under this section and to ensure appropriate placement, the department shall identify the special needs of the resident, the types of services that will best meet those needs, and the type of facility that will best provide those services.

(d) The treating physician shall conduct the evaluation of an

elderly resident of a department facility.

(e) The department shall attempt to place an elderly resident in a less restrictive setting if the department determines that the resident can be appropriately served in that setting. The department shall coordinate the attempt with the local mental health authority.

(f) A local mental health authority shall provide continuing care for an elderly resident placed in the authority's service area under this section.

(g) The local mental health authority shall have the right of access to all residents and records of residents who request continuing care services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 5, eff. Aug. 30, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.043. PROPOSALS FOR GERIATRIC, EXTENDED, AND TRANSITIONAL CARE. (a) The department shall solicit proposals from community providers to operate:

(1) community residential programs that will provide at least the same services that an extended care unit provides for the population the provider proposes to serve; or

(2) transitional living units that will provide at least the same services that the department traditionally provides in facility-based transitional care units.

(b) The department shall solicit proposals from community providers to operate community residential programs for elderly residents at least every two years.

(c) A proposal for extended care services may be designed to serve all or part of an extended care unit's population.

(d) A proposal to operate transitional living units may provide that the community provider operate the transitional living unit in a community setting or on the grounds of a department facility.

(e) The department shall require each provider to:

(1) offer adequate assurances of ability to:

(A) provide the required services;

(B) meet department standards; and

(C) safeguard the safety and well-being of each resident; and

(2) sign a memorandum of agreement with the local mental health authority outlining the responsibilities for continuity of care and monitoring, if the provider is not the local authority.

(f) The department may fund a proposal through a contract if the provider agrees to meet the requirements prescribed by Subsection (e) and agrees to provide the services at a cost that is equal to or less than the cost to the department to provide the services.

(g) The appropriate local mental health authority shall monitor the services provided to a resident placed in a program funded under this section. The department may monitor any service for which it contracts.

(h) The department is responsible for the care of a patient in an extended care program funded under this section. The department may terminate a contract for extended care services if the program ends or does not provide the required services. The department shall provide the services or find another program to provide the services if the department terminates a contract.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.051. ALLOCATION OF OUTPATIENT MENTAL HEALTH SERVICES AND BEDS IN STATE HOSPITALS. (a) To ensure the appropriate and timely provision of mental health services to patients who voluntarily receive those services or who are ordered by a court to receive those services in civil or criminal proceedings, the department, in conjunction with the commission, shall plan for the proper and separate allocation of outpatient or community-based mental health services provided by secure and nonsecure outpatient facilities that provide residential care alternatives and mental health services and for the proper and separate allocation of beds in the state hospitals for the following two groups of patients:

(1) patients who are voluntarily receiving outpatient or community-based mental health services, voluntarily admitted to a state hospital under Chapter 572, admitted to a state hospital for

emergency detention under Chapter 573, or ordered by a court under Chapter 574 to receive inpatient mental health services at a state hospital or outpatient mental health services from an outpatient facility that provides residential care alternatives and mental health services; and

(2) patients who are ordered to participate in an outpatient treatment program to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure, or committed to a state hospital or other facility to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure, or to receive inpatient mental health services following an acquittal by reason of insanity under Chapter 46C, Code of Criminal Procedure.

(b) The plan developed by the department under Subsection (a) must include:

(1) a determination of the needs for outpatient mental health services of the two groups of patients described by Subsection (a);

(2) a determination of the minimum number of beds that the state hospital system must maintain to adequately serve the two groups of patients;

(3) a statewide plan for and the allocation of sufficient funds for meeting the outpatient mental health service needs of and for the maintenance of beds by the state hospitals for the two groups of patients; and

(4) a process to address and develop, without adverse impact to local service areas, the accessibility and availability of sufficient outpatient mental health services provided to and beds provided by the state hospitals to the two groups of patients based on the success of contractual outcomes with mental health service providers and facilities under Sections 533.034 and 533.052.

(c) To assist in the development of the plan under Subsection (a), the department shall establish and meet at least monthly with an advisory panel composed of the following persons:

(1) one representative designated by the Texas Department of Criminal Justice;

(2) one representative designated by the Texas Association of Counties;

(3) two representatives designated by the Texas Council of Community Centers, including one representative of an urban local service area and one representative of a rural local service area;

(4) two representatives designated by the County Judges and Commissioners Association of Texas, including one representative who is the presiding judge of a court with jurisdiction over mental health matters;

(5) one representative designated by the Sheriffs' Association of Texas;

(6) two representatives designated by the Texas Municipal League, including one representative who is a municipal law enforcement official;

(7) one representative designated by the Texas Conference of Urban Counties;

(8) two representatives designated by the Texas Hospital Association, including one representative who is a physician;

(9) one representative designated by the Texas Catalyst for Empowerment; and

(10) four representatives designated by the department's Council for Advising and Planning for the Prevention and Treatment of Mental and Substance Use Disorders, including:

(A) the chair of the council;

(B) one representative of the council's members who is a consumer of or advocate for mental health services;

(C) one representative of the council's members who is a consumer of or advocate for substance abuse treatment; and

(D) one representative of the council's members who is a family member of or advocate for persons with mental health and substance abuse disorders.

(d) In developing the plan under Subsection (a), the department and advisory panel shall consider:

(1) needs for outpatient mental health services of the two groups of patients described by Subsection (a);

(2) the frequency of use of beds and the historical patterns of use of beds in the state hospitals and other facilities by the two groups of patients;

(3) local needs and demands for outpatient mental health services by the two groups of patients;

(4) local needs and demands for beds in the state hospitals and other facilities for the two groups of patients;

(5) the availability of outpatient mental health service providers and inpatient mental health facilities that may be contracted with to provide outpatient mental health services and beds

for the two groups of patients;

(6) the differences between the two groups of patients with regard to:

(A) admission to and discharge from a state hospital or outpatient facility;

(B) rapid stabilization and discharge to the community;

(C) length of stay in a state hospital or outpatient facility;

(D) disputes arising from the determination of a patient's length of stay in a state hospital by a health maintenance organization or a managed care organization;

(E) third-party billing; and

(F) legal challenges or requirements related to the examination and treatment of the patients; and

(7) public input provided to the department or advisory panel in a form and at a time and place that is effective and appropriate and in a manner that complies with any applicable laws, including administrative rules.

(e) The department shall update the plan biennially.

(i) While the plan required by Subsection (a) is being developed and implemented, the department may not, pursuant to any rule, contract, or directive, impose a sanction, penalty, or fine on a local mental health authority for the authority's noncompliance with any methodology or standard adopted or applied by the department relating to the allocation of beds by authorities for the two groups of patients described by Subsection (a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 3, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0515. REGIONAL ALLOCATION OF MENTAL HEALTH BEDS. (a) In this section, "inpatient mental health facility" has the meaning assigned by Section 571.003.

(b) The commission, with input from local mental health authorities, local behavioral health authorities, stakeholders, and the forensic director appointed under Section 532.013, and after

considering any plan developed under Section 533.051, shall divide the state into regions for the purpose of allocating to each region state-funded beds in the state hospitals and other inpatient mental health facilities for patients who are:

(1) voluntarily admitted to a state hospital or other inpatient mental health facility under Subchapter B, Chapter 462, or Chapter 572;

(2) admitted to a state hospital or other inpatient mental health facility for emergency detention under Subchapter C, Chapter 462, or Chapter 573;

(3) ordered by a court to receive at a state hospital or other inpatient mental health facility inpatient chemical dependency treatment under Subchapter D, Chapter 462, or inpatient mental health services under Chapter 574;

(4) committed to a state hospital or other inpatient mental health facility to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure; or

(5) committed to a state hospital or other inpatient mental health facility to receive inpatient mental health services following an acquittal by reason of insanity under Chapter 46C, Code of Criminal Procedure.

(c) The department, in conjunction with the commission, shall convene the advisory panel described by Section 533.051(c) at least quarterly in order for the advisory panel to:

(1) develop, make recommendations to the executive commissioner or department, as appropriate, and monitor the implementation of updates to:

(A) a bed day allocation methodology for allocating to each region designated under Subsection (b) a certain number of state-funded beds in state hospitals and other inpatient mental health facilities for the patients described by Subsection (b) based on the identification and evaluation of factors that impact the use of state-funded beds by patients in a region, including clinical acuity, the prevalence of serious mental illness, and the availability of resources in the region; and

(B) a bed day utilization review protocol that includes a peer review process to:

(i) evaluate:

(a) the use of state-funded beds in state hospitals and other inpatient mental health facilities by patients

described by Subsection (b);

(b) alternatives to hospitalization for those patients;

(c) the readmission rate for those patients; and

(d) the average length of admission for those patients; and

(ii) conduct a review of the diagnostic and acuity profiles of patients described by Subsection (b) for the purpose of assisting the department, commission, and advisory panel in making informed decisions and using available resources efficiently and effectively; and

(2) receive and review status updates from the department regarding the implementation of the bed day allocation methodology and the bed day utilization review protocol.

(d) Not later than December 1 of each even-numbered year, the advisory panel shall submit to the executive commissioner for consideration a proposal for an updated bed day allocation methodology and bed day utilization review protocol, and the executive commissioner shall adopt an updated bed day allocation methodology and bed day utilization review protocol.

(e) Not later than December 1 of each even-numbered year, the department, in conjunction with the commission and the advisory panel, shall prepare and submit to the governor, the lieutenant governor, the speaker of the house of representatives, the senate finance committee, the house appropriations committee, and the standing committees of the legislature having jurisdiction over mental health and human services a report that includes:

(1) a summary of the activities of the commission, department, and advisory panel to develop or update the bed day allocation methodology and bed day utilization review protocol;

(2) the outcomes of the implementation of the bed day allocation methodology by region, including an explanation of how the actual outcomes aligned with or differed from the expected outcomes;

(3) for planning purposes, for each region, the actual value of a bed day for the two years preceding the date of the report and the projected value of a bed day for the five years following the date of the report, as calculated by the department;

(4) for each region, an evaluation of the factors in Subsection (c)(1)(A), including the availability of resources in the

region, that impact the use of state-funded beds in state hospitals and other inpatient mental health facilities by the patients described by Subsection (b);

(5) the outcomes of the implementation of the bed day utilization review protocol and the impact of the use of the protocol on the use of state-funded beds in state hospitals and other inpatient mental health facilities by the patients described by Subsection (b); and

(6) any recommendations of the department, commission, or advisory panel to enhance the effective and efficient allocation of state-funded beds in state hospitals and other inpatient mental health facilities for the patients described by Subsection (b).

Added by Acts 2015, 84th Leg., R.S., Ch. 207 (S.B. 1507), Sec. 2, eff. May 28, 2015.

Sec. 533.052. CONTRACTING WITH CERTAIN MENTAL HEALTH SERVICE PROVIDERS AND FACILITIES TO PROVIDE SERVICES AND BEDS FOR CERTAIN PERSONS. The department shall make every effort, through collaboration and contractual arrangements with local mental health authorities, to contract with and use a broad base of local community outpatient mental health service providers and inpatient mental health facilities, as appropriate, to make available a sufficient and appropriately located amount of outpatient mental health services and a sufficient and appropriately located number of beds in inpatient mental health facilities, as specified in the plan developed by the department under Section 533.051, to ensure the appropriate and timely provision of mental health services to the two groups of patients described by Section 533.051(a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 3, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.053. INFORMING COURTS OF COMMITMENT OPTIONS. The department shall develop and implement a procedure through which a court that has the authority to commit a person who is incompetent to

stand trial or who has been acquitted by reason of insanity under Chapters 46B and 46C, Code of Criminal Procedure, is aware of all of the commitment options for the person, including jail diversion and community-based programs.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 3, eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

SUBCHAPTER D. POWERS AND DUTIES RELATING TO DEPARTMENT FACILITIES

Sec. 533.081. DEVELOPMENT OF FACILITY BUDGETS. The department, in budgeting for a facility, shall use uniform costs for specific types of services a facility provides unless a legitimate reason exists and is documented for the use of other costs.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.082. DETERMINATION OF SAVINGS IN FACILITIES. (a) The department shall determine the degree to which the costs of operating department facilities for persons with mental illness in compliance with applicable standards are affected as populations in the facilities fluctuate.

(b) In making the determination, the department shall:

(1) assume that the current level of services and necessary state of repair of the facilities will be maintained; and

(2) include sufficient funds to allow the department to comply with the requirements of litigation and applicable standards.

(c) The department shall allocate to community-based mental health programs any savings realized in operating department facilities for persons with mental illness.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff.

April 2, 2015.

Sec. 533.083. CRITERIA FOR EXPANSION, CLOSURE, OR CONSOLIDATION OF FACILITY. The department shall establish objective criteria for determining when a new facility may be needed and when a facility may be expanded, closed, or consolidated.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.084. MANAGEMENT OF SURPLUS REAL PROPERTY. (a) To the extent provided by this subtitle, the department, in coordination with the executive commissioner, may lease, transfer, or otherwise dispose of any surplus real property related to the provision of services under this title, including any improvements under its management and control, or authorize the lease, transfer, or disposal of the property. Surplus property is property the executive commissioner designates as having minimal value to the present service delivery system and projects to have minimal value to the service delivery system as described in the department's long-range plan.

(b) The proceeds from the lease, transfer, or disposal of surplus real property, including any improvements, shall be deposited to the credit of the department in the Texas capital trust fund established under Chapter 2201, Government Code. The proceeds may be appropriated only for improvements to the department's system of mental health facilities.

(c) A lease proposal shall be advertised at least once a week for four consecutive weeks in at least two newspapers. One newspaper must be a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location. The other newspaper must have statewide circulation. Each lease is subject to the attorney general's approval as to substance and form. The executive commissioner shall adopt forms, rules, and contracts that, in the executive commissioner's best judgment, will protect the state's interests.

The executive commissioner may reject any or all bids.

(d) This section does not authorize the executive commissioner or department to close or consolidate a facility used to provide mental health services without first obtaining legislative approval.

(e) Notwithstanding Subsection (c), the executive commissioner, in coordination with the department, may enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section 32.107, Natural Resources Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(5), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1175, Sec. 2, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.79, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0844. MENTAL HEALTH COMMUNITY SERVICES ACCOUNT. (a) The mental health community services account is an account in the general revenue fund that may be appropriated only for the provision of mental health services by or under contract with the department.

(b) The department shall deposit to the credit of the mental health community services account any money donated to the state for inclusion in the account, including life insurance proceeds designated for deposit to the account.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.80, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.085. FACILITIES FOR INMATE AND PAROLEE CARE. (a) With the written approval of the governor, the department may contract with the Texas Department of Criminal Justice to transfer facilities to the Texas Department of Criminal Justice or otherwise provide facilities for:

(1) inmates with mental illness in the custody of the Texas Department of Criminal Justice; or

(2) persons with mental illness paroled or released under the supervision of the Texas Department of Criminal Justice.

(b) An agency must report to the governor the agency's reasons for proposing to enter into a contract under this section and request the governor's approval.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.107, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.087. LEASE OF REAL PROPERTY. (a) The department, in coordination with the executive commissioner, may lease real property related to the provision of services under this title, including any improvements under the department's management and control, regardless of whether the property is surplus property. Except as provided by Subsection (c), the department, in coordination with the executive commissioner, may award a lease of real property only:

(1) at the prevailing market rate; and

(2) by competitive bid.

(b) The commission shall advertise a proposal for lease at least once a week for four consecutive weeks in:

(1) a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location; and

(2) a newspaper of statewide circulation.

(c) The department, in coordination with the executive commissioner, may lease real property related to the provision of services under this title or an improvement for less than the prevailing market rate, without advertisement or without competitive bidding, if:

(1) the executive commissioner determines that sufficient public benefit will be derived from the lease; and

(2) the property is leased to:

(A) a federal or state agency;

(B) a unit of local government;

(C) a not-for-profit organization; or

(D) an entity related to the department by a service contract.

(d) The executive commissioner shall adopt leasing rules, forms, and contracts that will protect the state's interests.

(e) The executive commissioner may reject any bid.

(f) This section does not authorize the executive commissioner or department to close or consolidate a facility used to provide mental health services without legislative approval.

(g) Notwithstanding Subsections (a) and (b), the executive commissioner, in coordination with the department, may enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section 32.107, Natural Resources Code.

Added by Acts 1995, 74th Leg., ch. 821, Sec. 10, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1175, Sec. 3, eff. June 18, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

SUBCHAPTER E. JAIL DIVERSION PROGRAM

Sec. 533.108. PRIORITIZATION OF FUNDING FOR DIVERSION OF PERSONS FROM INCARCERATION IN CERTAIN COUNTIES. (a) A local mental health authority may develop and may prioritize its available funding for:

(1) a system to divert members of the priority population, including those members with co-occurring substance abuse disorders, before their incarceration or other contact with the criminal justice system, to services appropriate to their needs, including:

(A) screening and assessment services; and

(B) treatment services, including:

(i) assertive community treatment services;

(ii) inpatient crisis respite services;

(iii) medication management services;

(iv) short-term residential services;
(v) shelter care services;
(vi) crisis respite residential services;
(vii) outpatient integrated mental health services;
(viii) co-occurring substance abuse treatment services;
(ix) psychiatric rehabilitation and service coordination services;
(x) continuity of care services; and
(xi) services consistent with the Texas Correctional Office on Offenders with Medical or Mental Impairments model;

(2) specialized training of local law enforcement and court personnel to identify and manage offenders or suspects who may be members of the priority population; and

(3) other model programs for offenders and suspects who may be members of the priority population, including crisis intervention training for law enforcement personnel.

(b) A local mental health authority developing a system, training, or a model program under Subsection (a) shall collaborate with other local resources, including local law enforcement and judicial systems and local personnel.

(c) A local mental health authority may not implement a system, training, or a model program developed under this section until the system, training, or program is approved by the department.

Added by Acts 2003, 78th Leg., ch. 1214, Sec. 3, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

CHAPTER 533A. POWERS AND DUTIES OF DEPARTMENT OF AGING AND DISABILITY SERVICES

SUBCHAPTER A. GENERAL POWERS AND DUTIES

Sec. 533A.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Department facility" means a facility listed in Section 532A.001(b).

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner by this title or another law conflicts with any of the following provisions of the Government Code, the Government Code provision controls:

(1) Subchapter A, Chapter 524;
(2) Section 524.0101;
(3) Sections 524.0151(a)(2) and (b);
(4) Section 524.0202; and
(5) Section 525.0254.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.57, eff. April 1, 2025.

Sec. 533A.003. USE OF FUNDS FOR VOLUNTEER PROGRAMS IN LOCAL AUTHORITIES AND COMMUNITY CENTERS. (a) To develop or expand a volunteer intellectual disability program in a local intellectual and developmental disability authority or a community center, the department may allocate available funds appropriated for providing volunteer intellectual disability services.

(b) The department shall develop formal policies that encourage the growth and development of volunteer intellectual disability services in local intellectual and developmental disability authorities and community centers.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.004. LIENS. (a) In this section, "department

facility" includes the ICF-IID component of the Rio Grande State Center.

(a-1) The department and each community center has a lien to secure reimbursement for the cost of providing support, maintenance, and treatment to a client with an intellectual disability in an amount equal to the amount of reimbursement sought.

(b) The amount of the reimbursement sought may not exceed:

(1) the amount the department is authorized to charge under Subchapter D, Chapter 593, if the client received the services in a department facility; or

(2) the amount the community center is authorized to charge under Section 534.017 if the client received the services in a community center.

(c) The lien attaches to:

(1) all nonexempt real and personal property owned or later acquired by the client or by a person legally responsible for the client's support;

(2) a judgment of a court in this state or a decision of a public agency in a proceeding brought by or on behalf of the client to recover damages for an injury for which the client was admitted to a department facility or community center; and

(3) the proceeds of a settlement of a cause of action or a claim by the client for an injury for which the client was admitted to a department facility or community center.

(d) To secure the lien, the department or community center must file written notice of the lien with the county clerk of the county in which:

(1) the client, or the person legally responsible for the client's support, owns property; or

(2) the client received or is receiving services.

(e) The notice must contain:

(1) the name and address of the client;

(2) the name and address of the person legally responsible for the client's support, if applicable;

(3) the period during which the department facility or community center provided services or a statement that services are currently being provided; and

(4) the name and location of the department facility or community center.

(f) Not later than the 31st day before the date on which the

department files the notice of the lien with the county clerk, the department shall notify by certified mail the client and the person legally responsible for the client's support. The notice must contain a copy of the charges, the statutory procedures relating to filing a lien, and the procedures to contest the charges. The executive commissioner by rule shall prescribe the procedures to contest the charges.

(g) The county clerk shall record on the written notice the name of the client, the name and address of the department facility or community center, and, if requested by the person filing the lien, the name of the person legally responsible for the client's support. The clerk shall index the notice record in the name of the client and, if requested by the person filing the lien, in the name of the person legally responsible for the client's support.

(h) The notice record must include an attachment that contains an account of the charges made by the department facility or community center and the amount due to the facility or center. The director or superintendent of the facility or center must swear to the validity of the account. The account is presumed to be correct, and in a suit to cancel the debt and discharge the lien or to foreclose on the lien, the account is sufficient evidence to authorize a court to render a judgment for the facility or center.

(i) To discharge the lien, the director or superintendent of the department facility or community center or a claims representative of the facility or center must execute and file with the county clerk of the county in which the lien notice is filed a certificate stating that the debt covered by the lien has been paid, settled, or released and authorizing the clerk to discharge the lien. The county clerk shall record a memorandum of the certificate and the date on which it is filed. The filing of the certificate and recording of the memorandum discharge the lien.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.005. EASEMENTS. The department, in coordination with the executive commissioner, may grant a temporary or permanent easement or right-of-way on land held by the department that relates to services provided under this title. The department, in

coordination with the executive commissioner, must grant an easement or right-of-way on terms and conditions the executive commissioner considers to be in the state's best interest.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.006. REPORTING OF ALLEGATIONS AGAINST PHYSICIAN. (a) The executive commissioner shall submit a report to the Texas Medical Board not later than 30 days after the last day of a month during which any allegation is received by the commission that a physician employed by or under contract with the commission in relation to services provided under this title has committed an action that constitutes a ground for the denial or revocation of the physician's license under Section 164.051, Occupations Code. The report must be made in the manner provided by Section 154.051, Occupations Code.

(b) The department shall provide to the Texas Medical Board a printed and electronic copy of any report or finding relating to an investigation of an allegation reported to that board.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.31, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 15, eff. September 1, 2021.

Sec. 533A.007. USE OF CRIMINAL HISTORY RECORD INFORMATION. (a) Subject to any applicable requirements of Chapter 250, the department, in relation to services provided under this title, or a local intellectual and developmental disability authority or community center, may deny employment or volunteer status to an applicant if:

(1) the department, authority, or community center determines that the applicant's criminal history record information indicates that the person is not qualified or suitable; or

(2) the applicant fails to provide a complete set of fingerprints if the department establishes that method of obtaining

criminal history record information.

(b) The executive commissioner shall adopt rules relating to the use of information obtained under this section, including rules that prohibit an adverse personnel action based on arrest warrant or wanted persons information received by the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.0075. EXCHANGE OF EMPLOYMENT RECORDS. The department, in relation to services provided under this title, or a local intellectual and developmental disability authority or community center, may exchange with one another the employment records of an employee or former employee who applies for employment at the department, authority, or community center.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.008. EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY. (a) Each department facility and community center shall annually assess the feasibility of converting entry level support positions into employment opportunities for individuals with mental illness or an intellectual disability in the facility's or center's service area.

(b) In making the assessment, the department facility or community center shall consider the feasibility of using an array of job opportunities that may lead to competitive employment, including sheltered employment and supported employment.

(c) Each department facility and community center shall annually submit to the department a report showing that the facility or center has complied with Subsection (a).

(d) The department shall compile information from the reports and shall make the information available to each designated provider in a service area.

(e) Each department facility and community center shall ensure that designated staff are trained to:

(1) assist clients through the Social Security Administration disability determination process;

(2) provide clients and their families information related to the Social Security Administration Work Incentive Provisions; and

(3) assist clients in accessing and utilizing the Social Security Administration Work Incentive Provisions to finance training, services, and supports needed to obtain career goals.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.009. EXCHANGE OF CLIENT RECORDS. (a) Department facilities, local intellectual and developmental disability authorities, community centers, other designated providers, and subcontractors of intellectual disability services are component parts of one service delivery system within which client records may be exchanged without the client's consent.

(b) The executive commissioner shall adopt rules to carry out the purposes of this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.0095. COLLECTION AND MAINTENANCE OF INFORMATION REGARDING PERSONS FOUND NOT GUILTY BY REASON OF INSANITY. (a) The executive commissioner by rule shall require the department to collect information and maintain current records regarding a person found not guilty of an offense by reason of insanity under Chapter 46C, Code of Criminal Procedure, who is:

(1) committed by a court for long-term placement in a residential care facility under Chapter 593 or under Chapter 46C, Code of Criminal Procedure; or

(2) ordered by a court to receive outpatient or community-based treatment and supervision.

(b) Information maintained by the department under this section must include the name and address of any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

(c) The department shall file annually with the presiding officer of each house of the legislature a written report containing the name of each person described by Subsection (a), the name and

address of any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.010. INFORMATION RELATING TO CONDITION. (a) A person, including a hospital, nursing facility, medical society, or other organization, may provide to the department or a medical organization, hospital, or hospital committee any information, including interviews, reports, statements, or memoranda relating to a person's condition and treatment for use in a study to reduce mental illness and intellectual disabilities.

(b) The department or a medical organization, hospital, or hospital committee receiving the information may use or publish the information only to advance mental health and intellectual disability research and education in order to reduce mental illness and intellectual disabilities. A summary of the study may be released for general publication.

(c) The identity of a person whose condition or treatment is studied is confidential and may not be revealed under any circumstances. Information provided under this section and any finding or conclusion resulting from the study is privileged information.

(d) A person is not liable for damages or other relief if the person:

(1) provides information under this section;

(2) releases or publishes the findings and conclusions of the person or organization to advance mental health and intellectual disability research and education; or

(3) releases or publishes generally a summary of a study.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.011. RETURN OF PERSON WITH AN INTELLECTUAL DISABILITY TO STATE OF RESIDENCE. (a) In this section, "department facility" includes the ICF-IID component of the Rio Grande State Center.

(a-1) The department may return a nonresident person with an intellectual disability who is committed to a department facility in this state to the proper agency of the person's state of residence.

(b) The department may permit the return of a resident of this state who is committed to a facility for persons with an intellectual disability in another state.

(c) The department may enter into reciprocal agreements with the proper agencies of other states to facilitate the return of persons committed to department facilities in this state, or facilities for persons with an intellectual disability in another state, to the state of their residence.

(d) The director of a department facility may detain for not more than 96 hours pending a court order in a commitment proceeding in this state a person with an intellectual disability returned to this state.

(e) The state returning a person with an intellectual disability to another state shall bear the expenses of returning the person.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.012. COOPERATION OF STATE AGENCIES. At the department's request and in coordination with the executive commissioner, all state departments, agencies, officers, and employees shall cooperate with the department in activities that are consistent with their functions and that relate to services provided under this title.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.015. UNANNOUNCED INSPECTIONS. The department may make any inspection of a department facility or program under the department's jurisdiction under this title without announcing the inspection.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.016. CERTAIN PROCUREMENTS OF GOODS AND SERVICES BY SERVICE PROVIDERS. (a) This section does not apply to a "health and human services agency," as that term is defined by Section 521.0001, Government Code.

(a-1) A state agency, local agency, or local intellectual and developmental disability authority that expends public money to acquire goods or services in connection with providing or coordinating the provision of intellectual disability services may satisfy the requirements of any state law requiring procurements by competitive bidding or competitive sealed proposals by procuring goods or services with the public money in accordance with Section 533A.017 or in accordance with:

(1) Section 32.043 or 32.044, Human Resources Code, if the entity is a public hospital subject to those laws; or

(2) this section, if the entity is not covered by Subdivision (1).

(b) An agency or authority under Subsection (a-1)(2) may acquire goods or services by any procurement method that provides the best value to the agency or authority. The agency or authority shall document that the agency or authority considered all relevant factors under Subsection (c) in making the acquisition.

(c) Subject to Subsection (d), the agency or authority may consider all relevant factors in determining the best value, including:

(1) any installation costs;

(2) the delivery terms;

(3) the quality and reliability of the vendor's goods or services;

(4) the extent to which the goods or services meet the agency's or authority's needs;

(5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements;

(6) the impact on the ability of the agency or authority to comply with laws and rules relating to historically underutilized businesses or relating to the procurement of goods and services from

persons with disabilities;

(7) the total long-term cost to the agency or authority of acquiring the vendor's goods or services;

(8) the cost of any employee training associated with the acquisition;

(9) the effect of an acquisition on the agency's or authority's productivity;

(10) the acquisition price; and

(11) any other factor relevant to determining the best value for the agency or authority in the context of a particular acquisition.

(d) If a state agency to which this section applies acquires goods or services with a value that exceeds $100,000, the state agency shall consult with and receive approval from the commission before considering factors other than price and meeting specifications.

(e) The state auditor or the executive commissioner may audit the agency's or authority's acquisitions of goods and services under this section to the extent state money or federal money appropriated by the state is used to make the acquisitions.

(f) The agency or authority may adopt rules and procedures for the acquisition of goods and services under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.58, eff. April 1, 2025.

Sec. 533A.017. PARTICIPATION IN PURCHASING CONTRACTS OR GROUP PURCHASING PROGRAM. (a) This section does not apply to a "health and human services agency," as that term is defined by Section 521.0001, Government Code.

(b) The executive commissioner may allow a state agency, local agency, or local intellectual and developmental disability authority that expends public money to purchase goods or services in connection with providing or coordinating the provision of intellectual disability services to purchase goods or services with the public money by participating in:

(1) a contract the executive commissioner has made to purchase goods or services; or

(2) a group purchasing program established or designated by the executive commissioner that offers discounts to providers of intellectual disability services.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.59, eff. April 1, 2025.

Sec. 533A.018. REVENUE FROM SPECIAL OLYMPICS TEXAS LICENSE PLATES. Annually, the department shall distribute the money deposited under Section 504.621, Transportation Code, to the credit of the account created in the trust fund created under Section 504.6012, Transportation Code, to Special Olympics Texas to be used only to pay for costs associated with training and with area and regional competitions of the Special Olympics Texas.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

SUBCHAPTER B. POWERS AND DUTIES RELATING TO PROVISION OF INTELLECTUAL DISABILITY SERVICES

Sec. 533A.031. DEFINITIONS. In this subchapter:

(1) "Elderly resident" means a person 65 years of age or older residing in a department facility.

(2) "ICF-IID and related waiver programs" includes ICF-IID Section 1915(c) waiver programs, home and community-based services, Texas home living waiver services, or another Medicaid program serving persons with an intellectual disability.

(3) "Qualified service provider" means an entity that meets requirements for service providers established by the executive commissioner.

(4) "Section 1915(c) waiver program" means a federally funded Medicaid program of the state that is authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)).

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.032. LONG-RANGE PLANNING. (a) The department shall have a long-range plan relating to the provision of services under this title covering at least six years that includes at least the provisions required by Section 525.0156, Government Code, and Chapter 2056, Government Code. The plan must cover the provision of services in and policies for state-operated institutions and ensure that the medical needs of the most medically fragile persons with an intellectual disability the department serves are met.

(b) In developing the plan, the department shall:

(1) solicit input from:

(A) local intellectual and developmental disability authorities;

(B) community representatives;

(C) consumers of intellectual disability services, including consumers of campus-based and community-based services, and family members of consumers of those services; and

(D) other interested persons; and

(2) consider the report developed under Subsection (c).

(c) The department shall develop a report containing information and recommendations regarding the most efficient long-term use and management of the department's campus-based facilities. The report must:

(1) project future bed requirements for state supported living centers;

(2) document the methodology used to develop the projection of future bed requirements;

(3) project maintenance costs for institutional facilities;

(4) recommend strategies to maximize the use of institutional facilities; and

(5) specify how each state supported living center will:

(A) serve and support the communities and consumers in its service area; and

(B) fulfill statewide needs for specialized services.

(d) In developing the report under Subsection (c), the department shall:

(1) conduct two public meetings, one meeting to be held at

the beginning of the process and the second meeting to be held at the end of the process, to receive comments from interested parties; and

(2) consider:

(A) the medical needs of the most medically fragile of its clients with an intellectual disability;

(B) the provision of services to clients with a severe and profound intellectual disability and to persons with an intellectual disability who are medically fragile or have behavioral problems;

(C) the program and service preference information collected under Section 533A.038; and

(D) input solicited from consumers of services of state supported living centers.

(g) The department shall:

(1) attach the report required by Subsection (c) to the department's legislative appropriations request for each biennium;

(2) at the time the department presents its legislative appropriations request, present the report to the:

(A) governor;

(B) governor's budget office;

(C) lieutenant governor;

(D) speaker of the house of representatives;

(E) Legislative Budget Board; and

(F) commission; and

(3) update the department's long-range plan biennially and include the report in the plan.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.60, eff. April 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 1147 (S.B. 956), Sec. 4, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 9.004(a), eff. September 1, 2025.

Sec. 533A.0325. CONTINUUM OF SERVICES IN DEPARTMENT FACILITIES. The executive commissioner by rule shall establish criteria regarding

the uses of department facilities as part of a full continuum of services under this title.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.0335. COMPREHENSIVE ASSESSMENT AND RESOURCE ALLOCATION PROCESS. (a) In this section:

(1) "Advisory committee" means the Intellectual and Developmental Disability System Redesign Advisory Committee established under Section 542.0052, Government Code.

(2) "Functional need," "ICF-IID program," and "Medicaid waiver program" have the meanings assigned those terms by Section 542.0001, Government Code.

(b) Subject to the availability of federal funding, the department shall develop and implement a comprehensive assessment instrument and a resource allocation process for individuals with intellectual and developmental disabilities as needed to ensure that each individual with an intellectual or developmental disability receives the type, intensity, and range of services that are both appropriate and available, based on the functional needs of that individual, if the individual receives services through one of the following:

(1) a Medicaid waiver program;

(2) the ICF-IID program; or

(3) an intermediate care facility operated by the state and providing services for individuals with intellectual and developmental disabilities.

(c) The department, in consultation with the advisory committee, shall establish a prior authorization process for requests for supervised living or residential support services available in the home and community-based services (HCS) Medicaid waiver program. The process must ensure that supervised living or residential support services available in the home and community-based services (HCS) Medicaid waiver program are available only to individuals for whom a more independent setting is not appropriate or available.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.61, eff. April 1, 2025.

Sec. 533A.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED SERVICES. The department may cooperate, negotiate, and contract with local agencies, hospitals, private organizations and foundations, community centers, physicians, and other persons to plan, develop, and provide community-based intellectual disability services.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.0345. STATE AGENCY SERVICES STANDARDS. (a) The executive commissioner by rule shall develop model program standards for intellectual disability services for use by each state agency that provides or pays for intellectual disability services. The department shall provide the model standards to each agency that provides intellectual disability services as identified by the commission.

(b) Model standards developed under Subsection (a) must be designed to improve the consistency of intellectual disability services provided by or through a state agency.

(c) Biennially the department shall review the model standards developed under Subsection (a) and determine whether each standard contributes effectively to the consistency of service delivery by state agencies.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.035. LOCAL INTELLECTUAL AND DEVELOPMENTAL DISABILITY AUTHORITIES. (a) The executive commissioner shall designate a local intellectual and developmental disability authority in one or more local service areas. The executive commissioner may delegate to the local authority the authority and responsibility of the executive commissioner, the commission, or a department of the commission related to planning, policy development, coordination, including coordination with criminal justice entities, resource allocation, and

resource development for and oversight of intellectual disability services in the most appropriate and available setting to meet individual needs in that service area. The executive commissioner may designate a single entity as both the local mental health authority under Chapter 533 and the local intellectual and developmental disability authority under this chapter for a service area.

(b) The department by contract or other method of allocation, including a case-rate or capitated arrangement, may disburse to a local intellectual and developmental disability authority department federal and department state funds to be spent in the local service area for community intellectual disability services.

(c) A local intellectual and developmental disability authority, with the approval of the department, shall use the funds received under Subsection (b) to ensure intellectual disability services are provided in the local service area. The local authority shall consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money in:

(1) assembling a network of service providers;

(2) making recommendations relating to the most appropriate and available treatment alternatives for individuals in need of intellectual disability services; and

(3) procuring services for a local service area, including a request for proposal or open-enrollment procurement method.

(d) A local intellectual and developmental disability authority shall demonstrate to the department that the services that the authority provides directly or through subcontractors and that involve state funds comply with relevant state standards.

(e) A local intellectual and developmental disability authority may serve as a provider of ICF-IID and related waiver programs only if:

(1) the local authority complies with the limitations prescribed by Section 533A.0355(d); or

(2) the ICF-IID and related waiver programs are necessary to ensure the availability of services and the local authority demonstrates to the commission that there is not a willing ICF-IID and related waiver program qualified service provider in the local authority's service area where the service is needed.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335,

eff. April 2, 2015.

Sec. 533A.0352. LOCAL AUTHORITY PLANNING FOR LOCAL SERVICE AREA. (a) Each local intellectual and developmental disability authority shall develop a local service area plan to maximize the authority's services by using the best and most cost-effective means of using federal, state, and local resources to meet the needs of the local community according to the relative priority of those needs. Each local intellectual and developmental disability authority shall undertake to maximize federal funding.

(b) A local service area plan must be consistent with the purposes, goals, and policies stated in Section 531.001 and the department's long-range plan developed under Section 533A.032.

(c) The department and a local intellectual and developmental disability authority shall use the local authority's local service plan as the basis for contracts between the department and the local authority and for establishing the local authority's responsibility for achieving outcomes related to the needs and characteristics of the authority's local service area.

(d) In developing the local service area plan, the local intellectual and developmental disability authority shall:

(1) solicit information regarding community needs from:

(A) representatives of the local community;

(B) consumers of community-based intellectual disability services and members of the families of those consumers;

(C) consumers of services of state supported living centers, members of families of those consumers, and members of state supported living center volunteer services councils, if a state supported living center is located in the local service area of the local authority; and

(D) other interested persons; and

(2) consider:

(A) criteria for assuring accountability for, cost-effectiveness of, and relative value of service delivery options;

(B) goals to ensure a client with an intellectual disability is placed in the least restrictive environment appropriate to the person's care;

(C) opportunities for innovation to ensure that the local authority is communicating to all potential and incoming

consumers about the availability of services of state supported living centers for persons with an intellectual disability in the local service area of the local authority;

(D) goals to divert consumers of services from the criminal justice system; and

(E) opportunities for innovation in services and service delivery.

(e) The department and the local intellectual and developmental disability authority by contract shall enter into a performance agreement that specifies required standard outcomes for the programs administered by the local authority. Performance related to the specified outcomes must be verifiable by the department. The performance agreement must include measures related to the outputs, costs, and units of service delivered. Information regarding the outputs, costs, and units of service delivered shall be recorded in the local authority's automated data systems, and reports regarding the outputs, costs, and units of service delivered shall be submitted to the department at least annually as provided by department rule.

(f) The department and the local intellectual and developmental disability authority shall provide an opportunity for community centers and advocacy groups to provide information or assistance in developing the specified performance outcomes under Subsection (e).

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.0355. LOCAL INTELLECTUAL AND DEVELOPMENTAL DISABILITY AUTHORITY RESPONSIBILITIES. (a) The executive commissioner shall adopt rules establishing the roles and responsibilities of local intellectual and developmental disability authorities.

(b) In adopting rules under this section, the executive commissioner must include rules regarding the following local intellectual and developmental disability authority responsibilities:

(1) access;

(2) intake;

(3) eligibility functions;

(4) enrollment, initial person-centered assessment, and service authorization;

(5) utilization management;

(6) safety net functions, including crisis management services and assistance in accessing facility-based care;

(7) service coordination functions;

(8) provision and oversight of state general revenue services;

(9) local planning functions, including stakeholder involvement, technical assistance and training, and provider complaint and resolution processes; and

(10) processes to assure accountability in performance, compliance, and monitoring.

(c) In determining eligibility under Subsection (b)(3), a local intellectual and developmental disability authority must offer a state supported living center as an option among the residential services and other community living options available to an individual who is eligible for those services and who meets the department's criteria for state supported living center admission, regardless of whether other residential services are available to the individual.

(d) In establishing a local intellectual and developmental disability authority's role as a qualified service provider of ICF-IID and related waiver programs under Section 533A.035(e), the executive commissioner shall require the local intellectual and developmental disability authority to:

(1) base the local authority's provider capacity on the local authority's August 2004 enrollment levels for the waiver programs the local authority operates and, if the local authority's enrollment levels exceed those levels, to reduce the levels by attrition; and

(2) base any increase in the local authority's provider capacity on:

(A) the local authority's state-mandated conversion from an ICF-IID program to a Section 1915(c) waiver program allowing for a permanent increase in the local authority's provider capacity in accordance with the number of persons who choose the local authority as their provider;

(B) the local authority's voluntary conversion from an ICF-IID program to a Section 1915(c) waiver program allowing for a temporary increase in the local authority's provider capacity, to be reduced by attrition, in accordance with the number of persons who choose the local authority as their provider;

(C) the local authority's refinancing from services funded solely by state general revenue to a Medicaid program allowing for a temporary increase in the local authority's provider capacity, to be reduced by attrition, in accordance with the number of persons who choose the local authority as their provider; or

(D) other extenuating circumstances that:

(i) are monitored and approved by the department;

(ii) do not include increases that unnecessarily promote the local authority's provider role over its role as a local intellectual and developmental disability authority; and

(iii) may include increases necessary to accommodate a family-specific or consumer-specific circumstance and choice.

(e) Any increase based on extenuating circumstances under Subsection (d)(2)(D) is considered a temporary increase in the local intellectual and developmental disability authority's provider capacity, to be reduced by attrition.

(f) At least biennially, the department shall review and determine the local intellectual and developmental disability authority's status as a qualified service provider in accordance with criteria that includes the consideration of the local authority's ability to assure the availability of services in its area, including:

(1) program stability and viability;

(2) the number of other qualified service providers in the area; and

(3) the geographical area in which the local authority is located.

(g) The department shall ensure that local services delivered further the following goals:

(1) to provide individuals with the information, opportunities, and support to make informed decisions regarding the services for which the individual is eligible;

(2) to respect the rights, needs, and preferences of an individual receiving services; and

(3) to integrate individuals with intellectual and developmental disabilities into the community in accordance with relevant independence initiatives and permanency planning laws.

(h) The department shall ensure that local intellectual and developmental disability authorities are informing and counseling

individuals and their legally authorized representatives, if applicable, about all program and service options for which the individuals are eligible in accordance with Section 533A.038(d), including options such as the availability and types of ICF-IID placements for which an individual may be eligible while the individual is on a department interest list or other waiting list for other services.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.03551. FLEXIBLE, LOW-COST HOUSING OPTIONS. (a) To the extent permitted under federal law and regulations, the executive commissioner shall adopt or amend rules as necessary to allow for the development of additional housing supports for individuals with disabilities, including individuals with intellectual and developmental disabilities, in urban and rural areas, including:

(1) a selection of community-based housing options that comprise a continuum of integration, varying from most to least restrictive, that permits individuals to select the most integrated and least restrictive setting appropriate to the individual's needs and preferences;

(2) provider-owned and non-provider-owned residential settings;

(3) assistance with living more independently; and

(4) rental properties with on-site supports.

(b) The department, in cooperation with the Texas Department of Housing and Community Affairs, the Department of Agriculture, the Texas State Affordable Housing Corporation, and the Intellectual and Developmental Disability System Redesign Advisory Committee established under Section 542.0052, Government Code, shall coordinate with federal, state, and local public housing entities as necessary to expand opportunities for accessible, affordable, and integrated housing to meet the complex needs of individuals with disabilities, including individuals with intellectual and developmental disabilities.

(c) The department shall develop a process to receive input from statewide stakeholders to ensure the most comprehensive review of opportunities and options for housing services described by this

section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.62, eff. April 1, 2025.

Sec. 533A.03552. BEHAVIORAL SUPPORTS FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES AT RISK OF INSTITUTIONALIZATION; INTERVENTION TEAMS. (a) Subject to the availability of federal funding, the department shall develop and implement specialized training for providers, family members, caregivers, and first responders providing direct services and supports to individuals with intellectual and developmental disabilities and behavioral health needs who are at risk of institutionalization.

(b) Subject to the availability of federal funding, the department shall establish one or more behavioral health intervention teams to provide services and supports to individuals with intellectual and developmental disabilities and behavioral health needs who are at risk of institutionalization. An intervention team may include a:

(1) psychiatrist or psychologist;
(2) physician;
(3) registered nurse;
(4) pharmacist or representative of a pharmacy;
(5) behavior analyst;
(6) social worker;
(7) crisis coordinator;
(8) peer specialist; and
(9) family partner.

(c) In providing services and supports, a behavioral health intervention team established by the department shall:

(1) use the team's best efforts to ensure that an individual remains in the community and avoids institutionalization;

(2) focus on stabilizing the individual and assessing the individual for intellectual, medical, psychiatric, psychological, and other needs;

(3) provide support to the individual's family members and other caregivers;

(4) provide intensive behavioral assessment and training to assist the individual in establishing positive behaviors and continuing to live in the community; and

(5) provide clinical and other referrals.

(d) The department shall ensure that members of a behavioral health intervention team established under this section receive training on trauma-informed care, which is an approach to providing care to individuals with behavioral health needs based on awareness that a history of trauma or the presence of trauma symptoms may create the behavioral health needs of the individual.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.037. SERVICE PROGRAMS AND SHELTERED WORKSHOPS. (a) The department may provide intellectual disability services through halfway houses, sheltered workshops, community centers, and other intellectual disability services programs.

(b) The department may operate or contract for the provision of part or all of the sheltered workshop services and may contract for the sale of goods produced and services provided by a sheltered workshop program. The goods and services may be sold for cash or on credit.

(c) An operating fund may be established for each sheltered workshop the department operates. Each operating fund must be in a national or state bank that is a member of the Federal Deposit Insurance Corporation.

(d) Money derived from gifts or grants received for sheltered workshop purposes and the proceeds from the sale of sheltered workshop goods and services shall be deposited to the credit of the operating fund. The money in the fund may be spent only in the operation of the sheltered workshop to:

(1) purchase supplies, materials, services, and equipment;

(2) pay salaries of and wages to participants and employees;

(3) construct, maintain, repair, and renovate facilities and equipment; and

(4) establish and maintain a petty cash fund of not more than $100.

(e) Money in an operating fund that is used to pay salaries of and wages to participants in the sheltered workshop program is money the department holds in trust for the participants' benefit.

(f) This section does not affect the authority or jurisdiction of a community center as prescribed by Chapter 534.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.038. FACILITIES AND SERVICES FOR CLIENTS WITH AN INTELLECTUAL DISABILITY. (a) In this section, "department facility" includes the ICF-IID component of the Rio Grande State Center.

(a-1) The department may designate all or any part of a department facility as a special facility for the diagnosis, special training, education, supervision, treatment, or care of clients with an intellectual disability.

(b) The department may specify the facility in which a client with an intellectual disability under the department's jurisdiction is placed.

(c) The department may maintain day classes at a department facility for the convenience and benefit of clients with an intellectual disability of the community in which the facility is located and who are not capable of enrollment in a public school system's regular or special classes.

(d) A person with an intellectual disability, or a person's legally authorized representative, seeking residential services shall receive a clear explanation of programs and services for which the person is determined to be eligible, including state supported living centers, community ICF-IID programs, waiver services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), or other services. The preferred programs and services chosen by the person or the person's legally authorized representative shall be documented in the person's record. If the preferred programs or services are not available, the person or the person's legally authorized representative shall be given assistance in gaining access to alternative services and the selected waiting list.

(e) The department shall ensure that the information regarding program and service preferences collected under Subsection (d) is documented and maintained in a manner that permits the department to access and use the information for planning activities conducted under Section 533A.032.

(f) The department may spend money appropriated for the state supported living center system only in accordance with limitations imposed by the General Appropriations Act.

(g) In addition to the explanation required under Subsection (d), the department shall ensure that each person inquiring about residential services receives:

(1) a pamphlet or similar informational material explaining that any programs and services for which the person is determined to be eligible, including state supported living centers, community ICF-IID programs, waiver services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), or other services, may be an option available to an individual who is eligible for those services; and

(2) information relating to whether appropriate residential services are available in each program and service for which the person is determined to be eligible, including state supported living centers, community ICF-IID programs, waiver services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), or other services located nearest to the residence of the proposed resident.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.040. SERVICES FOR CHILDREN AND YOUTH. The department shall ensure the development of programs and the expansion of services at the community level for children with an intellectual disability, or with a dual diagnosis of an intellectual disability and mental illness, and for their families. The department shall:

(1) prepare and review budgets for services for children;

(2) develop departmental policies relating to children's programs and service delivery; and

(3) increase interagency coordination activities to enhance the provision of services for children.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.0415. MEMORANDUM OF UNDERSTANDING ON INTERAGENCY TRAINING. (a) The executive commissioner, the Texas Juvenile Justice Department, and the Texas Education Agency by rule shall adopt a joint memorandum of understanding to develop interagency training for the staffs of the department, the Texas Juvenile Justice Department, and the Texas Education Agency who are involved in the functions of assessment, case planning, case management, and in-home or direct delivery of services to children, youth, and their families under this title. The memorandum must:

(1) outline the responsibility of each agency in coordinating and developing a plan for interagency training on individualized assessment and effective intervention and treatment services for children and dysfunctional families; and

(2) provide for the establishment of an interagency task force to:

(A) develop a training program to include identified competencies, content, and hours for completion of the training with at least 20 hours of training required each year until the program is completed;

(B) design a plan for implementing the program, including regional site selection, frequency of training, and selection of experienced clinical public and private professionals or consultants to lead the training; and

(C) monitor, evaluate, and revise the training program, including the development of additional curricula based on future training needs identified by staff and professionals.

(b) The task force consists of:

(1) one clinical professional and one training staff member from each agency, appointed by that agency; and

(2) 10 private sector clinical professionals with expertise in dealing with troubled children, youth, and dysfunctional families, two of whom are appointed by each agency.

(c) The task force shall meet at the call of the department.

(d) The commission shall act as the lead agency in coordinating the development and implementation of the memorandum.

(e) The executive commissioner and the agencies shall review

and by rule revise the memorandum not later than August each year.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.042. EVALUATION OF ELDERLY RESIDENTS. (a) The department shall evaluate each elderly resident at least annually to determine if the resident can be appropriately served in a less restrictive setting.

(b) The department shall consider the proximity to the resident of family, friends, and advocates concerned with the resident's well-being in determining whether the resident should be moved from a department facility or to a different department facility. The department shall recognize that a nursing facility may not be able to meet the special needs of an elderly resident.

(c) In evaluating an elderly resident under this section and to ensure appropriate placement, the department shall identify the special needs of the resident, the types of services that will best meet those needs, and the type of facility that will best provide those services.

(d) The appropriate interdisciplinary team shall conduct the evaluation of an elderly resident of a department facility.

(e) The department shall attempt to place an elderly resident in a less restrictive setting if the department determines that the resident can be appropriately served in that setting. The department shall coordinate the attempt with the local intellectual and developmental disability authority.

(f) A local intellectual and developmental disability authority shall provide continuing care for an elderly resident placed in the authority's service area under this section.

(g) The local intellectual and developmental disability authority shall have the right of access to all residents and records of residents who request continuing care services.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.043. PROPOSALS FOR GERIATRIC CARE. (a) The department shall solicit proposals from community providers to

operate community residential programs for elderly residents at least every two years.

(b) The department shall require each provider to:

(1) offer adequate assurances of ability to:

(A) provide the required services;

(B) meet department standards; and

(C) safeguard the safety and well-being of each resident; and

(2) sign a memorandum of agreement with the local intellectual and developmental disability authority outlining the responsibilities for continuity of care and monitoring, if the provider is not the local authority.

(c) The department may fund a proposal through a contract if the provider agrees to meet the requirements prescribed by Subsection (b) and agrees to provide the services at a cost that is equal to or less than the cost to the department to provide the services.

(d) The appropriate local intellectual and developmental disability authority shall monitor the services provided to a resident placed in a program funded under this section. The department may monitor any service for which it contracts.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

SUBCHAPTER C. POWERS AND DUTIES RELATING TO ICF-IID PROGRAM

Sec. 533A.062. PLAN ON LONG-TERM CARE FOR PERSONS WITH AN INTELLECTUAL DISABILITY. (a) The department shall biennially develop a proposed plan on long-term care for persons with an intellectual disability.

(b) The proposed plan must specify the capacity of the HCS waiver program for persons with an intellectual disability and the number and levels of new ICF-IID beds to be authorized in each region. In developing the proposed plan, the department shall consider:

(1) the needs of the population to be served;

(2) projected appropriation amounts for the biennium; and

(3) the requirements of applicable federal law.

(b-1) As part of the proposed plan, the commission shall review the statewide bed capacity of community ICF-IID facilities for

individuals with an intellectual disability or a related condition and, based on the review, develop a process to reallocate beds held in suspension by the commission. The process may include:

(1) criteria by which ICF-IID program providers may apply to the commission to receive reallocated beds; and

(2) a means to reallocate the beds among health services regions.

(c) Each proposed plan shall cover the subsequent fiscal biennium. The department shall conduct a public hearing on the proposed plan. Not later than July 1 of each even-numbered year, the department shall submit the plan to the commission for approval.

(d) The commission may modify the proposed plan as necessary before its final approval.

(e) Repealed by Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(8), eff. September 1, 2021.

(f) After legislative action on the appropriation for long-term care services for persons with an intellectual disability, the commission shall adjust the plan to ensure that the number of ICF-IID beds licensed or approved as meeting license requirements and the capacity of the HCS waiver program are within appropriated funding amounts.

(g) After any necessary adjustments, the commission shall approve the final biennial plan and publish the plan in the Texas Register.

(h) The department may submit proposed amendments to the plan to the commission.

(i) In this section, "HCS waiver program" means services under the state Medicaid home and community-based services waiver program for persons with an intellectual disability adopted in accordance with 42 U.S.C. Section 1396n(c).

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.32, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1153 (H.B. 3117), Sec. 1, eff. June 14, 2019.

Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(8), eff. September 1, 2021.

SUBCHAPTER D. POWERS AND DUTIES RELATING TO DEPARTMENT FACILITIES

Sec. 533A.081. DEVELOPMENT OF FACILITY BUDGETS. The department, in budgeting for a facility, shall use uniform costs for specific types of services a facility provides unless a legitimate reason exists and is documented for the use of other costs.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.082. DETERMINATION OF SAVINGS IN FACILITIES. (a) The department shall determine the degree to which the costs of operating department facilities for persons with an intellectual disability in compliance with applicable standards are affected as populations in the facilities fluctuate.

(b) In making the determination, the department shall:

(1) assume that the current level of services and necessary state of repair of the facilities will be maintained; and

(2) include sufficient funds to allow the department to comply with the requirements of litigation and applicable standards.

(c) The department shall allocate to community-based intellectual disability programs any savings realized in operating department facilities for persons with an intellectual disability.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.083. CRITERIA FOR EXPANSION, CLOSURE, OR CONSOLIDATION OF FACILITY. The department shall establish objective criteria for determining when a new facility may be needed and when a state supported living center may be expanded, closed, or consolidated.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.084. MANAGEMENT OF SURPLUS REAL PROPERTY. (a) To

the extent provided by this subtitle, the department, in coordination with the executive commissioner, may lease, transfer, or otherwise dispose of any surplus real property related to the provision of services under this title, including any improvements under its management and control, or authorize the lease, transfer, or disposal of the property. Surplus property is property the executive commissioner designates as having minimal value to the present service delivery system and projects to have minimal value to the service delivery system as described in the department's long-range plan.

(b) The proceeds from the lease, transfer, or disposal of surplus real property, including any improvements, shall be deposited to the credit of the department in the Texas capital trust fund established under Chapter 2201, Government Code. The proceeds may be appropriated only for improvements to the department's system of intellectual disability facilities.

(c) A lease proposal shall be advertised at least once a week for four consecutive weeks in at least two newspapers. One newspaper must be a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location. The other newspaper must have statewide circulation. Each lease is subject to the attorney general's approval as to substance and form. The executive commissioner shall adopt forms, rules, and contracts that, in the executive commissioner's best judgment, will protect the state's interests. The executive commissioner may reject any or all bids.

(d) This section does not authorize the executive commissioner or department to close or consolidate a state supported living center without first obtaining legislative approval.

(e) Notwithstanding Subsection (c), the executive commissioner, in coordination with the department, may enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section 32.107, Natural Resources Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.0846. INTELLECTUAL DISABILITY COMMUNITY SERVICES ACCOUNT. (a) The intellectual disability community services account is an account in the general revenue fund that may be appropriated only for the provision of intellectual disability services by or under contract with the department.

(b) The department shall deposit to the credit of the intellectual disability community services account any money donated to the state for inclusion in the account, including life insurance proceeds designated for deposit to the account.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.085. FACILITIES FOR INMATE AND PAROLEE CARE. (a) With the written approval of the governor, the department may contract with the Texas Department of Criminal Justice to transfer facilities to the Texas Department of Criminal Justice or otherwise provide facilities for:

(1) inmates with an intellectual disability in the custody of the Texas Department of Criminal Justice; or

(2) persons with an intellectual disability paroled or released under the supervision of the Texas Department of Criminal Justice.

(b) An agency must report to the governor the agency's reasons for proposing to enter into a contract under this section and request the governor's approval.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.087. LEASE OF REAL PROPERTY. (a) The department, in coordination with the executive commissioner, may lease real property related to the provision of services under this title, including any improvements under the department's management and control, regardless of whether the property is surplus property. Except as provided by Subsection (c), the department, in coordination with the executive commissioner, may award a lease of real property only:

(1) at the prevailing market rate; and

(2) by competitive bid.

(b) The commission shall advertise a proposal for lease at least once a week for four consecutive weeks in:

(1) a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location; and

(2) a newspaper of statewide circulation.

(c) The department, in coordination with the executive commissioner, may lease real property related to the provision of services under this title or an improvement for less than the prevailing market rate, without advertisement or without competitive bidding, if:

(1) the executive commissioner determines that sufficient public benefit will be derived from the lease; and

(2) the property is leased to:

(A) a federal or state agency;

(B) a unit of local government;

(C) a not-for-profit organization; or

(D) an entity related to the department by a service contract.

(d) The executive commissioner shall adopt leasing rules, forms, and contracts that will protect the state's interests.

(e) The executive commissioner may reject any bid.

(f) This section does not authorize the executive commissioner or department to close or consolidate a facility used to provide intellectual disability services without legislative approval.

(g) Notwithstanding Subsections (a) and (b), the executive commissioner, in coordination with the department, may enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section 32.107, Natural Resources Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

SUBCHAPTER E. JAIL DIVERSION PROGRAM

Sec. 533A.108. PRIORITIZATION OF FUNDING FOR DIVERSION OF PERSONS FROM INCARCERATION IN CERTAIN COUNTIES. (a) A local

intellectual and developmental disability authority may develop and may prioritize its available funding for:

(1) a system to divert members of the priority population, including those members with co-occurring substance abuse disorders, before their incarceration or other contact with the criminal justice system, to services appropriate to their needs, including:

(A) screening and assessment services; and

(B) treatment services, including:

(i) short-term residential services;

(ii) crisis respite residential services; and

(iii) continuity of care services;

(2) specialized training of local law enforcement and court personnel to identify and manage offenders or suspects who may be members of the priority population; and

(3) other model programs for offenders and suspects who may be members of the priority population, including crisis intervention training for law enforcement personnel.

(b) A local intellectual and developmental disability authority developing a system, training, or a model program under Subsection (a) shall collaborate with other local resources, including local law enforcement and judicial systems and local personnel.

(c) A local intellectual and developmental disability authority may not implement a system, training, or a model program developed under this section until the system, training, or program is approved by the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

CHAPTER 534. COMMUNITY SERVICES

SUBCHAPTER A. COMMUNITY CENTERS

Sec. 534.0001. DEFINITIONS. In this subchapter:

(1) "Commissioner" means:

(A) the commissioner of state health services in relation to:

(i) a community mental health center; or

(ii) the mental health services component of a community mental health and intellectual disability center; and

(B) the commissioner of aging and disability services

in relation to:

(i) a community intellectual disability center; or

(ii) the intellectual disability services component of a community mental health and intellectual disability center.

(2) "Department" means:

(A) the Department of State Health Services in relation to:

(i) a community mental health center; or

(ii) the mental health services component of a community mental health and intellectual disability center; and

(B) the Department of Aging and Disability Services in relation to:

(i) a community intellectual disability center; or

(ii) the intellectual disability services component of a community mental health and intellectual disability center.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.001. ESTABLISHMENT. (a) A county, municipality, hospital district, or school district, or an organizational combination of two or more of those local agencies, may establish and operate a community center.

(b) In accordance with this subtitle, a community center may be:

(1) a community mental health center that provides mental health services;

(2) a community intellectual disability center that provides intellectual disability services; or

(3) a community mental health and intellectual disability center that provides mental health and intellectual disability services.

(c) A community center is:

(1) an agency of the state, a governmental unit, and a unit of local government, as defined and specified by Chapters 101 and 102, Civil Practice and Remedies Code;

(2) a local government, as defined by Section 791.003, Government Code;

(3) a local government for the purposes of Chapter 2259, Government Code; and

(4) a political subdivision for the purposes of Chapter 172, Local Government Code.

(d) A community center may be established only if:

(1) the proposed center submits a copy of the contract between the participating local agencies, if applicable, to:

(A) the Department of State Health Services for a proposed center that will provide mental health services;

(B) the Department of Aging and Disability Services for a proposed center that will provide intellectual disability services; or

(C) both departments if the proposed center will provide mental health and intellectual disability services;

(2) each appropriate department approves the proposed center's plan to develop and make available to the region's residents an effective mental health or intellectual disability program, or both, through a community center that is appropriately structured to include the financial, physical, and personnel resources necessary to meet the region's needs; and

(3) each department from which the proposed center seeks approval determines that the center can appropriately, effectively, and efficiently provide those services in the region.

(e) Except as provided by this section, a community center operating under this subchapter may operate only for the purposes and perform only the functions defined in the center's plan. The executive commissioner by rule shall specify the elements that must be included in a plan and shall prescribe the procedure for submitting, approving, and modifying a center's plan. In addition to the services described in a center's plan, the center may provide other health and human services and supports as provided by a contract with or a grant received from a local, state, or federal agency.

(f) Each function performed by a community center under this title is a governmental function if the function is required or affirmatively approved by any statute of this state or of the United States or by a regulatory agency of this state or of the United States duly acting under any constitutional or statutory authority vesting the agency with such power. Notwithstanding any other law, a community center is subject to Chapter 554, Government Code.

(g) An entity is, for the purpose of operating a psychiatric center, a governmental unit and a unit of local government under Chapter 101, Civil Practice and Remedies Code, and a local government under Chapter 102, Civil Practice and Remedies Code, if the entity:

(1) is not operated to make a profit;

(2) is created through an intergovernmental agreement between a community mental health center and any other governmental unit; and

(3) contracts with the community mental health center and any other governmental unit that created it to operate a psychiatric center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.07, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 601, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 835, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 8.276, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.82, eff. Sept. 1, 2006.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1292 (H.B. 2303), Sec. 2, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.0015. PURPOSE AND POLICY. (a) A community center created under this subchapter is intended to be a vital component in a continuum of services for persons in this state with mental illness or an intellectual disability.

(b) It is the policy of this state that community centers strive to develop services for persons with mental illness or an intellectual disability, and may provide requested services to persons with developmental disabilities or with chemical dependencies, that are effective alternatives to treatment in a large residential facility.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.08, eff. Aug. 30, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1292 (H.B. 2303), Sec. 3, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.002. BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY ONE LOCAL AGENCY. (a) The board of trustees of a community center established by one local agency is composed of:

(1) the members of the local agency's governing body;

(2) not fewer than five or more than nine qualified voters who reside in the region to be served by the center and who are appointed by the local agency's governing body; and

(3) a sheriff or a representative of a sheriff of a county in the region served by the community center who is appointed by the local agency's governing body to serve as an ex officio nonvoting member.

(b) If a qualified voter appointed to a community center under Subsection (a)(2) is the sheriff of the only county in the region served by a community center, Subsection (a)(3) does not apply.

(c) If a qualified voter appointed to a community center under Subsection (a)(2) is a sheriff of a county in the region served by a community center and the region served by the community center consists of more than one county, under Subsection (a)(3) the local agency's governing body shall appoint a sheriff or a representative of a sheriff from a different county in the region served by the community center.

(d) Subsection (a)(3) does not prevent a sheriff or representative of a sheriff from being included on the board of trustees of a community center as a voting member of the board.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.09, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 962 (S.B. 632), Sec. 3, eff. September 1, 2019.

Sec. 534.003. BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY AT

LEAST TWO LOCAL AGENCIES. (a) Except as provided by Subsection (a-1), the board of trustees of a community center established by an organizational combination of local agencies is composed of not fewer than five or more than 13 members.

(a-1) In addition to the members described by Subsection (a), the board of trustees of a community center must include:

(1) if the region served by the community center consists of only one county, the sheriff of that county or a representative of the sheriff to serve as an ex officio nonvoting member; or

(2) if the region served by the community center consists of more than one county, sheriffs from at least two of the counties in the region served by the community center or representatives of the sheriffs to serve as ex officio nonvoting members.

(a-2) Subsection (a-1) does not prevent a sheriff or representative of a sheriff from being included on the board of trustees of a community center as a voting member of the board.

(b) The governing bodies of the local agencies shall appoint the board members either from among the membership of the governing bodies or from among the qualified voters who reside in the region to be served by the center.

(c) When the center is established, the governing bodies shall enter into a contract that stipulates the number of board members and the group from which the members are chosen. They may renegotiate or amend the contract as necessary to change the:

(1) method of choosing the members; or

(2) membership of the board of trustees to more accurately reflect the ethnic and geographic diversity of the local service area.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.10, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 198, Sec. 2.200, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 962 (S.B. 632), Sec. 4, eff. September 1, 2019.

Sec. 534.004. PROCEDURES RELATING TO BOARD OF TRUSTEES

MEMBERSHIP. (a) The local agency or organizational combination of local agencies that establishes a community center shall prescribe:

(1) the application procedure for a position on the board of trustees;

(2) the procedure and criteria for making appointments to the board of trustees;

(3) the procedure for posting notice of and filling a vacancy on the board of trustees; and

(4) the grounds and procedure for removing a member of the board of trustees.

(b) The local agency or organizational combination of local agencies that appoints the board of trustees shall, in appointing the members, attempt to reflect the ethnic and geographic diversity of the local service area the community center serves. The local agency or organizational combination shall include on the board of trustees one or more persons otherwise qualified under this chapter who are consumers of the types of services the center provides or who are family members of consumers of the types of services the center provides.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.11, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1187, Sec. 12, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.005. TERMS; VACANCIES. (a) Appointed members of the board of trustees who are not members of a local agency's governing body serve staggered two-year terms. In appointing the initial members, the appointing authority shall designate not less than one-third or more than one-half of the members to serve one-year terms and shall designate the remaining members to serve two-year terms.

(b) A vacancy on a board of trustees composed of qualified voters is filled by appointment for the remainder of the unexpired term.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.12, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1187, Sec. 13, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.006. TRAINING. (a) The executive commissioner by rule shall establish:

(1) an annual training program for members of a board of trustees administered by the professional staff of that community center, including the center's legal counsel; and

(2) an advisory committee to develop training guidelines that includes representatives of advocates for persons with mental illness or an intellectual disability and representatives of boards of trustees.

(b) Before a member of a board of trustees may assume office, the member shall attend at least one training session administered by that center's professional staff to receive information relating to:

(1) the enabling legislation that created the community center;

(2) the programs the community center operates;

(3) the community center's budget for that program year;

(4) the results of the most recent formal audit of the community center;

(5) the requirements of Chapter 551, Government Code, and Chapter 552, Government Code;

(6) the requirements of conflict of interest laws and other laws relating to public officials; and

(7) any ethics policies adopted by the community center.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.13, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), (88), eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.0065. QUALIFICATIONS; CONFLICT OF INTEREST; REMOVAL. (a) As a local public official, a member of the board of trustees of a community center shall uphold the member's position of public trust

by meeting and maintaining the applicable qualifications for membership and by complying with the applicable requirements relating to conflicts of interest.

(b) A person is not eligible for appointment as a member of a board of trustees if the person or the person's spouse:

(1) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the community center by contract or other method; or

(2) uses or receives a substantial amount of tangible goods or funds from the community center, other than:

(A) compensation or reimbursement authorized by law for board of trustees membership, attendance, or expenses; or

(B) as a consumer or as a family member of a client or patient receiving services from the community center.

(c) The primary residence of a member of the board of trustees must be in the local service area the member represents.

(d) A member of the board of trustees is subject to Chapter 171, Local Government Code.

(e) A member of the board of trustees may not:

(1) refer for services a client or patient to a business entity owned or controlled by a member of the board of trustees, unless the business entity is the only business entity that provides the needed services within the jurisdiction of the community center;

(2) use a community center facility in the conduct of a business entity owned or controlled by that member;

(3) solicit, accept, or agree to accept from another person or business entity a benefit in return for the member's decision, opinion, recommendation, vote, or other exercise of discretion as a local public official or for a violation of a duty imposed by law;

(4) receive any benefit for the referral of a client or a patient to the community center or to another business entity;

(5) appoint, vote for, or confirm the appointment of a person to a paid office or position with the community center if the person is related to a member of the board of trustees by affinity within the second degree or by consanguinity within the third degree; or

(6) solicit or receive a political contribution from a supplier to or contractor with the community center.

(f) Not later than the date on which a member of the board of

trustees takes office by appointment or reappointment and not later than the anniversary of that date, each member shall annually execute and file with the community center an affidavit acknowledging that the member has read the requirements for qualification, conflict of interest, and removal prescribed by this chapter.

(g) In addition to any grounds for removal adopted under Section 534.004(a), it is a ground for removal of a member of a board of trustees if the member:

(1) violates Chapter 171, Local Government Code;

(2) is not eligible for appointment to the board of trustees at the time of appointment as provided by Subsections (b) and (c);

(3) does not maintain during service on the board of trustees the qualifications required by Subsections (b) and (c);

(4) violates a provision of Subsection (e);

(5) violates a provision of Section 534.0115; or

(6) does not execute the affidavit required by Subsection (f).

(h) If a board of trustees is composed of members of the governing body of a local agency or organizational combination of local agencies, this section applies only to the qualifications for and removal from membership on the board of trustees.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.13, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.007. PROHIBITED ACTIVITIES BY FORMER OFFICERS OR EMPLOYEES; OFFENSE. (a) A former officer or employee of a community center who ceases service or employment with the center may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.

(b) This section does not apply to:

(1) a former employee who is compensated on the last date of service or employment below the amount prescribed by the General Appropriations Act for salary group 17, Schedule A, or salary group 9, Schedule B, of the position classification salary schedule; or

(2) a former officer or employee who is employed by a state agency or another community center.

(c) Subsection (a) does not apply to a proceeding related to policy development that was concluded before the officer's or employee's service or employment ceased.

(d) A former officer or employee of a community center commits an offense if the former officer or employee violates this section. An offense under this section is a Class A misdemeanor.

(e) In this section:

(1) "Participated" means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

(2) "Particular matter" means a specific investigation, application, request for a ruling or determination, proceeding related to the development of policy, contract, claim, charge, accusation, arrest, or judicial or other proceeding.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 1187, Sec. 14, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.008. ADMINISTRATION BY BOARD. (a) The board of trustees is responsible for the effective administration of the community center.

(b) The board of trustees shall make policies that are consistent with the applicable rules and standards of each appropriate department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.14, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff.

April 2, 2015.

Sec. 534.009. MEETINGS. (a) The board of trustees shall adopt rules for the holding of regular and special meetings.

(b) Board meetings are open to the public to the extent required by and in accordance with Chapter 551, Government Code.

(c) The board of trustees shall keep a record of its proceedings in accordance with Chapter 551, Government Code. The record is open for public inspection in accordance with that law.

(d) The board of trustees shall send to each appropriate department and each local agency that appoints the members a copy of the approved minutes of board of trustees meetings by:

(1) mailing a copy appropriately addressed and with the necessary postage paid using the United States Postal Service; or

(2) another method agreed to by the board of trustees and the local agency.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.15, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(84), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.010. EXECUTIVE DIRECTOR. (a) The board of trustees shall appoint an executive director for the community center.

(b) The board of trustees shall:

(1) adopt a written policy governing the powers that may be delegated to the executive director; and

(2) annually report to each local agency that appoints the members the executive director's total compensation and benefits.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.16, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.011. PERSONNEL. (a) The executive director, in accordance with the policies of the board of trustees, shall employ and train personnel to administer the community center's programs and services. The community center may recruit those personnel and contract for recruiting and training purposes.

(b) The board of trustees shall provide employees of the community center with appropriate rights, privileges, and benefits.

(c) The board of trustees may provide workers' compensation benefits.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.17, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.0115. NEPOTISM. (a) The board of trustees or executive director may not hire as a paid officer or employee of the community center a person who is related to a member of the board of trustees by affinity within the second degree or by consanguinity within the third degree.

(b) An officer or employee who is related to a member of the board of trustees in a prohibited manner may continue to be employed if the person began the employment not later than the 31st day before the date on which the member was appointed.

(c) The officer or employee or the member of the board of trustees shall resign if the officer or employee began the employment later than the 31st day before the date on which the member was appointed.

(d) If an officer or employee is permitted to remain in employment under Subsection (b), the related member of the board of trustees may not participate in the deliberation of or voting on an issue that is specifically applicable to the officer or employee unless the issue affects an entire class or category of employees.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.18, eff. Aug. 30, 1993.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.012. ADVISORY COMMITTEES. (a) The board of trustees may appoint committees, including medical committees, to advise the board of trustees on matters relating to mental health and intellectual disability services.
(b) Each committee must be composed of at least three members.
(c) The appointment of a committee does not relieve the board of trustees of the final responsibility and accountability as provided by this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.19, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.013. COOPERATION OF DEPARTMENTS. Each appropriate department shall provide assistance, advice, and consultation to local agencies, boards of trustees, and executive directors in the planning, development, and operation of a community center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.014. BUDGET; REQUEST FOR FUNDS. (a) Each community center shall annually provide to each local agency that appoints members to the board of trustees a copy of the center's:
(1) approved fiscal year operating budget;
(2) most recent annual financial audit; and
(3) staff salaries by position.
(b) The board of trustees shall annually submit to each local agency that appoints the members a request for funds or in-kind

assistance to support the center.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.20, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.015. PROVISION OF SERVICES. (a) The board of trustees may adopt rules to regulate the administration of mental health or intellectual disability services by a community center. The rules must be consistent with the purposes, policies, principles, and standards prescribed by this subtitle.

(b) The board of trustees may contract with a local agency or a qualified person or organization to provide a portion of the mental health or intellectual disability services.

(c) With the approval of each appropriate commissioner, the board of trustees may contract with the governing body of another county or municipality to provide mental health and intellectual disability services to residents of that county or municipality.

(d) A community center may provide services to a person who voluntarily seeks assistance or who has been committed to that center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.0155. FOR WHOM SERVICES MAY BE PROVIDED. (a) This subtitle does not prevent a community center from providing services to:

(1) a person with a chemical dependency;

(2) a person with a developmental disability; or

(3) a person younger than four years of age who is eligible for early childhood intervention services.

(b) A community center may provide those services by contracting with a public or private agency in addition to the appropriate department.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.21, eff. Aug. 30, 1993. Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 7(a), eff. Aug. 30, 1993.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1292 (H.B. 2303), Sec. 4, eff. June 19, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.016. SCREENING AND CONTINUING CARE SERVICES. (a) A community center shall provide screening services for:

(1) a person who requests voluntary admission to a Department of State Health Services facility for persons with mental illness; and

(2) a person for whom proceedings for involuntary commitment to a Department of State Health Services or Department of Aging and Disability Services facility for persons with mental illness or an intellectual disability have been initiated.

(b) A community center shall provide continuing mental health and physical care services for a person referred to the center by a Department of State Health Services facility and for whom the facility superintendent has recommended a continuing care plan.

(c) Services provided under this section must be consistent with the applicable rules and standards of each appropriate department.

(d) The appropriate commissioner may designate a facility other than the community center to provide the screening or continuing care services if:

(1) local conditions indicate that the other facility can provide the services more economically and effectively; or

(2) the commissioner determines that local conditions may impose an undue burden on the community center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.017. FEES FOR SERVICES. (a) A community center shall charge reasonable fees for services the center provides, unless prohibited by other service contracts or law.

(b) The community center may not deny services to a person because of inability to pay for the services.

(c) The community center has the same rights, privileges, and powers for collecting fees for treating patients or clients that each appropriate department has by law.

(d) The county or district attorney of the county in which the community center is located shall represent the center in collecting fees when the center's executive director requests the assistance.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.22, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.0175. TRUST EXEMPTION. (a) If a patient or client is the beneficiary of a trust that has an aggregate principal of $250,000 or less, the corpus or income of the trust is not considered to be the property of the patient or client or the patient's or client's estate and is not liable for the patient's or client's support. If the aggregate principal of the trust exceeds $250,000, only the portion of the corpus of the trust that exceeds that amount and the income attributable to that portion are considered to be the property of the patient or client or the patient's or client's estate and are liable for the patient's or client's support.

(b) To qualify for the exemption provided by Subsection (a), the trust and the trustee must comply with the requirements prescribed by Sections 552.018 and 593.081.

Added by Acts 1993, 73rd Leg., ch. 166, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2001, 77th Leg., ch. 1020, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.018. GIFTS AND GRANTS. A community center may accept gifts and grants of money, personal property, and real property to use in providing the center's programs and services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.23, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.019. CONTRIBUTION BY LOCAL AGENCY. A participating local agency may contribute land, buildings, facilities, other real and personal property, personnel, and funds to administer the community center's programs and services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.23, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.020. ACQUISITION AND CONSTRUCTION OF PROPERTY AND FACILITIES BY COMMUNITY CENTER. (a) A community center may purchase or lease-purchase real and personal property and may construct buildings and facilities.

(b) The board of trustees shall require that an appraiser certified by the Texas Appraiser Licensing and Certification Board conduct an independent appraisal of real estate the community center intends to purchase. The board of trustees may waive this requirement if the purchase price is less than the value listed for the property by the local appraisal district and the property has been appraised by the local appraisal district within the preceding two years. A community center may not purchase or lease-purchase property for an amount that is greater than the property's appraised value unless:

(1) the purchase or lease-purchase of that property at that price is necessary;

(2) the board of trustees documents in the official minutes the reasons why the purchase or lease-purchase is necessary at that price; and

(3) a majority of the board approves the transaction.

(c) The board of trustees shall establish in accordance with relevant rules of each appropriate department competitive bidding procedures and practices for capital purchases and for purchases involving department funds or required local matching funds.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.23, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 646, Sec. 8, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.021. APPROVAL AND NOTIFICATION REQUIREMENTS. (a) A community center must receive from each appropriate department prior written approval to acquire real property, including a building, if the acquisition involves the use of funds of that department or local funds required to match funds of that department. In addition, for acquisition of nonresidential property, the community center must notify each local agency that appoints members to the board of trustees not later than the 31st day before it enters into a binding obligation to acquire the property.

(b) A community center must notify each appropriate department and each local agency that appoints members to the board of trustees not later than the 31st day before it enters into a binding obligation to acquire real property, including a building, if the acquisition does not involve the use of funds of that department or local funds required to match funds of that department. Each appropriate commissioner, on request, may waive the 30-day requirement on a case-by-case basis.

(c) The executive commissioner shall adopt rules relating to the approval and notification process.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 9(a), eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.022. FINANCING OF PROPERTY AND IMPROVEMENTS. (a) To acquire or to refinance the acquisition of real and personal property, to construct improvements to property, or to finance all or part of a payment owed or to be owed on a credit agreement, a community center may contract in accordance with Subchapter A, Chapter 271, Local Government Code, or issue, execute, refinance, or refund bonds, notes, obligations, or contracts. The community center may secure the payment of the bonds, notes, obligations, or contracts with a security interest in or pledge of its revenues or by granting a mortgage on any of its properties.

(a-1) For purposes of Subsection (a), "revenues" includes the following, as those terms are defined by Section 9.102, Business & Commerce Code:

(1) an account;

(2) a chattel paper;

(3) a commercial tort claim;

(4) a deposit account;

(5) a document;

(6) a general intangible;

(7) a health care insurance receivable;

(8) an instrument;

(9) investment property;

(10) a letter-of-credit right; and

(11) proceeds.

(b) Except as provided by Subsection (f), the community center shall issue the bonds, notes, or obligations in accordance with Chapters 1201 and 1371, Government Code. The attorney general must approve before issuance:

(1) notes issued in the form of public securities, as that term is defined by Section 1201.002, Government Code;

(2) obligations, as that term is defined by Section 1371.001, Government Code; and

(3) bonds.

(c) A limitation prescribed in Subchapter A, Chapter 271, Local Government Code, relating to real property and the construction of improvements to real property, does not apply to a community center.

(e) A county or municipality acting alone or two or more counties or municipalities acting jointly pursuant to interlocal contract may create a public facility corporation to act on behalf of one or more community centers pursuant to Chapter 303, Local Government Code. Such counties or municipalities may exercise the powers of a sponsor under that chapter, and any such corporation may exercise the powers of a corporation under that chapter (including but not limited to the power to issue bonds). The corporation may exercise its powers on behalf of community centers in such manner as may be prescribed by the articles and bylaws of the corporation, provided that in no event shall one community center ever be liable to pay the debts or obligation or be liable for the acts, actions, or undertakings of another community center.

(f) The board of trustees of a community center may authorize the issuance of an anticipation note in the same manner, using the same procedure, and with the same rights under which an eligible school district may authorize issuance under Chapter 1431, Government Code, except that anticipation notes issued for the purposes described by Section 1431.004(a)(2), Government Code, may not, in the fiscal year in which the attorney general approves the notes for a community center, exceed 50 percent of the revenue anticipated to be collected in that year.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.24, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 161, Sec. 1, eff. May 16, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 11, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 8.277, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 826 (S.B. 812), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(13), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(97), eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.023. SALE OF REAL PROPERTY ACQUIRED SOLELY THROUGH

PRIVATE GIFT OR GRANT. (a) Except as provided by Subsection (d), a community center may sell center real property, including a building, without the approval of each appropriate department or any local agency that appoints members to the board of trustees, only if the real property was acquired solely through a gift or grant of money or real property from a private entity, including an individual.

(b) A community center that acquires real property by gift or grant shall, on the date the center acquires the gift or grant, notify the private entity providing the gift or grant that:

(1) the center may subsequently sell the real property; and

(2) the sale is subject to the provisions of this section.

(c) Except as provided by Subsection (d), real property sold under Subsection (a) must be sold for the property's fair market value.

(d) Real property sold under Subsection (a) may be sold for less than fair market value only if the board of trustees adopts a resolution stating:

(1) the public purpose that will be achieved by the sale; and

(2) the conditions and circumstances for the sale, including conditions to accomplish and maintain the public purpose.

(e) A community center must notify each appropriate department and each local agency that appoints members to the board of trustees not later than the 31st day before the date the center enters into a binding obligation to sell real property under this section. Each appropriate commissioner, on request, may waive the 30-day notice requirement on a case-by-case basis.

(f) The executive commissioner shall adopt rules relating to the notification process.

(g) A community center may use proceeds received from a sale of real property under this section only for a purpose authorized by this subchapter or for a public purpose authorized for a community center by state or federal law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 231 (H.B. 243), Sec. 1, eff. June 14, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.031. SURPLUS PERSONAL PROPERTY. The executive commissioner, in coordination with the appropriate department, may transfer, with or without reimbursement, ownership and possession of surplus personal property under that department's control or jurisdiction to a community center for use in providing mental health or intellectual disability services, as appropriate.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.032. RESEARCH. A community center may engage in research and may contract for that purpose.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.033. LIMITATION ON DEPARTMENT CONTROL AND REVIEW. (a) It is the intent of the legislature that each department limit its control over, and routine reviews of, community center programs to those programs that:

(1) use funds from that department or use required local funds that are matched with funds from that department;

(2) provide core or required services;

(3) provide services to former clients or patients of a facility of that department; or

(4) are affected by litigation in which that department is a defendant.

(b) Each appropriate department may review any community center program if the department has reason to suspect that a violation of a department rule has occurred or if the department receives an allegation of patient or client abuse.

(c) Each appropriate department may determine whether a particular program uses funds from that department or uses required local matching funds.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.27, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.035. REVIEW, AUDIT, AND APPEAL PROCEDURES. (a) The executive commissioner by rule shall establish review, audit, and appeal procedures for community centers. The procedures must ensure that reviews and audits are conducted in sufficient quantity and type to provide reasonable assurance that a community center has adequate and appropriate fiscal controls.

(b) In a community center plan approved under Section 534.001, the center must agree to comply with the review and audit procedures established under this section.

(c) If, by a date prescribed by each appropriate commissioner, the community center fails to respond to a deficiency identified in a review or audit to the satisfaction of that commissioner, that department may sanction the center in accordance with department rules.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.28, eff. Aug. 30, 1993. Amended by Acts 1999, 76th Leg., ch. 1209, Sec. 8, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.036. FINANCIAL AUDIT. (a) The executive commissioner shall prescribe procedures for financial audits of community centers. The executive commissioner shall develop the procedures with the assistance of the state agencies and departments that contract with community centers. The executive commissioner shall coordinate with each of those state agencies and departments to incorporate each agency's financial and compliance requirements for a community center into a single audit that meets the requirements of Section 534.068 or 534.121, as appropriate. Before prescribing or amending the

procedures, the executive commissioner shall set a deadline for those state agencies and departments to submit to the executive commissioner proposals relating to the financial audit procedures. The procedures must be consistent with any requirements connected with federal funding received by the community center.

(b) Each state agency or department that contracts with a community center shall comply with the procedures developed under this section.

(c) The executive commissioner shall develop protocols for a state agency or department to conduct additional financial audit activities of a community center.

Added by Acts 1997, 75th Leg., ch. 869, Sec. 2, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.037. PROGRAM AUDIT. (a) The executive commissioner shall coordinate with each state agency or department that contracts with a community center to prescribe procedures based on risk assessment for coordinated program audits of the activities of a community center. The procedures must be consistent with any requirements connected with federal funding received by the community center.

(b) A program audit of a community center must be performed in accordance with procedures developed under this section.

(c) This section does not prohibit a state agency or department or an entity providing funding to a community center from investigating a complaint against or performing additional contract monitoring of a community center.

(d) A program audit under this section must evaluate:

(1) the extent to which the community center is achieving the desired results or benefits established by the legislature or by a state agency or department;

(2) the effectiveness of the community center's organizations, programs, activities, or functions; and

(3) whether the community center is in compliance with applicable laws.

Added by Acts 1997, 75th Leg., ch. 869, Sec. 3, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.038. APPOINTMENT OF MANAGER OR MANAGEMENT TEAM. (a) Each appropriate commissioner may appoint a manager or management team to manage and operate a community center if the commissioner finds that the center or an officer or employee of the center:

(1) intentionally, recklessly, or negligently failed to discharge the center's duties under a contract with that department;

(2) misused state or federal money;

(3) engaged in a fraudulent act, transaction, practice, or course of business;

(4) endangers or may endanger the life, health, or safety of a person served by the center;

(5) failed to keep fiscal records or maintain proper control over center assets as prescribed by Chapter 783, Government Code;

(6) failed to respond to a deficiency in a review or audit;

(7) substantially failed to operate within the functions and purposes defined in the center's plan; or

(8) otherwise substantially failed to comply with this subchapter or rules of that department.

(b) Each appropriate department shall give written notification to the center and local agency or combination of agencies responsible for making appointments to the local board of trustees regarding:

(1) the appointment of the manager or management team; and

(2) the circumstances on which the appointment is based.

(c) Each appropriate commissioner may require the center to pay costs incurred by the manager or management team.

(d) The center may appeal a commissioner's decision to appoint a manager or management team as prescribed by rules of that department. The filing of a notice of appeal stays the appointment unless the commissioner based the appointment on a finding under Subsection (a)(2) or (4).

Added by Acts 1999, 76th Leg., ch. 1520, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 839, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.039. POWERS AND DUTIES OF MANAGEMENT TEAM. (a) As each appropriate commissioner determines for each appointment, a manager or management team appointed under Section 534.038 may:

(1) evaluate, redesign, modify, administer, supervise, or monitor a procedure, operation, or the management of a community center;

(2) hire, supervise, discipline, reassign, or terminate the employment of a center employee;

(3) reallocate a resource and manage an asset of the center;

(4) provide technical assistance to an officer or employee of the center;

(5) require or provide staff development;

(6) require that a financial transaction, expenditure, or contract for goods and services must be approved by the manager or management team;

(7) redesign, modify, or terminate a center program or service;

(8) direct the executive director, local board of trustees, chief financial officer, or a fiscal or program officer of the center to take an action;

(9) exercise a power or duty of an officer or employee of the center; or

(10) make a recommendation to the local agency or combination of agencies responsible for appointments to the local board of trustees regarding the removal of a center trustee.

(b) The manager or management team shall supervise the exercise of a power or duty by the local board of trustees.

(c) The manager or management team shall report monthly to each appropriate commissioner and local board of trustees on actions taken.

(d) A manager or management team appointed under this section may not use an asset or money contributed by a county, municipality, or other local funding entity without the approval of the county, municipality, or entity.

Added by Acts 1999, 76th Leg., ch. 1520, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.040. RESTORING MANAGEMENT TO CENTER. (a) Each month, each appropriate commissioner shall evaluate the performance of a community center managed by a manager or team appointed under Section 534.038 to determine the feasibility of restoring the center's management and operation to a local board of trustees.

(b) The authority of the manager or management team continues until each appropriate commissioner determines that the relevant factors listed under Section 534.038(a) no longer apply.

(c) Following a determination under Subsection (b), each appropriate commissioner shall terminate the authority of the manager or management team and restore authority to manage and operate the center to the center's authorized officers and employees.

Added by Acts 1999, 76th Leg., ch. 1520, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 839, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

SUBCHAPTER B. COMMUNITY-BASED MENTAL HEALTH SERVICES

Sec. 534.051. DEFINITIONS. In this subchapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.052. RULES AND STANDARDS. (a) The executive commissioner shall adopt rules, including standards, the executive commissioner considers necessary and appropriate to ensure the

adequate provision of community-based mental health services through a local mental health authority under this subchapter.

(b) The department shall send a copy of the rules to each local mental health authority or other provider receiving contract funds as a local mental health authority or designated provider.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.29, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.053. REQUIRED COMMUNITY-BASED MENTAL HEALTH SERVICES. (a) The department shall ensure that, at a minimum, the following services are available in each service area:

(1) 24-hour emergency screening and rapid crisis stabilization services;

(2) community-based crisis residential services or hospitalization;

(3) community-based assessments, including the development of interdisciplinary treatment plans and diagnosis and evaluation services;

(4) medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; and

(5) psychosocial rehabilitation programs, including social support activities, independent living skills, and vocational training.

(b) The department shall arrange for appropriate community-based services to be available in each service area for each person discharged from a department facility who is in need of care.

(c) To the extent that resources are available, the department shall:

(1) ensure that the services listed in this section are available for children, including adolescents, as well as adults, in each service area;

(2) emphasize early intervention services for children, including adolescents, who meet the department's definition of being

at high risk of developing severe emotional disturbances or severe mental illnesses; and

(3) ensure that services listed in this section are available for defendants required to submit to mental health treatment under Article 17.032, 42A.104, or 42A.506, Code of Criminal Procedure.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 4.021, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.69, eff. January 1, 2017.

Sec. 534.0535. JOINT DISCHARGE PLANNING. (a) The executive commissioner shall adopt or amend, and the department shall enforce, rules that require continuity of services and planning for patient care between department facilities and local mental health authorities.

(b) At a minimum, the rules must:

(1) specify the local mental health authority's responsibility for ensuring the successful transition of patients who are determined by the facility to be medically appropriate for discharge; and

(2) require participation by a department facility in joint discharge planning with a local mental health authority before the facility discharges a patient or places the patient on an extended furlough with an intent to discharge.

(c) The local mental health authority shall plan with the department facility to determine the appropriate community services for the patient.

(d) The local mental health authority shall arrange for the provision of the services upon discharge.

(e) The commission shall require each facility to designate at least one employee to provide transition support services for patients who are determined medically appropriate for discharge from the facility.

(f) Transition support services provided by the local mental health authority must be designed to complement joint discharge planning efforts and may include:

(1) enhanced services and supports for complex or high-need patients, including services and supports necessary to create viable discharge or outpatient management plans; and

(2) post-discharge monitoring for up to one year after the discharge date to reduce the likelihood of readmission.

(g) The commission shall ensure that each department facility concentrates the provision of transition support services for patients who have been:

(1) admitted to and discharged from a facility multiple times during a 30-day period; or

(2) in the facility for longer than 365 consecutive days.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.30, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1035 (S.B. 26), Sec. 6, eff. September 1, 2023.

Sec. 534.054. DESIGNATION OF PROVIDER. (a) The department shall identify and contract with a local mental health authority for each service area to ensure that services are provided to patient populations determined by the department. A local mental health authority shall ensure that services to address the needs of priority populations are provided as required by the department and shall comply with the rules and standards adopted under Section 534.052.

(c) The department may contract with a local agency or a private provider or organization to act as a designated provider of a service if the department:

(1) cannot negotiate a contract with a local mental health authority to ensure that a specific required service for priority populations is available in that service area; or

(2) determines that a local mental health authority does not have the capacity to ensure the availability of that service.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.31, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 12, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 869, Sec. 5, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.055. CONTRACTS FOR CERTAIN COMMUNITY SERVICES. (a) The executive commissioner shall design a competitive procurement or similar system that a mental health authority shall use in awarding an initial contract for the provision of services at the community level for persons with mental illness, including residential services, if the contract involves the use of state money or money for which the state has oversight responsibility.

(b) The system must require that each local mental health authority:

(1) ensure public participation in the authority's decisions regarding whether to provide or to contract for a service;

(2) make a reasonable effort to give notice of the intent to contract for services to each potential private provider in the local service area of the authority; and

(3) review each submitted proposal and award the contract to the applicant that the authority determines has made the lowest and best bid to provide the needed services.

(c) Each local mental health authority, in determining the lowest and best bid, shall consider any relevant information included in the authority's request for bid proposals, including:

(1) price;

(2) the ability of the bidder to perform the contract and to provide the required services;

(3) whether the bidder can perform the contract or provide the services within the period required, without delay or interference;

(4) the bidder's history of compliance with the laws relating to the bidder's business operations and the affected services and whether the bidder is currently in compliance;

(5) whether the bidder's financial resources are sufficient to perform the contract and to provide the services;

(6) whether necessary or desirable support and ancillary

services are available to the bidder;

(7) the character, responsibility, integrity, reputation, and experience of the bidder;

(8) the quality of the facilities and equipment available to or proposed by the bidder;

(9) the ability of the bidder to provide continuity of services; and

(10) the ability of the bidder to meet all applicable written departmental policies, principles, and regulations.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.32, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 13, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.056. COORDINATION OF ACTIVITIES. A local mental health authority shall coordinate its activities with the activities of other appropriate agencies that provide care and treatment for persons with drug or alcohol problems.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.33, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.058. STANDARDS OF CARE. (a) The executive commissioner shall develop standards of care for the services provided by a local mental health authority and its subcontractors under this subchapter.

(b) The standards must be designed to ensure that the quality of the community-based mental health services is consistent with the quality of care available in department facilities.

(c) In conjunction with local mental health authorities, the executive commissioner shall review the standards biennially to determine if each standard is necessary to ensure the quality of

care.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.34, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.059. CONTRACT COMPLIANCE FOR LOCAL AUTHORITIES. (a) The department shall evaluate a local mental health authority's compliance with its contract to ensure the provision of specific services to priority populations.

(b) If, by a date set by the commissioner, a local mental health authority fails to comply with its contract to ensure the provision of services to the satisfaction of the commissioner, the department may impose a sanction as provided by the applicable contract rule until the dispute is resolved. The department shall notify the authority in writing of the department's decision to impose a sanction.

(c) A local mental health authority may appeal the department's decision to impose a sanction on the authority. The executive commissioner by rule shall prescribe the appeal procedure.

(d) The filing of a notice of appeal stays the imposition of the department's decision to impose a sanction except when an act or omission by a local mental health authority is endangering or may endanger the life, health, welfare, or safety of a person.

(e) While an appeal under this section is pending, the department may limit general revenue allocations to a local mental health authority to monthly distributions.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.35, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1209, Sec. 9, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.060. PROGRAM AND SERVICE MONITORING AND REVIEW OF

LOCAL AUTHORITIES. (a) The department shall develop mechanisms for monitoring the services provided by a local mental health authority.

(b) The department shall review the program quality and program performance results of a local mental health authority in accordance with a risk assessment and evaluation system appropriate to the authority's contract requirements. The department may determine the scope of the review.

(c) A contract between a local mental health authority and the department must authorize the department to have unrestricted access to all facilities, records, data, and other information under the control of the authority as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with department funds.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.36, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 869, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1209, Sec. 10, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.0601. COORDINATED PROGRAM AUDITS OF LOCAL AUTHORITIES. (a) The executive commissioner shall coordinate with each agency or department of the state that contracts with a local mental health authority to prescribe procedures for a coordinated program audit of the authority. The procedures must be:

(1) consistent with the requirements for the receipt of federal funding by the authority; and

(2) based on risk assessment.

(b) A program audit must evaluate:

(1) the extent to which a local mental health authority is achieving the results or benefits established by an agency or department of the state or by the legislature;

(2) the effectiveness of the authority's organization, program, activities, or functions; and

(3) the authority's compliance with law.

(c) A program audit of a local mental health authority must be performed in accordance with the procedures prescribed under this

section.

(d) The department may not implement a procedure for a program audit under this section without the approval of the executive commissioner.

(e) This section does not prohibit an agency, department, or other entity providing funding to a local mental health authority from investigating a complaint against the authority or performing additional contract monitoring of the authority.

Added by Acts 1999, 76th Leg., ch. 1209, Sec. 11, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.0602. FINANCIAL AUDITS OF LOCAL AUTHORITIES. (a) The executive commissioner shall prescribe procedures for a financial audit of a local mental health authority. The procedures must be consistent with requirements for the receipt of federal funding by the authority.

(b) The executive commissioner shall develop the procedures with the assistance of each agency or department of the state that contracts with a local mental health authority. The executive commissioner shall incorporate each agency's or department's financial or compliance requirements for an authority into a single audit that meets the requirements of Section 534.068.

(c) Before prescribing or amending a procedure under this section, the executive commissioner must set a deadline for agencies and departments of the state that contract with local mental health authorities to submit proposals relating to the procedure.

(d) An agency or department of the state that contracts with a local mental health authority must comply with a procedure developed under this section.

(e) The department may not implement a procedure under this section without the approval of the executive commissioner.

Added by Acts 1999, 76th Leg., ch. 1209, Sec. 11, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.0603. ADDITIONAL FINANCIAL AUDIT ACTIVITY. (a) The executive commissioner shall develop protocols for an agency or department of the state to conduct additional financial audit activities of a local mental health authority.

(b) An agency or department of the state may not conduct additional financial audit activities relating to a local mental health authority without the approval of the executive commissioner.

(c) This section, and a protocol developed under this section, do not apply to an audit conducted under Chapter 321, Government Code.

Added by Acts 1999, 76th Leg., ch. 1209, Sec. 11, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.061. PROGRAM AND SERVICE MONITORING AND REVIEW OF CERTAIN COMMUNITY SERVICES. (a) The local mental health authority shall monitor the services of a provider who contracts with the authority to provide services for persons with mental illness to ensure that the provider is delivering the services in a manner consistent with the provider's contract.

(b) Each provider contract involving the use of state funds or funds for which the state has oversight responsibility must authorize the local mental health authority or the authority's designee and the department or the department's designee to have unrestricted access to all facilities, records, data, and other information under the control of the provider as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with the contract.

(c) The department may withdraw funding from a local mental health authority that fails to cancel a contract with a provider involving the use of state funds or funds for which the state has oversight responsibility if:

(1) the provider is not fulfilling its contractual obligations; and

(2) the authority has not taken appropriate action to remedy the problem in accordance with department rules.

(d) The executive commissioner by rule shall prescribe

procedures a local mental health authority must follow in remedying a problem with a provider.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 1209, Sec. 12, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.063. PEER REVIEW ORGANIZATION. The department shall assist a local mental health authority in developing a peer review organization to provide self-assessment of programs and to supplement department reviews under Section 534.060.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.37, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.064. CONTRACT RENEWAL. The executive commissioner may refuse to renew a contract with a local mental health authority and may select other agencies, entities, or organizations to be the local mental health authority if the department's evaluation of the authority's performance under Section 534.059 indicates that the authority cannot ensure the availability of the specific services to priority populations required by the department and this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.38, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 14, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.065. RENEWAL OF CERTAIN CONTRACTS FOR COMMUNITY

SERVICES. (a) A local mental health authority shall review a contract scheduled for renewal that:

(1) is between the authority and a private provider;

(2) is for the provision of mental health services at the community level, including residential services; and

(3) involves the use of state funds or funds for which the state has oversight responsibility.

(b) The local mental health authority may renew the contract only if the contract meets the criteria provided by Section 533.016.

(c) The local mental health authority and private provider shall negotiate a contract renewal at arm's length and in good faith.

(d) This section applies to a contract renewal regardless of the date on which the original contract was initially executed.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 821, Sec. 15, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1187, Sec. 15, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.066. LOCAL MATCH REQUIREMENT. (a) The department shall include in a contract with a local mental health authority a requirement that some or all of the state funds the authority receives be matched by local support in an amount or proportion jointly agreed to by the department and the authority's board of trustees and based on the authority's financial capability and its overall commitment to other mental health programs, as appropriate.

(b) Patient fee income, third-party insurance income, services and facilities contributed by the local mental health authority, contributions by a county or municipality, and other locally generated contributions, including local tax funds, may be counted when calculating the local support for a local mental health authority. The department may disallow or reduce the value of services claimed as support.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.38, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 16, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.067. FEE COLLECTION POLICY. The executive commissioner shall establish a uniform fee collection policy for all local mental health authorities that is equitable, provides for collections, and maximizes contributions to local revenue.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.38, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.0675. NOTICE OF DENIAL, REDUCTION, OR TERMINATION OF SERVICES. The executive commissioner by rule, in cooperation with local mental health authorities, consumers, consumer advocates, and service providers, shall establish a uniform procedure that each local mental health authority shall use to notify consumers in writing of the denial, involuntary reduction, or termination of services and of the right to appeal those decisions.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.38, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 646, Sec. 11, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.068. AUDITS. (a) As a condition to receiving funds under this subtitle, a local mental health authority other than a state facility designated as an authority must annually submit to the department a financial and compliance audit prepared by a certified public accountant or public accountant licensed by the Texas State Board of Public Accountancy. To ensure the highest degree of independence and quality, the local mental health authority shall use an invitation-for-proposal process as prescribed by the executive commissioner to select the auditor.

(a-1) The audit required under Subsection (a) may be published electronically on the local mental health authority's Internet website. An authority that electronically publishes an audit under this subsection shall notify the department that the audit is available on the authority's Internet website on or before the date the audit is due.

(b) The audit must meet the minimum requirements as shall be, and be in the form and in the number of copies as may be, prescribed by the executive commissioner, subject to review and comment by the state auditor.

(c) The local mental health authority shall file the required number of copies of the audit report with the department by the date prescribed by the executive commissioner. From the copies filed with the department, copies of the report shall be submitted to the governor and Legislative Budget Board.

(d) The local mental health authority shall either approve or refuse to approve the audit report. If the authority refuses to approve the report, the authority shall include with the department's copies a statement detailing the reasons for refusal.

(e) The commissioner and state auditor have access to all vouchers, receipts, journals, or other records the commissioner or auditor considers necessary to review and analyze the audit report.

(f) The department shall annually submit to the governor and Legislative Audit Committee a summary of the significant findings identified during the department's reviews of fiscal audit activities.

(g) The report required under Subsection (f) may be published electronically on the department's Internet website. The department shall notify each entity entitled to receive a copy of the report that the report is available on the department's Internet website on or before the date the report is due.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.39, eff. Aug. 30, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 68, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 16, eff. September 1, 2021.

Sec. 534.069. CRITERIA FOR PROVIDING FUNDS FOR START-UP COSTS. (a) The executive commissioner by rule shall develop criteria to regulate the provision of payment to a private provider for start-up costs associated with the development of residential and other community services for persons with mental illness.

(b) The criteria shall provide that start-up funds be awarded only as a last resort and shall include provisions relating to:

(1) the purposes for which start-up funds may be used;

(2) the ownership of capital property and equipment obtained by the use of start-up funds; and

(3) the obligation of the private provider to repay the start-up funds awarded by the department by direct repayment or by providing services for a period agreed to by the parties.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.070. USE OF PROSPECTIVE PAYMENT FUNDS. (a) Each local mental health authority that receives prospective payment funds shall submit to the department a quarterly report that clearly identifies how the provider or program used the funds during the preceding fiscal quarter.

(b) The executive commissioner by rule shall prescribe the form of the report, the specific information that must be included in the report, and the deadlines for submitting the report.

(c) The department may not provide prospective payment funds to a local mental health authority that fails to submit the quarterly reports required by this section.

(d) In this section, "prospective payment funds" means money the department prospectively provides to a local mental health authority to provide community services to certain persons with mental illness.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.071. ADVISORY COMMITTEE. A local mental health authority may appoint a committee to advise its governing board on a matter relating to the oversight and provision of mental health services. The appointment of a committee does not relieve the authority's governing board of a responsibility prescribed by this subtitle.

Added by Acts 1999, 76th Leg., ch. 1209, Sec. 13, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

SUBCHAPTER B-1. COMMUNITY-BASED INTELLECTUAL DISABILITY SERVICES

Sec. 534.101. DEFINITIONS. In this subchapter:

(1) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Department facility" means a state supported living center, including the ICF-IID component of the Rio Grande State Center.

Added by Acts 1997, 75th Leg., ch. 835, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 1229, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.530, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.102. RULES AND STANDARDS. (a) The executive commissioner shall adopt rules, including standards, the executive commissioner considers necessary and appropriate to ensure the adequate provision of community-based intellectual disability

services through a local intellectual and developmental disability authority under this subchapter.

(b) The department shall send a copy of the rules to each local intellectual and developmental disability authority or other provider receiving contract funds as a local intellectual and developmental disability authority or designated provider.

Added by Acts 1997, 75th Leg., ch. 835, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.531, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.103. REQUIRED COMMUNITY-BASED INTELLECTUAL DISABILITY SERVICES. (a) The department shall ensure that, at a minimum, the following services are available in each service area:

(1) community-based assessments, including diagnosis and evaluation services;

(2) respite care; and

(3) case management services.

(b) The department shall arrange for appropriate community-based services, including the assignment of a case manager, to be available in each service area for each person discharged from a department facility who is in need of care.

(c) To the extent that resources are available, the department shall ensure that the services listed in this section are available for children, including adolescents, as well as adults, in each service area.

Added by Acts 1997, 75th Leg., ch. 835, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.532, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.104. JOINT DISCHARGE PLANNING. (a) The executive commissioner shall adopt, and the department shall enforce, rules

that require continuity of services and planning for client care between department facilities and local intellectual and developmental disability authorities.

(b) At a minimum, the rules must require joint discharge planning between a department facility and a local intellectual and developmental disability authority before a facility discharges a client or places the client on an extended furlough with an intent to discharge.

(c) The local intellectual and developmental disability authority shall plan with the department facility and determine the appropriate community services for the client.

(d) The local intellectual and developmental disability authority shall arrange for the provision of the services if department funds are to be used and may subcontract with or make a referral to a local agency or entity.

Added by Acts 1997, 75th Leg., ch. 835, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.802, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.533, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.105. DESIGNATION OF PROVIDER. (a) The department shall identify and contract with a local intellectual and developmental disability authority for each service area to ensure that services are provided to client populations determined by the department. A local intellectual and developmental disability authority shall ensure that services to address the needs of priority populations are provided as required by the department and shall comply with the rules and standards adopted under Section 534.102.

(b) The department may contract with a local agency or a private provider or organization to act as a designated provider of a service if the department:

(1) cannot negotiate a contract with a local intellectual and developmental disability authority to ensure that a specific required service for priority populations is available in that service area; or

(2) determines that a local intellectual and developmental disability authority does not have the capacity to ensure the availability of that service.

Added by Acts 1997, 75th Leg., ch. 835, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.106. CONTRACTS FOR CERTAIN COMMUNITY SERVICES. (a) The executive commissioner shall design a competitive procurement or similar system that an intellectual and developmental disability authority shall use in awarding an initial contract for the provision of services at the community level for persons with an intellectual disability, including residential services, if the contract involves the use of state money or money for which the state has oversight responsibility.

(b) The system must require that each local intellectual and developmental disability authority:

(1) ensure public participation in the authority's decisions regarding whether to provide or to contract for a service;

(2) make a reasonable effort to give notice of the intent to contract for services to each potential private provider in the local service area of the authority; and

(3) review each submitted proposal and award the contract to the applicant that the authority determines has made the lowest and best bid to provide the needed services.

(c) Each local intellectual and developmental disability authority, in determining the lowest and best bid, shall consider any relevant information included in the authority's request for bid proposals, including:

(1) price;

(2) the ability of the bidder to perform the contract and to provide the required services;

(3) whether the bidder can perform the contract or provide the services within the period required, without delay or interference;

(4) the bidder's history of compliance with the laws relating to the bidder's business operations and the affected

services and whether the bidder is currently in compliance;

(5) whether the bidder's financial resources are sufficient to perform the contract and to provide the services;

(6) whether necessary or desirable support and ancillary services are available to the bidder;

(7) the character, responsibility, integrity, reputation, and experience of the bidder;

(8) the quality of the facilities and equipment available to or proposed by the bidder;

(9) the ability of the bidder to provide continuity of services; and

(10) the ability of the bidder to meet all applicable written departmental policies, principles, and regulations.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 16, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.107. COORDINATION OF ACTIVITIES. A local intellectual and developmental disability authority shall coordinate its activities with the activities of other appropriate agencies that provide care and treatment for persons with drug or alcohol problems.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.1075. RESPITE CARE. (a) The executive commissioner shall adopt rules relating to the provision of respite care and shall develop a system to reimburse providers of in-home respite care.

(b) The rules must:

(1) encourage the use of existing local providers;

(2) encourage family participation in the choice of a qualified provider;

(3) establish procedures necessary to administer this section, including procedures for:

(A) determining the amount and type of in-home respite care to be authorized;

(B) reimbursing providers;

(C) handling appeals from providers;

(D) handling complaints from recipients of in-home respite care;

(E) providing emergency backup for in-home respite care providers; and

(F) advertising for, selecting, and training in-home respite care providers; and

(4) specify the conditions and provisions under which a provider's participation in the program can be canceled.

(c) The executive commissioner shall establish service and performance standards for department facilities and designated providers to use in operating the in-home respite care program. The executive commissioner shall establish the standards from information obtained from the families of clients receiving in-home respite care and from providers of in-home respite care. The executive commissioner may obtain the information at a public hearing or from an advisory group.

(d) The service and performance standards established by the executive commissioner under Subsection (c) must:

(1) prescribe minimum personnel qualifications the executive commissioner determines are necessary to protect health and safety;

(2) establish levels of personnel qualifications that are dependent on the needs of the client; and

(3) permit a health professional with a valid Texas practitioner's license to provide care that is consistent with the professional's training and license without requiring additional training unless the executive commissioner determines that additional training is necessary.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.108. STANDARDS OF CARE. (a) The executive commissioner shall develop standards of care for the services provided by a local intellectual and developmental disability authority and its subcontractors under this subchapter.

(b) The standards must be designed to ensure that the quality of community-based intellectual disability services is consistent with the quality of care available in department facilities.

(c) In conjunction with local intellectual and developmental disability authorities, the executive commissioner shall review the standards biennially to determine if each standard is necessary to ensure the quality of care.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.109. CONTRACT COMPLIANCE FOR LOCAL AUTHORITIES. (a) The department shall evaluate a local intellectual and developmental disability authority's compliance with its contract to ensure the provision of specific services to priority populations.

(b) If, by a date set by the commissioner, a local intellectual and developmental disability authority fails to comply with its contract to ensure the provision of services to the satisfaction of the commissioner, the department may impose a sanction as provided by the applicable contract rule until the dispute is resolved. The department shall notify the authority in writing of the department's decision to impose a sanction.

(c) A local intellectual and developmental disability authority may appeal the department's decision to impose a sanction on the authority. The executive commissioner by rule shall prescribe the appeal procedure.

(d) The filing of a notice of appeal stays the imposition of the department's decision to impose a sanction except when an act or omission by a local intellectual and developmental disability authority is endangering or may endanger the life, health, welfare, or safety of a person.

(e) While an appeal under this section is pending, the department may limit general revenue allocations to a local intellectual and developmental disability authority to monthly distributions.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.110. PROGRAM AND SERVICE MONITORING AND REVIEW OF LOCAL AUTHORITIES. (a) The department shall develop mechanisms for monitoring the services provided by a local intellectual and developmental disability authority.

(b) The department shall review the program quality and program performance results of a local intellectual and developmental disability authority in accordance with a risk assessment and evaluation system appropriate to the authority's contract requirements. The department may determine the scope of the review.

(c) A contract between a local intellectual and developmental disability authority and the department must authorize the department to have unrestricted access to all facilities, records, data, and other information under the control of the authority as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with department funds.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.111. COORDINATED PROGRAM AUDITS OF LOCAL AUTHORITIES. (a) The executive commissioner shall coordinate with each agency or department of the state that contracts with a local intellectual and developmental disability authority to prescribe procedures for a coordinated program audit of the authority. The procedures must be:

(1) consistent with the requirements for the receipt of federal funding by the authority; and

(2) based on risk assessment.

(b) A program audit must evaluate:

(1) the extent to which a local intellectual and developmental disability authority is achieving the results or benefits established by an agency or department of the state or by the legislature;

(2) the effectiveness of the authority's organization, program, activities, or functions; and

(3) the authority's compliance with law.

(c) A program audit of a local intellectual and developmental

disability authority must be performed in accordance with the procedures prescribed under this section.

(d) The department may not implement a procedure for a program audit under this section without the approval of the executive commissioner.

(e) This section does not prohibit an agency, department, or other entity providing funding to a local intellectual and developmental disability authority from investigating a complaint against the authority or performing additional contract monitoring of the authority.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.112. FINANCIAL AUDITS OF LOCAL AUTHORITIES. (a) The executive commissioner shall prescribe procedures for a financial audit of a local intellectual and developmental disability authority. The procedures must be consistent with requirements for the receipt of federal funding by the authority.

(b) The executive commissioner shall develop the procedures with the assistance of each agency or department of the state that contracts with a local intellectual and developmental disability authority. The executive commissioner shall incorporate each agency's or department's financial or compliance requirements for an authority into a single audit that meets the requirements of Section 534.121.

(c) Before prescribing or amending a procedure under this section, the executive commissioner must set a deadline for agencies and departments of the state that contract with local intellectual and developmental disability authorities to submit proposals relating to the procedure.

(d) An agency or department of the state that contracts with a local intellectual and developmental disability authority must comply with a procedure developed under this section.

(e) The department may not implement a procedure under this section without the approval of the executive commissioner.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff.

April 2, 2015.

Sec. 534.113. ADDITIONAL FINANCIAL AUDIT ACTIVITY. (a) The executive commissioner shall develop protocols for an agency or department of the state to conduct additional financial audit activities of a local intellectual and developmental disability authority.

(b) An agency or department of the state may not conduct additional financial audit activities relating to a local intellectual and developmental disability authority without the approval of the executive commissioner.

(c) This section, and a protocol developed under this section, do not apply to an audit conducted under Chapter 321, Government Code.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.114. PROGRAM AND SERVICE MONITORING AND REVIEW OF CERTAIN COMMUNITY SERVICES. (a) The local intellectual and developmental disability authority shall monitor the services of a provider who contracts with the authority to provide services to persons with an intellectual disability to ensure that the provider is delivering the services in a manner consistent with the provider's contract.

(b) Each provider contract involving the use of state funds or funds for which the state has oversight responsibility must authorize the local intellectual and developmental disability authority or the authority's designee and the department or the department's designee to have unrestricted access to all facilities, records, data, and other information under the control of the provider as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with the contract.

(c) The department may withdraw funding from a local intellectual and developmental disability authority that fails to cancel a contract with a provider involving the use of state funds or funds for which the state has oversight responsibility if:

(1) the provider is not fulfilling its contractual obligations; and

(2) the authority has not taken appropriate action to remedy the problem in accordance with department rules.

(d) The executive commissioner by rule shall prescribe procedures a local intellectual and developmental disability authority must follow in remedying a problem with a provider.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.115. PEER REVIEW ORGANIZATION. The department shall assist a local intellectual and developmental disability authority in developing a peer review organization to provide self-assessment of programs and to supplement department reviews under Section 534.110.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.116. CONTRACT RENEWAL. The executive commissioner may refuse to renew a contract with a local intellectual and developmental disability authority and may select other agencies, entities, or organizations to be the local intellectual and developmental disability authority if the department's evaluation of the authority's performance under Section 534.109 indicates that the authority cannot ensure the availability of the specific services to priority populations required by the department and this subtitle.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.117. RENEWAL OF CERTAIN CONTRACTS FOR COMMUNITY SERVICES. (a) A local intellectual and developmental disability authority shall review a contract scheduled for renewal that:

(1) is between the authority and a private provider;

(2) is for the provision of intellectual disability services at the community level, including residential services; and

(3) involves the use of state funds or funds for which the state has oversight responsibility.

(b) The local intellectual and developmental disability authority may renew the contract only if the contract meets the criteria provided by Section 533A.016.

(c) The local intellectual and developmental disability authority and private provider shall negotiate a contract renewal at arm's length and in good faith.

(d) This section applies to a contract renewal regardless of the date on which the original contract was initially executed.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.118. LOCAL MATCH REQUIREMENT. (a) The department shall include in a contract with a local intellectual and developmental disability authority a requirement that some or all of the state funds the authority receives be matched by local support in an amount or proportion jointly agreed to by the department and the authority's board of trustees and based on the authority's financial capability and its overall commitment to other intellectual disability programs, as appropriate.

(b) Client fee income, third-party insurance income, services and facilities contributed by the local intellectual and developmental disability authority, contributions by a county or municipality, and other locally generated contributions, including local tax funds, may be counted when calculating the local support for a local intellectual and developmental disability authority. The department may disallow or reduce the value of services claimed as support.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.119. FEE COLLECTION POLICY. The executive

commissioner shall establish a uniform fee collection policy for all local intellectual and developmental disability authorities that is equitable, provides for collections, and maximizes contributions to local revenue.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.120. NOTICE OF DENIAL, REDUCTION, OR TERMINATION OF SERVICES. The executive commissioner by rule, in cooperation with local intellectual and developmental disability authorities, consumers, consumer advocates, and service providers, shall establish a uniform procedure that each local intellectual and developmental disability authority shall use to notify consumers in writing of the denial, involuntary reduction, or termination of services and of the right to appeal those decisions.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.121. AUDITS. (a) As a condition to receiving funds under this subtitle, a local intellectual and developmental disability authority other than a state facility designated as an authority must annually submit to the department a financial and compliance audit prepared by a certified public accountant or public accountant licensed by the Texas State Board of Public Accountancy. To ensure the highest degree of independence and quality, the local intellectual and developmental disability authority shall use an invitation-for-proposal process as prescribed by the executive commissioner to select the auditor.

(a-1) The audit required under Subsection (a) may be published electronically on the local intellectual and developmental disability authority's Internet website. An authority that electronically publishes an audit under this subsection shall notify the department that the audit is available on the authority's Internet website on or before the date the audit is due.

(b) The audit must meet the minimum requirements as shall be,

and be in the form and in the number of copies as may be, prescribed by the executive commissioner, subject to review and comment by the state auditor.

(c) The local intellectual and developmental disability authority shall file the required number of copies of the audit report with the department by the date prescribed by the executive commissioner. From the copies filed with the department, copies of the report shall be submitted to the governor and Legislative Budget Board.

(d) The local intellectual and developmental disability authority shall either approve or refuse to approve the audit report. If the authority refuses to approve the report, the authority shall include with the department's copies a statement detailing the reasons for refusal.

(e) The commissioner and state auditor have access to all vouchers, receipts, journals, or other records the commissioner or auditor considers necessary to review and analyze the audit report.

(f) The department shall annually submit to the governor, Legislative Budget Board, and Legislative Audit Committee a summary of the significant findings identified during the department's reviews of fiscal audit activities.

(g) The report required under Subsection (f) may be published electronically on the department's Internet website. The department shall notify each entity entitled to receive a copy of the report that the report is available on the department's Internet website on or before the date the report is due.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.122. CRITERIA FOR PROVIDING FUNDS FOR START-UP COSTS. (a) The executive commissioner by rule shall develop criteria to regulate the provision of payment to a private provider for start-up costs associated with the development of residential and other community services for persons with an intellectual disability.

(b) The criteria shall provide that start-up funds be awarded only as a last resort and shall include provisions relating to:

(1) the purposes for which start-up funds may be used;

(2) the ownership of capital property and equipment obtained by the use of start-up funds; and

(3) the obligation of the private provider to repay the start-up funds awarded by the department by direct repayment or by providing services for a period agreed to by the parties.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.123. USE OF PROSPECTIVE PAYMENT FUNDS. (a) Each local intellectual and developmental disability authority that receives prospective payment funds shall submit to the department a quarterly report that clearly identifies how the provider or program used the funds during the preceding fiscal quarter.

(b) The executive commissioner by rule shall prescribe the form of the report, the specific information that must be included in the report, and the deadlines for submitting the report.

(c) The department may not provide prospective payment funds to a local intellectual and developmental disability authority that fails to submit the quarterly reports required by this section.

(d) In this section, "prospective payment funds" means money the department prospectively provides to a local intellectual and developmental disability authority to provide community services to certain persons with an intellectual disability.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.124. ADVISORY COMMITTEE. A local intellectual and developmental disability authority may appoint a committee to advise its governing board on a matter relating to the oversight and provision of intellectual disability services. The appointment of a committee does not relieve the authority's governing board of a responsibility prescribed by this subtitle.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff.

April 2, 2015.

SUBCHAPTER C. HEALTH MAINTENANCE ORGANIZATIONS

Sec. 534.151. HEALTH MAINTENANCE ORGANIZATION CERTIFICATE OF AUTHORITY. (a) One or more community centers may create or operate a nonprofit corporation pursuant to the laws of this state for the purpose of accepting capitated or other at-risk payment arrangements for the provision of services designated in a plan approved by each appropriate department under Subchapter A.

(b) Before a nonprofit corporation organized or operating under Subsection (a) accepts or enters into any capitated or other at-risk payment arrangement for services designated in a plan approved by each appropriate department under Subchapter A, the nonprofit corporation must obtain the appropriate certificate of authority from the Texas Department of Insurance to operate as a health maintenance organization pursuant to Chapter 843, Insurance Code.

(c) Before submitting any bids, a nonprofit corporation operating under this subchapter shall disclose in an open meeting the services to be provided by the community center through any capitated or other at-risk payment arrangement by the nonprofit corporation. Notice of the meeting must be posted in accordance with Sections 551.041, 551.043, and 551.054, Government Code. Each appropriate department shall verify that the services provided under any capitated or other at-risk payment arrangement are within the scope of services approved by each appropriate department in each community center's plan required under Subchapter A.

(d) The board of the nonprofit corporation shall:

(1) provide for public notice of the nonprofit corporation's intent to submit a bid to provide or arrange services through a capitated or other at-risk payment arrangement through placement as a board agenda item on the next regularly scheduled board meeting that allows at least 15 days' public review of the plan; and

(2) provide an opportunity for public comment on the services to be provided through such arrangements and on the consideration of local input into the plan.

(e) The nonprofit corporation shall provide:

(1) public notice before verification and disclosure of services to be provided by the community center through any capitated

or other at-risk payment arrangements by the nonprofit corporation;

(2) an opportunity for public comment on the community center services within the capitated or other at-risk payment arrangements offered by the nonprofit corporation;

(3) published summaries of all relevant documentation concerning community center services arranged through the nonprofit corporation, including summaries of any similar contracts the nonprofit corporation has entered into; and

(4) public access and review of all relevant documentation.

(f) A nonprofit corporation operating under this subchapter:

(1) is subject to the requirements of Chapters 551 and 552, Government Code;

(2) shall solicit public input on the operations of the nonprofit corporation and allow public access to information on the operations, including services, administration, governance, revenues, and expenses, on request unless disclosure is expressly prohibited by law or the information is confidential under law; and

(3) shall publish an annual report detailing the services, administration, governance, revenues, and expenses of the nonprofit corporation, including the disposition of any excess revenues.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.152. LAWS AND RULES. A nonprofit corporation created or operated under this subchapter that obtains and holds a valid certificate of authority as a health maintenance organization may exercise the powers and authority and is subject to the conditions and limitations provided by this subchapter, Chapter 843, Insurance Code, the Texas Nonprofit Corporation Law as described by Section 1.008(d), Business Organizations Code, and rules of the Texas Department of Insurance.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.153. APPLICATION OF LAWS AND RULES. A health

maintenance organization created and operating under this subchapter is governed as, and is subject to the same laws and rules of the Texas Department of Insurance as, any other health maintenance organization of the same type. The commissioner of insurance may adopt rules as necessary to accept funding sources other than the sources specified by Section 843.405, Insurance Code, from a nonprofit health maintenance organization created and operating under this subchapter, to meet the minimum surplus requirements of that section.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.154. APPLICABILITY OF SPECIFIC LAWS. (a) A nonprofit health maintenance organization created under Section 534.151 is a health care provider that is a nonprofit health maintenance organization created and operated by a community center for purposes of Section 84.007(e), Civil Practice and Remedies Code. The nonprofit health maintenance organization is not a governmental unit or a unit of local government, for purposes of Chapters 101 and 102, Civil Practice and Remedies Code, respectively, or a local government for purposes of Chapter 791, Government Code.

(b) Nothing in this subchapter precludes one or more community centers from forming a nonprofit corporation under Chapter 162, Occupations Code, to provide services on a risk-sharing or capitated basis as permitted under Chapter 844, Insurance Code.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.155. CONSIDERATION OF BIDS. Each appropriate department shall give equal consideration to bids submitted by any entity, whether it be public, for-profit, or nonprofit, if the department accepts bids to provide services through a capitated or at-risk payment arrangement and if the entities meet all other criteria as required by the department.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.156. CONDITIONS FOR CERTAIN CONTRACTS. A contract between each appropriate department and a health maintenance organization formed by one or more community centers must provide that the health maintenance organization may not form a for-profit entity unless the organization transfers all of the organization's assets to the control of the boards of trustees of the community centers that formed the organization.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

SUBTITLE B. STATE FACILITIES

CHAPTER 551. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL POWERS AND DUTIES RELATING TO STATE FACILITIES

Sec. 551.001. DEFINITIONS. In this subtitle:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means:

(A) the commissioner of state health services in relation to mental health services; and

(B) the commissioner of aging and disability services in relation to intellectual disability services.

(3) "Department" means:

(A) the Department of State Health Services in relation to mental health services; and

(B) the Department of Aging and Disability Services in relation to intellectual disability services.

(4) "Department facility" means:

(A) a facility for persons with mental illness under the jurisdiction of the Department of State Health Services; and

(B) a facility for persons with an intellectual disability under the jurisdiction of the Department of Aging and Disability Services.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.002. PROHIBITION OF INTEREST. The superintendent or director of a department facility or a person connected with that department facility may not:

(1) sell or have a concern in the sale of merchandise, supplies, or other items to a department facility; or

(2) have an interest in a contract with a department facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.003. DEPOSIT OF PATIENT OR CLIENT FUNDS. (a) The superintendent or director of a department facility is the custodian of the personal funds that belong to a facility patient or client and that are on deposit with the institution.

(b) The superintendent or director may deposit or invest those funds in:

(1) a bank in this state;

(2) federal bonds or obligations; or

(3) bonds or obligations for which the faith and credit of the United States are pledged.

(c) The superintendent or director may combine the funds of facility patients or clients only to deposit or invest the funds.

(d) The person performing the function of business manager at that facility shall maintain records of the amount of funds on deposit for each facility patient or client.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.004. BENEFIT FUND. (a) The superintendent or director may deposit the interest or increment accruing from funds deposited or invested under Section 551.003 into a fund to be known as the benefit fund. The superintendent or director is the trustee of the fund.

(b) The superintendent or director may spend money from the benefit fund for:

(1) educating or entertaining the patients or clients;

(2) barber or cosmetology services for the patients or clients; and

(3) the actual expense incurred in maintaining the fund.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.005. DISBURSEMENT OF PATIENT OR CLIENT FUNDS. Funds in the benefit fund or belonging to a facility patient or client may be disbursed only on the signatures of both the facility's superintendent or director and the person performing the function of business manager at that facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.006. FACILITY STANDARDS. (a) The executive commissioner by rule shall prescribe standards for department facilities relating to building safety and the number and quality of staff. The staff standards must provide that adequate staff exist to ensure a continuous plan of adequate medical, psychiatric, nursing, and social work services for patients and clients of a department facility.

(b) Each department shall approve facilities of that department that meet applicable standards and, when requested, shall certify the approval to the Centers for Medicare and Medicaid Services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.007. BUILDING AND IMPROVEMENT PROGRAM. (a) The executive commissioner, in coordination with the appropriate department, shall design, construct, equip, furnish, and maintain buildings and improvements authorized by law at department facilities.

(b) The executive commissioner may employ architects and engineers to prepare plans and specifications and to supervise construction of buildings and improvements. The executive commissioner shall employ professional, technical, and clerical personnel to carry out the design and construction functions prescribed by this section, subject to the General Appropriations Act and other applicable law.

(c) If the legislature appropriates money to the commission for the purpose of the construction, expansion, or operation of certain inpatient mental health facilities under authority conferred by Sections 2155.144(b-2) and 2166.251, Government Code, the commission may award the money as a one-time grant directly to an entity for that purpose.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.
Acts 2025, 89th Leg., R.S., Ch. 367 (H.B. 109), Sec. 1, eff. September 1, 2025.

Sec. 551.008. REGIONAL LAUNDRY CENTERS. A regional laundry center operated by the commission to provide laundry services to department facilities may contract with federal agencies, other state agencies, or local political subdivisions to provide or receive

laundry services.

Added by Acts 2019, 86th Leg., R.S., Ch. 111 (S.B. 1234), Sec. 1, eff. May 22, 2019.

Sec. 551.009. HILL COUNTRY LOCAL MENTAL HEALTH AUTHORITY CRISIS STABILIZATION UNIT. (a) In this section, "department" means the Department of State Health Services.

(a-1) The department shall contract with the local mental health authority serving the Hill Country area, including Kerr County, to operate a crisis stabilization unit on the grounds of the Kerrville State Hospital as provided by this section. The unit must be a 16-bed facility separate from the buildings used by the Kerrville State Hospital.

(b) The department shall include provisions in the contract requiring the local mental health authority to ensure that the crisis stabilization unit provides short-term residential treatment, including medical and nursing services, designed to reduce a patient's acute symptoms of mental illness and prevent a patient's admission to an inpatient mental health facility.

(c) The local mental health authority shall contract with Kerrville State Hospital to provide food service, laundry service, and lawn care to the local mental health authority operating a crisis stabilization unit on the grounds of the Kerrville State Hospital as provided by this section.

(d) The crisis stabilization unit may not be used to provide care to:

(1) children; or

(2) adults committed to or court ordered to a department facility as provided by Chapter 46C, Code of Criminal Procedure.

(e) The local mental health authority operating the crisis stabilization unit under contract shall use, for the purpose of operating the 16-bed unit, the money appropriated to the department for operating 16 beds in state hospitals that is allocated to the local mental health authority. The department shall ensure that the local mental health authority retains the remainder of the local authority's state hospital allocation that is not used for operating the 16-bed unit. The department may allocate additional funds appropriated to the department for state hospitals to the crisis

stabilization unit.

(f) The department shall reduce the number of beds the department operates in the state hospital system by 16. The department, in collaboration with the local mental health authority, shall ensure that the 16 beds in the crisis stabilization unit are made available to other mental health authorities for use as designated by the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 1188 (H.B. 654), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 83 (S.B. 1054), Sec. 2, eff. May 20, 2009.

Acts 2009, 81st Leg., R.S., Ch. 83 (S.B. 1054), Sec. 3, eff. May 20, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 111 (S.B. 1234), Sec. 2, eff. May 22, 2019.

SUBCHAPTER B. PROVISIONS APPLICABLE TO FACILITY SUPERINTENDENT OR DIRECTOR

Sec. 551.022. POWERS AND DUTIES OF SUPERINTENDENT. (a) The superintendent of a department facility for persons with mental illness is the administrative head of that facility.

(b) The superintendent has the custody of and responsibility to care for the buildings, grounds, furniture, and other property relating to the facility.

(c) The superintendent shall:

(1) oversee the admission and discharge of patients;

(2) keep a register of all patients admitted to or discharged from the facility;

(3) supervise repairs and improvements to the facility;

(4) ensure that facility money is spent judiciously and economically;

(5) keep an accurate and detailed account of all money received and spent, stating the source of the money and to whom and the purpose for which the money is spent; and

(6) keep a full record of the facility's operations.

(d) In accordance with department rules and departmental operating procedures, the superintendent may:

(1) establish policy to govern the facility that the superintendent considers will best promote the patients' interest and welfare;

(2) appoint subordinate officers, teachers, and other employees and set their salaries, in the absence of other law; and

(3) remove an officer, teacher, or employee for good cause.

(e) This section does not apply to a state supported living center or the director of a state supported living center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 821, Sec. 17, eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 20, eff. June 11, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.0225. POWERS AND DUTIES OF STATE SUPPORTED LIVING CENTER DIRECTOR. (a) The director of a state supported living center is the administrative head of the center.

(b) The director of a state supported living center has the custody of and responsibility to care for the buildings, grounds, furniture, and other property relating to the center.

(c) The director of a state supported living center shall:

(1) oversee the admission and discharge of residents and clients;

(2) keep a register of all residents and clients admitted to or discharged from the center;

(3) ensure that the civil rights of residents and clients of the center are protected;

(4) ensure the health, safety, and general welfare of residents and clients of the center;

(5) supervise repairs and improvements to the center;

(6) ensure that center money is spent judiciously and economically;

(7) keep an accurate and detailed account of all money

received and spent, stating the source of the money and on whom and the purpose for which the money is spent;

(8) keep a full record of the center's operations;

(9) monitor the arrival and departure of individuals to and from the center as appropriate to ensure the safety of residents; and

(10) ensure that residents' family members and legally authorized representatives are notified of serious events that may indicate problems in the care or treatment of residents.

(d) In accordance with department rules and operating procedures, the director of a state supported living center may:

(1) establish policy to govern the center that the director considers will best promote the residents' interest and welfare;

(2) hire subordinate officers, teachers, and other employees and set their salaries, in the absence of other law; and

(3) dismiss a subordinate officer, teacher, or employee for good cause.

(e) The Department of Aging and Disability Services shall, with input from residents of a state supported living center, and the family members and legally authorized representatives of those residents, develop a policy that defines "serious event" for purposes of Subsection (c)(10).

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 21, eff. June 11, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.024. SUPERINTENDENT'S OR DIRECTOR'S DUTY TO ADMIT COMMISSIONER AND EXECUTIVE COMMISSIONER. (a) The superintendent or director shall admit into every part of the department facility the commissioner of that department and the executive commissioner.

(b) The superintendent or director shall on request show any book, paper, or account relating to the department facility's business, management, discipline, or government to the commissioner of that department or the executive commissioner.

(c) The superintendent or director shall give to the commissioner of that department or the executive commissioner any requested copy, abstract, or report.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.025. DUTY TO REPORT MISSING PATIENT OR CLIENT. If a person receiving inpatient intellectual disability services or court-ordered inpatient mental health services leaves a department facility without notifying the facility or without the facility's consent, the facility director or superintendent shall immediately report the person as a missing person to an appropriate law enforcement agency in the area in which the facility is located.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.026. PERSON PERFORMING BUSINESS MANAGER FUNCTION. (a) The person performing the function of business manager of a department facility is the chief disbursing officer of the department facility.

(b) The person performing the function of business manager of a department facility is directly responsible to the superintendent or director.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

SUBCHAPTER C. POWERS AND DUTIES RELATING TO PATIENT OR CLIENT CARE

Sec. 551.041. MEDICAL AND DENTAL TREATMENT. (a) Each department shall provide or perform recognized medical and dental treatment or services to a person admitted or committed to that department's care. Each department may perform this duty through an authorized agent.

(b) Each department may contract for the support, maintenance,

care, or medical or dental treatment or service with a municipal, county, or state hospital, a private physician, a licensed nursing facility or hospital, or a hospital district. The authority to contract provided by this subsection is in addition to other contractual authority granted to the department. A contract entered into under this subsection may not assign a lien accruing to this state.

(c) If a department requests consent to perform medical or dental treatment or services from a person or the guardian of the person whose consent is considered necessary and a reply is not obtained immediately, or if there is no guardian or responsible relative of the person to whom a request can be made, the superintendent or director of a department facility shall order:

(1) medical treatment or services for the person on the advice and consent of three primary care providers, at least two of whom are physicians licensed by the Texas Medical Board; or

(2) dental treatment or services for the person on the advice and consent of two dentists licensed by the State Board of Dental Examiners and of one physician licensed by the Texas Medical Board.

(d) This section does not authorize the performance of an operation involving sexual sterilization or a frontal lobotomy.

(e) For purposes of this section, "primary care provider" means a health care professional who provides health care services to a defined population of residents. The term includes a physician licensed by the Texas Medical Board, an advanced practice registered nurse licensed by the Texas Board of Nursing, and a physician assistant licensed by the Texas Physician Assistant Board.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 437 (S.B. 1565), Sec. 1, eff. September 1, 2017.

Sec. 551.042. OUTPATIENT CLINICS. (a) If funds are available, the Department of State Health Services may establish in locations the department considers necessary outpatient clinics to treat

persons with mental illness.

(b) As necessary to establish and operate the clinics:

(1) the department may:

(A) acquire facilities;

(B) hire personnel; and

(C) contract with persons, corporations, and local, state, and federal agencies; and

(2) the executive commissioner may adopt rules.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.044. OCCUPATIONAL THERAPY PROGRAMS. (a) Each department may provide equipment, materials, and merchandise for occupational therapy programs at department facilities.

(b) The superintendent or director of a department facility may, in accordance with rules of that department, contract for the provision of equipment, materials, and merchandise for occupational therapy programs. If the contractor retains the finished or semi-finished product, the contract shall provide for a fair and reasonable rental payment to the applicable department by the contractor for the use of facility premises or equipment. The rental payment is determined by the amount of time the facility premises or equipment is used in making the products.

(c) The finished products made in an occupational therapy program may be sold and the proceeds placed in the patients' or clients' benefit fund, the patients' or clients' trust fund, or a revolving fund for use by the patients or clients. A patient or client may keep the finished product if the patient or client purchases the material for the product from the state.

(d) Each department may accept donations of money or materials for use in occupational therapy programs and may use a donation in the manner requested by the donor if not contrary to the policy of that department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff.

April 2, 2015.

CHAPTER 552. STATE HOSPITALS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 552.001. HOSPITAL DISTRICTS. (a) The department shall divide the state into hospital districts.

(b) The department may change the districts.

(c) The department shall designate the state hospitals to which persons with mental illness from each district shall be admitted.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 552.0011. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(104), eff. April 2, 2015.

(2) "Department" means the Department of State Health Services.

(3) "Direct care employee" means a state hospital employee who provides direct delivery of services to a patient.

(4) "Direct supervision" means supervision of the employee by the employee's supervisor with the supervisor physically present and providing the employee with direction and assistance while the employee performs his or her duties.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(104), eff. April 2, 2015.

(6) "Inspector general" means the Health and Human Services Commission's office of inspector general.

(7) "Patient" means an individual who is receiving voluntary or involuntary mental health services at a state hospital.

(8) "State hospital" means a hospital operated by the department primarily to provide inpatient care and treatment for persons with mental illness.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 2, eff. June 14, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(104), eff. April 2, 2015.

Sec. 552.002. CARRYING OF HANDGUN BY LICENSE HOLDER IN STATE HOSPITAL. (a) In this section:

(1) "License holder" has the meaning assigned by Section 46.03, Penal Code.

(2) "State hospital" means the following facilities:

(A) the Austin State Hospital;

(B) the Big Spring State Hospital;

(C) the El Paso Psychiatric Center;

(D) the Kerrville State Hospital;

(E) the Vernon State Hospital;

(F) the Rio Grande State Center;

(G) the Rusk State Hospital;

(H) the San Antonio State Hospital;

(I) the Terrell State Hospital;

(J) the Waco Center for Youth;

(K) the Wichita Falls State Hospital;

(L) the Panhandle State Hospital; and

(M) the Lubbock Psychiatric Center.

(3) "Written notice" means a sign that is posted on property and that:

(A) includes in both English and Spanish written language identical to the following: "Pursuant to Section 552.002, Health and Safety Code (carrying of handgun by license holder in state hospital), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun";

(B) appears in contrasting colors with block letters at least one inch in height; and

(C) is displayed in a conspicuous manner clearly visible to the public at each entrance to the property.

(b) A state hospital may prohibit a license holder from carrying a handgun under the authority of Subchapter H, Chapter 411, Government Code, on the property of the hospital by providing written notice.

(c) A license holder who carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, on the property of a state hospital at which written notice is provided is liable for a civil penalty in the amount of:

(1) $100 for the first violation; or

(2) $500 for the second or subsequent violation.

(d) The attorney general or an appropriate prosecuting attorney may sue to collect a civil penalty under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 1143 (H.B. 435), Sec. 7, eff. September 1, 2017.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 12, eff. September 1, 2021.
Acts 2025, 89th Leg., R.S., Ch. 214 (H.B. 913), Sec. 2, eff. September 1, 2025.

SUBCHAPTER B. INDIGENT AND NONINDIGENT PATIENTS

Sec. 552.012. CLASSIFICATION AND DEFINITION OF PATIENTS. (a) A patient is classified as either indigent or nonindigent.

(b) An indigent patient is a patient who:

(1) possesses no property;

(2) has no person legally responsible for the patient's support; and

(3) is unable to reimburse the state for the costs of the patient's support, maintenance, and treatment.

(c) A nonindigent patient is a patient who:

(1) possesses property from which the state may be reimbursed for the costs of the patient's support, maintenance, and treatment; or

(2) has a person legally responsible for the patient's support.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 552.013. SUPPORT OF INDIGENT AND NONINDIGENT PATIENTS. (a) A person may not be denied services under this subtitle because of an inability to pay for the services.

(b) The state shall support, maintain, and treat indigent and nonindigent patients at the expense of the state.

(c) The state is entitled to reimbursement for the support, maintenance, and treatment of a nonindigent patient.

(d) A patient who does not own a sufficient estate shall be maintained at the expense:

(1) of the patient's spouse, if able to do so; or

(2) if the patient is younger than 18 years of age, of the patient's father or mother, if able to do so.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 552.014. CHILD SUPPORT PAYMENTS FOR BENEFIT OF PATIENT. (a) Child support payments for the benefit of a patient paid or owed by a parent under court order are considered the property and estate of the patient, and the state may be reimbursed for the costs of a patient's support, maintenance, and treatment from those amounts.

(b) The state shall credit the amount of child support a parent actually pays for a patient against charges for which the parent is liable, based on ability to pay.

(c) A parent who receives child support payments for a patient is liable for the charges based on the amount of child support payments actually received in addition to the liability of that parent based on ability to pay.

(d) The department may file a motion to modify a court order that establishes a child support obligation for a patient to require payment of the child support directly to the state hospital or facility in which the patient resides for the patient's support, maintenance, and treatment if:

(1) the patient's parent fails to pay child support as required by the order; or

(2) the patient's parent who receives child support fails to pay charges based on the amount of child support payments received.

(e) In addition to modification of an order under Subsection (d), the court may order all past due child support for the benefit of a patient paid directly to the patient's state hospital or facility to the extent that the state is entitled to reimbursement of the patient's charges from the child support obligation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 552.015. INVESTIGATION TO DETERMINE MEANS OF SUPPORT. (a) The department may demand and conduct an investigation in a county court to determine whether a patient possesses or is entitled to property or whether a person other than the patient is liable for the

payment of the costs of the patient's support, maintenance, and treatment.

(b) The department may have citation issued and witnesses summoned to be heard on the investigation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 552.016. FEES. (a) Except as provided by this section, the department may not charge a fee that exceeds the cost to the state to support, maintain, and treat a patient.

(b) The executive commissioner may use the projected cost of providing inpatient services to establish by rule the maximum fee that may be charged to a payer.

(c) The executive commissioner by rule may establish the maximum fee according to one or a combination of the following:

(1) a statewide per capita;

(2) an individual facility per capita; or

(3) the type of service provided.

(d) Notwithstanding Subsection (b), the executive commissioner by rule may establish a fee in excess of the department's projected cost of providing inpatient services that may be charged to a payer:

(1) who is not an individual; and

(2) whose method of determining the rate of reimbursement to a provider results in the excess.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1338, eff. April 2, 2015.

Sec. 552.017. SLIDING FEE SCHEDULE. (a) The executive commissioner by rule shall establish a sliding fee schedule for the payment by the patient's parents of the state's total costs for the support, maintenance, and treatment of a patient younger than 18 years of age.

(b) The executive commissioner shall set the fee according to the parents' net taxable income and ability to pay.

(c) The parents may elect to have their net taxable income determined by their current financial statement or most recent

federal income tax return.

(d) In determining the portion of the costs of the patient's support, maintenance, and treatment that the parents are required to pay, the department, in accordance with rules adopted by the executive commissioner, shall adjust, when appropriate, the payment required under the fee schedule to allow for consideration of other factors affecting the ability of the parents to pay.

(e) The executive commissioner shall evaluate and, if necessary, revise the fee schedule at least once every five years.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 278, Sec. 1, eff. June 5, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1339, eff. April 2, 2015.

Sec. 552.018. TRUST PRINCIPALS. (a) If a patient is the beneficiary of a trust that has an aggregate principal of $250,000 or less, the corpus or income of the trust is not considered to be the property of the patient or the patient's estate and is not liable for the patient's support. If the aggregate principal of the trust exceeds $250,000, only the portion of the corpus of the trust that exceeds that amount and the income attributable to that portion are considered to be the property of the patient or the patient's estate and are liable for the patient's support.

(b) To qualify for the exemption provided by Subsection (a), the trust must be created by a written instrument, and a copy of the trust instrument must be provided to the department.

(c) A trustee of the trust shall, on the department's request, provide to the department a financial statement that shows the value of the trust estate.

(d) The department may petition a district court to order the trustee to provide a financial statement if the trustee does not provide the statement before the 31st day after the date on which the department makes the request. The court shall hold a hearing on the department's petition not later than the 45th day after the date on which the petition is filed. The court shall order the trustee to provide to the department a financial statement if the court finds that the trustee has failed to provide the statement.

(e) For the purposes of this section, the following are not considered to be trusts and are not entitled to the exemption provided by this section:

(1) a guardianship administered under the Estates Code;

(2) a trust established under Chapter 142, Property Code;

(3) a facility custodial account established under Section 551.003;

(4) the provisions of a divorce decree or other court order relating to child support obligations;

(5) an administration of a decedent's estate; or

(6) an arrangement in which funds are held in the registry or by the clerk of a court.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 1020, Sec. 2, eff. June 15, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1340, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 846 (H.B. 2780), Sec. 8, eff. September 1, 2019.

Sec. 552.019. FILING OF CLAIMS. (a) A county or district attorney shall, on the written request of the department, represent the state in filing a claim in probate court or a petition in a court of competent jurisdiction to require the person responsible for a patient to appear in court and show cause why the state should not have judgment against the person for the costs of the patient's support, maintenance, and treatment.

(b) On a sufficient showing, the court may enter judgment against the person responsible for the patient for the costs of the patient's support, maintenance, and treatment.

(c) Sufficient evidence to authorize the court to enter judgment is a verified account, sworn to by the superintendent of the hospital in which the patient is being treated, or has been treated, as to the amount due.

(d) The judgment may be enforced as in other cases.

(e) The county or district attorney representing the state is entitled to a commission of 10 percent of the amount collected.

(f) The attorney general shall represent the state if the county and district attorney refuse or are unable to act on the department's request.

(g) In this section, "person responsible for a patient" means the guardian of a patient, a person liable for the support of the patient, or both.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1341, eff. April 2, 2015.

Sec. 552.020. APPLICATION. Except as provided by Subchapter C, Chapter 73, Education Code, this subchapter does not apply to The University of Texas M. D. Anderson Cancer Center.

Added by Acts 1995, 74th Leg., ch. 3, Sec. 4, eff. Sept. 1, 1995.

SUBCHAPTER C. POWERS AND DUTIES OF DEPARTMENT RELATING TO STATE HOSPITALS

Sec. 552.051. REPORTS OF ILLEGAL DRUG USE; POLICY. The executive commissioner shall adopt a policy requiring a state hospital employee who knows or reasonably suspects that another state hospital employee is illegally using or under the influence of a controlled substance, as defined by Section 481.002, to report that knowledge or reasonable suspicion to the superintendent of the state hospital.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.

Sec. 552.052. STATE HOSPITAL EMPLOYEE TRAINING. (a) Before a state hospital employee begins to perform the employee's duties without direct supervision, the department shall provide the employee with competency training and a course of instruction about the general duties of a state hospital employee. Upon completion of such training and instruction, the department shall evaluate the employee for competency. The department shall ensure the basic state hospital

employee competency course focuses on:

(1) the uniqueness of the individuals the state hospital employee serves;

(2) techniques for improving quality of life for and promoting the health and safety of individuals with mental illness; and

(3) the conduct expected of state hospital employees.

(b) The department shall ensure the training required by Subsection (a) provides instruction and information regarding topics relevant to providing care for individuals with mental illness, including:

(1) the general operation and layout of the state hospital at which the person is employed, including armed intruder lockdown procedures;

(2) an introduction to mental illness;

(3) an introduction to substance abuse;

(4) an introduction to dual diagnosis;

(5) the rights of individuals with mental illness who receive services from the department;

(6) respecting personal choices made by patients;

(7) the safe and proper use of restraints;

(8) recognizing and reporting:

(A) evidence of abuse, neglect, and exploitation of individuals with mental illness;

(B) unusual incidents;

(C) reasonable suspicion of illegal drug use in the workplace;

(D) workplace violence; or

(E) sexual harassment in the workplace;

(9) preventing and treating infection;

(10) first aid;

(11) cardiopulmonary resuscitation;

(12) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); and

(13) the rights of state hospital employees.

(c) In addition to the training required by Subsection (a) and before a direct care employee begins to perform the direct care employee's duties without direct supervision, the department shall provide the direct care employee with training and instructional information regarding implementation of the interdisciplinary

treatment program for each patient for whom the direct care employee will provide direct care, including the following topics:

(1) prevention and management of aggressive or violent behavior;

(2) observing and reporting changes in behavior, appearance, or health of patients;

(3) positive behavior support;

(4) emergency response;

(5) person-directed plans;

(6) self-determination; and

(7) trauma-informed care.

(d) In addition to the training required by Subsection (c), the department shall provide, in accordance with the specialized needs of the population being served, a direct care employee with training and instructional information as necessary regarding:

(1) seizure safety;

(2) techniques for:

(A) lifting;

(B) positioning; and

(C) movement and mobility;

(3) working with aging patients;

(4) assisting patients:

(A) who have a visual impairment;

(B) who have a hearing deficit; or

(C) who require the use of adaptive devices and specialized equipment;

(5) communicating with patients who use augmentative and alternative devices for communication;

(6) assisting patients with personal hygiene;

(7) recognizing appropriate food textures;

(8) using proper feeding techniques to assist patients with meals; and

(9) physical and nutritional management plans.

(e) The executive commissioner shall adopt rules that require a state hospital to provide refresher training courses to employees at least annually, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff.

June 14, 2013.

Sec. 552.053. INFORMATION MANAGEMENT, REPORTING, AND TRACKING SYSTEM. The department shall develop an information management, reporting, and tracking system for each state hospital to provide the department with information necessary to monitor serious allegations of abuse, neglect, or exploitation.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.

Sec. 552.054. RISK ASSESSMENT PROTOCOLS. The department shall develop risk assessment protocols for state hospital employees for use in identifying and assessing possible instances of abuse or neglect.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.

SUBCHAPTER D. INSPECTOR GENERAL DUTIES

Sec. 552.101. ASSISTING LAW ENFORCEMENT AGENCIES WITH CERTAIN INVESTIGATIONS. The inspector general shall employ and commission peace officers for the purpose of assisting a state or local law enforcement agency in the investigation of an alleged criminal offense involving a patient of a state hospital. A peace officer employed and commissioned by the inspector general is a peace officer for purposes of Article 2A.001, Code of Criminal Procedure.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.124, eff. January 1, 2025.

Sec. 552.102. SUMMARY REPORT. (a) The inspector general shall prepare a summary report for each investigation conducted with the assistance of the inspector general under this subchapter. The

inspector general shall ensure that the report does not contain personally identifiable information of an individual mentioned in the report.

(b) The summary report must include:

(1) a summary of the activities performed during an investigation for which the inspector general provided assistance;

(2) a statement regarding whether the investigation resulted in a finding that an alleged criminal offense was committed; and

(3) a description of the alleged criminal offense that was committed.

(c) The inspector general shall deliver the summary report to the:

(1) executive commissioner;

(2) commissioner of state health services;

(3) commissioner of the Department of Family and Protective Services;

(4) State Health Services Council;

(5) governor;

(6) lieutenant governor;

(7) speaker of the house of representatives;

(8) standing committees of the senate and house of representatives with primary jurisdiction over state hospitals;

(9) state auditor; and

(10) alleged victim or the alleged victim's legally authorized representative.

(d) A summary report regarding an investigation is subject to required disclosure under Chapter 552, Government Code. All information and materials compiled by the inspector general in connection with an investigation are confidential, not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the inspector general or the inspector general's employees or agents involved in the investigation, except that this information may be disclosed to the Department of Family and Protective Services, the office of the attorney general, the state auditor's office, and law enforcement agencies.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff.

June 14, 2013.

Sec. 552.103. ANNUAL STATUS REPORT. (a) The inspector general shall prepare an annual status report of the inspector general's activities under this subchapter. The annual report may not contain personally identifiable information of an individual mentioned in the report.

(b) The annual status report must include information that is aggregated and disaggregated by individual state hospital regarding:

(1) the number and type of investigations conducted with the assistance of the inspector general;

(2) the number and type of investigations involving a state hospital employee;

(3) the relationship of an alleged victim to an alleged perpetrator, if any;

(4) the number of investigations conducted that involve the suicide, death, or hospitalization of an alleged victim; and

(5) the number of completed investigations in which commission of an alleged offense was confirmed or unsubstantiated or in which the investigation was inconclusive, and a description of the reason that allegations were unsubstantiated or the investigation was inconclusive.

Text of subsection effective until September 1, 2026

(c) The inspector general shall submit the annual status report to the:

(1) executive commissioner;

(2) commissioner of state health services;

(3) commissioner of the Department of Family and Protective Services;

(4) State Health Services Council;

(5) Family and Protective Services Council;

(6) governor;

(7) lieutenant governor;

(8) speaker of the house of representatives;

(9) standing committees of the senate and house of representatives with primary jurisdiction over state hospitals;

(10) state auditor; and

(11) comptroller.

Text of subsection effective on September 1, 2026

(c) The inspector general shall submit the annual status report to the:

(1) executive commissioner;

(2) commissioner of state health services;

(3) commissioner of the Department of Family and Protective Services;

(4) State Health Services Council;

(5) governor;

(6) lieutenant governor;

(7) speaker of the house of representatives;

(8) standing committees of the senate and house of representatives with primary jurisdiction over state hospitals;

(9) state auditor; and

(10) comptroller.

(d) An annual status report submitted under this section is public information under Chapter 552, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 541 (H.B. 140), Sec. 2, eff. September 1, 2026.

Sec. 552.104. RETALIATION PROHIBITED. The department or a state hospital may not retaliate against a department employee, a state hospital employee, or any other person who in good faith cooperates with the inspector general under this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.

SUBCHAPTER E. STATE HOSPITAL OPERATIONS

Sec. 552.151. TRANSITION PLANNING FOR CONTRACTED OPERATIONS OF A CERTAIN STATE HOSPITAL. The commission shall establish a plan under which the commission may contract with a local public institution of higher education to transfer the operations of Austin State Hospital from the commission to a local public institution of higher education.

Added by Acts 2019, 86th Leg., R.S., Ch. 676 (S.B. 2111), Sec. 1, eff. September 1, 2019.

Sec. 552.152. PLAN REQUIREMENTS. (a) In developing the plan, the commission shall:

(1) consult with local public institutions of higher education;

(2) establish procedures and policies to ensure that a local public institution of higher education that contracts with the commission to operate Austin State Hospital operates the hospital at a quality level at least equal to the quality level achieved by the commission; and

(3) establish procedures and policies to monitor the care of affected state hospital patients.

(b) The procedures and policies required to be established under Subsection (a) must ensure that the commission is able to obtain and maintain information on activities carried out under the contract without violating privacy or confidentiality rules. The procedures and policies must account for the commission obtaining and maintaining information on:

(1) client outcomes;

(2) individual and average lengths of stay, including computation of lengths of stay according to the number of days a patient is in the facility during each calendar year, regardless of discharge and readmission;

(3) the number of incidents in which patients were restrained or secluded;

(4) the number of incidents of serious assaults in the hospital setting; and

(5) the number of occurrences in the hospital setting involving contacts with law enforcement personnel.

Added by Acts 2019, 86th Leg., R.S., Ch. 676 (S.B. 2111), Sec. 1, eff. September 1, 2019.

Sec. 552.153. REPORT. Not later than September 1, 2020, the commission shall prepare and deliver to the governor, the lieutenant governor, the speaker of the house of representatives, and the

legislature a written report containing the plan and any recommendations for legislation or other actions necessary.

Added by Acts 2019, 86th Leg., R.S., Ch. 676 (S.B. 2111), Sec. 1, eff. September 1, 2019.

Sec. 552.154. STATE HOSPITAL SUPERINTENDENT. The executive commissioner by rule shall require each state hospital to employ a superintendent.

Added by Acts 2025, 89th Leg., R.S., Ch. 214 (H.B. 913), Sec. 3, eff. September 1, 2025.

SUBCHAPTER F. RIGHT TO ESSENTIAL CAREGIVER VISITS

Sec. 552.201. DEFINITION. In this chapter, "essential caregiver" means a family member, friend, guardian, or other individual a patient, patient's guardian, or patient's legally authorized representative selects for in-person visits.

Added by Acts 2023, 88th Leg., R.S., Ch. 1038 (S.B. 52), Sec. 1, eff. September 1, 2023.

Sec. 552.202. PATIENT'S RIGHT TO ESSENTIAL CAREGIVER VISITS. (a) A patient, the patient's guardian, or the patient's legally authorized representative has the right to designate an essential caregiver with whom a state hospital may not prohibit in-person visitation.

(b) If a patient is a minor, the patient's parent, guardian, or managing conservator may designate both of the minor patient's parents as essential caregivers under Subsection (a).

Added by Acts 2023, 88th Leg., R.S., Ch. 1038 (S.B. 52), Sec. 1, eff. September 1, 2023.

Sec. 552.203. ESSENTIAL CAREGIVER POLICIES, PROCEDURES, AND SAFETY PROTOCOLS. (a) Notwithstanding Section 552.202, the executive commissioner by rule shall develop guidelines to assist state

hospitals in establishing essential caregiver visitation policies and procedures. The guidelines must require the hospitals to:

(1) allow a patient, patient's guardian, or patient's legally authorized representative or, for a minor patient, the patient's parent, guardian, or managing conservator, to designate for in-person visitation an essential caregiver;

(2) establish a visitation schedule allowing the essential caregiver to visit the patient for at least two hours each day;

(3) establish procedures to enable physical contact between the patient and essential caregiver; and

(4) obtain the signature of the essential caregiver certifying the caregiver will follow the hospital's safety protocols and any other policies, procedures, or rules established under this section.

(b) A state hospital may not establish safety protocols under this section that are more stringent than the safety protocols the hospital establishes for hospital staff.

Added by Acts 2023, 88th Leg., R.S., Ch. 1038 (S.B. 52), Sec. 1, eff. September 1, 2023.

Sec. 552.204. REVOCATION OF ESSENTIAL CAREGIVER DESIGNATION. (a) A state hospital may revoke an individual's designation as an essential caregiver if the individual violates the hospital's policies, procedures, or safety protocols established under Section 552.203.

(b) If a state hospital revokes an individual's designation as an essential caregiver under this section, the patient, patient's guardian, or patient's legally authorized representative or, for a minor patient, the patient's parent, guardian, or managing conservator, has the right to immediately designate another individual as the patient's essential caregiver.

(c) The commission by rule shall establish an appeals process to evaluate the revocation of an individual's designation as an essential caregiver under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 1038 (S.B. 52), Sec. 1, eff. September 1, 2023.

Sec. 552.205. TEMPORARY SUSPENSION OF ESSENTIAL CAREGIVER VISITS. (a) A state hospital may petition the commission to suspend in-person essential caregiver visits for not more than seven days if in-person visitation poses a serious community health risk. The commission may deny the hospital's request to suspend in-person essential caregiver visitation if the commission determines that in-person visitation does not pose a serious community health risk.

(b) A state hospital may request an extension from the commission to suspend in-person essential caregiver visitation for more than seven days. The commission may not approve an extension for a period that exceeds seven days, and the hospital must separately request each extension.

(c) A state hospital may not suspend in-person essential caregiver visitation in any year for more than 14 consecutive days or 45 days total.

Added by Acts 2023, 88th Leg., R.S., Ch. 1038 (S.B. 52), Sec. 1, eff. September 1, 2023.

Sec. 552.206. PROVISION OF NECESSARY PATIENT CARE BY ESSENTIAL CAREGIVER. This subchapter may not be construed as requiring an essential caregiver to provide necessary care to a patient, and a state hospital may not require an essential caregiver to provide the necessary care.

Added by Acts 2023, 88th Leg., R.S., Ch. 1038 (S.B. 52), Sec. 1, eff. September 1, 2023.

CHAPTER 553. SAN ANTONIO STATE SUPPORTED LIVING CENTER

Sec. 553.022. SAN ANTONIO STATE SUPPORTED LIVING CENTER. (a) The San Antonio State Supported Living Center is for the education, care, and treatment of persons with an intellectual disability.

(b) The Department of Aging and Disability Services may enter into agreements with the Department of State Health Services for use of the excess facilities of a public health hospital as defined by Section 13.033 in the operation of the state supported living center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 107, Sec. 8, eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1344, eff. April 2, 2015.

CHAPTER 554. STATE CENTERS AND HOMES

Sec. 554.0001. DEFINITION. In this chapter, "department" means the Department of State Health Services.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1345, eff. April 2, 2015.

Sec. 554.001. ADMISSION OF CERTAIN JUVENILES. (a) The department shall designate state facilities for use as residential treatment facilities for emotionally disturbed juveniles who:

(1) have been admitted under Subtitle C to a facility of the department; or

(2) are under the managing conservatorship of the Department of Family and Protective Services and have been admitted under Subtitle C to a state facility designated by the department under this section.

(b) An emotionally disturbed juvenile who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under Title 3, Family Code, may not be admitted to the Waco Center for Youth.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.077, eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 427 (S.B. 957), Sec. 1, eff. June 17, 2011.

Acts 2025, 89th Leg., R.S., Ch. 367 (H.B. 109), Sec. 2, eff. September 1, 2025.

Sec. 554.002. SERVICES. (a) The department shall provide without charge appropriate education services for all clients residing at state facilities designated by the department under Section 554.001.

(b) The department shall pay for the services described by Subsection (a) from funds appropriated for that purpose.

(c) A client of a state facility designated by the department under Section 554.001 who is not a resident of the school district that serves the geographical area in which the facility is located may receive education services from the district only with the prior approval of the superintendent of the district.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by:

Acts 2025, 89th Leg., R.S., Ch. 367 (H.B. 109), Sec. 3, eff. September 1, 2025.

CHAPTER 555. STATE SUPPORTED LIVING CENTERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 555.001. DEFINITIONS. In this chapter:

(1) "Alleged offender resident" means a person with an intellectual disability who:

(A) was committed to or transferred to a state supported living center under Chapter 46B or 46C, Code of Criminal Procedure, as a result of being charged with or convicted of a criminal offense; or

(B) is a child committed to or transferred to a state supported living center under Chapter 55, Family Code, as a result of being alleged by petition or having been found to have engaged in delinquent conduct constituting a criminal offense.

(2) "Center" means the state supported living centers and the ICF-IID component of the Rio Grande State Center.

(3) "Center employee" means an employee of a state supported living center or the ICF-IID component of the Rio Grande State Center.

(4) "Client" means a person with an intellectual disability who receives ICF-IID services from a state supported living center or the ICF-IID component of the Rio Grande State Center.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(107), eff. April 2, 2015.

(6) "Complaint" means information received by the office of independent ombudsman regarding a possible violation of a right of a resident or client and includes information received regarding a

failure by a state supported living center or the ICF-IID component of the Rio Grande State Center to comply with the department's policies and procedures relating to the community living options information process.

(7) "Department" means the Department of Aging and Disability Services.

(8) "Direct care employee" means a center employee who provides direct delivery of services to a resident or client.

(9) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(107), eff. April 2, 2015.

(10) "High-risk alleged offender resident" means an alleged offender resident who has been determined under Section 555.003 to be at risk of inflicting substantial physical harm to another.

(10-a) "ICF-IID" has the meaning assigned by Section 531.002.

(11) "Independent ombudsman" means the individual who has been appointed to the office of independent ombudsman for state supported living centers.

(12) "Inspector general" means the Health and Human Services Commission's office of inspector general.

(13) "Interdisciplinary team" has the meaning assigned by Section 591.003.

(14) "Office" means the office of independent ombudsman for state supported living centers established under Subchapter C.

(15) "Resident" means a person with an intellectual disability who resides in a state supported living center or the ICF-IID component of the Rio Grande State Center.

(16) "State supported living center" has the meaning assigned by Section 531.002.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1346, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(107), eff. April 2, 2015.

Sec. 555.002. FORENSIC STATE SUPPORTED LIVING CENTERS. (a)

The department shall designate separate forensic state supported living centers for the care of high-risk alleged offender residents. The department shall designate the Mexia and San Angelo State Supported Living Centers for this purpose.

(b) In establishing the forensic state supported living centers, the department shall:

(1) transfer an alleged offender resident already residing in a center who is classified as a high-risk alleged offender resident in accordance with Section 555.003, to a forensic state supported living center;

(2) place high-risk alleged offender residents in appropriate homes at a forensic state supported living center based on whether an individual is:

(A) an adult or a person younger than 18 years of age; or

(B) male or female;

(3) place alleged offender residents who are charged with or convicted of a felony offense or who are alleged by petition or have been found to have engaged in delinquent conduct defined as a felony offense, at the time the residents are initially committed to or transferred to a center, in a forensic state supported living center until a determination under Section 555.003 has been completed;

(4) transfer all residents who request a transfer, other than high-risk alleged offender residents and alleged offender residents described by Subdivision (3) and for whom a determination has not been completed under Section 555.003, from a forensic state supported living center; and

(5) provide training regarding the service delivery system for high-risk alleged offender residents to direct care employees of a forensic state supported living center.

(c) An alleged offender resident committed to a forensic state supported living center, for whom a determination under Section 555.003 has been completed and who is not classified as a high-risk alleged offender resident, may request a transfer to another center in accordance with Subchapter B, Chapter 594.

(d) The department shall ensure that each forensic state supported living center:

(1) complies with the requirements for ICF-IID certification under the Medicaid program, as appropriate; and

(2) has a sufficient number of center employees, including direct care employees, to protect the safety of center employees, residents, and the community.

(e) The department shall collect data regarding the commitment of alleged offender residents to state supported living centers, including any offense with which an alleged offender resident is charged, the location of the committing court, whether the alleged offender resident has previously been in the custody of the Texas Juvenile Justice Department or the Department of Family and Protective Services, and whether the alleged offender resident receives mental health services or previously received any services under a Section 1915(c) waiver program. The department shall annually submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of the legislature with primary subject matter jurisdiction over state supported living centers a report of the information collected under this section. The report may not contain personally identifiable information for any person in the report.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1347, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 207 (S.B. 1300), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 207 (S.B. 1300), Sec. 2, eff. September 1, 2017.

Sec. 555.003. DETERMINATION OF HIGH-RISK ALLEGED OFFENDER STATUS. (a) Not later than the 30th day after the date an alleged offender resident is first committed to a state supported living center and, if the resident is classified as a high-risk alleged offender resident, annually on the anniversary of that date, an interdisciplinary team shall determine whether the alleged offender resident is at risk of inflicting substantial physical harm to another and should be classified or remain classified as a high-risk alleged offender resident.

(b) In making a determination under Subsection (a), the

interdisciplinary team shall document and collect evidence regarding the reason the alleged offender resident is determined to be at risk of inflicting substantial physical harm to another.

(c) The interdisciplinary team shall provide the team's findings regarding whether the alleged offender resident is at risk of inflicting substantial physical harm to another and the documentation and evidence collected under this section to:

(1) the department;

(2) the director of the state supported living center;

(3) the independent ombudsman;

(4) the alleged offender resident or the alleged offender resident's parent if the resident is a minor; and

(5) the alleged offender resident's legally authorized representative.

(d) An alleged offender resident who is determined to be at risk of inflicting substantial physical harm to another and is classified as a high-risk alleged offender resident is entitled to an administrative hearing with the department to contest that determination and classification.

(e) An individual who has exhausted the administrative remedies provided by Subsection (d) may bring a suit to appeal the determination and classification in district court in Travis County. The suit must be filed not later than the 30th day after the date the final order in the administrative hearing is provided to the individual. An appeal under this section is by trial de novo.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 555.021. REQUIRED CRIMINAL HISTORY CHECKS FOR EMPLOYEES, CONTRACTORS, AND VOLUNTEERS. (a) The department, the Department of State Health Services, and the Health and Human Services Commission shall perform a state and federal criminal history background check on a person:

(1) who is:

(A) an applicant for employment with the agency;

(B) an employee of the agency;

(C) a volunteer with the agency;

(D) an applicant for a volunteer position with the agency;

(E) an applicant for a contract with the agency; or

(F) a contractor of the agency; and

(2) who would be placed in direct contact with a resident or client.

(b) The department, the Department of State Health Services, and the Health and Human Services Commission shall require a person described by Subsection (a) to submit fingerprints in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation for use in conducting a criminal history background check.

(c) Each agency shall obtain electronic updates from the Department of Public Safety of arrests and convictions of a person:

(1) for whom the agency performs a background check under Subsection (a); and

(2) who remains an employee, contractor, or volunteer of the agency and continues to have direct contact with a resident or client.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1027 (H.B. 2673), Sec. 10, eff. June 14, 2013.

Sec. 555.022. DRUG TESTING; POLICY. (a) The executive commissioner shall adopt a policy regarding random testing and reasonable suspicion testing for the illegal use of drugs by a center employee.

(b) The policy adopted under Subsection (a) must provide that a center employee may be terminated solely on the basis of a single positive test for illegal use of a controlled substance. The policy must establish an appeals process for a center employee who tests positively for illegal use of a controlled substance.

(c) The director of a state supported living center or the superintendent of the Rio Grande State Center shall enforce the policy adopted under Subsection (a) by performing necessary drug testing of the center employees for the use of a controlled substance

as defined by Section 481.002.

(d) Testing under this section may be performed on a random basis or on reasonable suspicion of the use of a controlled substance.

(e) For purposes of this section, a report made under Section 555.023 is considered reasonable suspicion of the use of a controlled substance.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.023. REPORTS OF ILLEGAL DRUG USE; POLICY. The executive commissioner shall adopt a policy requiring a center employee who knows or reasonably suspects that another center employee is illegally using or under the influence of a controlled substance, as defined by Section 481.002, to report that knowledge or reasonable suspicion to the director of the state supported living center or the superintendent of the Rio Grande State Center, as appropriate.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.024. CENTER EMPLOYEE TRAINING. (a) Before a center employee begins to perform the employee's duties without direct supervision, the department shall provide the employee with competency training and a course of instruction about the general duties of a center employee. The department shall ensure the basic center employee competency course focuses on:

(1) the uniqueness of the individuals the center employee serves;

(2) techniques for improving quality of life for and promoting the health and safety of individuals with an intellectual disability; and

(3) the conduct expected of center employees.

(b) The department shall ensure the training required by Subsection (a) provides instruction and information regarding the following topics:

(1) the general operation and layout of the center at which

the person is employed, including armed intruder lockdown procedures;

(2) an introduction to intellectual disabilities;

(3) an introduction to autism;

(4) an introduction to mental illness and dual diagnosis;

(5) the rights of individuals with an intellectual disability who receive services from the department;

(6) respecting personal choices made by residents and clients;

(7) the safe and proper use of restraints;

(8) recognizing and reporting:

(A) evidence of abuse, neglect, and exploitation of individuals with an intellectual disability;

(B) unusual incidents;

(C) reasonable suspicion of illegal drug use in the workplace;

(D) workplace violence; or

(E) sexual harassment in the workplace;

(9) preventing and treating infection;

(10) first aid;

(11) cardiopulmonary resuscitation;

(12) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); and

(13) the rights of center employees.

(c) In addition to the training required by Subsection (a) and before a direct care employee begins to perform the direct care employee's duties without direct supervision, the department shall provide a direct care employee with training and instructional information regarding implementation of the interdisciplinary treatment program for each resident or client for whom the direct care employee will provide direct care, including the following topics:

(1) prevention and management of aggressive or violent behavior;

(2) observing and reporting changes in behavior, appearance, or health of residents and clients;

(3) positive behavior support;

(4) emergency response;

(5) person-directed plans;

(6) self-determination;

(7) seizure safety;

(8) techniques for:

(A) lifting;

(B) positioning; and

(C) movement and mobility;

(9) working with aging residents and clients;

(10) assisting residents and clients:

(A) who have a visual impairment;

(B) who have a hearing deficit; or

(C) who require the use of adaptive devices and specialized equipment;

(11) communicating with residents and clients who use augmentative and alternative devices for communication;

(12) assisting residents and clients with personal hygiene;

(13) recognizing appropriate food textures;

(14) using proper feeding techniques to assist residents and clients with meals;

(15) physical and nutritional management plans; and

(16) home and community-based services, including the principles of community inclusion and participation and the community living options information process.

(d) The executive commissioner shall adopt rules that require a center to provide refresher training courses to direct care employees on a regular basis.

(e) A center may allow an employee of an ICF-IID licensed by the department, an employee of a person licensed or certified to provide Section 1915(c) waiver program services, or another employee or professional involved in the provision of services to persons with an intellectual disability to receive information and training under this section, as appropriate. The center may charge an administrative fee in an amount not to exceed the cost of providing the information or training.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1348, eff. April 2, 2015.

Sec. 555.025. VIDEO SURVEILLANCE. (a) In this section,

"private space" means a place in a center in which a resident or client has a reasonable expectation of privacy, including:

(1) a bedroom;

(2) a bathroom;

(3) a place in which a resident or client receives medical or nursing services;

(4) a place in which a resident or client meets privately with visitors; or

(5) a place in which a resident or client privately makes phone calls.

(b) The department shall install and operate video surveillance equipment in a center for the purpose of detecting and preventing the exploitation or abuse of residents and clients.

(c) Except as provided by Subchapter E, the department may not install or operate video surveillance equipment in a private space or in a location in which video surveillance equipment can capture images within a private space.

(d) The department shall ensure that the use of video surveillance equipment under this section complies with federal requirements for ICF-IID certification.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 1, eff. May 25, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1349, eff. April 2, 2015.

Sec. 555.026. DRINKING WATER QUALITY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY GUIDANCE ON LEAD AND COPPER TESTING. To ensure the quality of water provided by public drinking water supply systems to state supported living centers, the department or its successor agency, with guidance from the Texas Commission on Environmental Quality, shall:

(1) develop:

(A) a testing plan and monitoring strategy;

(B) outreach and educational materials for distribution to residents and department staff;

(C) requirements for using an accredited laboratory and sample chain of custody procedures; and

(D) guidance for compliance with the federal lead and copper rules (40 C.F.R. Part 141, Subpart I);

(2) review:

(A) public notification procedures to staff, residents, and visitors regarding water quality;

(B) sampling protocols and procedures;

(C) locations of taps used for monitoring;

(D) analytical data on lead or copper levels exceeding the applicable action level;

(E) remediation activities; and

(F) customer service inspection reports;

(3) compile a list of qualified customer service inspectors; and

(4) perform:

(A) on-site training and evaluation of sampling; and

(B) on-site evaluation of customer service inspections through licensed customer service inspectors.

Added by Acts 2017, 85th Leg., R.S., Ch. 559 (S.B. 546), Sec. 1, eff. June 9, 2017.

Sec. 555.027. ANATOMICAL GIFT. (a) The executive commissioner by rule shall prescribe a form that a resident's guardian may sign on behalf of a resident if the resident's guardian elects to make an anatomical gift on behalf of the resident in accordance with Chapter 692A.

(b) Subsection (a) does not preclude a guardian from executing a document in accordance with Chapter 692A that supersedes the form executed under that subsection.

Added by Acts 2019, 86th Leg., R.S., Ch. 843 (H.B. 2734), Sec. 1, eff. September 1, 2019.

SUBCHAPTER C. OFFICE OF INDEPENDENT OMBUDSMAN FOR STATE SUPPORTED LIVING CENTERS

Sec. 555.051. ESTABLISHMENT; PURPOSE. The office of independent ombudsman is established for the purpose of

investigating, evaluating, and securing the rights of residents and clients of state supported living centers and the ICF-IID component of the Rio Grande State Center. The office is administratively attached to the department. The department shall provide administrative support and resources to the office as necessary for the office to perform its duties.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1350, eff. April 2, 2015.

Sec. 555.052. INDEPENDENCE. The independent ombudsman in the performance of the ombudsman's duties and powers under this subchapter acts independently of the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.053. APPOINTMENT OF INDEPENDENT OMBUDSMAN. (a) The governor shall appoint the independent ombudsman for a term of two years expiring February 1 of odd-numbered years.

(b) The governor may appoint as independent ombudsman only an individual with at least five years of experience managing and ensuring the quality of care and services provided to individuals with an intellectual disability.

(c) A person appointed as independent ombudsman may be reappointed.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 573 (S.B. 747), Sec. 1, eff. June 14, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1351, eff. April 2, 2015.

Sec. 555.054. ASSISTANT OMBUDSMEN. (a) The independent ombudsman shall:

(1) hire assistant ombudsmen to perform, under the direction of the independent ombudsman, the same duties and exercise the same powers as the independent ombudsman; and

(2) station an assistant ombudsman at each center.

(b) The independent ombudsman may hire as assistant ombudsmen only individuals with at least five years of experience ensuring the quality of care and services provided to individuals with an intellectual disability.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1352, eff. April 2, 2015.

Sec. 555.055. CONFLICT OF INTEREST. A person may not serve as independent ombudsman or as an assistant ombudsman if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the department;

(2) owns or controls, directly or indirectly, any interest in a business entity or other organization receiving funds from the department; or

(3) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities or compensation on behalf of a profession related to the operation of the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.056. REPORT. (a) The independent ombudsman shall submit on a biannual basis to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and the house of representatives with primary jurisdiction over state supported living centers a

report that is both aggregated and disaggregated by individual center and describes:

(1) the work of the independent ombudsman;

(2) the results of any review or investigation undertaken by the independent ombudsman, including a review or investigation of services contracted by the department;

(3) any recommendations that the independent ombudsman has in relation to the duties of the independent ombudsman; and

(4) any recommendations that the independent ombudsman has for systemic improvements needed to decrease incidents of abuse, neglect, or exploitation at an individual center or at all centers.

(b) The independent ombudsman shall ensure that information submitted in a report under Subsection (a) does not permit the identification of an individual.

(c) The independent ombudsman shall immediately report to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and the house of representatives having primary jurisdiction over the Department of Aging and Disability Services any particularly serious or flagrant:

(1) case of abuse or injury of a resident or client about which the independent ombudsman is made aware;

(2) problem concerning the administration of a center program or operation; or

(3) interference by a center, the department, or the commission, other than actions by the commission's office of inspector general in accordance with the office's duties, with an investigation conducted by the independent ombudsman.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.057. COMMUNICATION AND CONFIDENTIALITY. (a) The department shall allow any resident or client, authorized representative of a resident or client, family member of a resident or client, or other interested party to communicate with the independent ombudsman or an assistant ombudsman. The communication:

(1) may be in person, by mail, or by any other means; and

(2) is confidential and privileged.

(b) The records of the independent ombudsman are confidential, except that the independent ombudsman shall:

(1) share with the Department of Family and Protective Services a communication that may involve the abuse, neglect, or exploitation of a resident or client;

(2) share with the inspector general a communication that may involve an alleged criminal offense;

(3) share with the regulatory services division of the department a communication that may involve a violation of an ICF-IID standard or condition of participation; and

(4) disclose the ombudsman's nonprivileged records if required by a court order on a showing of good cause.

(c) The independent ombudsman may make reports relating to an investigation by the independent ombudsman public after the investigation is complete but only if the name and any other personally identifiable information of a resident or client, legally authorized representative of a resident or client, family member of a resident or client, center, center employee, or other individual are redacted from the report and remain confidential. The independent ombudsman may provide an unredacted report to the center involved in the investigation, the department, the Department of Family and Protective Services, and the inspector general.

(d) The name, address, or other personally identifiable information of a person who files a complaint with the office of independent ombudsman, information generated by the office of independent ombudsman in the course of an investigation, and confidential records obtained by the office of independent ombudsman are confidential and not subject to disclosure under Chapter 552, Government Code, except as provided by this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1353, eff. April 2, 2015.

Sec. 555.058. PROMOTION OF AWARENESS OF OFFICE. The independent ombudsman shall promote awareness among the public, residents, clients, and center employees of:

(1) how the office may be contacted;
(2) the purpose of the office; and
(3) the services the office provides.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.059. DUTIES AND POWERS. (a) The independent ombudsman shall:

(1) evaluate the process by which a center investigates, reviews, and reports an injury to a resident or client or an unusual incident;

(2) evaluate the delivery of services to residents and clients to ensure that the rights of residents and clients are fully observed, including ensuring that each center conducts sufficient unannounced patrols;

(3) immediately refer a complaint alleging the abuse, neglect, or exploitation of a resident or client to the Department of Family and Protective Services;

(4) refer a complaint alleging employee misconduct that does not involve abuse, neglect, or exploitation or a possible violation of an ICF-IID standard or condition of participation to the regulatory services division of the department;

(5) refer a complaint alleging a criminal offense, other than an allegation of abuse, neglect, or exploitation of a resident or client, to the inspector general;

(6) conduct investigations of complaints, other than complaints alleging criminal offenses or the abuse, neglect, or exploitation of a resident or client, if the office determines that:

(A) a resident or client or the resident's or client's family may be in need of assistance from the office; or

(B) a complaint raises the possibility of a systemic issue in the center's provision of services;

(7) conduct biennial on-site audits at each center of:

(A) the ratio of direct care employees to residents;

(B) the provision and adequacy of training to:

(i) center employees; and

(ii) direct care employees; and

(C) if the center serves alleged offender residents,

the provision of specialized training to direct care employees;

(8) conduct an annual audit of each center's policies, practices, and procedures to ensure that each resident and client is encouraged to exercise the resident's or client's rights, including:

(A) the right to file a complaint; and

(B) the right to due process;

(9) prepare and deliver an annual report regarding the findings of each audit to the:

(A) executive commissioner;

(B) commissioner;

(C) Aging and Disability Services Council;

(D) governor;

(E) lieutenant governor;

(F) speaker of the house of representatives;

(G) standing committees of the senate and house of representatives with primary jurisdiction over state supported living centers; and

(H) state auditor;

(10) require a center to provide access to all records, data, and other information under the control of the center that the independent ombudsman determines is necessary to investigate a complaint or to conduct an audit under this section;

(11) review all final reports produced by the Department of Family and Protective Services, the regulatory services division of the department, and the inspector general regarding a complaint referred by the independent ombudsman;

(12) provide assistance to a resident, client, authorized representative of a resident or client, or family member of a resident or client who the independent ombudsman determines is in need of assistance, including advocating with an agency, provider, or other person in the best interests of the resident or client;

(13) make appropriate referrals under any of the duties and powers listed in this subsection; and

(14) monitor and evaluate the department's actions relating to any problem identified or recommendation included in a report received from the Department of Family and Protective Services relating to an investigation of alleged abuse, neglect, or exploitation of a resident or client.

(b) The independent ombudsman may apprise a person who is interested in a resident's or client's welfare of the rights of the

resident or client.

(c) To assess whether a resident's or client's rights have been violated, the independent ombudsman may, in any matter that does not involve an alleged criminal offense or the abuse, neglect, or exploitation of a resident or client, contact or consult with an administrator, employee, resident, client, family member of a resident or client, expert, or other individual in the course of the investigation or to secure information.

(d) Notwithstanding any other provision of this chapter, the independent ombudsman may not investigate an alleged criminal offense or the alleged abuse, neglect, or exploitation of a resident or client.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1354, eff. April 2, 2015.

Sec. 555.060. RETALIATION PROHIBITED. The department or a center may not retaliate against a department employee, center employee, or any other person who in good faith makes a complaint to the office of independent ombudsman or cooperates with the office in an investigation.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.061. TOLL-FREE NUMBER. (a) The office shall establish a permanent, toll-free number for the purpose of receiving any information concerning the violation of a right of a resident or client.

(b) The office shall ensure that:

(1) the toll-free number is prominently displayed in the main administration area and other appropriate common areas of a center; and

(2) a resident, a client, the legally authorized representative of a resident or client, and a center employee have confidential access to a telephone for the purpose of calling the

toll-free number.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

SUBCHAPTER D. INSPECTOR GENERAL DUTIES

Sec. 555.101. ASSISTING LAW ENFORCEMENT AGENCIES WITH CERTAIN INVESTIGATIONS. The inspector general shall employ and commission peace officers for the purpose of assisting a state or local law enforcement agency in the investigation of an alleged criminal offense involving a resident or client of a center. A peace officer employed and commissioned by the inspector general is a peace officer for purposes of Article 2A.001, Code of Criminal Procedure.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.125, eff. January 1, 2025.

Sec. 555.102. SUMMARY REPORT. (a) The inspector general shall prepare a summary report for each investigation conducted with the assistance of the inspector general under this subchapter. The inspector general shall ensure that the report does not contain personally identifiable information of an individual mentioned in the report.

(b) The summary report must include:

(1) a summary of the activities performed during an investigation for which the inspector general provided assistance;

(2) a statement regarding whether the investigation resulted in a finding that an alleged criminal offense was committed; and

(3) a description of the alleged criminal offense that was committed.

(c) The inspector general shall deliver the summary report to the:

(1) executive commissioner;

(2) governor;

(3) lieutenant governor;

(4) speaker of the house of representatives;

(5) standing committees of the senate and house of representatives with primary jurisdiction over centers;

(6) state auditor;

(7) independent ombudsman and the assistant ombudsman for the center involved in the report; and

(8) alleged victim or the alleged victim's legally authorized representative.

(d) A summary report regarding an investigation is subject to required disclosure under Chapter 552, Government Code. All information and materials compiled by the inspector general in connection with an investigation are confidential, and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the inspector general or the inspector general's employees or agents involved in the investigation, except that this information may be disclosed to the office of the attorney general, the state auditor's office, and law enforcement agencies.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.33, eff. September 1, 2019.

Sec. 555.103. ANNUAL STATUS REPORT. (a) The inspector general shall prepare an annual status report of the inspector general's activities under this subchapter. The annual report may not contain personally identifiable information of an individual mentioned in the report.

(b) The annual status report must include information that is aggregated and disaggregated by individual center regarding:

(1) the number and type of investigations conducted with the assistance of the inspector general;

(2) the number and type of investigations involving a center employee;

(3) the relationship of an alleged victim to an alleged perpetrator, if any;

(4) the number of investigations conducted that involve the suicide, death, or hospitalization of an alleged victim; and

(5) the number of completed investigations in which commission of an alleged offense was confirmed or unsubstantiated or in which the investigation was inconclusive, and a description of the reason that allegations were unsubstantiated or the investigation was inconclusive.

(c) The inspector general shall submit the annual status report to the:

(1) executive commissioner;

(2) governor;

(3) lieutenant governor;

(4) speaker of the house of representatives;

(5) standing committees of the senate and house of representatives with primary jurisdiction over centers;

(6) state auditor; and

(7) comptroller.

(d) An annual status report submitted under this section is public information under Chapter 552, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.34, eff. September 1, 2019.

Sec. 555.104. RETALIATION PROHIBITED. The department or a center may not retaliate against a department employee, a center employee, or any other person who in good faith cooperates with the inspector general under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

SUBCHAPTER E. ELECTRONIC MONITORING OF RESIDENT'S ROOM

Sec. 555.151. DEFINITIONS. In this subchapter:

(1) "Authorized electronic monitoring" means the placement of an electronic monitoring device in a resident's room and making tapes or recordings with the device after making a request to the

center to allow electronic monitoring.

(2) "Electronic monitoring device":

(A) includes:

(i) video surveillance cameras installed in a resident's room; and

(ii) audio devices installed in a resident's room designed to acquire communications or other sounds occurring in the room; and

(B) does not include an interception device that is specifically used for the nonconsensual interception of wire or electronic communications.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 3.14, eff. January 1, 2019.

Sec. 555.152. CRIMINAL AND CIVIL LIABILITY. (a) It is a defense to prosecution under Section 16.02, Penal Code, or any other statute of this state under which it is an offense to intercept a communication or disclose or use an intercepted communication, that the communication was intercepted by an electronic monitoring device placed in a resident's room.

(b) This subchapter does not affect whether a person may be held to be civilly liable under other law in connection with placing an electronic monitoring device in a resident's room or in connection with using or disclosing a tape or recording made by the device except:

(1) as specifically provided by this subchapter; or

(2) to the extent that liability is affected by:

(A) a consent or waiver signed under this subchapter; or

(B) the fact that authorized electronic monitoring is required to be conducted with notice to persons who enter a resident's room.

(c) A communication or other sound acquired by an audio electronic monitoring device installed under the provisions of this subchapter concerning authorized electronic monitoring is not

considered to be:

(1) an oral communication as defined by Article 18A.001, Code of Criminal Procedure; or

(2) a communication as defined by Section 123.001, Civil Practice and Remedies Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 3.15, eff. January 1, 2019.

Sec. 555.153. COVERT USE OF ELECTRONIC MONITORING DEVICE; LIABILITY OF DEPARTMENT OR CENTER. (a) For purposes of this subchapter, the placement and use of an electronic monitoring device in a resident's room are considered to be covert if:

(1) the placement and use of the device are not open and obvious; and

(2) the center and the department are not informed about the device by the resident, by a person who placed the device in the room, or by a person who is using the device.

(b) The department and the center may not be held to be civilly liable in connection with the covert placement or use of an electronic monitoring device in a resident's room.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.154. REQUIRED FORM ON ADMISSION. The executive commissioner by rule shall prescribe a form that must be completed and signed on a resident's admission to a center by or on behalf of the resident. The form must state:

(1) that a person who places an electronic monitoring device in a resident's room or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another;

(2) that a person who covertly places an electronic monitoring device in a resident's room or who consents to or acquiesces in the covert placement of the device in a resident's room

has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device;

(3) that a resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring under this subchapter, and that if the center refuses to permit the electronic monitoring or fails to make reasonable physical accommodations for the authorized electronic monitoring the person should contact the department;

(4) the basic procedures that must be followed to request authorized electronic monitoring;

(5) the manner in which this subchapter affects the legal requirement to report abuse, neglect, or exploitation when electronic monitoring is being conducted; and

(6) any other information regarding covert or authorized electronic monitoring that the executive commissioner considers advisable to include on the form.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.155. AUTHORIZED ELECTRONIC MONITORING: WHO MAY REQUEST. (a) If a resident has capacity to request electronic monitoring and has not been judicially declared to lack the required capacity, only the resident may request authorized electronic monitoring under this subchapter.

(b) If a resident has been judicially declared to lack the capacity required for taking an action such as requesting electronic monitoring, only the guardian of the resident may request electronic monitoring under this subchapter.

(c) If a resident does not have capacity to request electronic monitoring but has not been judicially declared to lack the required capacity, only the legal representative of the resident may request electronic monitoring under this subchapter. The executive commissioner by rule shall prescribe:

(1) guidelines that will assist centers, family members of residents, advocates for residents, and other interested persons to determine when a resident lacks the required capacity; and

(2) who may be considered to be a resident's legal representative for purposes of this subchapter, including:

(A) persons who may be considered the legal representative under the terms of an instrument executed by the resident when the resident had capacity; and

(B) persons who may become the legal representative for the limited purpose of this subchapter under a procedure prescribed by the executive commissioner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.156. AUTHORIZED ELECTRONIC MONITORING: FORM OF REQUEST; CONSENT OF OTHER RESIDENTS IN ROOM. (a) A resident or the guardian or legal representative of a resident who wishes to conduct authorized electronic monitoring must make the request to the center on a form prescribed by the executive commissioner.

(b) The form prescribed by the executive commissioner must require the resident or the resident's guardian or legal representative to:

(1) release the center from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device;

(2) choose, when the electronic monitoring device is a video surveillance camera, whether the camera will always be unobstructed or whether the camera should be obstructed in specified circumstances to protect the dignity of the resident; and

(3) obtain the consent of other residents in the room, using a form prescribed for this purpose by the executive commissioner, if the resident resides in a multiperson room.

(c) Consent under Subsection (b)(3) may be given only:

(1) by the other resident or residents in the room;

(2) by the guardian of a person described by Subdivision (1), if the person has been judicially declared to lack the required capacity; or

(3) by the legal representative who under Section 555.155(c) may request electronic monitoring on behalf of a person described by Subdivision (1), if the person does not have capacity to sign the form but has not been judicially declared to lack the required capacity.

(d) The form prescribed by the executive commissioner under

Subsection (b)(3) must condition the consent of another resident in the room on the other resident also releasing the center from any civil liability for a violation of the person's privacy rights in connection with the use of the electronic monitoring device.

(e) Another resident in the room may:

(1) when the proposed electronic monitoring device is a video surveillance camera, condition consent on the camera being pointed away from the consenting resident; and

(2) condition consent on the use of an audio electronic monitoring device being limited or prohibited.

(f) If authorized electronic monitoring is being conducted in a resident's room and another resident is moved into the room who has not yet consented to the electronic monitoring, authorized electronic monitoring must cease until the new resident has consented in accordance with this section.

(g) The executive commissioner may include other information that the executive commissioner considers to be appropriate on either of the forms that the executive commissioner is required to prescribe under this section.

(h) The executive commissioner by rule may prescribe the place or places that a form signed under this section must be maintained and the period for which it must be maintained.

(i) Authorized electronic monitoring:

(1) may not commence until all request and consent forms required by this section have been completed and returned to the center; and

(2) must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.157. AUTHORIZED ELECTRONIC MONITORING: GENERAL PROVISIONS. (a) A center shall permit a resident or the resident's guardian or legal representative to monitor the resident's room through the use of electronic monitoring devices.

(b) The center shall require a resident who conducts authorized electronic monitoring or the resident's guardian or legal

representative to post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(c) Authorized electronic monitoring conducted under this subchapter is not compulsory and may be conducted only at the request of the resident or the resident's guardian or legal representative.

(d) A center may not refuse to admit an individual to residency in the center and may not remove a resident from the center because of a request to conduct authorized electronic monitoring. A center may not remove a resident from the center because covert electronic monitoring is being conducted by or on behalf of a resident.

(e) A center shall make reasonable physical accommodation for authorized electronic monitoring, including:

(1) providing a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(2) providing access to power sources for the video surveillance camera or other electronic monitoring device.

(f) The resident or the resident's guardian or legal representative must pay for all costs associated with conducting electronic monitoring, other than the costs of electricity. The resident or the resident's guardian or legal representative is responsible for:

(1) all costs associated with installation of equipment; and

(2) maintaining the equipment.

(g) A center may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. The executive commissioner by rule may adopt guidelines regarding the safe placement of an electronic monitoring device.

(h) If authorized electronic monitoring is conducted, the center may require the resident or the resident's guardian or legal representative to conduct the electronic monitoring in plain view.

(i) A center may but is not required to place a resident in a different room to accommodate a request to conduct authorized electronic monitoring.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.158. REPORTING ABUSE, NEGLECT, OR EXPLOITATION. (a) A person who is conducting authorized electronic monitoring under this subchapter and who has cause to believe, based on the viewing of or listening to a tape or recording, that a resident is in a state of abuse, neglect, or exploitation or has been abused, neglected, or exploited shall:

(1) report that information to the Department of Family and Protective Services as required by Section 48.051, Human Resources Code; and

(2) provide the original tape or recording to the Department of Family and Protective Services.

(b) If the Department of Family and Protective Services has cause to believe that a resident has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense, the department shall immediately notify law enforcement and the inspector general as provided by Section 48.1522, Human Resources Code, and provide a copy of the tape or recording to law enforcement or the inspector general on request.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.159. USE OF TAPE OR RECORDING BY AGENCY OR COURT. (a) Subject to applicable rules of evidence and procedure and the requirements of this section, a tape or recording created through the use of covert or authorized electronic monitoring described by this subchapter may be admitted into evidence in a civil or criminal court action or administrative proceeding.

(b) A court or administrative agency may not admit into evidence a tape or recording created through the use of covert or authorized electronic monitoring or take or authorize action based on the tape or recording unless:

(1) if the tape or recording is a video tape or recording, the tape or recording shows the time and date that the events acquired on the tape or recording occurred;

(2) the contents of the tape or recording have not been edited or artificially enhanced; and

(3) if the contents of the tape or recording have been transferred from the original format to another technological format,

the transfer was done by a qualified professional and the contents of the tape or recording were not altered.

(c) A person who sends more than one tape or recording to the department shall identify for the department each tape or recording on which the person believes that an incident of abuse or exploitation or evidence of neglect may be found. The executive commissioner by rule may encourage persons who send a tape or recording to the department to identify the place on the tape or recording where an incident of abuse or evidence of neglect may be found.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.160. NOTICE AT ENTRANCE TO CENTER. Each center shall post a notice at the entrance to the center stating that the rooms of some residents may be being monitored electronically by or on behalf of the residents and that the monitoring is not necessarily open and obvious. The executive commissioner by rule shall prescribe the format and the precise content of the notice.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.161. ENFORCEMENT. The department may impose appropriate sanctions under this chapter on a director of a center who knowingly:

(1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;

(2) refuses to admit an individual to residency or allows the removal of a resident from the center because of a request to conduct authorized electronic monitoring;

(3) allows the removal of a resident from the center because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates another provision of this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.162. INTERFERENCE WITH DEVICE; CRIMINAL PENALTY. (a) A person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident's room in accordance with this subchapter or a tape or recording made by the device commits an offense. An offense under this subsection is a Class B misdemeanor.

(b) It is a defense to prosecution under Subsection (a) that the person took the action with the effective consent of the resident on whose behalf the electronic monitoring device was installed or the resident's guardian or legal representative.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

SUBCHAPTER F. RIGHT TO ESSENTIAL CAREGIVER VISITS

Sec. 555.201. DEFINITION. In this chapter, "essential caregiver" means a family member, friend, guardian, or other individual selected by a resident, resident's guardian, or resident's legally authorized representative for in-person visits.

Added by Acts 2021, 87th Leg., R.S., Ch. 531 (S.B. 25), Sec. 3, eff. September 1, 2021.

Sec. 555.202. RESIDENT'S RIGHT TO ESSENTIAL CAREGIVER VISITS. (a) A resident of a state supported living center, the resident's guardian, or the resident's legally authorized representative has the right to designate an essential caregiver with whom the center may not prohibit in-person visitation.

(b) Notwithstanding Subsection (a), the executive commissioner by rule shall develop guidelines to assist state supported living centers in establishing essential caregiver visitation policies and procedures. The guidelines must require the centers to:

(1) allow a resident, resident's guardian, or resident's legally authorized representative to designate for in-person visitation an essential caregiver;

(2) establish a visitation schedule allowing the essential caregiver to visit the resident for at least two hours each day;

(3) establish procedures to enable physical contact between the resident and essential caregiver; and

(4) obtain the signature of the essential caregiver certifying that the caregiver will follow the center's safety protocols and any other rules adopted under this section.

(c) A state supported living center may revoke an individual's designation as an essential caregiver if the essential caregiver violates the center's safety protocols or rules adopted under this section. If a state supported living center revokes an individual's designation as an essential caregiver under this subsection, the resident, resident's guardian, or resident's legally authorized representative has the right to immediately designate another individual as the resident's essential caregiver. The commission by rule shall establish an appeals process to evaluate the revocation of an individual's designation as an essential caregiver under this subsection.

(d) Safety protocols adopted by a state supported living center for an essential caregiver under this section may not be more stringent than safety protocols for center staff.

(e) A state supported living center may petition the commission to suspend in-person essential caregiver visits for not more than seven days if in-person visitation poses a serious community health risk. The commission may deny the state supported living center's request to suspend in-person essential caregiver visitation if the commission determines that in-person visitation does not pose a serious community health risk. A state supported living center may request an extension from the commission to suspend in-person essential caregiver visitation for more than seven days. The commission may not approve an extension under this subsection for a period that exceeds seven days, and a state supported living center must separately request each extension. A state supported living center may not suspend in-person essential caregiver visitation in any year for a number of days that exceeds 14 consecutive days or a total of 45 days.

(f) This section may not be construed as requiring an essential caregiver to provide necessary care to a resident, and a state supported living center may not require an essential caregiver to provide necessary care.

Added by Acts 2021, 87th Leg., R.S., Ch. 531 (S.B. 25), Sec. 3, eff.

September 1, 2021.

SUBTITLE C. TEXAS MENTAL HEALTH CODE
CHAPTER 571. GENERAL PROVISIONS

Sec. 571.001. SHORT TITLE. This subtitle may be cited as the Texas Mental Health Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.002. PURPOSE. The purpose of this subtitle is to provide to each person having severe mental illness access to humane care and treatment by:

(1) facilitating treatment in an appropriate setting;

(2) enabling the person to obtain necessary evaluation, care, treatment, and rehabilitation with the least possible trouble, expense, and embarrassment to the person and the person's family;

(3) eliminating, if requested, the traumatic effect on the person's mental health of public trial and criminal-like procedures;

(4) protecting the person's right to a judicial determination of the person's need for involuntary treatment;

(5) defining the criteria the state must meet to order involuntary care and treatment;

(6) establishing the procedures to obtain facts, carry out examinations, and make prompt and fair decisions;

(7) safeguarding the person's legal rights so as to advance and not impede the therapeutic and protective purposes of involuntary care; and

(8) safeguarding the rights of the person who voluntarily requests inpatient care.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.003. DEFINITIONS. In this subtitle:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(108), eff. April 2, 2015.

(2) "Commissioner" means the commissioner of state health services.

(3) "Commitment order" means a court order for involuntary

inpatient mental health services under this subtitle.

(4) "Community center" means a center established under Subchapter A, Chapter 534 that provides mental health services.

(5) "Department" means the Department of State Health Services.

(5-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "Facility administrator" means the individual in charge of a mental health facility.

(7) "General hospital" means a hospital operated primarily to diagnose, care for, and treat persons who are physically ill.

(8) "Hospital administrator" means the individual in charge of a hospital.

(9) "Inpatient mental health facility" means a mental health facility that can provide 24-hour residential and psychiatric services and that is:

(A) a facility operated by the department;

(B) a private mental hospital licensed by the department;

(C) a community center, facility operated by or under contract with a community center or other entity the department designates to provide mental health services;

(D) a local mental health authority or a facility operated by or under contract with a local mental health authority;

(E) an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the department; or

(F) a hospital operated by a federal agency.

(10) "Legal holiday" includes a holiday listed in Section 662.021, Government Code, and an officially designated county holiday applicable to a court in which proceedings under this subtitle are held.

(11) "Local mental health authority" means an entity to which the executive commissioner delegates the executive commissioner's authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental health services to persons with mental illness in the most appropriate and available setting to meet individual needs in one or

more local service areas.

(12) "Mental health facility" means:

(A) an inpatient or outpatient mental health facility operated by the department, a federal agency, a political subdivision, or any person;

(B) a community center or a facility operated by a community center;

(C) that identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided; or

(D) with respect to a reciprocal agreement entered into under Section 571.0081, any hospital or facility designated as a place of commitment by the department, a local mental health authority, and the contracting state or local authority.

(13) "Mental hospital" means a hospital:

(A) operated primarily to provide inpatient care and treatment for persons with mental illness; or

(B) operated by a federal agency that is equipped to provide inpatient care and treatment for persons with mental illness.

(14) "Mental illness" means an illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that:

(A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs behavior as demonstrated by recent disturbed behavior.

(15) "Non-physician mental health professional" means:

(A) a psychologist licensed to practice in this state and designated as a health-service provider;

(B) a registered nurse with a master's or doctoral degree in psychiatric nursing;

(C) a licensed clinical social worker;

(D) a licensed professional counselor licensed to practice in this state;

(E) a licensed marriage and family therapist licensed to practice in this state; or

(F) a physician assistant licensed to practice in this state who has expertise in psychiatry or is currently working in a mental health facility.

(16) "Patient" means an individual who is receiving

voluntary or involuntary mental health services under this subtitle.

(17) "Person" includes an individual, firm, partnership, joint-stock company, joint venture, association, and corporation.

(18) "Physician" means:

(A) a person licensed to practice medicine in this state;

(B) a person employed by a federal agency who has a license to practice medicine in any state; or

(C) a person authorized to perform medical acts under a physician-in-training permit at a Texas postgraduate training program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board.

(19) "Political subdivision" includes a county, municipality, or hospital district in this state but does not include a department, board, or agency of the state that has statewide authority and responsibility.

(20) "Private mental hospital" means a mental hospital operated by a person or political subdivision.

(21) "State mental hospital" means a mental hospital operated by the department.

(22) Repealed by Acts 2001, 77th Leg., ch. 367, Sec. 19, eff. Sept. 1, 2001.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.01, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(15), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 500, Sec. 2, eff. May 31, 1997; Acts 1999, 76th Leg., ch. 75, Sec. 1, eff. May 12, 1999; Acts 1999, 76th Leg., ch. 543, Sec. 2, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 722, Sec. 1, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 367, Sec. 4, 19, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 892, Sec. 27, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 169 (S.B. 1889), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1355, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(108), eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 335 (H.B. 2093), Sec. 1, eff.

September 1, 2021.

Sec. 571.004. LEAST RESTRICTIVE APPROPRIATE SETTING. The least restrictive appropriate setting for the treatment of a patient is the treatment setting that:

(1) is available;

(2) provides the patient with the greatest probability of improvement or cure; and

(3) is no more restrictive of the patient's physical or social liberties than is necessary to provide the patient with the most effective treatment and to protect adequately against any danger the patient poses to himself or others.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.005. TEXAS MENTAL HEALTH CODE INFORMATION PROGRAM. (a) The department shall hold seminars as necessary to increase understanding of and properly implement revisions to this subtitle.

(b) The department may arrange for community centers, other state agencies, and other public and private organizations or programs to prepare instructional materials and conduct the seminars.

(c) The department may solicit, receive, and expend funds it receives from public or private organizations to fund the seminars.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.006. EXECUTIVE COMMISSIONER AND DEPARTMENT POWERS. (a) The executive commissioner may adopt rules as necessary for the proper and efficient treatment of persons with mental illness.

(b) The department may:

(1) prescribe the form and content of applications, certificates, records, and reports provided for under this subtitle;

(2) require reports from a facility administrator relating to the admission, examination, diagnosis, release, or discharge of any patient;

(3) regularly visit each mental health facility to review the commitment procedure for each new patient admitted after the last visit; and

(4) visit a mental health facility to investigate a complaint made by a patient or by a person on behalf of a patient.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1356, eff. April 2, 2015.

Sec. 571.0065. TREATMENT METHODS. (a) The executive commissioner by rule may adopt procedures for an advisory committee to review treatment methods for persons with mental illness.

(b) A state agency that has knowledge of or receives a complaint relating to an abusive treatment method shall report that knowledge or forward a copy of the complaint to the department.

(c) A mental health facility, physician, or other mental health professional is not liable for an injury or other damages sustained by a person as a result of the failure of the facility, physician, or professional to administer or perform a treatment prohibited by statute or rules adopted by the executive commissioner.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 3.01(a), eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 337, Sec. 1, eff. May 27, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(14), eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(98), eff. June 17, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1357, eff. April 2, 2015.

Sec. 571.0066. PRESCRIPTION MEDICATION INFORMATION. (a) The executive commissioner by rule shall require a mental health facility that admits a patient under this subtitle to provide to the patient in the patient's primary language, if possible, information relating to prescription medications ordered by the patient's treating physician.

(b) At a minimum, the required information must:

(1) identify the major types of prescription medications;

and

(2) specify for each major type:

(A) the conditions the medications are commonly used to treat;

(B) the beneficial effects on those conditions generally expected from the medications;

(C) side effects and risks associated with the medications;

(D) commonly used examples of medications of the major type; and

(E) sources of detailed information concerning a particular medication.

(c) The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.01, eff. Aug. 30, 1993. Renumbered from Health & Safety Code Sec. 571.0065 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(32), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1358, eff. April 2, 2015.

Sec. 571.0067. RESTRAINT AND SECLUSION. A person providing services to a patient of a mental hospital or mental health facility shall comply with Chapter 322 and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 6, eff. September 1, 2005.

Sec. 571.007. DELEGATION OF POWERS AND DUTIES. (a) Except as otherwise expressly provided by this subtitle, an authorized, qualified department employee may exercise a power granted to or perform a duty imposed on the department.

(b) Except as otherwise expressly provided by this subtitle, an authorized, qualified person designated by a facility administrator may exercise a power granted to or perform a duty imposed on the facility administrator.

(c) The delegation of a duty under this section does not relieve the department or a facility administrator from responsibility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.008. RETURN OF COMMITTED PATIENT TO STATE OF RESIDENCE. (a) The department may return a nonresident patient committed to a department mental health facility or other mental health facility under Section 571.0081 to the proper agency of the patient's state of residence.

(b) The department may permit the return of a resident of this state who is committed to a mental health facility in another state.

(c) Subject to Section 571.0081, the department may enter into reciprocal agreements with the state or local authorities, as defined by Section 571.0081, of other states to facilitate the return of persons committed to mental health facilities in this state or another state to the states of their residence.

(d) A department facility administrator may detain for not more than 96 hours pending a court order in a commitment proceeding in this state a patient returned to this state from another state where the person was committed.

(e) The state returning a committed patient to another state shall bear the expenses of returning the patient, unless the state agrees to share costs under a reciprocal agreement under Section 571.0081.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 169 (S.B. 1889), Sec. 2, eff. September 1, 2013.

Sec. 571.0081. RETURN OF COMMITTED PATIENT TO STATE OF RESIDENCE; RECIPROCAL AGREEMENTS. (a) In this section, "state or local authority" means a state or local government authority or agency or a representative of a state or local government authority or agency acting in an official capacity.

(b) If a state or local authority of another state petitions the department, the department shall enter into a reciprocal

agreement with the state or local authority to facilitate the return of persons committed to mental health facilities in this state to the state of their residence unless the department determines that the terms of the agreement are not acceptable.

(c) A reciprocal agreement entered into by the department under Subsection (b) must require the department to develop a process for returning persons committed to mental health facilities to their state of residence. The process must:

(1) provide suitable care for the person committed to a mental health facility;

(2) use available resources efficiently; and

(3) consider commitment to a proximate mental health facility to facilitate the return of the committed patient to the patient's state of residence.

(d) For the purpose of this section, the department shall coordinate, as appropriate, with a mental health facility, a mental hospital, health service providers, courts, and law enforcement personnel located in the geographic area nearest the petitioning state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 169 (S.B. 1889), Sec. 3, eff. September 1, 2013.

Sec. 571.009. EFFECT OF CERTAIN CONDITIONS ON ADMISSION OR COMMITMENT. A person with mental illness may not be denied admission or commitment to a mental health facility because the person also suffers from epilepsy, dementia, substance abuse, or intellectual disability.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1359, eff. April 2, 2015.

Sec. 571.010. AGENT FOR SERVICE OF PROCESS. (a) The facility administrator or the superintendent, supervisor, or manager of an inpatient mental health facility is the agent for service of process on a patient confined in the facility.

(b) The person receiving process shall sign a certificate with

the person's name and title that states that the person is aware of the provisions of this subtitle. The certificate shall be attached to the citation and returned by the serving officer.

(c) The person receiving process, not later than the third day after its receipt, shall forward it by registered mail to the patient's legal guardian or personally deliver it to the patient, whichever appears to be in the patient's best interest.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.011. APPLICATION TO PERSONS CHARGED WITH CRIME. (a) A child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision under Title 3, Family Code, is not considered under this subtitle to be a person charged with a criminal offense.

(b) The provisions in this subtitle relating to the discharge, furlough, or transfer of a patient do not apply to a person charged with a criminal offense who is admitted to a mental health facility under Subchapter D or E, Chapter 46B, Code of Criminal Procedure.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2003, 78th Leg., ch. 35, Sec. 9, eff. Jan. 1, 2004.

Sec. 571.012. COURT HOURS; AVAILABILITY OF JUDGE OR MAGISTRATE. The probate court or court having probate jurisdiction shall be open for proceedings under this subtitle during normal business hours. The probate judge or magistrate shall be available at all times at the request of a person apprehended or detained under Chapter 573, or a proposed patient under Chapter 574.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 485, Sec. 1, eff. June 11, 2001.

Sec. 571.013. METHOD OF GIVING NOTICE. Except as otherwise provided by this subtitle, notice required under this subtitle may be given:

(1) by personal delivery of a copy of the notice or document by a constable or sheriff of the county; or

(2) in another manner directed by the court that is reasonably calculated to give actual notice.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 961 (S.B. 53), Sec. 1, eff. September 1, 2025.

Sec. 571.014. FILING REQUIREMENTS. (a) Each application, petition, certificate, or other paper permitted or required to be filed in a probate court or court having probate jurisdiction under this subtitle must be filed with the county clerk of the proper county.

(b) The county clerk shall file each paper after endorsing on it:

(1) the date on which the paper is filed;

(2) the docket number; and

(3) the clerk's official signature.

(c) A person may file a paper with the county clerk by the use of reproduced, photocopied, or electronically transmitted paper copies of the original signed copies of the paper. A person who files a reproduced, photocopied, or electronically transmitted paper must maintain possession of the original signed copies of the paper and on request shall make the original paper available for inspection by the parties or the court.

(d) Repealed by Acts 2025, 89th Leg., R.S., Ch. 961 (S.B. 53), Sec. 3, eff. September 1, 2025.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.42, eff. Aug. 30, 1993.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 961 (S.B. 53), Sec. 2, eff. September 1, 2025.
Acts 2025, 89th Leg., R.S., Ch. 961 (S.B. 53), Sec. 3, eff. September 1, 2025.

Sec. 571.015. INSPECTION OF COURT RECORDS. (a) Each paper in a docket for mental health proceedings in the county clerk's office,

including the docket book, indexes, and judgment books, is a public record of a private nature that may be used, inspected, or copied only under a written order issued by the county judge, a judge of a court that has probate jurisdiction, or a judge of a district court having jurisdiction in the county in which the docket is located.

(b) A judge may not issue an order under Subsection (a) unless the judge enters a finding that:

(1) the use, inspection, or copying is justified and in the public interest; or

(2) the paper is to be released to the person to whom it relates or to a person designated in a written release signed by the person to whom the paper relates.

(c) In addition to the finding required by Subsection (b), if a law relating to confidentiality of mental health information or physician-patient privilege applies, the judge must find that the reasons for the use, inspection, or copying fall within the applicable statutory exemptions.

(d) The papers shall be released to an attorney representing the proposed patient in a proceeding held under this subtitle.

(e) This section does not affect access of law enforcement personnel to necessary information in execution of a writ or warrant.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.016. REPRESENTATION OF STATE. Unless specified otherwise, in a hearing held under this subtitle, including a hearing held under Subchapter G, Chapter 574:

(1) the county attorney shall represent the state; or

(2) if the county has no county attorney, the district attorney, the criminal district attorney, or a court-appointed special prosecutor shall represent the state.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 322, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 770, Sec. 1, eff. June 16, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 832 (H.B. 3342), Sec. 1, eff. June 17, 2011.

Sec. 571.0165. EXTENSION OF DETENTION PERIOD. (a) If extremely hazardous weather conditions exist or a disaster occurs, the judge of a court having jurisdiction of a proceeding under Chapters 572, 573, 574, and 575 or a magistrate appointed by the judge may by written order made each day extend the period during which the person may be detained under those chapters until 4 p.m. on the first succeeding business day.

(b) The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(c) This section does not apply to a situation for which a specific procedure is prescribed by this subtitle for extending the detention period because of extremely hazardous weather conditions or the occurrence of a disaster.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.43, eff. Aug. 30, 1993.

Sec. 571.0166. PROCEEDINGS ON BEHALF OF THE STATE. All applications under this subtitle shall be filed on behalf of the State of Texas and styled "The State of Texas for the Best Interest and Protection of (NAME) the (patient or proposed patient)."

Added by Acts 1995, 74th Leg., ch. 770, Sec. 2, eff. June 16, 1995.

Sec. 571.0167. HABEAS CORPUS PROCEEDINGS. (a) A petition for a writ of habeas corpus arising from a commitment order must be filed in the court of appeals for the county in which the order is entered.

(b) The state shall be made a party in a habeas corpus proceeding described in Subsection (a). The appropriate attorney prescribed by Section 571.016 shall represent the state.

(c) In a habeas corpus proceeding in which a department inpatient mental health facility or a physician employed by a department inpatient mental health facility is a party as a result of enforcing a commitment order, the appropriate attorney prescribed by Section 571.016 shall represent the facility or physician, or both the facility and physician if both are parties, unless the attorney determines that representation violates the Texas Disciplinary Rules of Professional Conduct.

Added by Acts 2011, 82nd Leg., R.S., Ch. 832 (H.B. 3342), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1360, eff. April 2, 2015.

Sec. 571.017. COMPENSATION OF COURT-APPOINTED PERSONNEL. (a) The court shall order the payment of reasonable compensation to attorneys, physicians, language interpreters, sign interpreters, and associate judges appointed under this subtitle.

(b) The compensation paid shall be taxed as costs in the case.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 2, eff. September 1, 2009.

Sec. 571.018. COSTS. (a) The costs for a hearing or proceeding under this subtitle shall be paid by:

(1) the county in which emergency detention procedures are initiated under Subchapter A or B, Chapter 573; or

(2) if no emergency detention procedures are initiated, the county that accepts an application for court-ordered mental health services, issues an order for protective custody, or issues an order for temporary mental health services.

(b) The county responsible for the costs of a hearing or proceeding under Subsection (a) shall pay the costs of all subsequent hearings or proceedings for that person under this subtitle until the person is discharged from mental health services. The costs shall be billed by the clerk of the court conducting the hearings.

(c) Costs under this section include:

(1) attorney's fees;

(2) physician examination fees;

(3) compensation for court-appointed personnel listed under Section 571.017;

(4) expenses of transportation to a mental health facility or to a federal agency not to exceed $50 if transporting within the same county and not to exceed the reasonable cost of transportation

if transporting between counties;

(5) costs and salary supplements authorized under Sections 574.031(i) and (j);

(6) prosecutor's fees authorized under Section 574.031(k); and

(7) court reporter costs.

(d) A county is entitled to reimbursement for costs actually paid by the county from:

(1) the patient; or

(2) a person or estate liable for the patient's support in a department mental health facility.

(e) The state shall pay the cost of transporting a discharged or furloughed patient to the patient's home or of returning a patient absent without authority unless the patient or someone responsible for the patient is able to pay the costs.

(f) A proposed patient's county of residence shall pay the court-approved expenses incurred under Section 574.010 if ordered by the court under that section.

(g) A judge who holds hearings at locations other than the county courthouse is entitled to additional compensation as provided by Sections 574.031(h) and (i).

(h) The state or a county may not pay any costs for a patient committed to a private mental hospital, other than a filing fee or other cost associated with a hearing or proceeding under this subtitle, unless:

(1) a public facility is not available; and

(2) the commissioners court of the county authorizes the payment, if appropriate.

(i) The county may not require a person other than the patient to pay any costs associated with a hearing or proceeding under this subtitle, including a filing fee or other court costs imposed under Chapter 118, Local Government Code, Chapter 51, Government Code, or other law, unless the county first determines that:

(1) the costs relate to services provided or to be provided in a private mental hospital; or

(2) the person charged with the costs is a person or estate liable for the patient's support in a department mental health facility.

(j) The judge of a court conducting a hearing or proceeding under this subtitle shall order the clerk of the court to refund

court costs paid or advanced for a person by an inpatient mental health facility as defined under Section 571.003(9)(A), (B), (D), or (E) on the filing of an affidavit with the clerk of the court certifying that:

(1) the facility has received no compensation or reimbursement for the treatment of the person;

(2) the facility provided treatment for the person under a contract with a local mental health authority; or

(3) the facility provided treatment for the person and only received reimbursement under Medicaid.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.44, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 174, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 770, Sec. 3, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1354, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 527, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1512, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 723 (H.B. 1329), Sec. 1, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 237 (H.B. 1213), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 4.06, eff. January 1, 2022.

Acts 2023, 88th Leg., R.S., Ch. 1017 (H.B. 4085), Sec. 1, eff. September 1, 2023.

Sec. 571.019. LIMITATION OF LIABILITY. (a) A person who participates in the examination, certification, apprehension, custody, transportation, detention, treatment, or discharge of any person or in the performance of any other act required or authorized by this subtitle and who acts in good faith, reasonably, and without negligence is not criminally or civilly liable for that action.

(b) A physician performing a medical examination and providing information to the court in a court proceeding held under this subtitle or providing information to a peace officer to demonstrate the necessity to apprehend a person under Chapter 573 is considered an officer of the court and is not liable for the examination or

testimony when acting without malice.

(c) A physician or inpatient mental health facility that discharges a voluntary patient is not liable for the discharge if:

(1) a written request for the patient's release was filed and not withdrawn; and

(2) the person who filed the written request for discharge is notified that the person assumes all responsibility for the patient on discharge.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.020. CRIMINAL PENALTIES. (a) A person commits an offense if the person intentionally causes, conspires with another to cause, or assists another to cause the unwarranted commitment of a person to a mental health facility.

(b) A person commits an offense if the person knowingly violates a provision of this subtitle.

(c) An individual who commits an offense under this section is subject on conviction to:

(1) a fine of not less than $50 or more than $25,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than two years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

(d) A person other than an individual who commits an offense under this section is subject on conviction to a fine of not less than $500 or more than $100,000 for each violation and each day of a continuing violation.

(e) If it is shown on the trial of an individual that the individual has previously been convicted of an offense under this section, the offense is punishable by:

(1) a fine of not less than $100 or more than $50,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than four years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

(f) If it is shown on the trial of a person other than an individual that the person previously has been convicted of an offense under this section, the offense is punishable by a fine of

not less than $1,000 or more than $200,000 for each violation and each day of a continuing violation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.45, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 705, Sec. 3.10(a), eff. Sept. 1, 1993.

Sec. 571.021. ENFORCEMENT OFFICERS. The state attorney general and the district and county attorneys within their respective jurisdictions shall prosecute violations of this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.022. INJUNCTION. (a) At the request of the department, the attorney general or the appropriate district or county attorney shall institute and conduct in the name of the state a suit for a violation of this subtitle or a rule adopted under this subtitle.

(b) On his own initiative, the attorney general or district or county attorney may maintain an action for a violation of this subtitle or a rule adopted under this subtitle in the name of the state.

(c) Venue may be maintained in Travis County or in the county in which the violation occurred.

(d) The district court may grant any prohibitory or mandatory injunctive relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.11, eff. Sept. 1, 1993.

Sec. 571.023. CIVIL PENALTY. (a) A person is subject to a civil penalty of not more than $25,000 for each day of violation and for each act of violation of this subtitle or a rule adopted under this subtitle. In determining the amount of the civil penalty, the court shall consider:

(1) the person's or facility's previous violations;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) whether the health and safety of the public was threatened by the violation;

(4) the demonstrated good faith of the person or facility; and

(5) the amount necessary to deter future violations.

(b) The department or party bringing the suit may:

(1) combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 571.022 or 577.019; or

(2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(c) At the request of the department, the attorney general or the appropriate district or county attorney shall institute and conduct the suit authorized by Subsection (b) in the name of the state.

(d) On his own initiative, the attorney general, district attorney, or county attorney may maintain an action as authorized by Subsection (b) for a violation of this subtitle or a rule adopted under this subtitle in the name of the state.

(e) The department and the party bringing the suit may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

(f) A penalty collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

(g) The civil penalty and injunctive relief authorized by this section and Sections 571.022 and 577.019 are in addition to any other civil, administrative, or criminal remedies provided by law.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.11, eff. Sept. 1, 1993.

Sec. 571.024. NOTICE OF SUIT. Not later than the seventh day before the date on which the attorney general intends to bring suit

on his own initiative, the attorney general shall provide to the department notice of the suit. The attorney general is not required to provide notice of a suit if the attorney general determines that waiting to bring suit until the notice is provided will create an immediate threat to the health and safety of a patient. This section does not create a requirement that the attorney general obtain the permission of or a referral from the department before filing suit.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.11, eff. Sept. 1, 1993.

Sec. 571.025. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty against a person licensed or regulated under this subtitle who violates this subtitle or a rule or order adopted under this subtitle.

(b) The penalty for a violation may be in an amount not to exceed $25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) enforcement costs relating to the violation, including investigation costs, witness fees, and deposition expenses;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the department determines that a violation has occurred, the department may issue a report that states the facts on which the determination is based and the department's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the department shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person

has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the department, the department by order shall impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the department shall set a hearing and give notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the department's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the department's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for

placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(l) The department on receipt of a copy of an affidavit under Subsection (k)(2) may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the department:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York

Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.11, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1361, eff. April 2, 2015.

Sec. 571.026. RECOVERY OF COSTS. If the attorney general brings an action to enforce an administrative penalty assessed under this chapter and the court orders the payment of the penalty, the attorney general may recover reasonable expenses incurred in the investigation, initiation, or prosecution of the enforcement suit, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.111, eff. Sept. 1, 1993.

CHAPTER 572. VOLUNTARY MENTAL HEALTH SERVICES

See note following this section.

Sec. 572.001. REQUEST FOR ADMISSION. (a) A person 16 years of age or older may request admission to an inpatient mental health facility or for outpatient mental health services by filing a request with the administrator of the facility where admission or outpatient treatment is requested. Subject to Subsection (c-1), the parent, managing conservator, or guardian of a person younger than 18 years

of age may request the admission of the person to an inpatient mental health facility or for outpatient mental health services by filing a request with the administrator of the facility where admission or outpatient treatment is requested.

(a-1) A person eligible to consent to treatment for the person under Section 32.001(a)(1), (2), or (3), Family Code, may request temporary authorization for the admission of the person to an inpatient mental health facility by petitioning under Chapter 35A, Family Code, in the district court in the county in which the person resides for an order for temporary authorization to consent to voluntary mental health services under this section. The petitioner for temporary authorization may be represented by the county attorney or district attorney.

(a-2) Except as provided by Subsection (c-1), an inpatient mental health facility may admit or provide services to a person 16 years of age or older and younger than 18 years of age if the person's parent, managing conservator, or guardian consents to the admission or services, even if the person does not consent to the admission or services.

(b) An admission request must be in writing and signed by the person requesting the admission.

(c) A person or agency appointed as the guardian or a managing conservator of a person younger than 18 years of age and acting as an employee or agent of the state or a political subdivision of the state may request admission of the person younger than 18 years of age to an inpatient mental health facility only as provided by Subsection (c-2) or pursuant to an application for court-ordered mental health services or emergency detention or an order for protective custody.

(c-1) A person younger than 18 years of age may not be involuntarily committed unless provided by this chapter, Chapter 55, Family Code, or department rule.

(c-2) The Department of Family and Protective Services may request the admission to an inpatient mental health facility of a minor in the managing conservatorship of that department only if a physician states the physician's opinion, and the detailed reasons for that opinion, that the minor is a person:

(1) with mental illness or who demonstrates symptoms of a serious emotional disorder; and

(2) who presents a risk of serious harm to self or others

if not immediately restrained or hospitalized.

(c-3) The admission to an inpatient mental health facility under Subsection (c-2) of a minor in the managing conservatorship of the Department of Family and Protective Services is a significant event for purposes of Section 264.018, Family Code, and the Department of Family and Protective Services shall provide notice of the significant event:

(1) in accordance with that section to all parties entitled to notice under that section; and

(2) to the court with continuing jurisdiction before the expiration of three business days after the minor's admission.

(c-4) The Department of Family and Protective Services periodically shall review the need for continued inpatient treatment of a minor admitted to an inpatient mental health facility under Subsection (c-2). If following the review that department determines there is no longer a need for continued inpatient treatment, that department shall notify the facility administrator designated to detain the minor that the minor may no longer be detained unless an application for court-ordered mental health services is filed.

(d) The administrator of an inpatient or outpatient mental health facility may admit a minor who is 16 years of age or older to an inpatient or outpatient mental health facility as a voluntary patient without the consent of the parent, managing conservator, or guardian.

(e) A request for admission as a voluntary patient must state that the person for whom admission is requested agrees to voluntarily remain in the facility until the person's discharge and that the person consents to the diagnosis, observation, care, and treatment provided until the earlier of:

(1) the person's discharge; or

(2) the period prescribed by Section 572.004.

Amendments to this section made by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), take effect on September 1, 2018, but only if a specific appropriation is provided as described by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 74, which states: Subchapter F, Chapter 261, Family Code, as added by this Act, Section 262.206, Family Code, as added by this Act, Section 572.001, Health and Safety Code, as amended by this Act, and Section 25.07(a), Penal Code, as amended by this Act, take effect only if a specific appropriation for the implementation of those sections is provided in a general

appropriations act of the 85th Legislature.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 4.01, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 393, Sec. 1, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 1000, Sec. 1, eff. June 20, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 566 (S.B. 718), Sec. 2, eff. June 14, 2013.
Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 41, eff. September 1, 2018.
Acts 2019, 86th Leg., R.S., Ch. 988 (S.B. 1238), Sec. 2, eff. September 1, 2019.

Sec. 572.002. ADMISSION. The facility administrator or the administrator's authorized, qualified designee may admit a person for whom a proper request for voluntary inpatient or outpatient services is filed if the administrator or the designee determines:

(1) from a preliminary examination that the person has symptoms of mental illness and will benefit from the inpatient or outpatient services;

(2) that the person has been informed of the person's rights as a voluntary patient; and

(3) that the admission was voluntarily agreed to:

(A) by the person, if the person is 16 years of age or older; or

(B) by the person's parent, managing conservator, or guardian, if the person is younger than 18 years of age.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 393, Sec. 2, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 1000, Sec. 2, eff. June 20, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 566 (S.B. 718), Sec. 3, eff. June 14, 2013.

Sec. 572.0022. INFORMATION ON MEDICATIONS. (a) A mental health facility shall provide to a patient in the patient's primary language, if possible, and in accordance with department rules

information relating to prescription medication ordered by the patient's treating physician.

(b) The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.03, eff. May 1, 1994. Amended by Acts 1997, 75th Leg., ch. 337, Sec. 2, eff. May 27, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1363, eff. April 2, 2015.

Sec. 572.0025. INTAKE, ASSESSMENT, AND ADMISSION. (a) The executive commissioner shall adopt rules governing the voluntary admission of a patient to an inpatient mental health facility, including rules governing the intake and assessment procedures of the admission process.

(b) The rules governing the intake process shall establish minimum standards for:

(1) reviewing a prospective patient's finances and insurance benefits;

(2) explaining to a prospective patient the patient's rights; and

(3) explaining to a prospective patient the facility's services and treatment process.

(c) The assessment provided for by the rules may be conducted only by a professional who meets the qualifications prescribed by department rules.

(d) The rules governing the assessment process shall prescribe:

(1) the types of professionals who may conduct an assessment;

(2) the minimum credentials each type of professional must have to conduct an assessment; and

(3) the type of assessment that professional may conduct.

(e) In accordance with department rule, a facility shall provide annually a minimum of eight hours of inservice training regarding intake and assessment for persons who will be conducting an intake or assessment for the facility. A person may not conduct intake or assessments without having completed the initial and

applicable annual inservice training.

(f) A prospective voluntary patient may not be formally accepted for treatment in a facility unless:

(1) the facility has a physician's order admitting the prospective patient, which order may be issued orally, electronically, or in writing, signed by the physician, provided that, in the case of an oral order or an electronically transmitted unsigned order, a signed original is presented to the mental health facility within 24 hours of the initial order; the order must be from:

(A) an admitting physician who has, either in person or through the use of audiovisual or other telecommunications technology, conducted a physical and psychiatric examination within:

(i) 72 hours before admission; or

(ii) 24 hours after admission; or

(B) an admitting physician who has consulted with a physician who has, either in person or through the use of audiovisual or other telecommunications technology, conducted an examination within:

(i) 72 hours before admission; or

(ii) 24 hours after admission; and

(2) the facility administrator or a person designated by the administrator has agreed to accept the prospective patient and has signed a statement to that effect.

(f-1) A person who is admitted to a facility before the performance of the physical and psychiatric examination required by Subsection (f) must be discharged by the physician immediately if the physician conducting the physical and psychiatric examination determines the person does not meet the clinical standards to receive inpatient mental health services.

(f-2) A facility that discharges a patient under the circumstances described by Subsection (f-1) may not bill the patient or the patient's third-party payor for the temporary admission of the patient to the inpatient mental health facility.

(f-3) Section 572.001(c-2) applies to the admission of a minor in the managing conservatorship of the Department of Family and Protective Services to an inpatient mental health facility.

(g) An assessment conducted as required by rules adopted under this section does not satisfy a statutory or regulatory requirement for a personal evaluation of a patient or a prospective patient by a

physician.

(h) In this section:

(1) "Admission" means the formal acceptance of a prospective patient to a facility.

(2) "Assessment" means the administrative process a facility uses to gather information from a prospective patient, including a medical history and the problem for which the patient is seeking treatment, to determine whether a prospective patient should be examined by a physician to determine if admission is clinically justified.

(3) "Intake" means the administrative process for gathering information about a prospective patient and giving a prospective patient information about the facility and the facility's treatment and services.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 4.03, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 422, Sec. 1, eff. June 9, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.83, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1364, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 988 (S.B. 1238), Sec. 3, eff. September 1, 2019.

Sec. 572.0026. VOLUNTARY ADMISSION RESTRICTIONS. The facility administrator of an inpatient mental health facility or the administrator's designee may only approve the admission of a person for whom a proper request for voluntary inpatient services is filed if, at the time the request is filed, there is available space at the inpatient mental health facility.

Added by Acts 2023, 88th Leg., R.S., Ch. 1035 (S.B. 26), Sec. 7, eff. September 1, 2023.

Sec. 572.003. RIGHTS OF PATIENTS. (a) A person's voluntary admission to an inpatient mental health facility under this chapter does not affect the person's civil rights or legal capacity or affect the person's right to obtain a writ of habeas corpus.

(b) In addition to the rights provided by this subtitle, a

person voluntarily admitted to an inpatient mental health facility under this chapter has the right:

(1) to be reviewed periodically to determine the person's need for continued inpatient treatment; and

(2) to have an application for court-ordered mental health services filed only as provided by Section 572.005.

(c) A person admitted to an inpatient mental health facility under this chapter shall be informed of the rights provided under this section and Section 572.004:

(1) orally in simple, nontechnical terms, within 24 hours after the time the person is admitted, and in writing in the person's primary language, if possible; or

(2) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

(d) The patient's parent, managing conservator, or guardian shall also be informed of the patient's rights as required by this section if the patient is a minor.

(e) In addition to the rights provided by this subtitle, a person voluntarily admitted to an inpatient mental health facility under Section 572.002(3)(B) has the right to be evaluated by a physician at regular intervals to determine the person's need for continued inpatient treatment. The executive commissioner by rule shall establish the intervals at which a physician shall evaluate a person under this subsection.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.02, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 1000, Sec. 3, eff. June 20, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1365, eff. April 2, 2015.

Sec. 572.004. DISCHARGE. (a) A voluntary patient is entitled to leave an inpatient mental health facility in accordance with this section after a written request for discharge is filed with the facility administrator or the administrator's designee. The request must be signed, timed, and dated by the patient or a person legally responsible for the patient and must be made a part of the patient's

clinical record. If a patient informs an employee of or person associated with the facility of the patient's desire to leave the facility, the employee or person shall, as soon as possible, assist the patient in creating the written request and present it to the patient for the patient's signature.

(b) The facility shall, within four hours after a request for discharge is filed, notify the physician responsible for the patient's treatment. If that physician is not available during that period, the facility shall notify any available physician of the request.

(c) The notified physician shall discharge the patient before the end of the four-hour period unless the physician has reasonable cause to believe that the patient might meet the criteria for court-ordered mental health services or emergency detention.

(d) A physician who has reasonable cause to believe that a patient might meet the criteria for court-ordered mental health services or emergency detention shall examine the patient as soon as possible within 24 hours after the time the request for discharge is filed. The physician shall discharge the patient on completion of the examination unless the physician determines that the person meets the criteria for court-ordered mental health services or emergency detention. If the physician makes a determination that the patient meets the criteria for court-ordered mental health services or emergency detention, the physician shall, not later than 4 p.m. on the next succeeding business day after the date on which the examination occurs, either discharge the patient or file an application for court-ordered mental health services or emergency detention and obtain a written order for further detention. The physician shall notify the patient if the physician intends to detain the patient under this subsection or intends to file an application for court-ordered mental health services or emergency detention. A decision to detain a patient under this subsection and the reasons for the decision shall be made a part of the patient's clinical record.

(e) If extremely hazardous weather conditions exist or a disaster occurs, the physician may request the judge of a court that has jurisdiction over proceedings brought under Chapter 574 to extend the period during which the patient may be detained. The judge or a magistrate appointed by the judge may by written order made each day extend the period during which the patient may be detained until 4

p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(f) The patient is not entitled to leave the facility if before the end of the period prescribed by this section:

(1) a written withdrawal of the request for discharge is filed; or

(2) an application for court-ordered mental health services or emergency detention is filed and the patient is detained in accordance with this subtitle.

(g) A plan for continuing care shall be prepared in accordance with Section 574.081 for each patient discharged. If sufficient time to prepare a continuing care plan before discharge is not available, the plan may be prepared and mailed to the appropriate person within 24 hours after the patient is discharged.

(h) The patient or other person who files a request for discharge of a patient shall be notified that the person filing the request assumes all responsibility for the patient on discharge.

(i) On receipt of a written request for discharge from a patient admitted under Section 572.002(3)(B) who is younger than 18 years of age, a facility shall consult with the patient's parent, managing conservator, or guardian regarding the discharge. If the parent, managing conservator, or guardian objects in writing to the patient's discharge, the facility shall continue treatment of the patient as a voluntary patient.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.46, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 705, Sec. 4.02, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 1000, Sec. 4, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 48 (H.B. 224), Sec. 1, eff. May 17, 2005.

Sec. 572.005. APPLICATION FOR COURT-ORDERED TREATMENT. (a) An application for court-ordered mental health services may not be filed against a patient receiving voluntary inpatient services unless:

(1) a request for release of the patient has been filed with the facility administrator; or

(2) in the opinion of the physician responsible for the patient's treatment, the patient meets the criteria for court-ordered mental health services and:

(A) is absent from the facility without authorization;

(B) is unable to consent to appropriate and necessary psychiatric treatment; or

(C) refuses to consent to necessary and appropriate treatment recommended by the physician responsible for the patient's treatment and that physician completes a certificate of medical examination for mental illness that, in addition to the information required by Section 574.011, includes the opinion of the physician that:

(i) there is no reasonable alternative to the treatment recommended by the physician; and

(ii) the patient will not benefit from continued inpatient care without the recommended treatment.

(b) The physician responsible for the patient's treatment shall notify the patient if the physician intends to file an application for court-ordered mental health services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.04, eff. Aug. 30, 1993.

Sec. 572.0051. TRANSPORTATION OF PATIENT TO ANOTHER STATE. A person may not transport a patient to a mental health facility in another state for inpatient mental health services under this chapter unless transportation to that facility is authorized by a court order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 566 (S.B. 718), Sec. 4, eff. June 14, 2013.

CHAPTER 573. EMERGENCY DETENTION

SUBCHAPTER A. APPREHENSION BY PEACE OFFICER OR TRANSPORTATION FOR EMERGENCY DETENTION BY GUARDIAN

Sec. 573.0001. DEFINITIONS. In this chapter:

(1) "Emergency medical services personnel" and "emergency medical services provider" have the meanings assigned by Section

773.003.

(2) "Law enforcement agency" has the meaning assigned by Article 59.01, Code of Criminal Procedure.

Added by Acts 2017, 85th Leg., R.S., Ch. 541 (S.B. 344), Sec. 1, eff. June 9, 2017.

Sec. 573.001. APPREHENSION BY PEACE OFFICER WITHOUT WARRANT. (a) A peace officer, without a warrant, may take a person into custody, regardless of the age of the person, if the officer has reason to believe and does believe that:

(1) the person is a person with mental illness and because of that mental illness:

(A) there is a substantial risk of serious harm to the person or to others;

(B) the person evidences severe emotional distress and deterioration in the person's mental condition; or

(C) the person evidences an inability to recognize symptoms or appreciate the risks and benefits of treatment;

(2) the person is likely without immediate detention to suffer serious risk of harm or to inflict serious harm on another person; and

(3) there is not sufficient time to obtain a warrant before taking the person into custody.

(b) Repealed by Acts 2025, 89th Leg., R.S., Ch. 800 (S.B. 1164), Sec. 12(1), eff. September 1, 2025.

(c) The peace officer may form the belief that the person meets the criteria for apprehension:

(1) from a representation of a credible person; or

(2) on the basis of the conduct of the apprehended person or the circumstances under which the apprehended person is found.

(d) A peace officer who takes a person into custody under Subsection (a) shall immediately:

(1) transport the apprehended person to:

(A) the nearest appropriate inpatient mental health facility; or

(B) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available; or

(2) transfer the apprehended person to emergency medical services personnel of an emergency medical services provider in accordance with a memorandum of understanding executed under Section 573.005 for transport to a facility described by Subdivision (1)(A) or (B).

(e) A jail or similar detention facility may not be deemed suitable except in an extreme emergency.

(f) A person detained in a jail or a nonmedical facility shall be kept separate from any person who is charged with or convicted of a crime.

(g) A peace officer who takes a person into custody under Subsection (a) shall immediately inform the person orally in simple, nontechnical terms:

(1) of the reason for the detention; and

(2) that a staff member of the facility will inform the person of the person's rights within 24 hours after the time the person is admitted to a facility, as provided by Section 573.025(b).

(h) A peace officer who takes a person into custody under Subsection (a) may immediately seize any firearm found in possession of the person. After seizing a firearm under this subsection, the peace officer shall comply with the requirements of Article 18.191, Code of Criminal Procedure.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 367, Sec. 5, eff. Sept. 1, 2001. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 318 (H.B. 1738), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 776 (S.B. 1189), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1366, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(33), eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 541 (S.B. 344), Sec. 2, eff. June 9, 2017.

Acts 2019, 86th Leg., R.S., Ch. 988 (S.B. 1238), Sec. 4, eff. September 1, 2019.

Acts 2025, 89th Leg., R.S., Ch. 800 (S.B. 1164), Sec. 1, eff. September 1, 2025.

Acts 2025, 89th Leg., R.S., Ch. 800 (S.B. 1164), Sec. 12(1), eff. September 1, 2025.

Sec. 573.002. PEACE OFFICER'S NOTIFICATION OF EMERGENCY DETENTION. (a) A peace officer shall immediately file with a facility a notification of emergency detention after transporting a person to that facility in accordance with Section 573.001. Emergency medical services personnel of an emergency medical services provider who transport a person to a facility at the request of a peace officer made in accordance with a memorandum of understanding executed under Section 573.005 shall immediately file with the facility the notification of emergency detention completed by the peace officer who made the request.

(b) The notification of emergency detention must contain:

(1) a statement that the officer has reason to believe and does believe that the person evidences mental illness;

(2) a statement that the officer has reason to believe and does believe that the person evidences a substantial risk of serious harm to the person or others;

(3) a statement that the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(4) a statement that the officer's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by or reliably reported to the officer;

(5) a detailed description of the specific behavior, acts, attempts, or threats; and

(6) the name and relationship to the apprehended person of any person who reported or observed the behavior, acts, attempts, or threats.

(c) The facility where the person is detained shall include in the detained person's clinical file the notification of emergency detention described by this section.

(d) The peace officer shall provide the notification of emergency detention in substantially the following form:

Notification--Emergency Detention NO. _____

DATE:_____ TIME:_____

THE STATE OF TEXAS

FOR THE BEST INTEREST AND PROTECTION OF:

_____

DOB:_____ RACE:_____ GENDER:_____ PHONE NUMBER:_____ ADDRESS:_____

NOTIFICATION OF EMERGENCY DETENTION

Now comes _____, a peace officer with (name of agency) _____, of the State of Texas, and states as follows:

I have reason to believe and do believe that (name of person to be detained) _____ evidences mental illness;

I have reason to believe and do believe that the above-named person evidences a substantial risk of serious harm to himself/herself or others based on the person's behavior or evidence the person is experiencing severe emotional distress and deterioration to the extent the person cannot remain at liberty; and

I have reason to believe and do believe that the risk of harm is imminent unless the above-named person is immediately restrained.

1. My above-stated beliefs are based upon the following recent behavior, severe emotional distress and deterioration, overt acts, attempts, statements, or threats observed by me or reliably reported to me (may use attachments to report additional information):

_____

_____

_____

_____

2. The names, addresses, phone numbers, and relationship to the above-named person of those persons who reported or observed recent behavior, acts, attempts, statements, or threats of the above-named person are (if applicable):

_____

_____

_____

_____

ADULT 65 YEARS OF AGE OR OLDER? YES NO If yes, age: _____

CHILD 17 YEARS OF AGE OR YOUNGER? YES NO If yes, age: _____

FOR A CHILD 17 YEARS OF AGE OR YOUNGER (if yes):

My belief the child is at risk of imminent serious harm unless immediately removed from the parents' custody is based on the above-stated facts showing the parents or guardians are presently unable to protect the child from imminent serious harm.

I provided notice to the child's parents or guardians of my

intention to file this notification.

I was not able to provide notice to the child's parents or guardians of my intention to file this notification because:

_____

_____

Parent/Guardian Contact Information: _____

_____

USE OF RESTRAINT

Was the person physically restrained in any way? Yes No

If yes, reason for physical restraint? Officer Safety Person's Safety Other _____

CALL ORIGINATED AT:

Public Area Residence School/University

Group Home Hospital

Other_____

OBSERVATIONS/HISTORY

If YES to any question below, provide additional information:

		YES	NO	UNKNOWN
NOTES	Harm to self or stating an intention to harm self?			
	Previous attempt to commit suicide?			
	Harm to others or stating an intention to harm others?			
	Previous serious harm or injury to others?			
	Previous psychiatric hospital treatment?			
	Reported mental health diagnosis?			

Prescribed psychiatric medications ?

Current psychiatric medications taken?

Sleeping difficulty?

Substance use disorder?

TRANSPORTED TO:

Hospital/Emergency Room Mental Health Facility

Other _____

For the above reasons, I present this notification to seek temporary admission to the (name of facility) _____ inpatient mental health facility or hospital facility for the detention of (name of person to be detained) _____ on an emergency basis.

PEACE OFFICER'S PRINTED NAME: _____

BADGE NO. _____

PEACE OFFICER'S SIGNATURE _____

Address: _____ Zip Code: _____

Telephone: _____

SIGNATURE OF EMERGENCY MEDICAL SERVICES PERSONNEL (if applicable)

_____ PRINTED NAME OF PERSONNEL: _____

Address: _____ Zip Code: _____

Telephone: _____

A mental health facility or hospital emergency department may not require a peace officer or emergency medical services personnel to execute any form other than this form as a predicate to accepting for temporary admission a person detained by a peace officer under Section 573.001, Health and Safety Code.

(e) A mental health facility or hospital emergency department may not require a peace officer or emergency medical services personnel to execute any form other than the form provided by Subsection (d) as a predicate to accepting for temporary admission a person detained by a peace officer under Section 573.001 and transported by the officer under that section or by emergency medical services personnel of an emergency medical services provider at the

request of the officer made in accordance with a memorandum of understanding executed under Section 573.005.

(f) A peace officer who transports an apprehended person to a facility under Section 573.001(d)(1) or emergency medical services personnel of an emergency medical services provider who transports a person to a facility under Section 573.001(d)(2):

(1) is not required to remain at the facility while the apprehended person is medically screened or treated or while the person's insurance coverage is verified; and

(2) may leave the facility immediately after:

(A) the person is taken into custody by appropriate facility staff; and

(B) the notification of emergency detention required by this section is provided to the facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 318 (H.B. 1738), Sec. 2, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 541 (S.B. 344), Sec. 3, eff. June 9, 2017.

Acts 2025, 89th Leg., R.S., Ch. 800 (S.B. 1164), Sec. 2, eff. September 1, 2025.

Acts 2025, 89th Leg., R.S., Ch. 800 (S.B. 1164), Sec. 3, eff. September 1, 2025.

Sec. 573.0021. DUTY OF PEACE OFFICER TO NOTIFY PROBATE COURTS. As soon as practicable, but not later than the first working day after the date a peace officer takes a person who is a ward into custody, the peace officer shall notify the court having jurisdiction over the ward's guardianship of the ward's detention or transportation to a facility in accordance with Section 573.001.

Added by Acts 2017, 85th Leg., R.S., Ch. 313 (S.B. 1096), Sec. 13, eff. September 1, 2017.

Sec. 573.003. TRANSPORTATION FOR EMERGENCY DETENTION BY GUARDIAN. (a) A guardian of the person of a ward who is 18 years of age or older, without the assistance of a peace officer, may

transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Section 573.021 if the guardian has reason to believe and does believe that:

(1) the ward is a person with mental illness and because of that mental illness:

(A) there is a substantial risk of serious harm to the ward or to others;

(B) the ward evidences severe emotional distress and deterioration in the ward's mental condition; or

(C) the ward evidences an inability to recognize symptoms or appreciate the risks and benefits of treatment; and

(2) the ward is likely without immediate detention to suffer serious risk of harm or to inflict serious harm on another person.

(b) Repealed by Acts 2025, 89th Leg., R.S., Ch. 800 (S.B. 1164), Sec. 12(2), eff. September 1, 2025.

Added by Acts 2003, 78th Leg., ch. 692, Sec. 6, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1367, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 800 (S.B. 1164), Sec. 4, eff. September 1, 2025.

Acts 2025, 89th Leg., R.S., Ch. 800 (S.B. 1164), Sec. 12(2), eff. September 1, 2025.

Sec. 573.004. GUARDIAN'S APPLICATION FOR EMERGENCY DETENTION. (a) After transporting a ward to a facility under Section 573.003, a guardian shall immediately file an application for detention with the facility.

(b) The application for detention must contain:

(1) a statement that the guardian has reason to believe and does believe that the ward evidences mental illness;

(2) a statement that the guardian has reason to believe and does believe that the ward evidences a substantial risk of serious harm to the ward or others;

(3) a specific description of the risk of harm;

(4) a statement that the guardian has reason to believe and does believe that the risk of harm is imminent unless the ward is

immediately restrained;

(5) a statement that the guardian's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by the guardian; and

(6) a detailed description of the specific behavior, acts, attempts, or threats.

(c) The guardian shall immediately provide written notice of the filing of an application under this section to the court that granted the guardianship.

Added by Acts 2003, 78th Leg., ch. 692, Sec. 6, eff. Sept. 1, 2003.

Sec. 573.005. TRANSPORTATION FOR EMERGENCY DETENTION BY EMERGENCY MEDICAL SERVICES PROVIDER; MEMORANDUM OF UNDERSTANDING. (a) A law enforcement agency and an emergency medical services provider may execute a memorandum of understanding under which emergency medical services personnel employed by the provider may transport a person taken into custody under Section 573.001 by a peace officer employed by the law enforcement agency.

(b) A memorandum of understanding must:

(1) address responsibility for the cost of transporting the person taken into custody; and

(2) be approved by the county in which the law enforcement agency is located and the local mental health authority that provides services in that county with respect to provisions of the memorandum that address the responsibility for the cost of transporting the person.

(c) A peace officer may request that emergency medical services personnel transport a person taken into custody by the officer under Section 573.001 only if:

(1) the law enforcement agency that employs the officer and the emergency medical services provider that employs the personnel have executed a memorandum of understanding under this section; and

(2) the officer determines that transferring the person for transport is safe for both the person and the personnel.

(d) Emergency medical services personnel may, at the request of a peace officer, transport a person taken into custody by the officer under Section 573.001 to the appropriate facility, as provided by that section, if the law enforcement agency that employs the officer

and the emergency medical services provider that employs the personnel have executed a memorandum of understanding under this section.

(e) A peace officer who transfers a person to emergency medical services personnel under a memorandum of understanding executed under this section for transport to the appropriate facility must provide:

(1) to the person the notice described by Section 573.001(g); and

(2) to the personnel a completed notification of detention about the person on the form provided by Section 573.002(d).

Added by Acts 2017, 85th Leg., R.S., Ch. 541 (S.B. 344), Sec. 4, eff. June 9, 2017.

SUBCHAPTER B. JUDGE'S OR MAGISTRATE'S ORDER FOR EMERGENCY APPREHENSION AND DETENTION

Sec. 573.011. APPLICATION FOR EMERGENCY DETENTION. (a) An adult may file a written application for the emergency detention of another person.

(b) The application must state:

(1) that the applicant has reason to believe and does believe that the person evidences mental illness;

(2) that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;

(3) a specific description of the risk of harm;

(4) that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) that the applicant's beliefs are derived from specific recent behavior, overt acts, attempts, or threats;

(6) a detailed description of the specific behavior, acts, attempts, or threats; and

(7) a detailed description of the applicant's relationship to the person whose detention is sought.

(c) The application may be accompanied by any relevant information.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 573.012. ISSUANCE OF WARRANT. (a) Except as provided by Subsection (h), an applicant for emergency detention must present the application personally to a judge or magistrate. The judge or magistrate shall examine the application and may interview the applicant. Except as provided by Subsections (g) and (h), the judge of a court with probate jurisdiction by administrative order may provide that the application must be:

(1) presented personally to the court; or

(2) retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge of the court is not available at the time the application is presented.

(b) The magistrate shall deny the application unless the magistrate finds that there is reasonable cause to believe that:

(1) the person evidences mental illness and because of that mental illness the person evidences:

(A) a substantial risk of serious harm to himself or others;

(B) severe emotional distress and deterioration in the person's mental condition; or

(C) an inability to recognize symptoms or appreciate the risks and benefits of treatment;

(2) the person is likely without immediate detention to suffer serious risk of harm or to inflict serious harm on another person;

(3) the risk of harm is imminent unless the person is immediately restrained; and

(4) the necessary restraint cannot be accomplished without emergency detention.

(c) Repealed by Acts 2025, 89th Leg., R.S., Ch. 800 (S.B. 1164), Sec. 12(3), eff. September 1, 2025.

(d) The magistrate shall issue to an on-duty peace officer a warrant for the person's immediate apprehension if the magistrate finds that each criterion under Subsection (b) is satisfied.

(d-1) A peace officer who transports an apprehended person to a facility in accordance with this section:

(1) is not required to remain at the facility while the person is medically screened or treated or while the person's insurance coverage is verified; and

(2) may leave the facility immediately after:

(A) the person is taken into custody by appropriate

facility staff; and

(B) the peace officer provides to the facility the required documentation.

(e) A person apprehended under this section who is not physically located in a mental health facility at the time the warrant is issued under Subsection (h-1) shall be transported for a preliminary examination in accordance with Section 573.021 to:

(1) the nearest appropriate inpatient mental health facility; or

(2) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.

(f) The warrant serves as an application for detention in the facility. The warrant and a copy of the application for the warrant shall be immediately transmitted to the facility.

(g) If there is more than one court with probate jurisdiction in a county, an administrative order regarding presentation of an application must be jointly issued by all of the judges of those courts.

Text of subsection as amended by Acts 2023, 88th Leg., R.S., Ch. 939 (S.B. 1624), Sec. 18

(h) A judge or magistrate shall permit an applicant who is a physician to present an application by:

(1) e-mail with the application attached as a secure document in a portable document format (PDF); or

(2) another secure electronic means, including:

(A) satellite transmission;

(B) closed-circuit television transmission; or

(C) any other method of two-way electronic communication that:

(i) is secure;

(ii) is available to the judge or magistrate; and

(iii) provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between the judge or magistrate and the applicant.

Text of subsection as amended by Acts 2023, 88th Leg., R.S., Ch. 982 (S.B. 2479), Sec. 3

(h) A judge or magistrate may permit an applicant who is a physician or a licensed mental health professional employed by a

local mental health authority to present an application by:

(1) e-mail with the application attached as a secure document in a portable document format (PDF); or

(2) secure electronic means, including:

(A) satellite transmission;

(B) closed-circuit television transmission; or

(C) any other method of two-way electronic communication that:

(i) is secure;

(ii) is available to the judge or magistrate; and

(iii) provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between the judge or magistrate and the applicant.

(h-1) After the presentation of an application under Subsection (h), the judge or magistrate may transmit a warrant to the applicant:

(1) electronically, if a digital signature, as defined by Article 2.26, Code of Criminal Procedure, is transmitted with the document; or

(2) by e-mail with the warrant attached as a secure document in a portable document format (PDF), if the identifiable legal signature of the judge or magistrate is transmitted with the document.

(h-2) A facility may detain a person who is physically located in the facility to perform a preliminary examination in accordance with Section 573.021 if:

(1) a judge or magistrate transmits a warrant to the facility under Subsection (h-1) for the detention of the person; and

(2) the person is not under an order under this chapter or Chapter 574.

(h-3) The Office of Court Administration of the Texas Judicial System shall develop and implement a process for an applicant for emergency detention to electronically present the application under Subsection (h) and for a judge or magistrate to electronically transmit a warrant under Subsection (h-1).

(i) The judge or magistrate shall provide for a recording of the presentation of an application under Subsection (h) to be made and preserved until the patient or proposed patient has been released or discharged. The patient or proposed patient may obtain a copy of the recording on payment of a reasonable amount to cover the costs of reproduction or, if the patient or proposed patient is indigent, the

court shall provide a copy on the request of the patient or proposed patient without charging a cost for the copy.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.19, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 243, Sec. 3, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 367, Sec. 6, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1145 (S.B. 778), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 510 (H.B. 1829), Sec. 1, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 939 (S.B. 1624), Sec. 18, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 982 (S.B. 2479), Sec. 3, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 800 (S.B. 1164), Sec. 5, eff. September 1, 2025.

Acts 2025, 89th Leg., R.S., Ch. 800 (S.B. 1164), Sec. 12(3), eff. September 1, 2025.

SUBCHAPTER C. EMERGENCY DETENTION, RELEASE, AND RIGHTS

Sec. 573.021. PRELIMINARY EXAMINATION. (a) A facility shall temporarily accept a person for whom an application for detention is filed or for whom a peace officer or emergency medical services personnel of an emergency medical services provider transporting the person in accordance with a memorandum of understanding executed under Section 573.005 files a notification of detention completed by the peace officer under Section 573.002(a).

(b) A person accepted for a preliminary examination may be detained in custody for not longer than 48 hours after the time the person is presented to the facility unless a written order for protective custody is obtained. The 48-hour period allowed by this section includes any time the patient spends waiting in the facility for medical care before the person receives the preliminary examination. If the 48-hour period ends on a Saturday, Sunday, legal holiday, or before 4 p.m. on the first succeeding business day, the person may be detained until 4 p.m. on the first succeeding business day. If the 48-hour period ends at a different time, the person may

be detained only until 4 p.m. on the day the 48-hour period ends. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may, by written order made each day, extend by an additional 24 hours the period during which the person may be detained. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(c) A physician shall examine the person as soon as possible within 12 hours after the time the person is apprehended by the peace officer or transported for emergency detention by the person's guardian.

(d) A facility must comply with this section only to the extent that the commissioner determines that a facility has sufficient resources to perform the necessary services under this section.

(e) A person may not be detained in a private mental health facility without the consent of the facility administrator.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 623, Sec. 1, eff. June 11, 2001; Acts 2003, 78th Leg., ch. 692, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 202 (H.B. 518), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 333 (H.B. 888), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 318 (H.B. 1738), Sec. 3, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 541 (S.B. 344), Sec. 5, eff. June 9, 2017.

Sec. 573.022. EMERGENCY ADMISSION AND DETENTION. (a) A person may be admitted to a facility for emergency detention only if the physician who conducted the preliminary examination of the person makes a written statement that:

(1) is acceptable to the facility;

(2) states after a preliminary examination it is the physician's opinion that:

(A) the person is a person with mental illness and because of that mental illness the person evidences:

(i) a substantial risk of serious harm to the person or to others;

(ii) severe emotional distress and deterioration in the person's mental condition; or

(iii) an inability to recognize symptoms or appreciate the risks and benefits of treatment;

(B) the described risk of harm is imminent unless the person is immediately restrained; and

(C) emergency detention is the least restrictive means by which the necessary restraint may be accomplished; and

(3) includes:

(A) a description of the nature of the person's mental illness;

(B) a specific description of the risk of harm the person evidences to the extent that the person cannot remain at liberty; and

(C) the specific detailed information from which the physician formed the opinion in Subdivision (2).

(b) A mental health facility that has admitted a person for emergency detention under this section may transport the person to a mental health facility deemed suitable by the local mental health authority for the area. On the request of the local mental health authority, the judge may order that the proposed patient be detained in a department mental health facility.

(c) A facility that has admitted a person for emergency detention under Subsection (a) or to which a person has been transported under Subsection (b) may transfer the person to an appropriate mental hospital with the written consent of the hospital administrator.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 842, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 367, Sec. 7, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 510 (H.B. 1829), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1368, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 800 (S.B. 1164), Sec. 6, eff. September 1, 2025.

Sec. 573.023. RELEASE FROM EMERGENCY DETENTION. (a) A person apprehended by a peace officer or transported for emergency detention under Subchapter A or detained under Subchapter B shall be released on completion of the preliminary examination unless the person is admitted to a facility under Section 573.022.

(b) A person admitted to a facility under Section 573.022 shall be released if the facility administrator determines at any time during the emergency detention period that one of the criteria prescribed by Section 573.022(a)(2) no longer applies.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2003, 78th Leg., ch. 692, Sec. 8, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1369, eff. April 2, 2015.

Sec. 573.024. TRANSPORTATION AFTER RELEASE. (a) Arrangements shall be made to transport a person who is entitled to release under Section 573.023 to:

(1) the location of the person's apprehension;

(2) the person's residence in this state; or

(3) another suitable location.

(b) Subsection (a) does not apply to a person who is arrested or who objects to the transportation.

(c) If the person was apprehended by a peace officer under Subchapter A, arrangements must be made to immediately transport the person. If the person was transported for emergency detention under Subchapter A or detained under Subchapter B, the person is entitled to reasonably prompt transportation.

(d) The county in which the person was apprehended shall pay the costs of transporting the person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2003, 78th Leg., ch. 692, Sec. 9, eff. Sept. 1, 2003.

Sec. 573.025. RIGHTS OF PERSONS APPREHENDED, DETAINED, OR TRANSPORTED FOR EMERGENCY DETENTION. (a) A person apprehended,

detained, or transported for emergency detention under this chapter has the right:

(1) to be advised of the location of detention, the reasons for the detention, and the fact that the detention could result in a longer period of involuntary commitment;

(2) to a reasonable opportunity to communicate with and retain an attorney;

(3) to be transported to a location as provided by Section 573.024 if the person is not admitted for emergency detention, unless the person is arrested or objects;

(4) to be released from a facility as provided by Section 573.023;

(5) to be advised that communications with a mental health professional may be used in proceedings for further detention;

(6) to be transported in accordance with Sections 573.026 and 574.045, if the person is detained under Section 573.022 or transported under an order of protective custody under Section 574.023; and

(7) to a reasonable opportunity to communicate with a relative or other responsible person who has a proper interest in the person's welfare.

(b) A person apprehended, detained, or transported for emergency detention under this subtitle shall be informed of the rights provided by this section and this subtitle:

(1) orally in simple, nontechnical terms, within 24 hours after the time the person is admitted to a facility, and in writing in the person's primary language if possible; or

(2) through the use of a means reasonably calculated to communicate with a hearing or visually impaired person, if applicable.

(c) The executive commissioner by rule shall prescribe the manner in which the person is informed of the person's rights under this section and this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 1512, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 692, Sec. 10, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 318 (H.B. 1738), Sec. 4, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1370, eff. April 2, 2015.

Sec. 573.026. TRANSPORTATION AFTER DETENTION. A person being transported after detention under Section 573.022 shall be transported in accordance with Section 574.045.

Added by Acts 1999, 76th Leg., ch. 1512, Sec. 3, eff. Sept. 1, 1999.

CHAPTER 574. COURT-ORDERED MENTAL HEALTH SERVICES

SUBCHAPTER A. APPLICATION FOR COMMITMENT AND PREHEARING PROCEDURES

Sec. 574.001. APPLICATION FOR COURT-ORDERED MENTAL HEALTH SERVICES. (a) A county or district attorney or other adult may file a sworn written application for court-ordered mental health services. Only the district or county attorney may file an application that is not accompanied by a certificate of medical examination.

(b) Except as provided by Subsection (f), the application must be filed with the county clerk in the county in which the proposed patient:

(1) resides;

(2) is located at the time the application is filed;

(3) was apprehended under Chapter 573; or

(4) is receiving mental health services by court order or under Subchapter A, Chapter 573.

(c) If the application is not filed in the county in which the proposed patient resides, the court may, on request of the proposed patient or the proposed patient's attorney and if good cause is shown, transfer the application to that county.

(d) An application may be transferred to the county in which the person is being detained under Subchapter B if the county to which the application is to be transferred approves such transfer. A transfer under this subsection does not preclude the proposed patient from filing a motion to transfer under Subsection (c).

(e) An order transferring a criminal defendant against whom all charges have been dismissed to the appropriate court for a hearing on court-ordered mental health services in accordance with Subchapter F, Chapter 46B, Code of Criminal Procedure, serves as an application under this section. The order must state that all charges have been

dismissed.

(f) An application in which the proposed patient is a child in the custody of the Texas Juvenile Justice Department may be filed in the county in which the child's commitment to the Texas Juvenile Justice Department was ordered.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 770, Sec. 4, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1086, Sec. 38, eff. June 19, 1997; Acts 2003, 78th Leg., ch. 35, Sec. 10, eff. Jan. 1, 2004.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1371, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 800 (S.B. 1164), Sec. 7, eff. September 1, 2025.

Sec. 574.002. FORM OF APPLICATION. (a) An application for court-ordered mental health services must be styled using the proposed patient's initials and not the proposed patient's full name.

(b) The application must state whether the application is for temporary or extended mental health services. An application for extended inpatient mental health services must state that the person has received court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months. An application for extended outpatient mental health services must state that the person has received:

(1) court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for a total of at least 60 days during the preceding 12 months; or

(2) court-ordered outpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, during the preceding 60 days.

(c) Any application must contain the following information according to the applicant's information and belief:

(1) the proposed patient's name and address;

(2) the proposed patient's county of residence in this state;

(3) a statement that the proposed patient is a person with mental illness and meets the criteria in Section 574.034, 574.0345, 574.035, or 574.0355 for court-ordered mental health services; and

(4) whether the proposed patient is charged with a criminal offense.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2003, 78th Leg., ch. 35, Sec. 11, eff. Jan. 1, 2004. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 166 (S.B. 118), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1372, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 8, eff. September 1, 2019.

Sec. 574.003. APPOINTMENT OF ATTORNEY. (a) The judge shall appoint an attorney to represent a proposed patient within 24 hours after the time an application for court-ordered mental health services is filed if the proposed patient does not have an attorney. At that time, the judge shall also appoint a language or sign interpreter if necessary to ensure effective communication with the attorney in the proposed patient's primary language.

(b) The court shall inform the attorney in writing of the attorney's duties under Section 574.004.

(c) The proposed patient's attorney shall be furnished with all records and papers in the case and is entitled to have access to all hospital and physicians' records.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.004. DUTIES OF ATTORNEY. (a) An attorney representing a proposed patient shall interview the proposed patient within a reasonable time before the date of the hearing on the application.

(b) The attorney shall thoroughly discuss with the proposed patient the law and facts of the case, the proposed patient's options, and the grounds on which the court-ordered mental health services are being sought. A court-appointed attorney shall also

inform the proposed patient that the proposed patient may obtain personal legal counsel at the proposed patient's expense instead of accepting the court-appointed counsel.

(c) The attorney may advise the proposed patient of the wisdom of agreeing to or resisting efforts to provide mental health services, but the proposed patient shall make the decision to agree to or resist the efforts. Regardless of an attorney's personal opinion, the attorney shall use all reasonable efforts within the bounds of law to advocate the proposed patient's right to avoid court-ordered mental health services if the proposed patient expresses a desire to avoid the services. If the proposed patient desires, the attorney shall advocate for the least restrictive treatment alternatives to court-ordered inpatient mental health services.

(d) Before a hearing, the attorney shall:

(1) review the application, the certificates of medical examination for mental illness, and the proposed patient's relevant medical records;

(2) interview supporting witnesses and other witnesses who will testify at the hearing; and

(3) explore the least restrictive treatment alternatives to court-ordered inpatient mental health services.

(e) The attorney shall advise the proposed patient of the proposed patient's right to attend a hearing or to waive the right to attend a hearing and shall inform the court why a proposed patient is absent from a hearing.

(f) The attorney shall discuss with the proposed patient:

(1) the procedures for appeal, release, and discharge if the court orders participation in mental health services; and

(2) other rights the proposed patient may have during the period of the court's order.

(g) To withdraw from a case after interviewing a proposed patient, an attorney must file a motion to withdraw with the court. The court shall act on the motion as soon as possible. An attorney may not withdraw from a case unless the withdrawal is authorized by court order.

(h) The attorney is responsible for a person's legal representation until:

(1) the application is dismissed;

(2) an appeal from an order directing treatment is taken;

(3) the time for giving notice of appeal expires by operation of law; or

(4) another attorney assumes responsibility for the case.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.005. SETTING ON APPLICATION. (a) The judge or a magistrate designated under Section 574.021(e) shall set a date for a hearing to be held within 14 days after the date on which the application is filed.

(b) The hearing may not be held during the first three days after the application is filed if the proposed patient or the proposed patient's attorney objects.

(c) The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is filed. If extremely hazardous weather conditions exist or a disaster occurs that threatens the safety of the proposed patient or other essential parties to the hearing, the judge or magistrate may, by written order made each day, postpone the hearing for 24 hours. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.006. NOTICE. (a) The proposed patient and his attorney are entitled to receive a copy of the application and written notice of the time and place of the hearing immediately after the date for the hearing is set.

(b) A copy of the application and the written notice shall be delivered in person or sent by certified mail to the proposed patient's:

(1) parent, if the proposed patient is a minor;

(2) appointed guardian, if the proposed patient is the subject of a guardianship; or

(3) each managing and possessory conservator that has been appointed for the proposed patient.

(c) Notice may be given to the proposed patient's next of kin

if the relative is the applicant and the parent cannot be located and a guardian or conservator has not been appointed.

(d) Notice of the time and place of any hearing and of the name, telephone number, and address of any attorneys known or believed to represent the state or the proposed patient shall be furnished to any person stating that that person has evidence to present upon any material issue, without regard to whether such evidence is on behalf of the state or of the proposed patient. The notice shall not include the application, medical records, names or addresses of other potential witnesses, or any other information whatsoever. Any clerk, judge, magistrate, court coordinator, or other officer of the court shall provide such information and shall be entitled to judicial immunity in any civil suit seeking damages as a result of providing such notice. Should such evidence be offered at trial and the adverse party claim surprise, the hearing may be continued under the provisions of Section 574.005, and the person producing such evidence shall be entitled to timely notice of the date and time of such continuance.

Any officer, employee, or agent of the department shall refer any inquiring person to the court authorized to provide the notice if such information is in the possession of the department. The notice shall be provided in the form that is most understandable to the person making such inquiry.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 623, Sec. 1, eff. Aug. 28, 1995.

Sec. 574.007. DISCLOSURE OF INFORMATION. (a) The proposed patient's attorney may request information from the county or district attorney in accordance with this section if the attorney cannot otherwise obtain the information.

(b) If the proposed patient's attorney requests the information at least 48 hours before the time set for the hearing, the county or district attorney shall, within a reasonable time before the hearing, provide the attorney with a statement that includes:

(1) the provisions of this subtitle that will be relied on at the hearing to establish that the proposed patient requires court-ordered temporary or extended inpatient mental health services;

(2) the reasons voluntary outpatient services are not

considered appropriate for the proposed patient;

(3) the name, address, and telephone number of each witness who may testify at the hearing;

(4) a brief description of the reasons court-ordered temporary or extended inpatient or outpatient, as appropriate, mental health services are required; and

(5) a list of any acts committed by the proposed patient that the applicant will attempt to prove at the hearing.

(c) At the hearing, the judge may admit evidence or testimony that relates to matters not disclosed under Subsection (b) if the admission would not deprive the proposed patient of a fair opportunity to contest the evidence or testimony.

(d) Except as provided by this subsection, not later than 48 hours before the time set for the hearing on the petition for commitment, the county or district attorney shall inform the proposed patient through the proposed patient's attorney whether the county or district attorney will request that the proposed patient be committed to inpatient services or outpatient services. The proposed patient, the proposed patient's attorney, and the county or district attorney may agree to waive the requirement of this subsection. The waiver must be made by the proposed patient:

(1) orally and in the presence of the court; or

(2) in writing and signed and sworn to under oath by the proposed patient and the proposed patient's attorney.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 744, Sec. 1, eff. Sept. 1, 1997.

Sec. 574.008. COURT JURISDICTION AND TRANSFER. (a) A proceeding under Subchapter C or E must be held in the statutory or constitutional county court that has the jurisdiction of a probate court in mental illness matters.

(b) If the hearing is to be held in a county court in which the judge is not a licensed attorney, the proposed patient or the proposed patient's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county judge shall transfer the case after receiving the request and the receiving court shall hear the case as if it had been originally filed in that court.

(c) If a patient is receiving temporary inpatient mental health services in a county other than the county that initiated the court-ordered inpatient mental health services and the patient requires extended inpatient mental health services, the county in which the proceedings originated shall pay the expenses of transporting the patient back to the county for the hearing unless the court that entered the temporary order arranges with the appropriate court in the county in which the patient is receiving services to hold the hearing on court-ordered extended inpatient mental health services before the original order expires.

(d) If an order for outpatient services designates that such services be provided in a county other than the county in which the order was initiated, the court shall transfer the case to the appropriate court in the county in which the services are being provided. That court shall thereafter have exclusive, continuing jurisdiction of the case, including the receipt of the general treatment program required by Section 574.037(b).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 770, Sec. 5, eff. June 16, 1995.

Sec. 574.0085. ASSOCIATE JUDGES. (a) The county judge may appoint a full-time or a part-time associate judge to preside over the proceedings for court-ordered mental health services if the commissioners court of a county in which the court has jurisdiction authorizes the employment of an associate judge.

(b) To be eligible for appointment as an associate judge, a person must be a resident of this state and have been licensed to practice law in this state for at least four years or be a retired county judge, statutory or constitutional, with at least 10 years of service.

(c) An associate judge shall be paid as determined by the commissioners court of the county in which the associate judge serves. If an associate judge serves in more than one county, the associate judge shall be paid as determined by agreement of the commissioners courts of the counties in which the associate judge serves. The associate judge may be paid from county funds available for payment of officers' salaries.

(d) An associate judge who serves a single court serves at the

will of the judge of that court. The services of an associate judge who serves more than two courts may be terminated by a majority vote of all the judges of the courts the associate judge serves. The services of an associate judge who serves two courts may be terminated by either of the judges of the courts the associate judge serves.

(e) To refer cases to an associate judge, the referring court must issue an order of referral. The order of referral may limit the power or duties of an associate judge.

(f) Except as limited by an order of referral, an associate judge appointed under this section has all the powers and duties set forth in Section 201.007, Family Code.

(g) A bailiff may attend a hearing held by an associate judge if directed by the referring court.

(h) A witness appearing before an associate judge is subject to the penalties for perjury provided by law. A referring court may issue attachment against and may fine or imprison a witness whose failure to appear before an associate judge after being summoned or whose refusal to answer questions has been certified to the court.

(i) At the conclusion of any hearing conducted by an associate judge and on the preparation of an associate judge's report, the associate judge shall transmit to the referring court all papers relating to the case, with the associate judge's signed and dated report. After the associate judge's report has been signed, the associate judge shall give to the parties participating in the hearing notice of the substance of the report. The associate judge's report may contain the associate judge's findings, conclusions, or recommendations. The associate judge's report must be in writing in a form as the referring court may direct. The form may be a notation on the referring court's docket sheet. After the associate judge's report is filed, the referring court may adopt, approve, or reject the associate judge's report, hear further evidence, or recommit the matter for further proceedings as the referring court considers proper and necessary in the particular circumstances of the case.

(j) If a jury trial is demanded or required, the associate judge shall refer the entire matter back to the referring court for trial.

(k) An associate judge appointed under this section has the judicial immunity of a county judge.

(l) An associate judge appointed in accordance with this

section shall comply with the Code of Judicial Conduct in the same manner as the county judge.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.47, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 770, Sec. 6, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 7.45, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 3, eff. September 1, 2009.

Sec. 574.009. REQUIREMENT OF MEDICAL EXAMINATION. (a) A hearing on an application for court-ordered mental health services may not be held unless there are on file with the court at least two certificates of medical examination for mental illness completed by different physicians each of whom has examined the proposed patient during the preceding 30 days. At least one of the physicians must be a psychiatrist if a psychiatrist is available in the county.

(b) If the certificates are not filed with the application, the judge or magistrate designated under Section 574.021(e) may appoint the necessary physicians to examine the proposed patient and file the certificates.

(c) The judge or designated magistrate may order the proposed patient to submit to the examination and may issue a warrant authorizing a peace officer to take the proposed patient into custody for the examination.

(d) If the certificates required under this section are not on file at the time set for the hearing on the application, the judge shall dismiss the application and order the immediate release of the proposed patient if that person is not at liberty. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the period during which the two certificates of medical examination for mental illness may be filed, and the person may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.48, eff. Aug. 30,

1993.

Sec. 574.010. INDEPENDENT PSYCHIATRIC EVALUATION AND EXPERT TESTIMONY. (a) The court may order an independent evaluation of the proposed patient by a psychiatrist chosen by the proposed patient if the court determines that the evaluation will assist the finder of fact. The psychiatrist may testify on behalf of the proposed patient.

(b) If the court determines that the proposed patient is indigent, the court may authorize reimbursement to the attorney ad litem for court-approved expenses incurred in obtaining expert testimony and may order the proposed patient's county of residence to pay the expenses.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.011. CERTIFICATE OF MEDICAL EXAMINATION FOR MENTAL ILLNESS. (a) A certificate of medical examination for mental illness must be sworn to, dated, and signed by the examining physician. The certificate must include:

(1) the name and address of the examining physician;

(2) the name and address of the person examined;

(3) the date and place of the examination;

(4) a brief diagnosis of the examined person's physical and mental condition;

(5) the period, if any, during which the examined person has been under the care of the examining physician;

(6) an accurate description of the mental health treatment, if any, given by or administered under the direction of the examining physician; and

(7) the examining physician's opinion that:

(A) the examined person is a person with mental illness; and

(B) as a result of that illness the examined person is likely to cause serious harm to the person or to others or is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical

deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii) not able to make a rational and informed decision as to whether to submit to treatment.

(b) The examining physician must specify in the certificate which criterion listed in Subsection (a)(7)(B) forms the basis for the physician's opinion.

(c) If the certificate is offered in support of an application for extended mental health services, the certificate must also include the examining physician's opinion that the examined person's condition is expected to continue for more than 90 days.

(d) If the certificate is offered in support of a motion for a protective custody order, the certificate must also include the examining physician's opinion that the examined person presents a substantial risk of serious harm to himself or others if not immediately restrained. The harm may be demonstrated by the examined person's behavior or by evidence of severe emotional distress and deterioration in the examined person's mental condition to the extent that the examined person cannot remain at liberty.

(e) The certificate must include the detailed reason for each of the examining physician's opinions under this section.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 744, Sec. 2, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1373, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 800 (S.B. 1164), Sec. 8, eff. September 1, 2025.

Acts 2025, 89th Leg., 2nd C.S., Ch. 7 (H.B. 16), Sec. 11B.01, eff. September 17, 2025.

Sec. 574.012. RECOMMENDATION FOR TREATMENT. (a) The local mental health authority in the county in which an application is filed shall file with the court a recommendation for the most appropriate treatment alternative for the proposed patient.

(b) The court shall direct the local mental health authority to file, before the date set for the hearing, its recommendation for the proposed patient's treatment.

(c) If outpatient treatment is recommended, the local mental health authority will also file a statement as to whether the proposed mental health services are available.

(d) The hearing on an application may not be held before the recommendation for treatment is filed unless the court determines that an emergency exists.

(e) This section does not relieve a county of its responsibility under other provisions of this subtitle to diagnose, care for, or treat persons with mental illness.

(f) This section does not apply to a person for whom treatment in a private mental health facility is proposed.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 744, Sec. 3, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 367, Sec. 8, eff. Sept. 1, 2001.

Sec. 574.0125. IDENTIFICATION OF PERSON RESPONSIBLE FOR COURT-ORDERED OUTPATIENT MENTAL HEALTH SERVICES. Not later than the third day before the date of a hearing that may result in the judge ordering the patient to receive court-ordered outpatient mental health services, the judge shall identify the person the judge intends to designate to be responsible for those services under Section 574.037.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 1, eff. September 1, 2013.

Sec. 574.013. LIBERTY PENDING HEARING. The proposed patient is entitled to remain at liberty pending the hearing on the application unless the person is detained under an appropriate provision of this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.014. COMPILATION OF MENTAL HEALTH COMMITMENT RECORDS.

(a) The clerk of each court with jurisdiction to order commitment under this chapter shall provide the Office of Court Administration each month with a report of the number of applications for commitment orders for involuntary mental health services filed with the court and the disposition of those cases, including the number of commitment orders for inpatient and outpatient mental health services. The Office of Court Administration shall make the reported information available to the Health and Human Services Commission annually.

(b) Subsection (a) does not require the production of confidential information or information protected under Section 571.015.

Added by Acts 1997, 75th Leg., ch. 744, Sec. 4, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.35, eff. September 1, 2019.

SUBCHAPTER B. PROTECTIVE CUSTODY

Sec. 574.021. MOTION FOR ORDER OF PROTECTIVE CUSTODY. (a) A motion for an order of protective custody may be filed only in the court in which an application for court-ordered mental health services is pending.

(b) The motion may be filed by the county or district attorney or on the court's own motion.

(c) The motion must state that:

(1) the judge or county or district attorney has reason to believe and does believe that the proposed patient meets the criteria authorizing the court to order protective custody; and

(2) the belief is derived from:

(A) the representations of a credible person;

(B) the proposed patient's conduct; or

(C) the circumstances under which the proposed patient is found.

(d) The motion must be accompanied by a certificate of medical examination for mental illness prepared by a physician who has examined the proposed patient not earlier than the third day before the day the motion is filed.

(e) The judge of the court in which the application is pending

may designate a magistrate to issue protective custody orders, including a magistrate appointed by the judge of another court if the magistrate has at least the qualifications required for a magistrate of the court in which the application is pending. A magistrate's duty under this section is in addition to the magistrate's duties prescribed by other law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1278, Sec. 1, eff. June 15, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 202 (H.B. 518), Sec. 2, eff. September 1, 2007.

Sec. 574.022. ISSUANCE OF ORDER. (a) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:

(1) that a physician has stated the physician's opinion and the detailed reasons for the physician's opinion that the proposed patient is a person with mental illness; and

(2) the proposed patient presents a substantial risk of serious harm to the proposed patient or others if not immediately restrained pending the hearing.

(b) The determination that the proposed patient presents a substantial risk of serious harm may be demonstrated by the proposed patient's behavior or by evidence of severe emotional distress and deterioration in the proposed patient's mental condition to the extent that the proposed patient cannot remain at liberty.

(c) The judge or magistrate may make a determination that the proposed patient meets the criteria prescribed by Subsection (a) from the application and certificate alone if the judge or magistrate determines that the conclusions of the applicant and certifying physician are adequately supported by the information provided.

(d) The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and certificate only.

(e) The judge or magistrate may issue a protective custody order for a proposed patient who is charged with a criminal offense if the proposed patient meets the requirements of this section and

the facility administrator designated to detain the proposed patient agrees to the detention.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1374, eff. April 2, 2015.

Sec. 574.023. APPREHENSION UNDER ORDER. (a) A protective custody order shall direct a person authorized to transport patients under Section 574.045 to take the proposed patient into protective custody and transport the person immediately to a mental health facility deemed suitable by the local mental health authority for the area. On request of the local mental health authority, the judge may order that the proposed patient be detained in an inpatient mental health facility operated by the department.

(b) The proposed patient shall be detained in the facility until a hearing is held under Section 574.025.

(c) A facility must comply with this section only to the extent that the commissioner determines that the facility has sufficient resources to perform the necessary services.

(d) A person may not be detained in a private mental health facility without the consent of the facility administrator.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 1512, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 367, Sec. 9, eff. Sept. 1, 2001.

Sec. 574.024. APPOINTMENT OF ATTORNEY. (a) When a protective custody order is signed, the judge or designated magistrate shall appoint an attorney to represent a proposed patient who does not have an attorney.

(b) Within a reasonable time before a hearing is held under Section 574.025, the court that ordered the protective custody shall provide to the proposed patient and the proposed patient's attorney a written notice that states:

(1) that the proposed patient has been placed under a protective custody order;

(2) the grounds for the order; and

(3) the time and place of the hearing to determine probable cause.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.025. PROBABLE CAUSE HEARING. (a) A hearing must be held to determine if:

(1) there is probable cause to believe that a proposed patient under a protective custody order presents a substantial risk of serious harm to the proposed patient or others to the extent that the proposed patient cannot be at liberty pending the hearing on court-ordered mental health services; and

(2) a physician has stated the physician's opinion and the detailed reasons for the physician's opinion that the proposed patient is a person with mental illness.

(b) The hearing must be held not later than 72 hours after the time that the proposed patient was detained under a protective custody order. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the hearing each day for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions or the occurrence of a disaster that threatens the safety of the proposed patient or another essential party to the hearing.

(c) The hearing shall be held before a magistrate or, at the discretion of the presiding judge, before an associate judge appointed by the presiding judge. Notwithstanding any other law or requirement, an associate judge appointed to conduct a hearing under this section may practice law in the court the associate judge serves. The associate judge is entitled to reasonable compensation.

(d) The proposed patient and the proposed patient's attorney shall have an opportunity at the hearing to appear and present evidence to challenge the allegation that the proposed patient presents a substantial risk of serious harm to himself or others.

(e) The magistrate or associate judge may consider evidence, including letters, affidavits, and other material, that may not be admissible or sufficient in a subsequent commitment hearing.

(f) The state may prove its case on the physician's certificate

of medical examination filed in support of the initial motion.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 101, Sec. 1, eff. May 16, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 4, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1375, eff. April 2, 2015.

Sec. 574.026. ORDER FOR CONTINUED DETENTION. (a) The magistrate or associate judge shall order that a proposed patient remain in protective custody if the magistrate or associate judge determines after the hearing that an adequate factual basis exists for probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself or others to the extent that he cannot remain at liberty pending the hearing on court-ordered mental health services.

(b) The magistrate or associate judge shall arrange for the proposed patient to be returned to the mental health facility or other suitable place, along with copies of the certificate of medical examination, any affidavits or other material submitted as evidence in the hearing, and the notification prepared as prescribed by Subsection (d).

(c) A copy of the notification of probable cause hearing and the supporting evidence shall be filed with the court that entered the original order of protective custody.

(d) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the _____ day of _____, 20__, the undersigned hearing officer heard evidence concerning the need for protective custody of _____ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that the proposed patient presents a substantial risk of serious harm to self or others.

The proposed patient and the proposed patient's attorney _____ have been given written notice that the

(attorney)

proposed patient was placed under an order of protective custody and the reasons for such order on _____.
(date of notice)

I have examined the certificate of medical examination for mental illness and _____. Based on
(other evidence considered)

this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to the proposed patient (yes ___ or no ___) or others (yes ___ or no ___) such that the proposed patient cannot be at liberty pending final hearing because

_____

_____.

(reasons for finding; type of risk found)

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 5, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1376, eff. April 2, 2015.

Sec. 574.027. DETENTION IN PROTECTIVE CUSTODY. (a) A person under a protective custody order shall be detained in a mental health facility deemed suitable by the local mental health authority for the area. On request of the local mental health authority, the judge may order that the proposed patient be detained in an inpatient mental health facility operated by the department.

(b) The facility administrator or the administrator's designee shall detain a person under a protective custody order in the facility until a final order for court-ordered mental health services is entered or the person is released or discharged under Section 574.028.

(c) A person under a protective custody order may not be detained in a nonmedical facility used to detain persons who are charged with or convicted of a crime except because of and during an extreme emergency and in no case for longer than 72 hours, excluding

Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for an extreme emergency. The person must be isolated from any person who is charged with or convicted of a crime.

(d) The county health authority shall ensure that proper care and medical attention are made available to a person who is detained in a nonmedical facility under Subsection (c).

(e) Repealed by Acts 2001, 77th Leg., ch. 367, Sec. 19, eff. Sept. 1, 2001.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 367, Sec. 10, 19, eff. Sept. 1, 2001.

Sec. 574.028. RELEASE FROM DETENTION. (a) The magistrate or associate judge shall order the release of a person under a protective custody order if the magistrate or associate judge determines after the hearing under Section 574.025 that no probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to himself or others.

(b) Arrangements shall be made to return a person released under Subsection (a) to:

(1) the location of the person's apprehension;

(2) the person's residence in this state; or

(3) another suitable location.

(c) A facility administrator shall discharge a person held under a protective custody order if:

(1) the facility administrator does not receive notice that the person's continued detention is authorized after a probable cause hearing held within 72 hours after the detention began, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for extreme emergencies;

(2) a final order for court-ordered mental health services has not been entered within the time prescribed by Section 574.005; or

(3) the facility administrator or the administrator's designee determines that the person no longer meets the criteria for protective custody prescribed by Section 574.022.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 6, eff. September 1, 2009.

SUBCHAPTER C. PROCEEDINGS FOR COURT-ORDERED MENTAL HEALTH SERVICES

Sec. 574.031. GENERAL PROVISIONS RELATING TO HEARING. (a) Except as provided by Subsection (b), the judge may hold a hearing on an application for court-ordered mental health services at any suitable location in the county. The hearing should be held in a physical setting that is not likely to have a harmful effect on the proposed patient.

(b) On the request of the proposed patient or the proposed patient's attorney the hearing on the application shall be held in the county courthouse.

(c) The proposed patient is entitled to be present at the hearing. The proposed patient or the proposed patient's attorney may waive this right.

(d) The hearing must be open to the public unless the proposed patient or the proposed patient's attorney requests that the hearing be closed and the judge determines that there is good cause to close the hearing.

(d-1) In a hearing for temporary inpatient or outpatient mental health services under Section 574.034 or 574.0345, the proposed patient or the proposed patient's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and, if that right is waived, the court may admit, as evidence, the certificates of medical examination for mental illness. The certificates admitted under this subsection constitute competent medical or psychiatric testimony, and the court may make its findings solely from the certificates. If the proposed patient or the proposed patient's attorney does not waive in writing the right to cross-examine witnesses, the court shall proceed to hear testimony. The testimony must include competent medical or psychiatric testimony.

(d-2) In a hearing for extended inpatient or outpatient mental health services under Section 574.035 or 574.0355, the court may not make its findings solely from the certificates of medical examination for mental illness but shall hear testimony. The court may not enter an order for extended mental health services unless appropriate findings are made and are supported by testimony taken at the

hearing. The testimony must include competent medical or psychiatric testimony.

(e) The Texas Rules of Evidence apply to the hearing unless the rules are inconsistent with this subtitle.

(f) The court may consider the testimony of a nonphysician mental health professional in addition to medical or psychiatric testimony.

(g) The hearing is on the record, and the state must prove each element of the applicable criteria by clear and convincing evidence.

(h) A judge who holds a hearing under this section in hospitals or locations other than the county courthouse is entitled to be reimbursed for the judge's reasonable and necessary expenses related to holding a hearing at that location. The judge shall furnish the presiding judge of the statutory probate courts or the presiding judge of the administrative region, as appropriate, an accounting of the expenses for certification. The presiding judge shall provide a certification of expenses approved to the county judge responsible for payment of costs under Section 571.018.

(i) A judge who holds hearings at locations other than the county courthouse also may receive a reasonable salary supplement in an amount set by the commissioners court.

(j) Notwithstanding other law, a judge who holds a hearing under this section may assess for the judge's services a fee in an amount not to exceed $50 as a court cost against the county responsible for the payment of the costs of the hearing under Section 571.018.

(k) Notwithstanding other law, a judge who holds a hearing under this section may assess for the services of a prosecuting attorney a fee in an amount not to exceed $50 as a court cost against the county responsible for the payment of the costs of the hearing under Section 571.018. For a mental health proceeding, the fee assessed under this subsection includes costs incurred for the preparation of documents related to the proceeding. The court may award as court costs fees for other costs of a mental health proceeding against the county responsible for the payment of the costs of the hearing under Section 571.018.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 1354, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1252, Sec. 1, eff. Sept. 1, 2001;

Acts 2001, 77th Leg., ch. 1420, Sec. 10.006, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 9, eff. September 1, 2019.

Sec. 574.032. RIGHT TO JURY. (a) A hearing for temporary mental health services must be before the court unless the proposed patient or the proposed patient's attorney requests a jury.

(b) A hearing for extended mental health services must be before a jury unless the proposed patient or the proposed patient's attorney waives the right to a jury.

(c) A waiver of the right to a jury must be in writing, under oath, and signed and sworn to by the proposed patient and the proposed patient's attorney unless the proposed patient or the attorney orally waives the right to a jury in the court's presence.

(d) The court may permit an oral or written waiver of the right to a jury to be withdrawn for good cause shown. The withdrawal must be made not later than the eighth day before the date on which the hearing is scheduled.

(e) A court may not require a jury fee.

(f) In a hearing before a jury, the jury shall determine if the proposed patient is a person with mental illness and meets the criteria for court-ordered mental health services. The jury may not make a finding about the type of services to be provided to the proposed patient.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1377, eff. April 2, 2015.

Sec. 574.033. RELEASE AFTER HEARING. (a) The court shall enter an order denying an application for court-ordered temporary or extended mental health services if after a hearing the court or jury fails to find, from clear and convincing evidence, that the proposed patient is a person with mental illness and meets the applicable criteria for court-ordered mental health services.

(b) If the court denies the application, the court shall order

the immediate release of a proposed patient who is not at liberty.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1378, eff. April 2, 2015.

Sec. 574.034. ORDER FOR TEMPORARY INPATIENT MENTAL HEALTH SERVICES. (a) The judge may order a proposed patient to receive court-ordered temporary inpatient mental health services only if the judge or jury finds, from clear and convincing evidence, that:

(1) the proposed patient is a person with mental illness; and

(2) as a result of that mental illness the proposed patient:

(A) is likely to cause serious harm to the proposed patient;

(B) is likely to cause serious harm to others; or

(C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii) unable to make a rational and informed decision as to whether or not to submit to treatment.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 27(1), eff. September 1, 2019.

(c) If the judge or jury finds that the proposed patient meets the commitment criteria prescribed by Subsection (a), the judge or jury must specify which criterion listed in Subsection (a)(2) forms the basis for the decision.

(d) To be clear and convincing under Subsection (a), the evidence must include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the likelihood of serious harm to the proposed patient or others; or

(2) the proposed patient's distress and the deterioration of the proposed patient's ability to function.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 27(1), eff. September 1, 2019.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 27(1), eff. September 1, 2019.

(g) An order for temporary inpatient mental health services shall provide for a period of treatment not to exceed 45 days, except that the order may specify a period not to exceed 90 days if the judge finds that the longer period is necessary.

(h) A judge may not issue an order for temporary inpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(i) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1170, Sec. 11, eff. September 1, 2013.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.49, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 770, Sec. 7, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 744, Sec. 5, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 11, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1379, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 10, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 11, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 27(1), eff. September 1, 2019.

Acts 2025, 89th Leg., R.S., Ch. 800 (S.B. 1164), Sec. 9, eff. September 1, 2025.

Acts 2025, 89th Leg., 2nd C.S., Ch. 7 (H.B. 16), Sec. 11B.02, eff. September 17, 2025.

Sec. 574.0345. ORDER FOR TEMPORARY OUTPATIENT MENTAL HEALTH SERVICES. (a) The judge may order a proposed patient to receive court-ordered temporary outpatient mental health services only if:

(1) the judge finds that appropriate mental health services are available to the proposed patient; and

(2) the judge or jury finds, from clear and convincing evidence, that:

(A) the proposed patient is a person with severe and persistent mental illness;

(B) as a result of the mental illness, the proposed patient will, if not treated, experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient mental health services;

(C) outpatient mental health services are needed to prevent a relapse that would likely result in serious harm to the proposed patient or others; and

(D) the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i) any of the proposed patient's actions occurring within the two-year period that immediately precedes the hearing; or

(ii) specific characteristics of the proposed patient's clinical condition that significantly impair the proposed patient's ability to make a rational and informed decision whether to submit to voluntary outpatient treatment.

(b) To be clear and convincing under Subsection (a)(2), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the deterioration of ability to function independently to the extent that the proposed patient will be unable to live safely in the community;

(2) the need for outpatient mental health services to prevent a relapse that would likely result in serious harm to the proposed patient or others; and

(3) the proposed patient's inability to participate in outpatient treatment services effectively and voluntarily.

(c) An order for temporary outpatient mental health services shall state that treatment is authorized for not longer than 45 days, except that the order may specify a period not to exceed 90 days if

the judge finds that the longer period is necessary.

(d) A judge may not issue an order for temporary outpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

Added by Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 12, eff. September 1, 2019.

Sec. 574.035. ORDER FOR EXTENDED INPATIENT MENTAL HEALTH SERVICES. (a) The judge may order a proposed patient to receive court-ordered extended inpatient mental health services only if the jury, or the judge if the right to a jury is waived, finds, from clear and convincing evidence, that:

(1) the proposed patient is a person with mental illness;

(2) as a result of that mental illness the proposed patient:

(A) is likely to cause serious harm to the proposed patient;

(B) is likely to cause serious harm to others; or

(C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii) unable to make a rational and informed decision as to whether or not to submit to treatment;

(3) the proposed patient's condition is expected to continue for more than 90 days; and

(4) the proposed patient has received court-ordered inpatient mental health services under this subtitle or under Chapter 46B, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 27(2), eff. September 1, 2019.

(c) If the jury or judge finds that the proposed patient meets the commitment criteria prescribed by Subsection (a), the jury or judge must specify which criterion listed in Subsection (a)(2) forms the basis for the decision.

(d) The jury or judge is not required to make the finding under Subsection (a)(4) if the proposed patient has already been subject to an order for extended mental health services.

(e) To be clear and convincing under Subsection (a), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the likelihood of serious harm to the proposed patient or others; or

(2) the proposed patient's distress and the deterioration of the proposed patient's ability to function.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 27(2), eff. September 1, 2019.

(g) Repealed by Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 27(2), eff. September 1, 2019.

(h) An order for extended inpatient mental health services must provide for a period of treatment not to exceed 12 months.

(i) A judge may not issue an order for extended inpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(j) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1170, Sec. 11, eff. September 1, 2013.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 770, Sec. 8, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 312, Sec. 5, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 744, Sec. 6, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 238, Sec. 1, eff. May 28, 1999; Acts 2003, 78th Leg., ch. 35, Sec. 12, eff. Jan. 1, 2004.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 11, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1380, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 13, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 14, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 27(2), eff. September 1, 2019.

Acts 2025, 89th Leg., R.S., Ch. 800 (S.B. 1164), Sec. 10, eff. September 1, 2025.

Acts 2025, 89th Leg., 2nd C.S., Ch. 7 (H.B. 16), Sec. 11B.03, eff. September 17, 2025.

Sec. 574.0355. ORDER FOR EXTENDED OUTPATIENT MENTAL HEALTH SERVICES. (a) The judge may order a proposed patient to receive court-ordered extended outpatient mental health services only if:

(1) the judge finds that appropriate mental health services are available to the proposed patient; and

(2) the judge or jury finds, from clear and convincing evidence, that:

(A) the proposed patient is a person with severe and persistent mental illness;

(B) as a result of the mental illness, the proposed patient will, if not treated, experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient mental health services;

(C) outpatient mental health services are needed to prevent a relapse that would likely result in serious harm to the proposed patient or others;

(D) the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i) any of the proposed patient's actions occurring within the two-year period that immediately precedes the hearing; or

(ii) specific characteristics of the proposed patient's clinical condition that significantly impair the proposed patient's ability to make a rational and informed decision whether to submit to voluntary outpatient treatment;

(E) the proposed patient's condition is expected to continue for more than 90 days; and

(F) the proposed patient has received:

(i) court-ordered inpatient mental health services

under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for a total of at least 60 days during the preceding 12 months; or

(ii) court-ordered outpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, during the preceding 60 days.

(b) The jury or judge is not required to make the finding under Subsection (a)(2)(F) if the proposed patient has already been subject to an order for extended mental health services.

(c) To be clear and convincing under Subsection (a)(2), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community;

(2) the need for outpatient mental health services to prevent a relapse that would likely result in serious harm to the proposed patient or others; and

(3) the proposed patient's inability to participate in outpatient treatment services effectively and voluntarily.

(d) An order for extended outpatient mental health services must provide for a period of treatment not to exceed 12 months.

(e) A judge may not issue an order for extended outpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

Added by Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 15, eff. September 1, 2019.

Sec. 574.036. ORDER OF CARE OR COMMITMENT. (a) The judge shall dismiss the jury, if any, after a hearing in which a person is found to be a person with mental illness and to meet the criteria for court-ordered temporary or extended mental health services.

(b) The judge may hear additional evidence relating to alternative settings for care before entering an order relating to the setting for the care the person will receive.

(c) The judge shall consider in determining the setting for care the recommendation for the most appropriate treatment

alternative filed under Section 574.012.

(d) The judge shall order the mental health services provided in the least restrictive appropriate setting available.

(e) The judge may enter an order:

(1) committing the person to a mental health facility for inpatient care if the trier of fact finds that the person meets the commitment criteria prescribed by Section 574.034(a) or 574.035(a); or

(2) committing the person to outpatient mental health services if the trier of fact finds that the person meets the commitment criteria prescribed by Section 574.0345(a) or 574.0355(a).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 744, Sec. 7, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1381, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 16, eff. September 1, 2019.

Sec. 574.037. COURT-ORDERED OUTPATIENT SERVICES. (a) The court, in an order that directs a patient to participate in outpatient mental health services, shall designate the person identified under Section 574.0125 as responsible for those services or may designate a different person if necessary. The person designated must be the facility administrator or an individual involved in providing court-ordered outpatient services. A person may not be designated as responsible for the ordered services without the person's consent unless the person is the facility administrator of a department facility or the facility administrator of a community center that provides mental health services:

(1) in the region in which the committing court is located; or

(2) in a county where a patient has previously received mental health services.

(b) The person responsible for the services shall submit to the court a general program of the treatment to be provided as required by this subsection and Subsection (b-2). The program must be incorporated into the court order. The program must include:

(1) services to provide care coordination; and

(2) any other treatment or services, including medication and supported housing, that are available and considered clinically necessary by a treating physician or the person responsible for the services to assist the patient in functioning safely in the community.

(b-1) If the patient is receiving inpatient mental health services at the time the program is being prepared, the person responsible for the services under this section shall seek input from the patient's inpatient treatment providers in preparing the program.

(b-2) The person responsible for the services shall submit the program to the court before the hearing under Section 574.0345 or 574.0355 or before the court modifies an order under Section 574.061, as appropriate.

(c) The person responsible for the services shall inform the court of:

(1) the patient's failure to comply with the court order; and

(2) any substantial change in the general program of treatment that occurs before the order expires.

(c-1) A patient subject to court-ordered outpatient services may petition the court for specific enforcement of the court order.

(c-2) A court may set a status conference in accordance with Section 574.0665.

(c-3) The court shall order the patient to participate in the program but may not compel performance. If a court receives information under Subsection (c)(1) that a patient is not complying with the court's order, the court may:

(1) set a modification hearing under Section 574.062; and

(2) issue an order for temporary detention if an application is filed under Section 574.063.

(c-4) The failure of a patient to comply with the program incorporated into a court order is not grounds for punishment for contempt of court under Section 21.002, Government Code.

(d) A facility must comply with this section to the extent that the commissioner determines that the designated mental health facility has sufficient resources to perform the necessary services.

(e) A patient may not be detained in a private mental health facility without the consent of the facility administrator.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 2, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 17, eff. September 1, 2019.

SUBCHAPTER D. DESIGNATION OF FACILITY AND TRANSPORTATION OF PATIENT

Sec. 574.041. DESIGNATION OF FACILITY. (a) In an order for temporary or extended mental health services specifying inpatient care, the court shall commit the patient to a designated inpatient mental health facility. The court shall commit the patient to:

(1) a mental health facility deemed suitable by the local mental health authority for the area;

(2) a private mental hospital under Section 574.042;

(3) a hospital operated by a federal agency under Section 574.043; or

(4) an inpatient mental health facility of the Texas Department of Criminal Justice under Section 574.044.

(b) On request of the local mental health authority, the judge may commit the patient directly to an inpatient mental health facility operated by the department.

(c) A court may not commit a patient to an inpatient mental health facility operated by a community center or other entity designated by the department to provide mental health services unless the facility is licensed under Chapter 577 and the court notifies the local mental health authority serving the region in which the commitment is made.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 543, Sec. 3, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 367, Sec. 11, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.108, eff. September 1, 2009.

Sec. 574.0415. INFORMATION ON MEDICATIONS. (a) A mental health facility shall provide to a patient in the patient's primary

language, if possible, and in accordance with department rules information relating to prescription medication ordered by the patient's treating physician.

(b) The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.05, eff. May 1, 1994. Amended by Acts 1997, 75th Leg., ch. 337, Sec. 3, eff. May 27, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1382, eff. April 2, 2015.

Sec. 574.042. COMMITMENT TO PRIVATE FACILITY. The court may order a patient committed to a private mental hospital at no expense to the state if the court receives:

(1) an application signed by the patient or the patient's guardian or next friend requesting that the patient be placed in a designated private mental hospital at the patient's or applicant's expense; and

(2) written agreement from the hospital administrator of the private mental hospital to admit the patient and to accept responsibility for the patient in accordance with this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.043. COMMITMENT TO FEDERAL FACILITY. (a) A court may order a patient committed to a federal agency that operates a mental hospital if the court receives written notice from the agency that facilities are available and that the patient is eligible for care or treatment in a facility. The court may place the patient in the agency's custody for transportation to the mental hospital.

(b) A patient admitted under court order to a hospital operated by a federal agency, regardless of location, is subject to the agency's rules.

(c) The hospital administrator has the same authority and responsibility with respect to the patient as the facility administrator of an inpatient mental health facility operated by the department.

(d) The appropriate courts of this state retain jurisdiction to inquire at any time into the patient's mental condition and the necessity of the patient's continued hospitalization.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 367, Sec. 12, eff. Sept. 1, 2001.

Sec. 574.044. COMMITMENT TO FACILITY OF TEXAS DEPARTMENT OF CRIMINAL JUSTICE. The court shall commit an inmate patient to an inpatient mental health facility of the Texas Department of Criminal Justice if the court enters an order requiring temporary mental health services for the inmate patient under an application filed by a psychiatrist under Section 501.057, Government Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.50, eff. Aug. 30, 1993.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.109, eff. September 1, 2009.

Sec. 574.045. TRANSPORTATION OF PATIENT. (a) The court may authorize, in the following order of priority, the transportation of a committed patient or a patient detained under Section 573.022 or 574.023 to the designated mental health facility by:

(1) a special officer for mental health assignment certified under Section 1701.404, Occupations Code;

(2) the facility administrator of the designated mental health facility, unless the administrator notifies the court that facility personnel are not available to transport the patient;

(3) a representative of the local mental health authority, who shall be reimbursed by the county, unless the representative notifies the court that local mental health authority personnel are not qualified to ensure the safety of the patient during transport;

(4) a qualified transportation service provider selected from the list established and maintained as required by Section 574.0455 by the commissioners court of the county in which the court authorizing the transportation is located;

(5) the sheriff or constable; or

(6) a relative or other responsible person who has a proper interest in the patient's welfare and who receives no remuneration, except for actual and necessary expenses.

(a-1) A person who under Subsection (a)(1), (2), or (5) is authorized by the court to transport a person to a mental health facility may contract with a qualified transportation service provider that is included on the list established and maintained as required by Section 574.0455 by the commissioners court of the county in which the court is located to provide the transportation authorized by the court.

(b) The court shall require appropriate medical personnel to accompany the person transporting the patient if there is reasonable cause to believe that the patient will require medical assistance or the administration of medication during the transportation. The payment of an expense incurred under this subsection is governed by Section 571.018.

(c) The patient's friends and relatives may accompany the patient at their own expense.

(d) A female patient must be accompanied by a female attendant unless the patient is accompanied by her father, husband, or adult brother or son.

(e) The patient may not be transported in a marked police or sheriff's car or accompanied by a uniformed officer unless other means are not available.

(f) The patient may not be transported with a state prisoner.

(g) The patient may not be physically restrained unless necessary to protect the health and safety of the patient or of a person traveling with the patient. If the treating physician or the person transporting a patient determines that physical restraint of the patient is necessary, that person shall document the reasons for that determination and the duration for which the restraints are needed. The person transporting the patient shall deliver the document to the facility at the time the patient is delivered. The facility shall include the document in the patient's clinical record.

(h) The patient must be transported directly to the facility within a reasonable amount of time and without undue delay.

(i) All vehicles used to transport patients under this section must be adequately heated in cold weather and adequately ventilated in warm weather.

(j) Special diets or other medical precautions recommended by the patient's physician must be followed.

(k) The person transporting the patient shall give the patient reasonable opportunities to get food and water and to use a bathroom.

(l) A patient restrained under Subsection (g) may be restrained only during the apprehension, detention, or transportation of the patient. The method of restraint must permit the patient to sit in an upright position without undue difficulty unless the patient is being transported by ambulance.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.20, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 60, Sec. 20, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1512, Sec. 5, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.804, eff. Sept. 1, 2001. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1122 (H.B. 167), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 889 (H.B. 978), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 674 (S.B. 1129), Sec. 1, eff. June 17, 2015.

Sec. 574.0455. LIST OF QUALIFIED TRANSPORTATION SERVICE PROVIDERS. (a) The commissioners court of a county may:

(1) establish and maintain a list of qualified transportation service providers that a court may authorize or with whom a person may contract to transport a person to a mental health facility in accordance with Section 574.045;

(2) establish an application procedure for a person to be included on the list, including an appropriate application fee to be deposited in the county general fund;

(3) contract with qualified transportation service providers on terms acceptable to the county;

(4) allow officers and employees of the county to utilize persons on the list on a rotating basis if the officer or employee is authorized to provide transportation under Section 574.045 and chooses to utilize a qualified transportation service provider in accordance with the terms of the contract approved by the

commissioners court; and

(5) ensure that the list is made available to any person authorized to provide transportation under Section 574.045.

(b) The executive commissioner shall prescribe uniform standards:

(1) that a person must meet to be listed as a qualified transportation service provider under Subsection (a); and

(2) prescribing requirements relating to how the transportation of a person to a mental health facility by a qualified transportation service provider is provided.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1122 (H.B. 167), Sec. 2, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1383, eff. April 2, 2015.

Sec. 574.0456. TRANSPORTATION OF PATIENT TO ANOTHER STATE. A person may not transport a patient to a mental health facility in another state for court-ordered inpatient mental health services under this chapter unless transportation to that facility is authorized by a court order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 889 (H.B. 978), Sec. 2, eff. September 1, 2013.

Sec. 574.046. WRIT OF COMMITMENT. The court shall direct the court clerk to issue to the person authorized to transport the patient two writs of commitment requiring the person to take custody of and transport the patient to the designated mental health facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.047. TRANSCRIPT. (a) The court clerk shall prepare a certified transcript of the proceedings in the hearing on court-ordered mental health services.

(b) The clerk shall send the transcript and any available

information relating to the medical, social, and economic status and history of the patient and the patient's family to the designated mental health facility with the patient. The person authorized to transport the patient shall deliver the transcript and information to the facility personnel in charge of admissions.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.048. ACKNOWLEDGMENT OF PATIENT DELIVERY. The facility administrator, after receiving a copy of the writ of commitment and after admitting the patient, shall:

(1) give the person transporting the patient a written statement acknowledging acceptance of the patient and of any personal property belonging to the patient; and

(2) file a copy of the statement with the clerk of the committing court.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

SUBCHAPTER E. POST-COMMITMENT PROCEEDINGS

Sec. 574.061. MODIFICATION OF ORDER FOR INPATIENT TREATMENT. (a) The facility administrator of a facility to which a patient is committed for inpatient mental health services, not later than the 30th day after the date the patient is committed to the facility, shall assess the appropriateness of transferring the patient to outpatient mental health services. The facility administrator may recommend that the court that entered the commitment order modify the order to require the patient to participate in outpatient mental health services.

(b) A facility administrator's recommendation under Subsection (a) must explain in detail the reason for the recommendation. The recommendation must be accompanied by a supporting certificate of medical examination for mental illness signed by a physician who examined the patient during the seven days preceding the recommendation.

(c) The patient shall be given notice of a facility administrator's recommendation under Subsection (a).

(d) On request of the patient or any other interested person, the court shall hold a hearing on a facility administrator's

recommendation that the court modify the commitment order. The court shall appoint an attorney to represent the patient at the hearing and shall consult with the local mental health authority before issuing a decision. The hearing shall be held before the court without a jury and as prescribed by Section 574.031. The patient shall be represented by an attorney and receive proper notice.

(e) If a hearing is not requested, the court may make a decision regarding a facility administrator's recommendation based on:

(1) the recommendation;

(2) the supporting certificate; and

(3) consultation with the local mental health authority concerning available resources to treat the patient.

(f) If the court modifies the order, the court shall designate a person to be responsible for the outpatient services as prescribed by Section 574.037.

(g) The person responsible for the services must comply with Section 574.037(b).

(h) A modified order may extend beyond the term of the original order, but may not exceed the term of the original order by more than 60 days.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 3, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 18, eff. September 1, 2019.

Sec. 574.062. MOTION FOR MODIFICATION OF ORDER FOR OUTPATIENT TREATMENT. (a) The court that entered an order directing a patient to participate in outpatient mental health services may set a hearing to determine if the order should be modified in a way that is a substantial deviation from the original program of treatment incorporated in the court's order. The court may set the hearing on its own motion, at the request of the person responsible for the treatment, or at the request of any other interested person.

(b) The court shall appoint an attorney to represent the patient if a hearing is scheduled. The patient shall be given notice

of the matters to be considered at the hearing. The notice must comply with the requirements of Section 574.006 for notice before a hearing on court-ordered mental health services.

(c) The hearing shall be held before the court, without a jury, and as prescribed by Section 574.031. The patient shall be represented by an attorney and receive proper notice.

(d) The court shall set a date for a hearing on the motion to be held not later than the seventh day after the date the motion is filed. The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. Except as provided by Subsection (e), the court shall hold the hearing not later than the 14th day after the date the motion is filed.

(e) If extremely hazardous weather conditions exist or a disaster occurs that threatens the safety of the proposed patient or other essential parties to the hearing, the court, by written order made each day, may postpone the hearing for not more than 24 hours. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1997.

Sec. 574.063. ORDER FOR TEMPORARY DETENTION. (a) The person responsible for a patient's court-ordered outpatient treatment or the facility administrator of the outpatient facility in which a patient receives treatment may file a sworn application for the patient's temporary detention pending the modification hearing under Section 574.062.

(b) The application must state the applicant's opinion and detail the reasons for the applicant's opinion that:

(1) the patient meets the criteria described by Section 574.064(a-1); and

(2) detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) The court may issue an order for temporary detention if a modification hearing is set and the court finds from the information in the application that there is probable cause to believe that the

opinions stated in the application are valid.

(d) At the time the temporary detention order is signed, the judge shall appoint an attorney to represent a patient who does not have an attorney.

(e) Within 24 hours after the time detention begins, the court that issued the temporary detention order shall provide to the patient and the patient's attorney a written notice that states:

(1) that the patient has been placed under a temporary detention order;

(2) the grounds for the order; and

(3) the time and place of the modification hearing.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 4, eff. September 1, 2013.

Sec. 574.064. APPREHENSION AND RELEASE UNDER TEMPORARY DETENTION ORDER. (a) A temporary detention order shall direct a peace officer or other designated person to take the patient into custody and transport the patient immediately to:

(1) the nearest appropriate inpatient mental health facility; or

(2) a mental health facility deemed suitable by the local mental health authority for the area, if an appropriate inpatient mental health facility is not available.

(a-1) A physician shall evaluate the patient as soon as possible within 24 hours after the time detention begins to determine whether the patient, due to mental illness:

(1) presents a substantial risk of serious harm to the patient or others;

(2) evidences severe emotional distress and deterioration in the person's mental condition;

(3) evidences an inability to recognize symptoms or appreciate the risks and benefits of treatment; and

(4) is likely without immediate detention to suffer serious risk of harm or to inflict serious harm on another person to the extent that the patient cannot be at liberty pending the probable cause hearing under Subsection (b).

(a-2) If the physician who conducted the evaluation determines that the patient does not present a substantial risk of serious harm to the patient or others, the facility shall:

(1) notify:

(A) the person designated under Section 574.037 as responsible for providing outpatient mental health services or the facility administrator of the outpatient facility treating the patient; and

(B) the court that entered the order directing the patient to receive court-ordered outpatient mental health services; and

(2) release the patient.

(b) A patient who is not released under Subsection (a-2) may be detained under a temporary detention order for more than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for an extreme emergency only if, after a hearing held before the expiration of that period, the court, a magistrate, or a designated associate judge finds that there is probable cause to believe that:

(1) the patient, due to mental illness, presents a substantial risk of serious harm to the patient or others, using the criteria prescribed by Subsection (a-1), to the extent that the patient cannot be at liberty pending the final hearing under Section 574.062; and

(2) detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) If probable cause is found under Subsection (b), the patient may be detained under the temporary detention until the hearing set under Section 574.062 is completed.

(d) A facility administrator shall immediately release a patient held under a temporary detention order if the facility administrator does not receive notice that the patient's continued detention is authorized:

(1) after a probable cause hearing held within 72 hours after the patient's detention begins; or

(2) after a modification hearing held within the period prescribed by Section 574.062.

(e) A patient released from an inpatient mental health facility under Subsection (a-2) or (d) continues to be subject to the order

for court-ordered outpatient services, if the order has not expired.

(f) A person detained under this section may not be detained in a nonmedical facility used to detain persons charged with or convicted of a crime.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 191, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 367, Sec. 13, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 7, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 5, eff. September 1, 2013.

Acts 2025, 89th Leg., R.S., Ch. 800 (S.B. 1164), Sec. 11, eff. September 1, 2025.

Sec. 574.065. ORDER OF MODIFICATION OF ORDER FOR OUTPATIENT SERVICES. (a) The court may modify an order for outpatient services at the modification hearing if the court determines that the patient meets the applicable criteria for court-ordered inpatient mental health services prescribed by Section 574.034(a) or 574.035(a).

(b) The court may refuse to modify the order and may direct the patient to continue to participate in outpatient mental health services in accordance with the original order even if the criteria prescribed by Subsection (a) have been met.

(c) The court's decision to modify an order must be supported by at least one certificate of medical examination for mental illness signed by a physician who examined the patient not earlier than the seventh day before the date on which the hearing is held.

(d) A modification may include:

(1) incorporating in the order a revised treatment program and providing for continued outpatient mental health services under the modified order, if a revised general program of treatment was submitted to and accepted by the court; or

(2) providing for commitment to an inpatient mental health facility.

(e) A court may not extend the provision of mental health services beyond the period prescribed in the original order.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 744, Sec. 8, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 6, eff. September 1, 2013.

Sec. 574.066. RENEWAL OF ORDER FOR EXTENDED MENTAL HEALTH SERVICES. (a) A county or district attorney or other adult may file an application to renew an order for extended mental health services.

(b) The application must explain in detail why the person requests renewal. An application to renew an order committing the patient to extended inpatient mental health services must also explain in detail why a less restrictive setting is not appropriate.

(c) The application must be accompanied by two certificates of medical examination for mental illness signed by physicians who examined the patient during the 30 days preceding the date on which the application is filed.

(d) The court shall appoint an attorney to represent the patient when an application is filed.

(e) The patient, the patient's attorney, or other individual may request a hearing on the application. The court may set a hearing on its own motion. An application for which a hearing is requested or set is considered an original application for court-ordered extended mental health services.

(f) A court may not renew an order unless the court finds that the patient meets the criteria for extended mental health services prescribed by Sections 574.035(a)(1), (2), and (3). The court must make the findings prescribed by this subsection to renew an order, regardless of whether a hearing is requested or set. A renewed order authorizes treatment for not more than 12 months.

(g) If a hearing is not requested or set, the court may admit into evidence the certificates of medical examination for mental illness. The certificates constitute competent medical or psychiatric testimony and the court may make its findings solely from the certificates and the detailed request for renewal.

(h) The court, after renewing an order for extended inpatient mental health services, may modify the order to provide for outpatient mental health services in accordance with Section 574.037.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.0665. STATUS CONFERENCE. A court on its own motion may set a status conference with the patient, the patient's attorney, and the person designated to be responsible for the patient's court-ordered outpatient services under Section 574.037.

Added by Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 19, eff. September 1, 2019.

Sec. 574.067. MOTION FOR REHEARING. (a) The court may set aside an order requiring court-ordered mental health services and grant a motion for rehearing for good cause shown.

(b) Pending the hearing, the court may:

(1) stay the court-ordered mental health services and release the proposed patient from custody before the hearing if the court is satisfied that the proposed patient does not meet the criteria for protective custody under Section 574.022; and

(2) if the proposed patient is at liberty, require an appearance bond in an amount set by the court.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.068. REQUEST FOR REEXAMINATION. (a) A patient receiving court-ordered extended mental health services, or any interested person on the patient's behalf and with the patient's consent, may file a request with a court for a reexamination and a hearing to determine if the patient continues to meet the criteria for the services.

(b) The request must be filed in the county in which the patient is receiving the services.

(c) The court may, for good cause shown:

(1) require that the patient be reexamined;

(2) schedule a hearing on the request; and

(3) notify the facility administrator of the facility providing mental health services to the patient.

(d) A court is not required to order a reexamination or hearing if the request is filed within six months after an order for extended mental health services is entered or after a similar request is

filed.

(e) After receiving the court's notice, the facility administrator shall arrange for the patient to be reexamined.

(f) The facility administrator or the administrator's qualified authorized designee shall immediately discharge the patient if the facility administrator or designee determines that the patient no longer meets the criteria for court-ordered extended mental health services.

(g) If the facility administrator or the administrator's designee determines that the patient continues to meet the criteria for court-ordered extended mental health services, the facility administrator or designee shall file a certificate of medical examination for mental illness with the court within 10 days after the date on which the request for reexamination and hearing is filed.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.069. HEARING ON REQUEST FOR REEXAMINATION. (a) A court that required a patient's reexamination under Section 574.068 may set a date and place for a hearing on the request if, not later than the 10th day after the date on which the request is filed:

(1) a certificate of medical examination for mental illness stating that the patient continues to meet the criteria for court-ordered extended mental health services has been filed; or

(2) a certificate has not been filed and the patient has not been discharged.

(b) At the time the hearing is set, the judge shall:

(1) appoint an attorney to represent a patient who does not have an attorney; and

(2) give notice of the hearing to the patient, the patient's attorney, and the facility administrator.

(c) The judge shall appoint a physician to examine the patient and file a certificate of medical examination for mental illness with the court. The judge shall appoint a physician who is not on the staff of the mental health facility in which the patient is receiving services and who is a psychiatrist if a psychiatrist is available in the county. The court shall ensure that the patient may be examined by a physician of the patient's choice and at the patient's own expense if requested by the patient.

(d) The hearing is held before the court and without a jury. The hearing must be held in accordance with the requirements for a hearing on an application for court-ordered mental health services.

(e) The court shall dismiss the request if the court finds from clear and convincing evidence that the patient continues to meet the criteria for court-ordered extended mental health services prescribed by Section 574.035 or 574.0355.

(f) The judge shall order the facility administrator to discharge the patient if the court fails to find from clear and convincing evidence that the patient continues to meet the criteria.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 20, eff. September 1, 2019.

Sec. 574.070. APPEAL. (a) An appeal from an order requiring court-ordered mental health services, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is entered.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When an appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) Pending the appeal, the trial judge in whose court the cause is pending may:

(1) stay the order and release the patient from custody before the appeal if the judge is satisfied that the patient does not meet the criteria for protective custody under Section 574.022; and

(2) if the proposed patient is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

SUBCHAPTER F. FURLOUGH, DISCHARGE, AND TERMINATION OF COURT-ORDERED

MENTAL HEALTH SERVICES

Sec. 574.081. CONTINUING CARE PLAN BEFORE FURLOUGH OR DISCHARGE. (a) The physician responsible for the patient's treatment shall prepare a continuing care plan for a patient who is scheduled to be furloughed or discharged unless the patient does not require continuing care.

(a-1) Subject to available resources, Subsections (a), (b), (c), (c-1), and (c-2) apply to a patient scheduled to be furloughed or discharged from:

(1) a state hospital; or

(2) any psychiatric inpatient bed funded under a contract with the Health and Human Services Commission or operated by or funded under a contract with a local mental health authority or a behavioral mental health authority.

(b) The physician shall prepare the plan as prescribed by Health and Human Services Commission rules and shall consult the patient and the local mental health authority in the area in which the patient will reside before preparing the plan. The local mental health authority shall be informed of and must participate in planning the discharge of a patient.

(c) The plan must address the patient's mental health and physical needs, including, if appropriate:

(1) the need for outpatient mental health services following furlough or discharge; and

(2) the need for sufficient psychoactive medication on furlough or discharge to last until the patient can see a physician.

(c-1) Except as otherwise specified in the plan and subject to available funding provided to the Health and Human Services Commission and paid to a private mental health facility for this purpose, a private mental health facility is responsible for providing or paying for psychoactive medication and any other medication prescribed to the patient to counteract adverse side effects of psychoactive medication on furlough or discharge sufficient to last until the patient can see a physician.

(c-2) The Health and Human Services Commission shall adopt rules to determine the quantity and manner of providing psychoactive medication, as required by this section. The executive commissioner may not adopt rules requiring a mental health facility to provide or pay for psychoactive medication for more than seven days after furlough or discharge.

(d) The physician shall deliver the plan and other appropriate information to the community center or other provider that will deliver the services if:

(1) the services are provided by:

(A) a community center or other provider that serves the county in which the patient will reside and that has been designated by the commissioner to perform continuing care services; or

(B) any other provider that agrees to accept the referral; and

(2) the provision of care by the center or provider is appropriate.

(e) The facility administrator or the administrator's designee shall have the right of access to discharged patients and records of patients who request continuing care services.

(f) A patient who is to be discharged may refuse the continuing care services.

(g) A physician who believes that a patient does not require continuing care and who does not prepare a continuing care plan under this section shall document in the patient's treatment record the reasons for that belief.

(h) Subsection (c) does not create a mandate that a facility described by Section 571.003(9)(B) or (E) provide or pay for a medication for a patient.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 12, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 705, Sec. 4.04, 4.05, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(33), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 367, Sec. 14, eff. June 15, 2001; Acts 2001, 77th Leg., ch. 1066, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 21, eff. September 1, 2019.

Sec. 574.082. PASS OR FURLOUGH FROM INPATIENT CARE. (a) The facility administrator may permit a patient admitted to the facility under an order for temporary or extended inpatient mental health services to leave the facility under a pass or furlough.

(b) A pass authorizes the patient to leave the facility for not more than 72 hours. A furlough authorizes the patient to leave for a longer period.

(c) The pass or furlough may be subject to specified conditions.

(d) When a patient is furloughed, the facility administrator shall notify the court that issued the commitment order.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.083. RETURN TO FACILITY UNDER CERTIFICATE OF FACILITY ADMINISTRATOR OR COURT ORDER. (a) The facility administrator of a facility to which a patient was admitted for court-ordered inpatient health care services may authorize a peace officer of the municipality or county in which the facility is located to take an absent patient into custody, detain the patient, and return the patient to the facility by issuing a certificate as prescribed by Subsection (c) to a law enforcement agency of the municipality or county.

(b) If there is reason to believe that an absent patient may be outside the municipality or county in which the facility is located, the facility administrator may file an affidavit as prescribed by Subsection (c) with a magistrate requesting the magistrate to issue an order for the patient's return. The magistrate with whom the affidavit is filed may issue an order directing a peace or health officer to take an absent patient into custody and return the patient to the facility. An order issued under this subsection extends to any part of this state and authorizes any peace officer to whom the order is directed or transferred to execute the order, take the patient into custody, detain the patient, and return the patient to the facility.

(c) The certificate issued or affidavit filed under Subsection (a) or (b) must set out facts establishing that the patient is receiving court-ordered inpatient mental health services at the facility and show that the facility administrator reasonably believes that:

(1) the patient is absent without authority from the facility;

(2) the patient has violated the conditions of a pass or

furlough; or

(3) the patient's condition has deteriorated to the extent that the patient's continued absence from the facility under a pass or furlough is inappropriate.

(d) A peace or health officer shall take the patient into custody and return the patient to the facility as soon as possible if the patient's return is authorized by a certificate issued or court order issued under this section.

(e) A peace or health officer may take the patient into custody without having the certificate or court order in the officer's possession.

(f) A peace or health officer who cannot immediately return a patient to the facility named in the order may transport the patient to a local facility for detention. The patient may not be detained in a nonmedical facility that is used to detain persons who are charged with or convicted of a crime unless detention in the facility is warranted by an extreme emergency. If the patient is detained at a nonmedical facility:

(1) the patient:

(A) may not be detained in the facility for more than 24 hours; and

(B) must be isolated from all persons charged with or convicted of a crime; and

(2) the facility must notify the county health authority of the detention.

(g) The local mental health authority shall ensure that a patient detained in a nonmedical facility under Subsection (f) receives proper care and medical attention.

(h) Notwithstanding other law regarding confidentiality of patient information, the facility administrator may release to a law enforcement official information about the patient if the administrator determines the information is needed to facilitate the return of the patient to the facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 1016, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1187, Sec. 19, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 367, Sec. 15, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1006, Sec. 1, eff. Sept. 1, 2001.

Sec. 574.084. REVOCATION OF FURLOUGH. (a) A furlough may be revoked only after an administrative hearing held in accordance with department rules. The hearing must be held within 72 hours after the patient is returned to the facility.

(b) A hearing officer shall conduct the hearing. The hearing officer may be a mental health professional if the person is not directly involved in treating the patient.

(c) The hearing is informal and the patient is entitled to present information and argument.

(d) The hearing officer may revoke the furlough if the officer determines that the revocation is justified under Section 574.083(c).

(e) A hearing officer who revokes a furlough shall place in the patient's file:

(1) a written notation of the decision; and

(2) a written explanation of the reasons for the decision and the information on which the hearing officer relied.

(f) The patient shall be permitted to leave the facility under the furlough if the hearing officer determines that the furlough should not be revoked.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.085. DISCHARGE ON EXPIRATION OF COURT ORDER. The facility administrator of a facility to which a patient was committed or from which a patient was required to receive temporary or extended inpatient or outpatient mental health services shall discharge the patient when the court order expires.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.086. DISCHARGE BEFORE EXPIRATION OF COURT ORDER. (a) The facility administrator of a facility to which a patient was committed for inpatient mental health services or the person responsible for providing outpatient mental health services may discharge the patient at any time before the court order expires if the facility administrator or person determines that the patient no longer meets the criteria for court-ordered mental health services.

(b) The facility administrator of a facility to which the patient was committed for inpatient mental health services shall

consider before discharging the patient whether the patient should receive outpatient court-ordered mental health services in accordance with:

(1) a furlough under Section 574.082; or

(2) a modified order under Section 574.061 that directs the patient to participate in outpatient mental health services.

(c) A discharge under Subsection (a) terminates the court order, and the person discharged may not be required to submit to involuntary mental health services unless a new court order is entered in accordance with this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.087. CERTIFICATE OF DISCHARGE. The facility administrator or the person responsible for outpatient care who discharges a patient under Section 574.085 or 574.086 shall prepare a discharge certificate and file it with the court that entered the order requiring mental health services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.088. RELIEF FROM DISABILITIES IN MENTAL HEALTH CASES. (a) A person who is furloughed or discharged from court-ordered mental health services may petition the court that entered the commitment order for an order stating that the person qualifies for relief from a firearms disability.

(b) In determining whether to grant relief, the court must hear and consider evidence about:

(1) the circumstances that led to imposition of the firearms disability under 18 U.S.C. Section 922(g)(4);

(2) the person's mental history;

(3) the person's criminal history; and

(4) the person's reputation.

(c) A court may not grant relief unless it makes and enters in the record the following affirmative findings:

(1) the person is no longer likely to act in a manner dangerous to public safety; and

(2) removing the person's disability to purchase a firearm is in the public interest.

Added by Acts 2009, 81st Leg., R.S., Ch. 950 (H.B. 3352), Sec. 2, eff. September 1, 2009.

Sec. 574.089. TRANSPORTATION PLAN FOR FURLOUGH OR DISCHARGE. (a) The facility administrator of a mental health facility, in conjunction with the local mental health authority, shall create a transportation plan for a person scheduled to be furloughed or discharged from the facility.

(b) The transportation plan must account for the capacity of the person, must be in writing, and must specify:

(1) who is responsible for transporting the person;

(2) when the person will be transported; and

(3) where the person will arrive.

(c) If the person consents, the facility administrator shall forward the transportation plan to a family member of the person before the person is transported.

Added by Acts 2009, 81st Leg., R.S., Ch. 1020 (H.B. 4276), Sec. 1, eff. September 1, 2009.

SUBCHAPTER G. ADMINISTRATION OF MEDICATION TO PATIENT UNDER COURT ORDER FOR MENTAL HEALTH SERVICES

Sec. 574.101. DEFINITIONS. In this subchapter:

(1) "Capacity" means a patient's ability to:

(A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and

(B) make a decision whether to undergo the proposed treatment.

(2) "Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a patient to prevent:

(A) imminent probable death or substantial bodily harm to the patient because the patient:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the patient is unable to satisfy the patient's need for nourishment,

essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the patient overtly or continually makes or commits.

(3) "Psychoactive medication" means a medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. "Psychoactive medication" includes the following categories when used as described in this subdivision:

(A) antipsychotics or neuroleptics;

(B) antidepressants;

(C) agents for control of mania or depression;

(D) antianxiety agents;

(E) sedatives, hypnotics, or other sleep-promoting drugs; and

(F) psychomotor stimulants.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993.

Sec. 574.102. APPLICATION OF SUBCHAPTER. This subchapter applies to the application of medication to a patient subject to a court order for mental health services under this chapter or other law.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 770, Sec. 9, eff. June 16, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 1, eff. June 17, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 8, eff. September 1, 2013.

Sec. 574.103. ADMINISTRATION OF MEDICATION TO PATIENT UNDER COURT-ORDERED MENTAL HEALTH SERVICES. (a) In this section, "ward" has the meaning assigned by Section 1002.030, Estates Code.

(b) A person may not administer a psychoactive medication to a patient under court-ordered inpatient mental health services who refuses to take the medication voluntarily unless:

(1) the patient is having a medication-related emergency;

(2) the patient is under an order issued under Section 574.106 authorizing the administration of the medication regardless of the patient's refusal; or

(3) the patient is a ward who is 18 years of age or older and the guardian of the person of the ward consents to the administration of psychoactive medication regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Amended by Acts 2003, 78th Leg., ch. 692, Sec. 11, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 9, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1384, eff. April 2, 2015.

Sec. 574.104. PHYSICIAN'S APPLICATION FOR ORDER TO AUTHORIZE PSYCHOACTIVE MEDICATION; DATE OF HEARING. (a) A physician who is treating a patient may, on behalf of the state, file an application in a probate court or a court with probate jurisdiction for an order to authorize the administration of a psychoactive medication regardless of the patient's refusal if:

(1) the physician believes that the patient lacks the capacity to make a decision regarding the administration of the psychoactive medication;

(2) the physician determines that the medication is the proper course of treatment for the patient;

(3) the patient is under an order for inpatient mental health services under this chapter or other law or an application for court-ordered mental health services under Section 574.034, 574.0345, 574.035, or 574.0355 has been filed for the patient; and

(4) the patient, verbally or by other indication, refuses to take the medication voluntarily.

(b) An application filed under this section must state:

(1) that the physician believes that the patient lacks the capacity to make a decision regarding administration of the psychoactive medication and the reasons for that belief;

(2) each medication the physician wants the court to compel the patient to take;

(3) whether an application for court-ordered mental health services under Section 574.034, 574.0345, 574.035, or 574.0355 has been filed;

(4) whether a court order for inpatient mental health services for the patient has been issued and, if so, under what authority it was issued;

(5) the physician's diagnosis of the patient; and

(6) the proposed method for administering the medication and, if the method is not customary, an explanation justifying the departure from the customary methods.

(c) An application filed under this section is separate from an application for court-ordered mental health services.

(d) The hearing on the application may be held on the date of a hearing on an application for court-ordered mental health services under Section 574.034, 574.0345, 574.035, or 574.0355 but shall be held not later than 30 days after the filing of the application for the order to authorize psychoactive medication. If the hearing is not held on the same day as the application for court-ordered mental health services under those sections and the patient is transferred to a mental health facility in another county, the court may transfer the application for an order to authorize psychoactive medication to the county where the patient has been transferred.

(e) Subject to the requirement in Subsection (d) that the hearing shall be held not later than 30 days after the filing of the application, the court may grant one continuance on a party's motion and for good cause shown. The court may grant more than one continuance only with the agreement of the parties.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 322, Sec. 2, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 770, Sec. 10, eff. June 16, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 2, eff. June 17,

2005.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 22, eff. September 1, 2019.

Sec. 574.105. RIGHTS OF PATIENT. A patient for whom an application for an order to authorize the administration of a psychoactive medication is filed is entitled to:

(1) representation by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;

(2) meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the patient's questions or concerns;

(3) receive, immediately after the time of the hearing is set, a copy of the application and written notice of the time, place, and date of the hearing;

(4) be told, at the time personal notice of the hearing is given, of the patient's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;

(5) be present at the hearing;

(6) request from the court an independent expert; and

(7) oral notification, at the conclusion of the hearing, of the court's determinations of the patient's capacity and best interests.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 770, Sec. 11, eff. June 16, 1995.

Sec. 574.106. HEARING AND ORDER AUTHORIZING PSYCHOACTIVE MEDICATION. (a) The court may issue an order authorizing the administration of one or more classes of psychoactive medication to a patient who:

(1) is under a court order to receive inpatient mental health services; or

(2) is in custody awaiting trial in a criminal proceeding and was ordered to receive inpatient mental health services in the six months preceding a hearing under this section.

(a-1) The court may issue an order under this section only if the court finds by clear and convincing evidence after the hearing:

(1) that the patient lacks the capacity to make a decision regarding the administration of the proposed medication and treatment with the proposed medication is in the best interest of the patient; or

(2) if the patient was ordered to receive inpatient mental health services by a criminal court with jurisdiction over the patient, that treatment with the proposed medication is in the best interest of the patient and either:

(A) the patient presents a danger to the patient or others in the inpatient mental health facility in which the patient is being treated as a result of a mental disorder or mental defect as determined under Section 574.1065; or

(B) the patient:

(i) has remained confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer for competency restoration treatment; and

(ii) presents a danger to the patient or others in the correctional facility as a result of a mental disorder or mental defect as determined under Section 574.1065.

(b) In making the finding that treatment with the proposed medication is in the best interest of the patient, the court shall consider:

(1) the patient's expressed preferences regarding treatment with psychoactive medication;

(2) the patient's religious beliefs;

(3) the risks and benefits, from the perspective of the patient, of taking psychoactive medication;

(4) the consequences to the patient if the psychoactive medication is not administered;

(5) the prognosis for the patient if the patient is treated with psychoactive medication;

(6) alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and

(7) less intrusive treatments likely to secure the patient's agreement to take the psychoactive medication.

(c) A hearing under this subchapter shall be conducted on the

record by the probate judge or judge with probate jurisdiction, except as provided by Subsection (d).

(d) A judge may refer a hearing to a magistrate or court-appointed associate judge who has training regarding psychoactive medications. The magistrate or associate judge may effectuate the notice, set hearing dates, and appoint attorneys as required in this subchapter. A record is not required if the hearing is held by a magistrate or court-appointed associate judge.

(e) A party is entitled to a hearing de novo by the judge if an appeal of the magistrate's or associate judge's report is filed with the court within three days after the report is issued. The hearing de novo shall be held within 30 days of the filing of the application for an order to authorize psychoactive medication.

(f) If a hearing or an appeal of an associate judge's or magistrate's report is to be held in a county court in which the judge is not a licensed attorney, the proposed patient or the proposed patient's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county judge shall transfer the case after receiving the request, and the receiving court shall hear the case as if it had been originally filed in that court.

(g) As soon as practicable after the conclusion of the hearing, the patient is entitled to have provided to the patient and the patient's attorney written notification of the court's determinations under this section. The notification shall include a statement of the evidence on which the court relied and the reasons for the court's determinations.

(h) An order entered under this section shall authorize the administration to a patient, regardless of the patient's refusal, of one or more classes of psychoactive medications specified in the application and consistent with the patient's diagnosis. The order shall permit an increase or decrease in a medication's dosage, restitution of medication authorized but discontinued during the period the order is valid, or the substitution of a medication within the same class.

(i) The classes of psychoactive medications in the order must conform to classes determined by the department.

(j) An order issued under this section may be reauthorized or modified on the petition of a party. The order remains in effect pending action on a petition for reauthorization or modification.

For the purpose of this subsection, "modification" means a change of a class of medication authorized in the order.

(k) This section does not apply to a patient who receives services under an order of protective custody under Section 574.021.

(l) For a patient described by Subsection (a-1)(2)(B), an order issued under this section:

(1) authorizes the initiation of any appropriate mental health treatment for the patient awaiting transfer; and

(2) does not constitute authorization to retain the patient in a correctional facility for competency restoration treatment.

(m) An order issued under this section authorizes the taking of a patient's blood sample to conduct reasonable and medically necessary evaluations and laboratory tests to safely administer a psychoactive medication authorized by the order.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 770, Sec. 12, eff. June 16, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 3, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 4, eff. June 17, 2005.

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 8, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 624 (H.B. 1233), Sec. 1, eff. June 19, 2009.

Acts 2023, 88th Leg., R.S., Ch. 982 (S.B. 2479), Sec. 4, eff. September 1, 2023.

Sec. 574.1065. FINDING THAT PATIENT PRESENTS A DANGER. In making a finding under Section 574.106(a-1)(2) that, as a result of a mental disorder or mental defect, the patient presents a danger to the patient or others in the inpatient mental health facility in which the patient is being treated or in the correctional facility, as applicable, the court shall consider:

(1) an assessment of the patient's present mental condition;

(2) whether the patient has inflicted, attempted to

inflict, or made a serious threat of inflicting substantial physical harm to the patient's self or to another while in the facility; and

(3) whether the patient, in the six months preceding the date the patient was placed in the facility, has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to another that resulted in the patient being placed in the facility.

Added by Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 5, eff. June 17, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 624 (H.B. 1233), Sec. 2, eff. June 19, 2009.

Sec. 574.107. COSTS. (a) The costs for a hearing under this subchapter shall be paid in accordance with Sections 571.017 and 571.018.

(b) The county in which the applicable criminal charges are pending or were adjudicated shall pay as provided by Subsection (a) the costs of a hearing that is held under Section 574.106 to evaluate the court-ordered administration of psychoactive medication to:

(1) a patient ordered to receive mental health services as described by Section 574.106(a)(1) after having been determined to be incompetent to stand trial or having been acquitted of an offense by reason of insanity; or

(2) a patient who:

(A) is awaiting trial after having been determined to be competent to stand trial; and

(B) was ordered to receive mental health services as described by Section 574.106(a)(2).

Added by Acts 1995, 74th Leg., ch. 770, Sec. 13, eff. June 16, 1995.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 20, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 624 (H.B. 1233), Sec. 3, eff. June 19, 2009.

Sec. 574.108. APPEAL. (a) A patient may appeal an order under

this subchapter in the manner provided by Section 574.070 for an appeal of an order requiring court-ordered mental health services.

(b) An order authorizing the administration of medication regardless of the refusal of the patient is effective pending an appeal of the order.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Renumbered from Health & Safety Code Sec. 574.107 by Acts 1995, 74th Leg., ch. 770, Sec. 13, eff. June 16, 1995.

Sec. 574.109. EFFECT OF ORDER. (a) A person's consent to take a psychoactive medication is not valid and may not be relied on if the person is subject to an order issued under Section 574.106.

(b) The issuance of an order under Section 574.106 is not a determination or adjudication of mental incompetency and does not limit in any other respect that person's rights as a citizen or the person's property rights or legal capacity.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Renumbered from Health & Safety Code Sec. 574.108 by Acts 1995, 74th Leg., ch. 770, Sec. 13, eff. June 16, 1995.

Sec. 574.110. EXPIRATION OF ORDER. (a) Except as provided by Subsection (b), an order issued under Section 574.106 expires on the expiration or termination date of the order for temporary or extended mental health services in effect when the order for psychoactive medication is issued.

(b) An order issued under Section 574.106 for a patient who is returned to a correctional facility, as defined by Section 1.07, Penal Code, to await trial in a criminal proceeding continues to be in effect until the earlier of the following dates, as applicable:

(1) the 180th day after the date the defendant was returned to the correctional facility;

(2) the date the defendant is acquitted, is convicted, or enters a plea of guilty; or

(3) the date on which charges in the case are dismissed.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Renumbered from Health & Safety Code Sec. 574.109 and amended

by Acts 1995, 74th Leg., ch. 770, Sec. 13, eff. June 16, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 6, eff. June 17, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 718 (H.B. 748), Sec. 5, eff. September 1, 2011.

SUBCHAPTER H. VOLUNTARY ADMISSION FOR CERTAIN PERSONS FOR WHOM MOTION FOR COURT-ORDERED SERVICES HAS BEEN FILED

Sec. 574.151. APPLICABILITY. This subchapter applies only to a person for whom a motion for court-ordered mental health services is filed under Section 574.001, for whom a final order on that motion has not been entered under Section 574.034, 574.0345, 574.035, or 574.0355 and who requests voluntary admission to an inpatient mental health facility:

(1) while the person is receiving at that facility involuntary inpatient services under Subchapter B or under Chapter 573; or

(2) before the 31st day after the date the person was released from that facility under Section 573.023 or 574.028.

Added by Acts 2001, 77th Leg., ch. 1309, Sec. 1, eff. June 16, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 23, eff. September 1, 2019.

Sec. 574.152. CAPACITY TO CONSENT TO VOLUNTARY ADMISSION. A person described by Section 574.151 is rebuttably presumed to have the capacity to consent to admission to the inpatient mental health facility for voluntary inpatient mental health services.

Added by Acts 2001, 77th Leg., ch. 1309, Sec. 1, eff. June 16, 2001.

Sec. 574.153. RIGHTS OF PERSON ADMITTED TO VOLUNTARY INPATIENT TREATMENT. (a) A person described by Section 574.151 who is admitted to the inpatient mental health facility for voluntary inpatient mental health services has all of the rights provided by Chapter 576 for a person receiving voluntary or involuntary inpatient

mental health services.

(b) A right assured by Section 576.021 may not be waived by the patient, the patient's attorney or guardian, or any other person acting on behalf of the patient.

Added by Acts 2001, 77th Leg., ch. 1309, Sec. 1, eff. June 16, 2001.

Sec. 574.154. PARTICIPATION IN RESEARCH PROGRAM. Notwithstanding any other law, a person described by Section 574.151 may not participate in a research program in the inpatient mental health facility unless:

(1) the patient provides written consent to participate in the research program under a protocol that has been approved by the facility's institutional review board; and

(2) the institutional review board specifically reviews the patient's consent under the approved protocol.

Added by Acts 2001, 77th Leg., ch. 1309, Sec. 1, eff. June 16, 2001.

SUBCHAPTER I. USE OF VIDEO TECHNOLOGY AT PROCEEDINGS

Sec. 574.201. APPLICATION OF SUBCHAPTER. This subchapter applies only to a hearing or proceeding related to court-ordered mental health services under this chapter.

Added by Acts 2003, 78th Leg., ch. 358, Sec. 3, eff. June 18, 2003.

Sec. 574.202. CERTAIN TESTIMONY BY CLOSED-CIRCUIT VIDEO TELECONFERENCING PERMITTED. (a) A judge or magistrate may permit a physician or a nonphysician mental health professional to testify at a hearing or proceeding by closed-circuit video teleconferencing if:

(1) closed-circuit video teleconferencing is available to the judge or magistrate for that purpose;

(2) the proposed patient and the attorney representing the proposed patient do not file with the court a written objection to the use of closed-circuit video teleconferencing;

(3) the closed-circuit video teleconferencing system provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between all persons

involved in the hearing; and

(4) on request of the proposed patient, the proposed patient and the proposed patient's attorney can communicate privately without being recorded or heard by the judge or magistrate or by the attorney representing the state.

(b) The judge or magistrate must provide written notice of the use of closed-circuit video teleconferencing to the proposed patient, the proposed patient's attorney, and the attorney representing the state not later than the third day before the date of the hearing.

(c) On motion of the proposed patient or of the attorney representing the state the court shall, or on the court's discretion the court may, terminate testimony by closed-circuit video teleconferencing under this section at any time during the testimony and require the physician or nonphysician mental health professional to testify in person.

(d) A recording of the testimony under Subsection (a) shall be made and preserved with the court's record of the hearing.

Added by Acts 2003, 78th Leg., ch. 358, Sec. 3, eff. June 18, 2003.

Sec. 574.203. USE OF SECURE ELECTRONIC COMMUNICATION METHOD IN CERTAIN PROCEEDINGS UNDER THIS CHAPTER. (a) A hearing may be conducted in accordance with this chapter but conducted by secure electronic means, including satellite transmission, closed-circuit television transmission, or any other method of two-way electronic communication that is secure, available to the parties, approved by the court, and capable of visually and audibly recording the proceedings, if:

(1) written consent to the use of a secure electronic communication method for the hearing is filed with the court by:

(A) the proposed patient or the attorney representing the proposed patient; and

(B) the county or district attorney, as appropriate;

(2) the secure electronic communication method provides for a simultaneous, compressed full-motion video, and interactive communication of image and sound among the judge or associate judge, the county or district attorney, the attorney representing the proposed patient, and the proposed patient; and

(3) on request of the proposed patient or the attorney

representing the proposed patient, the proposed patient and the attorney can communicate privately without being recorded or heard by the judge or associate judge or by the county or district attorney.

(b) On the motion of the patient or proposed patient, the attorney representing the patient or proposed patient, or the county or district attorney or on the court's own motion, the court may terminate an appearance made through a secure electronic communication method at any time during the appearance and require an appearance by the patient or proposed patient in open court.

(c) The court shall provide for a recording of the communication to be made and preserved until any appellate proceedings have been concluded. The patient or proposed patient may obtain a copy of the recording on payment of a reasonable amount to cover the costs of reproduction or, if the patient or proposed patient is indigent, the court shall provide a copy on the request of the patient or proposed patient without charging a cost for the copy.

Added by Acts 2007, 80th Leg., R.S., Ch. 1145 (S.B. 778), Sec. 3, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 9, eff. September 1, 2009.

CHAPTER 575. ADMISSION AND TRANSFER PROCEDURES FOR INPATIENT SERVICES

SUBCHAPTER A. ADMISSION PROCEDURES

Sec. 575.001. AUTHORIZATION FOR ADMISSION. (a) The facility administrator of an inpatient mental health facility may admit and detain a patient under the procedures prescribed by this subtitle.

(b) The facility administrator of an inpatient mental health facility operated by a community center or other entity the department designates to provide mental health services may not admit or detain a patient under an order for temporary or extended court-ordered mental health services unless the facility is licensed under Chapter 577.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 575.002. ADMISSION OF VOLUNTARY PATIENT TO PRIVATE MENTAL HOSPITAL. This subtitle does not prohibit the voluntary admission of

a patient to a private mental hospital in any lawful manner.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 575.003. ADMISSION OF PERSONS WITH CHEMICAL DEPENDENCY AND PERSONS CHARGED WITH CRIMINAL OFFENSE. This subtitle does not affect the admission to a state mental health facility of:

(1) a person with a chemical dependency admitted under Chapter 462; or

(2) a person charged with a criminal offense admitted under Subchapter D or E, Chapter 46B, Code of Criminal Procedure.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2003, 78th Leg., ch. 35, Sec. 13, eff. Jan. 1, 2004.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1385, eff. April 2, 2015.

SUBCHAPTER B. TRANSFER PROCEDURES

Sec. 575.011. TRANSFER TO DEPARTMENT MENTAL HEALTH FACILITY OR LOCAL MENTAL HEALTH AUTHORITY. (a) The department may transfer a patient, if the transfer is considered advisable, from an inpatient mental health facility operated by the department to:

(1) another inpatient mental health facility operated by the department; or

(2) a mental health facility deemed suitable by the local mental health authority if the authority consents.

(b) A local mental health authority may transfer a patient from one authority facility to another if the transfer is considered advisable.

(c) A voluntary patient may not be transferred under Subsection (a) or (b) without the patient's consent.

(d) The facility administrator of an inpatient mental health facility may, for any reason, transfer an involuntary patient to a mental health facility deemed suitable by the local mental health authority for the area.

(e) The facility administrator shall notify the committing court and the local mental health authority before transferring a patient under Subsection (d).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 367, Sec. 16, eff. Sept. 1, 2001.

Sec. 575.012. TRANSFER OF PERSON WITH AN INTELLECTUAL DISABILITY TO AN INPATIENT MENTAL HEALTH FACILITY OPERATED BY THE DEPARTMENT. (a) An inpatient mental health facility may not transfer a patient who is also a person with an intellectual disability to a department mental health facility unless, before initiating the transfer, the facility administrator of the inpatient mental health facility obtains from the commissioner a determination that space is available in a department facility unit that is specifically designed to serve such a person.

(b) The department shall maintain an appropriate number of hospital-level beds for persons with an intellectual disability who are committed for court-ordered mental health services to meet the needs of the local mental health authorities. The number of beds the department maintains must be determined according to the previous year's need.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 367, Sec. 17, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1386, eff. April 2, 2015.

Sec. 575.013. TRANSFER OF PERSON WITH AN INTELLECTUAL DISABILITY TO STATE SUPPORTED LIVING CENTER. (a) The facility administrator of an inpatient mental health facility operated by the department may transfer an involuntary patient in the facility to a state supported living center for persons with an intellectual disability if:

(1) an examination of the patient indicates that the patient has symptoms of an intellectual disability to the extent that training, education, rehabilitation, care, treatment, and supervision in a state supported living center are in the patient's best interest;

(2) the director of the state supported living center to which the patient is to be transferred agrees to the transfer; and

(3) the facility administrator coordinates the transfer with the director of that state supported living center.

(b) A certificate containing the diagnosis and the facility administrator's recommendation of transfer to a specific state supported living center shall be furnished to the committing court.

(c) The patient may not be transferred before the judge of the committing court enters an order approving the transfer.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 367, Sec. 18, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1387, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1388, eff. April 2, 2015.

Sec. 575.014. TRANSFER TO PRIVATE MENTAL HOSPITAL. The hospital administrator of a private mental hospital may transfer a patient to another private mental hospital, or the department may transfer a patient to a private mental hospital, at no expense to the state if:

(1) the patient or the patient's guardian or next friend signs an application requesting the transfer at the patient's or applicant's expense;

(2) the hospital administrator of the private mental hospital to which the person is to be transferred agrees in writing to admit the patient and to accept responsibility for the patient as prescribed by this subtitle; and

(3) written notice of the transfer is sent to the committing court.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 575.015. TRANSFER TO FEDERAL FACILITY. The department or the hospital administrator of a private mental hospital may transfer an involuntary patient to a federal agency if:

(1) the federal agency sends notice that facilities are available and that the patient is eligible for care or treatment in a facility;

(2) notice of the transfer is sent to the committing court; and

(3) the committing court enters an order approving the transfer.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 575.016. TRANSFER FROM FACILITY OF TEXAS DEPARTMENT OF CRIMINAL JUSTICE. (a) The Texas Department of Criminal Justice shall transfer a patient committed to an inpatient mental health facility under Section 574.044 to a noncorrectional mental health facility on the day the inmate is released on parole or mandatory supervision.

(b) A patient transferred to a department mental health facility shall be transferred as prescribed by Section 575.011 or 575.012 to the facility that serves the location to which the patient is released on parole or mandatory supervision.

(c) The mental health facility to which a patient is transferred under this section is solely responsible for the patient's treatment.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.110, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.111, eff. September 1, 2009.

Sec. 575.017. TRANSFER OF RECORDS. The facility administrator of the transferring inpatient mental health facility shall send the patient's appropriate hospital records, or a copy of the records, to the hospital or facility administrator of the mental hospital or state supported living center to which the patient is transferred.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1389, eff. April 2, 2015.

CHAPTER 576. RIGHTS OF PATIENTS

SUBCHAPTER A. GENERAL RIGHTS

Sec. 576.001. RIGHTS UNDER CONSTITUTION AND LAW. (a) A person with mental illness in this state has the rights, benefits, responsibilities, and privileges guaranteed by the constitution and laws of the United States and this state.

(b) Unless a specific law limits a right under a special procedure, a patient has:

(1) the right to register and vote at an election;

(2) the right to acquire, use, and dispose of property, including contractual rights;

(3) the right to sue and be sued;

(4) all rights relating to the grant, use, and revocation of a license, permit, privilege, or benefit under law;

(5) the right to religious freedom; and

(6) all rights relating to domestic relations.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.002. PRESUMPTION OF COMPETENCY. (a) The provision of court-ordered, emergency, or voluntary mental health services to a person is not a determination or adjudication of mental incompetency and does not limit the person's rights as a citizen, or the person's property rights or legal capacity.

(b) There is a rebuttable presumption that a person is mentally competent unless a judicial finding to the contrary is made under the Estates Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 1309, Sec. 2, eff. June 16, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.047, eff. September 1, 2017.

Sec. 576.003. WRIT OF HABEAS CORPUS. A petition for a writ of habeas corpus must be filed in the court of appeals for the county in which the order is entered.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 994 (H.B. 2096), Sec. 1, eff. June 17, 2011.

Sec. 576.004. EFFECT ON GUARDIANSHIP. This subtitle, or an action taken or a determination made under this subtitle, does not affect a guardianship established under law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.005. CONFIDENTIALITY OF RECORDS. Records of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 1007, Sec. 1, eff. June 19, 1993; Acts 1997, 75th Leg., ch. 481, Sec. 1, eff. Sept. 1, 1997.

Sec. 576.0055. DISCLOSURE OF NAME AND BIRTH AND DEATH DATES FOR CERTAIN PURPOSES. (a) In this section, "cemetery organization" and "funeral establishment" have the meanings assigned by Section 711.001.

(b) Notwithstanding any other law, on request by a representative of a cemetery organization or funeral establishment, the administrator of a mental health facility shall release to the representative the name, date of birth, or date of death of a person who was a patient at the facility when the person died, unless the person or the person's guardian provided written instructions to the facility not to release the person's name or dates of birth and death. A representative of a cemetery organization or a funeral establishment may use a name or date released under this subsection only for the purpose of inscribing the name or date on a grave

marker.

Added by Acts 2003, 78th Leg., ch. 174, Sec. 1, eff. May 27, 2003.

Sec. 576.006. RIGHTS SUBJECT TO LIMITATION. (a) A patient in an inpatient mental health facility has the right to:

(1) receive visitors;

(2) communicate with a person outside the facility by telephone and by uncensored and sealed mail; and

(3) communicate by telephone and by uncensored and sealed mail with legal counsel, the department, the courts, and the state attorney general.

(b) The rights provided in Subsection (a) are subject to the general rules of the facility. The physician ultimately responsible for the patient's treatment may also restrict a right only to the extent that the restriction is necessary to the patient's welfare or to protect another person but may not restrict the right to communicate with legal counsel, the department, the courts, or the state attorney general.

(c) If a restriction is imposed under this section, the physician ultimately responsible for the patient's treatment shall document the clinical reasons for the restriction and the duration of the restriction in the patient's clinical record. That physician shall inform the patient and, if appropriate, the patient's parent, managing conservator, or guardian of the clinical reasons for the restriction and the duration of the restriction.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.06, eff. Aug. 30, 1993.

Sec. 576.007. NOTIFICATION OF RELEASE. (a) The department or facility shall make a reasonable effort to notify an adult patient's family before the patient is discharged or released from a facility providing voluntary or involuntary mental health services if the patient grants permission for the notification.

(b) The department shall notify each adult patient of the patient's right to have his family notified under this section.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.008. NOTIFICATION OF PROTECTION AND ADVOCACY SYSTEM. A patient shall be informed in writing, at the time of admission and discharge, of the existence, purpose, telephone number, and address of the protection and advocacy system established in this state under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. Sec. 10801, et seq.).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.51, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 705, Sec. 4.06, eff. Aug. 30, 1993.

Sec. 576.009. NOTIFICATION OF RIGHTS. A patient receiving involuntary inpatient mental health services shall be informed of the rights provided by this subtitle:

(1) orally, in simple, nontechnical terms, and in writing that, if possible, is in the person's primary language; or

(2) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.07, eff. Aug. 30, 1993.

Sec. 576.010. NOTIFICATION OF TRUST EXEMPTION. (a) At the time a patient is admitted to an inpatient mental health facility for voluntary or involuntary inpatient mental health services, the facility shall provide to the patient, and the parent if the patient is a minor or the guardian of the person of the patient, written notice, in the person's primary language, that a trust that qualifies under Section 552.018 is not liable for the patient's support. In addition, the facility shall ensure that, within 24 hours after the patient is admitted to the facility, the notification is explained to the patient:

(1) orally, in simple, nontechnical terms in the patient's primary language, if possible; or

(2) through a means reasonably calculated to communicate with a patient who has an impairment of vision or hearing, if applicable.

(b) Notice required under Subsection (a) must also be attached to any request for payment for the patient's support.

(c) This section applies only to state-operated mental health facilities.

Added by Acts 2009, 81st Leg., R.S., Ch. 481 (S.B. 584), Sec. 1, eff. June 19, 2009.

SUBCHAPTER B. RIGHTS RELATING TO TREATMENT

Sec. 576.021. GENERAL RIGHTS RELATING TO TREATMENT. (a) A patient receiving mental health services under this subtitle has the right to:

(1) appropriate treatment for the patient's mental illness in the least restrictive appropriate setting available;

(2) not receive unnecessary or excessive medication;

(3) refuse to participate in a research program;

(4) an individualized treatment plan and to participate in developing the plan; and

(5) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs.

(b) Participation in a research program does not affect a right provided by this chapter.

(c) A right provided by this section may not be waived by the patient, the patient's attorney or guardian, or any other person acting on behalf of the patient.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1309, Sec. 3, eff. June 16, 2001.

Sec. 576.022. ADEQUACY OF TREATMENT. (a) The facility administrator of an inpatient mental health facility shall provide adequate medical and psychiatric care and treatment to every patient in accordance with the highest standards accepted in medical practice.

(b) The facility administrator of an inpatient mental health

facility may give the patient accepted psychiatric treatment and therapy.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.023. PERIODIC EXAMINATION. The facility administrator is responsible for the examination of each patient of the facility at least once every six months and more frequently as practicable.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.024. USE OF PHYSICAL RESTRAINT. (a) A physical restraint may not be applied to a patient unless a physician prescribes the restraint.

(b) A physical restraint shall be removed as soon as possible.

(c) Each use of a physical restraint and the reason for the use shall be made a part of the patient's clinical record. The physician who prescribed the restraint shall sign the record.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.025. ADMINISTRATION OF PSYCHOACTIVE MEDICATION. (a) A person may not administer a psychoactive medication to a patient receiving voluntary or involuntary mental health services who refuses the administration unless:

(1) the patient is having a medication-related emergency;

(2) the patient is younger than 16 years of age, or the patient is younger than 18 years of age and is a patient admitted for voluntary mental health services under Section 572.002(3)(B), and the patient's parent, managing conservator, or guardian consents to the administration on behalf of the patient;

(3) the refusing patient's representative authorized by law to consent on behalf of the patient has consented to the administration;

(4) the administration of the medication regardless of the patient's refusal is authorized by an order issued under Section 574.106; or

(5) the administration of the medication regardless of the

patient's refusal is authorized by an order issued under Article 46B.086, Code of Criminal Procedure.

(b) Consent to the administration of psychoactive medication given by a patient or by a person authorized by law to consent on behalf of the patient is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;

(2) the treating physician or a person designated by the physician provided the following information, in a standard format approved by the department, to the patient and, if applicable, to the patient's representative authorized by law to consent on behalf of the patient:

(A) the specific condition to be treated;

(B) the beneficial effects on that condition expected from the medication;

(C) the probable health and mental health consequences of not consenting to the medication;

(D) the probable clinically significant side effects and risks associated with the medication;

(E) the generally accepted alternatives to the medication, if any, and why the physician recommends that they be rejected; and

(F) the proposed course of the medication;

(3) the patient and, if appropriate, the patient's representative authorized by law to consent on behalf of the patient is informed in writing that consent may be revoked; and

(4) the consent is evidenced in the patient's clinical record by a signed form prescribed by the facility or by a statement of the treating physician or a person designated by the physician that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(c) If the treating physician designates another person to provide the information under Subsection (b), then, not later than two working days after that person provides the information, excluding weekends and legal holidays, the physician shall meet with the patient and, if appropriate, the patient's representative who provided the consent, to review the information and answer any questions.

(d) A patient's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other

indications or means, shall be documented in the patient's clinical record.

(e) In prescribing psychoactive medication, a treating physician shall:

(1) prescribe, consistent with clinically appropriate medical care, the medication that has the fewest side effects or the least potential for adverse side effects, unless the class of medication has been demonstrated or justified not to be effective clinically; and

(2) administer the smallest therapeutically acceptable dosages of medication for the patient's condition.

(f) If a physician issues an order to administer psychoactive medication to a patient without the patient's consent because the patient is having a medication-related emergency:

(1) the physician shall document in the patient's clinical record in specific medical or behavioral terms the necessity of the order and that the physician has evaluated but rejected other generally accepted, less intrusive forms of treatment, if any; and

(2) treatment of the patient with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the patient's personal liberty.

(g) In this section, "medication-related emergency" and "psychoactive medication" have the meanings assigned by Section 574.101.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.09, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 322, Sec. 3, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 1477, Sec. 31, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 35, Sec. 14, eff. Jan. 1, 2004. Amended by:

Acts 2005, 79th Leg., Ch. 48 (H.B. 224), Sec. 2, eff. May 17, 2005.

Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 7, eff. June 17, 2005.

Sec. 576.026. INDEPENDENT EVALUATION. (a) A patient receiving inpatient mental health services under this subtitle is entitled to obtain at the patient's cost an independent psychiatric,

psychological, or medical examination or evaluation by a psychiatrist, physician, or nonphysician mental health professional chosen by the patient. The facility administrator shall allow the patient to obtain the examination or evaluation at any reasonable time.

(b) If the patient is a minor, the minor and the minor's parent, legal guardian, or managing or possessory conservator is entitled to obtain the examination or evaluation. The cost of the examination or evaluation shall be billed by the professional who performed the examination or evaluation to the person responsible for payment of the minor's treatment as a cost of treatment.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.09, eff. Aug. 30, 1993.

Sec. 576.027. LIST OF MEDICATIONS. (a) The facility administrator of an inpatient mental health facility shall provide to a patient, a person designated by the patient, and the patient's legal guardian or managing conservator, if any, a list of the medications prescribed for administration to the patient while the patient is in the facility. The list must include for each medication:

(1) the name of the medication;

(2) the dosage and schedule prescribed for the administration of the medication; and

(3) the name of the physician who prescribed the medication.

(b) The list must be provided within four hours after the facility administrator receives a written request for the list from the patient, a person designated by the patient, or the patient's legal guardian or managing conservator and on the discharge of the patient. If sufficient time to prepare the list before discharge is not available, the list may be mailed within 24 hours after discharge to the patient, a person designated by the patient, and the patient's legal guardian or managing conservator.

(c) A patient or the patient's legal guardian or managing conservator, if any, may waive the right of any person to receive the list of medications while the patient is participating in a research project if release of the list would jeopardize the results of the

project.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.10, eff. Aug. 30, 1993.

CHAPTER 577. PRIVATE MENTAL HOSPITALS AND OTHER MENTAL HEALTH FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS; LICENSING AND PENALTIES

Sec. 577.001. LICENSE REQUIRED. (a) A person or political subdivision may not operate a mental hospital without a license issued by the department under this chapter.

(b) A community center or other entity designated by the department to provide mental health services may not operate a mental health facility that provides court-ordered mental health services without a license issued by the department under this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.02, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1390, eff. April 2, 2015.

Sec. 577.002. EXEMPTIONS. (a) A mental health facility operated by the department or a federal agency need not be licensed under this chapter.

(b) This chapter does not apply to a psychiatric residential youth treatment facility certified under Chapter 577A.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.04, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1391, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 3, eff. September 1, 2021.

Sec. 577.003. ADDITIONAL LICENSE NOT REQUIRED. A mental hospital licensed under this chapter that the department designates to provide mental health services is not required to obtain an additional license to provide court-ordered mental health services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.04, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1392, eff. April 2, 2015.

Sec. 577.004. LICENSE APPLICATION. (a) An applicant for a license under this chapter must submit a sworn application to the department on a form prescribed by the department.

(b) The department shall prepare the application form and make the form available on request.

(c) The application must be accompanied by a nonrefundable application fee and by a license fee. The department shall return the license fee if the application is denied.

(d) The application must contain:

(1) the name and location of the mental hospital or mental health facility;

(2) the name and address of the physician to be in charge of the hospital care and treatment of the patients;

(3) the names and addresses of the mental hospital owners, including the officers, directors, and principal stockholders if the owner is a corporation or other association, or the names and addresses of the members of the board of trustees of the community center or the directors of the entity designated by the department to provide mental health services;

(4) the bed capacity to be authorized by the license;

(5) the number, duties, and qualifications of the professional staff;

(6) a description of the equipment and facilities of the mental hospital or mental health facility;

(7) the name and address of the person responsible for the daily operations of the mental hospital or mental health facility; and

(8) other information required by the department, including affirmative evidence of ability to comply with the department's rules and standards.

(e) The applicant must submit a plan of the mental hospital or mental health facility premises that describes the buildings and grounds and the manner in which the various parts of the premises are intended to be used.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 276 (H.B. 3560), Sec. 2, eff. September 1, 2025.

Sec. 577.005. INVESTIGATION AND LICENSE ISSUANCE. (a) The department shall conduct an investigation as considered necessary after receiving the proper license application and the required fees.

(b) The department shall issue a license if it finds that the premises are suitable and that the applicant is qualified to operate a mental hospital or a mental health facility that provides court-ordered inpatient mental health services, in accordance with the requirements and standards prescribed by law and the department.

(c) A license is issued to the applicant for the premises described and for the bed capacity specified by the license.

(d) The license is not transferable or assignable.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.006. FEES. (a) The department shall charge each hospital every two years a license fee for an initial license or a license renewal.

(b) The executive commissioner by rule shall adopt the fees authorized by Subsection (a) in accordance with Section 12.0111 and according to a schedule under which the number of beds in the hospital determines the amount of the fee. A minimum license fee may be established.

(c) The executive commissioner by rule shall adopt fees for hospital plan reviews according to a schedule under which the amounts of the fees are based on the estimated construction costs.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec.

3.1639(109), eff. April 2, 2015.

(e) The department shall charge a fee for field surveys of construction plans reviewed under this section. The executive commissioner by rule shall adopt a fee schedule for the surveys that provides a minimum fee and a maximum fee for each survey conducted.

(f) The department annually shall review the fee schedules to ensure that the fees charged are based on the estimated costs to and level of effort expended by the department.

(g) The executive commissioner may establish staggered license renewal dates and dates on which fees are due.

(h) A fee adopted under this chapter must be based on the estimated cost to and level of effort expended by the department to conduct the activity for which the fee is imposed.

(i) All license fees collected shall be deposited to the credit of the general revenue fund.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 8.01, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1393, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(109), eff. April 2, 2015.

Sec. 577.007. CHANGE IN BED CAPACITY. A mental hospital or mental health facility may increase the bed capacity authorized by the license at any time with the department's approval and may decrease the capacity at any time by notifying the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.008. REQUIREMENT OF PHYSICIAN IN CHARGE. Each licensed private mental hospital shall be in the charge of a physician who has at least three years experience as a physician in psychiatry in a mental hospital or who is certified by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Psychiatry and Neurology.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.009. LIMITATION ON CERTAIN CONTRACTS. A community center or other entity the department designates to provide mental health services may not contract with a mental health facility to provide court-ordered mental health services unless the facility is licensed by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.04, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1394, eff. April 2, 2015.

Sec. 577.010. RULES AND STANDARDS. (a) The executive commissioner shall adopt rules and standards the executive commissioner considers necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility required to obtain a license under this chapter.

(b) The rules must encourage mental health facilities licensed under this chapter to provide inpatient mental health services in ways that are appropriate for the diversity of the state.

(c) The standards for community-based crisis stabilization and crisis residential services must be less restrictive than the standards for mental hospitals.

(d) The department shall send a copy of the rules to each mental hospital or mental health facility licensed under this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.05, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1395, eff. April 2, 2015.

Sec. 577.0101. NOTIFICATION OF TRANSFER OR REFERRAL. (a) The

executive commissioner shall adopt rules governing the transfer or referral of a patient from a private mental hospital to an inpatient mental health facility.

(b) The rules must provide that before a private mental hospital may transfer or refer a patient, the hospital must:

(1) provide to the receiving inpatient mental health facility notice of the hospital's intent to transfer a patient;

(2) provide to the receiving inpatient mental health facility information relating to the patient's diagnosis and condition; and

(3) obtain verification from the receiving inpatient mental health facility that the facility has the space, personnel, and services necessary to provide appropriate care to the patient.

(c) The rules must also require that the private mental hospital send the patient's appropriate records, or a copy of the records, if any, to the receiving inpatient mental health facility.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 4.07, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1396, eff. April 2, 2015.

Sec. 577.011. RECORDS AND REPORTS. The department may require a license holder to make annual, periodical, or special reports to the department and to keep the records the department considers necessary to ensure compliance with this subtitle and the department's rules and standards.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.012. DESTRUCTION OF RECORDS. (a) A private mental hospital licensed under this chapter may authorize the disposal of any medical record on or after the 10th anniversary of the date on which the patient who is the subject of the record was last treated in the hospital.

(b) If a patient was younger than 18 years of age when last treated, the hospital may authorize the disposal of records relating to the patient on or after the later of the patient's 20th birthday

or the 10th anniversary of the date on which the patient was last treated.

(c) The hospital may not destroy medical records that relate to any matter that is involved in litigation if the hospital knows that the litigation has not been finally resolved.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.013. INVESTIGATIONS. (a) The department may make investigations it considers necessary and proper to obtain compliance with this subtitle and the department's rules and standards.

(b) An agent of the department may at any reasonable time enter the premises of a private mental hospital or mental health facility licensed under this chapter to:

(1) inspect the facilities and conditions;

(2) observe the hospital's or facility's care and treatment program; and

(3) question the employees of the hospital or facility.

(c) An agent of the department may examine or transcribe any records or documents relevant to the investigation.

(d) Except as provided by Subsection (e), all information and materials in the possession of or obtained or compiled by the commission in connection with a complaint and investigation concerning a mental hospital licensed under this chapter are confidential and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the commission or its employees or agents involved in the enforcement action except that this information may be disclosed to:

(1) persons involved with the commission in the enforcement action against the licensed mental hospital;

(2) the licensed mental hospital that is the subject of the enforcement action, or the licensed mental hospital's authorized representative;

(3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate licensed mental hospital services;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information and information identifying the

licensed mental hospital has been deleted.

(e) The following information is subject to disclosure in accordance with Chapter 552, Government Code, only to the extent that all personally identifiable information of a patient or health care provider is omitted from the information:

(1) a notice of the licensed mental hospital's alleged violation, which must include the provisions of law the licensed mental hospital is alleged to have violated, and the nature of the alleged violation;

(2) the number of investigations the commission has conducted of the licensed mental hospital;

(3) the pleadings in any administrative proceeding to impose a penalty against the licensed mental hospital for the alleged violation;

(4) the outcome of each investigation the commission conducted of the licensed mental hospital, including:

(A) the issuance of a reprimand;

(B) the denial or revocation of a license;

(C) the adoption of a corrective action plan; or

(D) the imposition of an administrative penalty and the penalty amount; and

(5) a final decision, investigative report, or order issued by the commission to address the alleged violation.

(f) Not later than the 90th day after the date the commission issues a final decision, investigative report, or order to address a licensed mental hospital's alleged violation, the commission shall post on the commission's Internet website:

(1) the notice of alleged violation described by Subsection (e)(1);

(2) the name of the licensed mental hospital;

(3) the geographic location of the licensed mental hospital;

(4) the date the commission issued the final decision, investigative report, or order; and

(5) the outcome of the commission's investigation of the licensed mental hospital that includes the information described by Subsection (e)(4).

(g) The commission may not remove information posted on the commission's Internet website under Subsection (f) before the second anniversary of the date the information is posted on the Internet

website.

(h) Nothing in this section precludes a licensed mental hospital from releasing medical records in the licensed mental hospital's possession:

(1) on request of the patient who is the subject of the record; or

(2) to the patient, the parent or guardian of a patient who is a minor or incapacitated, or the personal representative of a patient who is deceased.

(i) In this section, "commission" means the Health and Human Services Commission.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 1444, Sec. 16, eff. Aug. 30, 1999.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 42 (H.B. 49), Sec. 2, eff. September 1, 2023.

Sec. 577.014. OATHS. The department or its agent may administer oaths, receive evidence, and examine witnesses in conducting an investigation or other proceeding under this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.015. SUBPOENAS. (a) The department or its agent, in conducting an investigation or other proceeding under this chapter, may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents or records anywhere in this state that are related to the matter under inquiry.

(b) If a person refuses to obey a subpoena, the department may apply to the district court of Travis County for an order requiring obedience to the subpoena.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.016. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license

if the department finds that the applicant or licensee has substantially failed to comply with:

(1) department rules;

(2) this subtitle; or

(3) Chapters 104 and 225.

(b) The department must give the applicant or license holder notice of the proposed action, an opportunity to demonstrate or achieve compliance, and an opportunity for a hearing before taking the action.

(c) The department may suspend a license for 10 days pending a hearing if after an investigation the department finds that there is an immediate threat to the health or safety of the patients or employees of a private mental hospital or mental health facility licensed under this chapter. The department may issue necessary orders for the patients' welfare.

(d) The department shall send the license holder or applicant a copy of the department's decision by registered mail. If the department denies, suspends, or revokes a license, the department shall include the findings and conclusions on which the department based its decision.

(e) A license holder whose license is suspended or revoked may not admit new patients until the license is reissued.

(f) If the department finds that a private mental hospital or mental health facility is in repeated noncompliance under Subsection (a) but that the noncompliance does not endanger public health and safety, the department may schedule the hospital or facility for probation rather than suspending or revoking the license of the hospital or facility. The department shall provide notice to the hospital or facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the hospital or facility will remain under probation. During the probation period, the hospital or facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(g) The department may suspend or revoke the license of a private mental hospital or mental health facility that does not comply with the applicable requirements within the applicable probation period.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 3.12, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 802, Sec. 14, 15, eff. June 20, 2003.

Sec. 577.017. HEARINGS. (a) The department's legal staff may participate in a hearing under this chapter.

(b) The hearing proceedings shall be recorded in a form that can be transcribed if notice of appeal is filed.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.018. JUDICIAL REVIEW OF DEPARTMENT DECISION. (a) An applicant or license holder may appeal from a department decision by filing notice of appeal in the district court of Travis County and with the department not later than the 30th day after receiving a copy of the department's decision.

(b) The department shall certify and file with the court a transcript of the case proceedings on receiving notice of appeal. The transcript may be limited by stipulation.

(c) The court shall hear the case on the record and may consider other evidence the court determines necessary to determine properly the issues involved. The substantial evidence rule does not apply.

(d) The court may affirm or set aside the department decision or may remand the case to the department for further proceedings.

(e) The department shall pay the cost of the appeal unless the court affirms the department's decision, in which case the applicant or license holder shall pay the cost of the appeal.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.019. INJUNCTION. (a) The department, in the name of the state, may maintain an action in a district court of Travis County or in the county in which the violation occurs for an injunction or other process against any person to restrain the person from operating a mental hospital or mental health facility that is not licensed as required by this chapter.

(b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

(c) At the request of the department or on the initiative of the attorney general or district or county attorney, the attorney general or the appropriate district or county attorney shall institute and conduct a suit authorized by this section in the name of the state. The attorney general may recover reasonable expenses incurred in instituting and conducting a suit authorized by this section, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 3.13, eff. Sept. 1, 1993.

CHAPTER 577A. PSYCHIATRIC RESIDENTIAL YOUTH TREATMENT FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 577A.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Executive commissioner" means the executive commissioner of the commission.

(3) "Psychiatric residential youth treatment facility" means a private facility that provides psychiatric health treatments and services in a residential, nonhospital setting exclusively to individuals who are 21 years of age or younger and is licensed as a general residential operation under Chapter 42, Human Resources Code. The term includes a facility that provides room and board.

(4) "Severe emotional disturbance" means a mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits an individual's role or ability to function in family, school, or community activities.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

Sec. 577A.002. EXEMPTIONS. This chapter does not apply to:

(1) a mental hospital; or

(2) a private mental hospital or other mental health facility licensed under Chapter 577.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

Sec. 577A.003. LICENSING AND OTHER REQUIREMENTS NOT AFFECTED. This chapter does not affect any licensing or other requirements of or create a separate license for a psychiatric residential youth treatment facility under Chapter 42, Human Resources Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

Sec. 577A.004. RULES. The executive commissioner shall adopt rules necessary to implement this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

SUBCHAPTER B. CERTIFICATION, FEES, AND INSPECTIONS

Sec. 577A.051. VOLUNTARY QUALITY STANDARDS CERTIFICATION. The commission shall, using existing resources to the extent feasible, develop and implement a voluntary quality standards certification process to certify a psychiatric residential youth treatment facility that meets standards for certification under this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

Sec. 577A.052. CERTIFICATE APPLICATION. (a) To obtain a certificate under this chapter, an applicant must submit to the commission an application in the form and manner prescribed by the commission.

(b) Each application must be accompanied by a fee established by the executive commissioner under Section 577A.053.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

Sec. 577A.053. FEES. The executive commissioner by rule shall establish a nonrefundable certificate application fee and a nonrefundable certificate renewal fee in amounts necessary to cover the costs of administering this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

Sec. 577A.054. ISSUANCE AND RENEWAL OF CERTIFICATE. (a) The commission shall issue a certificate to an applicant if on inspection and investigation the commission determines the applicant meets the requirements of this chapter and commission rules. The commission may not issue to an applicant a certificate under this chapter unless the applicant is licensed as a general residential operation under Chapter 42, Human Resources Code.

(b) A certificate issued under this chapter expires on the second anniversary of the date the certificate is issued or renewed.

(c) The commission shall renew a certificate if:

(1) the certificate holder submits to the commission a fee established by the executive commissioner under Section 577A.053; and

(2) on inspection and investigation the commission determines the certificate holder meets the requirements of this chapter and commission rules.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

Sec. 577A.055. INSPECTIONS. In addition to the inspections required under Section 577A.054, the commission shall conduct an inspection not later than the first anniversary of the date a certificate is issued or renewed to ensure the certificate holder remains in compliance with the requirements of this chapter and commission rules.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2,

eff. September 1, 2021.

SUBCHAPTER C. REGULATION OF CERTIFIED PSYCHIATRIC RESIDENTIAL YOUTH TREATMENT FACILITIES

Sec. 577A.101. MINIMUM STANDARDS. The executive commissioner by rule shall establish minimum standards for the certification of psychiatric residential youth treatment facilities under this chapter. The minimum standards must require a facility to:

(1) obtain accreditation by The Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation, or another accrediting organization approved by the commission; and

(2) provide and prescribe guidelines for the provision of the following activities, treatments, and services:

(A) development and implementation of individual plans of care, including the provision of services provided by a licensed psychiatrist or physician to develop individual plans of care;

(B) individual therapy;

(C) family engagement activities;

(D) consultation services with qualified professionals, including case managers, primary care professionals, community-based mental health providers, school staff, and other support planners;

(E) 24-hour nursing services; and

(F) direct care and supervision services, supportive services for daily living and safety, and positive behavior management services.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

Sec. 577A.102. ADMISSION CRITERIA. A facility certified under this chapter may not admit or provide treatments or services to an individual unless the individual:

(1) is 21 years of age or younger;

(2) has been diagnosed with a severe emotional disturbance by a licensed mental health professional;

(3) requires residential psychiatric treatment under the direction of a licensed physician to improve the individual's

condition; and

(4) was referred for treatments or services in a psychiatric residential youth treatment facility by a licensed mental health professional.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

SUBCHAPTER D. ENFORCEMENT

Sec. 577A.151. PENALTIES. A facility certified under this chapter is subject to a civil penalty under Section 571.023 or an administrative penalty under Section 571.025, as applicable, for a violation of this chapter or a rule adopted under this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

CHAPTER 578. ELECTROCONVULSIVE AND OTHER THERAPIES

Sec. 578.001. APPLICATION. This chapter applies to the use of electroconvulsive therapy by any person, including a private physician who uses the therapy on an outpatient basis.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Sept. 1, 1993.

Sec. 578.002. USE OF ELECTROCONVULSIVE THERAPY. (a) Electroconvulsive therapy may not be used on a person who is younger than 16 years of age.

(b) Unless the person consents to the use of the therapy in accordance with Section 578.003, electroconvulsive therapy may not be used on:

(1) a person who is 16 years of age or older and who is voluntarily receiving mental health services; or

(2) an involuntary patient who is 16 years of age or older and who has not been adjudicated by an appropriate court of law as incompetent to manage the patient's personal affairs.

(c) Electroconvulsive therapy may not be used on an involuntary patient who is 16 years of age or older and who has been adjudicated

incompetent to manage the patient's personal affairs unless the patient's guardian of the person consents to the treatment in accordance with Section 578.003. The decision of the guardian must be based on knowledge of what the patient would desire, if known.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01.

Sec. 578.003. CONSENT TO THERAPY. (a) The executive commissioner by rule shall adopt a standard written consent form to be used when electroconvulsive therapy is considered. The executive commissioner by rule shall also prescribe the information that must be contained in the written supplement required under Subsection (c). In addition to the information required under this section, the form must include the information required by the Texas Medical Disclosure Panel for electroconvulsive therapy. In developing the form, the executive commissioner shall consider recommendations of the panel. Use of the consent form prescribed by the executive commissioner in the manner prescribed by this section creates a rebuttable presumption that the disclosure requirements of Sections 74.104 and 74.105, Civil Practice and Remedies Code, have been met.

(b) The written consent form must clearly and explicitly state:

(1) the nature and purpose of the procedure;

(2) the nature, degree, duration, and probability of the side effects and significant risks of the treatment commonly known by the medical profession, especially noting the possible degree and duration of memory loss, the possibility of permanent irrevocable memory loss, and the possibility of death;

(3) that there is a division of opinion as to the efficacy of the procedure; and

(4) the probable degree and duration of improvement or remission expected with or without the procedure.

(c) Before a patient receives each electroconvulsive treatment, the hospital, facility, or physician administering the therapy shall ensure that:

(1) the patient and the patient's guardian of the person, if any, receives a written copy of the consent form that is in the person's primary language, if possible;

(2) the patient and the patient's guardian of the person, if any, receives a written supplement that contains related

information that pertains to the particular patient being treated;

(3) the contents of the consent form and the written supplement are explained to the patient and the patient's guardian of the person, if any:

(A) orally, in simple, nontechnical terms in the person's primary language, if possible; or

(B) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable;

(4) the patient or the patient's guardian of the person, as appropriate, signs a copy of the consent form stating that the person has read the consent form and the written supplement and understands the information included in the documents; and

(5) the signed copy of the consent form is made a part of the patient's clinical record.

(d) Consent given under this section is not valid unless the person giving the consent understands the information presented and consents voluntarily and without coercion or undue influence.

(e) For a patient 65 years of age or older, before each treatment series begins, the hospital, facility, or physician administering the procedure shall:

(1) ensure that two physicians have signed an appropriate form that states the procedure is medically necessary;

(2) make the form described by Subdivision (1) available to the patient or the patient's guardian of the person; and

(3) inform the patient or the patient's guardian of the person of any known current medical condition that may increase the possibility of injury or death as a result of the treatment.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1323, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 137 (H.B. 740), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1397, eff. April 2, 2015.

Sec. 578.004. WITHDRAWAL OF CONSENT. (a) A patient or

guardian who consents to the administration of electroconvulsive therapy may revoke the consent for any reason and at any time.

(b) Revocation of consent is effective immediately.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Sept. 1, 1993.

Sec. 578.005. PHYSICIAN REQUIREMENT. (a) Only a physician may administer electroconvulsive therapy.

(b) A physician may not delegate the act of administering the therapy. A nonphysician who administers electroconvulsive therapy is considered to be practicing medicine in violation of Subtitle B, Title 3, Occupations Code.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.805, eff. Sept. 1, 2001.

Sec. 578.006. REGISTRATION OF EQUIPMENT. (a) A person may not administer electroconvulsive therapy unless the equipment used to administer the therapy is registered with the department.

(b) A mental hospital or facility administering electroconvulsive therapy or a private physician administering the therapy on an outpatient basis must file an application for registration under this section. The applicant must submit the application to the department on a form prescribed by department rule.

(c) The application must be accompanied by a nonrefundable application fee. The executive commissioner by rule shall set the fee in a reasonable amount not to exceed the cost to the department to administer this section.

(d) The application must contain:

(1) the model, manufacturer, and age of each piece of equipment used to administer the therapy; and

(2) any other information required by department rule.

(e) The department may conduct an investigation as considered necessary after receiving the proper application and the required fee.

(f) The executive commissioner by rule may prohibit the

registration and use of equipment of a type, model, or age the executive commissioner determines is dangerous.

(g) The department may deny, suspend, or revoke a registration if the department determines that the equipment is dangerous. The denial, suspension, or revocation of a registration is a contested case under Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1398, eff. April 2, 2015.

Sec. 578.007. REPORTS. (a) A mental hospital or facility administering electroconvulsive therapy, psychosurgery, pre-frontal sonic sound treatment, or any other convulsive or coma-producing therapy administered to treat mental illness or a physician administering the therapy on an outpatient basis shall submit to the department quarterly reports relating to the administration of the therapy in the hospital or facility or by the physician.

(b) A report must state for each quarter:

(1) the number of patients who received the therapy, including:

(A) the number of persons voluntarily receiving mental health services who consented to the therapy;

(B) the number of involuntary patients who consented to the therapy; and

(C) the number of involuntary patients for whom a guardian of the person consented to the therapy;

(2) the age, sex, and race of the persons receiving the therapy;

(3) the source of the treatment payment;

(4) the average number of nonelectroconvulsive treatments;

(5) the average number of electroconvulsive treatments administered for each complete series of treatments, but not including maintenance treatments;

(6) the average number of maintenance electroconvulsive treatments administered per month;

(7) the number of fractures, reported memory losses, incidents of apnea, and cardiac arrests without death;

(8) autopsy findings if death followed within 14 days after the date of the administration of the therapy; and

(9) any other information required by department rule.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1399, eff. April 2, 2015.

Sec. 578.008. USE OF INFORMATION. The department shall use the information received under Sections 578.006 and 578.007 to analyze, audit, and monitor the use of electroconvulsive therapy, psychosurgery, pre-frontal sonic sound treatment, or any other convulsive or coma-producing therapy administered to treat mental illness.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Sept. 1, 1993.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 17, eff. September 1, 2021.

CHAPTER 579. MENTAL HEALTH SERVICES DISTRICTS CREATED BY CERTAIN HOSPITAL DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 579.001. PURPOSE. The purpose of this chapter is to authorize certain hospital districts to create a special district to provide mental health services to the residents of the district.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of a district.

(2) "Director" means a member of the board.

(3) "District" means a mental health services district created by a hospital district under this chapter.

(4) "Hospital district" means a hospital district created under the authority of Sections 4-11, Article IX, Texas Constitution.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.003. APPLICABILITY. This chapter applies only to the:

(1) Midland County Hospital District of Midland County, Texas; and

(2) Ector County Hospital District.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

SUBCHAPTER B. CREATION AND DISSOLUTION OF DISTRICT

Sec. 579.051. CREATION BY CONCURRENT ORDERS. (a) The hospital districts to which this chapter applies may create a district by adopting concurrent orders.

(b) A concurrent order to create a district must:

(1) be approved by the governing body of each creating hospital district;

(2) contain identical provisions; and

(3) define the boundaries of the district to be coextensive with the combined boundaries of each creating hospital district.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.052. CONTRACT TERMS. (a) Each creating hospital district shall contract with the district for the district to provide mental health services to the hospital district's residents. The contract must:

(1) state the term of the contract;

(2) specify the purpose, terms, rights, and duties of the district, as authorized by this chapter;

(3) specify the financial contributions to be made by each

party to the contract to fund the district; and

(4) specify the land, buildings, improvements, equipment, and other assets owned by a party to the contract that the district will be required to manage and operate, if any.

(b) Chapter 791, Government Code, does not apply to a contract made under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.053. DISSOLUTION. A district shall be dissolved if the creating hospital districts adopt concurrent orders to dissolve the district and the concurrent orders contain identical provisions.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.054. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) After dissolution of a district under Section 579.053, the board shall continue to control and administer any property, debts, and assets of the district until all funds have been disposed of and all district debts have been paid or settled.

(b) If, after administering any property and assets, the board determines that the district's property and assets are insufficient to pay the debts of the district, the district shall transfer the remaining debts to the creating hospital districts in proportion to the funds contributed to the district by each hospital district.

(c) If, after complying with Subsection (b) and administering the property and assets, the board determines that unused funds remain, the board shall transfer the unused funds to the creating hospital districts in proportion to the funds contributed to the district by each hospital district.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.055. ACCOUNTING AFTER DISSOLUTION. After the district has paid all its debts and has disposed of all its assets and funds

as prescribed by Section 579.054, the board shall provide an accounting to each creating hospital district. The accounting must show the manner in which the assets and debts of the district were distributed.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

SUBCHAPTER C. BOARD OF DIRECTORS

Sec. 579.101. BOARD OF DIRECTORS; TERMS; VACANCY. (a) The board consists of six appointed directors. Each creating hospital district shall appoint three directors to the board.

(b) Directors serve staggered two-year terms, with one-half of the directors' terms expiring each year.

(c) A vacancy in the office of director shall be filled for the unexpired term in the same manner as the original appointment.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.102. OFFICERS. (a) The board shall elect from among its members a president.

(b) The board shall appoint a secretary, who need not be a director.

(c) Each officer of the board serves for a term of one year.

(d) The board shall fill a vacancy in a board office for the unexpired term.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.103. QUALIFICATIONS FOR OFFICE. (a) To be eligible to serve as a director, a person must be a resident or an officer of the hospital district that appoints the person under Section 579.101.

(b) An employee of the district may not serve as a director.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.104. COMPENSATION. (a) Directors and officers serve without compensation but may be reimbursed for actual expenses incurred in the performance of official duties.

(b) Expenses reimbursed under this section must be:

(1) reported in the district's minute book or other district records; and

(2) approved by the board.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 579.151. TRANSFER OF CERTAIN RESPONSIBILITIES OF CREATING HOSPITAL DISTRICT. On creation of a district, each creating hospital district may transfer to the district:

(1) management and operation of any real property, improvements, and equipment located wholly in the district that are owned by the creating hospital district and are used to provide mental health services, as specified in the contract under Section 579.052; and

(2) operating funds and reserves for operating expenses and funds that have been budgeted by the creating hospital district to provide mental health services for residents of the district, as specified in the contract under Section 579.052.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.152. POWERS AND DUTIES. A district may, if necessary to provide mental health services to the residents of the creating hospital districts:

(1) acquire and hold title to, construct, operate, manage, and maintain real property, including improvements to real property;

(2) acquire, operate, manage, and maintain equipment and other personal property;

(3) enter into and perform contracts;

(4) appoint and employ officers, agents, and employees;

(5) sue and be sued;

(6) seek and accept gifts, grants, and donations; and

(7) perform other acts necessary to accomplish the purpose of the district.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.153. RULES. The board may adopt rules governing the operation of the district and the duties, functions, and responsibilities of the district's staff and employees.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.154. DISTRICT ADMINISTRATOR; ASSISTANT ADMINISTRATOR. (a) The board shall appoint a qualified person as district administrator.

(b) The board may appoint assistant administrators.

(c) The district administrator and any assistant administrator serve at the will of the board and are entitled to the compensation determined by the board.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

SUBCHAPTER E. GENERAL FINANCIAL PROVISIONS

Sec. 579.201. DISTRICT FUNDING; LIMITATION. (a) Each creating hospital district shall provide funding for the district's operation as specified in the contract under Section 579.052.

(b) The district may not impose a tax or issue bonds or other obligations.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.202. BUDGET. (a) The district administrator shall

prepare an annual budget for approval by the board.

(b) The proposed budget must contain a complete financial statement of:

(1) the outstanding obligations of the district;

(2) the cash on hand in each district fund;

(3) the money received by the district from all sources during the previous year;

(4) the money available to the district from all sources during the ensuing year;

(5) the balances expected at the end of the year in which the budget is being prepared;

(6) the estimated revenue and balances available to cover the proposed budget; and

(7) the proposed expenditures and disbursements and the estimated receipts and collections for the following fiscal year.

(c) The board shall provide in each annual budget for the payment of all operation and maintenance expenses of the district.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.203. NOTICE; HEARING; ADOPTION OF BUDGET. (a) The board shall hold a public hearing on the proposed annual budget.

(b) At least 10 days before the date of the hearing, the board shall publish notice of the hearing in a newspaper of general circulation in the district.

(c) Any resident of the district is entitled to be present and participate at the hearing.

(d) At the conclusion of the hearing, the board shall adopt a budget by acting on the budget proposed by the district administrator. The board may make any changes in the proposed budget that the board judges to be in the interest of the district's residents and that the law warrants.

(e) The budget is effective only after adoption by the board.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.204. AMENDMENTS TO BUDGET. The budget may be amended

as required by circumstances. The board must approve all amendments.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.205. RESTRICTION ON EXPENDITURES. Money may be spent only for an expense included in the budget or an amendment to the budget.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.206. FISCAL YEAR. The district operates according to a fiscal year that begins on October 1 and ends on September 30. The board may change the fiscal year.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.207. AUDIT. The board shall have an independent audit made of the district's financial condition for each fiscal year.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.208. INSPECTION OF AUDIT AND DISTRICT RECORDS. The audit and other district records shall be open to inspection at the principal office of each creating hospital district.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.209. FINANCIAL REPORT. As soon as practicable after the close of each fiscal year, the district administrator shall prepare for the board:

(1) a complete sworn statement of all district money; and

(2) a complete account of the disbursements of that money.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

CHAPTER 580. INPATIENT COMPETENCY RESTORATION SERVICES

Sec. 580.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Competency restoration" has the meaning assigned by Article 46B.001, Code of Criminal Procedure.

(3) "Residential care facility" has the meaning assigned by Section 591.003.

Added by Acts 2025, 89th Leg., R.S., Ch. 900 (S.B. 528), Sec. 1, eff. September 1, 2025.

Sec. 580.002. APPLICABILITY. This chapter applies to a facility that contracts or subcontracts with the commission to provide inpatient competency restoration services for an individual to stand trial in accordance with Chapter 46B, Code of Criminal Procedure, or that subcontracts to provide those services.

Added by Acts 2025, 89th Leg., R.S., Ch. 900 (S.B. 528), Sec. 1, eff. September 1, 2025.

Sec. 580.003. MEMORANDUM OF UNDERSTANDING. The executive commissioner by rule shall require each facility to which this chapter applies to enter into a memorandum of understanding with the county and municipality in which the facility is located and each local mental health authority and local behavioral health authority that operates in the county or municipality, as applicable, to outline the respective powers and duties of the parties with respect to inpatient competency restoration services.

Added by Acts 2025, 89th Leg., R.S., Ch. 900 (S.B. 528), Sec. 1, eff. September 1, 2025.

Sec. 580.004. ANNUAL REPORT TO COMMISSION. (a) The commission shall require each facility to which this chapter applies to annually provide to the commission, in the form and manner the commission requires, the following information for the preceding year regarding individuals who received inpatient competency restoration services at the facility:

(1) the total number of individuals who received inpatient competency restoration services at the facility and the number of those individuals who were restored to competency;

(2) for those individuals who were restored to competency, the average number of days the individuals received services at the facility;

(3) the number of individuals who were restored to competency after receiving services at the facility for not more than 60 days;

(4) the number of individuals who were not restored to competency within the initial restoration period and for whom a treatment extension was sought;

(5) the number of individuals who were not restored to competency and who were transferred to an inpatient mental health facility or residential care facility; and

(6) for individuals who were not restored to competency, the average length of time between the date a determination was made that an individual was not restored to competency and the date the individual was transferred to an inpatient mental health facility or residential care facility.

(b) The data in the report must be disaggregated by whether the individual was charged with a misdemeanor or felony offense and by any other appropriate demographic factors determined by the commission.

Added by Acts 2025, 89th Leg., R.S., Ch. 900 (S.B. 528), Sec. 1, eff. September 1, 2025.

Sec. 580.005. ANNUAL REPORT TO LEGISLATURE. Not later than August 1 of each year, the commission shall prepare and submit to the legislature a written report on inpatient competency restoration services in this state for the state fiscal year preceding the year in which the report is due. The report must include:

(1) a performance evaluation of each facility to which this chapter applies;

(2) aggregated demographic data on individuals who received inpatient competency restoration services at a facility to which this chapter applies, including the criminal offenses the individuals were charged with, the individuals' countries of origin, and the individuals' diagnoses, if applicable; and

(3) the overall cost of providing inpatient competency restoration services at a facility to which this chapter applies compared to the cost of:

(A) providing forensic inpatient competency restoration services at a state hospital; and

(B) other competency restoration programs managed by the commission.

Added by Acts 2025, 89th Leg., R.S., Ch. 900 (S.B. 528), Sec. 1, eff. September 1, 2025.

SUBTITLE D. PERSONS WITH AN INTELLECTUAL DISABILITY ACT

CHAPTER 591. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 591.001. SHORT TITLE. This subtitle may be cited as the Persons with an Intellectual Disability Act.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1401, eff. April 2, 2015.

Sec. 591.002. PURPOSE. (a) It is the public policy of this state that persons with an intellectual disability have the opportunity to develop to the fullest extent possible their potential for becoming productive members of society.

(b) It is the purpose of this subtitle to provide and assure a continuum of quality services to meet the needs of all persons with an intellectual disability in this state.

(c) The state's responsibility to persons with an intellectual disability does not replace or impede parental rights and responsibilities or terminate the activities of persons, groups, or

associations that advocate for and assist persons with an intellectual disability.

(d) It is desirable to preserve and promote living at home if feasible. If living at home is not possible and placement in a residential care facility is necessary, a person must be admitted in accordance with basic due process requirements, giving appropriate consideration to parental desires if possible. The person must be admitted to a facility that provides habilitative training for the person's condition, that fosters the personal development of the person, and that enhances the person's ability to cope with the environment.

(e) Because persons with an intellectual disability have been denied rights solely because they are persons with an intellectual disability, the general public should be educated to the fact that persons with an intellectual disability who have not been adjudicated incompetent and for whom a guardian has not been appointed by a due process proceeding in a court have the same rights and responsibilities enjoyed by all citizens of this state. All citizens are urged to assist persons with an intellectual disability in acquiring and maintaining rights and in participating in community life as fully as possible.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1402, eff. April 2, 2015.

Sec. 591.003. DEFINITIONS. In this subtitle:

(1) "Adaptive behavior" means the effectiveness with or degree to which a person meets the standards of personal independence and social responsibility expected of the person's age and cultural group.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(110), eff. April 2, 2015.

(3) "Care" means the life support and maintenance services or other aid provided to a person with an intellectual disability, including dental, medical, and nursing care and similar services.

(4) "Client" means a person receiving intellectual disability services from the department or a community center. The

term includes a resident.

(4-a) "Commission" means the Health and Human Services Commission.

(5) "Commissioner" means the commissioner of aging and disability services.

(6) "Community center" means an entity organized under Subchapter A, Chapter 534, that provides intellectual disability services.

(7) "Department" means the Department of Aging and Disability Services.

(7-a) "Intellectual disability" means significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

(8) "Interdisciplinary team" means a group of intellectual disability professionals and paraprofessionals who assess the treatment, training, and habilitation needs of a person with an intellectual disability and make recommendations for services for that person.

(9) "Director" means the director or superintendent of a residential care facility.

(9-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(10) "Group home" means a residential arrangement, other than a residential care facility, operated by the department or a community center in which not more than 15 persons with an intellectual disability voluntarily live and under appropriate supervision may share responsibilities for operation of the living unit.

(11) "Guardian" means the person who, under court order, is the guardian of the person of another or of the estate of another.

(12) "Habilitation" means the process, including programs of formal structured education and training, by which a person is assisted in acquiring and maintaining life skills that enable the person to cope more effectively with the person's personal and environmental demands and to raise the person's physical, mental, and social efficiency.

(13) Repealed by Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 14.01(2), eff. September 1, 2023.

(14) "Intellectual disability services" means programs and

assistance for persons with an intellectual disability that may include a determination of an intellectual disability, interdisciplinary team recommendations, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling, but does not include those services or programs that have been explicitly delegated by law to other state agencies.

(15) "Minor" means a person younger than 18 years of age who:

(A) is not and has not been married; or

(B) has not had the person's disabilities of minority removed for general purposes.

(15-a) "Person with an intellectual disability" means a person determined by a physician or psychologist licensed in this state or certified by the department to have subaverage general intellectual functioning with deficits in adaptive behavior.

(16) Repealed by Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 14.01(2), eff. September 1, 2023.

(17) "Resident" means a person living in and receiving services from a residential care facility.

(18) "Residential care facility" means a state supported living center or the ICF-IID component of the Rio Grande Center.

(19) "Service provider" means a person who provides intellectual disability services.

(20) "Subaverage general intellectual functioning" refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the tests used.

(21) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(110), eff. April 2, 2015.

(22) "Training" means the process by which a person with an intellectual disability is habilitated and may include the teaching of life and work skills.

(23) "Treatment" means the process by which a service provider attempts to ameliorate the condition of a person with an intellectual disability.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 272 (H.B. 1481), Sec. 5, eff.

September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1403, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(110), eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 14.01(2), eff. September 1, 2023.

Sec. 591.004. RULES. The executive commissioner by rule shall ensure the implementation of this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1404, eff. April 2, 2015.

Sec. 591.005. LEAST RESTRICTIVE ALTERNATIVE. The least restrictive alternative is:

(1) the available program or facility that is the least confining for a client's condition; and

(2) the service and treatment that is provided in the least intrusive manner reasonably and humanely appropriate to the person's needs.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 591.006. CONSENT. (a) Consent given by a person is legally adequate if the person:

(1) is not a minor and has not been adjudicated incompetent to manage the person's personal affairs by an appropriate court of law;

(2) understands the information; and

(3) consents voluntarily, free from coercion or undue influence.

(b) The person giving the consent must be informed of and understand:

(1) the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure;

(2) that the withdrawal or refusal of consent will not prejudice the future provision of care and services; and

(3) the method used in the proposed procedure if the person is to receive unusual or hazardous treatment procedures, experimental research, organ transplantation, or nontherapeutic surgery.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

SUBCHAPTER B. DUTIES OF DEPARTMENT

Sec. 591.011. DEPARTMENT RESPONSIBILITIES. (a) Subject to the executive commissioner's authority to adopt rules and policies, the department shall make all reasonable efforts consistent with available resources to:

(1) assure that each identified person with an intellectual disability who needs intellectual disability services is given while these services are needed quality care, treatment, education, training, and rehabilitation appropriate to the person's individual needs other than those services or programs explicitly delegated by law to other governmental agencies;

(2) initiate, carry out, and evaluate procedures to guarantee to persons with an intellectual disability the rights listed in this subtitle;

(3) carry out this subtitle, including planning, initiating, coordinating, promoting, and evaluating all programs developed;

(4) provide either directly or by cooperation, negotiation, or contract with other agencies and those persons and groups listed in Section 533A.034, a continuum of services to persons with an intellectual disability; and

(5) provide, either directly or by contract with other agencies, a continuum of services to children, juveniles, or adults with an intellectual disability committed into the department's custody by the juvenile or criminal courts.

(b) The services provided by the department under Subsection (a)(4) shall include:

(1) treatment and care;

(2) education and training, including sheltered workshop programs;

(3) counseling and guidance; and

(4) development of residential and other facilities to enable persons with an intellectual disability to live and be habilitated in the community.

(c) The facilities provided under Subsection (b) shall include group homes, foster homes, halfway houses, and day-care facilities for persons with an intellectual disability to which the department has assigned persons with an intellectual disability.

(d) The department shall exercise periodic and continuing supervision over the quality of services provided under this section.

(e) The department shall have the right of access to all clients and records of clients who are placed with residential service providers.

(f) The department's responsibilities under this subtitle are in addition to all other responsibilities and duties of the department under other law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 13, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1405, eff. April 2, 2015.

Sec. 591.013. LONG-RANGE PLAN. (a) The commission shall develop a long-range plan for services to persons with intellectual and developmental disabilities.

(b) The executive commissioner shall appoint the necessary staff to develop the plan through research of appropriate topics and public hearings to obtain testimony from persons with knowledge of or interest in state services to persons with intellectual and developmental disabilities.

(c) In developing the plan, the commission shall consider existing plans or studies made by the commission or department.

(d) The plan must address at least the following topics:

(1) the needs of persons with intellectual and developmental disabilities;

(2) how state services should be structured to meet those needs;

(3) how the ICF-IID program, the waiver program under

Section 1915(c), federal Social Security Act, other programs under Title XIX, federal Social Security Act, and other federally funded programs can best be structured and financed to assist the state in delivering services to persons with intellectual and developmental disabilities;

(4) the statutory limits and rule or policy changes necessary to ensure the controlled growth of the programs under Title XIX, federal Social Security Act, and other federally funded programs;

(5) methods for expanding services available through the ICF-IID program to persons with related conditions as defined by federal regulations relating to the medical assistance program; and

(6) the cost of implementing the plan.

(e) The commission and the department shall, if necessary, modify their respective long-range plans and other existing plans relating to the provision of services to persons with intellectual and developmental disabilities to incorporate the provisions of the plan.

(f) The commission shall review and revise the plan biennially. The commission and the department shall consider the most recent revision of the plan in any modifications of the commission's or department's long-range plans and in each future budget request.

(g) This section does not affect the authority of the commission and the department to carry out their separate functions as established by state and federal law.

(h) In this section, "ICF-IID program" means the medical assistance program serving persons with intellectual and developmental disabilities who receive care in intermediate care facilities.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1406, eff. April 2, 2015.

SUBCHAPTER C. PENALTIES AND REMEDIES

Sec. 591.021. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally or knowingly causes, conspires with another to cause, or assists another to cause the unlawful

continued detention in or unlawful admission or commitment of a person to a facility specified in this subtitle with the intention of harming that person.

(b) An offense under this section is a Class B misdemeanor.

(c) The district and county attorney within their respective jurisdictions shall prosecute a violation of this section.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 591.022. CIVIL PENALTY. (a) A person who intentionally violates the rights guaranteed by this subtitle to a person with an intellectual disability is liable to the person injured by the violation in an amount of not less than $100 or more than $5,000.

(b) A person who recklessly violates the rights guaranteed by this subtitle to a person with an intellectual disability is liable to the person injured by the violation in an amount of not less than $100 or more than $1,000.

(c) A person who intentionally releases confidential information or records of a person with an intellectual disability in violation of law is liable to the person injured by the unlawful disclosure for $1,000 or three times the actual damages, whichever is greater.

(d) A cause of action under this section may be filed by:

(1) the injured person;

(2) the injured person's parent, if the person is a minor;

(3) a guardian, if the person has been adjudicated incompetent; or

(4) the injured person's next friend in accordance with Rule 44, Texas Rules of Civil Procedure.

(e) The cause of action may be filed in a district court in Travis County or in the county in which the defendant resides.

(f) This section does not supersede or abrogate other remedies existing in law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1407, eff. April 2, 2015.

Sec. 591.023. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) A district court, in an action brought in the name of the state by the state attorney general or a district or county attorney within the attorney's respective jurisdiction, may issue a temporary restraining order, a temporary injunction, or a permanent injunction to:

(1) restrain and prevent a person from violating this subtitle or a rule adopted by the executive commissioner under this subtitle; or

(2) enforce compliance with this subtitle or a rule adopted by the executive commissioner under this subtitle.

(b) A person who violates the terms of an injunction issued under this section shall forfeit and pay to the state a civil penalty of not more than $5,000 for each violation, but not to exceed a total of $20,000.

(c) In determining whether an injunction has been violated, the court shall consider the maintenance of procedures adopted to ensure compliance with the injunction.

(d) The state attorney general or the district or county attorney, acting in the name of the state, may petition the court issuing the injunction for recovery of civil penalties under this section.

(e) A civil penalty recovered under this section shall be paid to the state for use in intellectual disability services.

(f) An action filed under this section may be brought in a district court in Travis County or in the county in which the defendant resides.

(g) This section does not supersede or abrogate other remedies existing at law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1408, eff. April 2, 2015.

Sec. 591.024. CIVIL ACTION AGAINST DEPARTMENT EMPLOYEE. (a) The state attorney general shall provide legal counsel to represent a department employee in a civil action brought against the person under this subtitle for a claim of alleged negligence or other act of the person while employed by the department. The person shall

cooperate fully with the state attorney general in the defense of the claim, demand, or suit.

(b) The state shall hold harmless and indemnify the person against financial loss arising out of a claim, demand, suit, or judgment by reason of the negligence or other act by the person, if:

(1) at the time the claim arose or damages were sustained, the person was acting in the scope of the person's authorized duties; and

(2) the claim or cause of action or damages sustained did not result from an intentional and wrongful act or the person's reckless conduct.

(c) To be eligible for assistance under this section, the person must deliver to the department the original or a copy of the summons, complaint, process, notice, demand, or pleading not later than the 10th day after the date on which the person is served with the document. The state attorney general may assume control of the person's representation on delivery of the document or a copy of the document to the department.

(d) This section does not impair, limit, or modify rights and obligations existing under an insurance policy.

(e) This section applies only to a person named in this section and does not affect the rights of any other person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 591.025. LIABILITY. An officer or employee of the department or a community center, acting reasonably within the scope of the person's employment and in good faith, is not civilly or criminally liable under this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

CHAPTER 592. RIGHTS OF PERSONS WITH AN INTELLECTUAL DISABILITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 592.001. PURPOSE. The purpose of this chapter is to recognize and protect the individual dignity and worth of each person with an intellectual disability.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1410, eff. April 2, 2015.

Sec. 592.002. RULES. The executive commissioner by rule shall ensure the implementation of the rights guaranteed in this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1411, eff. April 2, 2015.

SUBCHAPTER B. BASIC BILL OF RIGHTS

Sec. 592.011. RIGHTS GUARANTEED. (a) Each person with an intellectual disability in this state has the rights, benefits, and privileges guaranteed by the constitution and laws of the United States and this state.

(b) The rights specifically listed in this subtitle are in addition to all other rights that persons with an intellectual disability have and are not exclusive or intended to limit the rights guaranteed by the constitution and laws of the United States and this state.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.012. PROTECTION FROM EXPLOITATION AND ABUSE. Each person with an intellectual disability has the right to protection from exploitation and abuse because of the person's intellectual disability.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.013. LEAST RESTRICTIVE LIVING ENVIRONMENT. Each person with an intellectual disability has the right to live in the least restrictive setting appropriate to the person's individual needs and abilities and in a variety of living situations, including living:

(1) alone;

(2) in a group home;

(3) with a family; or

(4) in a supervised, protective environment.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.014. EDUCATION. Each person with an intellectual disability has the right to receive publicly supported educational services, including those services provided under the Education Code, that are appropriate to the person's individual needs regardless of:

(1) the person's chronological age;

(2) the degree of the person's intellectual disability;

(3) the person's accompanying disabilities or handicaps; or

(4) the person's admission or commitment to intellectual disability services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.015. EMPLOYMENT. An employer, employment agency, or labor organization may not deny a person equal opportunities in employment because of the person's intellectual disability, unless:

(1) the person's intellectual disability significantly impairs the person's ability to perform the duties and tasks of the position for which the person has applied; or

(2) the denial is based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.016. HOUSING. An owner, lessee, sublessee, assignee, or managing agent or other person having the right to sell, rent, or lease real property, or an agent or employee of any of these, may not refuse to sell, rent, or lease to any person or group of persons solely because the person is a person with an intellectual disability or a group that includes one or more persons with an intellectual disability.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.017. TREATMENT AND SERVICES. Each person with an intellectual disability has the right to receive for the person's intellectual disability adequate treatment and habilitative services that:

(1) are suited to the person's individual needs;

(2) maximize the person's capabilities;

(3) enhance the person's ability to cope with the person's environment; and

(4) are administered skillfully, safely, and humanely with full respect for the dignity and personal integrity of the person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.018. DETERMINATION OF AN INTELLECTUAL DISABILITY. A person thought to be a person with an intellectual disability has the right promptly to receive a determination of an intellectual disability using diagnostic techniques that are adapted to that

person's cultural background, language, and ethnic origin to determine if the person is in need of intellectual disability services as provided by Subchapter A, Chapter 593.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 2, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.019. ADMINISTRATIVE HEARING. A person who files an application for a determination of an intellectual disability has the right to request and promptly receive an administrative hearing under Subchapter A, Chapter 593, to contest the findings of the determination of an intellectual disability.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 2, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.020. INDEPENDENT DETERMINATION OF AN INTELLECTUAL DISABILITY. A person for whom a determination of an intellectual disability is performed or a person who files an application for a determination of an intellectual disability under Section 593.004 and who questions the validity or results of the determination of an intellectual disability has the right to an additional, independent determination of an intellectual disability performed at the person's own expense.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 2, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.021. ADDITIONAL RIGHTS. Each person with an

intellectual disability has the right to:

(1) presumption of competency;

(2) due process in guardianship proceedings; and

(3) fair compensation for the person's labor for the economic benefit of another, regardless of any direct or incidental therapeutic value to the person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

SUBCHAPTER C. RIGHTS OF CLIENTS

Sec. 592.031. RIGHTS IN GENERAL. (a) Each client has the same rights as other citizens of the United States and this state unless the client's rights have been lawfully restricted.

(b) Each client has the rights listed in this subchapter in addition to the rights guaranteed by Subchapter B.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.032. LEAST RESTRICTIVE ALTERNATIVE. Each client has the right to live in the least restrictive habilitation setting and to be treated and served in the least intrusive manner appropriate to the client's individual needs.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.033. INDIVIDUALIZED PLAN. (a) Each client has the right to a written, individualized habilitation plan developed by appropriate specialists.

(b) The client, and the parent of a client who is a minor or the guardian of the person, shall participate in the development of the plan.

(c) The plan shall be implemented as soon as possible but not later than the 30th day after the date on which the client is admitted or committed to intellectual disability services.

(d) The content of an individualized habilitation plan is as

required by department rule and as may be required by the department by contract.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 3, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1413, eff. April 2, 2015.

Sec. 592.034. REVIEW AND REEVALUATION. (a) Each client has the right to have the individualized habilitation plan reviewed at least:

(1) once a year if the client is in a residential care facility; or

(2) quarterly if the client has been admitted for other services.

(b) The purpose of the review is to:

(1) measure progress;

(2) modify objectives and programs if necessary; and

(3) provide guidance and remediation techniques.

(c) Each client has the right to a periodic reassessment.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 4, eff. Sept. 1, 1993.

Sec. 592.035. PARTICIPATION IN PLANNING. (a) Each client, and parent of a client who is a minor or the guardian of the person, have the right to:

(1) participate in planning the client's treatment and habilitation; and

(2) be informed in writing at reasonable intervals of the client's progress.

(b) If possible, the client, parent, or guardian of the person shall be given the opportunity to choose from several appropriate alternative services available to the client from a service provider.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.036. WITHDRAWAL FROM VOLUNTARY SERVICES. (a) Except as provided by Section 593.030, a client, the parent if the client is a minor, or a guardian of the person may withdraw the client from intellectual disability services.

(b) This section does not apply to a person who was committed to a residential care facility as provided by Subchapter C, Chapter 593.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1414, eff. April 2, 2015.

Sec. 592.037. FREEDOM FROM MISTREATMENT. Each client has the right not to be mistreated, neglected, or abused by a service provider.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.038. FREEDOM FROM UNNECESSARY MEDICATION. (a) Each client has the right to not receive unnecessary or excessive medication.

(b) Medication may not be used:

(1) as punishment;

(2) for the convenience of the staff;

(3) as a substitute for a habilitation program; or

(4) in quantities that interfere with the client's habilitation program.

(c) Medication for each client may be authorized only by prescription of a physician and a physician shall closely supervise its use.

(d) Each client has the right to refuse psychoactive medication, as provided by Subchapter F.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 1, eff. September 1, 2013.

Sec. 592.039. GRIEVANCES. A client, or a person acting on behalf of a person with an intellectual disability or a group of persons with an intellectual disability, has the right to submit complaints or grievances regarding the infringement of the rights of a person with an intellectual disability or the delivery of intellectual disability services against a person, group of persons, organization, or business to the Health and Human Services Commission's ombudsman for individuals with an intellectual or developmental disability as provided under Section 523.0360, Government Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1415, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 741 (H.B. 3462), Sec. 16, eff. June 12, 2023.

Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 9.005, eff. September 1, 2025.

Sec. 592.040. INFORMATION ABOUT RIGHTS. (a) On admission for intellectual disability services, each client, and the parent if the client is a minor or the guardian of the person of the client, shall be given written notice of the rights guaranteed by this subtitle. The notice shall be in plain and simple language.

(b) Each client shall be orally informed of these rights in plain and simple language.

(c) Notice given solely to the parent or guardian of the person is sufficient if the client is manifestly unable to comprehend the rights.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1416, eff. April 2, 2015.

SUBCHAPTER D. RIGHTS OF RESIDENTS

Sec. 592.051. GENERAL RIGHTS OF RESIDENTS. Each resident has the right to:

(1) a normal residential environment;
(2) a humane physical environment;
(3) communication and visits; and
(4) possess personal property.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.052. MEDICAL AND DENTAL CARE AND TREATMENT. Each resident has the right to prompt, adequate, and necessary medical and dental care and treatment for physical and mental ailments and to prevent an illness or disability.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.053. STANDARDS OF CARE. Medical and dental care and treatment shall be performed under the appropriate supervision of a licensed physician or dentist and shall be consistent with accepted standards of medical and dental practice in the community.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.054. DUTIES OF DIRECTOR. (a) Except as limited by this subtitle, the director shall provide without further consent necessary care and treatment to each court-committed resident and make available necessary care and treatment to each voluntary resident.

(b) Notwithstanding Subsection (a), consent is required for:
(1) all surgical procedures; and
(2) as provided by Section 592.153, the administration of psychoactive medications.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 2, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1417, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1418, eff.

April 2, 2015.

Sec. 592.055. UNUSUAL OR HAZARDOUS TREATMENT. This subtitle does not permit the department to perform unusual or hazardous treatment procedures, experimental research, organ transplantation, or nontherapeutic surgery for experimental research.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.056. NOTIFICATION OF TRUST EXEMPTION. (a) At the time a resident is admitted to a residential care facility, the facility shall provide to the resident, and the parent if the resident is a minor or the guardian of the person of the resident, written notice, in the person's primary language, that a trust that qualifies under Section 593.081 is not liable for the resident's support. In addition, the facility shall ensure that, within 24 hours after the resident is admitted to the facility, the notification is explained to the resident, and the parent if the resident is a minor or the guardian of the person of the resident:

(1) orally, in simple, nontechnical terms in the person's primary language, if possible; or

(2) through a means reasonably calculated to communicate with a person who has an impairment of vision or hearing, if applicable.

(b) Notice required under Subsection (a) must also be attached to any request for payment for the resident's support.

Added by Acts 2009, 81st Leg., R.S., Ch. 481 (S.B. 584), Sec. 2, eff. June 19, 2009.

SUBCHAPTER E. USE OF RESTRAINTS IN STATE SUPPORTED LIVING CENTERS

Sec. 592.102. USE OF RESTRAINTS. (a) The executive commissioner shall adopt rules to ensure that:

(1) a mechanical or physical restraint is not administered to a resident of a state supported living center unless the restraint is:

(A) necessary to prevent imminent physical injury to the resident or another; and

(B) the least restrictive restraint effective to prevent imminent physical injury;

(2) the administration of a mechanical or physical restraint to a resident of a state supported living center ends immediately once the imminent risk of physical injury abates; and

(3) a mechanical or physical restraint is not administered to a resident of a state supported living center as punishment or as part of a behavior plan.

(b) The executive commissioner shall adopt rules to prohibit the use of prone and supine holds on a resident of a state supported living center except as transitional holds.

Added by Acts 2011, 82nd Leg., R.S., Ch. 361 (S.B. 41), Sec. 1, eff. June 17, 2011.

Sec. 592.103. STANDING ORDERS FOR RESTRAINTS PROHIBITED. (a) A person may not issue a standing order to administer on an as-needed basis mechanical or physical restraints to a resident of a state supported living center.

(b) A person may not administer mechanical or physical restraints to a resident of a state supported living center pursuant to a standing order to administer restraints on an as-needed basis.

Added by Acts 2011, 82nd Leg., R.S., Ch. 361 (S.B. 41), Sec. 1, eff. June 17, 2011.

Sec. 592.104. STRAITJACKETS PROHIBITED. A person may not use a straitjacket to restrain a resident of a state supported living center.

Added by Acts 2011, 82nd Leg., R.S., Ch. 361 (S.B. 41), Sec. 1, eff. June 17, 2011.

Sec. 592.105. DUTY TO REPORT. A state supported living center shall report to the executive commissioner each incident in which a physical or mechanical restraint is administered to a resident of a state supported living center. The report must contain information and be in the form required by rules of the executive commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 361 (S.B. 41), Sec. 1, eff. June 17, 2011.

Sec. 592.106. CONFLICT WITH OTHER LAW. To the extent of a conflict between this subchapter and Chapter 322, this subchapter controls.

Added by Acts 2011, 82nd Leg., R.S., Ch. 361 (S.B. 41), Sec. 1, eff. June 17, 2011.

SUBCHAPTER F. ADMINISTRATION OF PSYCHOACTIVE MEDICATIONS

Sec. 592.151. DEFINITIONS. In this subchapter:

(1) "Capacity" means a client's ability to:

(A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and

(B) make a decision whether to undergo the proposed treatment.

(2) "Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a client to prevent:

(A) imminent probable death or substantial bodily harm to the client because the client:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the client is unable to satisfy the client's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the client overtly or continually makes or commits.

(3) "Psychoactive medication" means a medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. "Psychoactive medication" includes the following categories when used as described in this subdivision:

(A) antipsychotics or neuroleptics;
(B) antidepressants;
(C) agents for control of mania or depression;
(D) antianxiety agents;
(E) sedatives, hypnotics, or other sleep-promoting drugs; and
(F) psychomotor stimulants.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.152. ADMINISTRATION OF PSYCHOACTIVE MEDICATION. (a) A person may not administer a psychoactive medication to a client receiving voluntary or involuntary residential care services who refuses the administration unless:

(1) the client is having a medication-related emergency;

(2) the refusing client's representative authorized by law to consent on behalf of the client has consented to the administration;

(3) the administration of the medication regardless of the client's refusal is authorized by an order issued under Section 592.156; or

(4) the administration of the medication regardless of the client's refusal is authorized by an order issued under Article 46B.086, Code of Criminal Procedure.

(b) Consent to the administration of psychoactive medication given by a client or by a person authorized by law to consent on behalf of the client is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;

(2) the treating physician or a person designated by the physician provides the following information, in a standard format approved by the department, to the client and, if applicable, to the client's representative authorized by law to consent on behalf of the client:

(A) the specific condition to be treated;
(B) the beneficial effects on that condition expected from the medication;
(C) the probable health care consequences of not

consenting to the medication;

(D) the probable clinically significant side effects and risks associated with the medication;

(E) the generally accepted alternatives to the medication, if any, and why the physician recommends that they be rejected; and

(F) the proposed course of the medication;

(3) the client and, if appropriate, the client's representative authorized by law to consent on behalf of the client are informed in writing that consent may be revoked; and

(4) the consent is evidenced in the client's clinical record by a signed form prescribed by the residential care facility or by a statement of the treating physician or a person designated by the physician that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(c) If the treating physician designates another person to provide the information under Subsection (b), then, not later than two working days after that person provides the information, excluding weekends and legal holidays, the physician shall meet with the client and, if appropriate, the client's representative who provided the consent, to review the information and answer any questions.

(d) A client's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, shall be documented in the client's clinical record.

(e) In prescribing psychoactive medication, a treating physician shall:

(1) prescribe, consistent with clinically appropriate medical care, the medication that has the fewest side effects or the least potential for adverse side effects, unless the class of medication has been demonstrated or justified not to be effective clinically; and

(2) administer the smallest therapeutically acceptable dosages of medication for the client's condition.

(f) If a physician issues an order to administer psychoactive medication to a client without the client's consent because the client is having a medication-related emergency:

(1) the physician shall document in the client's clinical

record in specific medical or behavioral terms the necessity of the order and that the physician has evaluated but rejected other generally accepted, less intrusive forms of treatment, if any; and

(2) treatment of the client with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the client's personal liberty.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.153. ADMINISTRATION OF MEDICATION TO CLIENT COMMITTED TO RESIDENTIAL CARE FACILITY. (a) In this section, "ward" has the meaning assigned by Section 1002.030, Estates Code.

(b) A person may not administer a psychoactive medication to a client who refuses to take the medication voluntarily unless:

(1) the client is having a medication-related emergency;

(2) the client is under an order issued under Section 592.156 authorizing the administration of the medication regardless of the client's refusal; or

(3) the client is a ward who is 18 years of age or older and the guardian of the person of the ward consents to the administration of psychoactive medication regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1419, eff. April 2, 2015.

Sec. 592.154. PHYSICIAN'S APPLICATION FOR ORDER TO AUTHORIZE PSYCHOACTIVE MEDICATION; DATE OF HEARING. (a) A physician who is treating a client may file an application in a probate court or a court with probate jurisdiction on behalf of the state for an order to authorize the administration of a psychoactive medication regardless of the client's refusal if:

(1) the physician believes that the client lacks the

capacity to make a decision regarding the administration of the psychoactive medication;

(2) the physician determines that the medication is the proper course of treatment for the client; and

(3) the client has been committed to a residential care facility under Subchapter C, Chapter 593, or other law or an application for commitment to a residential care facility under Subchapter C, Chapter 593, has been filed for the client.

(b) An application filed under this section must state:

(1) that the physician believes that the client lacks the capacity to make a decision regarding administration of the psychoactive medication and the reasons for that belief;

(2) each medication the physician wants the court to compel the client to take;

(3) whether an application for commitment to a residential care facility under Subchapter C, Chapter 593, has been filed;

(4) whether an order committing the client to a residential care facility has been issued and, if so, under what authority it was issued;

(5) the physician's diagnosis of the client; and

(6) the proposed method for administering the medication and, if the method is not customary, an explanation justifying the departure from the customary methods.

(c) An application filed under this section must be filed separately from an application for commitment to a residential care facility.

(d) The hearing on the application may be held on the same date as a hearing on an application for commitment to a residential care facility under Subchapter C, Chapter 593, but the hearing must be held not later than 30 days after the filing of the application for the order to authorize psychoactive medication. If the hearing is not held on the same date as the application for commitment to a residential care facility under Subchapter C, Chapter 593, and the client is transferred to a residential care facility in another county, the court may transfer the application for an order to authorize psychoactive medication to the county where the client has been transferred.

(e) Subject to the requirement in Subsection (d) that the hearing shall be held not later than 30 days after the filing of the application, the court may grant one continuance on a party's motion

and for good cause shown. The court may grant more than one continuance only with the agreement of the parties.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.155. RIGHTS OF CLIENT. A client for whom an application for an order to authorize the administration of a psychoactive medication is filed is entitled:

(1) to be represented by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;

(2) to meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the client's questions or concerns;

(3) to receive, immediately after the time of the hearing is set, a copy of the application and written notice of the time, place, and date of the hearing;

(4) to be informed, at the time personal notice of the hearing is given, of the client's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;

(5) to be present at the hearing;

(6) to request from the court an independent expert; and

(7) to be notified orally, at the conclusion of the hearing, of the court's determinations of the client's capacity and best interest.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.156. HEARING AND ORDER AUTHORIZING PSYCHOACTIVE MEDICATION. (a) The court may issue an order authorizing the administration of one or more classes of psychoactive medication to a client who:

(1) has been committed to a residential care facility; or

(2) is in custody awaiting trial in a criminal proceeding and was committed to a residential care facility in the six months preceding a hearing under this section.

(b) The court may issue an order under this section only if the

court finds by clear and convincing evidence after the hearing:

(1) that the client lacks the capacity to make a decision regarding the administration of the proposed medication and that treatment with the proposed medication is in the best interest of the client; or

(2) if the client was committed to a residential care facility by a criminal court with jurisdiction over the client, that treatment with the proposed medication is in the best interest of the client, and either:

(A) the client presents a danger to the client or others in the residential care facility in which the client is being treated as a result of a mental disorder or mental defect as determined under Section 592.157; or

(B) the client:

(i) has remained confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer for competency restoration treatment; and

(ii) presents a danger to the client or others in the correctional facility as a result of a mental disorder or mental defect as determined under Section 592.157.

(c) In making the finding that treatment with the proposed medication is in the best interest of the client, the court shall consider:

(1) the client's expressed preferences regarding treatment with psychoactive medication;

(2) the client's religious beliefs;

(3) the risks and benefits, from the perspective of the client, of taking psychoactive medication;

(4) the consequences to the client if the psychoactive medication is not administered;

(5) the prognosis for the client if the client is treated with psychoactive medication;

(6) alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and

(7) less intrusive treatments likely to secure the client's consent to take the psychoactive medication.

(d) A hearing under this subchapter shall be conducted on the record by the probate judge or judge with probate jurisdiction,

except as provided by Subsection (e).

(e) A judge may refer a hearing to a magistrate or court-appointed associate judge who has training regarding psychoactive medications. The magistrate or associate judge may effectuate the notice, set hearing dates, and appoint attorneys as required by this subchapter. A record is not required if the hearing is held by a magistrate or court-appointed associate judge.

(f) A party is entitled to a hearing de novo by the judge if an appeal of the magistrate's or associate judge's report is filed with the court before the fourth day after the date the report is issued. The hearing de novo shall be held not later than the 30th day after the date the application for an order to authorize psychoactive medication was filed.

(g) If a hearing or an appeal of an associate judge's or magistrate's report is to be held in a county court in which the judge is not a licensed attorney, the proposed client or the proposed client's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county judge shall transfer the case after receiving the request, and the receiving court shall hear the case as if it had been originally filed in that court.

(h) As soon as practicable after the conclusion of the hearing, the client is entitled to have provided to the client and the client's attorney written notification of the court's determinations under this section. The notification shall include a statement of the evidence on which the court relied and the reasons for the court's determinations.

(i) An order entered under this section shall authorize the administration to a client, regardless of the client's refusal, of one or more classes of psychoactive medications specified in the application and consistent with the client's diagnosis. The order shall permit an increase or decrease in a medication's dosage, restitution of medication authorized but discontinued during the period the order is valid, or the substitution of a medication within the same class.

(j) The classes of psychoactive medications in the order must conform to classes determined by the department.

(k) An order issued under this section may be reauthorized or modified on the petition of a party. The order remains in effect pending action on a petition for reauthorization or modification.

For the purpose of this subsection, "modification" means a change of a class of medication authorized in the order.

(l) For a client described by Subsection (b)(2)(B), an order issued under this section:

(1) authorizes the initiation of any appropriate mental health treatment for the patient awaiting transfer; and

(2) does not constitute authorization to retain the client in a correctional facility for competency restoration treatment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.157. FINDING THAT CLIENT PRESENTS A DANGER. In making a finding under Section 592.156(b)(2) that, as a result of a mental disorder or mental defect, the client presents a danger to the client or others in the residential care facility in which the client is being treated or in the correctional facility, as applicable, the court shall consider:

(1) an assessment of the client's present mental condition; and

(2) whether the client has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to the client's self or to another while in the facility.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.158. APPEAL. (a) A client may appeal an order under this subchapter in the manner provided by Section 593.056 for an appeal of an order committing the client to a residential care facility.

(b) An order authorizing the administration of medication regardless of the refusal of the client is effective pending an appeal of the order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.159. EFFECT OF ORDER. (a) A person's consent to take a psychoactive medication is not valid and may not be relied on if the person is subject to an order issued under Section 592.156.

(b) The issuance of an order under Section 592.156 is not a determination or adjudication of mental incompetency and does not limit in any other respect that person's rights as a citizen or the person's property rights or legal capacity.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.160. EXPIRATION OF ORDER. (a) Except as provided by Subsection (b), an order issued under Section 592.156 expires on the anniversary of the date the order was issued.

(b) An order issued under Section 592.156 for a client awaiting trial in a criminal proceeding expires on the date the defendant is acquitted, is convicted, or enters a plea of guilty or the date on which charges in the case are dismissed. An order continued under this subsection shall be reviewed by the issuing court every six months.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

CHAPTER 593. ADMISSION AND COMMITMENT TO INTELLECTUAL DISABILITY SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 593.001. ADMISSION. A person may be admitted for intellectual disability services offered by the department or a community center, admitted voluntarily to a residential care program, or committed to a residential care facility, only as provided by this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1421, eff. April 2, 2015.

Sec. 593.002. CONSENT REQUIRED. (a) Except as provided by Subsection (b), the department or a community center may not provide intellectual disability services to a client without the client's legally adequate consent.

(b) The department or community center may provide nonresidential intellectual disability services, including a determination of an intellectual disability, to a client without the client's legally adequate consent if the department or community center has made all reasonable efforts to obtain consent.

(c) The executive commissioner by rule shall prescribe the efforts to obtain consent that are reasonable and the documentation for those efforts.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 5, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1422, eff. April 2, 2015.

Sec. 593.003. REQUIREMENT OF DETERMINATION OF AN INTELLECTUAL DISABILITY. Except as provided by Sections 593.027, 593.0275, and 593.028, a person is not eligible to receive intellectual disability services unless the person first is determined to be a person with an intellectual disability.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1423, eff. April 2, 2015.

Sec. 593.004. APPLICATION FOR DETERMINATION OF AN INTELLECTUAL DISABILITY. (a) In this section, "authorized provider" means:

(1) a physician licensed to practice in this state;

(2) a psychologist licensed to practice in this state;

(3) a professional licensed to practice in this state and certified by the department; or

(4) a provider certified by the department before September 1, 2013.

(b) A person believed to be a person with an intellectual disability, the parent if the person is a minor, or the guardian of the person may make written application to an authorized provider for a determination of an intellectual disability using forms provided by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 883 (H.B. 807), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1424, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1425, eff. April 2, 2015.

Sec. 593.005. DETERMINATION OF AN INTELLECTUAL DISABILITY. (a) In this section, "authorized provider" has the meaning assigned by Section 593.004.

(a-1) An authorized provider shall perform the determination of an intellectual disability. The department may charge a reasonable fee for certifying an authorized provider.

(b) The authorized provider shall base the determination on an interview with the person and on a professional assessment that, at a minimum, includes:

(1) a measure of the person's intellectual functioning;

(2) a determination of the person's adaptive behavior level; and

(3) evidence of origination during the person's developmental period.

(c) The authorized provider may use a previous assessment, social history, or relevant record from a school district, a public or private agency, or a physician or psychologist if the authorized provider determines that the assessment, social history, or record is valid.

(d) If the person is indigent, the determination of an intellectual disability shall be performed at the department's expense by an authorized provider.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 883 (H.B. 807), Sec. 1, eff. June 14, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1426, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1427, eff. April 2, 2015.

Sec. 593.006. REPORT. A person who files an application for a determination of an intellectual disability under Section 593.004 shall be promptly notified in writing of the findings.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1428, eff. April 2, 2015.

Sec. 593.007. NOTIFICATION OF CERTAIN RIGHTS. The department shall inform the person who filed an application for a determination of an intellectual disability of the person's right to:

(1) an independent determination of an intellectual disability under Section 592.020; and

(2) an administrative hearing under Section 593.008 by the agency that conducted the determination of an intellectual disability to contest the findings.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1429, eff. April 2, 2015.

Sec. 593.008. ADMINISTRATIVE HEARING. (a) The proposed client and contestant by right may:

(1) have a public hearing unless the proposed client or contestant requests a closed hearing;

(2) be present at the hearing; and

(3) be represented at the hearing by a person of their choosing, including legal counsel.

(b) The proposed client, contestant, and their respective representative by right may:

(1) have reasonable access at a reasonable time before the hearing to any records concerning the proposed client relevant to the proposed action;

(2) present oral or written testimony and evidence, including the results of an independent determination of an intellectual disability; and

(3) examine witnesses.

(c) The hearing shall be held:

(1) as soon as possible, but not later than the 30th day after the date of the request;

(2) in a convenient location; and

(3) after reasonable notice.

(d) Any interested person may appear and give oral or written testimony.

(e) The executive commissioner by rule shall implement the hearing procedures.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 7, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1430, eff. April 2, 2015.

Sec. 593.009. HEARING REPORT; FINAL DECISION. (a) After each hearing, the hearing officer shall promptly report to the parties in writing the officer's decision, findings of fact, and the reasons for those findings.

(b) The hearing officer's decision is final on the 31st day after the date on which the decision is reported unless a party files an appeal within that period.

(c) The filing of an appeal suspends the hearing officer's decision, and a party may not take action on the decision.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.010. APPEAL. (a) A party to a hearing may appeal the hearing officer's decision without filing a motion for rehearing with the hearing officer.

(b) Venue for the appeal is in the county court of Travis County or the county in which the proposed client resides.

(c) The appeal is by trial de novo.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.011. FEES FOR SERVICES. (a) The department shall charge reasonable fees to cover the costs of services provided to nonindigent persons.

(b) The department shall provide services free of charge to indigent persons.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.012. ABSENT WITHOUT AUTHORITY. (a) The director of a residential care facility to which a client has been admitted for court-ordered care and treatment may have a client who is absent without authority taken into custody, detained, and returned to the facility by issuing a certificate to a law enforcement agency of the municipality or county in which the facility is located or by obtaining a court order issued by a magistrate in the manner prescribed by Section 574.083.

(b) The client shall be returned to the residential care facility in accordance with the procedures prescribed by Section 574.083.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 1016, Sec. 2, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1187, Sec. 20, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1006, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1431, eff. April 2, 2015.

Sec. 593.013. INTERDISCIPLINARY TEAM RECOMMENDATION. (a)

Except as provided by Section 593.0511, a person may not be admitted or committed to a residential care facility unless an interdisciplinary team recommends that placement.

(b) An interdisciplinary team shall:

(1) interview the person with an intellectual disability, the person's parent if the person is a minor, and the person's guardian;

(2) review the person's:

(A) social and medical history;

(B) medical assessment, which shall include an audiological, neurological, and vision screening;

(C) psychological and social assessment; and

(D) determination of adaptive behavior level;

(3) determine the person's need for additional assessments, including educational and vocational assessments;

(4) obtain any additional assessment necessary to plan services;

(5) identify the person's habilitation and service preferences and needs; and

(6) recommend services to address the person's needs that consider the person's preferences.

(c) The interdisciplinary team shall give the person, the person's parent if the person is a minor, and the person's guardian an opportunity to participate in team meetings.

(d) The interdisciplinary team may use a previous assessment, social history, or other relevant record from a school district, public or private agency, or appropriate professional if the interdisciplinary team determines that the assessment, social history, or record is valid.

(e) The interdisciplinary team shall prepare a written report of its findings and recommendations that is signed by each team member and shall promptly send a copy of the report and recommendations to the person, the person's parent if the person is a minor, and the person's guardian.

(f) If the court has ordered the interdisciplinary team report and recommendations under Section 593.041, the team shall promptly send a copy of the report and recommendations to the court, the person with an intellectual disability or the person's legal representative, the person's parent if the person is a minor, and the person's guardian.

Added by Acts 1993, 73rd Leg., ch. 60, Sec. 8, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1432, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 1145 (S.B. 944), Sec. 1, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 1145 (S.B. 944), Sec. 2, eff. September 1, 2023.

Sec. 593.014. EPILEPSY. A person may not be denied admission to a residential care facility because the person suffers from epilepsy.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Transferred, redesignated, and amended from Health and Safety Code, Section 553.001 by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1343, eff. April 2, 2015.

SUBCHAPTER B. APPLICATION AND ADMISSION TO VOLUNTARY INTELLECTUAL DISABILITY SERVICES

Sec. 593.021. APPLICATION FOR VOLUNTARY SERVICES. (a) The proposed client or the parent if the proposed client is a minor may apply for voluntary intellectual disability services under Section 593.022, 593.026, 593.027, 593.0275, or 593.028.

(b) The guardian of the proposed client may apply for services under this subchapter under Section 593.022, 593.027, 593.0275, or 593.028.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 9, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 809, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1434, eff. April 2, 2015.

Sec. 593.022. ADMISSION TO VOLUNTARY INTELLECTUAL DISABILITY SERVICES. (a) An eligible person who applies for intellectual disability services may be admitted as soon as appropriate services

are available.

(b) The department facility or community center shall develop a plan for appropriate programs or placement in programs or facilities approved or operated by the department.

(c) The programs or placement must be suited to the needs of the proposed client and consistent with the rights guaranteed by Chapter 592.

(d) The proposed client, the parent if the client is a minor, and the client's guardian shall be encouraged and permitted to participate in the development of the planned programs or placement.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1435, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1436, eff. April 2, 2015.

Sec. 593.023. RULES RELATING TO PLANNING OF SERVICES OR TREATMENT. (a) The executive commissioner by rule shall develop and adopt procedures permitting a client, a parent if the client is a minor, or a guardian of the person to participate in planning the client's treatment and habilitation, including a decision to recommend or place a client in an alternative setting.

(b) The procedures must inform clients, parents, and guardians of the due process provisions of Sections 594.015-594.017, including the right to an administrative hearing and judicial review in county court of a proposed transfer or discharge.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1437, eff. April 2, 2015.

Sec. 593.024. APPLICATION FOR VOLUNTARY RESIDENTIAL CARE SERVICES. (a) An application for voluntary admission to a residential care facility must be made according to department rules and contain a statement of the reasons for which placement is requested.

(b) Voluntary admission includes regular voluntary admission, emergency admission, and respite care.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.025. PLACEMENT PREFERENCE. Preference for requested, voluntary placement in a residential care facility shall be given to the facility located nearest the residence of the proposed resident, unless there is a compelling reason for placement elsewhere.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.026. REGULAR VOLUNTARY ADMISSION. A regular voluntary admission is permitted if:

(1) space is available at the facility for which placement is requested; and

(2) the facility director determines that the facility provides services that meet the needs of the proposed resident.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1438, eff. April 2, 2015.

Sec. 593.027. EMERGENCY ADMISSION. (a) An emergency admission to a residential care facility is permitted without a determination of an intellectual disability and an interdisciplinary team recommendation if:

(1) there is persuasive evidence that the proposed resident is a person with an intellectual disability;

(2) space is available at the facility for which placement is requested;

(3) the proposed resident has an urgent need for services that the facility director determines the facility provides; and

(4) the facility can provide relief for the urgent need within a year after admission.

(b) A determination of an intellectual disability and an interdisciplinary team recommendation for the person admitted under

this section shall be performed within 30 days after the date of admission.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 9, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1439, eff. April 2, 2015.

Sec. 593.0275. EMERGENCY SERVICES. (a) A person may receive emergency services without a determination of an intellectual disability if:

(1) there is persuasive evidence that the person is a person with an intellectual disability;

(2) emergency services are available; and

(3) the person has an urgent need for emergency services.

(b) A determination of an intellectual disability for the person served under this section shall be performed within 30 days after the date the services begin.

Added by Acts 1993, 73rd Leg., ch. 60, Sec. 10, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1440, eff. April 2, 2015.

Sec. 593.028. RESPITE CARE. (a) A person may be admitted to a residential care facility for respite care without a determination of an intellectual disability and interdisciplinary team recommendation if:

(1) there is persuasive evidence that the proposed resident is a person with an intellectual disability;

(2) space is available at the facility for which respite care is requested;

(3) the facility director determines that the facility provides services that meet the needs of the proposed resident; and

(4) the proposed resident or the proposed resident's family urgently requires assistance or relief that can be provided within a period not to exceed 30 consecutive days after the date of admission.

(b) If the relief sought by the proposed resident or the

proposed resident's family has not been provided within 30 days, one 30-day extension may be allowed if:

(1) the facility director determines that the relief may be provided in the additional period; and

(2) the parties agreeing to the original placement consent to the extension.

(c) If an extension is not granted the resident shall be released immediately and may apply for other services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 11, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1441, eff. April 2, 2015.

Sec. 593.029. TREATMENT OF MINOR WHO REACHES MAJORITY. When a facility resident who is voluntarily admitted as a minor approaches 18 years of age and continues to be in need of residential services, the facility director shall ensure that when the resident becomes an adult:

(1) the resident's legally adequate consent for admission to the facility is obtained from the resident or the guardian of the person; or

(2) an application is filed for court commitment under Subchapter C.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1442, eff. April 2, 2015.

Sec. 593.030. WITHDRAWAL FROM SERVICES. A resident voluntarily admitted to a residential care facility may not be detained more than 96 hours after the time the resident, the resident's parents if the resident is a minor, or the guardian of the resident's person requests discharge of the resident as provided by department rules, unless:

(1) the facility director determines that the resident's condition or other circumstances are such that the resident cannot be

discharged without endangering the safety of the resident or the general public;

(2) the facility director files an application for judicial commitment under Section 593.041; and

(3) a court issues a protective custody order under Section 593.044 pending a final determination on the application.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1443, eff. April 2, 2015.

SUBCHAPTER C. COMMITMENT TO RESIDENTIAL CARE FACILITY

Sec. 593.041. APPLICATION FOR PLACEMENT; JURISDICTION. (a) A proposed resident, if an adult, a parent if the proposed resident is a minor, the guardian of the person, the court, or any other interested person, including a community center or agency that conducted a determination of an intellectual disability of the proposed resident, may file an application for an interdisciplinary team report and recommendation that the proposed client is in need of long-term placement in a residential care facility.

(b) Except as provided by Subsection (e), the application must be filed with the county clerk in the county in which the proposed resident resides. If the director of a residential care facility files an application for judicial commitment of a voluntary resident, the county in which the facility is located is considered the resident's county of residence.

(c) The county court has original jurisdiction of all judicial proceedings for commitment of a person with an intellectual disability to residential care facilities.

(d) Except as provided by Section 593.0511, a person may not be committed to the department for placement in a residential care facility under this subchapter unless a report by an interdisciplinary team recommending the placement has been completed during the six months preceding the date of the court hearing on the application. If the report and recommendations have not been completed or revised during that period, the court shall order the report and recommendations on receiving the application.

(e) An application in which the proposed patient is a child in

the custody of the Texas Juvenile Justice Department may be filed in the county in which the child's commitment to the Texas Juvenile Justice Department was ordered.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 12, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1086, Sec. 39, eff. June 19, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1444, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 1145 (S.B. 944), Sec. 3, eff. September 1, 2023.

Sec. 593.042. FORM OF APPLICATION. (a) An application for commitment of a person to a residential care facility must:

(1) be executed under oath; and

(2) include:

(A) the name, birth date, sex, and address of the proposed resident;

(B) the name and address of the proposed resident's parent or guardian, if applicable;

(C) a short, plain statement of the facts demonstrating that commitment to a facility is necessary and appropriate; and

(D) a short, plain statement explaining the inappropriateness of admission to less restrictive services.

(b) If the report required under Section 593.013 is completed, a copy must be included in the application.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 13, eff. Sept. 1, 1993.

Sec. 593.043. REPRESENTATION BY COUNSEL; APPOINTMENT OF ATTORNEY. (a) The proposed resident shall be represented by an attorney who shall represent the rights and legal interests of the proposed resident without regard to who initiates the proceedings or pays the attorney's fee.

(b) If the proposed resident cannot afford counsel, the court shall appoint an attorney not later than the 11th day before the date set for the hearing.

(c) An attorney appointed under this section is entitled to a reasonable fee. The county in which the proceeding is brought shall pay the attorney's fee from the county's general fund.

(d) The parent, if the proposed resident is a minor, or the guardian of the person may be represented by legal counsel during the proceedings.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.044. ORDER FOR PROTECTIVE CUSTODY. (a) The court in which an application for a hearing is filed may order the proposed resident taken into protective custody if the court determines from certificates filed with the court that the proposed resident is:

(1) believed to be a person with an intellectual disability; and

(2) likely to cause injury to the proposed resident or others if not immediately restrained.

(b) The judge of the court may order a health or peace officer to take the proposed resident into custody and transport the person to:

(1) a designated residential care facility in which space is available; or

(2) a place deemed suitable by the county health authority.

(c) If the proposed resident is a voluntary resident, the court for good cause may order the resident's detention in:

(1) the facility to which the resident was voluntarily admitted; or

(2) another suitable location to which the resident may be transported under Subsection (b).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1445, eff. April 2, 2015.

Sec. 593.045. DETENTION IN PROTECTIVE CUSTODY. (a) A person under a protective custody order may be detained for not more than 20 days after the date on which custody begins pending an order of the court.

(b) A person under a protective custody order may not be detained in a nonmedical facility used to detain persons charged with or convicted of a crime, unless an extreme emergency exists and in no case for longer than 24 hours.

(c) The county health authority shall ensure that the detained person receives proper care and medical attention pending removal to a residential care facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.046. RELEASE FROM PROTECTIVE CUSTODY. (a) The administrator of a facility in which a person is held in protective custody shall discharge the person not later than the 20th day after the date on which custody begins if the court that issued the protective custody order has not issued further detention orders.

(b) A facility administrator who believes that the person is a danger to himself or others shall immediately notify the court that issued the protective custody order of this belief.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.047. SETTING ON APPLICATION. On the filing of an application the court shall immediately set the earliest practicable date for a hearing to determine the appropriateness of the proposed commitment.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.048. HEARING NOTICE. (a) Not later than the 11th day before the date set for the hearing, a copy of the application, notice of the time and place of the hearing and, if appropriate, the order for the determination of an intellectual disability and interdisciplinary team report and recommendations shall be served on:

(1) the proposed resident or the proposed resident's representative;

(2) the parent if the proposed resident is a minor;

(3) the guardian of the person; and

(4) the department.

(b) The notice must specify in plain and simple language:

(1) the right to an independent determination of an intellectual disability under Section 593.007; and

(2) the provisions of Sections 593.043, 593.047, 593.049, 593.050, and 593.053.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 14, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1446, eff. April 2, 2015.

Sec. 593.049. HEARING BEFORE JURY; PROCEDURE. (a) On request of a party to the proceedings, or on the court's own motion, the hearing shall be before a jury.

(b) The Texas Rules of Civil Procedure apply to the selection of the jury, the court's charge to the jury, and all other aspects of the proceedings and trial unless the rules are inconsistent with this subchapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.050. CONDUCT OF HEARING. (a) The hearing must be open to the public unless the proposed resident or the resident's representative requests that the hearing be closed and the judge determines that there is good cause to close the hearing.

(b) The proposed resident is entitled to be present throughout the hearing. If the court determines that the presence of the proposed resident would result in harm to the proposed resident, the court may waive the requirement in writing clearly stating the reason for the decision.

(c) The proposed resident is entitled to and must be provided the opportunity to confront and cross-examine each witness.

(d) The Texas Rules of Evidence apply. The results of the determination of an intellectual disability and the current interdisciplinary team report and recommendations, except in the case of a long-term placement under Section 593.0511, shall be presented in evidence.

(e) The party who filed the application has the burden to prove

beyond a reasonable doubt that long-term placement of the proposed resident in a residential care facility is appropriate.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 15, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 1420, Sec. 10.007, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1447, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1145 (S.B. 944), Sec. 4, eff. September 1, 2023.

Sec. 593.051. DISMISSAL AFTER HEARING. If long-term placement in a residential care facility is not found to be appropriate, the court shall enter a finding to that effect, dismiss the application, and if appropriate, recommend application for admission to voluntary services under Subchapter B.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.0511. LONG-TERM PLACEMENT WITHOUT INTERDISCIPLINARY TEAM RECOMMENDATION. A court may commit a proposed resident to long-term placement in a residential care facility without an interdisciplinary team recommendation under Section 593.013 if the court determines beyond a reasonable doubt that the proposed resident meets the requirements for commitment to a residential care facility under Section 593.052.

Added by Acts 2023, 88th Leg., R.S., Ch. 1145 (S.B. 944), Sec. 5, eff. September 1, 2023.

Sec. 593.052. ORDER FOR COMMITMENT. (a) A proposed resident may not be committed to a residential care facility unless:

(1) the proposed resident is a person with an intellectual disability;

(2) a petition to the court to issue a commitment order by the guardian of the proposed resident or, if the proposed resident is a minor, the parent of the proposed resident or the current

interdisciplinary team report and recommendations, if applicable, show that because of the proposed resident's intellectual disability, the proposed resident:

(A) represents a substantial risk of physical impairment or injury to the proposed resident or others; or

(B) is unable to provide for and is not providing for the proposed resident's most basic personal physical needs;

(3) the proposed resident cannot be adequately and appropriately habilitated in an available, less restrictive setting; and

(4) the residential care facility provides habilitative services, care, training, and treatment appropriate to the proposed resident's needs.

(b) If it is determined that the requirements of Subsection (a) have been met and that long-term placement in a residential care facility is appropriate, the court shall commit the proposed resident for care, treatment, and training to a community center or the department when space is available in a residential care facility.

(c) The court shall immediately send a copy of the commitment order to the department or community center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1448, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1145 (S.B. 944), Sec. 6, eff. September 1, 2023.

Sec. 593.053. DECISION. The court in each case shall promptly report in writing the decision and findings of fact.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.054. NOT A JUDGMENT OF INCOMPETENCE. An order for commitment is not an adjudication of mental incompetency.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.055. DESIGNATION OF FACILITY. If placement in a residential facility is necessary, preference shall be given to the facility nearest to the residence of the proposed resident unless:

(1) space in the facility is unavailable;

(2) the proposed resident, parent if the resident is a minor, or guardian of the person requests otherwise; or

(3) there are other compelling reasons.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.056. APPEAL. (a) A party to a commitment proceeding has the right to appeal the judgment to the appropriate court of appeals.

(b) The Texas Rules of Civil Procedure apply to an appeal under this section.

(c) An appeal under this section shall be given a preference setting.

(d) The county court may grant a stay of commitment pending appeal.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

SUBCHAPTER D. FEES

Sec. 593.071. APPLICATION OF SUBCHAPTER. This subchapter applies only to a resident admitted to a residential care facility operated by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.072. INABILITY TO PAY. A resident may not be denied residential care because of an inability to pay for the care.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.073. DETERMINATION OF RESIDENTIAL COSTS. The executive commissioner by rule may determine the cost of support, maintenance, and treatment of a resident.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1449, eff. April 2, 2015.

Sec. 593.074. MAXIMUM FEES. (a) Except as provided by this section, the department may not charge for a resident total fees from all sources that exceed the cost to the state to support, maintain, and treat the resident.

(b) The executive commissioner may use the projected cost of providing residential services to establish by rule the maximum fee that may be charged to a payer.

(c) The executive commissioner by rule may establish maximum fees on one or a combination of the following:

(1) a statewide per capita;

(2) an individual facility per capita; or

(3) the type of service provided.

(d) Notwithstanding Subsection (b), the executive commissioner by rule may establish a fee in excess of the department's projected cost of providing residential services that may be charged to a payer:

(1) who is not an individual; and

(2) whose method of determining the rate of reimbursement to a provider results in the excess.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1450, eff. April 2, 2015.

Sec. 593.075. SLIDING FEE SCHEDULE. (a) The executive commissioner by rule shall establish a sliding fee schedule for the payment by the resident's parents of the state's total costs for the support, maintenance, and treatment of a resident younger than 18 years of age.

(b) The executive commissioner by rule shall set the fee according to the parents' net taxable income and ability to pay.

(c) The parents may elect to have their net taxable income

determined by their most current financial statement or federal income tax return.

(d) In determining the portion of the costs of the resident's support, maintenance, and treatment that the parents are required to pay, the department, in accordance with rules adopted by the executive commissioner, shall adjust, when appropriate, the payment required under the fee schedule to allow for consideration of other factors affecting the ability of the parents to pay.

(e) The executive commissioner shall evaluate and, if necessary, revise the fee schedule at least once every five years.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 278, Sec. 2, eff. June 5, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1451, eff. April 2, 2015.

Sec. 593.076. FEE SCHEDULE FOR DIVORCED PARENTS. (a) If the parents of a resident younger than 18 years of age are divorced, the fee charged each parent for the cost of the resident's support, maintenance, and treatment is determined by that parent's own income.

(b) If the divorced parents' combined fees exceed the maximum fee authorized under the fee schedule, the department shall equitably allocate the maximum fee between the parents in accordance with department rules, but a parent's fee may not exceed the individual fee determined for that parent under Subsection (a).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.077. CHILD SUPPORT PAYMENTS FOR BENEFIT OF RESIDENT. (a) Child support payments for the benefit of a resident paid or owed by a parent under court order are considered the property and estate of the resident and the:

(1) department may be reimbursed for the costs of a resident's support, maintenance, and treatment from those amounts; and

(2) executive commissioner by rule may establish a fee based on the child support obligation in addition to other fees authorized by this subchapter.

(b) The department shall credit the amount of child support a parent actually pays for a resident against monthly charges for which the parent is liable, based on ability to pay.

(c) A parent who receives child support payments for a resident is liable for the monthly charges based on the amount of child support payments actually received in addition to the liability of that parent based on ability to pay.

(d) The department may file a motion to modify a court order that establishes a child support obligation for a resident to require payment of the child support directly to the residential care facility in which the resident resides for the resident's support, maintenance, and treatment if:

(1) the resident's parent fails to pay child support as required by the order; or

(2) the resident's parent who receives child support fails to pay charges based on the amount of child support payments received.

(e) In addition to modification of an order under Subsection (d), the court may order all past due child support for the benefit of a resident paid directly to the resident's residential care facility to the extent that the department is entitled to reimbursement of the resident's charges from the child support obligation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1452, eff. April 2, 2015.

Sec. 593.078. PAYMENT FOR ADULT RESIDENTS. (a) A parent of a resident who is 18 years of age or older is not required to pay for the resident's support, maintenance, and treatment.

(b) Except as provided by Section 593.081, a resident and the resident's estate are liable for the costs of the resident's support, maintenance, and treatment regardless of the resident's age.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.080. STATE CLAIMS FOR UNPAID FEES. (a) Unpaid

charges accruing after January 1, 1978, and owed by a parent for the support, maintenance, and treatment of a resident are a claim in favor of the state for the cost of support, maintenance, and treatment of the resident and constitute a lien against the parent's property and estate as provided by Section 533.004, but do not constitute a lien against any other estate or property of the resident.

(b) Except as provided by Section 593.081, costs determined under Section 593.073 constitute a claim by the state against the entire estate or property of the resident, including any share the resident may have by gift, descent, or devise in the estate of the resident's parent or any other person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.081. TRUST EXEMPTION. (a) If the resident is the beneficiary of a trust that has an aggregate principal of $250,000 or less, the corpus or income of the trust for the purposes of this subchapter is not considered to be the property of the resident or the resident's estate, and is not liable for the resident's support, maintenance, and treatment regardless of the resident's age.

(b) To qualify for the exemption provided by Subsection (a), the trust must be created by a written instrument, and a copy of the trust instrument must be provided to the department.

(c) A trustee of the trust shall, on the department's request, provide to the department a current financial statement that shows the value of the trust estate.

(d) The department may petition a district court to order the trustee to provide a current financial statement if the trustee does not provide the statement before the 31st day after the date on which the department makes the request. The court shall hold a hearing on the department's petition not later than the 45th day after the date on which the petition is filed. The court shall order the trustee to provide to the department a current financial statement if the court finds that the trustee has failed to provide the statement.

(e) Failure of the trustee to comply with the court's order is punishable by contempt.

(f) For the purposes of this section, the following are not considered to be trusts and are not entitled to the exemption

provided by this section:

(1) a guardianship administered under the Estates Code;

(2) a trust established under Chapter 142, Property Code;

(3) a facility custodial account established under Section 551.003;

(4) the provisions of a divorce decree or other court order relating to child support obligations;

(5) an administration of a decedent's estate; or

(6) an arrangement in which funds are held in the registry or by the clerk of a court.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 498, Sec. 1, eff. June 18, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1453, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 846 (H.B. 2780), Sec. 9, eff. September 1, 2019.

Sec. 593.082. FILING OF CLAIMS. (a) In this section:

(1) "Person responsible for a resident" means the resident, a person liable for the support of the resident, or both.

(2) "Resident" means a person admitted to a residential care facility operated by the department for persons with an intellectual disability.

(b) A county or district attorney shall, on the written request of the department, represent the state in filing a claim in probate court or a petition in a court of competent jurisdiction to require a person responsible for a resident to appear in court and show cause why the state should not have judgment against the person for the resident's support and maintenance in a residential care facility operated by the department.

(c) On a sufficient showing, the court may enter judgment against the person responsible for the resident for the costs of the resident's support and maintenance.

(d) Sufficient evidence to authorize the court to enter judgment is a verified account, sworn to by the director of the residential care facility in which the person with an intellectual disability resided or has resided, as to the amount due.

(e) The judgment may be enforced as in other cases.

(f) The county or district attorney representing the state is entitled to a commission of 10 percent of the amount collected.

(g) The attorney general shall represent the state if the county and district attorney refuse or are unable to act on the department's request.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1454, eff. April 2, 2015.

SUBCHAPTER E. ADMISSION AND COMMITMENT UNDER PRIOR LAW

Sec. 593.091. ADMISSION AND COMMITMENT. A resident admitted or committed to a department residential care facility under law in force before January 1, 1978, may remain in the facility until:

(1) necessary and appropriate alternate placement is found; or

(2) the resident can be admitted or committed to a facility as provided by this chapter, if the admission or commitment is necessary to meet the due process requirements of this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.092. DISCHARGE OF PERSON VOLUNTARILY ADMITTED TO RESIDENTIAL CARE FACILITY. (a) Except as otherwise provided, a resident voluntarily admitted to a residential care facility under a law in force before January 1, 1978, shall be discharged not later than the 96th hour after the time the facility director receives written request from the person on whose application the resident was admitted, or on the resident's own request.

(b) The facility director may detain the resident for more than 96 hours in accordance with Section 593.030.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1455, eff. April 2, 2015.

Sec. 593.093. REIMBURSEMENT TO COUNTY. (a) The state shall

reimburse a county an amount not to exceed $50 for the cost of a hearing held by the county court to commit a resident of a department facility who was committed under a law in force before January 1, 1978, and for whom the due process requirements of this subtitle require another commitment proceeding.

(b) The commissioners court of a county entitled to reimbursement under this section may file a claim for reimbursement with the comptroller.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

CHAPTER 594. TRANSFER AND DISCHARGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 594.001. APPLICABILITY OF CHAPTER. (a) A client may not be transferred or discharged except as provided by this chapter and department rules.

(b) This chapter does not apply to the:

(1) transfer of a client for emergency medical, dental, or psychiatric care for not more than 30 consecutive days;

(2) voluntary withdrawal of a client from intellectual disability services; or

(3) discharge of a client by a director because the person is not a person with an intellectual disability according to the results of the determination of an intellectual disability.

(c) A discharge under Subsection (b)(3) is without further hearings, unless an administrative hearing under Subchapter A, Chapter 593, to contest the determination of an intellectual disability is requested.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 16, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1456, eff. April 2, 2015.

Sec. 594.002. LEAVE; FURLOUGH. The director may grant or deny a resident a leave of absence or furlough.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1457, eff. April 2, 2015.

Sec. 594.003. HABEAS CORPUS. This chapter does not alter or limit a resident's right to obtain a writ of habeas corpus.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

SUBCHAPTER B. TRANSFER OR DISCHARGE

Sec. 594.011. SERVICE PROVIDER. A service provider shall transfer a client, furlough a client to an alternative placement, or discharge a client if the service provider determines:

(1) that the client's placement is no longer appropriate to the person's individual needs; or

(2) that the client can be better treated and habilitated in another setting; and

(3) placement in another setting that can better treat and habilitate the client has been secured.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.012. REQUEST BY CLIENT, PARENT, OR GUARDIAN. (a) A client, the parent of a client who is a minor, or the guardian of the person may request a transfer or discharge.

(b) The service provider shall determine the appropriateness of the requested transfer or discharge.

(c) If a request is denied, the client, parent, or guardian of the person is entitled to a hearing under Section 594.015 to contest the decision.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.013. NOTICE OF TRANSFER OR DISCHARGE; APPROVAL. (a) A client and the parent or guardian must be notified not later than the 31st day before the date of the proposed transfer or discharge of the client.

(b) A client may not be transferred to another facility without the prior approval and knowledge of the parents or guardian of the client.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.014. RIGHT TO ADMINISTRATIVE HEARING. (a) A client and the parent or the guardian shall be informed of the right to an administrative hearing to contest a proposed transfer or discharge.

(b) A client may not be transferred to another facility or discharged from intellectual disability services unless the client is given the opportunity to request and receive an administrative hearing to contest the proposed transfer or discharge.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1458, eff. April 2, 2015.

Sec. 594.015. ADMINISTRATIVE HEARING. (a) An administrative hearing to contest a transfer or discharge decision must be held:

(1) as soon as possible, but not later than the 30th day after the date of the request;

(2) in a convenient location; and

(3) after reasonable notice.

(b) The client, the parent of a client who is a minor, the guardian of the person, and the director have the right to:

(1) be present and represented at the hearing; and

(2) have reasonable access at a reasonable time before the hearing to any records concerning the client relevant to the proposed action.

(c) Evidence, including oral and written testimony, shall be presented.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1459, eff. April 2, 2015.

Sec. 594.016. DECISION. (a) After each case, the hearing officer shall promptly report to the parties in writing the officer's decision, findings of fact, and the reasons for those findings.

(b) The hearing officer's decision is final on the 31st day after the date on which the decision is reported, unless an appeal is filed within that period.

(c) The filing of an appeal suspends the decision of the hearing officer, and a party may not take action on the decision.

(d) If an appeal is not filed from a final order granting a request for a transfer or discharge, the director shall proceed with the transfer or discharge.

(e) If an appeal is not filed from a final order denying a request for a transfer or discharge, the client shall remain in the same program or facility at which the client is receiving services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1460, eff. April 2, 2015.

Sec. 594.017. APPEAL. (a) A party to a hearing may appeal the hearing officer's decision without filing a motion for rehearing with the hearing officer.

(b) Venue for an appeal is the county court of Travis County or the county in which the client resides.

(c) The appeal is by trial de novo.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.018. NOTICE TO COMMITTING COURT. When a resident is discharged, the department shall notify the court that committed the resident to a residential care facility under Subchapter C, Chapter 593.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.019. ALTERNATIVE SERVICES. (a) The department shall provide appropriate alternative or follow-up supportive services

consistent with available resources by agreement among the department, the local intellectual and developmental disability authority in the area in which the client will reside, and the client, parent of a client who is a minor, or guardian of the person. The services shall be consistent with the rights guaranteed in Chapter 592.

(b) Placement in a residential care facility, other than by transfer from another residential care facility, may be made only as provided by Subchapters B and C, Chapter 593.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1461, eff. April 2, 2015.

SUBCHAPTER C. TRANSFER TO STATE MENTAL HOSPITAL

Sec. 594.0301. DEFINITION. In this subchapter, "state mental hospital" has the meaning assigned by Section 571.003.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1462, eff. April 2, 2015.

Sec. 594.031. TRANSFER OF VOLUNTARY RESIDENT. A voluntary resident may not be transferred to a state mental hospital without legally adequate consent to the transfer.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.032. TRANSFER OF COURT-COMMITTED RESIDENT. (a) The director may transfer a resident committed to a residential care facility under Subchapter C, Chapter 593, to a state mental hospital for mental health care if:

(1) an examination of the resident by a licensed physician indicates symptoms of mental illness to the extent that care, treatment, and rehabilitation in a state mental hospital is in the best interest of the resident;

(2) the hospital administrator of the state mental hospital to which the resident is to be transferred agrees to the transfer;

and

(3) the director coordinates the transfer with the hospital administrator of the state mental hospital.

(b) A resident transferred from a residential care facility to a state mental hospital may not remain in the hospital for longer than 30 consecutive days unless the transfer is authorized by a court order under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1463, eff. April 2, 2015.

Sec. 594.033. EVALUATION; COURT ORDER. The hospital administrator of the state mental hospital to which a court-committed resident is transferred shall immediately have an evaluation of the resident's condition performed.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.034. REQUEST FOR TRANSFER ORDER. (a) If the evaluation performed under Section 594.033 reveals that continued hospitalization is necessary for longer than 30 consecutive days, the hospital administrator of the state mental hospital to which a court-committed resident is transferred shall promptly request from the court that originally committed the resident to the residential care facility an order transferring the resident to the hospital.

(b) In support of the request, the hospital administrator shall send two certificates of medical examination for mental illness as described in Section 574.011, stating that the resident is:

(1) a person with mental illness; and

(2) requires observation or treatment in a mental hospital.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.035. HEARING DATE. When the committing court receives the hospital administrator's request and the certificates of medical examination, the court shall set a date for the hearing on the

proposed transfer.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.036. NOTICE. (a) A copy of the transfer request and notice of the transfer hearing shall be personally served on the resident not later than the eighth day before the date set for the hearing.

(b) Notice shall also be served on the parents if the resident is a minor and on the guardian for the resident's person if the resident has been declared to be incapacitated and a guardian has been appointed in a proceeding under Title 3, Estates Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1464, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 846 (H.B. 2780), Sec. 10, eff. September 1, 2019.

Sec. 594.037. HEARING LOCATION. (a) The judge may hold a transfer hearing on the petition at any suitable place in the county.

(b) The hearing should be held in a physical setting that is not likely to have a harmful effect on the resident.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.038. HEARING BEFORE JURY. (a) The transfer hearing must be held before a jury unless a waiver of trial by jury is made in writing under oath by the resident, the parent if the resident is a minor, or the resident's guardian of the person.

(b) Notwithstanding the executed waiver, a jury shall determine the issue of the case if the resident, the parent, the guardian of the person, or the resident's legal representative demands a jury trial at any time before the hearing's determination is made.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.039. RESIDENT PRESENT AT HEARING. The resident is entitled to be present at the transfer hearing unless the court determines it is in the resident's best interest to not be present.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.040. OPENING HEARING. The transfer hearing must be open to the public unless the court:

(1) finds that it is in the best interest of the resident to close the hearing; and

(2) obtains the consent of the resident, a parent of a resident who is a minor, the resident's guardian of the person, and the resident's legal representative to close the hearing.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.041. MEDICAL EVIDENCE. (a) At least two physicians, at least one of whom must be a psychiatrist, must testify at the transfer hearing. The physicians must have examined the resident not earlier than the 15th day before the date set for the hearing.

(b) A person may not be transferred to a state mental hospital except on competent medical or psychiatric testimony.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1465, eff. April 2, 2015.

Sec. 594.042. HEARING DETERMINATION. The court by order shall approve the transfer of the resident to a state mental hospital if the court or jury determines that the resident:

(1) is a person with mental illness; and

(2) requires a transfer to a state mental hospital for treatment for the resident's own welfare and protection or for the protection of others.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.043. DISCHARGE OF RESIDENT. A resident who is transferred to a state mental hospital and no longer requires treatment in a state mental hospital or a residential care facility shall be discharged.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.044. TRANSFER TO RESIDENTIAL CARE FACILITY. (a) Except as provided by Section 594.045, a resident who is transferred to a state mental hospital and no longer requires treatment in a state mental hospital but requires treatment in a residential care facility shall be returned to the residential care facility from which the resident was transferred.

(b) The hospital administrator of the state mental hospital shall notify the director of the facility from which the resident was transferred that hospitalization in a state mental hospital is not necessary or appropriate for the resident. The director shall immediately provide for the return of the resident to the facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1466, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1467, eff. April 2, 2015.

Sec. 594.045. RETURN OF COURT-ORDERED TRANSFER RESIDENT. (a) If a resident has been transferred to a state mental hospital under a court order under this subchapter, the hospital administrator of the state mental hospital shall:

(1) send a certificate to the committing court stating that the resident does not require hospitalization in a state mental hospital but requires care in a residential care facility because of the resident's intellectual disability; and

(2) request that the resident be transferred to a residential care facility.

(b) The transfer may be made only if the judge of the committing court approves the transfer as provided by Section 575.013.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1468, eff. April 2, 2015.

CHAPTER 595. RECORDS

Sec. 595.001. CONFIDENTIALITY OF RECORDS. Records of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the performance of a program or activity relating to an intellectual disability are confidential and may be disclosed only for the purposes and under the circumstances authorized by this chapter, subject to applicable federal and other state law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1469, eff. April 2, 2015.

Sec. 595.002. RULES. The executive commissioner shall adopt rules to carry out this chapter that are necessary or proper to:

(1) prevent circumvention or evasion of the chapter; or

(2) facilitate compliance with the chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1470, eff. April 2, 2015.

Sec. 595.003. CONSENT TO DISCLOSURE. (a) The content of a confidential record may be disclosed in accordance with the prior written consent of:

(1) the person about whom the record is maintained;

(2) the person's parent if the person is a minor;

(3) the guardian if the person has been adjudicated incompetent to manage the person's personal affairs; or

(4) if the person is dead:

(A) the executor or administrator of the deceased's estate; or

(B) if an executor or administrator has not been appointed, the deceased's spouse or, if the deceased was not married, an adult related to the deceased within the first degree of consanguinity.

(b) Disclosure is permitted only to the extent, under the circumstances, and for the purposes allowed under department rules.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 595.004. RIGHT TO PERSONAL RECORD. (a) The content of a confidential record shall be made available on the request of the person about whom the record was made unless:

(1) the person is a client; and

(2) the qualified professional responsible for supervising the client's habilitation states in a signed written statement that having access to the record is not in the client's best interest.

(b) The parent of a minor or the guardian of the person shall be given access to the contents of any record about the minor or person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 595.005. EXCEPTIONS. (a) The content of a confidential record may be disclosed without the consent required under Section 595.003 to:

(1) medical personnel to the extent necessary to meet a medical emergency;

(2) qualified personnel for management audits, financial audits, program evaluations, or research approved by the department; or

(3) personnel legally authorized to conduct investigations concerning complaints of abuse or denial of rights of persons with an intellectual disability.

(b) A person who receives confidential information under

Subsection (a)(2) may not directly or indirectly identify a person receiving services in a report of the audit, evaluation, or research, or otherwise disclose any identities.

(c) The department may disclose without the consent required under Section 595.003 a person's educational records to a school district that provides or will provide educational services to the person.

(d) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause, the content of a record may be disclosed without the consent required under Section 595.003. In determining whether there is good cause, a court shall weigh the public interest and need for disclosure against the injury to the person receiving services. On granting the order, the court, in determining the extent to which any disclosure of all or any part of a record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1471, eff. April 2, 2015.

Sec. 595.0055. DISCLOSURE OF NAME AND BIRTH AND DEATH DATES FOR CERTAIN PURPOSES. (a) In this section, "cemetery organization" and "funeral establishment" have the meanings assigned by Section 711.001.

(b) Notwithstanding any other law, on request by a representative of a cemetery organization or funeral establishment, the director of a residential care facility shall release to the representative the name, date of birth, or date of death of a person who was a resident at the facility when the person died, unless the person or the person's guardian provided written instructions to the facility not to release the person's name or dates of birth and death. A representative of a cemetery organization or a funeral establishment may use a name or date released under this subsection only for the purpose of inscribing the name or date on a grave marker.

Added by Acts 2003, 78th Leg., ch. 174, Sec. 2, eff. May 27, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1472, eff. April 2, 2015.

Sec. 595.006. USE OF RECORD IN CRIMINAL PROCEEDINGS. Except as authorized by a court order under Section 595.005, a confidential record may not be used to:

(1) initiate or substantiate a criminal charge against a person receiving services; or

(2) conduct an investigation of a person receiving services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 595.007. CONFIDENTIALITY OF PAST SERVICES. The prohibition against disclosing information in a confidential record applies regardless of when the person received services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 595.008. EXCHANGE OF RECORDS. The prohibitions against disclosure apply to an exchange of records between government agencies or persons, except for exchanges of information necessary for:

(1) delivery of services to clients; or

(2) payment for intellectual disability services as defined in this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1473, eff. April 2, 2015.

Sec. 595.009. RECEIPT OF INFORMATION BY PERSONS OTHER THAN CLIENT OR PATIENT. (a) A person who receives information that is confidential under this chapter may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

(b) This section does not apply to the person about whom the record is made, or the parent, if the person is a minor, or the guardian of the person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 595.010. DISCLOSURE OF PHYSICAL OR MENTAL CONDITION. This chapter does not prohibit a qualified professional from disclosing the current physical and mental condition of a person with an intellectual disability to the person's parent, guardian, relative, or friend.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1474, eff. April 2, 2015.

CHAPTER 597. CAPACITY OF CLIENTS TO CONSENT TO TREATMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 597.001. DEFINITIONS. In this chapter:

(1) "Highly restrictive procedure" means the application of aversive stimuli, exclusionary time-out, physical restraint, or a requirement to engage in an effortful task.

(2) "Client" means a person receiving services in a community-based ICF-IID.

(3) "Committee" means a surrogate consent committee established under Section 597.042.

(4) "ICF-IID" has the meaning assigned by Section 531.002.

(5) "Interdisciplinary team" means those interdisciplinary teams defined in the Code of Federal Regulations for participation in the intermediate care facilities for individuals with intellectual and developmental disabilities.

(6) "Major medical and dental treatment" means a medical, surgical, dental, or diagnostic procedure or intervention that:

(A) has a significant recovery period;

(B) presents a significant risk;

(C) employs a general anesthetic; or

(D) in the opinion of the primary physician, involves a significant invasion of bodily integrity that requires the extraction

of bodily fluids or an incision or that produces substantial pain, discomfort, or debilitation.

(7) "Psychoactive medication" means any medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect upon the central nervous system for the purposes of influencing and modifying behavior, cognition, or affective state.

(8) "Surrogate decision-maker" means an individual authorized under Section 597.041 to consent on behalf of a client residing in an ICF-IID.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1475, eff. April 2, 2015.

Sec. 597.002. RULES. The executive commissioner may adopt rules necessary to implement this chapter.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1476, eff. April 2, 2015.

Sec. 597.003. EXCEPTIONS. (a) This chapter does not apply to decisions for the following:

(1) experimental research;
(2) abortion;
(3) sterilization;
(4) management of client funds; and
(5) electroconvulsive treatment.

(b) This chapter does not apply to campus-based facilities operated by the department.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.

Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

SUBCHAPTER B. ASSESSMENT OF CLIENT'S CAPACITY; INCAPACITATED CLIENTS WITHOUT GUARDIANS

Sec. 597.021. ICF-IID ASSESSMENT OF CLIENT'S CAPACITY TO CONSENT TO TREATMENT. (a) The executive commissioner by rule shall require an ICF-IID certified in this state to assess the capacity of each adult client without a legal guardian to make treatment decisions when there is evidence to suggest the individual is not capable of making a decision covered under this chapter.

(b) The rules must require the use of a uniform assessment process prescribed by department rule to determine a client's capacity to make treatment decisions.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1477, eff. April 2, 2015.

SUBCHAPTER C. SURROGATE CONSENT FOR ICF-IID CLIENTS

Sec. 597.041. SURROGATE DECISION-MAKERS. (a) If the results of an assessment conducted in accordance with Section 597.021 indicate that an adult client who does not have a legal guardian or a client under 18 years of age who has no parent, legal guardian, or managing or possessory conservator lacks the capacity to make a major medical or dental treatment decision, an adult surrogate from the following list, in order of descending preference, who has decision-making capacity and who is willing to consent on behalf of the client may consent to major medical or dental treatment on behalf of the client:

(1) an actively involved spouse;

(2) an actively involved adult child who has the waiver and consent of all other actively involved adult children of the client to act as the sole decision-maker;

(3) an actively involved parent or stepparent;

(4) an actively involved adult sibling who has the waiver and consent of all other actively involved adult siblings of the client to act as the sole decision-maker; and

(5) any other actively involved adult relative who has the waiver and consent of all other actively involved adult relatives of the client to act as the sole decision-maker.

(b) Any person who consents on behalf of a client and who acts in good faith, reasonably, and without malice is not criminally or civilly liable for that action.

(c) Consent given by the surrogate decision-maker is valid and competent to the same extent as if the client had the capacity to consent and had consented.

(d) Any dispute as to the right of a party to act as a surrogate decision-maker may be resolved only by a court of record under Title 3, Estates Code.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1479, eff. April 2, 2015.

Sec. 597.042. SURROGATE CONSENT COMMITTEE ESTABLISHED; DEPARTMENTAL SUPPORT. (a) For cases in which there is no guardian or surrogate decision-maker available, the department shall establish and maintain a list of individuals qualified to serve on a surrogate consent committee.

(b) The department shall provide the staff and assistance necessary to perform the duties prescribed by this subchapter.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.043. COMMITTEE MEMBERSHIP. (a) A surrogate consent committee considering an application for a treatment decision shall be composed of at least three but not more than five members, and consent on behalf of clients shall be based on consensus of the

members.

(b) A committee considering an application for a treatment decision must consist of individuals who:

(1) are not employees of the facility;

(2) do not provide contractual services to the facility;

(3) do not manage or exercise supervisory control over:

(A) the facility or the employees of the facility; or

(B) any company, corporation, or other legal entity that manages or exercises control over the facility or the employees of the facility;

(4) do not have a financial interest in the facility or in any company, corporation, or other legal entity that has a financial interest in the facility; and

(5) are not related to the client.

(c) The list of qualified individuals from which committee members are drawn shall include:

(1) health care professionals licensed or registered in this state who have specialized training in medicine, psychopharmacology, nursing, or psychology;

(2) persons with an intellectual disability or parents, siblings, spouses, or children of a person with an intellectual disability;

(3) attorneys licensed in this state who have knowledge of legal issues of concern to persons with an intellectual disability or to the families of persons with an intellectual disability;

(4) members of private organizations that advocate on behalf of persons with an intellectual disability; and

(5) persons with demonstrated expertise or interest in the care and treatment of persons with an intellectual disability.

(d) At least one member of the committee must be an individual listed in Subsection (c)(1) or (5).

(e) A member of a committee shall participate in education and training as required by department rule.

(f) The department shall designate a committee chair.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 450, Sec. 2, eff. Sept. 1, 1997. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1480, eff. April 2, 2015.

Sec. 597.044. APPLICATION FOR TREATMENT DECISION. (a) If the results of the assessment conducted in accordance with Section 597.021 indicate that a client who does not have a legal guardian or surrogate decision-maker lacks the capacity to make a treatment decision about major medical or dental treatment, psychoactive medication, or a highly restrictive procedure, the ICF-IID must file an application for a treatment decision with the department.

(b) An application must be in the form prescribed by the department, must be signed by the applicant, and must:

(1) state that the applicant has reason to believe and does believe that the client has a need for major medical or dental treatment, psychoactive medication, or a highly restrictive procedure;

(2) specify the condition proposed to be treated;

(3) provide a description of the proposed treatment, including the risks and benefits to the client of the proposed treatment;

(4) provide a description of generally accepted alternatives to the proposed treatment, including the risks and potential benefits to the client of the alternatives, and the reasons the alternatives were rejected;

(5) state the applicant's opinion on whether the proposed treatment promotes the client's best interest and the grounds for the opinion;

(6) state the client's opinion about the proposed treatment, if known;

(7) provide any other information necessary to determine the client's best interest regarding the treatment; and

(8) state that the client does not have a guardian of the person and does not have a parent, spouse, child, or other person with demonstrated interest in the care and welfare of the client who is able and willing to become the client's guardian or surrogate decision-maker.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 450, Sec. 2, eff. Sept. 1, 1997.

Reenacted and amended by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1481, eff. April 2, 2015.

Sec. 597.045. NOTICE OF REVIEW OF APPLICATION FOR TREATMENT DECISION. (a) Following receipt of an application for a treatment decision that meets the requirements of Section 597.044(b), the department shall appoint a surrogate consent committee.

(b) The ICF-IID with assistance from the department shall schedule a review of the application.

(c) The ICF-IID with assistance from the department shall send notice of the date, place, and time of the review to the surrogate consent committee, the client who is the subject of the application, the client's actively involved parent, spouse, adult child, or other person known to have a demonstrated interest in the care and welfare of the client, and any other person as prescribed by department rule. The ICF-IID shall include a copy of the application and a statement of the committee's procedure for consideration of the application, including the opportunity to be heard or to present evidence and to appeal.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.
Amended by Act 1997, 75th Leg., ch. 450, Sec. 4, eff. Sept. 1, 1997.
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1482, eff. April 2, 2015.

Sec. 597.046. PREREVIEW OF APPLICATION. (a) Before the date of the review of an application for a treatment decision the committee chair shall review the application to determine whether additional information may be necessary to assist the committee in determining the client's best interest under the circumstances.

(b) A committee member may consult with a person who might assist in the determination of the best interest of the client or in

learning the personal opinions, beliefs, and values of the client.

(c) If a committee that does not include in its membership an individual listed in Section 597.043(c)(1) is to review an application for a treatment decision about psychoactive medication, the department shall provide consultation with a health care professional licensed or registered in this state to assist the committee in the determination of the best interest of the client.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 450, Sec. 4, eff. Sept. 1, 1997. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.047. CONFIDENTIAL INFORMATION. Notwithstanding any other state law, a person licensed by this state to provide services related to health care or to the treatment or care of a person with an intellectual disability, a developmental disability, or a mental illness shall provide to the committee members any information the committee requests that is relevant to the client's need for a proposed treatment.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1483, eff. April 2, 2015.

Sec. 597.048. REVIEW OF APPLICATION. (a) The committee shall review the application at the time, place, and date provided in the notice under Section 597.045.

(b) A person notified under Section 597.045 is entitled to be present and to present evidence personally or through a representative.

(c) The committee may take testimony or review evidence from any person who might assist the committee in determining a client's best interest.

(d) Formal rules of evidence do not apply to committee proceedings.

(e) If practicable, the committee shall interview and observe the client before making a determination of the client's best interest, and in those cases when a client is not interviewed, the reason must be documented in the committee's record.

(f) At any time before the committee makes its determination of a client's best interest under Section 597.049, the committee chair may suspend the review of the application for not more than five days if any person applies for appointment as the client's guardian of the person in accordance with the Estates Code.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 450, Sec. 5, eff. Sept. 1, 1997. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1484, eff. April 2, 2015.

Sec. 597.049. DETERMINATION OF BEST INTEREST. (a) The committee shall make a determination, based on clear and convincing evidence, of whether the proposed treatment promotes the client's best interest and a determination that:

(1) a person has not been appointed as the guardian of the client's person before the sixth day after proceedings are suspended under Section 597.048(f); or

(2) there is a medical necessity, based on clear and convincing evidence, that the determination about the proposed treatment occur before guardianship proceedings are completed.

(b) In making its determination of the best interest of the client, the committee shall consider fully the preference of the client as articulated at any time.

(c) According to its determination of the client's best interest, the committee shall consent or refuse the treatment on the client's behalf.

(d) The committee shall determine a date on which the consent becomes effective and a date on which the consent expires.

(e) A person serving on a committee who consents or refuses to consent on behalf of a client and who acts in good faith, reasonably, and without malice is not criminally or civilly liable for that

action.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 450, Sec. 6, eff. Sept. 1, 1997. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.050. NOTICE OF DETERMINATION. (a) The committee shall issue a written opinion containing each of its determinations and a separate statement of the committee's findings of fact.

(b) The ICF-IID shall send a copy of the committee's opinion to:

(1) each person notified under Section 597.045; and

(2) the department.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 450, Sec. 7, eff. Sept. 1, 1997. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1485, eff. April 2, 2015.

Sec. 597.051. EFFECT OF COMMITTEE'S DETERMINATION. This chapter does not limit the availability of other lawful means of obtaining a client's consent for medical treatment.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. June 18, 1999. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.052. SCOPE OF CONSENT. (a) The committee or the surrogate decision-maker may consent to the release of records related to the client's condition or treatment to facilitate treatment to which the committee or surrogate decision-maker has consented.

(b) The interdisciplinary team may consent to psychoactive medication subsequent to the initial consent for administration of

psychoactive medication made by a surrogate consent committee in accordance with rules of the department until the expiration date of the consent.

(c) Unless another decision-making mechanism is provided for by law, a client, a client's authorized surrogate decision-maker if available, or the client's interdisciplinary team may consent to decisions which involve risk to client protection and rights not specifically reserved to surrogate decision-makers or surrogate consent committees.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 450, Sec. 8, eff. Sept. 1, 1997. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.053. APPEALS. (a) A person notified under Section 597.045 may appeal the committee's decision by filing a petition in the probate court or court having probate jurisdiction for the county in which the client resides or in Travis County. The person must file the appeal not later than the 15th day after the effective date of the committee's determination.

(b) If the hearing is to be held in a probate court in which the judge is not a licensed attorney, the person filing the appeal may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The probate court judge shall transfer the case after receiving the request, and the receiving court shall hear the case as if it had been originally filed in that court.

(c) A copy of the petition must be served on all parties of record in the proceedings before the committee.

(d) After considering the nature of the condition of the client, the proposed treatment, and the need for timely medical attention, the court may issue a temporary restraining order to facilitate the appeal. If the order is granted, the court shall expedite the trial.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.054. PROCEDURES. (a) Each ICF-IID shall develop procedures for the surrogate consent committees in accordance with the rules adopted under Section 597.002.

(b) A committee is not subject to Chapter 2001, Government Code, Chapter 551, Government Code, or Chapter 552, Government Code.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (82), (88), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 450, Sec. 9, eff. Sept. 1, 1997. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1486, eff. April 2, 2015.

SUBTITLE E. SPECIAL PROVISIONS RELATING TO MENTAL ILLNESS AND INTELLECTUAL DISABILITY

CHAPTER 611. MENTAL HEALTH RECORDS

Sec. 611.001. DEFINITIONS. In this chapter:

(1) "Patient" means a person who consults or is interviewed by a professional for diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism or drug addiction.

(2) "Professional" means:

(A) a person authorized to practice medicine in any state or nation;

(B) a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder; or

(C) a person the patient reasonably believes is authorized, licensed, or certified as provided by this subsection.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 611.002. CONFIDENTIALITY OF INFORMATION AND PROHIBITION AGAINST DISCLOSURE. (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004, 611.0041, or 611.0045.

(b-1) No exception to the privilege of confidentiality under Section 611.004 may be construed to create an independent duty or requirement to disclose the confidential information to which the exception applies.

(c) This section applies regardless of when the patient received services from a professional.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.11, eff. Aug. 30, 1993.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 633 (H.B. 549), Sec. 1, eff. September 1, 2021.

Sec. 611.003. PERSONS WHO MAY CLAIM PRIVILEGE OF CONFIDENTIALITY. (a) The privilege of confidentiality may be claimed by:

(1) the patient;

(2) a person listed in Section 611.004(a)(4) or (a)(5) who is acting on the patient's behalf; or

(3) the professional, but only on behalf of the patient.

(b) The authority of a professional to claim the privilege of confidentiality on behalf of the patient is presumed in the absence of evidence to the contrary.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 611.004. AUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION OTHER THAN IN JUDICIAL OR ADMINISTRATIVE PROCEEDING. (a) A professional may disclose confidential information only:

(1) to a governmental agency if the disclosure is required or authorized by law;

(2) to medical, mental health, or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the patient to the patient or others or there is a probability of immediate mental or emotional injury to the patient;

(3) to qualified personnel for management audits, financial audits, program evaluations, or research, in accordance with Subsection (b);

(4) to a person who has the written consent of the patient, or a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient's personal affairs;

(5) to the patient's personal representative if the patient is deceased;

(6) to individuals, corporations, or governmental agencies involved in paying or collecting fees for mental or emotional health services provided by a professional;

(7) to other professionals and personnel under the professionals' direction who participate in the diagnosis, evaluation, or treatment of the patient;

(8) in an official legislative inquiry relating to a state hospital or state school as provided by Subsection (c);

(9) to designated persons or personnel of a correctional facility in which a person is detained if the disclosure is for the sole purpose of providing treatment and health care to the person in custody;

(10) to an employee or agent of the professional who requires mental health care information to provide mental health care services or in complying with statutory, licensing, or accreditation requirements, if the professional has taken appropriate action to ensure that the employee or agent:

(A) will not use or disclose the information for any other purposes; and

(B) will take appropriate steps to protect the information; or

(11) to satisfy a request for medical records of a deceased or incompetent person pursuant to Section 74.051(e), Civil Practice and Remedies Code.

(a-1) No civil, criminal, or administrative cause of action exists against a person described by Section 611.001(2)(A) or (B) for the disclosure of confidential information in accordance with Subsection (a)(2). A cause of action brought against the person for the disclosure of the confidential information must be dismissed with prejudice.

(b) Personnel who receive confidential information under

Subsection (a)(3) may not directly or indirectly identify or otherwise disclose the identity of a patient in a report or in any other manner.

(c) The exception in Subsection (a)(8) applies only to records created by the state hospital or state school or by the employees of the hospital or school. Information or records that identify a patient may be released only with the patient's proper consent.

(d) A person who receives information from confidential communications or records may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information. This subsection does not apply to a person listed in Subsection (a)(4) or (a)(5) who is acting on the patient's behalf.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 856, Sec. 8, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1264, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 138 (H.B. 741), Sec. 1, eff. September 1, 2005.

Acts 2021, 87th Leg., R.S., Ch. 633 (H.B. 549), Sec. 2, eff. September 1, 2021.

Sec. 611.0041. REQUIRED DISCLOSURE OF CONFIDENTIAL INFORMATION OTHER THAN IN JUDICIAL OR ADMINISTRATIVE PROCEEDING. (a) In this section:

(1) "Patient" has the meaning assigned by Section 552.0011.

(2) "State hospital" has the meaning assigned by Section 552.0011.

(b) To the extent permitted by federal law, a professional shall disclose confidential information to the descendant of a patient of a state hospital if:

(1) the patient has been deceased for at least 50 years; and

(2) the professional does not have information indicating that releasing the medical record is inconsistent with any prior expressed preference of the deceased patient or personal representatives of the deceased patient's estate.

(c) A person who receives information from confidential

communications or records may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information.

Added by Acts 2019, 86th Leg., R.S., Ch. 1088 (H.B. 1901), Sec. 1, eff. September 1, 2019.

Sec. 611.0045. RIGHT TO MENTAL HEALTH RECORD. (a) Except as otherwise provided by this section, a patient is entitled to have access to the content of a confidential record made about the patient.

(b) The professional may deny access to any portion of a record if the professional determines that release of that portion would be harmful to the patient's physical, mental, or emotional health.

(c) If the professional denies access to any portion of a record, the professional shall give the patient a signed and dated written statement that having access to the record would be harmful to the patient's physical, mental, or emotional health and shall include a copy of the written statement in the patient's records. The statement must specify the portion of the record to which access is denied, the reason for denial, and the duration of the denial.

(d) The professional who denies access to a portion of a record under this section shall redetermine the necessity for the denial at each time a request for the denied portion is made. If the professional again denies access, the professional shall notify the patient of the denial and document the denial as prescribed by Subsection (c).

(e) If a professional denies access to a portion of a confidential record, the professional shall allow examination and copying of the record by another professional if the patient selects the professional to treat the patient for the same or a related condition as the professional denying access.

(f) The content of a confidential record shall be made available to a person listed by Section 611.004(a)(4) or (5) who is acting on the patient's behalf.

(g) A professional shall delete confidential information about another person who has not consented to the release, but may not delete information relating to the patient that another person has provided, the identity of the person responsible for that

information, or the identity of any person who provided information that resulted in the patient's commitment.

(h) If a summary or narrative of a confidential record is requested by the patient or other person requesting release under this section, the professional shall prepare the summary or narrative.

(i) The professional or other entity that has possession or control of the record shall grant access to any portion of the record to which access is not specifically denied under this section within a reasonable time and may charge a reasonable fee.

(j) Notwithstanding Section 159.002, Occupations Code, this section applies to the release of a confidential record created or maintained by a professional, including a physician, that relates to the diagnosis, evaluation, or treatment of a mental or emotional condition or disorder, including alcoholism or drug addiction.

(k) The denial of a patient's access to any portion of a record by the professional or other entity that has possession or control of the record suspends, until the release of that portion of the record, the running of an applicable statute of limitations on a cause of action in which evidence relevant to the cause of action is in that portion of the record.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.12, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.806, eff. Sept. 1, 2001.

Sec. 611.005. LEGAL REMEDIES FOR IMPROPER DISCLOSURE OR FAILURE TO DISCLOSE. (a) A person aggrieved by the improper disclosure of or failure to disclose confidential communications or records in violation of this chapter may petition the district court of the county in which the person resides for appropriate relief, including injunctive relief. The person may petition a district court of Travis County if the person is not a resident of this state.

(b) In a suit contesting the denial of access under Section 611.0045, the burden of proving that the denial was proper is on the professional who denied the access.

(c) The aggrieved person also has a civil cause of action for damages.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.13, eff. Aug. 30, 1993.

Sec. 611.006. AUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION IN JUDICIAL OR ADMINISTRATIVE PROCEEDING. (a) A professional may disclose confidential information in:

(1) a judicial or administrative proceeding brought by the patient or the patient's legally authorized representative against a professional, including malpractice proceedings;

(2) a license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claim or defense of a professional;

(3) a judicial or administrative proceeding in which the patient waives the patient's right in writing to the privilege of confidentiality of information or when a representative of the patient acting on the patient's behalf submits a written waiver to the confidentiality privilege;

(4) a judicial or administrative proceeding to substantiate and collect on a claim for mental or emotional health services rendered to the patient;

(5) a judicial proceeding if the judge finds that the patient, after having been informed that communications would not be privileged, has made communications to a professional in the course of a court-ordered examination relating to the patient's mental or emotional condition or disorder, except that those communications may be disclosed only with respect to issues involving the patient's mental or emotional health;

(6) a judicial proceeding affecting the parent-child relationship;

(7) any criminal proceeding, as otherwise provided by law;

(8) a judicial or administrative proceeding regarding the abuse or neglect, or the cause of abuse or neglect, of a resident of an institution, as that term is defined by Chapter 242;

(9) a judicial proceeding relating to a will if the patient's physical or mental condition is relevant to the execution of the will;

(10) an involuntary commitment proceeding for court-ordered treatment or for a probable cause hearing under:

(A) Chapter 462;

(B) Chapter 574; or

(C) Chapter 593; or

(11) a judicial or administrative proceeding where the court or agency has issued an order or subpoena.

(b) On granting an order under Subsection (a)(5), the court, in determining the extent to which disclosure of all or any part of a communication is necessary, shall impose appropriate safeguards against unauthorized disclosure.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 9, eff. Sept. 1, 1995.

Sec. 611.007. REVOCATION OF CONSENT. (a) Except as provided by Subsection (b), a patient or a patient's legally authorized representative may revoke a disclosure consent to a professional at any time. A revocation is valid only if it is written, dated, and signed by the patient or legally authorized representative.

(b) A patient may not revoke a disclosure that is required for purposes of making payment to the professional for mental health care services provided to the patient.

(c) A patient may not maintain an action against a professional for a disclosure made by the professional in good faith reliance on an authorization if the professional did not have notice of the revocation of the consent.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 9, eff. Sept. 1, 1995.

Sec. 611.008. REQUEST BY PATIENT. (a) On receipt of a written request from a patient to examine or copy all or part of the patient's recorded mental health care information, a professional, as promptly as required under the circumstances but not later than the 15th day after the date of receiving the request, shall:

(1) make the information available for examination during regular business hours and provide a copy to the patient, if requested; or

(2) inform the patient if the information does not exist or cannot be found.

(b) Unless provided for by other state law, the professional may charge a reasonable fee for retrieving or copying mental health care information and is not required to permit examination or copying

until the fee is paid unless there is a medical emergency.

(c) A professional may not charge a fee for copying mental health care information under Subsection (b) to the extent the fee is prohibited under Subchapter M, Chapter 161.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 9, eff. Sept. 1, 1995.

CHAPTER 612. INTERSTATE COMPACT ON MENTAL HEALTH

Sec. 612.001. EXECUTION OF INTERSTATE COMPACT. This state enters into a compact with all other states legally joining in the compact in substantially the following form:

"INTERSTATE COMPACT ON MENTAL HEALTH

"The contracting states solemnly agree that:

"ARTICLE I

"The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

"ARTICLE II

"As used in this compact:

"(a) 'Sending state' shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

"(b) 'Receiving state' shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

"(c) 'Institution' shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the

care and treatment of mental illness or mental deficiency.

"(d) 'Patient' shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

"(e) 'After-care' shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

"(f) 'Mental illness' shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

"(g) 'Mental deficiency' shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

"(h) 'State' shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

"ARTICLE III

"(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

"(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

"(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other

appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

"(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

"(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

"ARTICLE IV

"(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

"(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

"(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and

treatment that it employs for similar local patients.

"ARTICLE V

"Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

"ARTICLE VI

"The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

"ARTICLE VII

"(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

"(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

"(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

"(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

"(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a non-party state relating to institutionalization, care or treatment of the mentally

ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

"ARTICLE VIII

"(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

"(b) The term guardian as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

"ARTICLE IX

"(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to the incarceration in a penal or correctional institution.

"(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all

expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

"ARTICLE X

"(a) Each party state shall appoint a compact administrator who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

"(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

"ARTICLE XI

"The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

"ARTICLE XII

"This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

"ARTICLE XIII

"(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

"(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

"ARTICLE XIV

"This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 612.002. COMPACT ADMINISTRATOR. (a) Under the compact, the governor shall appoint the executive commissioner of the Health and Human Services Commission as the compact administrator.

(b) The compact administrator may appoint a designee to perform the administrator's duties.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1487, eff. April 2, 2015.

Sec. 612.004. GENERAL POWERS AND DUTIES OF ADMINISTRATOR. (a) The compact administrator, acting jointly with like officers of other states that are parties to the compact, may adopt rules to carry out the compact more effectively.

(b) The compact administrator shall cooperate with all departments, agencies, and officers of this state and its subdivisions in facilitating the proper administration of the compact or of a supplementary agreement entered into by this state under the compact.

(c) For informational purposes, the compact administrator shall file with the secretary of state notice of compact meetings for publication in the Texas Register.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 612.005. SUPPLEMENTARY AGREEMENTS. (a) The compact administrator may enter into supplementary agreements with appropriate officials of other states under Articles VII and XI of the compact.

(b) If a supplementary agreement requires or contemplates the use of an institution or facility of this state or requires or contemplates the provision of a service by this state, the supplementary agreement does not take effect until approved by the executive commissioner and the head of the department or agency:

(1) under whose jurisdiction the institution or facility is operated; or

(2) that will perform the service.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1488, eff. April 2, 2015.

Sec. 612.006. FINANCIAL AGREEMENTS. The compact administrator may make or arrange for the payments necessary to discharge the financial obligations imposed on this state by the compact or by a supplementary agreement entered into under the compact, subject to the approval of the comptroller.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 612.007. REQUIREMENTS AFFECTING TRANSFERS OF CERTAIN PATIENTS. (a) The compact administrator shall consult with the immediate family of any person proposed to be transferred.

(b) If a person is proposed to be transferred from an institution in this state to an institution in another state that is a party to the compact, the compact administrator may not take final action without the approval of the district court of the district in which the person resides.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

CHAPTER 613. KIDNEY DONATION BY WARD WITH INTELLECTUAL DISABILITY

Sec. 613.001. DEFINITION. In this chapter, "ward with an intellectual disability" means a ward who is a person with an intellectual disability, as defined by Subtitle D.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.08, eff. September 1, 2023.

Sec. 613.002. COURT ORDER AUTHORIZING KIDNEY DONATION. A district court may authorize the donation of a kidney of a ward with an intellectual disability to a father, mother, son, daughter, brother, or sister of the ward if:

(1) the guardian of the ward with an intellectual disability consents to the donation;

(2) the ward is 12 years of age or older;

(3) the ward assents to the kidney transplant;

(4) the ward has two kidneys;

(5) without the transplant the donee will soon die or suffer severe and progressive deterioration, and with the transplant the donee will probably benefit substantially;

(6) there are no medically preferable alternatives to a kidney transplant for the donee;

(7) the risks of the operation and the long-term risks to the ward are minimal;

(8) the ward will not likely suffer psychological harm; and

(9) the transplant will promote the ward's best interests.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.09, eff. September 1, 2023.

Sec. 613.003. PETITION FOR COURT ORDER. The guardian of the person of a ward with an intellectual disability may petition a district court having jurisdiction of the guardian for an order

authorizing the ward to donate a kidney under Section 613.002.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.10, eff. September 1, 2023.

Sec. 613.004. COURT HEARING. (a) The court shall hold a hearing on the petition filed under Section 613.003.

(b) A party to the proceeding is entitled on request to a preferential setting for the hearing.

(c) The court shall appoint an attorney ad litem and a guardian ad litem to represent the interest of the ward with an intellectual disability. Neither person appointed may be related to the ward within the second degree by consanguinity.

(d) The hearing must be adversary in order to secure a complete record, and the attorney ad litem shall advocate the ward's interest, if any, in not being a donor.

(e) The petitioner has the burden of establishing good cause for the kidney donation by establishing the prerequisites prescribed by Section 613.002.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.11, eff. September 1, 2023.

Sec. 613.005. INTERVIEW AND EVALUATION ORDER BY COURT. (a) Before the eighth day after the date of the hearing, the court shall interview the ward with an intellectual disability to determine if the ward assents to the donation. The interview shall be conducted in chambers and out of the presence of the guardian.

(b) If the court considers it necessary, the court may order the performance of a determination of intellectual disability, as provided by Section 593.005, to help the court evaluate the ward's capacity to agree to the donation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 17, eff. Sept. 1, 1993.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.12, eff. September 1, 2023.

CHAPTER 614. TEXAS CORRECTIONAL OFFICE ON OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS

Sec. 614.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Criminal Justice.

(2) "Case management" means a process by which a person or team responsible for establishing and continuously maintaining contact with a person with mental illness, a developmental disability, or an intellectual disability provides that person with access to services required by the person and ensures the coordinated delivery of those services to the person.

(3) "Committee" means the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments.

(3-a) "Continuity of care and services" refers to the process of:

(A) identifying the medical, psychiatric, or psychological care or treatment needs and educational or rehabilitative service needs of an offender with medical or mental impairments;

(B) developing a plan for meeting the treatment, care, and service needs of the offender with medical or mental impairments; and

(C) coordinating the provision of treatment, care, and services between the various agencies who provide treatment, care, or services such that they may continue to be provided to the offender at the time of arrest, while charges are pending, during post-adjudication or post-conviction custody or criminal justice supervision, and for pretrial diversion.

(4) "Developmental disability" means a severe, chronic disability that:

(A) is attributable to a mental or physical impairment or a combination of physical and mental impairments;

(B) is manifested before the person reaches 22 years of age;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;

(ii) self-direction;

(iii) learning;

(iv) receptive and expressive language;

(v) mobility;

(vi) capacity for independent living; or

(vii) economic self-sufficiency; and

(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services of extended or lifelong duration that are individually planned and coordinated.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Mental illness" has the meaning assigned by Section 571.003.

(6) "Mental impairment" means a mental illness, an intellectual disability, or a developmental disability.

(7) "Intellectual disability" has the meaning assigned by Section 591.003.

(8) "Offender with a medical or mental impairment" means a juvenile or adult who is arrested or charged with a criminal offense and who:

(A) is a person with:

(i) a mental impairment; or

(ii) a physical disability, terminal illness, or significant illness; or

(B) is elderly.

(9) "Office" means the Texas Correctional Office on Offenders with Medical or Mental Impairments.

(10) "Person with an intellectual disability" means a juvenile or adult with an intellectual disability that is not a mental disorder who, because of the mental deficit, requires special training, education, supervision, treatment, care, or control in the person's home or community or in a private school or state supported living center for persons with an intellectual disability.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.52, eff. Aug. 30,

1993; Acts 2003, 78th Leg., ch. 856, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1306 (S.B. 839), Sec. 1, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1489, eff. April 2, 2015.

Sec. 614.002. COMPOSITION OF COMMITTEE; DUTIES. (a) The Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments is composed of 27 members.

(b) The governor shall appoint, with the advice and consent of the senate:

(1) four at-large members who have expertise in mental health, intellectual disabilities, or developmental disabilities, three of whom must be forensic psychiatrists or forensic psychologists;

(2) one at-large member who is the judge of a district court with criminal jurisdiction;

(3) one at-large member who is a prosecuting attorney;

(4) one at-large member who is a criminal defense attorney;

(5) two at-large members who have expertise in the juvenile justice or criminal justice system; and

(6) one at-large member whose expertise can further the mission of the committee.

(c)(1) The following entities, by September 1 of each even-numbered year, shall submit to the governor for consideration a list of five candidates from their respective fields for at-large membership on the committee:

(A) the Texas District and County Attorneys Association;

(B) the Texas Criminal Defense Lawyers Association;

(C) the Texas Association of Counties;

(D) the Texas Medical Association;

(E) the Texas Society of Psychiatric Physicians;

(F) the Texas Psychological Association;

(G) the Sheriffs' Association of Texas;

(H) the court of criminal appeals;

(I) the County Judges and Commissioners Association of

Texas; and

(J) the Texas Conference of Urban Counties.

(2) The Texas Medical Association, the Texas Society of Psychiatric Physicians, and the Texas Psychological Association may submit a candidate for membership only if the candidate has documented expertise and educational training in, as appropriate, medical forensics, forensic psychology, or forensic psychiatry.

(d) A person may not be a member of the committee if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the committee.

(e) The executive head of each of the following agencies, divisions of agencies, or associations, or that person's designated representative, shall serve as a member of the committee:

(1) the correctional institutions division of the Texas Department of Criminal Justice;

(2) the Department of State Health Services;

(3) the parole division of the Texas Department of Criminal Justice;

(4) the community justice assistance division of the Texas Department of Criminal Justice;

(5) the Texas Juvenile Justice Department;

(6) the Texas Workforce Commission;

(7) the Correctional Managed Health Care Committee;

(8) Mental Health America of Texas;

(9) the Board of Pardons and Paroles;

(10) the Texas Commission on Law Enforcement;

(11) the Texas Council of Community Centers;

(12) the Commission on Jail Standards;

(13) the Texas Council for Developmental Disabilities;

(14) the Arc of Texas;

(15) the National Alliance on Mental Illness of Texas;

(16) the Texas Veterans Commission; and

(17) the Health and Human Services Commission.

(f) In making the appointments under Subsection (b), the governor shall attempt to reflect the geographic and economic diversity of the state. Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(g) It is a ground for removal from the committee that an at-

large member:

(1) does not have at the time of taking office the qualifications required by Subsection (b);

(2) does not maintain during service on the committee the qualifications required by Subsection (b);

(3) is ineligible for membership under Subsection (d);

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term;

(5) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the committee; or

(6) is absent from more than two consecutive regularly scheduled committee meetings that the member is eligible to attend.

(h) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

(i) If the director of the committee has knowledge that a potential ground for removal exists, the director shall notify the presiding officer of the committee of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest ranking officer of the committee, who shall then notify the governor and the attorney general that a potential ground for removal exists.

(j) A representative designated by the executive head of a state agency must be an officer or employee of the agency when designated and while serving on the committee.

(k) The committee shall advise the board and the director of the Texas Correctional Office on Offenders with Medical or Mental Impairments on matters related to offenders with medical or mental impairments and perform other duties imposed by the board.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.53(a), eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 321, Sec. 2.020, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 6.50, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 79, Sec. 5, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1188, Sec. 3.01, eff. Sept. 1, 1999; Acts 2003, 78th Leg.,

ch. 856, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1170, Sec. 27.01, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.005, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1112 (H.B. 2384), Sec. 1, eff. September 1, 2005.
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.112, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 1176 (H.B. 3278), Sec. 8, eff. June 17, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.39, eff. May 18, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1490, eff. April 2, 2015.
Acts 2025, 89th Leg., R.S., Ch. 1022 (S.B. 2405), Sec. 96, eff. September 1, 2025.

Sec. 614.003. TEXAS CORRECTIONAL OFFICE ON OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS; DIRECTOR. The Texas Correctional Office on Offenders with Medical or Mental Impairments shall perform duties imposed on or assigned to the office by this chapter, other law, the board, and the executive director of the Texas Department of Criminal Justice. The executive director of the Texas Department of Criminal Justice shall hire a director of the office. The director serves at the pleasure of the executive director. The director shall hire the employees for the office.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 3.02, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 856, Sec. 4, eff. Sept. 1, 2003.

Sec. 614.0031. TRAINING PROGRAM. (a) A person who is appointed to and qualifies for office as a member of the committee may not vote, deliberate, or be counted as a member in attendance at a meeting of the committee until the person completes a training program that complies with this section.
(b) The training program must provide the person with

information regarding:

(1) the legislation that created the committee and the office;

(2) the programs operated by the committee and the office;

(3) the role and functions of the committee and the office;

(4) the rules of the committee and the office;

(5) the current budget for the committee and the office;

(6) the results of the most recent formal audit of the committee and the office;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict of interest laws; and

(8) any applicable ethics policies adopted by the committee or the Texas Ethics Commission.

(c) A person appointed to the committee is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 3.02, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 856, Sec. 5, eff. Sept. 1, 2003.

Sec. 614.0032. SPECIAL DUTIES RELATED TO MEDICALLY RECOMMENDED SUPERVISION; DETERMINATIONS REGARDING MENTAL ILLNESS OR INTELLECTUAL DISABILITY. (a) The office shall:

(1) perform duties imposed on the office by Section 508.146, Government Code; and

(2) periodically identify state jail felony defendants suitable for release under Article 42A.561, Code of Criminal Procedure, and perform other duties imposed on the office by that article.

(b) The office shall approve and make generally available in electronic format a standard form for use by experts in reporting competency examination results under Chapter 46B, Code of Criminal Procedure.

(c) The office shall approve and make generally available in electronic format a standard form for use by a person providing a written report under Article 16.22(a)(1)(B), Code of Criminal Procedure.

Added by Acts 2003, 78th Leg., ch. 856, Sec. 6, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 35, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1269 (H.B. 2194), Sec. 3, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 617 (H.B. 431), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 8.003, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1308 (S.B. 909), Sec. 44, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.019, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.70, eff. January 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 34, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 35(3), eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 24, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 25, eff. September 1, 2019.

Sec. 614.004. TERMS. The at-large members of the committee serve for staggered six-year terms with the terms of approximately one-third of the at-large members expiring on February 1 of each odd-numbered year.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 2003, 78th Leg., ch. 856, Sec. 7, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1170, Sec. 27.02, eff. Sept. 1, 2003.

Sec. 614.005. OFFICERS; MEETINGS. (a) The governor shall designate a member of the committee as the presiding officer of the committee to serve in that capacity at the pleasure of the governor.

(b) The committee shall meet at least four times each year and may meet at other times at the call of the presiding officer or as provided by committee rule.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.53(a), eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1188, Sec. 3.03, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 856, Sec. 8, eff. Sept. 1, 2003.

Sec. 614.006. APPLICABILITY OF CERTAIN GOVERNMENT CODE PROVISIONS. (a) The provisions of Chapter 2110, Government Code, other than Section 2110.002(a), apply to the committee.

(b) A member of the committee is not entitled to compensation for performing duties on the committee but is entitled to receive reimbursement for travel and other necessary expenses incurred in performing official duties at the rate provided for state employees in the General Appropriations Act.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2003, 78th Leg., ch. 856, Sec. 9, eff. Sept. 1, 2003.

Sec. 614.007. POWERS AND DUTIES. The office shall:

(1) determine the status of offenders with medical or mental impairments in the state criminal justice system;

(2) identify needed services for offenders with medical or mental impairments;

(3) develop a plan for meeting the treatment, rehabilitative, and educational needs of offenders with medical or mental impairments that includes a case management system and the development of community-based alternatives to incarceration;

(4) cooperate in coordinating procedures of represented agencies for the orderly provision of services for offenders with

medical or mental impairments;

(5) evaluate programs in this state and outside this state for offenders with medical or mental impairments and recommend to the directors of state programs methods of improving the programs;

(6) collect and disseminate information about available programs to judicial officers, law enforcement officers, probation and parole officers, providers of social services or treatment, and the public;

(7) provide technical assistance to represented agencies and organizations in the development of appropriate training programs;

(8) apply for and receive money made available by the federal or state government or by any other public or private source to be used by the office to perform its duties;

(9) distribute to political subdivisions, private organizations, or other persons money appropriated by the legislature to be used for the development, operation, or evaluation of programs for offenders with medical or mental impairments;

(10) develop and implement pilot projects to demonstrate a cooperative program to identify, evaluate, and manage outside of incarceration offenders with medical or mental impairments; and

(11) assess the need for demonstration projects and provide management for approved projects.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.53(a), eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 312, Sec. 6, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1188, Sec. 3.04, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 856, Sec. 10, eff. Sept. 1, 2003.

Sec. 614.008. COMMUNITY-BASED DIVERSION PROGRAM FOR OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS. (a) The office may maintain at least one program in a county selected by the office to employ a cooperative community-based alternative system to divert from the state criminal justice system offenders with mental impairments or offenders who are identified as being elderly or persons with physical disabilities, terminal illnesses, or significant illnesses and to rehabilitate those offenders.

(b) The office may contract for or employ and train a case

management team to carry out the purposes of the program and to coordinate the joint efforts of agencies represented on the committee.

(c) The agencies represented on the committee shall perform duties and offer services as required by the office to further the purposes of the program and the office.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.53(a), eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 856, Sec. 11, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1491, eff. April 2, 2015.

Sec. 614.009. BIENNIAL REPORT. Not later than December 1 of each even-numbered year, the office shall present to the board and file with the governor, lieutenant governor, and speaker of the house of representatives a report giving the details of the office's activities during the preceding biennium. The report must include:

(1) an evaluation of any demonstration project undertaken by the office;

(2) an evaluation of the progress made by the office toward developing a plan for meeting the treatment, rehabilitative, and educational needs of offenders with special needs;

(3) information on the provision of services under Section 614.021 to wrongfully imprisoned persons;

(4) recommendations of the office made in accordance with Section 614.007(5);

(5) an evaluation of the development and implementation of the continuity of care and service programs established under Sections 614.013, 614.014, 614.015, 614.016, and 614.018, changes in rules, policies, or procedures relating to the programs, future plans for the programs, and any recommendations for legislation; and

(6) any other recommendations that the office considers appropriate.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 488, Sec. 2, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 856, Sec. 12, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1187 (H.B. 3689), Sec. 4.009, eff. June 19, 2009.

Acts 2025, 89th Leg., R.S., Ch. 1022 (S.B. 2405), Sec. 97, eff. September 1, 2025.

Sec. 614.0101. PUBLIC ACCESS. The committee shall develop and implement policies that provide the public with a reasonable opportunity to appear before the committee and to speak on any issue under the jurisdiction of the committee or office.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 3.05, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 856, Sec. 13, eff. Sept. 1, 2003.

Sec. 614.0102. COMPLAINTS. (a) The office shall maintain a file on each written complaint filed with the office. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the office;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the office closed the file without taking action other than to investigate the complaint.

(b) The office shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the office's policies and procedures relating to complaint investigation and resolution.

(c) The office, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 3.05, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 856, Sec. 14, eff. Sept.

1, 2003.

Sec. 614.013. CONTINUITY OF CARE FOR OFFENDERS WITH MENTAL IMPAIRMENTS. (a) The Texas Department of Criminal Justice, the Department of State Health Services, the bureau of identification and records of the Department of Public Safety, representatives of local mental health or intellectual and developmental disability authorities appointed by the commissioner of the Department of State Health Services, and the directors of community supervision and corrections departments shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for offenders with mental impairments in the criminal justice system. The office shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders with mental impairments in the criminal justice system and collecting and reporting prevalence rate data to the office;

(2) developing interagency rules, policies, procedures, and standards for the coordination of care of and the exchange of information on offenders with mental impairments by local and state criminal justice agencies, the Department of State Health Services and the Health and Human Services Commission, local mental health or intellectual and developmental disability authorities, the Commission on Jail Standards, and local jails;

(3) identifying the services needed by offenders with mental impairments to reenter the community successfully; and

(4) establishing a process to report implementation activities to the office.

(b-1) Subject to available resources, and to the extent feasible, the methods established under Subsection (b) must ensure that each offender with a mental impairment is identified and qualified for the continuity of care system and serve adults with severe and persistent mental illness who are experiencing significant functional impairment due to a mental health disorder that is defined by the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), including:

(1) major depressive disorder, including single episode or

recurrent major depressive disorder;

(2) post-traumatic stress disorder;

(3) schizoaffective disorder, including bipolar and depressive types;

(4) psychotic disorder;

(5) anxiety disorder;

(6) delusional disorder; or

(7) any other diagnosed mental health disorder that is severe or persistent in nature.

(c) The Texas Department of Criminal Justice, the Department of State Health Services, local mental health or intellectual and developmental disability authorities, and community supervision and corrections departments shall:

(1) operate the continuity of care and service program for offenders with mental impairments in the criminal justice system with funds appropriated for that purpose; and

(2) actively seek federal grants or funds to operate and expand the program.

(d) Local and state criminal justice agencies shall, whenever possible, contract with local mental health or intellectual and developmental disability authorities to maximize Medicaid funding and improve on the continuity of care and service program for offenders with mental impairments in the criminal justice system.

(e) The office, in coordination with each state agency identified in Subsection (b)(2), shall develop a standardized process for collecting and reporting the memorandum of understanding implementation outcomes by local and state criminal justice agencies and local and state mental health or intellectual and developmental disability authorities. The findings of these reports shall be submitted to the office by September 1 of each even-numbered year and shall be included in recommendations to the board in the office's biennial report under Section 614.009.

Added by Acts 1993, 73rd Leg., ch. 488, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 312, Sec. 7, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 165, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 856, Sec. 15, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1306 (S.B. 839), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1492, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 753 (H.B. 1908), Sec. 1, eff. September 1, 2015.

Acts 2025, 89th Leg., R.S., Ch. 1022 (S.B. 2405), Sec. 98, eff. September 1, 2025.

Sec. 614.014. CONTINUITY OF CARE FOR ELDERLY OFFENDERS. (a) The Texas Department of Criminal Justice, the Texas Workforce Commission, and the executive commissioner by rule shall adopt a memorandum of understanding that establishes the respective responsibilities of the Texas Department of Criminal Justice, the Department of State Health Services, the Health and Human Services Commission, and the Texas Workforce Commission to institute a continuity of care and service program for elderly offenders in the criminal justice system. The office shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying elderly offenders in the criminal justice system;

(2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on elderly offenders by local and state criminal justice agencies, the Department of State Health Services, the Health and Human Services Commission, and the Texas Workforce Commission; and

(3) identifying the services needed by elderly offenders to reenter the community successfully.

(c) The Texas Department of Criminal Justice, the Department of State Health Services, the Health and Human Services Commission, and the Texas Workforce Commission shall:

(1) operate the continuity of care and service program for elderly offenders in the criminal justice system with funds appropriated for that purpose; and

(2) actively seek federal grants or funds to operate and expand the program.

Added by Acts 1993, 73rd Leg., ch. 488, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 856, Sec. 16, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1493, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 1022 (S.B. 2405), Sec. 99, eff. September 1, 2025.

Sec. 614.015. CONTINUITY OF CARE FOR OFFENDERS WITH PHYSICAL DISABILITIES, TERMINAL ILLNESSES, OR SIGNIFICANT ILLNESSES. (a) The Texas Department of Criminal Justice, the Texas Workforce Commission, and the executive commissioner by rule shall adopt a memorandum of understanding that establishes the respective responsibilities of the Texas Department of Criminal Justice, the Texas Workforce Commission, the Department of State Health Services, and the Health and Human Services Commission to institute a continuity of care and service program for offenders in the criminal justice system who are persons with physical disabilities, terminal illnesses, or significant illnesses. The council shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders in the criminal justice system who are persons with physical disabilities, terminal illnesses, or significant illnesses;

(2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on offenders who are persons with physical disabilities, terminal illnesses, or significant illnesses by local and state criminal justice agencies, the Texas Department of Criminal Justice, the Texas Workforce Commission, the Department of State Health Services, and the Health and Human Services Commission; and

(3) identifying the services needed by offenders who are persons with physical disabilities, terminal illnesses, or significant illnesses to reenter the community successfully.

(c) The Texas Department of Criminal Justice, the Texas Workforce Commission, the Department of State Health Services, and the Health and Human Services Commission shall:

(1) operate, with funds appropriated for that purpose, the continuity of care and service program for offenders in the criminal justice system who are persons with physical disabilities, terminal illnesses, or significant illnesses; and

(2) actively seek federal grants or funds to operate and expand the program.

Added by Acts 1993, 73rd Leg., ch. 488, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 835, Sec. 26, eff. Sept. 1, 1995.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1306 (S.B. 839), Sec. 3, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1494, eff. April 2, 2015.
Acts 2025, 89th Leg., R.S., Ch. 1022 (S.B. 2405), Sec. 100, eff. September 1, 2025.

Sec. 614.016. CONTINUITY OF CARE FOR CERTAIN OFFENDERS BY LAW ENFORCEMENT AND JAILS. (a) The office, the Texas Commission on Law Enforcement, the bureau of identification and records of the Department of Public Safety, and the Commission on Jail Standards by rule shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for offenders in the criminal justice system who are persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are elderly.

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders in the criminal justice system who are persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are elderly;

(2) developing procedures for the exchange of information relating to offenders who are persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are elderly by the office, the Texas Commission on Law Enforcement, and the Commission on Jail Standards for use in the continuity of care and services program; and

(3) adopting rules and standards that assist in the development of a continuity of care and services program for offenders who are persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are elderly.

Added by Acts 1993, 73rd Leg., ch. 488, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 2003, 78th Leg., ch. 856, Sec. 17, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1306 (S.B. 839), Sec. 4, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.40, eff. May 18, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1495, eff. April 2, 2015.

Sec. 614.017. EXCHANGE OF INFORMATION. (a) An agency shall:

(1) accept information relating to a special needs offender or a juvenile with a mental impairment that is sent to the agency to serve the purposes of continuity of care and services regardless of whether other state law makes that information confidential; and

(2) disclose information relating to a special needs offender or a juvenile with a mental impairment, including information about the offender's or juvenile's identity, needs, treatment, social, criminal, and vocational history, supervision status and compliance with conditions of supervision, and medical and mental health history, if the disclosure serves the purposes of continuity of care and services.

(b) Information obtained under this section may not be used as evidence in any juvenile or criminal proceeding, unless obtained and introduced by other lawful evidentiary means.

(c) In this section:

(1) "Agency" includes any of the following entities and individuals, a person with an agency relationship with one of the following entities or individuals, and a person who contracts with one or more of the following entities or individuals:

(A) the Texas Department of Criminal Justice and the Correctional Managed Health Care Committee;

(B) the Board of Pardons and Paroles;

(C) the Department of State Health Services;

(D) the Texas Juvenile Justice Department;

(E) the Texas Workforce Commission;

(F) the Texas Education Agency;

(G) the Commission on Jail Standards;

(H) the Texas School for the Blind and Visually

Impaired;

(I) community supervision and corrections departments and local juvenile probation departments;

(J) personal bond pretrial release offices established under Article 17.42, Code of Criminal Procedure;

(K) local jails regulated by the Commission on Jail Standards;

(L) a municipal or county health department;

(M) a hospital district;

(N) a judge of this state with jurisdiction over juvenile or criminal cases;

(O) an attorney who is appointed or retained to represent a special needs offender or a juvenile with a mental impairment;

(P) the Health and Human Services Commission;

(Q) the Department of Information Resources;

(R) the bureau of identification and records of the Department of Public Safety, for the sole purpose of providing real-time, contemporaneous identification of individuals in the Department of State Health Services client data base; and

(S) the Department of Family and Protective Services.

(2) "Special needs offender" includes an individual for whom criminal charges are pending or who after conviction or adjudication is in custody or under any form of criminal justice supervision.

(3) "Juvenile with a mental impairment" means a juvenile with a mental impairment in the juvenile justice system.

(d) An agency shall manage confidential information accepted or disclosed under this section prudently so as to maintain, to the extent possible, the confidentiality of that information.

(e) A person commits an offense if the person releases or discloses confidential information obtained under this section for purposes other than continuity of care and services, except as authorized by other law or by the consent of the person to whom the information relates. An offense under this subsection is a Class B misdemeanor.

Added by Acts 1995, 74th Leg., ch. 321, Sec. 1.107, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 312, Sec. 8, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1067, Sec. 1, eff. June 18, 1999;

Acts 1999, 76th Leg., ch. 1188, Sec. 3.06, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 247, Sec. 1, eff. May 22, 2001; Acts 2003, 78th Leg., ch. 6, Sec. 1, 2, 6, eff. April 10, 2003; Acts 2003, 78th Leg., ch. 856, Sec. 18, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 706 (S.B. 396), Sec. 1, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1306 (S.B. 839), Sec. 5, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1187 (H.B. 3689), Sec. 4.007, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1187 (H.B. 3689), Sec. 4.008, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 2.003, eff. September 1, 2011.

Acts 2025, 89th Leg., R.S., Ch. 1022 (S.B. 2405), Sec. 101, eff. September 1, 2025.

Sec. 614.018. CONTINUITY OF CARE FOR JUVENILES WITH MENTAL IMPAIRMENTS. (a) The Texas Juvenile Justice Department, the Department of Public Safety, the Department of State Health Services, the Health and Human Services Commission, the Department of Family and Protective Services, the Texas Education Agency, and local juvenile probation departments shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for juveniles with mental impairments in the juvenile justice system. The Texas Correctional Office on Offenders with Medical and Mental Impairments shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying juveniles with mental impairments in the juvenile justice system and collecting and reporting relevant data to the office;

(2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on juveniles with mental impairments who are committed to or treated, served, or supervised by the Texas Juvenile Justice Department, the Department of Public Safety, the Department of State Health Services,

the Department of Family and Protective Services, the Health and Human Services Commission, the Texas Education Agency, local juvenile probation departments, local mental health or intellectual and developmental disability authorities, and independent school districts; and

(3) identifying the services needed by juveniles with mental impairments in the juvenile justice system.

(c) For purposes of this section, "continuity of care and service program" includes:

(1) identifying the medical, psychiatric, or psychological care or treatment needs and educational or rehabilitative service needs of a juvenile with mental impairments in the juvenile justice system;

(2) developing a plan for meeting the needs identified under Subdivision (1); and

(3) coordinating the provision of continual treatment, care, and services throughout the juvenile justice system to juveniles with mental impairments.

Added by Acts 2009, 81st Leg., R.S., Ch. 1187 (H.B. 3689), Sec. 4.006, eff. June 19, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 2.004, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1496, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 1022 (S.B. 2405), Sec. 102, eff. September 1, 2025.

Sec. 614.019. PROGRAMS FOR JUVENILES. (a) The office, in cooperation with the Department of State Health Services, the Department of Family and Protective Services, the Texas Juvenile Justice Department, and the Texas Education Agency, may establish and maintain programs, building on existing successful efforts in communities, to address prevention, intervention, and continuity of care for juveniles with mental health and substance abuse disorders.

(b) A child with mental illness who is receiving continuity of care services during parole from the Texas Juvenile Justice Department and who is no longer eligible to receive services from a

local mental health authority when the child becomes 17 years of age because the child does not meet the requirements of a local service area plan under Section 533.0352(a) may continue to receive continuity of care services from the office until the child completes the child's parole.

(c) A child with mental illness or an intellectual disability who is discharged from the Texas Juvenile Justice Department under Section 244.011, Human Resources Code, may receive continuity of care services from the office for a minimum of 90 days after discharge from the department and for as long as necessary for the child to demonstrate sufficient stability to transition successfully to mental health or intellectual disability services provided by a local mental health or intellectual and developmental disability authority.

Added by Acts 2001, 77th Leg., ch. 328, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 856, Sec. 19, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1038 (H.B. 4451), Sec. 3, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 3.015, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1497, eff. April 2, 2015.

Sec. 614.020. YOUTH ASSERTIVE COMMUNITY TREATMENT PROGRAM. (a) The office may establish and maintain in Tarrant County an assertive community treatment program to provide treatment, rehabilitation, and support services to individuals in that county who:

(1) are under 18 years of age;

(2) have severe and persistent mental illness;

(3) have a history of:

(A) multiple hospitalizations;

(B) poor performance in school;

(C) placement in emergency shelters or residential treatment facilities; or

(D) chemical dependency or abuse; and

(4) have been placed on probation by a juvenile court.

(b) The program must be modeled after other assertive community

treatment programs established by the Department of State Health Services. The program is limited to serving not more than 30 program participants at any time.

(c) If the office creates and maintains a program under this section, the office shall provide for the program a team of licensed or degreed professionals in the clinical treatment or rehabilitation field to administer the program. A team provided under this subsection must include:

(1) a registered nurse to provide full-time direct services to the program participants; and

(2) a psychiatrist available to the program for 10 or more hours each week.

(d) In administering the program, the program's professional team shall:

(1) provide psychiatric, substance abuse, and employment services to program participants;

(2) maintain a ratio of one or more team members for each 10 program participants to the extent practicable;

(3) be available to program participants during evening and weekend hours;

(4) meet the needs of special populations;

(5) maintain at all times availability for addressing and managing a psychiatric crisis of any program participant; and

(6) cover the geographic areas served by the program.

(e) The office and the program shall cooperate with or contract with local agencies to avoid duplication of services and to maximize federal Medicaid funding.

Added by Acts 2001, 77th Leg., ch. 1499, Sec. 1, eff. Sept. 1, 2001. Renumbered from Health & Safety Sec. 614.019 and amended by Acts 2003, 78th Leg., ch. 856, Sec. 20, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1498, eff. April 2, 2015.

Sec. 614.0205. APPROPRIATION CONTINGENCY. The office is required to provide a service or program under Section 614.019(a) or 614.020 only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money

specifically for that purpose, the office may, but is not required to, provide a service or program under Section 614.019(a) or 614.020 using other appropriations available for that purpose.

Added by Acts 2011, 82nd Leg., R.S., Ch. 785 (H.B. 2119), Sec. 1, eff. June 17, 2011.

Sec. 614.021. SERVICES FOR WRONGFULLY IMPRISONED PERSONS. (a) In this section, "wrongfully imprisoned person" has the meaning assigned by Section 501.101, Government Code.

(b) The office shall develop a plan to use existing case management functions to assist wrongfully imprisoned persons who are discharged from the Texas Department of Criminal Justice in:

(1) accessing medical and dental services, including assistance in completing documents required for application to federal entitlement programs;

(2) obtaining mental health treatment and related support services through the public mental health system for as long as the wrongfully imprisoned person requires assistance; and

(3) obtaining appropriate support services, as identified by the wrongfully imprisoned person and the assigned case manager, to assist the person in making the transition from incarceration into the community.

(c) Repealed by Acts 2025, 89th Leg., R.S., Ch. 1022 (S.B. 2405), Sec. 105(13), eff. September 1, 2025.

Added by Acts 2009, 81st Leg., R.S., Ch. 180 (H.B. 1736), Sec. 11, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(10), eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1499, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 1022 (S.B. 2405), Sec. 105(13), eff. September 1, 2025.

CHAPTER 615. MISCELLANEOUS PROVISIONS

Sec. 615.001. COUNTY RESPONSIBILITY. Each commissioners court shall provide for the support of a person with mental illness or an

intellectual disability who is:

(1) a resident of the county;

(2) unable to provide self-support; and

(3) cannot be admitted to a state mental health or intellectual disability facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1500, eff. April 2, 2015.

Sec. 615.002. ACCESS TO RECORDS BY PROTECTION AND ADVOCACY SYSTEM. (a) Notwithstanding other state law, the protection and advocacy system established in this state under the federal Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. Sec. 10801 et seq.) and the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. Sec. 15001 et seq.) is entitled to access to records relating to persons with mental illness or developmental disabilities to the extent authorized by federal law.

(b) If the person consents to notification, the protection and advocacy system shall notify the Department of State Health Services or the Department of Aging and Disability Services, as appropriate, if the system decides to investigate a complaint of abuse, neglect, or rights violation that relates to a person with mental illness or a developmental disability who is a patient or client in a facility or program operated by, licensed by, certified by, or in a contractual relationship with that department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1500, eff. April 2, 2015.

TITLE 8. DEATH AND DISPOSITION OF THE BODY

SUBTITLE A. DEATH

CHAPTER 671. DETERMINATION OF DEATH AND AUTOPSY REPORTS

SUBCHAPTER A. DETERMINATION OF DEATH

Sec. 671.001. STANDARD USED IN DETERMINING DEATH. (a) A

person is dead when, according to ordinary standards of medical practice, there is irreversible cessation of the person's spontaneous respiratory and circulatory functions.

(b) If artificial means of support preclude a determination that a person's spontaneous respiratory and circulatory functions have ceased, the person is dead when, in the announced opinion of a physician, according to ordinary standards of medical practice, there is irreversible cessation of all spontaneous brain function. Death occurs when the relevant functions cease.

(c) Death must be pronounced before artificial means of supporting a person's respiratory and circulatory functions are terminated.

(d) A registered nurse, including an advanced practice registered nurse, or physician assistant may determine and pronounce a person dead in situations other than those described by Subsection (b) if permitted by written policies of a licensed health care facility, institution, or entity providing services to that person. Those policies must include physician assistants who are credentialed or otherwise permitted to practice at the facility, institution, or entity. If the facility, institution, or entity has an organized nursing staff and an organized medical staff or medical consultant, the nursing staff and medical staff or consultant shall jointly develop and approve those policies. The executive commissioner of the Health and Human Services Commission shall adopt rules to govern policies for facilities, institutions, or entities that do not have organized nursing staffs and organized medical staffs or medical consultants.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 201, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 965, Sec. 8, eff. June 16, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1501, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 412 (S.B. 919), Sec. 2, eff. June 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 2, eff. September 1, 2017.

Sec. 671.002. LIMITATION OF LIABILITY. (a) A physician who determines death in accordance with Section 671.001(b) or a registered nurse, including an advanced practice registered nurse, or physician assistant who determines death in accordance with Section 671.001(d) is not liable for civil damages or subject to criminal prosecution for the physician's, registered nurse's, or physician assistant's actions or the actions of others based on the determination of death.

(b) A person who acts in good faith in reliance on a physician's, registered nurse's, or physician assistant's determination of death is not liable for civil damages or subject to criminal prosecution for the person's actions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 201, Sec. 2, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 965, Sec. 9, eff. June 16, 1995.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 412 (S.B. 919), Sec. 3, eff. June 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 3, eff. September 1, 2017.

SUBCHAPTER B. AUTOPSY REPORTS

Sec. 671.011. DEFINITION. (a) In this subchapter, "autopsy report" includes:

(1) the report of the postmortem examination of the body of a person, including x-rays and photographs taken during the actual postmortem examination; and

(2) the toxicology report, if any, and other reports that involve an examination of the internal organs and structures of the body after dissection.

(b) An autopsy report does not include investigative reports and other documents that the physician performing the autopsy may review to assist in determining the cause of death.

Added by Acts 1999, 76th Leg., ch. 607, Sec. 1, eff. Sept. 1, 1999.

Sec. 671.012. FILING AUTOPSY REPORT. A designated physician who performs an autopsy provided for by state law shall file an

autopsy report with the office designated by the autopsy order not later than the 30th day after the date of request for the autopsy unless:

(1) a required test cannot be completed within that time; and

(2) the physician certifies when the autopsy report is filed that a required test could not be completed within the 30-day limit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 671.011 by Acts 1999, 76th Leg., ch. 607, Sec. 1, eff. Sept. 1, 1999.

Sec. 671.013. RELEASE OF REPORTS; FEES. (a) An autopsy report shall be released on request to an authorized person in connection with the determination of the cause of death in relation to a workers' compensation or insurance claim.

(b) A person who receives information under Subsection (a) may disclose the information to others only to the extent consistent with the authorized purposes for which the information was obtained.

(c) The commissioners court of the county having custody of an autopsy report shall establish a fee to be charged for a copy of the autopsy report as follows:

(1) for written portions of the report, an amount reasonably necessary to recover the cost of providing the copy, not to exceed $25; and

(2) for x-rays and photographs, the actual cost of reproduction, including the reasonable cost of overhead.

(d) Except as provided by Subsection (e), an autopsy report released in connection with the determination of the cause of death in relation to a workers' compensation claim under Subsection (a) shall be released not later than the 15th business day after the date the request is received from the authorized person.

(e) If the report has not been filed as provided by Section 671.012, a representative of the office designated by the autopsy order shall, not later than the 10th business day after the date of the request, notify the requesting person that the report has not been filed and of the date, to the best of the knowledge of the representative, that the requesting person may anticipate receiving

the report.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 671.012 and amended by Acts 1999, 76th Leg., ch. 607, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1190 (H.B. 251), Sec. 2, eff. June 18, 2005.

CHAPTER 671A. NOTICE REQUIRED AT PRIVATE AUTOPSY FACILITY

Sec. 671A.001. DEFINITION. In this chapter, "private autopsy facility" means a facility that is owned or operated by a physician who performs autopsy services for a fee or that employs a physician to perform autopsy services for a fee, including autopsy services performed on the order of a justice of the peace. The term does not include a medical examiner's office.

Added by Acts 2011, 82nd Leg., R.S., Ch. 374 (S.B. 256), Sec. 1, eff. September 1, 2011.

Sec. 671A.002. NOTICE FOR COMPLAINTS REQUIRED. (a) A private autopsy facility shall post a notice in a conspicuous place in a public area of the facility that substantially complies with the notice published by the Texas Medical Board under this section.

(b) The notice must state in English and in Spanish that a person may file with the Texas Medical Board a complaint against a physician who performs autopsy services and must include the appropriate mailing address and telephone number of the Texas Medical Board for filing complaints against physicians.

(c) The Texas Medical Board by rule shall adopt a sample form of the notice. The board shall publish the notice on the board's Internet website.

Added by Acts 2011, 82nd Leg., R.S., Ch. 374 (S.B. 256), Sec. 1, eff. September 1, 2011.

Sec. 671A.003. CRIMINAL PENALTY FOR FAILURE TO POST NOTICE. (a) A private autopsy facility commits an offense if the facility

fails to post the notice required by this chapter.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 374 (S.B. 256), Sec. 1, eff. September 1, 2011.

CHAPTER 672. ADULT FATALITY REVIEW AND INVESTIGATION

Sec. 672.001. DEFINITIONS. In this chapter:

(1) "Abuse" means:

(A) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting emotional or physical harm leading to death; or

(B) sexual abuse of an adult, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code, or Chapter 22, Penal Code.

Text of subdivision effective until April 1, 2027

(2) "Autopsy" and "inquest" have the meanings assigned by Article 49.01, Code of Criminal Procedure.

Text of subdivision effective on April 1, 2027

(2) "Autopsy" and "inquest" have the meanings assigned by Article 49A.001, Code of Criminal Procedure.

(3) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(4) "Health care provider" means any health care practitioner or facility that provides medical evaluation or treatment, including dental and mental health evaluation or treatment.

(5) "Review" means a reexamination of information regarding a deceased adult from relevant agencies, professionals, and health care providers.

(6) "Review team" means an unexpected fatality review team established under this chapter.

(7) "Unexpected death" includes a death of an adult that before investigation appears:

(A) to have occurred without anticipation or forewarning; and

(B) to have been caused by suicide, family violence, or abuse.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 202 (H.B. 1610), Sec. 2.13, eff. April 1, 2027.

Sec. 672.002. ESTABLISHMENT OF REVIEW TEAM. (a) A multidisciplinary and multiagency unexpected fatality review team may be established for a county to conduct reviews of unexpected deaths that occur within the county. A review team for a county with a population of less than 50,000 may join with an adjacent county or counties to establish a combined review team.

(b) The commissioners court of a county may oversee the activities of the review team or may designate a county department to oversee those activities. The commissioners court may designate a nonprofit agency or a political subdivision of the state involved in the support or treatment of victims of family violence, abuse, or suicide to oversee the activities of the review team if the governing body of the nonprofit agency or political subdivision concurs.

(c) Any person who may be a member of a review team under Subsection (d) may initiate the establishment of a review team and call the first organizational meeting of the team.

(d) A review team may include:

(1) a criminal prosecutor involved in prosecuting crimes involving family violence;

(2) a peace officer;

(3) a justice of the peace or medical examiner;

(4) a public health professional;

(5) a representative of the Department of Family and Protective Services engaged in providing adult protective services;

(6) a mental health services provider;

(7) a representative of the family violence shelter center providing services to the county;

(8) the victim witness advocate in the county prosecutor's office;

(9) a representative from the battering intervention and prevention program for the county; and

(10) a community supervision and corrections department officer.

(e) Members of a review team may select additional team members

according to community resources and needs.

(f) A review team shall select a presiding officer from its members.

(g) Members selected under Subsection (e) must reflect the geographical, cultural, racial, ethnic, and gender diversity of the county or counties represented.

(h) Members selected under this section should have experience in abuse, neglect, suicide, family violence, or elder abuse.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1502, eff. April 2, 2015.

Sec. 672.003. PURPOSE AND POWERS OF REVIEW TEAM. (a) The purpose of a review team is to decrease the incidence of preventable adult deaths by:

(1) promoting cooperation, communication, and coordination among agencies involved in responding to unexpected deaths;

(2) developing an understanding of the causes and incidence of unexpected deaths in the county or counties in which the review team is located; and

(3) advising the legislature, appropriate state agencies, and local law enforcement agencies on changes to law, policy, or practice that will reduce the number of unexpected deaths.

(b) To achieve its purpose, a review team shall:

(1) develop and implement, according to local needs and resources, appropriate protocols;

(2) meet on a regular basis to review fatality cases suspected to have resulted from suicide, family violence, or abuse and recommend methods to improve coordination of services and investigations between agencies that are represented on the team;

(3) collect and maintain data, as appropriate; and

(4) submit the report required under Section 672.008.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.004. DUTIES OF PRESIDING OFFICER. The presiding officer of a review team may:

(1) send notices to the review team members of a meeting to review a fatality involving suspected suicide, family violence, or abuse;

(2) provide a list to the review team members of each fatality to be reviewed at the meeting; and

(3) ensure that the review team operates according to the protocols developed by the review team.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.005. REVIEW PROCEDURE. (a) The review team of the county in which the event that was the cause of the unexpected death occurred, as stated on the death certificate or as otherwise indicated by the medical examiner or justice of the peace notified of the death, may review the death.

(b) On receipt of the list of fatalities under Section 672.004, each review team member shall review available records for information regarding each listed unexpected death.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.006. ACCESS TO INFORMATION. (a) A review team may request information and records regarding adult deaths resulting from suicide, family violence, or abuse as necessary to carry out the review team's purpose and duties. Records and information that may be requested under this section include:

(1) medical, dental, and mental health care information; and

(2) information and records maintained by any state or local government agency, including:

(A) a birth certificate;

(B) law enforcement investigative data;

(C) medical examiner investigative data;

(D) juvenile court records;

(E) parole and probation information and records; and

(F) adult protective services information and records.

(b) On request of the presiding officer of a review team, the custodian of the relevant information or records relating to the deceased adult shall provide the information or records to the review

team. A law enforcement agency or a medical examiner may decline to provide investigative data to a review team until after the conclusion of the investigation.

(c) This section does not authorize the release of the original or copies of the mental health or medical records of any member of the deceased adult's family, the guardian or caretaker of the deceased adult, or an alleged or suspected perpetrator of family violence or abuse of the adult that are in the possession of any state or local government agency as provided in Subsection (a)(2). Information relating to the mental health or medical condition of a member of the deceased adult's family, the guardian or caretaker of the deceased adult, or the alleged or suspected perpetrator of family violence or abuse of the deceased adult acquired as part of an investigation by a state or local government agency as provided in Subsection (a)(2) may be provided to the review team.

(d) This section does not authorize any interference with a criminal investigation, inquest, or autopsy.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.007. MEETING OF REVIEW TEAM. (a) A meeting of a review team is closed to the public and not subject to the open meetings law, Chapter 551, Government Code.

(b) This section does not prohibit a review team from requesting the attendance at a closed meeting of a person who is not a member of the review team and who has information regarding a fatality resulting from suicide, family violence, or abuse.

(c) Except as necessary to carry out a review team's purpose and duties, members of a review team and persons attending a review team meeting may not disclose what occurred at the meeting.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.008. REPORT. (a) Not later than December 15 of each even-numbered year, each review team shall submit to the Department of Family and Protective Services a report on deaths reviewed.

(b) Subject to Section 672.009, the Department of Family and Protective Services shall make the reports received under Subsection (a) available to the public.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1503, eff. April 2, 2015.

Sec. 672.009. USE OF INFORMATION AND RECORDS; CONFIDENTIALITY. (a) Information and records acquired by a review team in the exercise of its purpose and duties under this chapter are confidential and exempt from disclosure under the open records law, Chapter 552, Government Code, and may only be disclosed as necessary to carry out the review team's purpose and duties.

(b) A report of a review team or a statistical compilation of data reports is a public record subject to the open records law, Chapter 552, Government Code, as if the review team were a governmental body under that chapter, if the report or statistical compilation does not contain any information that would permit the identification of an individual and is not otherwise confidential or privileged.

(c) A member of a review team may not disclose any information that is confidential under this section.

(d) A person commits an offense if the person discloses information made confidential by this section. An offense under this subsection is a Class A misdemeanor.

(e) Information, documents, and records that are confidential as provided by this section are not subject to subpoena or discovery and may not be introduced into evidence in any civil or criminal proceeding. A document or other information that is otherwise available from another source is not protected from subpoena, discovery, or introduction into evidence under this subsection solely because the document or information was acquired by a review team in the exercise of its duties under this chapter.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 268 (H.B. 3303), Sec. 1, eff. September 1, 2009.

Sec. 672.010. CIVIL LIABILITY FOR DISCLOSURE OF INFORMATION.

Subject to the limits described in Section 101.023(b), Civil Practice and Remedies Code, a team organized pursuant to this chapter, or any member thereof, may be civilly liable for damages caused by the disclosure of information gathered pursuant to an investigation if such disclosure is made in violation of Section 672.007 and Section 672.009.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.011. GOVERNMENTAL UNIT. Subject to Section 672.010, a review team established under this chapter is a local governmental unit for purposes of Chapter 101, Civil Practice and Remedies Code.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.012. REPORT OF UNEXPECTED FATALITY. (a) A person, including a health care provider, who knows of the death of an adult that resulted from, or that occurred under circumstances indicating death may have resulted from, suicide, family violence, or abuse, shall immediately report the death to the medical examiner of the county in which the death occurred or, if the death occurred in a county that does not have a medical examiner's office or that is not part of a medical examiner's district, to a justice of the peace in that county.

(b) The requirement of this section is in addition to any other reporting requirement imposed by law.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.013. PROCEDURE IN THE EVENT OF REPORTABLE DEATH.

Text of subsection effective until April 1, 2027

(a) A medical examiner or justice of the peace notified of a death under Section 672.012 may hold an inquest under Chapter 49, Code of Criminal Procedure, to determine whether the death was caused by suicide, family violence, or abuse.

Text of subsection effective on April 1, 2027

(a) A medical examiner or justice of the peace notified of a death under Section 672.012 may hold an inquest under Chapter 49A, Code of Criminal Procedure, to determine whether the death was caused by suicide, family violence, or abuse.

(b) Without regard to whether an inquest is held under Subsection (a), the medical examiner or justice of the peace shall immediately notify the county or entity designated under Section 672.002(b) of:

(1) each notification of death received under Section 672.012;

(2) each death found to be caused by suicide, family violence, or abuse; or

(3) each death that may be a result of suicide, family violence, or abuse, without regard to whether the suspected suicide, family violence, or abuse is determined to be a sole or contributing cause and without regard to whether the cause of death is conclusively determined.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 202 (H.B. 1610), Sec. 2.14, eff. April 1, 2027.

CHAPTER 672A. PROHIBITED PUBLICATION OF CERTAIN PHOTOGRAPHS OF HUMAN REMAINS

Sec. 672A.001. DEFINITIONS. In this chapter:

(1) "Human remains" has the meaning assigned by Section 711.001.

(2) "Publish" means to display, present, or release a photograph to an unauthorized person, or to cause a photograph to be displayed, presented, or released to an unauthorized person.

Added by Acts 2023, 88th Leg., R.S., Ch. 1151 (S.B. 997), Sec. 2, eff. September 1, 2023.

Sec. 672A.002. PROHIBITED PUBLICATION OF CERTAIN PHOTOGRAPHS DEPICTING HUMAN REMAINS. (a) An individual may not publish a photograph of human remains that the individual obtained while acting within the course and scope of the individual's duties as an officer

or employee of this state or a political subdivision of this state.

(b) For purposes of Subsection (a), a photograph is considered to have been published if the photograph is:

(1) displayed to an unauthorized person;

(2) released to an unauthorized person by any delivery method, including text message, e-mail, or facsimile;

(3) posted on a social media platform; or

(4) sold to a news publication.

Added by Acts 2023, 88th Leg., R.S., Ch. 1151 (S.B. 997), Sec. 2, eff. September 1, 2023.

Sec. 672A.003. CIVIL PENALTY. (a) An individual who violates Section 672A.002 is liable for a civil penalty in an amount not to exceed $10,000 for each violation.

(b) The attorney general or the appropriate county or district attorney may sue to collect the civil penalty provided by Subsection (a) and may recover attorney's fees and costs incurred in obtaining relief under this section.

(c) It is a defense to liability for a civil penalty under this section that:

(1) the individual published the photograph of human remains for an official law enforcement, scientific, educational, research, or medical purpose, or as part of a civil proceeding; or

(2) the photograph was published in a documentary film or television show with the approval of the chief medical examiner, coroner, or commissioners court, as applicable, and the remains are unidentifiable.

(d) A defendant may not assert official immunity as a defense in an action brought under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 1151 (S.B. 997), Sec. 2, eff. September 1, 2023.

CHAPTER 673. SUDDEN INFANT DEATH SYNDROME

Sec. 673.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health

Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1504, eff. April 2, 2015.

Sec. 673.002. AUTOPSY. (a) The death in this state of a child 12 months old or younger shall be immediately reported to the justice of the peace, medical examiner, or other proper official as prescribed by law if the child dies suddenly or is found dead and if the cause of death is unknown.

(b) The justice of the peace or medical examiner shall inform the child's legal guardian or parents that an autopsy shall be performed on the child. The state shall reimburse a county $500 for the cost of the autopsy if the primary cause of death of the child is sudden infant death syndrome. The executive commissioner shall adopt rules that:

(1) define sudden infant death syndrome; and

(2) describe the method for obtaining reimbursement for the cost of an autopsy.

(c) Reimbursement required by Subsection (b) is subject to the availability of funds.

(d) After the autopsy is completed, the child's parents or legal guardian shall be notified of the autopsy results.

(e) This section does not affect the duties of the justice of the peace or medical examiner prescribed by other laws.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 785, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1505, eff. April 2, 2015.

Sec. 673.003. DESIGNATION OF SUDDEN INFANT DEATH SYNDROME AS PRIMARY CAUSE OF DEATH. Sudden infant death syndrome may be used as a primary cause of death on a death certificate required by Chapter

193.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 674. FETAL AND INFANT MORTALITY REVIEW

Sec. 674.001. DEFINITIONS. In this chapter:

(1) "Decedent" means:

(A) a person for whom a fetal death certificate must be filed; or

(B) a deceased infant.

(2) "Fetal death certificate" means a death certificate filed for any fetus weighing 350 grams or more or, if the weight is unknown, a fetus age 20 weeks or more as calculated from the start date of the last normal menstrual period to the date of delivery.

(3) "Health care provider" means any health care practitioner or facility that provides medical evaluation or treatment, including mental health evaluation or treatment.

(4) "Infant" means a child younger than one year of age.

(5) "Local health authority" means:

(A) a municipal or county health authority;

(B) a director of a local health department or public health district; or

(C) a regional director of a public health region.

(6) "Review" means a reexamination of information regarding a decedent from relevant agencies, professionals, health care providers, and the family of the decedent.

(7) "Review team" means the fetal and infant mortality review team.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.002. REVIEW TEAM. (a) A fetal and infant mortality review team may be established only:

(1) by a local health authority or other local health official or by the Department of State Health Services; or

(2) under a contract or in accordance with a memorandum of agreement with a local health authority or other local health official or the Department of State Health Services.

(b) Local health authorities or other local health officials for two or more adjacent counties or municipalities may join to establish a joint review team.

(c) A review team must be composed of culturally diverse members representing multiple disciplines, including professionals and representatives of agencies that provide services or community resources for families in the community and community representatives. The review team may include:

(1) a physician, including a pediatrician, an obstetrician, or a physician practicing in another relevant specialty;

(2) a registered nurse;

(3) a certified nurse-midwife or licensed midwife;

(4) a county attorney or a designee of a county attorney;

(5) a representative of a school district;

(6) a representative of the local health department;

(7) a forensic pathologist;

(8) a mental health professional;

(9) a representative from a local hospital;

(10) a local registrar of births and deaths;

(11) a person working in a supervisory position in local administration of the state Medicaid program;

(12) a person working with local implementation of the Special Supplemental Nutrition Program for Women, Infants, and Children;

(13) an educator;

(14) a pastoral counselor;

(15) a member of the health committee of a chamber of commerce; and

(16) other community representatives.

(d) Members of a review team may select additional members according to the resources of the review team and its needs.

(e) The review team shall select a presiding officer from its members.

(f) A local health authority or other local health official or the Department of State Health Services is not required to establish a review team for a particular municipality or county.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.003. PURPOSE AND POWERS AND DUTIES OF REVIEW TEAM. (a) The purpose of a review team is to:

(1) improve the health and well-being of women, infants, and families;

(2) reduce racial disparities in the rates of and the overall rates of fetal and infant mortality;

(3) facilitate the operations of the review team and train review team members on the review team process; and

(4) develop and deliver reports of findings to the community.

(b) For a death or fetal death subject to review, the review team shall collect information relating to the death of the decedent, including medical, dental, and mental health care records or information, autopsy reports, social services records, and other pertinent records related to the decedent and the family of the decedent.

(c) Before review at a meeting of the review team, the names and addresses of the decedent and the decedent's family and the name and address of each health care provider that provided services to the decedent or decedent's family shall be removed from information collected under Subsection (b). A summary of the information, with the identifying information described by this subsection removed, shall be prepared for consideration of the review team.

(d) The review team shall:

(1) compile statistics of fetal and infant mortality;

(2) analyze the causes of fetal and infant mortality; and

(3) recommend measures to decrease fetal and infant mortality to a community action team formed for this purpose or to state or local governmental officials or other appropriate members of the community.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.004. GOVERNMENTAL UNIT. A review team is a governmental unit for purposes of Chapter 101, Civil Practice and Remedies Code. A review team is a unit of local government under that chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff.

September 1, 2007.

Sec. 674.005. MEETINGS. (a) Meetings of a review team are closed to the public and are not subject to Chapter 551, Government Code.

(b) A member of a review team participating in the review of a death or fetal death, and any person employed by or acting in an advisory capacity to the review team and who provides counsel or services to the review team, are immune from civil or criminal liability arising from information presented in a review team meeting or recommendations resulting from the meeting.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.006. DISCLOSURE OF INFORMATION TO REVIEW TEAM. (a) A review team may request information regarding a decedent or the decedent's family as necessary to carry out the review team's purpose and duties, including any information described by Section 674.003(b).

(b) On the request of the review team, a health care provider or other custodian of the requested information shall provide the information to the review team. The information shall be provided without the authorization of the decedent's parent, guardian, or other representative.

(c) A health care provider or other person who provides information to a review team is not subject to a civil action for damages or other relief as a result of having provided the information. This subsection does not apply if the information provided was false and the health care provider or other person knew or had reason to know that the information was false.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.007. CONFIDENTIALITY OF RECORDS; PRIVILEGE. (a) Information is confidential for purposes of this chapter if the disclosure of the information would compromise the privacy of the

decedent or the decedent's family. Confidential information includes any information pertaining to the decedent's death.

(b) Confidential information that is acquired by the review team and that permits the identification of an individual or health care provider is privileged and may not be disclosed to any person except to the extent necessary to carry out the purposes of the review team. Information that may not be disclosed under this subsection includes:

(1) names and addresses of the decedent or the decedent's family;

(2) services received by the decedent or the decedent's family;

(3) the social and economic condition of the decedent or the decedent's family;

(4) medical, dental, and mental health care information related to the decedent or the decedent's family, including diagnoses, conditions, diseases, or disability; and

(5) the identity of health care providers that provided services to the decedent or the decedent's family.

(c) Review team work product and information obtained by a review team, including files, records, reports, records of proceedings, recommendations, meeting notes, records of interviews, statements, and memoranda, are confidential and are not subject to disclosure under Chapter 552, Government Code. This subsection does not prevent a review team from releasing information described by Subsection (d) or (e).

(d) Information is not confidential under this section if the information is general information that cannot be connected with any specific individual, case, or health care provider, such as:

(1) total expenditures made for specified purposes;

(2) the number of families served by particular health care providers or agencies;

(3) aggregated data on social and economic conditions;

(4) medical data and information related to health care services that do not include any identifying information relating to a decedent or the decedent's family; and

(5) other statistical information.

(e) A review team may publish statistical studies and research reports based on information that is confidential under this section, provided that the information published may not identify a decedent

or the decedent's family and may not include any information that could be used to identify a decedent or the decedent's family.

(f) A review team shall adopt and follow practices and procedures to ensure that information that is confidential under this section is not disclosed in violation of this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.008. IMMUNITY FROM SUBPOENA AND DISCOVERY. (a) Review team work product and information obtained by a review team, including files, records, reports, records of proceedings, recommendations, meeting notes, records of interviews, statements, and memoranda, are privileged, are not subject to subpoena or discovery, and may not be introduced into evidence in any civil or criminal proceeding against a member of the family of a decedent or a health care provider.

(b) A document or other information that is otherwise available from another source is not protected from subpoena, discovery, or introduction into evidence under Subsection (a) solely because the document or other information was presented during a meeting of a review team or because a record of the document or other information is maintained by the review team.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.009. UNAUTHORIZED DISCLOSURE BY REVIEW TEAM MEMBER; OFFENSE. (a) A person commits an offense if the person is a member of a review team and the person knowingly:

(1) discloses confidential information in violation of Section 674.007; or

(2) inspects confidential information without authority granted in accordance with procedures established by the review team.

(b) An offense under Subsection (a) is a Class A misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.010. IMMUNITY. A member of a review team is not liable for damages to a person for an action taken or a recommendation made within the scope of the functions of the review team if the member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the review team member.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.011. INAPPLICABILITY OF CHAPTER. This chapter does not apply to disclosure of records pertaining to voluntary or therapeutic termination of pregnancy, and those records may not be disclosed under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

SUBTITLE B. DISPOSITION OF THE BODY

CHAPTER 691. DONATION OF BODIES AND ANATOMICAL SPECIMENS

SUBCHAPTER A. GENERAL PROVISIONS; STATE ANATOMICAL ADVISORY COMMITTEE

Sec. 691.001. DEFINITIONS. In this chapter:

(1) "Advisory committee" means the State Anatomical Advisory Committee.

(1-a) "Anatomical facility" means a facility in this state inspected and approved by the commission under Section 691.034 that does not operate as a willed body program or a non-transplant anatomical donation organization.

(2) "Body" means a human corpse.

(3) "Anatomical specimen" means a part of a human corpse.

(4) "Commission" means the Texas Funeral Service Commission.

(5) "Non-transplant anatomical donation organization" means a person accredited to engage in the recovery, receipt, screening, testing, processing, storage, or distribution of tissue or human remains for any purpose other than transplantation into a living individual in this state.

(6) "Willed body program" means a program operated at an

institution of higher education in this state that allows a living individual to donate the individual's body or anatomical specimen for educational or research purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.03, eff. September 1, 2023.

Sec. 691.002. ADVISORY COMMITTEE. (a) The State Anatomical Advisory Committee is established to advise and provide expertise to the commission on matters related to the regulation and operation of willed body programs, non-transplant anatomical donation organizations, and anatomical facilities in this state.

(b) The advisory committee is composed of seven members appointed by the commission as follows:

(1) two members who represent institutions of higher education that operate willed body programs;

(2) two members who represent non-transplant anatomical donation organizations;

(3) two members who represent anatomical facilities; and

(4) one public member.

(c) Members of the advisory committee serve two-year terms.

(d) An advisory committee member may be reappointed.

(e) Appointments to the advisory committee shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(f) Sections 2110.002 and 2110.008, Government Code, do not apply to the advisory committee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.04, eff. September 1, 2023.

Sec. 691.010. PUBLIC INFORMATION AND PARTICIPATION; COMPLAINTS. (a) The commission shall prepare information of public interest describing the functions of the commission under this chapter and the

commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.

(b) The commission by rule shall establish methods by which service recipients can be notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission. The commission may provide for that notification by including the information on each written contract relating to bodies willed or donated to an entity regulated by the commission or authorized by the commission to receive bodies.

(c) The commission shall keep an information file about each complaint filed with the commission relating to its functions under this chapter. If a written complaint is filed with the commission relating to a person or an entity regulated by the commission under this chapter, the commission shall periodically notify the parties to the complaint of the status of the complaint until final disposition unless notice would jeopardize an undercover investigation.

(d) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.07, eff. September 1, 2023.

Sec. 691.011. RECORDS. The commission shall keep identification records of each body donated to the commission and of each body or anatomical specimen distributed by the commission.

Acts 1989, 71st Leg., R.S., ch. 678 (H.B. 2136), Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., R.S., Ch. 948 (S.B. 1419), Sec. 2, eff. Sept. 1, 2003.
Redesignated and amended by Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.05, eff. September 1, 2023.

Sec. 691.012. FEES. (a) The commission by rule may set and collect fees in amounts reasonable and necessary to cover the cost of

administering this chapter, including fees for:

(1) receiving and distributing bodies and anatomical specimens;

(2) conducting inspections and other verification activities authorized under Section 691.034; and

(3) registering willed body programs and non-transplant anatomical donation organizations.

(b) A non-transplant anatomical donation organization is exempt from a fee described by Subsection (a)(1).

Acts 1989, 71st Leg., R.S., ch. 678 (H.B. 2136), Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., R.S., Ch. 948 (S.B. 1419), Sec. 3, eff. Sept. 1, 2003.
Redesignated and amended by Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.06, eff. September 1, 2023.

SUBCHAPTER B. DONATION AND DISTRIBUTION OF BODIES AND ANATOMICAL SPECIMENS

Sec. 691.021. DEFINITION. In this subchapter, "political subdivision" means a municipality, county, or special district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 691.022. GENERAL DUTIES. (a) The commission shall distribute bodies and anatomical specimens to persons authorized to receive a body or specimen under this chapter. This subsection does not apply to a body or specimen donated to a registered non-transplant anatomical donation organization.

(b) The commission shall adopt rules to ensure that each body and anatomical specimen is treated with respect while in the custody of the commission or person authorized to receive the body or specimen.

(c) The commission shall adopt rules, establish procedures, and prescribe forms necessary to administer and enforce this chapter, including rules establishing registration and inspection requirements and procedures. The commission may issue a reprimand, assess an administrative penalty, impose other penalties, or revoke, suspend, or probate a registration or other authorization for a violation of this chapter or a commission rule adopted under this chapter,

including a violation related to an inspection conducted under Section 691.034, in the manner provided by Chapter 651, Occupations Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 5, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 1, eff. September 1, 2015.
Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.08, eff. September 1, 2023.

Sec. 691.0225. INFORMATIONAL DOCUMENT. The commission shall develop a document to inform a person making a gift of a decedent's body or anatomical specimen about the options for donation authorized under this chapter. The commission shall make the document available on the commission's Internet website.

Added by Acts 2011, 82nd Leg., R.S., Ch. 875 (S.B. 187), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 2, eff. September 1, 2015.
Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.09, eff. September 1, 2023.

Sec. 691.023. DUTY TO DELIVER CERTAIN BODIES TO COMMISSION. (a) An officer, employee, or representative of the state, of a political subdivision, or of an institution having charge or control of a body not claimed for burial or a body required to be buried at public expense shall:

(1) notify the commission or the commission's representative of the body's existence when the body comes into the person's possession, charge, or control if notified in writing to do so by the commission or the commission's representative;

(2) deliver the body in accordance with the direction of the commission; and

(3) allow the commission, the commission's representative, or a physician designated by the commission who complies with this

chapter to remove the body to be used for the advancement of medical or forensic science.

(b) If the commission does not require a political subdivision or agency of the political subdivision to deliver a body under this section, the political subdivision shall pay all costs of preparation for burial, including costs of embalming.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 3, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.10, eff. September 1, 2023.

Sec. 691.024. PERSONS WHO MAY CLAIM BODY FOR BURIAL. (a) An officer, employee, or representative of the state, of a political subdivision, or of an institution is not required to give notice or deliver a body as required by Section 691.023 if the body is claimed for burial.

(b) A relative, bona fide friend, or representative of an organization to which the deceased belonged may claim the body for burial. The person in charge of the body shall release the body to the claimant without requiring payment when the person is satisfied that the claimed relationship exists.

(c) A claimant alleging to be a bona fide friend or a representative of an organization to which the deceased belonged must present a written statement of the relationship under which the claimant qualifies as a bona fide friend or organization representative.

(d) For purposes of this section, a bona fide friend means a person who is like one of the family, and does not include:

(1) an ordinary acquaintance;

(2) an officer, employee, or representative of the state, of a political subdivision, or of an institution having charge of a body not claimed for burial or a body required to be buried at public expense;

(3) an employee of an entity listed in Subdivision (2) with which the deceased was associated; or

(4) a patient, inmate, or ward of an institution with which

the deceased was associated.

(e) A person covered by Subsection (d) may qualify as a bona fide friend if the friendship existed before the deceased entered the institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 691.025. PROCEDURE AFTER DEATH. (a) If a body is not claimed for burial immediately after death, the body shall be embalmed within 24 hours.

(b) For 72 hours after death, the person in charge of the institution having charge or control of the body shall make due effort to find a relative of the deceased and notify the relative of the death. If the person is not able to find a relative, the person shall file with the county clerk an affidavit stating that the person has made a diligent inquiry to find a relative and stating the inquiry the person made.

(c) A body that is not claimed for burial within 48 hours after a relative receives notification shall be delivered as soon as possible to the commission or the commission's representative.

(d) A relative of the deceased may claim the body within 60 days after the body has been delivered to an institution or other entity authorized to receive the body. The body shall be released without charge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.11, eff. September 1, 2023.

Sec. 691.026. BODY OF TRAVELER. If an unclaimed body is the body of a traveler who died suddenly, the commission shall direct the institution or other person receiving the body to retain the body for six months for purposes of identification.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 4, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.12, eff. September 1, 2023.

Sec. 691.027. AUTOPSY. Only the commission may grant permission to perform an autopsy on an unclaimed body. The commission may grant permission after receiving a specific request for an autopsy that shows sufficient evidence of medical urgency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.13, eff. September 1, 2023.

Sec. 691.028. DONATION OF BODY BY WRITTEN INSTRUMENT. (a) An adult living in this state who is of sound mind may donate the adult's body by will or other written instrument to the commission, a willed body program of a medical or dental school, a non-transplant anatomical donation organization, or another donee authorized by the commission to be used for the advancement of medical or forensic science.

(b) To be effective, the donor must provide informed consent by signing the will or other written instrument and it must be witnessed by two adults. The donor is not required to use a particular form or particular words in making the donation, but the will or other instrument must clearly convey:

(1) the donor's intent; and

(2) the donor's acknowledgment that the donor was informed about:

(A) the consequences of the donation before providing consent;

(B) the use the donee plans for the donated body parts; and

(C) if applicable, any body part and the condition in which the body part will be returned to the person designated by the donor.

(b-1) For purposes of Subsection (b), the donor must be informed in writing about the information described by Subsection (b)(2) in a clear manner on a single piece of paper that is 8-1/2 by

11 inches with 14-point type. The commission by rule shall design and adopt a form that complies with this subsection that willed body programs and non-transplant anatomical donation organizations must use.

(c) Appointment of an administrator or executor or acquisition of a court order is not necessary before the body may be delivered under this chapter.

(d) A donor may revoke a donation made under this section by executing a written instrument in a manner similar to the original donation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 6, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 5, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.14, eff. September 1, 2023.

Sec. 691.029. AUTHORITY TO RECEIVE, DISTRIBUTE, AND TRANSFER BODIES OR ANATOMICAL SPECIMENS. The commission may receive, distribute, and transfer a body or anatomical specimen from inside or outside this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.15, eff. September 1, 2023.

Sec. 691.030. COMMISSION'S AUTHORITY TO DISTRIBUTE BODIES AND ANATOMICAL SPECIMENS. (a) The commission or the commission's representative shall distribute bodies donated to it and may redistribute bodies donated to medical or dental schools or other donees authorized by the commission to:

(1) willed body programs of schools and colleges of chiropractic, osteopathy, medicine, or dentistry incorporated in this state;

(2) forensic science programs;

(3) search and rescue organizations or recovery teams that

are recognized by the commission, are exempt from federal taxation under Section 501(c)(3), Internal Revenue Code of 1986, and use human remains detection canines with the authorization of a local or county law enforcement agency;

(4) physicians;

(5) anatomical facilities; and

(6) other persons as provided by this section.

(b) In making the distribution, the commission shall give priority to the schools and colleges that need bodies for lectures and demonstrations.

(c) If the commission has remaining bodies, the commission or the commission's representative shall distribute or redistribute those bodies to the schools and colleges proportionately and equitably according to the number of students in each school or college receiving instruction or demonstration in normal or morbid anatomy and operative surgery. The dean of each school or college shall certify that number to the commission when required by the commission.

(d) The commission may transport a body or anatomical specimen to an authorized recipient in another state if the commission determines that the supply of bodies or anatomical specimens in this state exceeds the need for bodies or anatomical specimens in this state and if:

(1) the deceased donated the deceased's body in compliance with Section 691.028 and at the time of the donation authorized the commission to transport the body outside this state; or

(2) the body was donated in compliance with Chapter 692A and the person authorized to make the donation under Section 692A.009 authorized the commission to transport the body outside this state.

(e) This section does not apply to a body or anatomical specimen donated to a registered non-transplant anatomical donation organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 7, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 3, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 6, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.16, eff. September 1, 2023.

Sec. 691.031. TRANSPORTATION OF BODIES; RECORDS. (a) The commission shall adopt rules to ensure that:

(1) each body or anatomical specimen received or distributed under this chapter is properly transported;

(2) a label with a statement that the container's contents are derived from human tissue is affixed to the container in which the body or anatomical specimen is transported; and

(3) each person who has control or possession of a body or anatomical specimen:

(A) satisfactorily completes the information required on a chain-of-custody form prescribed by the commission;

(B) maintains a copy of the form for the person's records; and

(C) transfers the form to any other person to whom control or possession of the body or anatomical specimen is transferred.

(b) The commission may employ a public carrier to transport bodies or anatomical specimens received or distributed by the commission.

(c) Each body or anatomical specimen shall be carefully deposited and transported with the least possible public display.

(d) A person or institution who sends a body or anatomical specimen under this chapter shall keep on permanent file a description of the body or anatomical specimen that includes the deceased's name, if known, color, sex, age, place and supposed cause of death, and any other information available for identification of the body or anatomical specimen, such as the existence of scars or deformities.

(e) The sender shall mail or otherwise safely convey to the person or institution to whom the body is sent a copy of the description required by Subsection (d). The person or institution receiving the body or anatomical specimen shall immediately and safely transmit to the sender a receipt containing the full terms of the description furnished by the sender.

(f) The sender and receiver of each body or anatomical specimen shall file the records required under this section in accordance with

commission rules so that the commission or a district or county attorney may inspect the records at any time.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 8, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 875 (S.B. 187), Sec. 2, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.17, eff. September 1, 2023.

Sec. 691.032. COSTS OF DISTRIBUTION. A person or institution receiving a body or anatomical specimen under this chapter shall pay in a manner specified by the commission, or as otherwise agreed on, all costs incurred in distributing the body or anatomical specimen so that the state, a county, a municipality, or an officer, employee, or representative of the state, a county, or a municipality does not incur any expense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 9, eff. Sept. 1, 2003. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.18, eff. September 1, 2023.

Sec. 691.033. USE OF BODIES AND ANATOMICAL SPECIMENS. (a) To further medical or forensic science, a willed body program, non-transplant anatomical donation organization, anatomical facility, or other person designated by the commission may use, dissect, operate on, examine, and experiment on a body or anatomical specimen distributed under this chapter.

(b) A willed body program, non-transplant anatomical donation organization, or other person shall keep a permanent record of each body or anatomical specimen received from the commission or the commission's representative. The record:

(1) must be sufficient to identify the body or anatomical specimen;

(2) must track the body or anatomical specimen from intake to final disposition; and

(3) may be inspected by the commission or the commission's representative.

(c) A law relating to the prevention of mutilation of a body does not apply to the use of a body as authorized under this section or a dissection, operation, examination, or experiment performed under this section.

(d) To aid prosecutions under Section 42.08, Penal Code, the commission shall adopt rules that clearly state the activities that are authorized by the commission in relation to the use or dissection of a body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.42, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 948, Sec. 10, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 7, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.19, eff. September 1, 2023.

Sec. 691.034. REGULATION AND REGISTRATION OF PERSONS AND INSTITUTIONS USING BODIES AND ANATOMICAL SPECIMENS. (a) A willed body program or non-transplant anatomical donation organization may not operate in this state unless the program or organization registers with the commission in the form and manner prescribed by the commission.

(a-1) To be eligible for registration under this section, a non-transplant anatomical donation organization must be accredited by the American Association of Tissue Banks under the association's Standards for Non-Transplant Anatomical Donation. The commission may issue conditional registration to a non-transplant anatomical donation organization that is not yet accredited.

(a-2) The commission shall inspect and may approve willed body programs and anatomical facilities for the receipt and use of bodies and anatomical specimens under this chapter.

(a-3) The commission shall establish a process to periodically verify a non-transplant anatomical donation organization's compliance with the Standards for Non-Transplant Anatomical Donation published by the American Association of Tissue Banks. The process:

(1) may authorize the commission to inspect a non-transplant anatomical donation organization; and

(2) may not:

(A) be duplicative of the accreditation process described by Subsection (a-1); or

(B) occur more frequently than once every five years.

(b) The commission may investigate a willed body program, non-transplant anatomical donation organization, anatomical facility, or other person if the commission has reason to believe that the program, organization, facility, or person has improperly used a body or anatomical specimen.

(b-1) The commission may inspect a non-transplant anatomical donation organization as part of an investigation described by Subsection (b).

(c) The commission may suspend or revoke a willed body program's, non-transplant anatomical donation organization's, anatomical facility's, or other person's registration or other authorization to receive and use or dissect bodies or anatomical specimens if the commission determines that the program, organization, facility, or person has improperly used a body or anatomical specimen.

(d) A willed body program, non-transplant anatomical donation organization, anatomical facility, or other person is entitled to a hearing before the commission or a hearing examiner appointed by the commission before the commission may revoke the program's, organization's, facility's, or person's registration or other authorization to receive and use or dissect bodies or anatomical specimens. The commission shall make all final decisions to suspend or revoke an authorization.

(e) A registered non-transplant anatomical donation organization must inform the commission within the time prescribed by commission rule if the organization loses its accreditation with the American Association of Tissue Banks.

(f) A commission member or holder of any license issued by the commission may not hold an ownership interest in a registered non-transplant anatomical donation organization.

(g) The commission shall adopt rules and procedures necessary to administer this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 2003, 78th Leg., ch. 948, Sec. 11, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 8, eff. September 1, 2015.
Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.20, eff. September 1, 2023.

Sec. 691.035. CRIMINAL PENALTY. (a) A person commits an offense if the person has a duty imposed under this chapter and refuses, neglects, or omits to perform the duty as required by this chapter.
(b) An offense under this section is punishable by a fine of not less than $100 or more than $500.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 692A. REVISED UNIFORM ANATOMICAL GIFT ACT

Sec. 692A.001. SHORT TITLE. This chapter may be cited as the Revised Uniform Anatomical Gift Act.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.002. DEFINITIONS. In this chapter:
(1) "Adult" means an individual who is at least 18 years of age.
(2) "Agent" means an individual:
(A) authorized to make health care decisions on the principal's behalf by a medical power of attorney; or
(B) expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.
(3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.
(4) "Commissioner" means the commissioner of state health services.
(5) "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. The term

includes a stillborn infant and, subject to restrictions imposed by law other than this chapter, a fetus.

(6) "Department" means the Department of State Health Services.

(7) "Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under Section 692A.011.

(8) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry.

(9) "Donor" means an individual whose body or part is the subject of an anatomical gift.

(10) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(11) "Driver's license" means a license or permit issued by the Department of Public Safety to operate a vehicle, whether or not conditions are attached to the license or permit.

(11-a) "Education" with respect to the purposes authorized by law for making an anatomical gift includes forensic science education and related training.

(12) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(13) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(14) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(15) "Identification card" means an identification card issued by the Department of Public Safety.

(16) "Imminent death" means a patient who requires mechanical ventilation, has a severe neurologic injury, and meets certain clinical criteria indicating that neurologic death is near or a patient for whom withdrawal of ventilatory support is being

considered.

(17) "Know" means to have actual knowledge.

(18) "Minor" means an individual who is under 18 years of age.

(19) "Organ procurement organization" means a person designated by the secretary of the United States Department of Health and Human Services as an organ procurement organization.

(20) "Parent" means a parent whose parental rights have not been terminated.

(21) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

(22) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(23) "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.

(24) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(25) "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.

(26) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(27) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(28) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(29) "Refusal" means a record created under Section 692A.007 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(30) "Sign" means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(31) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(32) "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(33) "Timely notification" means notification of an imminent death to the organ procurement organization within one hour of the patient's meeting the criteria for imminent death and before the withdrawal of any life sustaining therapies. With respect to cardiac death, timely notification means notification to the organ procurement organization within one hour of the cardiac death.

(34) "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(35) "Tissue bank" means a person licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(36) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

(37) "Visceral organ" means the heart, kidney, or liver or another organ or tissue that requires a patient support system to maintain the viability of the organ or tissue.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 9, eff. September 1, 2015.

Sec. 692A.003. APPLICABILITY. This chapter applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff.

September 1, 2009.

Sec. 692A.004. PERSONS AUTHORIZED TO MAKE ANATOMICAL GIFT BEFORE DONOR'S DEATH. Subject to Section 692A.008, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in Section 692A.005 by:

(1) the donor, if the donor is an adult or if the donor is a minor and is:

(A) emancipated; or

(B) authorized under state law to apply for a driver's license because the donor is at least 16 years of age and:

(i) circumstances allow the donation to be actualized prior to 18 years of age; and

(ii) an organ procurement organization obtains signed written consent from the minor's parent, guardian, or custodian as in Subdivision (3);

(2) an agent of the donor, unless the medical power of attorney or other record prohibits the agent from making an anatomical gift;

(3) a parent of the donor, if the donor is an unemancipated minor; or

(4) the donor's guardian.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.005. MANNER OF MAKING ANATOMICAL GIFT BEFORE DONOR'S DEATH. (a) A donor may make an anatomical gift:

(1) by authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;

(2) in a will;

(3) during a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(4) as provided in Subsection (b) or (b-1).

(b) A donor or other person authorized to make an anatomical

gift under Section 692A.004 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person, or be acknowledged before a notary public; and

(2) state that the record has been signed and witnessed or acknowledged as provided in Subdivision (1).

(b-1) A donor or other person authorized to make an anatomical gift under Section 692A.004 may make a gift through an online registry. The online registration:

(1) does not require the consent of another person or require a witness to sign at the donor's request or a notary public to acknowledge the gift; and

(2) constitutes a legal document under this chapter that remains binding after the donor's death.

(c) Revocation, suspension, expiration, or cancellation of a driver's license or identification card on which an anatomical gift is indicated does not invalidate the gift.

(d) An anatomical gift made by will takes effect on the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 363 (S.B. 2186), Sec. 1, eff. September 1, 2023.

Sec. 692A.006. AMENDING OR REVOKING ANATOMICAL GIFT BEFORE DONOR'S DEATH. (a) Subject to Section 692A.008, a donor or other person authorized to make an anatomical gift under Section 692A.004 may amend or revoke an anatomical gift by:

(1) a record signed by:

(A) the donor;

(B) the other person; or

(C) subject to Subsection (b), another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(2) a later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b) A record signed pursuant to Subsection (a)(1)(C) must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person, or be acknowledged before a notary public; and

(2) state that the record has been signed and witnessed or acknowledged as provided in Subdivision (1).

(c) Subject to Section 692A.008, a donor or other person authorized to make an anatomical gift under Section 692A.004 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 363 (S.B. 2186), Sec. 2, eff. September 1, 2023.

Sec. 692A.007. REFUSAL TO MAKE ANATOMICAL GIFT; EFFECT OF REFUSAL. (a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) a record signed by:

(A) the individual; or

(B) subject to Subsection (b), another individual acting at the direction of the individual if the individual is physically unable to sign;

(2) the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(3) any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(b) A record signed pursuant to Subsection (a)(1)(B) must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual, or be acknowledged before a notary public; and

(2) state that the record has been signed and witnessed or acknowledged as provided in Subdivision (1).

(c) An individual who has made a refusal may amend or revoke the refusal:

(1) in the manner provided in Subsection (a) for making a refusal;

(2) by subsequently making an anatomical gift pursuant to Section 692A.005 that is inconsistent with the refusal; or

(3) by destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d) Except as otherwise provided in Section 692A.008(h), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 363 (S.B. 2186), Sec. 3, eff. September 1, 2023.

Sec. 692A.008. PRECLUSIVE EFFECT OF ANATOMICAL GIFT, AMENDMENT, OR REVOCATION. (a) Except as otherwise provided in Subsection (g) and subject to Subsection (f), in the absence of an express, contrary

indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under Section 692A.005 or an amendment to an anatomical gift of the donor's body or part under Section 692A.006.

(b) A donor's revocation of an anatomical gift of the donor's body or part under Section 692A.006 is not a refusal and does not bar another person specified in Section 692A.004 or Section 692A.009 from making an anatomical gift of the donor's body or part under Section 692A.005 or Section 692A.010.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under Section 692A.005 or an amendment to an anatomical gift of the donor's body or part under Section 692A.006, another person may not make, amend, or revoke the gift of the donor's body or part under Section 692A.010.

(d) A revocation of an anatomical gift of a donor's body or part under Section 692A.006 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under Section 692A.005 or Section 692A.010.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 692A.004, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 692A.004, an anatomical gift of a part for one or more of the purposes set forth in Section 692A.004 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under Section 692A.005 or Section 692A.010.

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.009. WHO MAY MAKE ANATOMICAL GIFT OF DECEDENT'S BODY OR PART. (a) Subject to Subsections (b) and (c) and unless barred by Section 692A.007 or Section 692A.008, an anatomical gift of a decedent's body or part for the purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) an agent of the decedent at the time of death who could have made an anatomical gift under Section 692A.004(2) immediately before the decedent's death;

(2) the spouse of the decedent;

(3) adult children of the decedent;

(4) parents of the decedent;

(5) adult siblings of the decedent;

(6) adult grandchildren of the decedent;

(7) grandparents of the decedent;

(8) an adult who exhibited special care and concern for the decedent;

(9) the persons who were acting as the guardians of the person of the decedent at the time of death;

(10) the hospital administrator; and

(11) any other person having the authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in Subsection (a)(1), (3), (4), (5), (6), (7), or (9) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under Section 692A.011 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under Subsection (a) is reasonably available to make or to object to the making of an anatomical gift.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.010. MANNER OF MAKING, AMENDING, OR REVOKING ANATOMICAL GIFT OF DECEDENT'S BODY OR PART. (a) A person authorized to make an anatomical gift under Section 692A.009 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to Subsection (c), an anatomical gift by a person authorized under Section 692A.009 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under Section 692A.009 may be:

(1) amended only if a majority of the reasonably available members agree to the amending of the gift; or

(2) revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c) A revocation under Subsection (b) is effective only if, before an incision has been made to remove a part from the donor's body or before the initiation of invasive procedures to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.011. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT; PURPOSE OF ANATOMICAL GIFT. (a) An anatomical gift may be made to the following persons named in the document of gift:

(1) an organ procurement organization to be used for transplantation, therapy, research, or education;

(2) a hospital to be used for research;

(3) subject to Subsection (d), an individual designated by the person making the anatomical gift if the individual is the recipient of the part;

(4) an eye bank or tissue bank, except that use of a gift of a whole body must be coordinated through the Texas Funeral Service Commission;

(5) a forensic science program at:

(A) a general academic teaching institution as defined by Section 61.003, Education Code; or

(B) a private or independent institution of higher education as defined by Section 61.003, Education Code;

(6) a search and rescue organization or recovery team that is recognized by the Texas Funeral Service Commission, is exempt from federal taxation under Section 501(c)(3), Internal Revenue Code of 1986, and uses human remains detection canines with the authorization of a local or county law enforcement agency;

(7) the Texas Funeral Service Commission; or

(8) a non-transplant anatomical donation organization.

(b) Except for donations described by Subsections (a)(1) through (6), the Texas Funeral Service Commission or a non-transplant anatomical donation organization shall be the donee of gifts of bodies or parts of bodies made for the purpose of education or research that are subject to distribution by the commission or organization under Chapter 691.

(c) A forensic science program that receives a donation under Subsection (a)(5) must submit a report to the Texas Funeral Service Commission on a quarterly basis that lists:

(1) the number of bodies or parts of bodies that the program received; and

(2) the method in which the program used the bodies or parts of bodies for education or research.

(d) If an anatomical gift to an individual under Subsection (a)(3) cannot be transplanted into the individual, the part passes in accordance with Subsection (i) in the absence of an express, contrary indication by the person making the anatomical gift.

(e) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in Subsection (a) but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) if the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank;

(2) if the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank;

(3) if the part is an organ and the gift is for the purpose

of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ; and

(4) if the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(f) For the purpose of Subsection (e), if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(g) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in Subsection (a) and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with Subsection (i).

(h) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with Subsection (i).

(i) For purposes of Subsections (d), (g), and (h), the following rules apply:

(1) if the part is an eye, the gift passes to the appropriate eye bank;

(2) if the part is tissue, the gift passes to the appropriate tissue bank; and

(3) if the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(j) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under Subsection (a)(3), passes to the organ procurement organization as custodian of the organ.

(k) If an anatomical gift does not pass pursuant to Subsections (a) through (j) or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(l) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under Section 692A.005

or Section 692A.010 or if the person knows that the decedent made a refusal under Section 692A.007 that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(m) Except as otherwise provided in Subsection (a)(3), nothing in this chapter affects the allocation of organs for transplantation or therapy.

(n) A donee may accept or reject a gift.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 10, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 2.03, eff. September 1, 2023.

Sec. 692A.012. SEARCH AND NOTIFICATION. The donor card of a person who is involved in an accident or other trauma shall accompany the person to the hospital or other health care facility. The driver's license or personal identification certificate indicating an affirmative statement of gift of a person who is involved in an accident or other trauma shall accompany the person to the hospital or health care facility if the person does not have a donor card.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.013. DELIVERY OF DOCUMENT OF GIFT NOT REQUIRED; RIGHT TO EXAMINE. (a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) On or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under Section 692A.011.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.014. RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATION AND OTHERS. (a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Department of Public Safety and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization must be allowed reasonable access to information in the records of the Department of Public Safety to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(d) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under Section 692A.011 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than this chapter, an examination under Subsection (c) or (d) may include an examination of all medical and dental records of the donor or prospective donor.

(f) On the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) On referral by a hospital under Subsection (a), a procurement organization shall make a reasonable search for any

person listed in Section 692A.009 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to Sections 692A.011(k) and 693.002, the rights of the person to which a part passes under Section 692A.011 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift wholly or partly. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under Section 692A.011, on the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) The physician who attends the decedent at death or the physician who determines the time of the decedent's death may not participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.015. COORDINATION OF PROCUREMENT AND USE; HOSPITAL PROCEDURES. Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts. Each hospital must have a protocol that ensures its maintenance of an effective donation system in order to maximize organ, tissue, and eye donation. The protocol must:

(1) be available to the public during the hospital's normal business hours;

(2) establish a procedure for the timely notification to an organ procurement organization of individuals whose death is imminent or who have died in the hospital;

(3) establish procedures to ensure potential donors are declared dead by an appropriate practitioner in an acceptable time frame;

(4) establish procedures to ensure that hospital staff and organ procurement organization staff maintain appropriate medical treatment of potential donors while necessary testing and placement of potential donated organs, tissues, and eyes take place;

(5) ensure that all families are provided the opportunity to donate organs, tissues, and eyes, including vascular organs procured from asystolic donors;

(6) provide that the hospital use appropriately trained persons from an organ procurement organization, tissue bank, or eye bank to make inquiries relating to donations;

(7) provide for documentation of the inquiry and of its disposition in the decedent's medical records;

(8) require an organ procurement organization, tissue bank, or eye bank that makes inquiries relating to donations to develop a protocol for making those inquiries;

(9) encourage sensitivity to families' beliefs and circumstances in all discussions relating to the donations;

(10) provide that the organ procurement organization determines medical suitability for organ donation and, in the absence of alternative arrangements by the hospital, the organ procurement organization determines medical suitability for tissue and eye donation, using the definition of potential tissue and eye donor and the notification protocol developed in consultation with the tissue and eye banks identified by the hospital for this purpose;

(11) ensure that the hospital works cooperatively with the designated organ procurement organization, tissue bank, and eye bank in educating staff on donation issues;

(12) ensure that the hospital works with the designated organ procurement organization, tissue bank, and eye bank in reviewing death records; and

(13) provide for monitoring of donation system effectiveness, including rates of donation, protocols, and policies, as part of the hospital's quality improvement program.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.016. SALE OR PURCHASE OF PARTS PROHIBITED. (a) Except as otherwise provided in Subsection (b), a person commits an offense if the person for valuable consideration knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death. An offense under this subsection is a Class A misdemeanor.

(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

(c) If conduct that constitutes an offense under this section also constitutes an offense under other law, the actor may be prosecuted under this section, the other law, or both this section and the other law.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.017. OTHER PROHIBITED ACTS. (a) A person commits an offense if the person, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal. An offense under this section is a Class A misdemeanor.

(b) If conduct that constitutes an offense under this section also constitutes an offense under other law, the actor may be prosecuted under this section, the other law, or both this section and the other law.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.018. IMMUNITY. (a) A person who acts in good faith in accordance with this chapter is not liable for civil damages or subject to criminal prosecution for the person's action if the prerequisites for an anatomical gift are met under the laws applicable at the time and place the gift is made.

(b) A person that acts in accordance with this chapter or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action,

criminal prosecution, or administrative proceeding.

(c) A person who acts in good faith in accordance with this chapter is not liable as a result of the action except in the case of an act or omission of the person that is intentional, wilfully or wantonly negligent, or done with conscious indifference or reckless disregard. For purposes of this subsection, "good faith" in determining the appropriate person authorized to make a donation under Section 692A.009 means making a reasonable effort to locate and contact the member or members of the highest priority class who are reasonably available at or near the time of death.

(d) Neither a person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(e) In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely on representations of an individual listed in Section 692A.009(a)(2), (3), (4), (5), (6), (7), or (8) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.019. LAW GOVERNING VALIDITY; CHOICE OF LAW AS TO EXECUTION OF DOCUMENT OF GIFT; PRESUMPTION OF VALIDITY. (a) A document of gift is valid if executed in accordance with:

(1) this chapter;

(2) the laws of the state or country where it was executed; or

(3) the laws of the state or country where the person making the anatomical gift was domiciled, had a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.020. GLENDA DAWSON DONATE LIFE-TEXAS REGISTRY; EDUCATION PROGRAM. (a) A nonprofit organization designated by the Department of Public Safety shall maintain and administer a statewide donor registry, to be known as the Glenda Dawson Donate Life-Texas Registry.

(b) The nonprofit organization administering the registry must include representatives from each organ procurement organization in this state.

(c) The nonprofit organization shall establish and maintain a statewide Internet-based registry of organ, tissue, and eye donors.

(d) The Department of Public Safety at least monthly shall electronically transfer to the nonprofit organization administering the registry the name, date of birth, driver's license number, most recent address, and any other relevant information in the possession of the Department of Public Safety for any person who indicates on the person's driver's license application under Section 521.401, Transportation Code, that the person would like to make an anatomical gift.

(e) The nonprofit organization administering the registry shall:

(1) make information obtained from the Department of Public Safety under Subsection (d) available to procurement organizations;

(2) allow potential donors to submit information in writing directly to the organization for inclusion in the Internet-based registry;

(3) maintain the Internet-based registry in a manner that allows procurement organizations to immediately access organ, tissue, and eye donation information 24 hours a day, seven days a week through electronic and telephonic methods; and

(4) protect the confidentiality and privacy of the individuals providing information to the Internet-based registry, regardless of the manner in which the information is provided.

(f) Except as otherwise provided by Subsection (e)(3) or this subsection, the Department of Public Safety, the nonprofit organization administering the registry, or a procurement organization may not sell, rent, or otherwise share any information provided to the Internet-based registry. A procurement organization may share any information provided to the registry with an organ

procurement organization or a health care provider or facility providing medical care to a potential donor as necessary to properly identify an individual at the time of donation.

(g) The Department of Public Safety, the nonprofit organization administering the registry, or the procurement organizations may not use any demographic or specific data provided to the Internet-based registry for any fund-raising activities. Data may only be transmitted from the selected organization to procurement organizations through electronic and telephonic methods using secure, encrypted technology to preserve the integrity of the data and the privacy of the individuals providing information.

(h) In each office authorized to issue driver's licenses or personal identification certificates, the Department of Public Safety shall make available educational materials developed by the nonprofit organization administering the registry.

(i) The Glenda Dawson Donate Life-Texas Registry fund is created as a trust fund outside the state treasury to be held by the comptroller and administered by the Department of Public Safety as trustee on behalf of the statewide donor registry maintained for the benefit of the citizens of this state. The fund is composed of money deposited to the credit of the fund under Sections 502.405(b), 521.008, and 522.0295, Transportation Code, as provided by those sections. Money in the fund shall be disbursed at least monthly, without appropriation, to the nonprofit organization administering the registry to pay the costs of:

(1) maintaining, operating, and updating the Internet-based registry and establishing procedures for an individual to be added to the registry;

(2) designing and distributing educational materials for prospective donors as required under this section; and

(3) providing education under this chapter.

(j) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 121, Sec. 6(a), eff. May 18, 2013.

(k) To the extent funds are available and as part of the donor registry program, the nonprofit organization administering the registry may educate residents about anatomical gifts. The education provided under this section shall include information about:

(1) the laws governing anatomical gifts, including Subchapter Q, Chapter 521, Transportation Code, Chapter 693, and this chapter;

(2) the procedures for becoming an organ, eye, or tissue donor or donee; and

(3) the benefits of organ, eye, or tissue donation.

(l) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 121, Sec. 6(a), eff. May 18, 2013.

(m) The nonprofit organization administering the registry may:

(1) implement a training program for all appropriate Department of Public Safety and Texas Department of Transportation employees on the benefits of organ, tissue, and eye donation and the procedures for individuals to be added to the Internet-based registry; and

(2) conduct the training described by Subdivision (1) on an ongoing basis for new employees.

(n) The nonprofit organization administering the registry may develop a program to educate health care providers and attorneys in this state about anatomical gifts.

(o) The nonprofit organization administering the registry shall encourage:

(1) attorneys to provide organ donation information to clients seeking advice for end-of-life decisions;

(2) medical and nursing schools in this state to include mandatory organ donation education in the schools' curricula; and

(3) medical schools in this state to require a physician in a neurology or neurosurgery residency program to complete an advanced course in organ donation education.

(p) The nonprofit organization administering the registry may not use the registry to solicit voluntary donations of money from a registrant.

(q) Except as provided by Subsection (p), the nonprofit organization administering the registry may accept voluntary donations of money and perform fund-raising on behalf of the registry for the purpose of supporting registering donors.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 554 (H.B. 2904), Sec. 1, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 121 (S.B. 1815), Sec. 1, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 121 (S.B. 1815), Sec. 6(a), eff. May 18, 2013.

Acts 2023, 88th Leg., R.S., Ch. 614 (H.B. 3798), Sec. 6, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 11.003, eff. September 1, 2023.

Sec. 692A.021. EFFECT OF ANATOMICAL GIFT ON ADVANCE DIRECTIVE. (a) In this section:

(1) "Advance directive" means a medical power of attorney or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health-care decision for the prospective donor.

(2) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(3) "Health-care decision" means any decision made regarding the health care of the prospective donor.

(b) If a prospective donor has a declaration or advance directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if the agent is not reasonably available, another person authorized by law other than this chapter to make health-care decisions on behalf of the prospective donor, shall act on the prospective donor's behalf to resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under Section 692A.009. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor.

(c) If the conflict cannot be resolved, an expedited review of the matter must be initiated by an ethics or medical committee of the

appropriate health care facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.022. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of this chapter among states that enact a law substantially similar to this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.023. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.), but does not modify, limit, or supersede Section 101(a) of that Act (15 U.S.C. Section 7001(a)), or authorize electronic delivery of any of the notices described in Section 103 of that Act (15 U.S.C. Section 7003(b)).

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

CHAPTER 693. REMOVAL OF BODY PARTS, BODY TISSUE, AND CORNEAL TISSUE

SUBCHAPTER A. REMOVAL OF BODY PARTS OR TISSUE

Sec. 693.001. DEFINITION. In this subchapter, "visceral organ" means the heart, kidney, liver, or other organ or tissue that requires a patient support system to maintain the viability of the organ or tissue.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 693.002. REMOVAL OF BODY PART OR TISSUE FROM DECEDENT WHO DIED UNDER CIRCUMSTANCES REQUIRING AN INQUEST. (a) (1) On a request from an organ procurement organization, as defined by Section

692A.002, the medical examiner, justice of the peace, county judge, or physician designated by the justice of the peace or county judge may permit the removal of organs from a decedent who died under circumstances requiring an inquest by the medical examiner, justice of the peace, or county judge if consent is obtained pursuant to Sections 692A.005 through 692A.010 or Section 693.003.

(2) If no autopsy is required, the organs to be transplanted shall be released in a timely manner to the organ procurement organization, as defined by Section 692A.002, for removal and transplantation.

(3) If an autopsy is required and the medical examiner, justice of the peace, county judge, or designated physician determines that the removal of the organs will not interfere with the subsequent course of an investigation or autopsy, the organs shall be released in a timely manner for removal and transplantation. The autopsy will be performed in a timely manner following the removal of the organs.

(4) If the medical examiner is considering withholding one or more organs of a potential donor for any reason, the medical examiner shall be present during the removal of the organs. In such case, the medical examiner may request a biopsy of those organs or deny removal of the anatomical gift. If the medical examiner denies removal of the anatomical gift, the medical examiner shall explain in writing the reasons for the denial. The medical examiner shall provide the explanation to:

(A) the organ procurement organization; and

(B) any person listed in Section 692A.009 who consented to the removal.

(5) If the autopsy is not being performed by a medical examiner and one or more organs may be withheld, the justice of the peace, county judge, or designated physician shall be present during the removal of the organs and may request the biopsy or deny removal of the anatomical gift. If removal of the anatomical gift is denied, the justice of the peace, county judge, or physician shall provide the written explanation required by Subdivisions (4)(A) and (B).

(6) If, in performing the duties required by this subsection, the medical examiner or, in those cases in which an autopsy is not performed by a medical examiner, the justice of the peace, county judge, or designated physician is required to be present at the hospital to examine the decedent prior to removal of

the organs or during the procedure to remove the organs, the qualified organ procurement organization shall on request reimburse the county or the entity designated by the county for the actual costs incurred in performing such duties, not to exceed $1,000. Such reimbursements shall be deposited in the general fund of the county. The payment shall be applied to the additional costs incurred by the office of the medical examiner, justice of the peace, or county judge in performing such duties, including the cost of providing coverage beyond regular business hours. The payment shall be used to facilitate the timely procurement of organs in a manner consistent with the preservation of the organs for the purposes of transplantation.

(7) At the request of the medical examiner or, in those cases in which an autopsy is not performed by a medical examiner, the justice of the peace, county judge, or designated physician, the health care professional removing organs from a decedent who died under circumstances requiring an inquest shall file with the medical examiner, justice of the peace, or county judge a report detailing the condition of the organs removed and their relationship, if any, to the cause of death.

(b) On a request from a tissue bank, as defined by Section 692A.002, the medical examiner may permit the removal of tissue believed to be clinically usable for transplants or other therapy or treatment from a decedent who died under circumstances requiring an inquest if consent is obtained pursuant to Sections 692A.005 through 692A.010 or Section 693.003 or, if consent is not required by those sections, no objection by a person listed in Section 692A.009 is known by the medical examiner. If the medical examiner denies removal of the tissue, the medical examiner shall explain in writing the reasons for the denial. The medical examiner shall provide the explanation to:

(1) the tissue bank; and

(2) the person listed in Section 692A.009 who consented to the removal.

(c) If the autopsy is not being performed by a medical examiner, the justice of the peace, county judge, or designated physician may permit the removal of tissue in the same manner as a medical examiner under Subsection (b). If removal of the anatomical gift is denied, the justice of the peace, county judge, or physician shall provide the written explanation required by Subsections (b)(1)

and (2).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 523, Sec. 1, eff. June 13, 1995; Acts 2003, 78th Leg., ch. 1220, Sec. 1, eff. July 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 4, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 5, eff. September 1, 2009.

Sec. 693.003. CONSENT NOT REQUIRED IN CERTAIN CIRCUMSTANCES. If a person listed in Section 692A.009 cannot be identified and contacted within four hours after death is pronounced and the county court determines that no reasonable likelihood exists that a person can be identified and contacted during the four-hour period, the county court may permit the removal of a nonvisceral organ or tissue.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 6, eff. September 1, 2009.

Sec. 693.005. IMMUNITY FROM DAMAGES IN CIVIL ACTION. In a civil action brought by a person listed in Section 692A.009 who did not object before the removal of tissue or a body part specified by Section 693.002, a medical examiner, justice of the peace, county judge, medical facility, physician acting on permission of a medical examiner, justice of the peace, or county judge, or person assisting a physician is not liable for damages on a theory of civil recovery based on a contention that the plaintiff's consent was required before the body part or tissue could be removed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1220, Sec. 1, eff. July 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 7, eff. September 1, 2009.

Sec. 693.006. REMOVAL OF CORNEAL TISSUE. On a request from an eye bank, as defined in Section 692A.002, the medical examiner, justice of the peace, county judge, or physician designated by the justice of the peace or county judge may permit the removal of corneal tissue subject to the same provisions that apply to removal of a visceral organ on the request of a procurement organization under this subchapter. The provisions of Chapter 692A relating to immunity and consent apply to the removal of the corneal tissue.

Added by Acts 2005, 79th Leg., Ch. 1069 (H.B. 1544), Sec. 2, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 8, eff. September 1, 2009.

SUBCHAPTER C. EYE ENUCLEATION

Sec. 693.021. DEFINITION. In this chapter, "ophthalmologist" means a person licensed to practice medicine who specializes in treating eye diseases.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 693.022. PERSONS WHO MAY ENUCLEATE EYE AS ANATOMICAL GIFT. Only the following persons may enucleate an eye that is an anatomical gift:

(1) a licensed physician;

(2) a licensed doctor of dental surgery or medical dentistry;

(3) a licensed embalmer; or

(4) a technician supervised by a physician.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 693.023. EYE ENUCLEATION COURSE. Each person, other than a licensed physician, who performs an eye enucleation must complete a course in eye enucleation taught by an ophthalmologist and must possess a certificate showing that the course has been completed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 693.024. REQUISITES OF EYE ENUCLEATION COURSE. The course in eye enucleation prescribed by Section 693.023 must include instruction in:

(1) the anatomy and physiology of the eye;

(2) maintaining a sterile field during the procedure;

(3) use of the appropriate instruments; and

(4) procedures for the sterile removal of the corneal button and the preservation of it in a preservative fluid.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 694. BURIAL

Sec. 694.001. DUTIES OF DEPARTMENT OF STATE HEALTH SERVICES. The Department of State Health Services shall regulate the disposal, transportation, interment, and disinterment of dead bodies to the extent reasonable and necessary to protect public health and safety.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1506, eff. April 2, 2015.

Sec. 694.002. DUTY OF COMMISSIONERS COURT CONCERNING DISPOSITION OF BODY OF DECEASED PAUPERS. (a) The commissioners court of each county shall provide for the disposition of the body of a deceased pauper. The commissioners court may adopt rules to implement this section.

(b) The commissioners court shall consider any information, including the religious affiliation of the deceased pauper, provided by a person listed in Section 711.002(a).

(c) If a county discovers cash in the possession of a deceased pauper, a county may use the cash to pay the actual costs incurred by the county in disposing of the pauper's body.

(d) If any cash remains after the county has paid the costs of disposing of the body under Subsection (c), the county shall place the cash in trust. A person having a claim to the money in trust

must exercise the right to collect the money not later than the first anniversary of the date of disposition of the pauper's body.

(e) A county may create a fund to be used by the county to pay the costs incurred in disposing of the bodies of deceased paupers and administering the county's body disposition activities. If money placed in a trust under Subsection (d) is not claimed by the first anniversary of the date of disposition of the pauper's body, the county may transfer the money to the fund created under this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 211, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 929, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 404 (H.B. 1843), Sec. 1, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 480 (S.B. 530), Sec. 1, eff. June 19, 2009.

Sec. 694.003. POWER OF GOVERNING BODY OF TYPE A GENERAL-LAW MUNICIPALITY CONCERNING BURIAL. The governing body of a Type A general-law municipality may regulate the burial of the dead.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 695. IN-CASKET IDENTIFICATION

Sec. 695.001. DEFINITIONS. In this chapter:

(1) "Casket" means a container used to hold the remains of a deceased person.

(2) "Commission" means the Texas Funeral Service Commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 2, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 3.03, eff. September 1, 2009.

Sec. 695.002. IDENTIFICATION OF DECEASED PERSON. The

commission shall ensure a casket contains identification of the deceased person, including the person's name, date of birth, and date of death.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 2, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 3.03, eff. September 1, 2009.

Sec. 695.003. RULES. The commission may adopt rules to enforce this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 2, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 3.03, eff. September 1, 2009.

CHAPTER 696. DISPOSITION OF UNCLAIMED CREMATED REMAINS

Sec. 696.001. DEFINITIONS. In this chapter:

(1) "Verification information" means data required by the United States Department of Veterans Affairs to verify whether a person is a veteran or a veteran's dependent eligible for burial in a veterans cemetery, including a copy of the person's death certificate and the person's name, service number, social security number, date of birth, date of death, and place of birth.

(2) "Veterans' service organization" means:

(A) a veterans' organization that is chartered by the United States Congress;

(B) a veterans' service organization recognized by the United States Department of Veterans Affairs; or

(C) a veterans' service organization that is organized for verifying whether a person is a veteran or a veteran's dependent and providing for interment of veterans and their dependents and that is exempt from the payment of federal income taxes under Section 501(c) of the Internal Revenue Code of 1986 by being listed as an exempt organization under Section 501(c)(3) or 501(c)(19) of that code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 373 (H.B. 3064), Sec. 1, eff.

September 1, 2013.

Sec. 696.002. APPLICABILITY. This chapter applies to any person who possesses unclaimed cremated remains, including a funeral establishment or funeral director licensed under Chapter 651, Occupations Code, a coroner, or a crematory.

Added by Acts 2013, 83rd Leg., R.S., Ch. 373 (H.B. 3064), Sec. 1, eff. September 1, 2013.

Sec. 696.003. AUTHORIZATION TO RELEASE INFORMATION. A person who possesses unclaimed cremated remains may release to the United States Department of Veterans Affairs or a veterans' service organization verification information associated with the remains to verify whether the remains are the remains of a person who was a veteran or a veteran's dependent eligible to be interred in a veterans cemetery if:

(1) the person has possessed the cremated remains for at least five years;

(2) the person authorized to dispose of the decedent's remains under Section 711.002 has not claimed the cremated remains; and

(3) the person made a reasonable effort to locate a relative of the decedent to claim the remains, including publishing notice in a newspaper of general circulation in the county in which the person is located, and more than 30 days have passed since the person first made an effort to locate a relative of the decedent.

Added by Acts 2013, 83rd Leg., R.S., Ch. 373 (H.B. 3064), Sec. 1, eff. September 1, 2013.

Sec. 696.004. TRANSFER OF UNCLAIMED CREMATED REMAINS. A person who receives notice from the United States Department of Veterans Affairs or a veterans' service organization that the unclaimed cremated remains are the remains of a veteran or veteran's dependent eligible to be interred in a veterans cemetery may:

(1) transport the cremated remains to the veterans cemetery for burial; or

(2) transfer the cremated remains to a veterans' service organization that will ensure that the cremated remains are interred in a veterans cemetery.

Added by Acts 2013, 83rd Leg., R.S., Ch. 373 (H.B. 3064), Sec. 1, eff. September 1, 2013.

Sec. 696.005. CIVIL IMMUNITY. (a) A person who releases verification information as authorized by this chapter or who transfers cremated remains to a veterans' service organization or a veterans cemetery as authorized by this chapter is immune from civil liability for damages resulting from the release or transfer.

(b) A veterans' service organization that inters cremated remains in a veterans cemetery as authorized by this chapter is immune from civil liability for damages arising from the interment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 373 (H.B. 3064), Sec. 1, eff. September 1, 2013.

CHAPTER 697. DISPOSITION OF EMBRYONIC AND FETAL TISSUE REMAINS

Sec. 697.001. PURPOSE. The purpose of this chapter is to express the state's profound respect for the life of the unborn by providing for a dignified disposition of embryonic and fetal tissue remains.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 13, eff. September 1, 2017.

Sec. 697.002. DEFINITIONS. In this chapter:

(1) "Cremation" means the irreversible process of reducing remains to bone fragments through direct flame, extreme heat, and evaporation.

(2) "Department" means the Department of State Health Services.

(3) "Embryonic and fetal tissue remains" means an embryo, a fetus, body parts, or organs from a pregnancy that terminates in the death of the embryo or fetus and for which the issuance of a fetal death certificate is not required by state law. The term does not

include the umbilical cord, placenta, gestational sac, blood, or body fluids.

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Incineration" means the process of burning remains in an incinerator.

(6) "Interment" means the disposition of remains by entombment, burial, or placement in a niche.

(7) "Steam disinfection" means the act of subjecting remains to steam under pressure to disinfect the remains.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 13, eff. September 1, 2017.

Sec. 697.003. APPLICABILITY OF OTHER LAW. Embryonic and fetal tissue remains are not pathological waste under state law. Unless otherwise provided by this chapter, Chapters 711 and 716 of this code and Chapter 651, Occupations Code, do not apply to the disposition of embryonic and fetal tissue remains.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 13, eff. September 1, 2017.

Sec. 697.004. DISPOSITION OF EMBRYONIC AND FETAL TISSUE REMAINS. (a) Subject to Section 241.010, a health care facility in this state that provides health or medical care to a pregnant woman shall dispose of embryonic and fetal tissue remains that are passed or delivered at the facility by:

(1) interment;

(2) cremation;

(3) incineration followed by interment; or

(4) steam disinfection followed by interment.

(b) The ashes resulting from the cremation or incineration of embryonic and fetal tissue remains:

(1) may be interred or scattered in any manner as authorized by law for human remains; and

(2) may not be placed in a landfill.

(c) A health care facility responsible for disposing of embryonic and fetal tissue remains may coordinate with an entity in

the registry established under Section 697.005 in an effort to offset the cost associated with burial or cremation of the embryonic and fetal tissue remains of an unborn child.

(d) Notwithstanding any other law, the umbilical cord, placenta, gestational sac, blood, or body fluids from a pregnancy terminating in the death of the embryo or fetus for which the issuance of a fetal death certificate is not required by state law may be disposed of in the same manner as and with the embryonic and fetal tissue remains from that same pregnancy as authorized by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 13, eff. September 1, 2017.

Sec. 697.005. BURIAL OR CREMATION ASSISTANCE REGISTRY. The department shall:

(1) establish and maintain a registry of:

(A) participating funeral homes and cemeteries willing to provide free common burial or low-cost private burial; and

(B) private nonprofit organizations that register with the department to provide financial assistance for the costs associated with burial or cremation of the embryonic and fetal tissue remains of an unborn child; and

(2) make the registry information available on request to a physician, health care facility, or agent of a physician or health care facility.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 13, eff. September 1, 2017.

Sec. 697.006. ETHICAL FETAL REMAINS GRANT PROGRAM. The department shall develop a grant program that uses private donations to provide financial assistance for the costs associated with disposing of embryonic and fetal tissue remains.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 13, eff. September 1, 2017.

Sec. 697.007. SUSPENSION OR REVOCATION OF LICENSE. The department may suspend or revoke the license of a health care facility that violates this chapter or a rule adopted under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 13, eff. September 1, 2017.

Sec. 697.008. CIVIL PENALTY. (a) A person that violates this chapter or a rule adopted under this chapter is liable for a civil penalty in an amount of $1,000 for each violation.

(b) The attorney general, at the request of the department, may sue to collect the civil penalty. The attorney general may recover reasonable expenses incurred in collecting the civil penalty, including court costs, reasonable attorney's fees, investigation costs, witness fees, and disposition expenses.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 13, eff. September 1, 2017.

Sec. 697.009. RULES. The executive commissioner shall adopt rules to implement this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 13, eff. September 1, 2017.

SUBTITLE C. CEMETERIES AND CREMATORIES

CHAPTER 711. GENERAL PROVISIONS RELATING TO CEMETERIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 711.001. DEFINITIONS. In this chapter:

(1) "Abandoned cemetery" means a cemetery, regardless of whether it appears on a map or in deed records, that is not owned or operated by a cemetery organization, does not have another person legally responsible for its care, and is not maintained by any person.

(2) "Burial park" means a tract of land that is used or intended to be used for interment in graves.

(3) "Campus" means the area:

(A) within the boundaries of one or more adjacent tracts, parcels, or lots under common ownership;

(B) on which the principal church building and related structures and facilities of an organized religious society or sect are located; and

(C) that may be subject to one or more easements for street, utility, or pipeline purposes.

(4) "Cemetery" means a place that is used or intended to be used for interment, and includes a graveyard, burial park, mausoleum, or any other area containing one or more graves.

(5) "Cemetery element" means a grave, memorial, crypt, mausoleum, columbarium, or other item that is associated with the cemetery, including a fence, road, curb, wall, path, gate, or bench and the lighting and landscaping.

(6) "Cemetery broker" means a person who sells the exclusive right of sepulture for another person. The term does not include a person who:

(A) is an officer, agent, or employee of the cemetery organization in which the plot is located, acting at the direction or under the control of the cemetery organization; or

(B) originally purchased the exclusive right of sepulture for personal use.

(7) "Cemetery organization" means:

(A) an unincorporated association of plot owners not operated for profit that is authorized by its articles of association to conduct a business for cemetery purposes; or

(B) a corporation, as defined by Section 712.001(b)(3), that is authorized by its certificate of formation or its registration to conduct a business for cemetery purposes.

(8) "Cemetery purpose" means a purpose necessary or incidental to establishing, maintaining, managing, operating, improving, or conducting a cemetery, interring remains, or caring for, preserving, and embellishing cemetery property.

(9) "Columbarium" means a durable, fireproof structure, or a room or other space in a durable, fireproof structure, containing niches and used or intended to be used to contain cremated remains.

(10) "Cremains receptacle" means a marker, boulder, bench, pedestal, pillar, or other aboveground vessel that contains niches for cremated remains.

(11) "Cremated remains" or "cremains" means the bone

fragments remaining after the cremation process, which may include the residue of any foreign materials that were cremated with the human remains.

(12) "Cremation" means the irreversible process of reducing human remains to bone fragments through extreme heat and evaporation, which may include the processing or the pulverization of bone fragments.

(13) "Crematory" means a structure containing a furnace used or intended to be used for the cremation of human remains.

(14) "Crematory and columbarium" means a durable, fireproof structure containing both a crematory and columbarium.

(15) "Crypt" means a chamber in a mausoleum of sufficient size to inter human remains.

(16) "Directors" means the governing body of a cemetery organization.

(17) "Entombment" means interment in a crypt.

(18) "Funeral establishment" means a place of business used in the care and preparation for interment or transportation of human remains, or any place where one or more persons, either as sole owner, in copartnership, or through corporate status, are engaged or represent themselves to be engaged in the business of embalming or funeral directing.

(19) "Grave" means a space of ground that contains interred human remains or is in a burial park and that is used or intended to be used for interment of human remains in the ground.

(20) "Human remains" means the body of a decedent.

(21) "Interment" means the permanent disposition of remains by entombment, burial, or placement in a niche.

(22) "Interment right" means the right to inter the remains of one decedent in a plot.

(23) "Inurnment" means the placement of cremated remains in an urn.

(24) "Lawn crypt" means a subsurface receptacle installed in multiple units for ground burial of human remains.

(25) "Mausoleum" means a durable, fireproof structure used or intended to be used for entombment.

(26) "Memorial" means a headstone, tombstone, gravestone, monument, or other marker denoting a grave.

(27) "Niche" means a space in a columbarium or cremains receptacle used or intended to be used for the placement of cremated

remains in an urn or other container.

(28) "Nonperpetual care cemetery" means a cemetery that is not a perpetual care cemetery.

(29) "Perpetual care" or "endowment care" means the maintenance, repair, and care of all places in the cemetery.

(30) "Perpetual care cemetery" or "endowment care cemetery" means a cemetery for the benefit of which a perpetual care trust fund is established as provided by Chapter 712.

(31) "Plot" means space in a cemetery owned by an individual or organization that is used or intended to be used for interment, including a grave or adjoining graves, a crypt or adjoining crypts, a lawn crypt or adjoining lawn crypts, or a niche or adjoining niches.

(32) "Plot owner" means a person:

(A) in whose name a plot is listed in a cemetery organization's office as the owner of the exclusive right of sepulture; or

(B) who holds, from a cemetery organization, a certificate of ownership or other instrument of conveyance of the exclusive right of sepulture in a particular plot in the organization's cemetery.

(33) "Prepaid funeral contract" means a written contract providing for prearranged or prepaid funeral services or funeral merchandise.

(34) "Remains" means either human remains or cremated remains.

(35) "Unidentified grave" means a grave that is not marked in a manner that provides the identity of the interment.

(36) "Unknown cemetery" means an abandoned cemetery evidenced by the presence of marked or unmarked graves that does not appear on a map or in deed records.

(37) "Unmarked grave" means the immediate area where one or more human interments are found that:

(A) is not in a recognized and maintained cemetery;

(B) is not owned or operated by a cemetery organization;

(C) is not marked by a tomb, monument, gravestone, or other structure or thing placed or designated as a memorial of the dead; or

(D) is located on land designated as agricultural,

timber, recreational, park, or scenic land under Chapter 23, Tax Code.

(38) "Unverified cemetery" means a location having some evidence of interment but in which the presence of one or more unmarked graves has not been verified by a person described by Section 711.0105(a) or by the Texas Historical Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 212, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1389, Sec. 3, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 106 (S.B. 350), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 1, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 110 (S.B. 1630), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 38, eff. September 1, 2019.

Sec. 711.002. DISPOSITION OF REMAINS; DUTY TO INTER. (a) Except as provided by Subsection (l), unless a decedent has left directions in writing for the disposition of the decedent's remains as provided in Subsection (g), the following persons, in the priority listed, have the right to control the disposition, including cremation, of the decedent's remains, shall inter the remains, and in accordance with Subsection (a-3) are liable for the reasonable cost of interment:

(1) the person designated in a written instrument signed by the decedent;

(2) the decedent's surviving spouse;

(3) any one of the decedent's surviving adult children;

(4) either one of the decedent's surviving parents;

(5) any one of the decedent's surviving adult siblings;

(6) any one or more of the duly qualified executors or administrators of the decedent's estate; or

(7) any adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

(a-1) If the person with the right to control the disposition of the decedent's remains fails to make final arrangements or appoint another person to make final arrangements for the disposition before the earlier of the 6th day after the date the person received notice of the decedent's death or the 10th day after the date the decedent died, the person is presumed to be unable or unwilling to control the disposition, and:

(1) the person's right to control the disposition is terminated; and

(2) the right to control the disposition is passed to the following persons in the following priority:

(A) any other person in the same priority class under Subsection (a) as the person whose right was terminated; or

(B) a person in a different priority class, in the priority listed in Subsection (a).

(a-2) If a United States Department of Defense Record of Emergency Data, DD Form 93, or a successor form, was in effect at the time of death for a decedent who died in a manner described by 10 U.S.C. Sections 1481(a)(1) through (8), the DD Form 93 controls over any other written instrument described by Subsection (a)(1) or (g) with respect to designating a person to control the disposition of the decedent's remains. Notwithstanding Subsections (b) and (c), the form is legally sufficient if it is properly completed, signed by the decedent, and witnessed in the manner required by the form.

(a-3) A person exercising the right to control the disposition of remains under Subsection (a), other than a duly qualified executor or administrator of the decedent's estate, is liable for the reasonable cost of interment and may seek reimbursement for that cost from the decedent's estate. When an executor or administrator exercises the right to control the disposition of remains under Subsection (a)(6), the decedent's estate is liable for the reasonable cost of interment, and the executor or administrator is not

individually liable for that cost.

(b) The written instrument referred to in Subsection (a)(1) may be in substantially the following form:

APPOINTMENT FOR DISPOSITION OF REMAINS

I, _____,
(your name and address)

being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by _____
(name of agent)

in accordance with Sections 711.002 and 711.004, Health and Safety Code, and, with respect to that subject only, I hereby appoint such person as my agent (attorney-in-fact).

All decisions made by my agent with respect to the disposition of my remains, including cremation, shall be binding.

SPECIAL DIRECTIONS:

Set forth below are any special directions limiting the power granted to my agent:

_____

_____

_____

_____

_____

AGENT:

Name: _____

Address: _____

Telephone Number: _____

SUCCESSORS:

If my agent or a successor agent dies, becomes legally disabled, resigns, or refuses to act, or if my marriage to my agent or successor agent is dissolved by divorce, annulled, or declared void before my death and this instrument does not state that the agent or successor agent continues to serve after my marriage to that agent or successor agent is dissolved by divorce, annulled, or declared void, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent (attorney-in-fact) to control the disposition of my remains as authorized by this document:

1. First Successor

Name: _____

Address: _____

Telephone Number: _____

2. Second Successor

Name: _____

Address: _____

Telephone Number: _____

DURATION:

This appointment becomes effective upon my death.

PRIOR APPOINTMENTS REVOKED:

I hereby revoke any prior appointment of any person to control the disposition of my remains.

RELIANCE:

I hereby agree that any cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to any such party until that party receives actual notice of the modification or revocation. No such party shall be liable because of reliance on a copy of this document.

ASSUMPTION:

THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND BY THE PROVISIONS OF, SECTIONS 711.002 AND 711.004, HEALTH AND SAFETY CODE.

SIGNATURES:

This written instrument and my appointments of an agent and any successor agent in this instrument are valid without the signature of my agent and any successor agents below. Each agent, or a successor agent, acting pursuant to this appointment must indicate acceptance of the appointment by signing below before acting as my agent.

Signed this _____ day of _____, 20___.

_____

(your signature)

State of _____

County of _____

This document was acknowledged before me on _____ (date) by _____ (name of principal).

_____

(signature of notarial officer)

(Seal, if any, of notary)

_____

(printed name)
My commission expires:
_____

ACCEPTANCE AND ASSUMPTION BY AGENT:

I have no knowledge of or any reason to believe this Appointment for Disposition of Remains has been revoked. I hereby accept the appointment made in this instrument with the understanding that I will be individually liable for the reasonable cost of the decedent's interment, for which I may seek reimbursement from the decedent's estate.

Acceptance of Appointment: _____
(signature of agent)
Date of Signature: _____
Acceptance of Appointment: _____
(signature of first successor)
Date of Signature: _____
Acceptance of Appointment: _____
(signature of second successor)
Date of Signature: _____

(c) A written instrument is legally sufficient under Subsection (a)(1) if the instrument designates a person to control the disposition of the decedent's remains, the instrument is signed by the decedent, the signature of the decedent is acknowledged, and the agent or successor agent signs the instrument before acting as the decedent's agent. Unless the instrument provides otherwise, the designation of the decedent's spouse as an agent or successor agent in the instrument is revoked when the marriage of the decedent and the spouse appointed as an agent or successor agent is dissolved by divorce, annulled, or declared void before the decedent's death. Such written instrument may be modified or revoked only by a subsequent written instrument that complies with this subsection.

(d) A person listed in Subsection (a) has the right, duty, and liability provided by that subsection only if there is no person in a priority listed before the person.

(e) If there is no person with the duty to inter under Subsection (a) and:

(1) an inquest is held, the person conducting the inquest shall inter the remains; and

(2) an inquest is not held, the county in which the death occurred shall inter the remains.

(f) A person who represents that the person knows the identity of a decedent and, in order to procure the disposition, including cremation, of the decedent's remains, signs an order or statement, other than a death certificate, warrants the identity of the decedent and is liable for all damages that result, directly or indirectly, from that warrant.

(g) A person may provide written directions for the disposition, including cremation, of the person's remains in a will, a prepaid funeral contract, or a written instrument signed and acknowledged by such person. A party to the prepaid funeral contract or a written contract providing for all or some of a decedent's funeral arrangements who fails to honor the contract is liable for the additional expenses incurred in the disposition of the decedent's remains as a result of the breach of contract. The directions may govern the inscription to be placed on a grave marker attached to any plot in which the decedent had the right of sepulture at the time of death and in which plot the decedent is subsequently interred. The directions may be modified or revoked only by a subsequent writing signed and acknowledged by such person. The person otherwise entitled to control the disposition of a decedent's remains under this section shall faithfully carry out the directions of the decedent to the extent that the decedent's estate or the person controlling the disposition are financially able to do so.

(h) If the directions are in a will, they shall be carried out immediately without the necessity of probate. If the will is not probated or is declared invalid for testamentary purposes, the directions are valid to the extent to which they have been acted on in good faith.

(i) A cemetery organization, a business operating a crematory or columbarium or both, a funeral director or an embalmer, or a funeral establishment shall not be liable for carrying out the written directions of a decedent or the directions of any person who represents that the person is entitled to control the disposition of the decedent's remains.

(j) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 707, Sec. 3, eff. June 17, 2011.

(k) Any dispute among any of the persons listed in Subsection (a) concerning their right to control the disposition, including cremation, of a decedent's remains shall be resolved by a court with jurisdiction over probate proceedings for the decedent, regardless of

whether a probate proceeding has been initiated. A cemetery organization or funeral establishment shall not be liable for refusing to accept the decedent's remains, or to inter or otherwise dispose of the decedent's remains, until it receives a court order or other suitable confirmation that the dispute has been resolved or settled.

(l) A person listed in Subsection (a) may not control the disposition of the decedent's remains if:

(1) in connection with the decedent's death, the person has been arrested or an arrest warrant has been issued for the person for a crime under Chapter 19, Penal Code, that involves family violence against the decedent; or

(2) the decedent had filed an application for a protective order against or with respect to the person under Subchapter A, Chapter 7B, Code of Criminal Procedure, Article 17.292, Code of Criminal Procedure, Section 6.504, Family Code, or Subtitle B, Title 4, Family Code, or an order has been issued against or with respect to the person under one of those provisions.

(l-1) A person regulated under Chapter 651, Occupations Code, who knowingly allows a person described by Subsection (l) to control the disposition of the decedent's remains in violation of that subsection commits a prohibited practice under Section 651.460, Occupations Code, and the Texas Funeral Service Commission may take disciplinary action or assess an administrative penalty against the regulated person under that chapter.

(l-2) A court with jurisdiction over probate proceedings shall expedite the proceedings to resolve any dispute over the right to control the disposition of a decedent's remains among the persons listed in Subsection (a) if the dispute involves the control of the disposition of the remains by a prohibited person described by Subsection (l).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 213, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 967, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1385, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 95 (H.B. 74), Sec. 1, eff. May 20, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 707 (H.B. 549), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 707 (H.B. 549), Sec. 3, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(28), eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 619 (S.B. 988), Sec. 2, eff. June 16, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1103 (H.B. 3070), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 807 (H.B. 2248), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 284 (S.B. 1300), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 737 (H.B. 3161), Sec. 4, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 11.004, eff. September 1, 2023.

Sec. 711.003. RECORDS OF INTERMENT. A record shall be kept of each interment in a cemetery. The record must include:

(1) the date the remains are received;

(2) the date the remains are interred;

(3) the name and age of the person interred if those facts can be conveniently obtained; and

(4) the identity of the plot in which the remains are interred.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 3, eff. Sept. 1, 1993.

Sec. 711.004. REMOVAL OF REMAINS. (a) Remains interred in a cemetery may be removed from a plot in the cemetery with the written consent of the cemetery organization operating the cemetery and the

written consent of the current plot owner or owners and the following persons, in the priority listed:

(1) the person designated in a written instrument signed by the decedent, as described by Section 711.002(a)(1);

(2) the decedent's surviving spouse;

(3) any one of the decedent's surviving adult children;

(4) either one of the decedent's surviving parents;

(5) any one of the decedent's surviving adult siblings;

(6) any one of the duly qualified executors or administrators of the decedent's estate; or

(7) any adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

(b) A person listed in Subsection (a) may consent to the removal only if there is no person in a priority listed before that person.

(c) If the consent required by Subsection (a) cannot be obtained, the remains may be removed by permission of a county court of the county in which the cemetery is located. Before the date of application to the court for permission to remove remains under this subsection, notice must be given to:

(1) the cemetery organization operating the cemetery in which the remains are interred or if the cemetery organization cannot be located or does not exist, the Texas Historical Commission;

(2) each person whose consent is required for removal of the remains under Subsection (a); and

(3) any other person or entity that the court subsequently requires to be served.

(d) For the purposes of Subsection (c) and except as provided by this subsection or Subsection (d-1) or (k), personal notice must be given not later than the 11th day before the date of application to the court for permission to remove the remains, or notice by certified or registered mail must be given not later than the 16th day before the date of application. In an emergency circumstance described by Subsection (l) that necessitates immediate removal of remains from a plot, the court shall hear an application for permission to remove remains under Subsection (c) not later than the first business day after the application is made. In an emergency circumstance described by this subsection, personal notice may be given on the date the application is made.

(d-1) If the court subsequently requires an additional person

or entity to be served under Subsection (c)(3), that additional service must be performed not later than the 11th day after the date of the judge's order. Service may not be required for any court appointed representative or other court appointed official.

(e) Subsections (a)-(d) and (k) do not apply to the removal of remains:

(1) from one plot to another plot in the same cemetery, if the cemetery:

(A) is a family, fraternal, or community cemetery that is not larger than 10 acres;

(B) is owned or operated by an unincorporated association of plot owners not operated for profit;

(C) is owned or operated by a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; or

(D) is a public cemetery owned by this state, a county, or a municipality;

(2) by the cemetery organization from a plot for which the purchase price is past due and unpaid, to another suitable place;

(3) on the order of a court or person who conducts inquests; or

(4) from a plot in a cemetery owned and operated by the Veterans' Land Board.

Text of subsection effective until April 1, 2027

(f) Except as is authorized for a justice of the peace acting as coroner or medical examiner under Chapter 49, Code of Criminal Procedure, remains may not be removed from a cemetery except on the written order of the state registrar or the state registrar's designee. The cemetery organization shall keep a duplicate copy of the order as part of its records. The Texas Funeral Service Commission may adopt rules to implement this subsection.

Text of subsection effective on April 1, 2027

(f) Except as is authorized for a justice of the peace acting as coroner or medical examiner under Chapter 49A, Code of Criminal Procedure, remains may not be removed from a cemetery except on the written order of the state registrar or the state registrar's designee. The cemetery organization shall keep a duplicate copy of the order as part of its records. The Texas Funeral Service Commission may adopt rules to implement this subsection.

Text of subsection effective until April 1, 2027

(f-1) For unmarked graves contained within an abandoned, unknown, or unverified cemetery, a justice of the peace acting as coroner or medical examiner under Chapter 49, Code of Criminal Procedure, or a person described by Section 711.0105(a) may investigate or remove remains without written order of the state registrar or the state registrar's designee.

Text of subsection effective on April 1, 2027

(f-1) For unmarked graves contained within an abandoned, unknown, or unverified cemetery, a justice of the peace acting as coroner or medical examiner under Chapter 49A, Code of Criminal Procedure, or a person described by Section 711.0105(a) may investigate or remove remains without written order of the state registrar or the state registrar's designee.

(g) A person who removes remains from a cemetery shall keep a record of the removal that includes:

(1) the date the remains are removed;

(2) the name and age at death of the decedent if those facts can be conveniently obtained;

(3) the place to which the remains are removed; and

(4) the cemetery and plot from which the remains are removed.

(h) If the remains are not reinterred, the person who removes the remains shall:

(1) make and keep a record of the disposition of the remains; and

(2) not later than the 30th day after the date the remains are removed, provide notice by certified mail to the Texas Funeral Service Commission and the Department of State Health Services of the person's intent not to reinter the remains and the reason the remains will not be reinterred.

(i) A person who removes remains from a cemetery shall give the cemetery organization operating the cemetery a copy of the record made as required by Subsections (g) and (h).

(j) A cemetery organization may remove remains from a plot in the cemetery and transfer the remains to another plot in the same cemetery without the written consent required under Subsection (a) if the cemetery seeks consent by sending written notice by certified mail, return receipt requested, to the last known address of the current owner of the plot from which the remains are to be removed or

to the person designated under Subsection (a). The notice must indicate that the remains will be removed, the reason for the removal of the remains, and the proposed location of the reinterment of the remains. The cemetery may transfer the remains to another plot in accordance with this subsection if an objection is not received in response to the notice before the 31st day after the date the notice is sent. A cemetery may not remove remains under this subsection for a fraudulent purpose or to allow the sale of the plot in which the remains are located to another person.

(k) In an emergency circumstance described by Subsection (l) that necessitates immediate removal of remains before the date on which the court is required to hear an application for permission to remove remains under Subsection (d), a cemetery organization may remove remains from a plot in the cemetery and transfer the remains to another plot in the same cemetery without the court hearing. A cemetery association that removes remains under this subsection shall send written notice of the removal by certified mail, return receipt requested, to the last known address of the person designated under Subsection (a) not later than the fifth day after the date the remains are removed. The notice must indicate that the remains were removed, the reason for the removal of the remains, and the location of the reinterment of the remains.

(l) For purposes of Subsections (d) and (k), "emergency circumstance" means:

(1) a natural disaster; or

(2) an error in the interment of remains.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 214, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 488, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 4, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 504, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 562, Sec. 32, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 2, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 110 (S.B. 1630), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 807 (H.B. 2248), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 817 (H.B. 2430), Sec. 1, eff. June 10, 2019.

Acts 2023, 88th Leg., R.S., Ch. 284 (S.B. 1300), Sec. 1, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 202 (H.B. 1610), Sec. 2.15, eff. April 1, 2027.

Sec. 711.007. NUISANCE; ABATEMENT AND INJUNCTION. (a) A district court of the county in which a cemetery is located may, by order, abate the cemetery as a nuisance and enjoin its continuance if the cemetery is:

(1) maintained, located, or used in violation of this chapter or Chapter 712; or

(2) neglected so that it is offensive to the inhabitants of the surrounding section.

(b) The proceeding may be brought by:

(1) the attorney general;

(2) the Banking Commissioner of Texas;

(3) the governing body of a municipality with a population of more than 25,000, if the cemetery is located in the municipality or not farther than five miles from the municipality;

(4) the district attorney of the county, if the cemetery is located in an area of the county not described by Subdivision (3);

(5) the owner of a residence:

(A) in or near the municipality in which the cemetery is located; or

(B) in the area proscribed for the location of a cemetery by Section 711.008; or

(6) the owner of a plot in the cemetery.

(c) The court shall grant a permanent injunction against each person responsible for the nuisance if a cemetery nuisance exists or is threatened.

(d) If a cemetery nuisance under Subsection (a)(2) is located in a municipality, the governing body of the municipality may authorize the removal of all bodies, monuments, tombs, or other similar items from the cemetery to a perpetual care cemetery.

(e) Notice of an action under this section must be provided to the Texas Historical Commission and to the county historical commission of the county in which the cemetery is located. The Texas

Historical Commission and the county historical commission may intervene and become parties to the suit.

(f) In an action under this section, the court shall determine:

(1) whether the cemetery nuisance must be abated by repair and restoration or by removal of the cemetery; and

(2) the party or parties liable for the costs associated with the abatement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 6, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 562, Sec. 33, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 3, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 1, eff. September 1, 2019.

Sec. 711.008. LOCATION OF CEMETERY. (a) Except as provided by Subsections (b), (f), (g), (g-1), (g-2), (g-3), (g-4), (h), (k), and (m), an individual, corporation, partnership, firm, trust, or association may not establish or operate a cemetery, or use any land for the interment of remains, located:

(1) in or within one mile of the boundaries of a municipality with a population of 5,000 to 25,000;

(2) in or within two miles of the boundaries of a municipality with a population of 25,000 to 50,000;

(3) in or within three miles of the boundaries of a municipality with a population of 50,000 to 100,000;

(4) in or within four miles of the boundaries of a municipality with a population of 100,000 to 200,000; or

(5) in or within five miles of the boundaries of a municipality with a population of at least 200,000.

(b) Subsection (a) does not apply to:

(1) a cemetery heretofore established and operating;

(2) the establishment and use of a columbarium by an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, as part of or attached to the principal church building owned by the society or

sect;

(3) the establishment and use of a columbarium by an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, on land that:

(A) is owned by the society or sect; and

(B) is part of the campus on which an existing principal church building is located;

(4) the establishment and use of a columbarium on the campus of a private or independent institution of higher education, as defined by Section 61.003, Education Code, that is wholly or substantially controlled, managed, owned, or supported by or otherwise affiliated with an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, if a place of worship is located on the campus;

(5) the establishment and use of a mausoleum that is:

(A) constructed beneath the principal church building owned by an organized religious society or sect that:

(i) is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code; and

(ii) has recognized religious traditions and practices of interring the remains of ordained clergy in or below the principal church building; and

(B) used only for the interment of the remains of ordained clergy of that organized religious society or sect;

(6) the establishment and operation, if authorized in accordance with Subsection (h), of a perpetual care cemetery by an organized religious society or sect that:

(A) is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code;

(B) has been in existence for at least five years;

(C) has at least $500,000 in assets; and

(D) establishes and operates the cemetery on land that:

(i) is owned by the society or sect;

(ii) together with any other land owned by the society or sect and adjacent to the land on which the cemetery is located, is not less than 10 acres; and

(iii) is in a municipality with a population of at least one million that is located predominantly in a county that has a total area of less than 1,000 square miles;

(7) the establishment and use of a private family cemetery by an organization that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, on land that is:

(A) owned by the organization; and

(B) located in a county:

(i) with a population of more than 165,000; and

(ii) that is adjacent to a county that has a population of more than 1.5 million and in which more than 70 percent of the population lives in a single municipality; or

(8) the establishment and use of a private family cemetery located at the site of a presidential library and museum.

(c) Subsection (a) does not apply to a private family cemetery that:

(1) was established and operating on or before September 1, 2009; or

(2) is established and operating on land outside the boundaries of a municipality that has been owned or occupied by members of the same family for at least three generations and that is within 10 miles of the largest prison cemetery in this state.

(d) Subsection (a) does not apply to a cemetery established and operating before September 1, 1995, in a county with a population of more than 315,000 and less than 351,000 that borders the Gulf of Mexico.

(e) For the purpose of determining where a cemetery may be located under Subsection (a), the boundary of an area annexed by a municipality is not considered to be a boundary of the municipality if:

(1) no more than 10 percent of the boundary of the annexed area is composed of a part of the boundary of the annexing municipality as it existed immediately before the annexation; or

(2) the annexed area cannot be developed as residential or commercial property and is primarily used for flood control.

(f) This subsection applies only to a municipality with a population of at least 60,000 that is located in a county with a population of no more than 155,000. Not later than December 1, 2001, a charitable nonprofit corporation may file a written application

with the governing body of a municipality to establish or use a cemetery located inside the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

(g) Not later than December 1, 2003, a corporation may file a written application with the governing body of a municipality that has a population of at least 27,000 and not more than 30,000 and that is located in a county with a population of at least 245,000 and not more than 250,000 to establish or use a cemetery located outside the municipality but within two miles of the municipal boundaries. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of the cemetery if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

(g-1) Not later than September 1, 2020, a nonprofit organization may file a written application with the governing body of a municipality to establish or use a cemetery located inside the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare. This subsection applies only to a municipality that is wholly or partly located in a county with a population of more than 3.3 million.

(g-2) Not later than December 1, 2022, an individual, corporation, partnership, firm, trust, or association may file a written application with the governing body of a municipality to establish or use a cemetery located inside the legal boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of the cemetery if the municipality determines and states in the ordinance that the

establishment or use of the cemetery does not adversely affect public health, safety, and welfare. This subsection applies only to a municipality that has a population of:

(1) at least 55,000 and not more than 60,000 and that is located in two counties, each of which has a population of less than 132,000; or

(2) at least 24,000 and not more than 26,000 and that is the county seat of a county that has a population of at least 130,000 and not more than 135,000.

(g-3) An individual, corporation, partnership, firm, trust, or association may file a written application with the governing body of a municipality to establish or use a cemetery located inside the limits of the municipality. The governing body by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of the cemetery if the governing body determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare. This subsection applies only to a municipality that is located in:

(1) a county with a population of more than 750,000; or

(2) a county adjacent to a county with a population of more than 750,000.

(g-4) An individual, corporation, partnership, firm, trust, or association may file a written application with the commissioners court of a county to establish or use a cemetery located inside the limits of the county. The commissioners court by order shall prescribe the information to be included in the application. The commissioners court by order may authorize the establishment or use of the cemetery if the commissioners court determines and states in the order that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare. This subsection applies only to a county:

(1) with a population of more than 750,000; or

(2) that is adjacent to a county with a population of more than 750,000.

(h) The governing body of a municipality described by Subsection (b)(6)(D)(iii) may authorize the establishment and use in accordance with Subsection (b)(6) of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery

does not adversely affect public health, safety, and welfare.

(i) A person may file a written application with the governing body of a municipality to establish or use a cemetery located inside the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare. This subsection applies only to a municipality that:

(1) is located in three or more counties;

(2) has a population of 18,000 or more; and

(3) does not have a cemetery within its boundaries, other than a family cemetery.

(j) Deleted by Acts 1993, 73rd Leg., ch. 634, Sec. 7, eff. Sept. 1, 1993.

(k) This subsection applies only to a municipality with a population of 115,000 or more that is located in a county with a population of less than 132,000. Not later than September 1, 1994, a person may file a written application with the governing body of the municipality to establish or use a cemetery located inside the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

(l) Subsection (a) does not apply to a cemetery established and operating before September 1, 2023, in a municipality:

(1) with a population of not less than 75,000 and not more than 95,000; and

(2) in which a state veterans cemetery is located.

(m) Not later than September 1, 2024, an organized religious society or sect may file a written application with the governing body of a municipality to establish or use a cemetery within the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included on the application. The governing body by ordinance may authorize the establishment or use of

the cemetery if the municipality determines and states in the ordinance that the establishment or use does not adversely affect public health, safety, and welfare. This subsection applies only to a municipality with a population of 200,000 or more located in a county with a population of less than 300,000 that is adjacent to this state's international border with Mexico.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 215, 216, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 597, Sec. 77, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 7, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 736, Sec. 1, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 200, Sec. 1, eff. May 21, 2001; Acts 2001, 77th Leg., ch. 631, Sec. 1, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 669, Sec. 39, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 98, Sec. 1, eff. May 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 106 (S.B. 350), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1026 (H.B. 1614), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 373 (H.B. 1404), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 487 (S.B. 662), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 367 (S.B. 131), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 721 (H.B. 788), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 49, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 10.007, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 287 (H.B. 1415), Sec. 1, eff.

June 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 470 (H.B. 2214), Sec. 1, eff. June 9, 2017.

Acts 2019, 86th Leg., R.S., Ch. 292 (H.B. 2634), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1275 (H.B. 515), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 26 (H.B. 2005), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 464 (H.B. 1526), Sec. 1, eff. June 14, 2021.

Acts 2021, 87th Leg., R.S., Ch. 465 (H.B. 1571), Sec. 1, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 579 (H.B. 2732), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 100, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 670 (H.B. 783), Sec. 1, eff. September 1, 2023.

Sec. 711.009. AUTHORITY OF CEMETERY KEEPER. (a) The superintendent, sexton, or other person in charge of a cemetery has the same powers, duties, and immunities granted by law to:

(1) a police officer in the municipality in which the cemetery is located; or

(2) a constable or sheriff of the county in which the cemetery is located if the cemetery is outside a municipality.

(b) A person who is granted authority under Subsection (a) shall maintain order and enforce the cemetery organization's rules, state law, and municipal ordinances in the cemetery over which that person has charge and as near the cemetery as necessary to protect cemetery property.

(c) This section applies only to a cemetery located in a municipality with a population of 40,000 or more or in a county with a population of 290,000 or more.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 8, eff. Sept. 1, 1993. Amended by:

Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 5, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 10.008, eff. September 1, 2013.

Sec. 711.010. ABANDONED, UNKNOWN, OR UNVERIFIED CEMETERY. (a) The owner of property on which an unknown cemetery is discovered or on which an abandoned cemetery is located may not construct improvements on the property in a manner that would disturb the cemetery until the human remains interred in the cemetery are removed under a written order issued by the state registrar or the state registrar's designee under Section 711.004(f) and under an order of a district court as provided by this section, except as provided by Section 711.004(f-1).

(b) On petition of the owner of the property, a district court of the county in which an unknown cemetery is discovered or an abandoned cemetery is located may order the removal of any dedication for cemetery purposes that affects the property if the court finds that the removal of the dedication is in the public interest. If a court orders the removal of a dedication of a cemetery and all human remains in that cemetery have not previously been removed, the court shall order the removal of the human remains from the cemetery to:

(1) a perpetual care cemetery;

(2) a municipal or county cemetery; or

(3) any other place on the owner's property that the district court finds is in the public interest.

(c) In addition to any notice required by Section 711.004, notice of a petition filed under Subsection (b) must be given to the Texas Historical Commission and to the county historical commission of the county in which the cemetery is located. The court may consult the Texas Historical Commission and the county historical commission in making a decision under this section. The court may also designate or appoint any person, party, court appointed representative, or official the court considers necessary to assist in determining whether the removal is in the public interest.

(d) The Texas Historical Commission, with consent of the landowner, may investigate a suspected but unverified cemetery or may delegate the investigation to a qualified person described by Section 711.0105(a).

Added by Acts 1999, 76th Leg., ch. 703, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 251 (H.B. 1011), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 5, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 110 (S.B. 1630), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 110 (S.B. 1630), Sec. 4, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 817 (H.B. 2430), Sec. 2, eff. June 10, 2019.

Sec. 711.0105. METHOD OF REMOVAL OF REMAINS. (a) The removal of remains authorized under this chapter shall be supervised by a cemetery keeper, a licensed funeral director, a medical examiner, a coroner, or a professional archeologist.

(b) The person removing the remains shall make a good faith effort to locate and remove all human remains, any casket or other covering of the remains, and any funerary objects associated with the remains.

(c) Remains that have been moved must be reburied unless a court, medical examiner, coroner, other authorized official, or next of kin approves a different disposition of the remains.

Added by Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 6, eff. September 1, 2009.

Sec. 711.011. FILING RECORD OF UNKNOWN OR ABANDONED CEMETERY. (a) A person who discovers an unknown or abandoned cemetery shall file notice of the discovery of the cemetery with the county clerk of the county in which the cemetery is located and concurrently mail notice to the landowner on record in the county appraisal district not later than the 10th day after the date of the discovery. The notice must contain a legal description of the land on which the unknown or abandoned cemetery was found and describe the approximate location of the cemetery and the evidence of the cemetery that was discovered.

(b) A county clerk may not charge a fee for filing notice under this section.

(c) The county clerk shall send a copy of the notice to the Texas Historical Commission and file the notice in the deed records of the county, with an index entry referencing the land on which the cemetery was discovered.

Added by Acts 1999, 76th Leg., ch. 703, Sec. 1, eff. June 18, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 7, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 110 (S.B. 1630), Sec. 5, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 110 (S.B. 1630), Sec. 6, eff. September 1, 2017.

Sec. 711.0111. NOTICE OF UNVERIFIED CEMETERY. (a) A person who discovers an unverified cemetery shall file notice and evidence of the discovery with the Texas Historical Commission on a form provided by the Texas Historical Commission, and shall concurrently provide a copy of the notice to the landowner on record in the county appraisal district on whose land the unverified cemetery is located.

(b) The landowner described by Subsection (a) may send a response or comments to the Texas Historical Commission concerning the notice not later than the 30th day after the date the notice is filed.

(c) The Texas Historical Commission shall evaluate the notice of the unverified cemetery, the evidence submitted with the notice, and the response of the landowner, if any, and shall determine whether there is sufficient evidence of the existence of a cemetery.

(d) If the Texas Historical Commission determines sufficient evidence supports the existence of a cemetery, the Texas Historical Commission shall inform the landowner and may file notice of the existence of the cemetery under Section 711.011.

(e) If the Texas Historical Commission determines sufficient evidence supports a determination that a cemetery does not exist, the Texas Historical Commission shall notify the landowner on record in the appraisal district of its determination, amend the notice to include the commission's determination, and ensure any notice filed

with a county clerk under Section 711.011 is corrected.

Added by Acts 2017, 85th Leg., R.S., Ch. 110 (S.B. 1630), Sec. 7, eff. September 1, 2017.

Sec. 711.012. RULES. (a) The Finance Commission of Texas may adopt rules to enforce and administer Sections 711.003, 711.004, 711.007, 711.008, 711.0105, 711.021-711.024, 711.032-711.036, 711.038, 711.0381, 711.040-711.042, 711.052, 711.061, 711.063, and 711.064 relating to perpetual care cemeteries.

(b) The Texas Funeral Service Commission may adopt rules, establish procedures, and prescribe forms to enforce and administer Section 711.0105.

(c) The Texas Historical Commission may adopt rules to:

(1) enforce and administer Sections 711.010 and 711.011; and

(2) enforce and administer Sections 711.004, 711.007, 711.0105, 711.035, and 711.036 relating to cemeteries that are not perpetual care cemeteries.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 34, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 8, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 2, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 39, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 2, eff. September 1, 2019.

SUBCHAPTER B. CEMETERY CORPORATIONS

Sec. 711.021. FORMATION OF CORPORATION TO MAINTAIN AND OPERATE CEMETERY. (a) An individual, corporation, partnership, firm, trust, or association may not engage in a business for cemetery purposes in

this state unless the person is a corporation organized for those purposes.

(b) A corporation conducting a business for cemetery purposes, including the sale of plots, may be formed only as provided by this section. The corporation must be a filing entity or foreign filing entity, as those terms are defined by Section 1.002, Business Organizations Code.

(b-1) The formation and governance of a nonprofit corporation for cemetery purposes is subject to Sections 711.022 and 711.023.

(c) The charter of a cemetery corporation formed after May 15, 1947, but before September 1, 1993, must state whether the corporation:

(1) is operated for profit or not for profit; and

(2) is operating a perpetual care cemetery or a nonperpetual care cemetery.

(d) A corporation formed before September 3, 1945, under statutory authority other than Section 5, Chapter 340, Acts of the 49th Legislature, Regular Session, 1945 (Article 912a-5, Vernon's Texas Civil Statutes), to maintain and operate a cemetery is governed by this chapter only to the extent that this chapter does not conflict with the charter or articles of incorporation of the corporation.

(e) This section does not apply to a corporation chartered by the state before September 3, 1945, that, under its charter, bylaws, or dedication, created a perpetual care trust fund and maintains that fund in accordance with the corporation's trust agreement, Chapter 712, and this chapter. The corporation may operate a perpetual care cemetery without amending the corporation's charter as if it had been incorporated under this section.

(f) Any cemetery that begins its initial operations on or after September 1, 1993, shall be operated as a perpetual care cemetery in accordance with Chapter 712.

(g) This section does not apply to:

(1) a family, fraternal, or community cemetery that is not larger than 10 acres;

(2) an unincorporated association of plot owners not operated for profit;

(3) a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; or

(4) a public cemetery belonging to this state or a county or municipality.

(h) A cemetery corporation, including a corporation described by Subsection (d), that does not operate as a perpetual care cemetery in accordance with Chapter 712 may not use the words "perpetual care" or "endowment care," or any other term that suggests "perpetual care" or "endowment care" standards, in:

(1) the cemetery's name; or

(2) any advertising relating to the cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 9, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 405, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 3, eff. September 1, 2013.

Sec. 711.022. FORMATION OF NONPROFIT CEMETERY CORPORATION BY PLOT OWNERS. (a) Plot owners may organize a nonprofit corporation to receive title to land previously dedicated to cemetery purposes.

(b) The plot owners must:

(1) publish notice of the time and place of the organizational meeting in a newspaper in the county, if there is a newspaper, for 30 days before the date of the meeting; and

(2) post written notice at the cemetery of the time and place of the meeting for 30 days before the date of the meeting.

(c) A majority of the plot owners present and voting at the meeting shall decide whether to incorporate and to convey the land to the corporation.

(d) If the plot owners vote to incorporate, at the same meeting they shall select from the plot owners a board of directors to be named in the charter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 711.023. RIGHTS OF PLOT OWNERS IN CEMETERY OPERATED BY NONPROFIT CEMETERY CORPORATION. (a) A person who purchases a plot from a nonprofit cemetery corporation is a shareholder of the corporation. The person may vote in the election of corporate

officers and on other matters to the same extent as a stockholder in another corporation.

(b) An owner of a plot in a cemetery operated by a nonprofit corporation is a shareholder in any corporation that owns the cemetery. The plot owner may exercise the rights and privileges of a shareholder, whether the owner acquired title to the plot from the corporation or before the corporation was organized.

(c) This section does not apply to a nonprofit cemetery corporation formed before September 1, 1963, if:

(1) the corporation was formed under Subdivision 87, Article 1302, Revised Statutes; and

(2) the charter or the articles of incorporation of the corporation provide that the corporation has no capital stock.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1284, Sec. 1, eff. Sept. 1, 2003.

Sec. 711.024. AUTHORITY OF NONPROFIT CEMETERY CORPORATION. A nonprofit cemetery corporation organized by plot owners may divide cemetery property into lots and subdivisions for cemetery purposes and charge assessments on the property for the purposes of general improvement and maintenance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. CEMETERY ORGANIZATIONS

Sec. 711.031. RULES; CIVIL PENALTY. (a) A cemetery organization may adopt and enforce rules:

(1) concerning the use, care, control, management, restriction, and protection of the cemetery operated by the cemetery organization;

(2) to restrict the use of cemetery property;

(3) to regulate the placement, uniformity, class, and kind of markers, monuments, effigies, and other structures in any part of the cemetery;

(4) to regulate the planting and care of plants in the cemetery;

(5) to prevent the interment of remains not entitled to be interred in the cemetery;

(6) to prevent the use of a plot for a purpose that violates the cemetery organization's restrictions;

(7) to regulate the conduct of persons on cemetery property and to prevent improper meetings at the cemetery; and

(8) for other purposes the directors consider necessary for the proper conduct of the cemetery organization's business, and for the protection of the premises and the principles, plans, and ideals on which the cemetery was organized.

(b) Rules adopted under this section must be plainly printed or typed and maintained for inspection in the cemetery organization's office or another place in the cemetery prescribed by the directors.

(c) The directors may prescribe a penalty for the violation of a rule adopted under this section. The cemetery organization may recover the amount of the penalty in a civil action.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 11, eff. Sept. 1, 1993.

Sec. 711.032. DISCRIMINATION BY RACE, COLOR, OR NATIONAL ORIGIN PROHIBITED. (a) A cemetery organization may not adopt or enforce a rule that prohibits interment because of the race, color, or national origin of a decedent.

(b) A provision of a contract entered into by a cemetery organization or of a certificate of ownership or other instrument of conveyance issued by a cemetery organization that prohibits interment in a cemetery because of the race, color, or national origin of a decedent is void.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 13, eff. Sept. 1, 1993.

Sec. 711.033. PROPERTY ACQUISITION BY CEMETERY ORGANIZATION; RECORDING TITLE. (a) A cemetery organization may acquire by purchase, donation, or devise property consisting of land, a mausoleum, a crematory and columbarium, or other property in which remains may be interred under law.

(b) A cemetery organization operating a cemetery located and operated in accordance with the distance requirements prescribed in Section 711.008 may acquire land adjacent to the cemetery for

cemetery purposes. In this subsection, "adjacent" means that some part of the property to be acquired has a common boundary with the existing cemetery, or a common boundary with a public easement, a utility easement, or a railroad right-of-way, some part of which has a common boundary with the cemetery. In no event shall the closest points of the property to be acquired and the cemetery be more than 200 feet apart.

(c) A cemetery organization that acquires property may record title to its property with the county clerk of the county in which the property is located if its president and secretary or other authorized officer acknowledge a declaration executed by the cemetery organization that describes the property and declares the cemetery organization's intention to use the property or a part of the property for interment purposes.

(d) Filing under Subsection (b) is constructive notice as of the date of the filing of the use of the property for interment.

(e) A cemetery organization may by condemnation acquire property in which remains may be interred, and the acquisition of that property is for a public purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 14, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 200, Sec. 2, eff. May 21, 2001.

Sec. 711.034. DEDICATION. (a) A cemetery organization that acquires property for interment purposes shall:

(1) in the case of land, survey and subdivide the property into gardens or sections, with descriptive names or numbers, and make a map or plat of the property showing the plots contained within the perimeter boundary and showing a specific unique number for each plot; or

(2) in the case of a mausoleum or a crematory and columbarium, make a map or plat of the property delineating sections or other divisions with descriptive names and numbers and showing a specific unique number for each crypt, lawn crypt, or niche.

(b) The cemetery organization shall file the map or plat with the county clerk of each county in which the property or any part of the property is located.

(c) The cemetery organization shall file with the map or plat a

written certificate or declaration of dedication of the property delineated by the map or plat, dedicating the property exclusively to cemetery purposes. The certificate or declaration must be:

(1) in a form prescribed by the directors or officers of the cemetery organization;

(2) signed by the president or vice-president and the secretary of the cemetery organization, or by another person authorized by the directors; and

(3) acknowledged.

(d) Filing a map or plat and a certificate or declaration under this section dedicates the property for cemetery purposes and is constructive notice of that dedication.

(e) The certificate or declaration may contain a provision permitting the directors by order to resurvey and change the shape and size of the property for which the associated map or plat is filed if that change does not disturb any interred remains. Except as provided by Subsection (e-1), if a change is made, the cemetery organization shall:

(1) file an amended map or plat not later than the last day of the next calendar quarter; and

(2) indicate any change in a specific unique number assigned to a plot, crypt, lawn crypt, or columbarium niche.

(e-1) A cemetery organization that holds a certificate of authority to operate a perpetual care cemetery under Chapter 712 is not required to file an amended map or plat if:

(1) the only change to the property is:

(A) the placement of a cremains receptacle that contains not more than four niches on a plot; or

(B) the alteration of an existing cremains receptacle on a plot; and

(2) the cemetery organization maintains records, as required by rules adopted by the Finance Commission of Texas, that specify the location of the cremains receptacle.

(f) The county clerk shall number and file the map or plat and record the certificate or declaration in the county deed records.

(g) A cemetery association is civilly liable to the state in an amount not to exceed $1,000 for each map or plat that fails to comply with Subsection (a), (b), (c), or (e).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 634, Sec. 15, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 502, Sec. 1, eff. Oct. 1, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 4, eff. September 1, 2013.

Sec. 711.035. EFFECT OF DEDICATION. (a) Property may be dedicated for cemetery purposes, and the dedication is permitted in respect for the dead, for the disposition of remains, and in fulfillment of a duty to and for the benefit of the public.

(b) Dedication of cemetery property and title to the exclusive right of sepulture of a plot owner are not affected by the dissolution of the cemetery organization, nonuse by the cemetery organization, alienation, encumbrance, or forced sale of the property.

(c) Dedication of cemetery property may not be invalidated because of a violation of the law against perpetuities or the law against the suspension of the power of alienation of title to or use of property.

(d) A railroad, street, road, alley, pipeline, telephone, telegraph, electric line, wind turbine, cellular telephone tower, or other public utility or thoroughfare may not be placed through, over, or across a part of a dedicated cemetery without the consent of:

(1) the directors of the cemetery organization that owns or operates the cemetery; or

(2) at least two-thirds of the owners of plots in the cemetery.

(e) All property of a dedicated cemetery, including a road, alley, or walk in the cemetery:

(1) is exempt from public improvements assessments, fees, and public taxation; and

(2) may not be sold on execution or applied in payment of debts due from individual owners and plots.

(f) Dedicated cemetery property shall be used exclusively for cemetery purposes until the dedication is removed by court order or until the maintenance of the cemetery is enjoined or abated as a nuisance under Section 711.007.

(g) Property is considered to be dedicated cemetery property if:

(1) one or more human burials are present on the property; or

(2) a dedication of the property for cemetery use is recorded in the deed records of the county where the land is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 16, eff. Sept. 1, 1993. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 9, eff. September 1, 2009.

Sec. 711.036. REMOVAL OF DEDICATION. (a) A cemetery organization may petition a district court of the county in which its dedicated cemetery is located to remove the dedication with respect to all or any portion of the cemetery if:

(1) all the remains have been removed from that portion of the cemetery where the dedication is to be removed; or

(2) no interments were made in that portion of the cemetery where the dedication is to be removed and that portion of the cemetery is not used or necessary for interment purposes.

(b) An owner of land adjacent to a cemetery for which a cemetery organization or other governing body does not exist may petition a district court of the county in which the cemetery is located to remove any human remains and the dedication for all or any portion of the cemetery. In addition to the notice required by Section 711.004, notice of a petition filed under this subsection must be given to the Texas Historical Commission and to the county historical commission of the county in which the cemetery is located. The court may consult the Texas Historical Commission and the county historical commission in making a decision under this section. The court may also designate or appoint any person, party, court appointed representative, or official the court considers necessary to assist in determining whether the removal is in the public interest. Unknown next of kin of deceased persons buried in the cemetery shall be served by publication of a notice in a newspaper of general circulation in the county in which the cemetery is located, or if there is not a newspaper of general circulation in the county, in a newspaper of general circulation in an adjacent county. A reasonable good faith effort shall be made to remove all remains and

monuments from the cemetery or that portion of the cemetery for which the dedication is to be removed.

(c) The court shall order the removal of the human remains and the dedication on notice and proof satisfactory to the court that the removal is in the public interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 17, eff. Sept. 1, 1993. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 10, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 817 (H.B. 2430), Sec. 3, eff. June 10, 2019.

Sec. 711.037. LIEN AGAINST CEMETERY PROPERTY. (a) A cemetery organization by contract may incur indebtedness as required to conduct its business and may secure the indebtedness by mortgage, deed of trust, or other lien against its property.

(b) A mortgage, deed of trust, or other lien placed on dedicated cemetery property, or on cemetery property that is later dedicated with the consent of the holder of the lien, does not affect the dedication and is subject to the dedication. A sale on foreclosure of the lien is subject to the dedication of the property for cemetery purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 18, eff. Sept. 1, 1993.

Sec. 711.038. SALE OF PLOTS BY CEMETERY ORGANIZATIONS. (a) A cemetery organization may sell and convey the exclusive right of sepulture in a plot:

(1) after a map or plat and a certificate or declaration of dedication are filed as provided by Section 711.034;

(2) subject to the rules of the cemetery organization and the restrictions in the certificate of ownership or other instrument of conveyance; and

(3) after payment in full of the purchase price of the plot.

(b) A certificate of ownership or other instrument evidencing

the conveyance of the exclusive right of sepulture by a cemetery organization must be signed by the president or vice-president and the secretary or other officers authorized by the cemetery organization.

(c) A conveyance of the exclusive right of sepulture must be filed and recorded in the cemetery organization's office.

(d) A plot or a part of a plot that is conveyed as a separate plot by a certificate of ownership or other instrument may not be divided without the consent of the cemetery organization.

(e) A person is not required to be licensed or registered to sell a plot in a dedicated cemetery.

(f) A cemetery organization may not resell the exclusive right of sepulture in a plot unless the exclusive right of sepulture has been reacquired by the cemetery organization. A sanction or other penalty may not be imposed on a cemetery organization that violates this subsection unless:

(1) the state agency authorized to enforce this section provides the cemetery organization written notice of the violation; and

(2) the cemetery organization does not correct the violation before the 91st day after the date on which the cemetery organization received the notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 19, eff. Sept. 1, 1993. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 5, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 4, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 40, eff. September 1, 2019.

Sec. 711.0381. SALE OR RESALE OF PLOTS BY CERTAIN PERSONS. (a) Repealed by Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 47(7), eff. September 1, 2019.

(b) Resale of the exclusive right of sepulture in a plot is

subject to the rules of the cemetery organization and any restrictions in the certificate of ownership, quitclaim agreement, or other instrument of conveyance. A quitclaim agreement or other instrument evidencing the conveyance of the exclusive right of sepulture must be:

(1) in a form authorized by or otherwise acceptable to the cemetery organization, subject to Subsection (c);

(2) signed by:

(A) the grantee named in the certificate of ownership or other instrument of conveyance as filed and recorded in the cemetery organization's office in accordance with Section 711.038 or 711.039(g)(2), as the seller or transferor;

(B) the designated purchaser or transferee; and

(C) each cemetery broker or other agent assisting in the transfer of the interment rights; and

(3) filed and recorded with the cemetery organization not later than the third business day after the date of the sale.

(c) On request of a person acting as a cemetery broker, a cemetery organization shall provide its rules, conveyance forms, and written guidelines and procedures for brokered sales, if any.

(d) The resale of the exclusive right of sepulture in a group of interment rights that were conveyed collectively may not be divided without the consent of the cemetery organization.

(e) A person acting as a cemetery broker that sells or resells the right of sepulture in a plot shall collect and remit to the cemetery organization:

(1) all fees required by law; and

(2) any other fee required by the rules of the cemetery organization, subject to Subsection (f).

(f) A fee required by a rule of the cemetery organization for the sale or resale of the right of sepulture in a plot under this section may not exceed the fee charged by the cemetery organization on the sale of the right of sepulture in a plot under Section 711.038.

(g) A person acting as a cemetery broker must keep a record of each sale or resale under this section. The record must include:

(1) the name and address of the purchaser;

(2) the date of the purchase;

(3) a copy of the purchase agreement, with the name and address of the cemetery;

(4) a specific description of the interment rights;

(5) the purchase price;

(6) the amount of fees collected and remitted in accordance with Subsection (e); and

(7) information on the disposal of the purchase agreement, including whether the agreement was conveyed, canceled, or voided.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 5, eff. January 1, 2014.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 47(7), eff. September 1, 2019.

Sec. 711.039. RIGHTS OF INTERMENT IN PLOT. (a) A plot in which the exclusive right of sepulture is conveyed is presumed to be the separate property of the person named as grantee in the certificate of ownership or other instrument of conveyance.

(b) The spouse of a person to whom the exclusive right of sepulture in a plot is conveyed has a vested right of interment of the spouse's remains in the plot while the spouse is married to the plot owner or if the spouse is married to the plot owner at the time of the owner's death.

(c) An attempted conveyance or other action without the joinder or written, attached consent of the spouse of the plot owner does not divest the spouse of the vested right of interment.

(d) The vested right of interment is terminated:

(1) on the final decree of divorce between the plot owner and the owner's former spouse unless the decree provides otherwise; or

(2) when the remains of the person having the vested right are interred elsewhere.

(e) Unless a plot owner who has the exclusive right of sepulture in a plot and who is interred in that plot has made a specific disposition of the plot by express reference to the plot in the owner's will or by written declaration filed and recorded in the office of the cemetery organization:

(1) a grave, niche, or crypt in the plot shall be reserved for the surviving spouse of the plot owner; and

(2) the owner's children, in order of need, may be interred

in any remaining graves, niches, or crypts of the plot without the consent of a person claiming an interest in the plot.

(f) The surviving spouse or a child of an interred plot owner may each waive his right of interment in the plot in favor of a relative of the owner or relative of the owner's spouse. The person in whose favor the waiver is made may be interred in the plot.

(g) The exclusive right of sepulture in an unused grave, niche, or crypt of a plot in which the plot owner has been interred may be conveyed only by:

(1) specific disposition of the unused grave, niche, or crypt by express reference to it in a will or by written declaration of the plot owner filed and recorded in the office of the cemetery organization; or

(2) the surviving spouse, if any, and the heirs-at-law of the owner.

(h) Unless a deceased plot owner who has the exclusive right of sepulture in a plot and who is not interred in the plot has otherwise made specific disposition of the plot, the exclusive right of sepulture in the plot, except the one grave, niche, or crypt reserved for the surviving spouse, if any, vests on the death of the owner in the owner's heirs-at-law and may be conveyed by them.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 20, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 502, Sec. 1, eff. Sept. 1, 2001.

Sec. 711.0395. MULTIPLE INTERMENTS IN SAME PLOT. A cemetery organization may not make more than one interment in a plot unless each owner of the plot consents to the interment.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 6, eff. September 1, 2009.

Sec. 711.040. MULTIPLE OWNERS OF PLOT. Two or more owners of a plot may designate a person to represent the plot and file with the cemetery organization written notice of the designation. If notice is not filed, the cemetery organization may inter or permit an interment in the plot at the request or direction of a registered co-owner of the plot.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 21, eff. Sept. 1, 1993.

Sec. 711.041. ACCESS TO CEMETERY. (a) Any person who wishes to visit a cemetery or private burial grounds for which no public ingress or egress is available shall have the right to reasonable ingress and egress for the purpose of visiting the cemetery or private burial grounds. This right of access extends only to visitation during the hours determined by the owner or owners of the lands under Subsection (b) or at a reasonable time as provided by Subsection (c) and only for purposes usually associated with cemetery visits.

(b) The owner or owners of the lands surrounding the cemetery or private burial grounds may designate the routes of reasonable ingress and egress and reasonable hours of availability.

(c) At a time other than the time provided by Subsection (b), the owner or owners of the lands surrounding a cemetery or private burial grounds must allow a person to enter and exit the owner's land for the purpose of visiting the cemetery or private burial grounds if:

(1) the person provides written notice to the owner or owners of the lands surrounding the cemetery or private burial grounds of the person's visit;

(2) the person provides the notice required by Subdivision (1) not later than the 14th day before the date the person wishes to visit the cemetery; and

(3) the time of the visit is reasonable.

(d) This section does not apply to an unverified cemetery.

Added by Acts 1993, 73rd Leg., ch. 634, Sec. 22, eff. Sept. 1, 1993. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 7, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 110 (S.B. 1630), Sec. 8, eff. September 1, 2017.

Sec. 711.042. AUTHORITY OF NONPROFIT CEMETERY ORGANIZATION. A nonprofit cemetery organization organized by plot owners may:

(1) divide cemetery property into lots and subdivisions for cemetery purposes;

(2) charge assessments on the property for the purposes of general improvement and maintenance; and

(3) take any action, to the same extent and for the same purposes as a for-profit cemetery corporation, that is necessary to carry out the organization's business purposes, which include the business purposes necessarily incident to the burial and disposal of human remains, including any action necessary to:

(A) convey property or other assets of the organization;

(B) borrow money;

(C) pledge or mortgage the property or other assets of the organization to secure the organization's indebtedness or other obligations;

(D) lend money and take security for the loan in furtherance of its business purposes; and

(E) conduct any business activity or business directly or by or through one or more subsidiaries.

Added by Acts 1999, 76th Leg., ch. 703, Sec. 2, eff. June 18, 1999.

SUBCHAPTER D. ENFORCEMENT

Sec. 711.051. ENFORCEMENT BY ATTORNEY GENERAL; PROCEEDINGS TO FORFEIT CHARTER FOR NONCOMPLIANCE. (a) A cemetery corporation that violates this chapter or Chapter 712 forfeits the corporation's charter and right to do business in this state unless the corporation corrects the violation before the 30th day after the date of receiving notice of the violation from the attorney general.

(b) When the attorney general learns that a cemetery corporation has violated this chapter or Chapter 712, the attorney general shall serve notice of the violation on the corporation.

(c) If the violation is not corrected before the 30th day after the date of the notice, the attorney general shall bring suit or quo warranto proceedings for the forfeiture of the corporation's charter and dissolution of the corporation in a district court of Travis County or of any county in which the violation occurred.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 5, eff. September 1, 2013.

Sec. 711.0515. ENFORCEMENT BY ATTORNEY GENERAL; INJUNCTIVE RELIEF. In addition to bringing an action under Section 711.051, the attorney general may bring an action for injunctive relief to enforce this chapter or a rule or order adopted by the Texas Funeral Service Commission under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 8, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 11, eff. September 1, 2009.
Reenacted by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.008, eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 3, eff. September 1, 2019.

Sec. 711.052. CRIMINAL PENALTIES. (a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person:

(1) engages in a business for cemetery purposes in this state other than through a corporation organized for that purpose, if a corporation is required by law;

(2) fails or refuses to keep records of interment as required by Sections 711.003 and 711.004;

(3) sells, offers to sell, or advertises for sale a plot or the exclusive right of sepulture in a plot for purposes of speculation or investment;

(4) represents through advertising or printed material that a retail department will be established for the resale of the plots of plot purchasers, that specific improvements will be made in the cemetery, or that specific merchandise or services will be furnished to a plot owner, unless adequate funds or reserves are created by the cemetery organization for the represented purpose;

(5) makes more than one interment in a plot in a cemetery

operated by a cemetery organization other than as provided by Section 711.0395;

(6) removes remains from a plot in a cemetery operated by a cemetery organization without complying with Section 711.004;

(7) offers or receives monetary inducement to solicit business for a cemetery broker; or

(8) fails or refuses to keep records of sales or resales or to collect and remit fees as required by Section 711.0381.

(b) A cemetery organization or an officer, agent, or employee of the cemetery organization commits an offense if the cemetery organization, officer, agent, or employee offers any inducement, pecuniary or otherwise, to any person or entity for the purpose of securing or attempting to secure business for that cemetery organization. This subsection does not prohibit the offering or payment by a cemetery organization of any such inducement, pecuniary or otherwise, to an officer, employee, agent, subcontractor, or representative of the cemetery organization.

(c) A cemetery organization or an officer, agent, or employee of the cemetery organization commits an offense if the cemetery organization, officer, agent, or employee of a cemetery organization offers a free plot in a drawing, in a lottery, or in another manner, unless the offer is for the immediate burial of an indigent person.

(d) Except as provided by this subsection, an offense under this section is a Class A misdemeanor. An offense under Subsection (a)(5) or (6) is a felony of the second degree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 217, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 23, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 7, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 10.001, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 41, eff. September 1, 2019.

Sec. 711.0521. ACCESS TO CEMETERIES; CRIMINAL PENALTIES. (a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person interferes with a person's reasonable right to ingress and egress under Section 711.041.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 9, eff. September 1, 2009.

Sec. 711.053. DEFINITION. In this subchapter, "commissioner" means the banking commissioner of Texas.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 35, eff. Sept. 1, 2003.

Sec. 711.054. ENFORCEMENT BY FINANCE COMMISSION OF TEXAS. The Finance Commission of Texas may use remedies available under Chapter 712 to enforce a section listed under Section 711.012(a) relating to perpetual care cemeteries.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 35, eff. Sept. 1, 2003.

Sec. 711.055. ENFORCEMENT BY COMMISSIONER. (a) Chapter 2001, Government Code, applies to a proceeding under this section.

(b) After notice and opportunity for hearing, the commissioner may impose an administrative penalty on a person who:

(1) violates this chapter or a final order of the commissioner or rule of the Finance Commission of Texas and does not correct the violation before the 31st day after the date the person receives written notice of the violation from the Texas Department of Banking; or

(2) engages in a pattern of violations, as determined by the commissioner.

(c) The amount of the penalty for each violation may not exceed $1,000 for each day the violation occurs.

(d) In determining the amount of the penalty, the commissioner shall consider the seriousness of the violation, the person's history

of violations, and the person's good faith in attempting to comply with this chapter. The commissioner may collect the penalty in the same manner that a money judgment is enforced in district court.

(e) In addition to any penalty that may be imposed under Subsection (b), the commissioner may bring a civil action against a person to enjoin a violation described in Subsection (b) that has not been corrected within 30 days after receipt by the person of written notice of the violation from the commissioner. The civil action may be brought in the district court of the county in which the cemetery is operated.

(f) The commissioner may issue an order to cease and desist if a violation described in Subsection (b) has not been corrected within 30 days after receipt by the person of written notice of the violation from the commissioner. Any order proposed under this subsection shall be served on the person, shall state the grounds for the proposed order with reasonable certainty, and shall state the proposed effective date, which may not be less than 15 days after receipt by the person. Unless the person requests a hearing within 15 days after the receipt, the order is effective as proposed.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 35, eff. Sept. 1, 2003.

Sec. 711.056. PATTERN OF WILFUL DISREGARD. (a) If after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas establishes a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission, the trier of fact may recommend to the commissioner that the maximum administrative penalty permitted under Section 711.055 be imposed on the person committing the violation or that the commissioner cancel or not renew the person's permit under Chapter 154, Finance Code, if the person holds such a permit.

(b) For the purposes of this section, violations corrected as provided by Section 711.055 may be included in determining whether a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission exists.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 35, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 8, eff.

September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 71 (S.B. 1402), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 42, eff. September 1, 2019.

Sec. 711.057. EMERGENCY ORDER. (a) The commissioner may issue an emergency order that takes effect immediately if the commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a sale of the exclusive right of sepulture in a plot.

(b) An emergency order remains in effect unless stayed by the commissioner.

(c) The person named in the order may request in writing an opportunity for a hearing to show that the emergency order should be stayed. On receipt of the request, the commissioner shall set a time for the hearing before the 22nd day after the date the commissioner received the request, unless extended at the request of the person named in the order.

(d) The hearing is an administrative hearing relating to the validity of findings that support immediate effect of the order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 9, eff. September 1, 2013.

Sec. 711.058. RESTITUTION. The commissioner may issue an order to a person requiring restitution if, after notice and opportunity for hearing, the commissioner finds that the person:

(1) failed to remit a fee in accordance with Section 711.0381; or

(2) misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person that belongs to a cemetery organization under an instrument of conveyance.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 9, eff. September 1, 2013.

Sec. 711.059. SEIZURE OF ACCOUNTS AND RECORDS. (a) The

commissioner may issue an order to seize accounts in which funds from the sale or resale of the exclusive right of sepulture in a plot, including earnings, may be held and may issue an order to seize the records that relate to the sale or resale of the exclusive right of sepulture in a plot if the commissioner finds, by examination or other credible evidence, that the person:

(1) failed to remit a fee in accordance with Section 711.0381;

(2) misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person that belongs to a cemetery organization under an instrument of conveyance; or

(3) refused to submit to examination by the department.

(b) An order shall be served on the person named in the order by certified mail, return receipt requested, to the last known address of the person.

(c) An order takes effect immediately and remains in effect unless stayed by the commissioner, if the commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a sale of the exclusive right of sepulture in a plot. If such a threat does not exist, the order must state the effective date, which may not be before the 16th day after the date the order is mailed.

(d) An emergency order remains in effect unless stayed by the commissioner. The person named in the order may request in writing an opportunity for a hearing to show that the emergency order should be stayed. On receipt of the request, the commissioner shall set a time before the 22nd day after the date the commissioner received the request, unless extended at the request of the person named in the order. The hearing is an administrative hearing relating to the findings that support immediate effect of the order.

(e) A nonemergency order takes effect as proposed unless the person named in the order requests a hearing not later than the 15th day after the date the order is mailed.

(f) After the issuance of an order under this section, the commissioner may initiate an administrative claim for ancillary relief, including a claim for:

(1) costs incurred in the administration, transfer, or other disposition of the seized assets and records; or

(2) costs reasonably expected to be incurred in connection

with the administration and performance of any outstanding certificate of ownership or other instrument of conveyance that is a part of a sale by the person subject to the order.

(g) The remedy provided by Subsection (f) is not exclusive. The commissioner may seek an additional remedy authorized under this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 9, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 43, eff. September 1, 2019.

SUBCHAPTER E. LAWN CRYPTS

Sec. 711.061. REQUIREMENTS FOR LAWN CRYPTS. (a) A lawn crypt may not be installed unless:

(1) the lawn crypt is constructed of concrete and reinforced steel or other comparably durable material;

(2) the lawn crypt is installed on not less than six inches of rock, gravel, or other drainage material;

(3) the lawn crypt provides a method to drain water out of the lawn crypt;

(4) the outside top surface of the lawn crypt at the time of installation is at least 1-1/2 feet below the surface of the ground as required by Section 714.001(a)(2) and is capable of withstanding the weight of the soil and sod above the top surface and the weight of machinery and equipment normally used in the maintenance of the cemetery;

(5) the lawn crypt is installed in a garden or other section of the cemetery that has been dedicated for lawn crypt interment purposes in accordance with Section 711.034; and

(6) the lawn crypt is installed in multiple units of 10 or more or as prescribed by Subsection (b).

(b) A lawn crypt that is part of a private estate may be installed in fewer than 10 units. For purposes of this subsection, a private estate is a small section of a cemetery that has the following characteristics:

(1) is sold under a single contract;

(2) is usually offset from other burial sites;

(3) allows for interment of several members of the same family or their designees; and

(4) is identified on the plat for cemetery property as a private estate in accordance with Section 711.034.

Added by Acts 1997, 75th Leg., ch. 1389, Sec. 4, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 3, eff. September 1, 2011.

Sec. 711.063. CONSTRUCTION; DEFAULT. (a) A cemetery in which undeveloped lawn crypt spaces are being sold or reserved for sale shall begin construction on the lawn crypt section not later than 48 months after the date of the first sale or reservation, whichever is earlier, and must complete construction not later than 60 months after the date of the first sale or reservation, whichever is earlier.

(b) If construction of a lawn crypt section described by Subsection (a) does not begin or has not been completed by the dates specified in Subsection (a), on the buyer's written request, the cemetery shall refund the entire amount paid for the undeveloped lawn crypt space not later than the 30th day after the date of the buyer's request.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 4, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 4, eff. September 1, 2011.

Sec. 711.064. CONTRACT DISCLOSURES. (a) A sales contract for an undeveloped lawn crypt space must contain terms, whether in English or Spanish, that inform the buyer:

(1) that the buyer may, after providing written notice, cancel the contract for failure by the cemetery or contractor to construct the lawn crypt space within the time limits specified by Section 711.063(a) and receive a refund of the entire amount paid under the contract for the undeveloped lawn crypt space as described

by Section 711.063(b); and

(2) of the options available under a fully paid contract if the person to be interred in the undeveloped lawn crypt space dies before completion of the related lawn crypt section, including the option to:

(A) select a replacement lawn crypt space or other interment acceptable to the buyer or the buyer's representative;

(B) elect temporary interment of the human remains or cremated remains in an existing mausoleum space until the undeveloped lawn crypt space is completed, at which time the cemetery shall disinter and reinter the human remains or cremated remains at no additional charge to the buyer; or

(C) cancel the contract on written notice of the buyer or the buyer's representative and receive a refund of the entire amount paid under the contract for the undeveloped lawn crypt space if:

(i) the cemetery does not offer a temporary interment option; or

(ii) the buyer or the buyer's representative does not accept a replacement lawn crypt or other interment.

(b) A sales contract for undeveloped lawn crypt space must comply with applicable regulations of the Federal Trade Commission, including 16 C.F.R. Section 433.2, with respect to a contract payable in installments.

(c) Each notice required by this section must be written in plain language designed to be easily understood by the average consumer and must be printed in an easily readable font and type size.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 4, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 4, eff. September 1, 2011.

SUBCHAPTER F. POWERS AND DUTIES OF DEPARTMENT RELATING TO CEMETERY BROKERS

Sec. 711.081. DEFINITIONS. In this subchapter:

(1) "Commission" means the Finance Commission of Texas.

(2) "Commissioner" means the banking commissioner of Texas.

(3) "Department" means the Texas Department of Banking.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 10, eff. September 1, 2013.

Sec. 711.082. ADMINISTRATION; FEES. (a) The department shall administer Subchapter C relating to cemetery brokers.

(b) The commission may adopt reasonable rules concerning:

(1) fees to defray the cost of administering Subchapter C;

(2) the retention and inspection of records relating to the sale or resale of the exclusive right of sepulture in a plot;

(3) changes in the management or control of a cemetery broker's business; and

(4) any other matter relating to the enforcement and administration of Subchapter C.

(c) A fee set by the commission may not produce unnecessary fund balances.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 10, eff. September 1, 2013.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 44, eff. September 1, 2019.

Sec. 711.083. RECORDS; EXAMINATION. (a) A person acting as a cemetery broker shall maintain records in accordance with this subchapter and Section 711.0381.

(b) The department shall examine the records of each person acting as a cemetery broker if the commissioner determines the examination is necessary to:

(1) safeguard the interests of purchasers and beneficiaries of the exclusive right of sepulture in a plot; and

(2) efficiently enforce applicable law.

(c) A person may maintain and provide a record required to be maintained under this section in an electronic format if the record is reliable and can be retrieved in a timely manner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 10, eff. September 1, 2013.

Sec. 711.084. EXAMINATION FEE. (a) For each examination conducted under Section 711.083, the commissioner or the commissioner's agent shall impose on the cemetery broker a fee in an amount set by the commission under Section 711.082.

(b) The amount of the fee must be sufficient to cover:

(1) the cost of the examination, including:

(A) salary and travel expenses for department employees, including travel to and from the place where the records are kept; and

(B) any other expense necessarily incurred in conducting the examination;

(2) the equitable or proportionate cost of maintaining and operating the department; and

(3) the cost of enforcing this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 10, eff. September 1, 2013.

CHAPTER 712. PERPETUAL CARE CEMETERIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 712.001. DEFINITIONS. (a) The definitions provided by Section 711.001 apply to this chapter.

(b) In this chapter:

(1) "Banking department" or "department" means the Banking Department of Texas.

(2) "Commissioner" means the Banking Commissioner of Texas.

(3) "Corporation" means a filing entity or foreign filing entity, as those terms are defined by Section 1.002, Business Organizations Code, or an entity that is organized under this chapter, or any corresponding statute in effect before September 1, 1993, to operate one or more perpetual care cemeteries in this state.

(4) "Fund" means a perpetual care trust fund established by one or more corporations under this chapter or any corresponding statute in effect before September 1, 1993.

(4-a) "Preconstruction trust" means a trust established by a corporation under this chapter for the purpose of administering proceeds from sales of undeveloped mausoleum spaces.

(4-b) "Preconstruction trustee" means the trustee of a preconstruction trust.

(5) "Trustee" means the trustee of a cemetery perpetual care trust fund.

(6) "Undeveloped mausoleum space" means a crypt or niche in a mausoleum or mausoleum section that is designed to contain at least 10 crypt or niche interments and that is not ready for the interment of human remains or cremated remains on the date an interment right pertaining to the mausoleum space is sold. The term does not include a private mausoleum or mausoleum section in which all mausoleum spaces are intended to be sold under a single contract.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 24, eff. Sept. 1, 1993. Amended by:

Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 5, eff. September 1, 2011.

Sec. 712.002. EXEMPTIONS FROM CHAPTER. This chapter does not apply to:

(1) a family, fraternal, or community cemetery that is not larger than 10 acres;

(2) an unincorporated association of plot owners not operated for profit;

(3) a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; or

(4) a public cemetery owned by this state, a county, or a municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 25, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 562, Sec. 36, eff. Sept. 1, 2003.

Sec. 712.003. REGISTRATION REQUIRED; MINIMUM CAPITAL. (a) A perpetual care cemetery may not be operated in this state unless a certificate of formation for a domestic filing entity or registration to transact business for a foreign filing entity is filed with the secretary of state showing:

(1) subscriptions and payments in cash for 100 percent of the entity's ownership or membership interests;

(2) the location of its perpetual care cemetery; and

(3) a certificate showing the deposit in its fund of the minimum amount required under Section 712.004.

(b) A corporation chartered on or after September 5, 1955, and before September 1, 1993, must have a minimum capital of:

(1) $15,000, if the cemetery serves a municipality with a population of less than 15,000;

(2) $30,000, if the cemetery serves a municipality with a population of 15,000 to 25,000; or

(3) $50,000, if the cemetery serves a municipality with a population of at least 25,000.

(c) A corporation chartered on or after September 1, 1993, and before September 1, 2013, must have:

(1) a minimum capital of $75,000; and

(2) a minimum of $75,000 in capital for each certificate of authority to operate a perpetual care cemetery issued to the corporation on or after September 1, 2013.

(c-1) A corporation whose certificate of formation takes effect on or after September 1, 2013, must have a minimum of $75,000 in capital for each certificate of authority to operate a perpetual care cemetery issued to the corporation.

(d) A nonprofit association or corporation operated solely for the benefit of plot owners seeking to convert a cemetery to a perpetual care cemetery under this chapter is not required to meet the requirements prescribed by this section and Section 712.004 if the cemetery has existed for at least 75 years and the association or corporation has operated the cemetery for the preceding 10 years.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 218, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 26, eff. Sept. 1, 1993.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 6, eff.

September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 7, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 6, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 7, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 7, eff. September 1, 2013.

Sec. 712.0032. CERTIFICATE OF AUTHORITY REQUIREMENT. A corporation must hold a certificate of authority issued under this chapter to operate a perpetual care cemetery.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

Sec. 712.0033. CERTIFICATE OF AUTHORITY APPLICATION; FEES. (a) To obtain a certificate of authority to operate a perpetual care cemetery, an applicant must, not later than the 30th day after the date a corporation files its certificate of formation or application for registration with the secretary of state:

(1) file an application, made under oath, on a form prescribed by the department; and

(2) pay a filing fee in an amount set by the Finance Commission of Texas under Section 712.008.

(b) If the corporation fails to comply with Subsection (a), the commissioner may instruct the secretary of state to remove the corporation from the secretary's active records or cancel the corporation's registration. On an instruction from the commissioner under this subsection, the secretary of state shall remove the corporation from the secretary's active records or cancel the corporation's registration and serve notice of the cancellation on the corporation by registered or certified letter, addressed to the corporation's address.

(c) A fee or cost paid under this chapter in connection with an

application or renewal is not refundable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

Sec. 712.0034. QUALIFICATIONS FOR CERTIFICATE OF AUTHORITY; INVESTIGATION. (a) The commissioner may:

(1) investigate an applicant before issuing a certificate of authority; and

(2) recover from the applicant reasonable costs the commissioner incurs in the investigation.

(b) To qualify for a certificate of authority under this chapter, an applicant must demonstrate to the satisfaction of the commissioner that:

(1) the applicant's business ability, experience, character, financial condition, and general fitness warrant the public's confidence;

(2) the cemetery operations manager has at least two years of experience in cemetery management;

(3) the issuance of the certificate of authority is in the public interest;

(4) the applicant, a principal of the applicant, or a person who controls the applicant does not owe the department a delinquent fee, assessment, administrative penalty, or other amount imposed under this chapter or a rule adopted or order issued under this chapter; and

(5) the applicant corporation:

(A) is in good standing and statutory compliance with this state;

(B) is authorized to engage in the perpetual care cemetery business in this state;

(C) does not owe any delinquent franchise or other taxes to this state; and

(D) wholly owns all land on which the perpetual care cemetery will be located.

(c) For purposes of Subsection (b)(5)(D), an applicant corporation is considered to wholly own land regardless of whether

the land is subject to a mortgage, deed of trust, or other lien.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 71 (S.B. 1402), Sec. 2, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 274 (S.B. 1821), Sec. 1, eff. September 1, 2019.

Sec. 712.0035. ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) The commissioner shall issue a certificate of authority if the commissioner finds that:

(1) the applicant meets the qualifications listed in Section 712.0034 and it is reasonable to believe that the applicant's cemetery business will be conducted fairly and lawfully, according to applicable state and federal law, and in a manner commanding the public's trust and confidence;

(2) the issuance of the certificate of authority is in the public interest;

(3) the documentation and forms required to be submitted by the applicant are acceptable; and

(4) the applicant has satisfied all requirements for issuance of a certificate of authority.

(b) The applicant is entitled, on request, to a hearing on a denial of the application. The request must be filed with the commissioner not later than the 30th day after the date the notice of denial is mailed. The hearing must be held not later than the 60th day after the date of the request unless the administrative law judge extends the period for good cause or the parties agree to a later hearing date. The hearing is a contested case under Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

Sec. 712.0036. TERM OF CERTIFICATE OF AUTHORITY. (a) The Finance Commission of Texas by rule shall prescribe the term of and renewal procedures for a certificate of authority issued under this chapter.

(b) If the Finance Commission of Texas prescribes the term of a certificate of authority issued under this chapter for a period other than one year, the finance commission shall prorate any applicable fees as necessary to reflect the term of the certificate.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 45, eff. September 1, 2019.

For expiration of Subsections (a-1) and (a-2), see Subsection (a-2).

Sec. 712.0037. RENEWAL OF CERTIFICATE OF AUTHORITY. (a) As a condition of renewal, a certificate holder must meet the qualifications and satisfy the requirements that apply to an applicant for a new certificate of authority. Additionally, not later than the certificate's renewal date, a certificate holder shall:

(1) pay a renewal fee in an amount established by Finance Commission of Texas rule; and

(2) submit a renewal report under oath and in the form and medium required by the commissioner that demonstrates that the certificate holder meets the qualifications and requirements for holding a certificate.

(a-1) Notwithstanding Subsection (a), a certificate holder holding a certificate of authority issued before September 1, 2017, that does not on that date satisfy the ownership requirement under Section 712.0034(b)(5)(D) is not required to satisfy that ownership requirement as a condition of renewal until September 1, 2022. The commissioner may extend the period of compliance for the ownership requirement if the certificate holder:

(1) files a written application for the extension in the form and manner required by the department; and

(2) shows good cause for the extension.

(a-2) This subsection and Subsection (a-1) expire September 1, 2028.

(b) If the department does not receive a certificate holder's renewal fee and complete renewal report on or before the certificate's renewal date, the commissioner:

(1) shall notify the certificate holder in writing that the certificate holder must submit the renewal report and pay the renewal fee not later than the 30th day after the certificate's renewal date; and

(2) may require the certificate holder to pay a late fee, in an amount established by Finance Commission of Texas rule and not subject to appeal, for each business day after the certificate's renewal date that the commissioner does not receive the completed renewal report and renewal fee.

(c) On timely receipt of a certificate holder's complete renewal report and renewal fee and any late fee, the department shall review the report and the commissioner may:

(1) renew the certificate of authority; or

(2) refuse to renew the certificate of authority and take other action the commissioner considers appropriate.

(d) The applicant on request is entitled to a hearing to contest the commissioner's refusal to renew the certificate. The request must be filed with the commissioner not later than the 30th day after the date the notice of refusal to renew is mailed. The hearing is a contested case under Chapter 2001, Government Code.

(e) The holder or principal of or the person in control of the holder of an expired certificate of authority, or the holder or principal of or person in control of the holder of a certificate of authority surrendered under Section 712.00395, who wishes to conduct activities for which a certificate of authority is required under this chapter shall file a new application for a certificate of authority and satisfy all requirements for the certificate that apply at the time the new application is filed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 71 (S.B. 1402), Sec. 3, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 46, eff. September 1, 2019.

Sec. 712.0038. TRANSFER OR ASSIGNMENT PROHIBITED. A certificate of authority issued under this chapter may not be transferred or assigned.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

Sec. 712.0039. TRANSFER OF BUSINESS OWNERSHIP; CHANGE OF CONTROL. (a) A certificate holder shall notify the department in writing of a transfer of ownership of the certificate holder's business or a transfer of 25 percent or more of the stock or other ownership or membership interest of the corporation as follows:

(1) in the case of a voluntary transfer, not later than the seventh day after the date the contract for transfer is executed; and

(2) in the case of an involuntary transfer, not later than one business day after receiving notice of the impending foreclosure or other involuntary transfer.

(b) If the proposed transferee would own more than 50 percent of the stock or other ownership or membership interest of the corporation and is not a certificate holder, the proposed transferee shall file any necessary documents with the secretary of state and an application for a certificate of authority with the department as required by this chapter. If the proposed transferee is required to apply for a certificate of authority under this subsection, the transfer of the perpetual care fund may not occur until after the date a certificate of authority is issued to the transferee applicant.

(c) If the commissioner denies the application, a hearing may be requested and conducted according to the procedures in Section 712.0035(b).

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff.

September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 8, eff. September 1, 2013.

Sec. 712.00395. SURRENDER OF CERTIFICATE OF AUTHORITY; FEE. (a) A certificate holder may apply to the commissioner for permission to surrender the certificate of authority if the holder:

(1) is a cemetery that qualified for an exemption under Section 711.021(g), but voluntarily elected to become a perpetual care cemetery;

(2) has performed not more than 10 burials per year during each of the last five years;

(3) is not larger than 10 acres; and

(4) has a perpetual care fund that is less than $30,000.

(b) The application for permission to surrender a certificate of authority must be sworn to and be on a form prescribed by the department.

(c) The certificate holder shall publish a notice of intention to surrender a certificate of authority to operate a perpetual care cemetery one time in a newspaper of general circulation in each county in which the cemetery is located. The notice must:

(1) be in the form and include the information required by the banking commissioner;

(2) state that:

(A) the certificate holder is applying to surrender the holder's certificate of authority to operate a perpetual care cemetery;

(B) a cemetery plot owner or cemetery plot owner's heir may request a hearing to contest the surrender; and

(C) a request for a hearing must be filed with the department not later than the 14th day after the date the notice is published.

(d) The certificate holder shall submit, not later than the seventh day after the date the notice is published, a publisher's affidavit evidencing publication of the notice.

(e) If a request for hearing is timely filed by a plot owner or

plot owner's heir, the commissioner shall hold a hearing in accordance with Chapter 2001, Government Code.

(f) If a request for a hearing is not timely filed by a plot owner or plot owner's heir, the commissioner may approve or deny the application.

(g) If an application is denied, and if a hearing is not held before the denial, the applicant may request a hearing to appeal the denial of the application. The applicant's request for a hearing must be filed with the commissioner not later than the 30th day after the date the notice of denial is mailed. The hearing is a contested case under Chapter 2001, Government Code.

(h) An order approving the surrender of a certificate of authority must impose four conditions that are not subject to objection. Failure to satisfy any of these conditions constitutes a violation of the commissioner's order, and the certificate holder is subject to an enforcement action under this chapter. The order approving the surrender must:

(1) require the perpetual care fund to remain in an irrevocable trust, with the permissible distributions to be used for perpetual care of the cemetery in general and for those plots that were purchased before the certificate was surrendered;

(2) require that the cemetery remove any signage or other announcement stating that the cemetery is a perpetual care cemetery;

(3) require each contract and other evidence of ownership entered into after the date of the order to clearly state that the cemetery is not regulated by the Texas Department of Banking and may not use the term "perpetual care cemetery"; and

(4) state the location of cemetery records and require the cemetery to:

(A) retain existing records regarding the perpetual care fund for five years after the date of the order; and

(B) continue to comply with all recordkeeping requirements of Chapter 711.

(i) Not later than the 10th day after the date an order approving the surrender of a certificate of authority is signed, the certificate holder shall deliver the original certificate of authority to the commissioner along with a written notice of surrender that includes the location of the certificate holder's records and the name, address, telephone number, and other contact information for an individual who is authorized to provide access to

the records.

(j) The surrender of a certificate of authority does not reduce or eliminate a certificate holder's administrative, civil, or criminal liability arising from any acts or omissions that occur before the surrender of the certificate.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 2, eff. September 1, 2017.

Sec. 712.004. PERPETUAL CARE TRUST FUND REQUIRED. (a) Before obtaining a corporate charter, the incorporators of a corporation chartered on or after September 3, 1945, and before September 1, 1993, must establish a fund by permanently depositing in cash with the trustee of the fund:

(1) $15,000, if the corporation has capital stock of $15,000;

(2) $30,000, if the corporation has capital stock of $30,000; or

(3) $50,000, if the corporation has capital stock of $50,000 or more.

(b) Before obtaining a corporate charter, the incorporators of a corporation chartered on or after September 1, 1993, must establish a fund by permanently depositing in cash with the trustee of the fund an amount of not less than $50,000 for each perpetual care cemetery operated in this state.

(c) The fund shall be permanently set aside and deposited in trust with the trustee in accordance with Subchapter B.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 28, eff. Sept. 1, 1993.

Sec. 712.005. CANCELLATION OF CHARTER FOR FAILURE TO BEGIN OPERATION OF PERPETUAL CARE CEMETERY. (a) If a corporation chartered under Section 712.003 does not begin actual operation of

its perpetual care cemetery for six months after the charter is granted and delivered, the commissioner may instruct the secretary of state to cancel the charter and serve notice of the cancellation on the corporation by registered or certified letter, addressed to the corporation's address.

(b) The commissioner may rescind the order of cancellation on:

(1) the application of the directors;

(2) the payment to the commissioner of a penalty set by the commissioner in an amount not to exceed $500;

(3) the execution and delivery to the commissioner of an agreement to begin actual operation of the perpetual care cemetery not later than one month after the date of the agreement; and

(4) a proper showing by the trustee that the fund is on deposit.

(c) If the corporation does not begin actual operation as agreed, the commissioner by order may set aside the order of rescission and the cancellation is final. The commissioner shall make a full report of the cancellation to the attorney general for liquidation of the corporation, if liquidation is necessary.

(d) If no sale of the dedicated cemetery property of the corporation is made, a certified copy of the order of cancellation authorizes the trustee to refund the fund to the incorporators who signed the corporation's articles of incorporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 29, eff. Sept. 1, 1993.

Sec. 712.007. NOTICE OF PERPETUAL CARE REQUIRED. (a) A corporation shall post a sign at or near a cemetery entrance or administration building and readily accessible to the public.

(b) The sign must contain the following:

(1) "Perpetual Care Cemetery," or "Endowment Care Cemetery";

(2) the names and telephone numbers of two of the corporation's officers or directors; and

(3) the name of each bank or trust company entrusted with the fund.

(c) A corporation must include the following statement in each sales contract, certificate of ownership, or other instrument of

conveyance of the exclusive right of sepulture:

"This cemetery is operated as a perpetual care cemetery, which means that a perpetual care fund for its maintenance has been established in conformity with the laws of the State of Texas. Perpetual care means to maintain, repair, and care for the cemetery, including the roads on cemetery property."

(d) The term "endowment care" may be substituted for the term "perpetual care" in the statement required by Subsection (c).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 30, eff. March 1, 1994. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 341 (H.B. 1031), Sec. 1, eff. September 1, 2009.

Sec. 712.008. RULES. (a) The Finance Commission of Texas may adopt rules to enforce and administer this chapter, including rules establishing fees to defray the costs of enforcing and administering this chapter.

(b) The Finance Commission of Texas shall adopt rules establishing reasonable standards for:

(1) timely placement of burial markers or monuments in a perpetual care cemetery; and

(2) timely response to consumer complaints made to a corporation that operates a perpetual care cemetery.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 13, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 37, eff. Sept. 1, 2003.

Sec. 712.009. LIMITATIONS ON BURIALS; DAMAGES. (a) The Finance Commission of Texas shall adopt rules to administer and enforce this section.

(b) An individual, corporation, partnership, firm, trust, or association that operates or owns a perpetual care cemetery may not inter the remains of an individual who may have caused the death of another person if:

(1) the victim is interred in that cemetery; and

(2) the person having the right to control the disposition of the victim's remains under Section 711.002(a) gives written notice to the cemetery requesting that the individual not be interred in that cemetery if:

(A) the individual was convicted under Section 19.02, 19.03, 19.05, or 49.08, Penal Code, for causing the death of the victim, or convicted under a similar statute of another state; or

(B) the individual was identified as causing the death of the victim, in violation of a provision described by Paragraph (A), by the medical examiner or law enforcement agency having jurisdiction over the offense, and the individual dies before being convicted of the offense.

(c) An individual, corporation, partnership, firm, trust, or association that violates Subsection (b) is liable to the person having the right to control the disposition of the victim's remains under Section 711.002(a) for:

(1) any actual damages incurred;

(2) punitive damages not to exceed $10,000; and

(3) reasonable attorney's fees and court costs incurred in an effort to enforce compliance with Subsection (b).

(d) Damages under Subsection (c) may not be assessed if the individual, corporation, partnership, firm, trust, or association that operates the cemetery proves by a preponderance of the evidence that:

(1) the cemetery is the only cemetery serving the municipality or county in which the victim and individual causing the victim's death lived; and

(2) the bodies of the victim and individual causing the victim's death were placed as far apart as possible in, or in different parts of, the cemetery.

(e) An individual, corporation, partnership, firm, trust, or association operating or owning a perpetual care cemetery and barred from interring remains of an individual under this section may not be held liable for damages by a person having the right to control the disposition of the individual's remains under Section 711.002(a), including damages for failure to provide for interment under a contract executed before the delivery of the written notice under Subsection (b)(2).

(f) A notice under Subsection (b)(2) expires seven years after the date the notice is delivered. A new notice may be delivered on

the expiration of each previous notice.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 14, eff. Sept. 1, 2001.

Sec. 712.010. CONFIDENTIALITY AND DISCLOSURE OF CERTAIN INFORMATION. (a) Information relating to the financial condition of a perpetual care cemetery or fund the department obtains directly or indirectly, through examination or otherwise, other than a published statement, is confidential.

(b) A department file or record relating to the financial condition of a perpetual care cemetery or fund is confidential.

(c) The commissioner may disclose information described by Subsection (a) or (b) to an agency, department, or instrumentality of this or another state or the United States if the commissioner determines disclosure is in the best interest of the public and necessary or proper to enforce the laws of this or another state or the United States.

Added by Acts 2025, 89th Leg., R.S., Ch. 637 (H.B. 3803), Sec. 1, eff. June 20, 2025.

SUBCHAPTER B. PERPETUAL CARE TRUST FUND

Sec. 712.020. CONFLICT WITH OTHER LAW. To the extent of any conflict between this subchapter and Subtitle B, Title 9, Property Code, this subchapter controls.

Added by Acts 2015, 84th Leg., R.S., Ch. 19 (S.B. 656), Sec. 1, eff. May 15, 2015.

Sec. 712.021. ESTABLISHMENT AND PURPOSES OF FUND. (a) Except as provided by Subsection (h), a corporation that operates a perpetual care cemetery in this state shall have a fund established with a trust company or a bank with trust powers that is located in this state. The trust company or bank may not have more than one director who is also a director of the corporation.

(b) Except as otherwise provided by this chapter, the principal of the fund may not be reduced voluntarily, and it must remain inviolable. The trustee shall maintain the principal of the fund

separate from all operating funds of the corporation.

(c) In establishing a fund, the corporation may adopt plans for the general care, maintenance, and embellishment of its perpetual care cemetery.

(d) The fund and the trustee are governed by the Texas Trust Code (Section 111.001 et seq., Property Code).

(e) A corporation that establishes a fund may receive and hold for the fund and as a part of the fund or as an incident to the fund any property contributed to the fund.

(f) The fund and contributions to the fund are for charitable purposes. The perpetual care financed by the fund is:

(1) the discharge of a duty due from the corporation to persons interred and to be interred in its perpetual care cemetery; and

(2) for the benefit and protection of the public by preserving and keeping the perpetual care cemetery from becoming a place of disorder, reproach, and desolation in the community in which the perpetual care cemetery is located.

(g) In this subsection, "master trust account" means an account containing the perpetual care trust funds of two or more certificate holders for the purpose of collective investment and administration. The trustors of two or more perpetual care trust funds may establish a master trust account in which deposits required by this chapter are made, provided that separate records of principal and income are maintained for each perpetual care cemetery for the benefit of which the master trust account is established, and further provided that the income attributable to each perpetual care cemetery is used only for the perpetual care of that cemetery.

(h) A corporation may apply to the commissioner for temporary relief and placement of a perpetual care trust fund in a segregated interest bearing account at a Texas financial institution, as defined by Section 201.101, Finance Code, if the corporation:

(1) has been operating a perpetual care cemetery in this state for at least two years; and

(2) has a perpetual care trust fund with a balance of less than $100,000, the income of which is insufficient to pay trustee fees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 31, eff. Sept. 1, 1993.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 19 (S.B. 656), Sec. 2, eff. May 15, 2015.
Acts 2017, 85th Leg., R.S., Ch. 71 (S.B. 1402), Sec. 4, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 3, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 864 (H.B. 2950), Sec. 1, eff. September 1, 2019.

Sec. 712.022. OPERATION OF PERPETUAL CARE CEMETERY. A corporation authorized by law to operate a perpetual care cemetery but not doing so may do so if the corporation:

(1) complies with the requirements of this chapter for obtaining a certificate of authority; and

(2) establishes a fund as provided by Section 712.021 in an amount equal to the larger of:

(A) the amount that would have been paid into the fund if the cemetery operated as a perpetual care cemetery from the date of the cemetery's first sale of plots; or

(B) the minimum amount provided by Section 712.004.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 32, eff. Sept. 1, 1993.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 9, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 9, eff. September 1, 2011.

Sec. 712.023. VALIDITY OF CONTRIBUTIONS. A contribution to a fund for perpetual care is not invalid because of:

(1) indefiniteness or uncertainty of the person designated as beneficiary in the instrument establishing the fund; or

(2) a violation of the law against perpetuities or the law against the suspension of the power of alienation of title to or use of property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 634, Sec. 33, eff. Sept. 1, 1993.

Sec. 712.024. AMENDMENT OF TRUST INSTRUMENT. A corporation and the trustee of a fund may, by agreement, amend the instrument that established the fund to include any provision that is consistent with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 34, eff. Sept. 1, 1993.

Sec. 712.025. USE OF FUND DISTRIBUTIONS. Fund distributions may be used only to provide the perpetual care described by the instrument that established the fund, including the general care and maintenance of the property entitled to perpetual care in the perpetual care cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 35, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 562, Sec. 38, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 4, eff. September 1, 2017.

Sec. 712.0255. JUDICIAL MODIFICATION OR TERMINATION OF FUND. (a) The commissioner may petition a court to modify or terminate a fund under Section 112.054, Property Code. In addition to the grounds described by that section, the commissioner may petition a court under that section if the permissible distributions from the fund are inadequate to maintain, repair, and care for the perpetual care cemetery and another source for providing additional contributions to the fund is unavailable.

(b) If feasible, the corporation for the perpetual care cemetery and the trustee of the fund are necessary parties to an action described by this section. A court may not modify or terminate the fund without the consent of the commissioner.

(c) At the request or with the consent of the commissioner, the court may order the distribution and transfer of all or a portion of the assets in the fund to a nonprofit corporation, municipality,

county, or other appropriate person who is willing to accept, continue to care for, and maintain the perpetual care cemetery. A transfer under this subsection does not limit the court's ability to modify or terminate the fund under an action described by this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 19 (S.B. 656), Sec. 3, eff. May 15, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 5, eff. September 1, 2017.

Sec. 712.026. SUIT BY PLOT OWNERS TO MAINTAIN PERPETUAL CARE. (a) If the directors of a corporation do not generally care for and maintain the corporation's perpetual care cemetery, the district court of the county in which the perpetual care cemetery is located may:

(1) by injunction compel the directors to expend the permissible distributions from the corporation's fund as required by this chapter; or

(2) appoint a receiver to take charge of the fund and expend the permissible distributions from the fund as required by this chapter.

(b) The suit for relief under this section must be brought by at least five owners of plots located in the perpetual care cemetery.

(c) In a suit for relief under this section, court costs and attorney's fees shall be awarded:

(1) to the directors of the corporation, if it is found that the directors are substantially expending the permissible distributions from the fund as required by this subchapter; or

(2) to the plot owners initiating the suit, if it is found that the directors are not substantially expending the permissible distributions from the fund as required by this subchapter.

(d) Fund assets may not be used to pay court costs and attorney's fees awarded under Subsection (c).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 36, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 106, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 6, eff. September 1, 2017.

Sec. 712.027. INVESTMENT OF FUND. (a) A trustee shall invest and manage the investment of the principal of a fund in accordance with the Texas Trust Code (Section 111.001 et seq., Property Code).

(b) An investment must be made at not more than the prevailing market value of the securities at the time of acquisition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 37, eff. Sept. 1, 1993.

Sec. 712.028. AMOUNT OF FUND DEPOSITS FROM SALES. (a) A corporation shall deposit in its fund an amount that is at least:

(1) the greater of:

(A) $1.75 a square foot of ground area conveyed as perpetual care property; or

(B) 15 percent of the total purchase price of that ground area;

(2) the greater of:

(A) $105 for each crypt interment right for mausoleum interment or lawn crypt interment conveyed as perpetual care property, or $60 for each crypt interment right if that crypt is accessible only through another crypt; or

(B) seven percent of the total purchase price of that crypt interment right; and

(3) the greater of:

(A) $35 for each niche interment right for columbarium interment conveyed; or

(B) 15 percent of the total purchase price of that niche interment right.

(b) Subsection (a) does not apply to deposits from sales required to be made by a corporation in its fund before September 1, 1993, under a corresponding statute in effect before that date.

(c) If a plot owner exchanges a plot for another plot in a corporation's perpetual care cemetery, the amount to be deposited in the corporation's fund in respect of the plot received by the plot owner in the exchange may be reduced by the amount deposited in the

fund in respect of the plot contributed by the plot owner in the exchange. The amount required to be deposited with respect to an exchanged plot is the amount required at the time the plot owner originally contracted to purchase the plot.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 219, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 38, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 562, Sec. 39, eff. Sept. 1, 2003.

Sec. 712.029. ACCOUNTING FOR AND DEPOSITING AMOUNTS. (a) The part of the purchase price of a plot in a perpetual care cemetery that is to be deposited in a fund must be shown separately on the original purchase agreement from the total purchase price. A copy of the agreement shall be delivered to the purchaser of the plot.

(b) On the sale of a plot, a commission may not be paid to a broker or salesman on the amount to be deposited in the fund.

(c) A corporation shall deposit in its fund the amount required under Section 712.028 not later than the 20th day after the end of the month in which the original purchase agreement has been paid in full. A corporation may prepay funds into its fund at any time and, if a surplus exists in the fund from the prepayments, may credit against the surplus the amounts otherwise required to be deposited in the fund under Section 712.028 until the surplus has been depleted. In determining whether a surplus exists from prepayments, no part of the fund resulting from gifts to the fund under Section 712.030 may be considered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 220, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 39, eff. Sept. 1, 1993.

Sec. 712.030. USE OF GIFT FOR SPECIAL CARE OF PLOT IN PERPETUAL CARE CEMETERY. (a) A trustee may take and hold property transferred to the trustee in trust in order to apply the principal, proceeds, or income of the property for any purpose consistent with the terms of the trust and the purpose of a corporation's perpetual care cemetery, including:

(1) the improvement or embellishment of any part of the

perpetual care cemetery;

(2) the erection, renewal, repair, or preservation of a monument, fence, building, or other structure in the perpetual care cemetery;

(3) planting or cultivating plants in or around the perpetual care cemetery; or

(4) taking special care of or embellishing a plot, section, or building in the perpetual care cemetery.

(b) Except as provided by this subsection, the assets of a trust established under this section are not considered assets of the fund. If a gift in trust is specifically intended to serve the same general purpose as the fund, the trust may be merged with the fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 40, eff. Sept. 1, 1993. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 7, eff. September 1, 2017.

SUBCHAPTER B-1. DISTRIBUTIONS FROM FUND

Sec. 712.0351. DEFINITIONS. In this subchapter:

(1) "Net income fund" means a fund from which permissible distributions are calculated based on the net income method.

(2) "Net income method" means calculation of permissible annual distributions by the trustee as equal to the annual net income of the fund.

(3) "Total return fund" means a fund from which permissible distributions are calculated based on the total return method.

(4) "Total return method" means the calculation of permissible annual distributions by the trustee as equal to the average fair market value of the assets in the fund, determined under Section 712.0353, multiplied by the total return percentage.

(5) "Total return percentage" means the annual percentage selected by the trustee in accordance with Section 712.0354.

Added by Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 1, eff. September 1, 2017.

Sec. 712.0352. MODIFICATION OF DISTRIBUTION METHOD. (a)

Except as otherwise provided by this subchapter, the trustee of a fund shall use the net income method to determine permissible distributions from the fund to the corporation.

(b) A corporation on concurrence of the corporation's trustee may modify the terms of the trust instrument governing the fund to require the trustee to use the total return method in determining permissible distributions to the corporation. To convert a net income fund to a total return fund, at least 60 days before the effective date of the conversion, which must be the first day of the fund's next fiscal year, the corporation shall submit written documentation to the commissioner in support of the conversion that includes:

(1) a copy of the trust instrument governing the fund and any proposed amendments to the instrument necessary to authorize the conversion;

(2) the trustee's estimates of the current fair market value and the average fair market value of the fund as of the effective date of the conversion, as determined under Section 712.0353, and actions by the trustee to finalize the trustee's determination of both current and average fair market value of the fund and to advise the corporation and the commissioner as soon as reasonably possible after the effective date;

(3) a description of the method the trustee used or will use to determine the fair market value of any unique and hard-to-value asset in the fund, and identification and explanation of any asset the trustee excluded or will exclude from the average fair market value calculation;

(4) the total return percentage selected by the trustee under Section 712.0354, and the reasons for the selection;

(5) a copy of the written investment policy for the fund as modified to support use of the total return method; and

(6) any additional information required by rules adopted under this chapter.

(c) A corporation that converts the corporation's fund to a total return fund under this section may elect to reconvert the fund to a net income fund and modify the terms of the trust instrument governing the fund to require the trustee to calculate permissible distributions under the net income method. To reconvert a total return fund to a net income fund, the corporation must submit written documentation to the commissioner in support of the reconversion

before the proposed effective date of the reconversion, that includes:

(1) a copy of the trust instrument governing the fund and any proposed amendments to the instrument necessary to authorize the reconversion;

(2) the proposed effective date of the reconversion, provided that the effective date must be the first day of the fund's next fiscal year unless the total distributions received or to be received from the fund in the current fiscal year would not exceed the distributions permissible for a net income fund at the beginning of the current fiscal year; and

(3) any additional information required by rules adopted under this chapter.

(d) The trustee of a net income fund or a total return fund shall make distributions to the corporation, annually or in more frequent installments agreed to by the trustee and the corporation, to be used by the corporation in the manner required by Section 712.025.

Added by Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 1, eff. September 1, 2017.

Sec. 712.0353. DETERMINATION OF FAIR MARKET VALUE. (a) The trustee of a total return fund, or of a net income fund seeking to convert to a total return fund, shall determine for the corporation, in the trustee's sole discretion and in accordance with this section, the average fair market value of the fund at the beginning of each fiscal year.

(b) The trustee shall derive the average fair market value of the fund at least annually by averaging the fair market value of fund assets, determined on an asset-by-asset basis, as of the beginning of the current fiscal year and in each of the two previous years, or for the entire term of the trust with less than two previous years, using the valuation date or averages of valuation dates as the trustee considers appropriate. The trustee shall exclude from the fair market value calculation any asset described in Section 712.030(b) and any asset for which the trustee is not able to reasonably ascertain a fair market value. In determining the average fair market value, the trustee shall adjust the fair market value for each

year used in the calculation as follows:

(1) for assets added to the fund during the years used to determine the average, the trustee shall add the amount of each addition to all years in which the addition is not included; and

(2) for assets withdrawn from the fund during the years used to determine the average, other than in satisfaction of permissible distributions, the trustee shall subtract the amount of each withdrawal from all years in which the withdrawal is not included.

(c) Before the 31st day after the beginning of each fiscal year, the trustee of a total return fund shall send written notice to the commissioner and to the corporation of the trustee's determination of the current fair market value of the fund as of the beginning of the current fiscal year and the average fair market value of the fund for determining permissible distributions for the fiscal year, with identification and explanation of any asset excluded from the determination. If the trustee alters the methodology of determining fair market value in a manner that changes the fair market value of the fund during a fiscal year, the trustee shall send written notice to the commissioner and to the corporation of the revised current and average fair market value of the fund and the reason for the revision before the first distribution is made based on the revised average fair market value.

(d) This section does not alter or otherwise affect a fiduciary duty under other law to evaluate and monitor the fair market value of assets held in trust.

Added by Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 1, eff. September 1, 2017.

Sec. 712.0354. DETERMINATION OF TOTAL RETURN PERCENTAGE. (a) Consistent with the prudent investor rule, the trustee in the exercise of the trustee's sole discretion shall select the total return percentage to be used in determining permissible distributions from a total return trust at least annually, in an amount that represents a reasonable current return from the fund in light of the investment policy currently applicable to the fund, provided that the total return percentage does not exceed five percent.

(b) Before the 31st day after the beginning of each fiscal

year, the trustee of a total return fund shall send written notice to the commissioner and to the corporation of the trustee's determination of the total return percentage to be applied in the fiscal year. If the trustee alters the total return percentage during a fiscal year, the trustee shall send written notice to the commissioner and to the corporation of the revised total return percentage and the reason for the revision before the first distribution is made based on the new total return percentage.

Added by Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 1, eff. September 1, 2017.

Sec. 712.0355. REGULATORY LIMITS ON DISTRIBUTIONS. (a) After notice and an opportunity for hearing, the commissioner by order may convert a total return fund to a net income fund, limit or prohibit distributions from the fund, or both, if:

(1) the current fair market value of the fund at the beginning of a fiscal year is less than the original principal of the fund, consisting of the sum of all required deposits into the fund under this chapter, including deposits required by Sections 712.004 and 712.028;

(2) the average fair market value of the fund declines by 10 percent or more over a two-year period; or

(3) the trustee or other fiduciary of the fund responsible for investment policy has demonstrated a lack of sufficient knowledge and expertise or has failed to ensure that an investment policy is in place to support the use of the total return method of calculating distributions in a manner consistent with achieving the purposes of the fund as provided by Section 712.021(f).

(b) The commissioner may decline to impose corrective measures under Subsection (a) if the commissioner finds that:

(1) the cause of the adverse trend in the fair market value of the fund is due to one or more unusual or temporary factors not within the control of the corporation or trustee of the corporation's fund and could not have been reasonably anticipated;

(2) the current, written investment policy of the fund, in light of anticipated distributions from the fund, is reasonably designed to protect the fund from further declines in fair market value; and

(3) the exception appears to be both necessary and appropriate for the continued protection and perpetual existence of the fund.

Added by Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 1, eff. September 1, 2017.

Sec. 712.0356. RULES. The Finance Commission of Texas may adopt rules to implement and clarify this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 1, eff. September 1, 2017.

Sec. 712.0357. NATURE OF TOTAL RETURN DISTRIBUTIONS. (a) A distribution from a total return fund is considered a distribution of all income of the fund that reasonably apportions the total return of the fund, and may not be considered a fundamental departure from applicable state law.

(b) Unless the trust instrument provides otherwise, the trustee of a total return fund shall treat a distribution as first being made from the following sources in order of priority:

(1) from net accounting income;

(2) from ordinary accounting income not allocable to net accounting income;

(3) from net realized short-term capital gains;

(4) from net realized long-term capital gains; and

(5) from the principal of the fund.

Added by Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 1, eff. September 1, 2017.

SUBCHAPTER C. REGULATION AND ENFORCEMENT

Sec. 712.041. ANNUAL STATEMENT OF FUNDS. (a) A corporation shall file in its office and with the commissioner a statement for each perpetual care cemetery operated in this state in duplicate that shows:

(1) the principal amount of its fund;

(2) the amount of the fund invested in bonds and other

securities;

(3) the amount of cash on hand in the fund;

(4) any other item that shows the financial condition of the fund;

(5) the number of crypts, niches, and square feet of ground area conveyed under perpetual care before and after March 15, 1934, listed separately; and

(6) the number of crypts, niches, and square feet of ground area conveyed under perpetual care after March 15, 1934, for which the minimum deposits required for perpetual care have not been paid to the fund.

(b) The corporation's president and secretary, or two principal officers, shall verify the information on the statement.

(c) The corporation shall revise and post and file the statement on or before March 1 of each year.

(d) A copy of the statement shall be available to the public upon request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 41, eff. Sept. 1, 1993.

Sec. 712.042. FEES. On filing a statement of funds under Section 712.041, a corporation shall pay the commissioner a reasonable and necessary fee set by rule adopted by the Finance Commission of Texas under Section 712.008 to defray the cost of administering this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 221, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 42, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 914, Sec. 6, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 7.65, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 699, Sec. 15, eff. Sept. 1, 2001.

Sec. 712.043. ADDITIONAL FUND REPORT. The commissioner may require, as often as the commissioner determines necessary, the trustee of a corporation's fund to make under oath a detailed report of the condition of the fund. The report must include:

(1) a detailed description of the assets of the fund;

(2) a description of securities held by the fund;

(3) if a security held by the fund is a lien, a description of the property against which the lien is taken;

(4) each security's acquisition cost;

(5) each security's market value at the time of acquisition;

(6) each security's current market value;

(7) each security's status with reference to default;

(8) a statement that a security is not encumbered by debt; and

(9) any other information the commissioner determines is pertinent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 43, eff. Sept. 1, 1993.

Sec. 712.0435. INVESTIGATIONS. The commissioner may:

(1) conduct an investigation to administer and enforce this chapter; and

(2) recover reasonable costs incurred by the commissioner in the investigation from the subject of the investigation if the commissioner determines a violation occurred.

Added by Acts 2019, 86th Leg., R.S., Ch. 274 (S.B. 1821), Sec. 2, eff. September 1, 2019.

Sec. 712.044. EXAMINATION OF RECORDS; EXAMINATION FEES AND EXPENSES. (a) The commissioner may examine on a periodic basis as the commissioner reasonably considers necessary or appropriate to protect the interest of plot owners and efficiently administer and enforce this chapter:

(1) the books and records of a corporation relating to its fund, including deposits to or withdrawals from the fund, income of the fund, and uses and expenditures of distributions from the fund;

(2) the books and records of a corporation relating to sales of undeveloped mausoleum spaces and any preconstruction trust established by the corporation as provided by Section 712.063, including deposits to or withdrawals from the preconstruction trust, income of the preconstruction trust, and uses and expenditures of

principal and income of the preconstruction trust; and

(3) the consumer complaint files of a corporation relating to the fund, sales of undeveloped mausoleum spaces, a preconstruction trust, or to discharge of the corporation's perpetual care responsibilities, minutes of the corporation's board of directors, cemetery dedication statements and plat maps, and mausoleum and lawn crypt construction contracts and specifications.

(b) A corporation that is examined under this section shall make the specified books and records available for examination by the banking department upon reasonable notice to the corporation and shall pay to the commissioner for the examination a reasonable and necessary fee set by rules adopted by the Finance Commission of Texas under Section 712.008 to defray:

(1) the cost of examination;

(2) the equitable or proportionate cost of maintenance and operation of the department; and

(3) the cost of administering and enforcing this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 44, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 699, Sec. 16, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 10, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 10, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 8, eff. September 1, 2017.

Sec. 712.0441. ENFORCEMENT. (a) After notice and opportunity for hearing, the commissioner may impose an administrative penalty on a person who:

(1) violates this chapter or a final order of the commissioner or rule of the Finance Commission of Texas and does not correct the violation before the 31st day after the date the person

receives written notice of the violation from the banking department; or

(2) engages in a pattern of violations, as determined by the commissioner.

(b) The amount of the penalty for each violation may not exceed $1,000 for each day the violation occurs.

(c) In determining the amount of the penalty, the commissioner shall consider the seriousness of the violation, the person's history of violations, and the person's good faith in attempting to comply with this chapter. The imposition of a penalty under this section is subject to judicial review as a contested case under Chapter 2001, Government Code. The commissioner may collect the penalty in the same manner that a money judgment is enforced in district court.

(d) In addition to any penalty that may be imposed under Subsection (a), the commissioner may bring a civil action against a person to enjoin a violation described in Subsection (a) that has not been corrected within 30 days after the receipt by the person of written notice from the commissioner of the violation. Any such civil action may be brought in a district court of Travis County or a county in which the perpetual care cemetery is operated.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1336, Sec. 15, eff. September 1, 2011.

(f) The commissioner may issue an order requiring restitution by a person to the cemetery's fund or to a preconstruction trust if, after notice and opportunity for hearing held in accordance with the procedures for a contested case hearing under Chapter 2001, Government Code, the commissioner finds that the corporation has not made a deposit in the fund as required by Section 712.028 or in the preconstruction trust as required by Section 712.063.

(f-1) The commissioner may issue an order requiring restitution by a person if, after notice and opportunity for a hearing held in accordance with the procedures for a contested case hearing under Chapter 2001, Government Code, the commissioner finds that the corporation has not ordered memorials, as defined by Section 711.001, in compliance with the deadlines established by rules adopted under this chapter.

(g) If a violation described in Subsection (a) has not been corrected before the 31st day after the date the corporation receives written notice from the commissioner of the violation, the commissioner may report the violation to the attorney general, who

shall bring suit or quo warranto proceedings for the forfeiture of the corporation's charter and dissolution of the corporation in a district court of Travis County or of any county in which the corporation's perpetual care cemetery is operated.

(h) If a fund is misappropriated by its trustee or is not otherwise handled as required by this chapter, the commissioner may take action against the trustee as provided in Chapter 185, Finance Code.

Added by Acts 1993, 73rd Leg., ch. 634, Sec. 45, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 769, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.66, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 699, Sec. 17, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 3, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 11, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 15, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 11, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 15, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 9, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 19 (S.B. 656), Sec. 4, eff. May 15, 2015.

Acts 2017, 85th Leg., R.S., Ch. 110 (S.B. 1630), Sec. 9, eff. September 1, 2017.

Sec. 712.0442. PATTERN OF WILFUL DISREGARD. (a) If, after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas establishes a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission, the trier of fact may recommend to the commissioner that

the maximum administrative penalty permitted under Section 712.0441 be imposed on the person committing the violation or that the commissioner cancel or not renew the corporation's certificate of authority under this chapter if the person holds such a certificate.

(b) For the purposes of this section, violations corrected as provided by Section 712.0441 may be included in determining whether a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission exists.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 18, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 12, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 12, eff. September 1, 2011.

Sec. 712.0443. CEASE AND DESIST ORDER. (a) The commissioner may issue an order to cease and desist to a person if:

(1) the commissioner finds by examination or other credible evidence that the person has violated a law of this state relating to perpetual care cemeteries, including a violation of this chapter, the commissioner's final order, or a Finance Commission of Texas rule; and

(2) the violation was not corrected by the 31st day after the date the person receives written notice of the violation from the department.

(b) An order proposed under this section shall be served on the person and must state the grounds for the proposed order with reasonable certainty and the proposed effective date, which may not be less than the 20th day after the date the order is mailed or delivered. The order becomes effective on the proposed date unless the person requests a hearing not later than the 19th day after the date the order is mailed or delivered. If the person requests a hearing, the hearing shall be conducted in accordance with the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) If a cease and desist order issued under this section names an officer, director, or employee of a perpetual care cemetery, the order may require the person named in the order to take corrective

action to remedy the violation described by the order.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 13, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 13, eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 274 (S.B. 1821), Sec. 3, eff. September 1, 2019.

Sec. 712.0444. EMERGENCY ORDER. (a) The commissioner may issue an emergency order that takes effect immediately if the commissioner finds that immediate and irreparable harm is threatened to the public or a plot owner, marker purchaser, or other person whose interests are protected by this chapter.

(a-1) An emergency order must:

(1) state the grounds on which the order is granted;

(2) advise the person against whom the order is directed that the order takes effect immediately;

(3) to the extent applicable, require the person to:

(A) immediately cease and desist from the conduct or violation that is the basis of the order; or

(B) take the affirmative action stated in the order as necessary to correct a condition resulting from the conduct or violation that is the basis of the order or as otherwise appropriate;

(4) be delivered by personal delivery or sent by certified mail, return receipt requested, to the person at the person's last known address; and

(5) notify the person against whom the order is directed that the person may request a hearing on the order by filing a written request for a hearing with the commissioner not later than the 18th day after the date the order is delivered or mailed, whichever is earlier.

(b) The emergency order takes effect as soon as the person against whom the order is directed has actual or constructive knowledge of the issuance of the order. An emergency order remains in effect unless stayed by the commissioner.

(c) The person named in the emergency order may request in writing, not later than the 18th day after the date the order is

delivered or mailed, whichever is earlier, a hearing to show that the emergency order should be stayed. On receipt of the request, the commissioner shall set a time for the hearing not later than the 21st day after the date the commissioner received the request, unless extended at the request of the person named in the order.

(d) The hearing is an administrative hearing relating to the validity of findings that support immediate effect of the order.

(e) Unless the commissioner receives a written request for a hearing in accordance with Subsection (c), the order is final on the 19th day after the date the order is delivered or mailed, whichever is earlier, and may not be appealed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 13, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 13, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 19 (S.B. 656), Sec. 5, eff. May 15, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(28), eff. September 1, 2017.

Sec. 712.0445. RECEIVERSHIP PROCEEDINGS. (a) In conjunction with a proceeding to forfeit the right to do business in this state brought by the attorney general, the attorney general may seek the appointment of a receiver. This remedy is in addition to other grounds for the appointment of a receiver.

(b) If the receiver is a private party, the receiver shall be compensated from the corporation or, if the corporation has no assets available to pay the receiver, from the income only of the perpetual care fund. The receiver may not invade the principal of the fund.

(c) The court may appoint a department employee as receiver. If the receiver is a department employee, the employee may not receive compensation for serving as receiver in addition to the employee's regular salary. The department may receive reimbursement from the corporation for the travel expenses and the fully allocated personnel costs associated with the employee's service as receiver.

(d) A department employee serving as receiver is not personally liable for damages arising from the employee's official act or

omission unless the act or omission is corrupt or malicious. The attorney general shall defend an action brought against an employee serving as receiver because of an official act or omission as receiver regardless of whether the employee has terminated service with the department before the action commences.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 13, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 13, eff. September 1, 2011.

Sec. 712.045. REVOCATION OR SUSPENSION OF CERTIFICATE OF AUTHORITY. (a) The commissioner by order may revoke or suspend a certificate of authority issued under this chapter if the commissioner determines through an investigation or other credible evidence that the certificate holder:

(1) violated this chapter, a rule adopted or order issued under this chapter, or another law of this state relating to cemeteries;

(2) misrepresented or concealed a material fact in the certificate application; or

(3) obtained or attempted to obtain the certificate by misrepresentation, concealment, or fraud.

(b) An order issued under Subsection (a) must state:

(1) with reasonable certainty, the grounds for the order; and

(2) the effective date of the order, which may not be earlier than the 16th day after the date the order is mailed.

(c) The commissioner shall provide an order described by Subsection (a) to the person named in the order by certified mail, return receipt requested, at the person's last known address.

(d) A person may request a hearing on an order described by Subsection (a) not later than the 15th day after the date the order is mailed. If the person requests a hearing, the order is stayed until the hearing is resolved. A hearing is a contested case under Chapter 2001, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 274 (S.B. 1821), Sec. 4, eff. September 1, 2019.

Sec. 712.048. CRIMINAL PENALTIES. (a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person sells, offers to sell, or advertises for sale an interment right in a plot and, before a fund is established for the cemetery in which the plot is located as provided by this chapter, represents that the plot is under perpetual care. An offense under this subsection is a Class A misdemeanor. This subsection does not prevent an aggrieved party or the attorney general from maintaining a civil action for the recovery of damages caused by an injury resulting from an offense under this subsection.

(b) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person knowingly defalcates or misappropriates assets of a fund. An offense under this subsection is punishable as if it were an offense under Section 32.45, Penal Code.

(c) A person commits an offense if the person collects money for the purchase of a memorial, as defined by Section 711.001, and knowingly defalcates or misappropriates the funds. An offense under this subsection is punishable as if it were an offense under Section 32.45, Penal Code. This subsection does not prevent an aggrieved party or the attorney general from maintaining a civil action for the recovery of damages, or the commissioner from maintaining an administrative action for restitution, caused by an injury resulting from an offense under this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 46, eff. Sept. 1, 1993. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 14, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 14, eff. September 1, 2011.

SUBCHAPTER D. SALE OF UNDEVELOPED MAUSOLEUM SPACE

Sec. 712.061. OFFER AND SALE OF UNDEVELOPED MAUSOLEUM SPACE. (a) A corporation may not directly or indirectly sell or offer for

sale an undeveloped mausoleum space unless before the sale or offer the corporation:

(1) establishes a preconstruction trust as provided by Section 712.063 or executes and submits a performance bond payable to the commissioner as provided by Section 712.067; and

(2) submits a written notice to the commissioner as required by Subsection (b).

(b) The written notice to the commissioner must set forth:

(1) the date the corporation anticipates that sales of undeveloped mausoleum spaces will begin;

(2) a copy of the sales contract proposed for use that complies with Section 712.066;

(3) if the corporation establishes a preconstruction trust as provided by Section 712.063, a copy of the executed preconstruction trust agreement that complies with this subchapter and identifies the preconstruction trustee;

(4) if the corporation submits a performance bond payable to the commissioner as provided by Section 712.067, the executed, original performance bond in the amount required by Section 712.067 and documentation supporting the corporation's computation of that amount; and

(5) other information the commissioner reasonably requires to properly administer and enforce this subchapter.

(c) At any time before beginning construction of the mausoleum or mausoleum section in which undeveloped mausoleum spaces are being sold, a corporation that has established a preconstruction trust may substitute a performance bond that meets the requirements of Section 712.067. On acceptance of the performance bond by the commissioner, the corporation may terminate and withdraw all proceeds deposited in the preconstruction trust.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.062. DEPOSITS TO FUND. This subchapter does not affect the corporation's obligation to make deposits to its fund as provided in Subchapter B.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.063. PRECONSTRUCTION TRUST. (a) Except as provided by Section 712.067, a corporation that intends to directly or indirectly sell or offer for sale undeveloped mausoleum spaces shall establish a preconstruction trust by written declaration and agreement appointing as preconstruction trustee a financial institution with trust powers that is located in this state.

(b) The corporation shall deposit in the preconstruction trust an amount equal to at least 40 percent of all proceeds received directly or indirectly from the sale of undeveloped mausoleum spaces, not including interest, finance charges, sales taxes, credit life insurance premiums, or deposits to the corporation's fund required by Section 712.029(c).

(c) On application, the commissioner may authorize a corporation to deposit less than the amount required by Subsection (b) if the corporation demonstrates to the reasonable satisfaction of the commissioner that:

(1) the sales projections of the corporation are prudent and based on reasonable assumptions;

(2) the projected cost of construction is objectively determined based on documentation similar to that required by Section 712.067(b); and

(3) the amount of money projected to be deposited in the preconstruction trust under the proposed lesser amount will equal or exceed 120 percent of the cost of constructing the mausoleum or mausoleum section.

(d) The corporation shall deposit the required amount into the preconstruction trust on or before the 30th day after the end of the month in which payment is received. At the time of making a deposit, the corporation shall furnish to the preconstruction trustee the name of each payor and the amount of payment on each account for which the deposit is being made. A contract between the corporation and an agent or third party developer may not restrict or waive the corporation's primary liability for making the deposits required by this section.

(e) The preconstruction trustee may commingle deposits received if the accounting records accurately establish a separate account for each contract and reflect the amounts deposited and the income and loss allocable to each contract.

(f) Money in a preconstruction trust may be invested only in:

(1) demand deposits, savings accounts, certificates of deposit, or other accounts in financial institutions if the amounts deposited in those accounts are fully covered by federal deposit insurance or otherwise fully secured by a separate fund of securities in the manner provided by Section 184.301, Finance Code;

(2) marketable notes, bonds, evidences of indebtedness, or obligations with a term to maturity of five years or less and:

(A) issued by the United States or an instrumentality of the United States; or

(B) the principal and interest of which are guaranteed by the full faith and credit of the United States; and

(3) a mutual fund the portfolio of which consists wholly of investments permitted by Subdivisions (1) and (2).

(g) The preconstruction trustee may withdraw money from earnings on a preconstruction trust for the purpose of paying reasonable and necessary costs of operation of the preconstruction trust, including trustee or depository fees and expenses, and any special examination fees due to the department related to an examination of the preconstruction trust that is not incidental to examination of the corporation's fund. With the department's prior approval, the corporation may withdraw money from earnings on a preconstruction trust to pay any tax incurred because of the existence of the preconstruction trust.

(h) The preconstruction trust and the preconstruction trustee are governed by Subtitle B, Title 9, Property Code.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.064. CONSTRUCTION; DEFAULT. (a) The corporation shall start construction of the mausoleum or mausoleum section in which sales or reservations for sale of undeveloped mausoleum spaces

are being made on or before a date that is 48 months after the date of the first of those sales or reservations and shall complete construction on or before a date that is 60 months after the date of the first of those sales or reservations. The commissioner may grant extensions for good cause shown.

(b) If construction of a mausoleum or mausoleum section related to an undeveloped mausoleum space has not begun or been completely constructed by the applicable time specified by Subsection (a), on the written request of the buyer, the corporation and the preconstruction trustee shall, on or before the 30th day after the date of the buyer's request, refund the entire amount paid for the undeveloped mausoleum space plus, if the corporation established a preconstruction trust, net income earned on that portion of the money deposited in the preconstruction trust. The corporation is liable to a buyer for any portion of the purchase price paid for undeveloped mausoleum spaces that was not deposited in the preconstruction trust.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.065. RELEASE OF TRUST FUNDS TO CORPORATION. (a) On completion of construction of a mausoleum or mausoleum section subject to this subchapter, the corporation may withdraw all money deposited in the preconstruction trust and the net income earned on the money after submitting to the preconstruction trustee a sworn affidavit of completion executed by an officer or agent of the corporation on a form prescribed by the department.

(b) During construction of the mausoleum or mausoleum section containing the undeveloped mausoleum spaces, the corporation may periodically withdraw from the preconstruction trust an amount equal to the previously unreimbursed cost of performed labor or delivered materials after submitting to the preconstruction trustee a sworn affidavit of expenditures for construction cost executed by an officer or agent of the corporation on a form prescribed by the department.

(c) If the corporation delivers a completed mausoleum space acceptable to the buyer in lieu of the undeveloped mausoleum space

purchased, the corporation may withdraw all money deposited to the preconstruction trust for that buyer and related income earned on the money after submitting to the preconstruction trustee a sworn affidavit of performance executed by an officer or agent of the corporation on a form prescribed by the department.

(d) The corporation shall maintain copies of the affidavits required by this section for examination by the department.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.066. CONTRACT DISCLOSURES. (a) A sales contract for an undeveloped mausoleum space, whether in English or Spanish, must inform the buyer:

(1) that the buyer by written notice may cancel the contract for the failure of the corporation or its agent or contractor to construct the mausoleum or mausoleum section containing the undeveloped mausoleum space within the time limits specified by Section 712.064(a) and receive a refund of the entire amount paid under the contract for the undeveloped mausoleum space plus, if the corporation established a preconstruction trust, net income earned on that portion of the money deposited in the preconstruction trust, as provided by Section 712.064(b);

(2) of the options available under a fully paid contract in the event that the person to be interred in the undeveloped mausoleum space dies before completion of the related mausoleum or mausoleum section, which may include an option to:

(A) select a replacement mausoleum space or other interment that is acceptable to the buyer or buyer's representative; or

(B) elect temporary interment of the human remains or cremated remains in an existing mausoleum space until the undeveloped mausoleum space is completed, at which time the corporation shall disinter and reinter the human remains or cremated remains at no additional charge; and

(3) if the corporation does not offer a temporary interment option and the buyer does not accept a replacement mausoleum space or

other interment, that the buyer or the buyer's representative by written notice may cancel the contract and receive a refund of the entire amount paid under the contract for the undeveloped mausoleum space plus, if the corporation established a preconstruction trust, net income earned on that portion of the money deposited in the preconstruction trust, as provided by Section 712.064(b).

(b) A corporation's sales contract for undeveloped mausoleum space must comply with applicable regulations of the Federal Trade Commission, including 16 C.F.R. Section 433.2, with respect to a contract payable in installments.

(c) Required notices to buyers must be written in plain language designed to be easily understood by the average consumer and be printed in an easily readable font and type size.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.067. BOND IN LIEU OF PRECONSTRUCTION TRUST. (a) In lieu of establishing the preconstruction trust required by Section 712.063, a corporation may execute and submit a bond issued by a surety company authorized to do business in this state and reasonably acceptable to the commissioner. The bond must be payable to the commissioner and conditioned on the faithful performance of the contracts for sale of undeveloped mausoleum spaces.

(b) The amount of the bond must equal or exceed 120 percent of the cost of construction of the related mausoleum or mausoleum section. The cost of construction of the mausoleum or mausoleum section must be based on:

(1) estimates of the design architect and two or more bids for the construction from qualified contractors authorized to do business in this state;

(2) the actual cost of construction set forth in an executed contract with a qualified contractor authorized to do business in this state; or

(3) if the corporation intends to construct the mausoleum or mausoleum section itself, an amount equal to 120 percent of the estimated cost of construction, including direct and allocated labor

and material costs.

(c) At any time before beginning construction of the mausoleum or mausoleum section in which undeveloped mausoleum spaces are being sold, a corporation that has submitted a performance bond may establish a preconstruction trust that meets the requirements of Section 712.063. On acceptance of the substituted preconstruction trust by the commissioner, the corporation may terminate and withdraw the previously submitted performance bond.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.068. REPORTS. On or before the date the corporation's annual statement of funds is due as required by Section 712.041, the corporation shall cause the preconstruction trustee to file with the department, in the form prescribed by the department, a full and true statement regarding the activities of any preconstruction trust that was subject to this subchapter at any time during the preceding calendar year.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

CHAPTER 713. LOCAL REGULATION OF CEMETERIES

SUBCHAPTER A. MUNICIPAL REGULATION OF CEMETERIES

Sec. 713.001. MUNICIPAL CEMETERY AUTHORIZED. The governing body of a municipality may:

(1) purchase, establish, and regulate a cemetery; and

(2) enclose and improve a cemetery owned by the municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 47, eff. Sept. 1, 1993.

Sec. 713.002. LOCAL TRUST FOR CEMETERY. (a) A municipality that owns or operates a cemetery or has control of cemetery property may act as a permanent trustee for the perpetual maintenance of the lots and graves in the cemetery.

(b) To act as a trustee, a majority of the municipality's governing body must adopt an ordinance or resolution stating the municipality's willingness and intention to act as a trustee. When the ordinance or resolution is adopted and the trust is accepted, the trust is perpetual.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.003. LOCAL AUTHORITY TO RECEIVE GIFTS; DEPOSITS FOR CARE; CERTIFICATES. (a) A municipality that is a trustee for the perpetual maintenance of a cemetery may adopt reasonable rules to receive a gift or grant from any source and to determine the amount necessary for permanent maintenance of a grave or burial lot, including a family lot.

(b) A municipality that is a trustee for any person shall accept the amount the municipality requires for permanent maintenance of a grave or burial lot on behalf of that person or a decedent.

(c) The municipality's acceptance of the deposit is a perpetual trust for the designated grave or burial lot.

(d) On acceptance of the deposit, the municipality's secretary, clerk, or mayor shall issue a certificate in the name of the municipality to the trustee or depositor. The certificate must state:

(1) the depositor's name;

(2) the amount and purpose of the deposit;

(3) the location, as specifically as possible, of the grave, lot, or burial place to be maintained; and

(4) other information required by the municipality.

(e) An individual, association, foundation, or corporation that is interested in the maintenance of a neglected cemetery in a municipality's possession and control may donate funds to the perpetual trust fund to beautify and maintain the entire cemetery or burial grounds generally.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.004. USE OF FUNDS. (a) A municipality may invest and reinvest deposits under this subchapter in interest-bearing bonds or governmental securities.

(b) The principal of the funds must be kept intact as a principal trust fund, and the fund's trustee may not use those funds.

(c) The income or revenue of the fund must be used for the maintenance and care in a first-class condition of the grave, lot, or burial place for which the funds are donated. Income or revenue that is more than the amount necessary to faithfully accomplish the trust may be used, in the discretion of the trustee, to beautify the entire cemetery or burial grounds generally.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.005. DEPOSIT RECORDS. (a) A municipality that acts as a trustee under this subchapter shall maintain a permanent, well-bound record book including, for each deposit made:

(1) the name of the depositor, listed in alphabetical order;

(2) the purpose and amount of the deposit;

(3) the name and location, as specifically as possible, of the grave, lot, or burial place to be maintained;

(4) the condition and status of the trust imposed; and

(5) other information required by the municipality.

(b) A certificate holder under this subchapter may, on payment of the proper cost or recording fee, record the certificate in the deed records of the county in which the cemetery is located. The county clerk shall file, index, and record the certificate in the deed records of that county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.006. TAX. (a) A municipality acting as a trustee for a cemetery may include in the municipality's annual budget an amount considered necessary for cemetery maintenance.

(b) The municipality may impose a tax on all property in the municipality in an amount not exceeding five cents for each $100 valuation of the property for maintenance of the cemetery, regardless of whether the cemetery is located inside or outside the municipal

limits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.007. APPOINTMENT OF SUCCESSOR TRUSTEE. The district judge of the county in which the cemetery is located shall appoint a suitable successor or trustee to faithfully execute a trust in accordance with this subchapter if the municipality renounces a trust assumed under this subchapter or fails to act as its trustee and:

(1) the occasion demands the appointment; or

(2) a vacancy occurs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 310 (H.B. 2198), Sec. 1

For text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 855 (H.B. 2812), Sec. 1, see other Sec. 713.008.

Sec. 713.008. TERMINATION OF MUNICIPAL TRUST BY CERTAIN MUNICIPALITIES. (a) The governing body of a municipality in a county with a population of at least 128,000 but not more than 300,000 may abolish the municipality's perpetual trust fund for a cemetery and use the fund, including both principal and interest, for permanent improvements to the cemetery.

(b) The governing body of a municipality in a county with a population of at least 40,000 but not more than 80,000 and that contains a portion of the Angelina National Forest may abolish the municipality's perpetual trust fund for a cemetery and use the fund, including both principal and interest, for permanent improvements to the cemetery. Termination of a trust fund under this subsection does not constitute renouncement of a trust or failure to act as its trustee under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 222, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 597, Sec. 78, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 40, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 136 (S.B. 1103), Sec. 1, eff. May 23, 2009.

Acts 2019, 86th Leg., R.S., Ch. 310 (H.B. 2198), Sec. 1, eff. September 1, 2019.

Text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 855 (H.B. 2812), Sec. 1

For text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 310 (H.B. 2198), Sec. 1, see other Sec. 713.008.

Sec. 713.008. TERMINATION OF MUNICIPAL TRUST BY CERTAIN MUNICIPALITIES. (a) This section applies to the governing body of a municipality in a county with a population of:

(1) at least 128,000 but not more than 300,000; or

(2) at least 20,000 but not more than 21,000.

(b) The governing body of a municipality to which this section applies may abolish the municipality's perpetual trust fund for a cemetery and use the fund, including both principal and interest, for permanent improvements to the cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 222, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 597, Sec. 78, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 40, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 136 (S.B. 1103), Sec. 1, eff. May 23, 2009.

Acts 2019, 86th Leg., R.S., Ch. 855 (H.B. 2812), Sec. 1, eff. September 1, 2019.

Sec. 713.009. LOCAL POSSESSION AND CONTROL OF UNKEPT OR ABANDONED CEMETERY. (a) Except as provided by Subsection (i), a municipality with a cemetery inside the municipality's boundaries or extraterritorial jurisdiction may, by resolution, take possession and control of the cemetery on behalf of the public if the cemetery threatens or endangers public health, safety, comfort, or welfare.

(b) If a municipality does not take possession and control of a cemetery under Subsection (a) or acts to take possession and control but does not perform the work required by Subsections (d), (e), and

(f), a district court on petition of a resident of the county in which the cemetery is located shall by order appoint a willing nonprofit corporation organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) to act in place of the municipality to protect the public health, safety, comfort, and welfare. The district court and the nonprofit corporation must comply with the requirements of Chapter 715 in assuming responsibility for the cemetery.

(c) In accordance with Chapter 715, a district court appointing a nonprofit corporation has continuing jurisdiction to monitor and review the corporation's operation of the cemetery. The court may, on its own motion, revoke the appointment and appoint another willing nonprofit corporation without the necessity of another petition. The court shall review the subsequent appointment if a county resident petitions for review of the appointment.

(d) A resolution of the municipality or an order of the court under this section must specify that, not later than the 60th day after the date of giving notice of a declaration of intent to take possession and control, the municipality or corporation, as appropriate, shall present a plan to:

(1) remove or repair any fences, walls, or other improvements;

(2) straighten and reset any memorial stones or embellishments that are a threat or danger to public health, safety, comfort, or welfare; and

(3) take proper steps to restore and maintain the premises in an orderly and decent condition.

(e) The notice must be given by mail to all persons shown by the records in the county clerk's office to have an interest in the cemetery, to the Texas Historical Commission, and to all interested persons by publication in a newspaper of general circulation in the municipality.

(f) After taking the action described by Subsection (d), the municipality or corporation shall continue to maintain the cemetery so that it does not endanger the public health, safety, comfort, or welfare. Additional burial spaces may not be offered for sale, except as provided by Subsection (f-1).

(f-1) A municipality that has taken possession and control of a cemetery under this section for at least 25 years may sell additional burial spaces in the cemetery if, after a public hearing, the

governing body of the municipality by official action finds that:

(1) the cemetery has been consistently maintained in accordance with Section 713.011; and

(2) the sale and use of additional burial spaces in the cemetery will not endanger the public health, safety, comfort, or welfare.

(f-2) A municipality shall provide written notice of a public hearing required under Subsection (f-1). The notice must:

(1) describe the municipality's proposed action;

(2) identify the cemetery that is the subject of the hearing by name and location;

(3) be published in a newspaper of general circulation:

(A) once a week for three consecutive weeks:

(i) in a county in which the cemetery is located; or

(ii) in the absence of a newspaper in that county, in the neighboring county nearest to the cemetery that has a newspaper of general circulation; and

(B) with a final date of publication that is not less than one week and not more than two weeks before the date of the hearing; and

(4) be mailed to the Texas Historical Commission not less than one week before the date of the hearing.

(g) A cemetery in the possession and control of a municipality or corporation under this section must remain open to the public.

(h) A municipality or an officer or employee of the municipality is not civilly or criminally liable for acts performed in the good faith administration of this section.

(i) This section does not apply to:

(1) a perpetual care cemetery incorporated under the laws of this state; or

(2) a private family cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 12, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 136 (H.B. 2371), Sec. 1, eff. September 1, 2023.

Sec. 713.010. PRIVATE CARE OF GRAVES. This subchapter does not affect the right of a person who has an interest in a grave or burial lot, or who is related within the fifth degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to, or is a direct descendant of, a decedent interred in the cemetery, to beautify or maintain a grave or burial lot individually or at the person's own expense in accordance with reasonable municipal rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 33, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 13, eff. September 1, 2009.

Sec. 713.011. MAINTENANCE OF MUNICIPAL CEMETERIES. (a) A municipality that operates or has jurisdiction over a public cemetery shall maintain the cemetery in a condition that does not endanger the public health, safety, comfort, or welfare.

(b) A municipality's responsibility to maintain a cemetery under this section includes:

(1) repairing and maintaining any fences, walls, buildings, roads, or other improvements;

(2) leveling or straightening markers or memorials;

(3) properly maintaining lawns, shrubbery, and other plants;

(4) removing debris, including dead flowers and deteriorated plastic ornaments; and

(5) promptly restoring gravesites following an interment.

Added by Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 14, eff. September 1, 2009.

Sec. 713.012. ABANDONED PLOTS IN CERTAIN CEMETERIES IN MUNICIPAL POSSESSION AND CONTROL. (a) This section applies only to a cemetery for which the governing body of a municipality by official action issues the findings described by Section 713.009(f-1).

(b) After notice provided in accordance with Subsection (c) and a public hearing, the governing body of a municipality may by

official action declare a plot in a cemetery subject to this section as presumed abandoned if:

(1) the municipality does not have any record of ownership or sale of the plot;

(2) the plot has not been used for interment; and

(3) the plot is not within a family enclosure or area of plots of related persons.

(c) A municipality shall provide written notice of the public hearing required under Subsection (b) that satisfies the notice requirements described by Section 713.009(f-2).

(d) The municipality may combine the notice and hearing required under this section with the notice and hearing required under Sections 713.009(f-1) and (f-2).

(e) A municipality has the exclusive right of sepulture in an abandoned plot in a cemetery subject to this section and may convey that right in the plot.

(f) A person may rebut the presumption of abandonment by submitting to the municipality a deed, certificate of ownership, bill of sale, receipt, instrument of conveyance, or other evidence of ownership under which the person may claim the exclusive right of sepulture in the plot in accordance with Section 711.039.

Added by Acts 2023, 88th Leg., R.S., Ch. 136 (H.B. 2371), Sec. 2, eff. September 1, 2023.

Sec. 713.013. APPEAL OF FINDING OF ABANDONMENT. (a) Not later than the 10th day after the date the governing body of a municipality declares a plot abandoned under Section 713.012, a person aggrieved by the declaration or a taxpayer residing in the municipality may file with a district court, county court, or county court at law of the county in which the cemetery is located a verified petition that states the decision is wholly or partly illegal and the grounds of the illegality.

(b) On the filing of the petition, the court may grant a writ of certiorari directed to the governing body to review the governing body's decision. The writ must require the governing body's return to be made and served on the petitioner not later than the 10th day after the date the writ is issued, unless otherwise extended by the court. Granting of the writ does not stay the proceedings on appeal,

but on application and after notice to the governing body, the court may grant a restraining order.

(c) The governing body's return must be verified and concisely state any pertinent facts that show the grounds of the decision under appeal. The governing body is not required to return the original documents on which the governing body acted but may return certified or sworn copies of the documents or parts of the documents as required by the writ.

(d) If a court determines at the hearing that testimony is necessary for proper disposition of the matter, the court may take evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court makes a decision.

(e) The court may wholly or partly reverse or affirm or modify the appealed decision. The court may not assess costs against the governing body unless the court determines that the governing body acted with gross negligence, bad faith, or malice in making the decision.

Added by Acts 2023, 88th Leg., R.S., Ch. 136 (H.B. 2371), Sec. 2, eff. September 1, 2023.

SUBCHAPTER B. COUNTY REGULATION OF CEMETERIES

Sec. 713.021. COUNTY TRUST FOR CEMETERY. A commissioners court by resolution may establish a perpetual trust fund to provide maintenance for a neglected or unkept public or private cemetery in the county. The commissioners court shall appoint the county judge as trustee for the fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.022. GIFTS FOR MAINTENANCE OF CEMETERY. (a) A trustee for a county perpetual trust fund may adopt reasonable rules to receive a gift or grant from any source and to determine the amount necessary for permanent maintenance of the cemetery.

(b) A person who is interested in the maintenance of a neglected or unkept public or private cemetery in the county may make

a gift to the trust fund for maintenance of the cemetery.

(c) The trustee's acceptance of the gift is a perpetual trust for the maintenance of the cemetery.

(d) On acceptance of the gift, the trustee shall instruct the county treasurer to issue a certificate to the donor. The certificate must state:

(1) the amount and purpose of the gift; and

(2) other information determined necessary by the trustee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.023. USE OF FUNDS. (a) The trustee may invest the fund in interest-bearing bonds or federal, state, or local government securities.

(b) The principal of the fund must be kept intact as a permanent principal trust fund.

(c) The income or revenue of the fund may be used only for maintenance of a neglected or unkept public or private cemetery in the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.024. APPOINTMENT OF SUCCESSOR TRUSTEE. If a county judge who is acting as a trustee under this subchapter vacates the office or renounces the trust, the district judge shall appoint a person, other than a county commissioner, as successor trustee to execute the trust.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.025. PRIVATE CARE OF GRAVES. This subchapter does not affect the right of a person to maintain a grave or burial lot in a cemetery if the person:

(1) has an interest in the grave or burial lot; or

(2) is related within the fifth degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to, or is a direct descendant of, a decedent interred in a cemetery maintained by a trustee under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 34, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 15, eff. September 1, 2009.

Sec. 713.026. USE OF PUBLIC FUNDS AND PROPERTY PROHIBITED; EXCEPTIONS. (a) Except as provided by Sections 713.027, 713.0271, and 713.028, a trustee of a fund established under this subchapter or a member of the commissioners court or any other elected county officer may not pay or use public funds or county employees, equipment, or property to maintain a neglected or unkept public or private cemetery.

(b) Subsection (a) does not apply to a county if:

(1) the county owned the cemetery from September 1, 1976, through January 1, 1979; or

(2) the county used county funds, employees, equipment, or property to maintain a county-owned cemetery during 1976.

(c) A county described by Subsection (b)(1) or (2) may continue to own the cemetery or to provide maintenance for the cemetery that qualified the county for the exception if the county files with the secretary of state a certified copy of a commissioners court order certifying that the county qualifies to own or maintain a cemetery under this section. The order must be kept in a register entitled "County-Owned and -Operated Cemeteries."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 492 (H.B. 4179), Sec. 3, eff. June 7, 2019.

Sec. 713.027. CEMETERY OWNED BY COUNTY OF 8,200 OR LESS. (a) A county with a population of 8,200 or less may own, operate, and maintain a cemetery and sell the right of burial in the cemetery.

(b) The sale of the right of burial is exempt from the requirements of Sections 263.001-263.006, Local Government Code.

(c) Revenue received from the sale of the right of burial may

be used to purchase additional land for cemetery purposes and for maintenance of county cemetery property.

(d) The commissioners court of the county may spend money in the general fund to maintain a public cemetery in the county and may dedicate not more than one-eighth of the maximum allowable tax levy for that purpose.

(e) The commissioners court of the county serves as the county cemetery board and shall manage cemetery property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.0271. CEMETERY OWNED BY CERTAIN COUNTIES. A county with a population of more than 800,000 that borders a county with a population of more than 3.3 million may own, operate, and maintain a cemetery.

Added by Acts 2019, 86th Leg., R.S., Ch. 492 (H.B. 4179), Sec. 1, eff. June 7, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 101, eff. September 1, 2023.

Sec. 713.028. COUNTY CARE OF CEMETERY OLDER THAN 50 YEARS. (a) For purposes of historical preservation or public health, safety, or welfare, a commissioners court may use public funds, county employees, county inmate labor as provided by Article 43.10, Code of Criminal Procedure, and county equipment to maintain a cemetery that is at least 50 years old.

(b) This section does not apply to a perpetual care cemetery or a cemetery maintained by a religious or fraternal organization.

(c) At the discretion of the commissioners court, a county may permit the use of public funds, county employees, county inmate labor as provided by Article 43.10, Code of Criminal Procedure, and county equipment to open and close graves in a cemetery described by Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1168, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 853 (S.B. 951), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1187 (H.B. 129), Sec. 2, eff. June 18, 2005.

Acts 2019, 86th Leg., R.S., Ch. 492 (H.B. 4179), Sec. 2, eff. June 7, 2019.

Sec. 713.029. COUNTY AUTHORITY TO PURCHASE BURIAL GROUNDS FOR VETERANS. (a) A commissioners court may purchase burial grounds to be used exclusively for the burial of honorably discharged persons who:

(1) have served in the United States armed forces during a war in which the United States participated; and

(2) die without leaving sufficient means to pay funeral expenses.

(b) A commissioners court may not purchase burial grounds under this section if there is a national military cemetery or other military plot in the county in which honorably discharged veterans of the United States armed forces may be buried free of charge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 714. MISCELLANEOUS PROVISIONS RELATING TO CEMETERIES

Sec. 714.001. DEPTH OF GRAVES; CRIMINAL PENALTY. (a) The body of a decedent may not be buried in a manner so that the outside top surface of the container of the body is:

(1) less than two feet below the surface of the ground if the container is not made of an impermeable material; or

(2) less than 1-1/2 feet below the surface of the ground if the container is made of an impermeable material.

(b) The governing body of a political subdivision of this state may, because of subsurface soil conditions or other relevant considerations, permit, by ordinance or rule, burials in that political subdivision at a shallower depth than that required by Subsection (a).

(c) This section does not apply to burials in a sealed surface reinforced concrete burial vault.

(d) A person commits an offense if the person buries the body

of a decedent in violation of this section or in violation of an ordinance or rule adopted under this section.

(e) An offense under this section is a misdemeanor punishable by a fine of not less than $100 or more than $200.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 714.002. LIMITATION ON LOCATION OF FEED OR SLAUGHTER PENS NEAR CEMETERY. (a) The maintenance or location of a feed pen for hogs, cattle, or horses, a slaughter pen, or a slaughterhouse 500 feet or nearer to an established cemetery in a county with a population of at least 525,000 is a nuisance.

(b) The cemetery owner or a lot owner may bring suit to abate the nuisance and to prohibit its continuance. If a nuisance under this section exists or is threatened, the court shall grant a permanent injunction against the person responsible for the nuisance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 714.003. ABANDONED PLOTS IN PRIVATE CEMETERIES. (a) The ownership or right of sepulture in an unoccupied plot for which adequate perpetual care has not been provided in a private cemetery operated by a nonprofit organization reverts to the cemetery on a finding by a court that the plot is abandoned. A cemetery may convey title to any plot that has reverted to the cemetery.

(b) A plot is presumed to be abandoned if for 10 consecutive years an owner or an owner's successor in interest does not:

(1) maintain the plot in a condition consistent with other plots in the cemetery; or

(2) pay any assessments for maintenance charged by the cemetery.

(c) An owner or an owner's successors in interest may rebut the presumption of abandonment by:

(1) delivering to the governing body or by filing with the court written notice claiming ownership of or right of sepulture in the plot; and

(2) paying the cemetery for any past due maintenance charges on the plot plus interest at the maximum legal rate.

(d) A notice for rebuttal of a presumption must be given by

delivery in person or by prepaid United States mail, properly addressed. If the notice is mailed, delivery is effective on the date the envelope containing the notice is postmarked.

(e) The governing body may petition a court of competent jurisdiction for an order declaring that a plot is abandoned if, not later than the 91st day and not earlier than the 120th day before the date the petition is filed, the governing body gives written notice of its claim of the plot to the owner or, if the owner is deceased or his address is unknown, to the owner's known successors in interest. The notice must be delivered in person or by prepaid United States mail, sent to the last known address of the owner or the owner's successors in interest.

(f) If after reasonable effort the governing body cannot locate or ascertain the identity of an owner or an owner's successors in interest, the governing body must give the notice required by this section by publishing it once each week for four consecutive weeks in a newspaper of general circulation in the county in which the cemetery is located.

(g) After deducting reasonable expenses related to the reacquisition and sale of an abandoned plot, including restoration, expenses of the sale, court costs and legal fees, a cemetery shall deposit the balance of the funds from the sale of the plot into an account to be used for the care of the cemetery.

(h) This section prevails over Sections 711.035, 711.036, 711.038, 711.039, and 711.040 to the extent of any conflict.

(i) In this section:

(1) "Governing body" means the person in a nonprofit organization responsible for conducting a cemetery business.

(2) "Nonprofit organization" means an organization described by Section 501(c)(13), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(13)).

(3) "Plot" means a grave space in a cemetery that has not been used to inter human remains.

(4) "Private cemetery" means a cemetery that is not owned or operated by the United States, this state, or a political subdivision of this state, but is owned and operated by a nonprofit organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1124, Sec. 1, 2, eff. June 18, 1999.

Sec. 714.004. REMOVAL OF REMAINS FROM ABANDONED CEMETERY IN COUNTY OF AT LEAST 525,000. (a) If an abandoned and neglected cemetery in a county with a population of at least 525,000 for which no perpetual care and endowment fund has been regularly and legally established is abated as a nuisance, the court abating the nuisance and enjoining its continuance or the governing body of the municipality in which the cemetery is located may authorize the removal of all bodies, monuments, tombs, and other similar items from the cemetery to a perpetual care cemetery as defined by Section 711.001.

(b) If there is no perpetual care cemetery in the county that under its rules permits the interment of the bodies of the persons that are to be removed, the bodies, monuments, tombs, and other similar items may be removed to a nonperpetual care cemetery that has provided for assessments for the cemetery's future care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 715. CERTAIN HISTORIC CEMETERIES

Sec. 715.001. DEFINITIONS. In this chapter:

(1) "Burial park," "cemetery purposes," "crematory," "mausoleum," and "plot" have the meanings assigned by Section 711.001.

(2) "Cemetery" means a place that is used for interment, including a graveyard, burial park, or a mausoleum located on the grounds of a graveyard or burial park.

(3) "Nonprofit corporation" means a corporation not for profit subject to the provisions of the Texas Non-Profit Corporation Act (Article 1396-1.01, et seq., Vernon's Texas Civil Statutes).

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.002. PETITION OF NONPROFIT CORPORATION. A nonprofit corporation organized under this chapter to restore, operate, and maintain a historic cemetery may petition the district court of the county in which the cemetery is located to authorize the nonprofit corporation to restore, operate, and maintain the cemetery.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.003. PARTIES TO ACTION. An action commenced under this chapter shall be brought by the incorporators of the nonprofit corporation on behalf of the nonprofit corporation. The necessary parties to the action on which citation shall be served under Section 715.006 are:

(1) the record owners of the real property comprising the historic cemetery;

(2) the owners of plots in the cemetery, who may be designated as a class in the petition; and

(3) the Texas Historical Commission.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.
Amended by Acts 2003, 78th Leg., ch. 562, Sec. 40, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 4, eff. September 1, 2019.

Sec. 715.004. CONTENTS OF PETITION. (a) A petition filed by a nonprofit corporation under this chapter must contain a legal description of the real property comprising the historic cemetery and must aver to the court that:

(1) the nonprofit corporation, through its members and incorporators, has a religious, ethnic, historic, or cultural relationship to the cemetery;

(2) the cemetery was established more than 75 years before the date the action was commenced;

(3) a viable organization of plot owners of the cemetery does not exist; and

(4) the cemetery threatens or endangers the public health, safety, comfort, or welfare.

(b) The petition must be accompanied by the written plan described by Section 715.005.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.005. WRITTEN PLAN. (a) The written plan accompanying the nonprofit corporation's petition must include:

(1) a description of the actions to be taken by the nonprofit corporation to restore, operate, and maintain the historic cemetery, which must include:

(A) repair of any fences;

(B) straightening, leveling, and resetting of memorials or embellishments in the cemetery that are a threat or danger to the public health, safety, comfort, or welfare;

(C) taking proper steps to restore and continuously operate and maintain the cemetery in an orderly and decent fashion that does not endanger the public health, safety, comfort, or welfare;

(D) restoration of damaged memorials; and

(E) restoration and maintenance of cemetery elements as defined by Section 711.001;

(2) the anticipated costs of the actions described under Subdivision (1);

(3) the time that the actions described by Subdivision (1) will be commenced and the time that it is anticipated the actions will be completed;

(4) a description of the actions to be taken by the nonprofit corporation for the proper conduct of its business and for the protection of the cemetery and the principles, plans, and ideals on which the cemetery was established;

(5) the percentage of the total purchase price of each plot in the cemetery sold and conveyed by the nonprofit corporation to be deposited in the trust fund established under Section 715.011, which must be at least 10 percent of the total purchase price of the plot; and

(6) a description of the records to be maintained by the nonprofit corporation, including records regarding:

(A) the sale of plots in the cemetery;

(B) the interments in the cemetery;

(C) the total purchase price received from the sale of each plot in the cemetery;

(D) the percentage of the total purchase price of each plot in the cemetery deposited in the trust fund established under Section 715.011; and

(E) the income received by the nonprofit corporation

from the trust fund established under Section 715.011 and the manner in which the income is used by the nonprofit corporation for the maintenance and care of the cemetery.

(b) After the written plan is filed, the court may require that the nonprofit corporation modify the plan to include other matters specified by the court.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 16, eff. September 1, 2009.

Sec. 715.006. SERVICE OF CITATION. (a) Before the 31st day after the date an action is commenced by a nonprofit corporation under this chapter, the nonprofit corporation shall cause citation to be issued and served by certified mail, return receipt requested, on:

(1) the record owners of the real property comprising the cemetery at their last known addresses;

(2) the owners of plots in the cemetery at their last known addresses;

(3) the Texas Historical Commission at its office in Austin, Texas; and

(4) the county auditor of the county in which the cemetery is located.

(b) The citation must be accompanied by a copy of the petition.

(c) Except as provided by Section 17.032, Civil Practice and Remedies Code, if the address or identity of a plot owner is not known and cannot be ascertained with reasonable diligence, service by publication shall be made on the plot owner by publishing notice on the public information Internet website maintained as required by Section 72.034, Government Code, and at least three times in a newspaper of general circulation in the county in which the cemetery is located.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 41, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 5, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 606 (S.B. 891), Sec. 10.12, eff. June 1, 2020.

Sec. 715.007. HEARING. (a) Not later than the 90th day after the date the petition is filed, the court shall hold a hearing on the petition.

(b) Notice of the hearing shall be given by the nonprofit corporation to the parties listed in Section 715.003 not later than the 30th day before the date of the hearing.

(c) The notice shall be given in the manner prescribed by Section 715.006 for service of citation.

(d) At the hearing, each of the parties listed in Section 715.003 shall be given an opportunity to be heard by the court and to answer the petition of the nonprofit corporation.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.008. COURT ORDER. (a) The court shall issue an order authorizing the nonprofit corporation to restore, operate, and maintain the cemetery if the court finds that:

(1) the facts stated in the petition filed by a nonprofit corporation under this chapter are true and correct;

(2) the written plan accompanying the petition demonstrates the nonprofit corporation's ability to restore, operate, and maintain the historic cemetery in accordance with this chapter; and

(3) authorizing the nonprofit corporation to restore, operate, and maintain the cemetery is in the best interest of the public.

(b) The written plan must be incorporated in the court's order.

(c) The court's order is binding on all parties to the action.

(d) The court retains continuing jurisdiction to monitor and review compliance with the court's order.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.009. NONPROFIT CORPORATION. (a) The members of a nonprofit corporation authorized to restore, operate, and maintain a historic cemetery are the plot and property owners of the cemetery.

(b) Each plot owner may exercise the rights and privileges of a member of the nonprofit corporation without regard to whether the plot owner acquired the plot before or after the nonprofit corporation was organized.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.010. ORGANIZATIONAL MEETING. (a) A nonprofit corporation authorized to restore, operate, and maintain a historic cemetery shall, not later than the 10th day after the date of the order of the court under Section 715.008:

(1) publish notice of the time and place of the organizational meeting of the members of the nonprofit corporation in a newspaper having general circulation in the county in which the cemetery is located or, if there is no newspaper of general circulation in the county in which the cemetery is located, in a newspaper of general circulation in an adjoining county; and

(2) post written notice of the time and place of the meeting at the cemetery.

(b) The notice published under Subsection (a)(1) must be published not later than the 30th day before the date of the meeting and repeated twice before the date of the meeting. The notice may not be published more than once a week.

(c) The written notice posted under Subsection (a)(2) must be posted not later than the 30th day before the date of the hearing and must remain posted until the date of the hearing.

(d) At the organizational meeting of the members of a nonprofit corporation authorized to restore, operate, and maintain a historic cemetery, a majority of the members present and voting at the meeting shall elect a board of directors of the nonprofit corporation. Directors and officers are not required to be members of the nonprofit corporation.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.011. POWERS AND DUTIES OF NONPROFIT CORPORATION; TRUST FUND. (a) A nonprofit corporation authorized to restore, operate, and maintain a historic cemetery may divide cemetery property into lots and subdivisions for cemetery purposes and charge

reasonable assessments on the property for the purposes of general improvement and maintenance of the cemetery.

(b) The nonprofit corporation may sell and convey the exclusive right of sepulture in any unsold plot in the cemetery if, before the sale and conveyance of any right of sepulture, the nonprofit corporation establishes a trust fund to provide for the perpetual maintenance of the cemetery.

(c) The county auditor of the county in which the cemetery is located shall act as the trustee of the trust fund.

(d) The nonprofit corporation shall deposit in the trust fund the amount required under the written plan incorporated in the court's order not later than the 20th day after the last day of the month in which the total purchase price of a plot has been paid in full.

(e) The nonprofit corporation shall file a monthly statement with the county auditor, signed by the president and secretary of the nonprofit corporation, that verifies that all funds required to be deposited in the trust fund during the preceding month have been deposited in the trust fund and that any income disbursed from the trust fund during the preceding month was used by the nonprofit corporation for the maintenance and care of the cemetery.

(f) The principal of a trust fund established under this section may not be reduced voluntarily, and it must remain inviolable.

(g) The trust fund and the trustee are governed by Title 9, Property Code.

(h) The trustee may receive and hold as part of the trust fund any property contributed as a gift or grant to the trust fund for the perpetual maintenance of the historic cemetery.

(i) The income of the trust fund may be applied in the manner the directors of the nonprofit corporation determine to be for the best interest of the cemetery and may be used only for the maintenance and care of the cemetery.

(j) A district court of the county in which the historic cemetery is located shall appoint a suitable successor trustee of a trust fund established under this section if the county auditor resigns the position of trustee of the trust fund or fails to act as its trustee.

(k) The county auditor or other person who acts as the trustee of a trust fund established under this section is not civilly or

criminally liable for acts performed in the good faith administration of the trust fund.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.012. CREMATORY PROHIBITED. A nonprofit corporation authorized to restore, operate, and maintain a cemetery under this chapter may not construct, establish, or maintain a crematory.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.013. ADJACENT OR CONTIGUOUS CEMETERY. A nonprofit corporation authorized to restore, operate, and maintain a historic cemetery may not acquire land for cemetery purposes that is adjacent or contiguous to the cemetery unless the adjacent or contiguous land is operated as a perpetual care cemetery under Chapter 712. The nonprofit corporation may not petition the district court of the county in which the cemetery is located to remove the dedication with respect to all or any portion of the cemetery.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.014. CEMETERY OPEN TO PUBLIC. A historic cemetery restored, operated, and maintained by a nonprofit corporation under this chapter must remain open to the public.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.015. EXEMPTION. This chapter does not apply to:

(1) a perpetual care cemetery; or

(2) a family cemetery.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

CHAPTER 716. CREMATORIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 716.001. DEFINITIONS. In this chapter:

(1) "Authorizing agent" means a person authorized to dispose of a decedent's remains under Section 711.002.

(2) "Cemetery" has the meaning assigned by Section 711.001.

(3) "Commission" means the Texas Funeral Service Commission.

(4) "Cremated remains" means the recoverable human remains after the completion of the cremation process. The term may include the residue of any nonhuman matter cremated with the deceased human body including casket material, bridgework, eyeglasses, or other material.

(5) "Cremation" means the irreversible process of reducing human remains to bone fragments through direct flame, extreme heat, and evaporation. The term may include pulverization, which is the process of reducing identifiable bone fragments after cremation and processing granulated particles by manual or mechanical means.

(6) "Cremation chamber" means an enclosed retort used exclusively for cremation of human remains.

(7) "Cremation container" means a casket or other container designed to transport a deceased human body and for placement in a cremation chamber during cremation.

(8) "Cremation interment container" means a rigid outer container composed of concrete, steel, fiberglass, or similar material used for the ground burial of cremated remains that meets a cemetery's specifications.

(9) "Crematory" means a structure containing a retort used or intended to be used for cremation of human remains.

(10) "Crematory establishment" means a business that operates a crematory for which a license is required under Subchapter N, Chapter 651, Occupations Code.

(10-a) "First responder" has the meaning assigned by Section 421.095, Government Code.

(11) "Funeral director" has the meaning assigned by Section 651.001, Occupations Code.

(12) "Funeral establishment" has the meaning assigned by Section 651.001, Occupations Code.

(13) "Scattering area" means an area designated for scattering cremated remains. The term includes dedicated cemetery property on which cremated remains may be:

(A) mixed with or placed on top of soil or ground

cover; or

(B) commingled and buried in an underground receptacle.

(14) "Temporary container" means a receptacle composed of cardboard, plastic, or similar material designed to temporarily store cremated remains until the remains are placed in an urn or other permanent container.

(15) "Urn" means a container designed to permanently store cremated remains.

(16) "Veteran" means an individual who:

(A) has served in:

(i) the army, navy, air force, coast guard, or marine corps of the United States;

(ii) the state military forces as defined by Section 431.001, Government Code; or

(iii) an auxiliary service of one of those branches of the armed forces; and

(B) has been honorably discharged from the branch of the service in which the individual served.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 474 (H.B. 587), Sec. 1, eff. September 1, 2023.

Sec. 716.002. CREMATION RULES. The commission may adopt rules consistent with this chapter and Chapter 651, Occupations Code, to govern the cremation of human remains.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.003. LOCATION OF CREMATORY. (a) A crematory may be constructed on or adjacent to a perpetual care cemetery or adjacent to a funeral establishment.

(b) A crematory, other than a crematory registered with the commission on September 1, 2003, must:

(1) be adjacent to a perpetual care cemetery or funeral establishment; and

(2) be owned or operated by the person that owns or operates the perpetual care cemetery or funeral establishment.

(c) In this section, "adjacent to" means that a part of the property on which the crematory is to be constructed has a common boundary with:

(1) the perpetual care cemetery or property on which the funeral establishment is located; or

(2) a public easement, a utility easement, or a railroad right-of-way that has a common boundary with the perpetual care cemetery or property on which the funeral establishment is located.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.0035. ACCEPTANCE OF REMAINS. A crematory establishment may accept deceased human remains for refrigeration before it receives authorization to cremate the remains under Subchapter B.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 10, eff. September 1, 2009.

Sec. 716.004. WAITING PERIOD FOR CREMATION. (a) A crematory establishment may not cremate human remains within 48 hours of the time of death indicated on a death certificate unless the waiting period is waived in writing by:

(1) a justice of the peace or medical examiner of the county in which the death occurred; or

(2) a court order.

(b) A justice of the peace or medical examiner's office authorized to grant a waiver under Subsection (a) shall adopt a written policy for requesting a waiver under Subsection (a). In adopting the written policy, the justice of the peace or medical examiner's office shall consider how a person makes a request, and how the justice of the peace or medical examiner may process the request as quickly as possible. The written policy must outline the process of making a request for a waiver under Subsection (a) during regular business hours and outside of regular business hours, including on a weekend day or holiday.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 33(1), eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 237 (S.B. 292), Sec. 1, eff. May 29, 2015.

Sec. 716.005. CREMATORY ESTABLISHMENT PROCEDURES. A crematory establishment may adopt procedures not inconsistent with this chapter for the management and operation of a crematory.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.006. APPLICABILITY OF CHAPTER TO OTHER LAW. This chapter may not be construed to require a funeral director to perform any act not otherwise authorized by other law.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

SUBCHAPTER B. AUTHORIZATION REQUIREMENTS

Sec. 716.051. CREMATION AUTHORIZATION. Except as otherwise provided in this chapter, a crematory establishment may not cremate deceased human remains until it receives:

(1) a cremation authorization form signed by an authorizing agent; and

(2) a death certificate or other death record that indicates the deceased human remains may be cremated.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.052. CREMATION AUTHORIZATION FORM. (a) A cremation authorization form must:

(1) identify the deceased person and the time and date of death;

(2) include the name and address of the funeral director or other person that contracted to provide for the cremation;

(3) identify the authorizing agent and the relationship between the authorizing agent and the deceased person;

(4) include a statement by the authorizing agent that:

(A) the authorizing agent has the right to authorize the cremation of the deceased person and is not aware of any person with a superior or equal priority right; or

(B) if another person has an equal priority right to authorize cremation, the authorizing agent:

(i) has made all reasonable efforts but failed to contact that person and believes the person would not object to the cremation; and

(ii) agrees to indemnify and hold harmless the funeral establishment and the crematory establishment for any liability arising from performing the cremation without the person's authorization;

(5) authorize the crematory establishment to cremate the human remains;

(6) declare that to their knowledge the human remains do not contain a pacemaker or any other material or implant that may potentially be hazardous or cause damage to the cremation chamber or the person performing the cremation;

(7) include the name of the funeral establishment or other person authorized to receive the cremated remains from the crematory establishment;

(8) detail the manner of permanent disposition of the cremated remains, if known;

(9) list any items of value delivered to the crematory establishment along with the human remains and include instructions on the handling of the items;

(10) specify whether the authorizing agent has arranged for a viewing of the deceased person or service with the deceased person present before cremation and the date and time of the viewing or service; and

(11) include the signature of the authorizing agent attesting to the accuracy of all representations contained on the cremation authorization form.

(b) A cremation authorization form must include a written notice to the authorizing agent that:

(1) the authorizing agent assumes responsibility for the disposition of the cremated remains; and

(2) the crematory establishment may:

(A) release to the authorizing agent, in person, the cremated remains of the deceased person;

(B) ship the cremated remains to the authorizing agent if the agent authorizes shipment and provides a shipping address on the authorization form; or

(C) dispose of the cremated remains in accordance with this chapter not earlier than the 121st day following the date of cremation if the cremated remains have not been claimed by the authorizing agent.

(c) A funeral director or other representative of a funeral establishment that contracts to provide for the cremation of deceased human remains must sign the cremation authorization form.

(d) A crematory establishment shall provide a cremation authorization form to an authorizing agent on request.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.053. DELEGATION OF CREMATION AUTHORIZATION AUTHORITY. (a) An authorizing agent may delegate to a representative in writing the authority to execute a cremation authorization form.

(b) An authorizing agent's written delegation of authority must be notarized and include:

(1) the name and address of the authorizing agent and the relationship of the authorizing agent to the deceased person;

(2) the name and address of the representative; and

(3) an acknowledgment by the authorizing agent that the representative may serve as the authorizing agent and execute the cremation authorization form.

(c) A crematory establishment is not liable in a civil action for relying on a cremation authorization form executed by a representative of the authorizing agent to whom authority is delegated in accordance with this section.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.054. EXCEPTION; WRITTEN DIRECTIONS. (a) This section applies and a cremation authorization form is not required under this chapter if:

(1) the deceased person has left written directions for the disposition by cremation of the deceased person's human remains as provided by Section 711.002(g); and

(2) the authorizing agent refuses for any reason to sign a cremation authorization form.

(b) The crematory establishment may cremate the deceased person's human remains without receipt of a cremation authorization form signed by the authorizing agent if:

(1) cremation costs are paid; and

(2) the authorizing agent provides positive written identification that the human remains to be cremated are the human remains of the deceased person.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 11, eff. September 1, 2009.

SUBCHAPTER C. RECEIPT AND IDENTIFICATION OF REMAINS

Sec. 716.101. UNIDENTIFIED HUMAN REMAINS. (a) Except as provided by Subsection (b), a crematory establishment may not accept for cremation unidentified human remains.

(b) Notwithstanding any other provision of this chapter, a crematory establishment may accept for cremation unidentified human remains from a county on the order of:

(1) the county commissioners court; or

(2) a court located in the county.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 747 (S.B. 571), Sec. 1, eff. June 19, 2009.

Sec. 716.102. RECEIPT ACKNOWLEDGING ACCEPTANCE OF REMAINS. (a) A crematory establishment shall furnish to a representative of a funeral establishment who delivers deceased human remains to the crematory establishment a receipt that includes:

(1) the signature and printed name of the representative who delivered the remains;

(2) the date and time of the delivery;

(3) the type of cremation container in which the remains were delivered;

(4) the name of the funeral establishment or other entity that contracted to provide for the cremation;

(5) the name of the individual who received the human remains on behalf of the crematory; and

(6) the name of the deceased person.

(b) The crematory establishment shall retain a copy of the receipt required by Subsection (a) in the crematory establishment's records.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.103. IDENTIFICATION RESPONSIBILITY OF CREMATORY. (a) A crematory establishment shall place on the exterior of a cremation container a label with the deceased person's name as provided by the authorizing agent unless the crematory establishment knows the name is incorrect.

(b) A crematory establishment shall place, with the cremated remains, in the temporary container, urn, or other permanent container, a permanent metal identification disc, bracelet, or other item that can be used to identify the deceased person.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 12, eff. September 1, 2009.

Sec. 716.104. IDENTIFICATION RESPONSIBILITIES OF FUNERAL DIRECTOR OR ESTABLISHMENT. (a) Except as provided by Section 716.054, a funeral director or funeral establishment shall provide a signed written statement to a crematory establishment that the human remains delivered to the crematory establishment were positively identified as the deceased person listed on the cremation authorization form by the authorizing agent or a representative of the authorizing agent delegated as provided by Section 716.053.

(b) An authorizing agent or the delegated representative of the agent may identify a deceased person in person or by photograph. The authorizing agent may waive the right of identification.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 13, eff.

September 1, 2009.

SUBCHAPTER D. CREMATION PROCEDURES

Sec. 716.151. CREMATION CONTAINERS. (a) Human remains must be placed in a cremation container that:

(1) is made of combustible materials suitable for cremation;

(2) provides a complete covering of the body;

(3) is resistant to leakage or spillage;

(4) is rigid for easy handling; and

(5) protects the health and safety of crematory personnel.

(b) A crematory establishment may not remove human remains from a cremation container and must cremate the cremation container with the human remains.

(c) Except as provided by this section, a crematory establishment may not:

(1) require that deceased human remains be placed in a casket before cremation or that remains be cremated in a casket; or

(2) refuse to accept for cremation remains that have not been placed in a casket.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.152. CREMATION PROCESS. (a) A crematory establishment is not required to accept a cremation container that evidences leakage of human body fluids.

(b) A person other than a crematory establishment employee, the authorizing agent, or representatives delegated as provided by Section 716.053 and approved by the crematory establishment may not be present in a crematory area during:

(1) the cremation of deceased human remains; or

(2) the removal of the remains from the cremation chamber.

(c) Immediately before placing deceased human remains in a cremation chamber, a crematory establishment employee must verify and remove the identification label from the cremation container and place the label near the cremation chamber control panel until the cremation process is complete.

(d) To the extent practicable, the crematory establishment

shall remove all recoverable cremation residue from the cremation chamber following cremation and pulverize any bone fragments to a particle size of one-eighth inch or less as necessary. The crematory establishment shall remove and dispose of any other material included with the residue.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 14, eff. September 1, 2009.

Sec. 716.153. SIMULTANEOUS CREMATION. (a) A crematory establishment may not simultaneously cremate the deceased human remains of more than one person in the same cremation chamber unless authorized in writing by the authorizing agent of each deceased person.

(b) A crematory establishment is not civilly or criminally liable for commingling human remains during cremation if each authorizing agent provides a signed written statement authorizing the simultaneous cremation.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.154. PACEMAKERS. (a) A crematory establishment may not knowingly cremate deceased human remains containing a pacemaker or other potentially hazardous implant.

(b) An authorizing agent who knows of the existence of a pacemaker or other potentially hazardous implant in deceased human remains shall notify the funeral director and crematory establishment. The authorizing agent shall ensure that the pacemaker or other potentially hazardous implant is removed from the remains before cremation.

(c) If an authorizing agent discloses to the funeral director on the cremation authorization form the presence of a pacemaker or other potentially hazardous implant in the deceased human remains, the funeral director shall ensure that the pacemaker or other potentially hazardous implant is removed from the remains before delivering the remains to the crematory establishment.

(d) An authorizing agent or funeral director that violates

Subsection (b) or (c) is liable to the crematory establishment in a civil action for any damages resulting from cremation of the remains containing the pacemaker or other potentially hazardous implant.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.155. TEMPORARY CONTAINER OR URN. (a) A crematory establishment shall place the cremated remains with proper identification in a temporary container or urn unless otherwise instructed in writing by the authorizing agent.

(b) The crematory establishment may not commingle the cremated remains with other cremated remains or include any other object or material in the temporary container or urn unless authorized in writing by the authorizing agent unless otherwise provided by this chapter.

(c) A crematory establishment shall place a label on a temporary container that:

(1) discloses the temporary container is not intended for the permanent storage of cremated remains in a niche, crypt, cremation interment container, or interment space;

(2) includes the deceased person's name; and

(3) includes the name of the crematory establishment.

(d) A crematory establishment shall release all cremated remains to an authorizing agent, a representative delegated as provided by Section 716.053, or an employee of the funeral establishment if the authorizing agent authorized the release on the authorization form. Any cremated remains that do not fit in a temporary container or urn must be returned to the authorizing agent, representative, or employee in a separate temporary container that meets the requirements of this section.

(e) A crematory establishment may ship cremated remains only by a method with an internal tracking system that provides a receipt signed by the person accepting delivery. The outside of the container in which the cremated remains are placed for shipment must display a label that includes:

(1) the deceased person's name;

(2) the name of the crematory establishment; and

(3) a warning that the container is temporary, if a temporary container is used.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.156. RELEASE OF REMAINS. (a) A crematory establishment shall:

(1) release the cremated remains to a representative of the funeral establishment that delivered the deceased human remains to the crematory establishment;

(2) release the cremated remains to the person authorized to receive the remains on the cremation authorization form;

(3) ship the remains to the shipping address provided by the authorizing agent on the cremation authorization form not later than the 30th day following the date of cremation; or

(4) release the cremated remains according to written directions for the disposition by cremation of the deceased person's human remains as provided by Section 711.002(g).

(b) A crematory establishment shall furnish to a person who receives the cremated remains a receipt that includes:

(1) the date and time of release;

(2) the printed name of the person who receives the cremated remains;

(3) the name of the funeral establishment or other entity who contracted to provide for the cremation;

(4) the printed name of the person who released the cremated remains on behalf of the crematory establishment; and

(5) the name of the deceased person.

(c) A crematory establishment shall retain a copy of the receipt required by this section in the crematory establishment's records.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 15, eff. September 1, 2009.

Sec. 716.157. INCINERATION OF UNITED STATES FLAG OR STATE FLAG THROUGH CREMATION PROCESS. (a) A crematory establishment may incinerate through the cremation process and separately from human remains one or more United States flags or state flags at the request

of any person, including a family member of a deceased veteran, deceased first responder, or deceased spouse or child of a veteran or first responder for the purpose of spreading the ashes on the grave or memorial site of the veteran, first responder, spouse, or child. A crematory establishment may only incinerate a flag during the week preceding and the week after the following national holidays:

(1) Memorial Day;

(2) Flag Day; and

(3) Independence Day.

(b) The commission shall adopt rules necessary to implement this section. The rules must:

(1) establish guidelines on:

(A) crematory sanitation;

(B) the release of ashes from an incinerated United States flag or state flag to the person who requested incineration of the flag; and

(C) the disposal of ashes from an incinerated flag; and

(2) ensure that incineration of the flag is in accordance with 4 U.S.C. Section 8 and Chapter 3100, Government Code, as applicable.

Added by Acts 2023, 88th Leg., R.S., Ch. 474 (H.B. 587), Sec. 2, eff. September 1, 2023.

SUBCHAPTER E. DISPUTES AND LIABILITY

Sec. 716.201. CREMATION DISPUTE. (a) Until authorized by a valid court order, a crematory establishment, funeral establishment, cemetery, or other person may refuse to accept deceased human remains or to perform a cremation if the crematory establishment, funeral establishment, cemetery, or person is aware of:

(1) a dispute that has not been resolved or settled concerning the cremation of the remains;

(2) a reasonable basis for questioning any representation made by the authorizing agent; or

(3) any other lawful reason for refusing to accept or cremate the remains.

(b) A crematory establishment, funeral establishment, cemetery, or other person aware of any dispute concerning the release or disposition of the cremated remains may refuse to release the remains

until:

(1) the dispute has been resolved or settled; or

(2) authorized by a valid court order to release or dispose of the remains.

(c) A crematory establishment, funeral establishment, cemetery, or other person is not liable in a civil action or criminal prosecution for refusing to accept or cremate human remains in accordance with Subsection (a) or for refusing to release or dispose of or releasing or disposing of cremated remains in accordance with Subsection (b).

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.202. LIABILITY OF AUTHORIZING AGENT. An authorizing agent who signs a cremation authorization form is subject to Section 711.002(f) and attests to the truthfulness of the facts set forth in the form, including the identity of the deceased person and the agent's authority under this chapter and Section 711.002.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.203. LIABILITY OF CREMATORY ESTABLISHMENT, FUNERAL ESTABLISHMENT, FUNERAL DIRECTOR, CEMETERY, OR OTHER PERSON. (a) A crematory establishment, funeral establishment, funeral director, cemetery, or other person that contracts to provide for a cremation, accepts human remains, cremates human remains, or releases or disposes of the cremated remains as provided on a cremation authorization form is not criminally or civilly liable for performing the actions authorized.

(b) A crematory establishment or funeral establishment is not criminally or civilly liable for disposing of cremated remains after the 120th day after the date of cremation in accordance with this chapter if:

(1) the authorizing agent did not authorize shipment of the remains or provide a shipping address on the authorization form; and

(2) the authorizing agent did not claim the remains before the 121st day following the date of cremation.

(c) A crematory establishment is not liable in a civil action or criminal prosecution for any valuables delivered with human

remains if the crematory establishment exercises reasonable care in protecting the valuables.

(d) A crematory establishment, funeral establishment, funeral director, cemetery, or other person is not liable in a civil action for representations made by the authorizing agent or the agent's representative in the cremation authorization form.

(e) The commission may not initiate disciplinary action against a crematory establishment on the basis of a complaint based on the conduct of an employee, agent, or representative of the establishment that is:

(1) performed outside of the scope and authority of employment; or

(2) contrary to the written instructions of the crematory establishment.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.204. IMMUNITY FROM CRIMINAL AND CIVIL LIABILITY; WRITTEN DIRECTIONS. (a) In this section:

(1) "Cemetery organization" has the meaning assigned by Section 711.001.

(2) "Embalmer" has the meaning assigned by Section 651.001, Occupations Code.

(b) If Section 716.054(a) applies, a cemetery organization, a business operating a crematory or columbarium, a funeral director, an embalmer, or a funeral establishment is not criminally liable or liable in a civil action for:

(1) cremating the human remains of a deceased person; or

(2) carrying out the written directions of the deceased person.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 16, eff. September 1, 2009.

SUBCHAPTER F. RECORDS

Sec. 716.251. CREMATORY ESTABLISHMENT RECORDS. (a) A crematory establishment shall maintain a record at its place of business of each cremation. The record must contain:

(1) the name of the deceased person;

(2) the date of the cremation;

(3) the final disposition of the cremated remains; and

(4) any other document required by this chapter.

(b) A record must be kept on file at least until the fifth anniversary of the cremation.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

SUBCHAPTER G. DISPOSITION OF REMAINS

Sec. 716.301. TRANSPORT OF CREMATED REMAINS. On delivery of the cremated remains by a crematory establishment, an authorizing agent or the representative delegated by the authorizing agent as provided by Section 716.053 may transport the remains without a permit in any manner in this state and finally dispose of the cremated remains in accordance with this subchapter.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.302. DISPOSITION OF CREMATED REMAINS. (a) An authorizing agent shall provide to a crematory establishment a signed written statement disclosing the final disposition of the cremated remains, if known. The crematory establishment shall retain a copy of the statement in the crematory establishment's records.

(b) The authorizing agent is responsible for disposing of cremated remains.

(c) Not earlier than the 121st day following the date of cremation, if the authorizing agent or the agent's representative has not specified the final disposition of or claimed the cremated remains, the crematory establishment or funeral establishment, if the cremated remains have been released to an employee of the funeral establishment in accordance with the authorization form, may dispose of the cremated remains in accordance with this subchapter. The crematory establishment or funeral establishment, as applicable, shall retain a record of the disposition in the establishment's records.

(d) An authorizing agent is responsible for all reasonable expenses incurred in disposing of the cremated remains under Subsection (c).

(e) A person may dispose of cremated remains only:

(1) in a crypt, niche, grave, or scattering area of a dedicated cemetery;

(2) by scattering the remains over uninhabited public land, sea, or other public waterways in accordance with Section 716.304; or

(3) on private property as directed by the authorizing agent with the written consent of the property owner in accordance with Section 716.304.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.303. COMMINGLING OF REMAINS. Unless authorized in writing by the authorizing agent, a person may not:

(1) dispose of or scatter cremated remains in a manner or at a location that commingles the remains with other cremated remains, except by air over a scattering area or by sea; or

(2) place the cremated remains of more than one deceased person in the same urn or other container.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.304. SCATTERING REMAINS. A person may scatter cremated remains over uninhabited public land, over a public waterway or sea, or on the private property of a consenting owner. Unless the container is biodegradable, the cremated remains must be removed from the container before being scattered.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 17, eff. September 1, 2009.

SUBCHAPTER H. PENALTY

Sec. 716.351. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) cremates human remains without receipt of:

(A) a cremation authorization form signed by an authorizing agent; or

(B) written directions for the disposition by cremation of the deceased person's human remains as provided in Section 711.002(g);

(2) signs a cremation authorization form with actual knowledge that the form contains false or incorrect information; or

(3) represents to the public that the person may cremate human remains without being licensed as provided by Subchapter N, Chapter 651, Occupations Code.

(b) An offense under Subsection (a) is a Class B misdemeanor.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 18, eff. September 1, 2009.

TITLE 9. SAFETY
SUBTITLE A. PUBLIC SAFETY
CHAPTER 751. MASS GATHERINGS

Sec. 751.001. SHORT TITLE. This chapter may be cited as the Texas Mass Gatherings Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.002. DEFINITIONS. In this chapter:

(1) "Mass gathering" means a gathering:

(A) that is held outside the limits of a municipality;

(B) that attracts or is expected to attract:

(i) more than 2,500 persons; or

(ii) more than 500 persons, if 51 percent or more of those persons may reasonably be expected to be younger than 21 years of age and it is planned or may reasonably be expected that alcoholic beverages will be sold, served, or consumed at or around the gathering; and

(C) at which the persons will remain:

(i) for more than five continuous hours; or

(ii) for any amount of time during the period beginning at 10 p.m. and ending at 4 a.m.

(2) "Person" means an individual, group of individuals, firm, corporation, partnership, or association.

(3) "Promote" includes organize, manage, finance, or hold.

(4) "Promoter" means a person who promotes a mass gathering.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 553, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 692 (S.B. 270), Sec. 1, eff. June 17, 2005.

Sec. 751.0021. APPLICABILITY TO CERTAIN HORSE AND GREYHOUND RACES.

(a) This chapter applies to a horse or greyhound race that attracts or is expected to attract at least 100 persons, except that this chapter does not apply if the race is held at a location at which pari-mutuel wagering is authorized under Subtitle A-1, Title 13, Occupations Code (Texas Racing Act).

(b) This section does not legalize any activity prohibited under the Penal Code or other state law.

Added by Acts 2015, 84th Leg., R.S., Ch. 1274 (S.B. 917), Sec. 1, eff. September 1, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 2.05, eff. April 1, 2019.

Sec. 751.003. PERMIT REQUIREMENT. A person may not promote a mass gathering without a permit issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.004. APPLICATION PROCEDURE. (a) At least 45 days before the date on which a mass gathering will be held, the promoter shall file a permit application with the county judge of the county in which the mass gathering will be held.

(b) The application must include:

(1) the promoter's name and address;

(2) a financial statement that reflects the funds being supplied to finance the mass gathering and each person supplying the funds;

(3) the name and address of the owner of the property on which the mass gathering will be held;

(4) a certified copy of the agreement between the promoter and the property owner;

(5) the location and a description of the property on which the mass gathering will be held;

(6) the dates and times that the mass gathering will be held;

(7) the maximum number of persons the promoter will allow to attend the mass gathering and the plan the promoter intends to use to limit attendance to that number;

(8) the name and address of each performer who has agreed to appear at the mass gathering and the name and address of each performer's agent;

(9) a description of each agreement between the promoter and a performer;

(10) a description of each step the promoter has taken to ensure that minimum standards of sanitation and health will be maintained during the mass gathering;

(11) a description of all preparations being made to provide traffic control, to ensure that the mass gathering will be conducted in an orderly manner, and to protect the physical safety of the persons who attend the mass gathering;

(12) a description of the preparations made to provide adequate medical and nursing care; and

(13) a description of the preparations made to supervise minors who may attend the mass gathering.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.005. INVESTIGATION. (a) After a permit application is filed with the county judge, the county judge shall send a copy of the application to the county health authority, the county fire marshal or the person designated under Subsection (c), and the sheriff.

(b) The county health authority shall inquire into preparations

for the mass gathering. At least five days before the date on which the hearing prescribed by Section 751.006 is held, the county health authority shall submit to the county judge a report stating whether the health authority believes that the minimum standards of health and sanitation prescribed by state and local laws, rules, and orders will be maintained.

(c) The county fire marshal shall investigate preparations for the mass gathering. If there is no county fire marshal in that county, the commissioners court shall designate a person to act under this section. At least five days before the date on which the hearing prescribed by Section 751.006 is held, the county fire marshal or the commissioners court designee shall submit to the county judge a report stating whether the fire marshal or designee believes that the minimum standards for ensuring public fire safety and order as prescribed by state and local laws, rules, and orders will be maintained.

(d) The sheriff shall investigate preparations for the mass gathering. At least five days before the date on which the hearing prescribed by Section 751.006 is held, the sheriff shall submit to the county judge a report stating whether the sheriff believes that the minimum standards for ensuring public safety and order that are prescribed by state and local laws, rules, and orders will be maintained.

(e) The county judge may conduct any additional investigation that the judge considers necessary.

(f) The county health authority, county fire marshal or commissioners court designee, and sheriff shall be available at the hearing prescribed by Section 751.006 to give testimony relating to their reports.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 553, Sec. 2, eff. June 18, 1999.

Sec. 751.0055. DELEGATION OF DUTIES OF COUNTY JUDGE. (a) The county judge of a county may file an order with the commissioners court of the county delegating to another county officer the duty to hear applications for a permit under this chapter. The order may provide for allowing the county officer to revoke a permit under Section 751.008.

(b) An order of a county officer acting under the delegated authority of the county judge in regard to a permit has the same effect as an order of the county judge.

(c) During the period in which the order is in effect, the county judge may withdraw the authority delegated in relation to an application and the county judge may hear the application.

(d) The county judge may at any time revoke an order delegating duties under this section.

Added by Acts 2001, 77th Leg., ch. 1, Sec. 1, effective March 26, 2001.

Sec. 751.006. HEARING. (a) Not later than the 10th day before the date on which a mass gathering will begin, the county judge shall hold a hearing on the application. The county judge shall set the date and time of the hearing.

(b) Notice of the time and place of the hearing shall be given to the promoter and to each person who has an interest in whether the permit is granted or denied.

(c) At the hearing, any person may appear and testify for or against granting the permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.007. FINDINGS AND DECISION OF COUNTY JUDGE. (a) After the completion of the hearing prescribed by Section 751.006, the county judge shall enter his findings in the record and shall either grant or deny the permit.

(b) The county judge may deny the permit if he finds that:

(1) the application contains false or misleading information or omits required information;

(2) the promoter's financial backing is insufficient to ensure that the mass gathering will be conducted in the manner stated in the application;

(3) the location selected for the mass gathering is inadequate for the purpose for which it will be used;

(4) the promoter has not made adequate preparations to limit the number of persons attending the mass gathering or to provide adequate supervision for minors attending the mass gathering;

(5) the promoter does not have assurance that scheduled performers will appear;

(6) the preparations for the mass gathering do not ensure that minimum standards of sanitation and health will be maintained;

(7) the preparations for the mass gathering do not ensure that the mass gathering will be conducted in an orderly manner and that the physical safety of persons attending will be protected;

(8) adequate arrangements for traffic control have not been provided; or

(9) adequate medical and nursing care will not be available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.008. PERMIT REVOCATION. (a) The county judge may revoke a permit issued under this chapter if the county judge finds that preparations for the mass gathering will not be completed by the time the mass gathering will begin or that the permit was obtained by fraud or misrepresentation.

(b) The county judge must give notice to the promoter that the permit will be revoked at least 24 hours before the revocation. If requested by the promoter, the county judge shall hold a hearing on the revocation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.009. APPEAL. A promoter or a person affected by the granting, denying, or revoking of a permit may appeal that action to a district court having jurisdiction in the county in which the mass gathering will be held.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1, Sec. 2, eff. March 26, 2001.

Sec. 751.010. RULES. (a) After notice and a public hearing, the executive commissioner of the Health and Human Services Commission shall adopt rules relating to minimum standards of health and sanitation to be maintained at mass gatherings.

(b) After notice and a public hearing, the Department of Public Safety shall adopt rules relating to minimum standards that must be maintained at a mass gathering to protect public safety and maintain order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1507, eff. April 2, 2015.

Sec. 751.011. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 751.003.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $1,000, confinement in the county jail for not more than 90 days, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.012. INSPECTIONS. (a) The county health authority may inspect a mass gathering during the mass gathering to ensure that the minimum standards of health and sanitation prescribed by state and local laws, rules, and orders are being maintained. If the county health authority determines a violation of the minimum standards is occurring, the health authority may order the promoter of the mass gathering to correct the violation.

(b) The county fire marshal or the person designated under Section 751.005(c) may inspect a mass gathering during the mass gathering to ensure that the minimum standards for ensuring public fire safety and order as prescribed by state and local laws, rules, and orders are being maintained. If the marshal or commissioners court designee determines a violation of the minimum standards is occurring, the marshal or designee may order the promoter of the mass gathering to correct the violation.

(c) The sheriff may inspect a mass gathering during the mass gathering to ensure that the minimum standards for ensuring public safety and order prescribed by state and local laws, rules, and orders are being maintained. If the sheriff determines a violation of the minimum standards is occurring, the sheriff may order the promoter of the mass gathering to correct the violation.

(d) A promoter who fails to comply with an order issued under this section commits an offense. An offense under this section is a Class C misdemeanor.

Added by Acts 1999, 76th Leg., ch. 553, Sec. 3, eff. June 18, 1999.

Sec. 751.013. INSPECTION FEES. (a) A commissioners court may establish and collect a fee for an inspection performed under Section 751.012. The fee may not exceed the amount necessary to defray the costs of performing the inspections. The fee shall be deposited into the general fund of the county.

(b) A commissioners court may use money collected under this section to reimburse the county department or, if a state agency performs the inspection on behalf of the county, the state agency, the cost of performing the inspection.

Added by Acts 1999, 76th Leg., ch. 553, Sec. 3, eff. June 18, 1999.

CHAPTER 752. HIGH VOLTAGE OVERHEAD LINES

Sec. 752.001. DEFINITIONS. In this chapter:

(1) "High voltage" means more than 600 volts measured between conductors or between a conductor and the ground.

(2) "Overhead line" means a bare or insulated electrical conductor installed above ground but does not include a conductor that is de-energized and grounded or that is enclosed in a rigid metallic conduit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.002. EXEMPTION FOR CERTAIN EMPLOYEES AND ACTIVITIES. (a) This chapter does not apply to the construction, reconstruction, operation, or maintenance by an authorized person of overhead electrical or communication circuits or conductors and their supporting structures and associated equipment that are part of a rail transportation system, an electrical generating, transmission, or distribution system, or a communication system.

(b) In this section, "authorized person" means:

(1) an employee of a light and power company, an electric

cooperative, or a municipality working on his employer's electrical system;

(2) an employee of a transportation system working on the system's electrical circuits;

(3) an employee of a communication utility;

(4) an employee of a state, county, or municipal agency that has authorized circuit construction on the poles or structures that belong to an electric power company, an electric cooperative, a municipal or transportation system, or a communication system;

(5) an employee of an industrial plant who works on the plant's electrical system; or

(6) an employee of an electrical or communications contractor who is working under the contractor's supervision.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.003. TEMPORARY CLEARANCE OF LINES. (a) A person, firm, corporation, or association responsible for temporary work or a temporary activity or function closer to a high voltage overhead line than the distances prescribed by this chapter must notify the operator of the line at least 48 hours before the work begins.

(b) A person, firm, corporation, or association may not begin the work, activity, or function under this section until the person, firm, corporation, or association responsible for the work, activity, or function and the owner or operator, or both, of the high voltage overhead line have negotiated a satisfactory mutual arrangement to provide temporary de-energization and grounding, temporary relocation or raising of the line, or temporary mechanical barriers to separate and prevent contact between the line and the material or equipment or the person performing the work, activity, or function.

(c) The person, firm, corporation, or association responsible for the work, activity, or function shall pay the operator of the high voltage overhead line the actual expense incurred by the operator in providing the clearance prescribed in the agreement. The operator may require payment in advance and is not required to provide the clearance until the person, firm, corporation, or association responsible for the work, activity, or function makes the payment.

(d) If the actual expense of providing the clearance is less

than the amount paid, the operator of the high voltage overhead line shall refund the surplus amount.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.004. RESTRICTION ON ACTIVITIES NEAR LINES. (a) Unless a person, firm, corporation, or association effectively guards against danger by contact with the line as prescribed by Section 752.003, the person, firm, corporation, or association, either individually or through an agent or employee, may not perform a function or activity on land, a building, a highway, or other premises if at any time it is possible that the person performing the function or activity may:

(1) move or be placed within six feet of a high voltage overhead line while performing the function or activity; or

(2) bring any part of a tool, equipment, machine, or material within six feet of a high voltage overhead line while performing the function or activity.

(b) A person, firm, corporation, or association may not require an employee to perform a function or activity prohibited by Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.005. RESTRICTION ON OPERATION OF MACHINERY AND PLACEMENT OF STRUCTURES NEAR LINES. Unless a person, firm, corporation, or association effectively guards against danger by contact with the line as prescribed by Section 752.003, the person, firm, corporation, or association, either individually or through an agent or employee, may not:

(1) erect, install, transport, or store all or any part of a house, building, or other structure within six feet of a high voltage overhead line;

(2) install, operate, transport, handle, or store all or any part of a tool, machine, or equipment within six feet of a high voltage overhead line; or

(3) transport, handle, or store all or any part of supplies or materials within six feet of a high voltage overhead line.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.007. CRIMINAL PENALTY. (a) A person, firm, corporation, or association or an agent or employee of a person, firm, corporation, or association commits an offense if the person, firm, corporation, association, agent, or employee violates this chapter.

(b) An offense under this section is punishable by a fine of not less than $100 or more than $1,000, confinement in jail for not more than one year, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.008. LIABILITY FOR DAMAGES. If a violation of this chapter results in physical or electrical contact with a high voltage overhead line, the person, firm, corporation, or association that committed the violation is liable to the owner or operator of the line for all damages to the facilities and for all liability that the owner or operator incurs as a result of the contact.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 753. FLAMMABLE LIQUIDS

Sec. 753.001. DEFINITIONS. In this chapter and in the rules adopted under this chapter:

(1) "Board" means the State Board of Insurance.

(2) "Bulk plant" means that portion of a property operated in conjunction with a retail service station where flammable liquids are received by tank vessel, tank car, or tank vehicle and are stored or blended in bulk for distribution by tank car, tank vehicle, or container.

(3) "Flammable liquid" means a liquid having a flash point below 140%A1 Fahrenheit and having a vapor pressure of not more than 40 pounds per square inch (absolute) at 100%A1 Fahrenheit. The term does not include a liquefied petroleum gas.

(4) "Mobile service unit" means a vehicle, tank truck, or other mobile device from which a flammable liquid used as motor fuel may be dispensed as an act of retail sale into the fuel tank of a

motor vehicle parked on an off-street parking facility.

(5) "Person" means an individual, firm, association, corporation, or other private entity.

(6) "Retail service station" means that portion of a property where a flammable liquid used as motor fuel is stored and dispensed as an act of retail sale from fixed equipment into the fuel tank of a motor vehicle. The term does not include a marina.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 223, eff. Sept. 1, 1991.

Sec. 753.0011. TRANSFER OF POWERS AND DUTIES; REFERENCES IN CHAPTER. The powers and duties assigned to the State Board of Insurance under this chapter are transferred to the Texas Commission on Fire Protection. All references in this chapter to the State Board of Insurance mean the Texas Commission on Fire Protection.

Added by Acts 1991, 72nd Leg., ch. 628, Sec. 7, eff. Sept. 1, 1991.

Sec. 753.002. MOBILE SERVICE UNITS. (a) The board shall adopt rules for the safe movement and operation of mobile service units and the safe dispensing of flammable liquids by mobile service units.

(b) A municipality may require a license for the operation of each mobile service unit in the municipality and may charge a reasonable license fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.003. FLAMMABLE LIQUID AT RETAIL SERVICE STATIONS. (a) The board shall administer this chapter through the state fire marshal and shall adopt rules for the safe storage, handling, and use of flammable liquids at retail service stations.

(b) The rules must substantially conform to the most recent published standards of the National Fire Protection Association, including standards in effect on or after August 1, 1989, for the storage, handling, and use of flammable liquids at retail service stations.

(c) In adopting rules, the board may use recognized standards,

including:

(1) standards recognized by the federal government;

(2) standards published by a nationally recognized standards-making organization; and

(3) specifications and instructions of manufacturers.

(d) This chapter or a rule adopted under this chapter does not prohibit or permit the prohibition of an unattended self-service gasoline station operation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 224, eff. Sept. 1, 1991.

Sec. 753.004. STORAGE TANKS. (a) Except as provided by Subsection (d), flammable liquids may not be stored at a retail service station in a tank that has a gross capacity of more than 60 gallons above the surface of the ground. The individual or combined capacity or size of an underground flammable liquid tank at a retail service station may not be limited.

(b) A retail service station may operate in conjunction with a bulk plant that has aboveground storage tanks if:

(1) there are separate underground tanks having a capacity of not less than 550 gallons each for final storage and dispensing of flammable liquids into motor vehicle fuel tanks; and

(2) any piping that connects the bulk plant storage tanks with the retail service station's underground tanks is equipped with a valve that is within the control of the retail service station operator and that is kept closed and locked when the underground tanks are not being filled.

(c) Each aboveground tank at a bulk plant that is operated in conjunction with a retail service station that is on the same or contiguous property must be equipped with emergency vents of the types and capacities prescribed by standards adopted under Section 753.003.

(d) Except as provided by Subsection (d-1), gasoline, diesel fuel, or kerosene may be stored in an aboveground storage tank at a retail service station located in an unincorporated area or in a municipality with a population of less than 5,000.

(d-1) A commissioners court of a county with a population of 3.3 million or more may by order limit the maximum volume of an

aboveground storage tank in an unincorporated area of the county in accordance with the county fire code.

(e) Under Subsection (d), a retail service station may have a tank for each separate grade of gasoline, diesel fuel, or kerosene, but may not have more than one tank for the same grade.

(f) A new aboveground storage tank may not be constructed within:

(1) 15 feet of an adjoining property line, including the full width of the right-of-way of a public road that runs between the property on which the proposed tank site is located and an adjoining property;

(2) 15 feet of the right-of-way line of a public road that is nearest to the proposed tank site;

(3) five feet of an established place of business or other building designated by board rule;

(4) 100 feet of the property line of any established school, hospital, nursing home, day-care center, preschool, or nursery school; or

(5) 15 feet of any fuel dispenser.

(g) In adopting rules under Section 753.003, the board shall include rules concerning the design, construction, and installation of tanks permitted to be used under Subsection (d). Except as provided by Subsection (f), the rules may not be more stringent than the standards of the National Fire Protection Association.

(h) The authority of a retail service station to store flammable liquids in an aboveground storage tank under Subsection (d) is not affected by a change in the boundaries or population of a municipality that occurs after the date the retail service station begins operation, unless prohibited by municipal ordinance. A municipal ordinance prohibiting the use of aboveground storage tanks may not take effect before the second anniversary of the date on which the ordinance was adopted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 225, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 902, Sec. 1, eff. June 16, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 388 (H.B. 239), Sec. 1, eff. June 10, 2015.

Sec. 753.005. VEHICLE REGULATIONS. The size and weight of and load carried by a vehicle used to transport or deliver flammable liquid from a point of origin to a point of destination may not be limited unless the limitation is in accordance with an applicable state motor vehicle and highway law and a municipal or county ordinance or rule in effect on September 1, 1969.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.006. UNIFORMITY AND CONFORMITY. (a) A county or municipality may not enact or enforce an ordinance or rule that is inconsistent with this chapter or the board's rules unless allowed by this chapter.

(b) If a municipality by ordinance adopted rules relating to mobile service units not later than 180 days after the board adopted rules relating to mobile service units and the rules adopted by the municipality are more restrictive than the board's rules, the rules are not invalid under Subsection (a).

(c) This chapter does not invalidate a municipal or county ordinance or rule that was in effect on September 1, 1969, and that relates to the storage of flammable liquids or relates to or prohibits mobile service units.

(d) The board rules must provide that a facility that is in service before the effective date of an applicable rule and that is not in strict conformity with the rule may continue in service if the facility does not constitute a distinct hazard to life or property. The rules may delineate the type of nonconformities that should be considered distinctly hazardous and the nonconformities that should be evaluated in light of local conditions. The rules must provide that a person who owns a facility affected by the rules receives reasonable notice of intent to evaluate the need for compliance and the time and place at which the person may appear to offer evidence on that issue.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.007. CITATION IN ACTION FOR DECLARATORY JUDGMENT. In an action for declaratory judgment on the validity or applicability of a rule adopted by the board under this chapter, citation shall be

served on the state fire marshal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 226, eff. Sept. 1, 1991.

Sec. 753.008. ENFORCEMENT. (a) The Texas Commission on Environmental Quality:

(1) has concurrent jurisdiction with the board regarding the inspection of initial installation and other administrative supervision of aboveground tanks authorized and regulated by this chapter;

(2) has the primary authority for inspection of initial installation of the tanks; and

(3) shall report all violations of this chapter in regard to aboveground storage tanks to the state fire marshal for enforcement proceedings.

(b) Under the board's supervision, the state fire marshal and each county fire marshal and municipal fire marshal shall enforce this chapter and the rules adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 227, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.253, eff. Sept. 1, 1995.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 986 (S.B. 766), Sec. 29, eff. September 1, 2025.

Sec. 753.009. INJUNCTIVE RELIEF. (a) The board may bring suit against a person who appears to be violating or threatening to violate a rule adopted under this chapter to restrain the person from violating or continuing to violate the rule.

(b) The suit shall be brought in the district court having jurisdiction in the county in which the violation or threat of violation occurs. At the board's request, the attorney general shall represent the board.

(c) In the suit, the court may grant the board any prohibitory or mandatory injunction the facts warrant, including a temporary restraining order, temporary injunction, or permanent injunction. The court may grant the relief without requiring a bond or other

undertaking.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.010. CIVIL PENALTY. (a) A person who violates a rule adopted under this chapter is liable to the state for a civil penalty of not more than $100 for each day the person violates the rule.

(b) The civil penalty is recoverable in a district court in:

(1) Travis County;

(2) the county in which the person resides; or

(3) the county in which the violation occurs.

(c) At the board's request, the attorney general shall institute and conduct a suit in the name of the state to recover the penalty.

(d) The civil penalty provided by this section may be in addition to or in lieu of the criminal penalty prescribed by Section 753.011.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.011. CRIMINAL PENALTY. (a) A person who is engaged in the business of storing, selling, or handling flammable liquids commits an offense if the person violates a rule adopted under this chapter.

(b) An offense under this section is a Class B misdemeanor.

(c) Each day a person continues to violate a rule adopted under this chapter constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 228, eff. Sept. 1, 1991.

CHAPTER 754. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

Sec. 754.011. DEFINITIONS. In this chapter:

(1) "Acceptance inspection" means an inspection performed at the completion of the initial installation or alteration of equipment and in accordance with the applicable ASME Code A17.1.

(2) "Accident" means an event involving equipment that results in death or serious bodily injury to a person.

(3) "Alteration" means a change in existing equipment. The term does not include testing, maintenance, repair, replacement, or a cosmetic change that does not affect the operational safety of the equipment or diminish the safety of the equipment below the level required by the ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable, at the time of alteration.

(4) "Annual inspection" means an inspection of equipment performed in a 12-month period in accordance with the applicable ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21. The term includes an acceptance inspection performed within that period.

(5) "ASCE" means the American Society of Civil Engineers.

(6) "ASCE Code 21" means the American Society of Civil Engineers Code 21 for people movers operated by cables, as it existed on January 1, 2004, or any subsequent revision of that code adopted after a review by the commission, as required by law.

(7) "ASME" means the American Society of Mechanical Engineers.

(8) "ASME Code A17.1" means the American Society of Mechanical Engineers Safety Code for Elevators and Escalators (Bi-national standard with CSA B44-2007), ASME A17.1/CSA-B44, as it existed on January 1, 2004, or any subsequent revision of that code adopted after a review by the commission, as required by law.

(9) "ASME Code A17.3" means the 2002 American Society of Mechanical Engineers Safety Code for Elevators and Escalators A17.3.

(10) "ASME Code A18.1" means the American Society of Mechanical Engineers Safety Code for Platform Lifts and Stairway Chairlifts A18.1, as it existed on January 1, 2004, or any subsequent revision of that code adopted after a review by the commission, as required by law.

(11) "Board" means the elevator advisory board.

(12) "Commission" means the Texas Commission of Licensing and Regulation.

(13) "Contractor" means a person engaged in the installation, alteration, testing, repair, or maintenance of equipment. The term does not include an employee of a contractor or a person engaged in cleaning or any other work performed on equipment that does not affect the operational safety of the equipment or diminish the safety of the equipment below the level required by the ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable.

(14) "Department" means the Texas Department of Licensing and Regulation.

(15) "Equipment" means an elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

(16) "Executive director" means the executive director of the department.

(17) "Industrial facility" means a facility to which access is primarily limited to employees or contractors working in that facility.

(18) "Inspector" means a person engaged in the inspection and witnessing of the tests specified in the adopted standards of ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable, to determine compliance with those standards.

(19) "Owner" means a person, company, corporation, authority, commission, board, governmental entity, institution, or other entity that holds title to a building or facility in which equipment regulated by this chapter is located.

(20) "Qualified historic building or facility" means a building or facility that is:

(A) listed in or eligible for listing in the National Register of Historic Places; or

(B) designated as a Recorded Texas Historic Landmark or State Archeological Landmark.

(21) "Related equipment" means:

(A) automatic equipment that is used to move a person in a manner that is similar to that of an elevator, an escalator, a chairlift, a platform lift, an automated people mover operated by cables, or a moving sidewalk; and

(B) hoistways, pits, and machine rooms for equipment.

(22) "Serious bodily injury" means a major impairment to bodily function or serious dysfunction of any bodily organ or part requiring medical attention.

(23) "Unit of equipment" means one elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts

2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 574 (S.B. 1729), Sec. 1, eff. June 16, 2007.
Acts 2007, 80th Leg., R.S., Ch. 574 (S.B. 1729), Sec. 4, eff. June 16, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 1, eff. September 1, 2013.

Sec. 754.0111. EXEMPTIONS. (a) This chapter does not apply to equipment in a private building for a labor union, trade association, private club, or charitable organization that has two or fewer floors.

(b) This chapter does not apply to an elevator located in a single-family dwelling, except as provided by Section 754.0141.

(c) This chapter does not apply to equipment located in a building owned and operated by the federal government.

(d) This chapter does not apply to equipment in an industrial facility, or in a grain silo, radio antenna, bridge tower, underground facility, or dam, to which access is limited primarily to employees of or working in that facility or structure.

Added by Acts 1995, 74th Leg., ch. 974, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 2, eff. September 1, 2013.

Sec. 754.0112. INSTITUTION OF HIGHER EDUCATION: EMPLOYEE DUTIES AND INSURANCE REQUIREMENT. (a) In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(b) Notwithstanding any contrary provision of this chapter, this chapter does not prohibit a registered elevator inspector or registered contractor from performing an activity regulated by this chapter or the rules adopted under this chapter if the inspector or contractor is performing the activity as an employee of an

institution of higher education.

(c) Notwithstanding any contrary provision of this chapter, this chapter does not prohibit a registered elevator inspector or registered contractor performing an activity described by Subsection (b) as an employee of an institution of higher education from providing written evidence of self-insurance coverage to satisfy an insurance requirement under this chapter or rules adopted under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 3, eff. September 1, 2013.

Sec. 754.012. ELEVATOR ADVISORY BOARD. (a) The elevator advisory board is composed of nine members appointed by the presiding officer of the commission, with the commission's approval, as follows:

(1) a representative of the insurance industry or a registered elevator inspector;

(2) a representative of equipment constructors;

(3) a representative of owners or managers of a building having fewer than six stories and having equipment;

(4) a representative of owners or managers of a building having six stories or more and having equipment;

(5) a representative of independent equipment maintenance companies;

(6) a representative of equipment manufacturers;

(7) a licensed or registered engineer or architect;

(8) a public member; and

(9) a public member with a physical disability.

(b) A member of the advisory board may be removed from the advisory board as provided by Section 51.209, Occupations Code.

(c) The presiding officer of the commission, with the commission's approval, shall appoint a presiding officer of the board to serve for two years.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.25(3), eff. September 1, 2021.

(e) A board member serves without compensation but is entitled to reimbursement for travel as provided for in the General Appropriations Act.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 4, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.25(3), eff. September 1, 2021.

Acts 2025, 89th Leg., R.S., Ch. 871 (S.B. 2075), Sec. 4, eff. September 1, 2025.

Sec. 754.013. BOARD DUTIES. To protect public safety and to identify and correct potential hazards, the board shall advise the commission on:

(1) the adoption of appropriate standards for the installation, maintenance, alteration, operation, testing, and inspection of equipment;

(2) the status of equipment used by the public in this state;

(3) sources of information relating to equipment safety;

(4) public awareness programs related to elevator safety, including programs for sellers and buyers of single-family dwellings with elevators, chairlifts, or platform lifts; and

(5) any other matter considered relevant by the commission.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 5, eff. September 1, 2013.

Sec. 754.014. STANDARDS ADOPTED BY COMMISSION. (a) The commission by rule shall adopt standards for the installation,

maintenance, alteration, operation, testing, removal from service, and inspection of equipment used by the public in:

(1) buildings owned or operated by the state, a state-owned institution or agency, or a political subdivision of the state; and

(2) buildings that contain equipment that is open to the general public, including a hotel, motel, apartment house, boardinghouse, church, office building, shopping center, or other commercial establishment.

(b) Standards adopted under commission rules may not contain requirements in addition to the requirements in the ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21. The standards must allow alteration of existing equipment if the alteration does not diminish the safety of the equipment below the level required by this chapter at the time of alteration.

(c) Standards adopted under commission rules must require equipment to comply with the installation requirements of the ASME Code A17.1, ASME Code A18.1, or ASCE Code 21 that was in effect and applicable on the date of installation of the equipment.

(d) Standards adopted under commission rules must require equipment to comply with the installation requirements of the ASME Code A17.3 that contains minimum safety standards for all equipment, regardless of the date of installation.

(e) The executive director may grant a delay for compliance with the codes and adopted standards until a specified time if the executive director determines that the noncompliance does not constitute a significant threat to passenger or worker safety. The accumulated total time of all delays for a specific noncompliant condition may not exceed three years, except as determined by the executive director.

(g) The executive director may grant a waiver of compliance from an applicable code requirement if the executive director finds that:

(1) the building in which the equipment is located is a qualified historic building or facility or the noncompliance is due to structural components of the building;

(2) noncompliance will not constitute a significant threat to passenger safety; and

(3) noncompliance, with adequate alternative safeguards, will not constitute a significant threat to worker safety.

(h) The executive director shall grant a waiver of compliance

if the noncompliance resulted from compliance with a municipal equipment construction code at the time of the original installation and the noncompliance does not pose imminent and significant danger.

(h-1) The executive director may grant a waiver of compliance with the firefighter's service provisions of the ASME Code A17.1 or the ASME Code A17.3 in an elevator that exclusively serves a vehicle parking garage in a building that:

(1) is used only for parking;

(2) is constructed of noncombustible materials; and

(3) is not greater than 75 feet in height.

(i) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 558, Sec. 23(3), eff. September 1, 2013.

(j) One application for a waiver or delay may contain all requests related to a unit of equipment.

(k) For purposes of determining the applicable standards and codes under this chapter, the date of installation or alteration of equipment is the date that the owner of the real property entered into a contract for the installation or alteration of the equipment. If that date cannot be established, the date of installation or alteration is the date of issuance of the municipal building permit under which the equipment was installed or altered or, if a municipal building permit was not issued, the date that electrical consumption began for the construction of the building in which the equipment was installed.

(l) Standards adopted under commission rules may include and be guided by revised versions of ASME Code A17.1, ASME Code A18.1, and ASCE Code 21, as appropriate.

(m) The executive director may on application of a person and in accordance with procedures adopted under commission rules, grant a variance to allow the installation of new technology if the new component, system, subsystem, function, or device is equivalent or superior to the standards adopted under commission rules.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 974, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1268, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 574 (S.B. 1729), Sec. 2, eff. June 16, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1181 (H.B. 3628), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 23(3), eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 423 (H.B. 3741), Sec. 1, eff. June 10, 2015.

Sec. 754.0141. STANDARDS FOR EQUIPMENT IN SINGLE-FAMILY DWELLINGS; REQUIRED INFORMATION. (a) Elevators, chairlifts, or platform lifts installed in a single-family dwelling on or after January 1, 2004, must comply with the ASME Code A17.1 or A18.1, as applicable, and must be inspected by a registered elevator inspector after the installation is complete. The inspector shall provide the dwelling owner a copy of the inspection report.

(b) The commission shall adopt rules containing minimum safety standards that must be used by registered elevator inspectors when inspecting elevators, chairlifts, and platform lifts installed in single-family dwellings.

(c) A municipality may withhold a certificate of occupancy for a dwelling or for the installation of the elevator or chairlift until the owner provides a copy of the inspection report to the municipality.

(d) A contractor is not required to report to the department any information concerning equipment in a single-family dwelling or the contractor's work on the equipment.

(e) On completing installation of equipment in a single-family dwelling, a contractor shall provide the dwelling owner with relevant information, in writing, about use, safety, and maintenance of the equipment, including the advisability of having the equipment periodically and timely inspected by a registered elevator inspector.

(f) An inspection by a registered elevator inspector of equipment in a single-family dwelling may be performed only at the request and with the consent of the owner. The owner of a single-family dwelling is not subject to Section 754.0231, 754.0232, 754.0233, 754.0234, or 754.0235.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 110 (S.B. 972), Sec. 1, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 7, eff. September 1, 2013.

Sec. 754.015. RULES. (a) The commission by rule shall provide for:

(1) an annual inspection and certification of the equipment covered by standards adopted under this chapter;

(2) enforcement of those standards;

(3) registration, including certification, of elevator inspectors;

(4) registration of contractors;

(5) the procedures by which a certificate of compliance is issued and displayed;

(6) notification to building owners, architects, and other building industry professionals regarding the necessity of annually inspecting equipment;

(7) approval of continuing education programs for registered elevator inspectors;

(8) standards of conduct for individuals who are registered under this chapter;

(9) general liability insurance written by an insurer authorized to engage in the business of insurance in this state or an eligible surplus lines insurer, as defined by Section 981.002, Insurance Code, as a condition of contractor registration with coverage of not less than:

(A) $1 million for each single occurrence of bodily injury or death; and

(B) $500,000 for each single occurrence of property damage;

(10) the submission and review of plans for the installation or alteration of equipment;

(11) continuing education requirements for renewal of

contractor registration;

(12) maintenance control programs, maintenance, repair, and parts manuals, and product-specific inspection, testing, and maintenance procedures;

(13) the method and manner of reporting accidents and reportable conditions to the department; and

(14) an owner's designation of an agent for purposes of this chapter.

(b) The commission by rule may not:

(1) require inspections of equipment to be made more often than every 12 months, except as provided by Subsection (c); or

(2) require persons to post a bond or furnish insurance or to have minimum experience or education as a condition of certification or registration, except as otherwise provided by this chapter.

(c) The commission by rule may require a reinspection or recertification of equipment if:

(1) the equipment has been altered;

(2) the equipment poses a significant threat to passenger or worker safety; or

(3) an annual inspection report indicates an existing violation has continued longer than permitted in a delay granted by the executive director.

(d) The executive director may charge a reasonable fee as set by the commission for:

(1) registering or renewing registration of an elevator inspector;

(2) registering or renewing registration of a contractor;

(3) applying for a certificate of compliance;

(4) filing an inspection report as required by Section 754.019(a)(3), 30 days or more after the date the report is due, for each day the report remains not filed after the date the report is due;

(5) submitting for review plans for the installation or alteration of equipment;

(6) reviewing and approving continuing education providers and courses for renewal of elevator inspector and contractor registrations;

(7) applying for a waiver, new technology variance, or delay;

(8) attending a continuing education program sponsored by the department for registered elevator inspectors; and

(9) applying to remove equipment from service.

(e) The commission by rule may require or permit inspection reports, other documents, and fees to be filed in a manner prescribed by the department, including electronically.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 574 (S.B. 1729), Sec. 3, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 2, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 8, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 423 (H.B. 3741), Sec. 2, eff. June 10, 2015.

Acts 2025, 89th Leg., R.S., Ch. 1087 (H.B. 3848), Sec. 1, eff. September 1, 2025.

Sec. 754.016. INSPECTION REPORTS AND CERTIFICATES OF COMPLIANCE. (a) Inspection reports and certificates of compliance required under this chapter must cover all equipment in a building or structure appurtenant to the building, including a parking facility, that are owned by the same person or persons.

(b) A registered elevator inspector shall issue an inspection report to the owner not later than the fifth calendar day after the date of inspection in accordance with the procedures established by commission rule.

(c) The executive director shall issue a certificate of compliance to the owner.

(d) The commission by rule shall:

(1) require that a certificate of compliance for any equipment be posted in a publicly visible area of the building; and

(2) determine what constitutes a "publicly visible area" under Subdivision (1).

(e) The department shall prescribe the format and the required information contained in the inspection reports, the certificates of compliance, and other documents.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 9, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 10.002, eff. September 1, 2015.

Sec. 754.017. REGISTERED ELEVATOR INSPECTORS. (a) In order to inspect equipment, an individual must:

(1) be registered with the department;

(2) attend educational programs approved by the department;

(3) be certified as an inspector in accordance with the rules adopted by the commission;

(4) comply with the continuing education requirements established by commission rule for registration renewal; and

(5) pay all applicable fees.

(b) A person assisting a registered elevator inspector and working under the direct, on-site supervision of the inspector is not required to be registered.

(c) A registration expires on the first anniversary of the date of issuance.

(d) A registered elevator inspector may not inspect equipment if the inspector or the inspector's employer has a financial or personal conflict of interest or the appearance of impropriety related to the inspection of that equipment.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts

2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 5, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 6, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 10, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 11, eff. September 1, 2013.

Sec. 754.0171. CONTRACTOR REGISTRATION. (a) A person may not install, repair, alter, test, or maintain equipment without registering as a contractor with the department as required by this chapter.

(b) A contractor shall submit an application for registration or renewal of registration, as applicable, and pay appropriate fees to the department. The registration application form shall require:

(1) information concerning the background, experience, and identity of the applicant;

(2) designation of and information regarding the responsible party or parties under Section 754.0173; and

(3) documentation of fulfillment of the continuing education requirements for renewal of registration, if applicable.

(c) A registration expires on the first anniversary of the date of issuance.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 558, Sec. 23(4), eff. September 1, 2013.

(e) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 558, Sec. 23(4), eff. September 1, 2013.

(f) Installation, repair, alteration, testing, and maintenance standards for contractors must be consistent with ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, and ASCE Code 21.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 3, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 12, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 23(4), eff. September 1, 2013.

Sec. 754.0172. INSPECTION FEE. The amount charged for an inspection or the performance of an inspection of equipment under this chapter may not be contingent on the existence of a maintenance contract between the person performing the inspection and any other person.

Added by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995. Renumbered from Health & Safety Code Sec. 754.0171 and amended by Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 13, eff. September 1, 2013.

Sec. 754.0173. DESIGNATION OF RESPONSIBLE PARTY OR PARTIES. (a) Each contractor who registers with the department must designate at least one but not more than two responsible parties.

(b) A responsible party designated under this section must:

(1) have a minimum of three years of elevator contractor experience related to elevator installation, repair, and maintenance; and

(2) comply with continuing education requirements as determined by commission rule in order for an elevator contractor to renew an elevator contractor registration.

(c) The commission shall adopt rules regarding documentation of the completion of the continuing education to accompany the application for registration.

(d) A responsible party may be added to or removed from the registration at any time by providing written notice to the department. If a responsible party is added to a registration, the written notice must include evidence that the responsible party meets the requirements of this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 4,

eff. June 17, 2011.

Sec. 754.018. POWERS OF MUNICIPALITIES. Subject to Section 754.014(h), if a municipality operates a program for the installation, maintenance, alteration, inspection, testing, or certification of equipment, this chapter shall not apply to the equipment in that municipality, provided that the standards of installation, maintenance, alteration, inspection, testing, and certification are at least equivalent to those contained in this chapter.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 16, eff. September 1, 2013.

Sec. 754.019. DUTIES OF OWNERS. (a) The owner shall:

(1) have the equipment inspected annually by a registered elevator inspector, unless the equipment has been removed from service in accordance with commission rules;

(2) obtain an inspection report from the inspector evidencing that all equipment in a building on the real property was inspected in accordance with this chapter and rules adopted under this chapter;

(3) file with the executive director each inspection report, and all applicable fees, not later than the 30th calendar day after the date on which an inspection is made under this chapter;

(4) display the certificate of compliance for the equipment in a publicly visible area as defined by commission rule; and

(5) maintain the equipment in compliance with the standards and codes adopted under commission rules.

(b) When an inspection report is filed, the owner shall submit to the executive director, as applicable:

(1) verification that any deficiencies in the registered elevator inspector's report have been remedied or that a bona fide

contract to remedy the deficiencies has been entered into; or

(2) any application for delay or waiver of an applicable standard.

(c) For the purpose of determining timely filing under Subsection (a)(3) and Section 754.016(b), an inspection report and filing fees are considered filed on the earlier of:

(1) the date of personal delivery;

(2) the date of postmark by United States mail if properly addressed to the executive director;

(3) the date of deposit with a commercial courier service, if properly addressed to the executive director; or

(4) the date of electronic submission, if filed in an electronic manner prescribed by the department.

(d) A fee may not be charged or collected for a certificate of compliance for an institution of higher education as defined in Section 61.003, Education Code.

(e) An owner shall report to the department each accident involving equipment not later than 24 hours following the accident.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 9, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 17, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 18, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 423 (H.B. 3741), Sec. 3, eff. June 10, 2015.

Acts 2025, 89th Leg., R.S., Ch. 1087 (H.B. 3848), Sec. 2, eff. September 1, 2025.

Sec. 754.020. CHIEF ELEVATOR INSPECTOR. The executive director may appoint a chief elevator inspector to administer the equipment inspection and registration program. The chief elevator inspector:

(1) may not have a financial or commercial interest in the

manufacture, maintenance, repair, inspection, installation, or sale of equipment; and

(2) must possess the certification or obtain the certification required under Section 754.017 within six months after becoming chief elevator inspector.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 10, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 19, eff. September 1, 2013.

Sec. 754.021. LIST OF REGISTERED ELEVATOR INSPECTORS AND CONTRACTORS; PERSONNEL. The executive director shall:

(1) compile a list of elevator inspectors and contractors who are registered with the department; and

(2) employ personnel who are necessary to enforce this chapter.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, 26.006, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 11, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 20, eff. September 1, 2013.

Sec. 754.0231. INSPECTIONS AND INVESTIGATIONS. (a) Except as provided by Subsection (b), the department may conduct an inspection or investigation of equipment regulated under this chapter in accordance with Chapter 51, Occupations Code. The department shall be granted access to any location in the building that is inaccessible to the public in order to conduct a full inspection or

investigation of the equipment.

(b) If there is good cause for the executive director to believe that equipment on the property poses an imminent and significant danger or that an accident involving equipment occurred on the property, the executive director or the executive director's designee may at any time enter the property to inspect the equipment or investigate the danger or accident. The executive director or the executive director's designee must be granted access to any location in the building that is inaccessible to the public in order to conduct a full inspection or investigation.

Added by Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 21, eff. September 1, 2013.

Sec. 754.0232. REGISTRATION PROCEEDINGS. (a) The commission or executive director may deny, suspend, or revoke a registration under this chapter and may assess an administrative penalty for:

(1) obtaining registration by fraud or false representation;

(2) falsifying a report submitted to the executive director; or

(3) violating this chapter or a rule adopted under this chapter.

(b) Proceedings for the denial, suspension, or revocation of a registration and appeals from these proceedings are governed by Chapter 2001, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 21, eff. September 1, 2013.

Sec. 754.0233. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The attorney general or the executive director may institute an action for injunctive relief to prevent or restrain a violation or threatened violation of this chapter or a rule adopted under this chapter.

(b) The attorney general or the executive director may institute an action to collect a civil penalty from a person that appears to be violating or threatening to violate this chapter or a rule adopted under this chapter. A civil penalty assessed under this

subsection may not exceed $5,000 per day for each violation.

(c) An action filed under this section must be filed in a district court in Travis County.

(d) The attorney general and the department may recover reasonable expenses incurred in obtaining injunctive relief or civil penalties under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Added by Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 21, eff. September 1, 2013.

Sec. 754.0234. EMERGENCY ORDERS. (a) The executive director may issue an emergency order as necessary to enforce this chapter if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety.

(b) The executive director shall issue an emergency order in accordance with Chapter 51, Occupations Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 21, eff. September 1, 2013.

Sec. 754.0235. ORDERS TO DISCONNECT POWER TO OR LOCK OUT EQUIPMENT. (a) An emergency order issued in accordance with Section 754.0234 may also direct an owner to disconnect power to or lock out equipment if:

(1) the department determines imminent and significant danger to passenger or worker safety exists if action is not taken immediately; or

(2) an annual inspection has not been performed in more than two years.

(b) If an emergency order to disconnect power or lock out equipment is issued, the owner may have the power reconnected or the equipment unlocked only if a registered elevator inspector or contractor or a department representative verifies in writing to the department that the imminent and significant danger has been removed by repair, replacement, or other means.

(c) If an emergency order to disconnect power or lock out equipment is issued and the owner later notifies the department that

the imminent and significant danger no longer exists, the executive director or the executive director's designee shall, after the requirements of Subsection (b) are satisfied, issue written permission to reconnect power or unlock the equipment and notify the owner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 21, eff. September 1, 2013.

Sec. 754.025. APPLICATION OF CERTAIN LAW. Sections 51.401 and 51.4041, Occupations Code, do not apply to this chapter, except those sections do apply to Sections 754.017 and 754.0171.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 22, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 586 (H.B. 3742), Sec. 3, eff. September 1, 2015.

Sec. 754.026. DISCLOSURE OF E-MAIL ADDRESS. Notwithstanding any other law, an e-mail address provided to the department relating to an inspection or review of plans under this chapter is not confidential and is subject to disclosure under Chapter 552, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 5.001, eff. September 1, 2019.

CHAPTER 755. BOILERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 755.001. DEFINITIONS. In this chapter:

(1) "Alteration" means a substantial change in an original design.

(2) "Board" means the board of boiler rules.

(3) "Boiler" means:

(A) a heating boiler;

(B) a nuclear boiler;

(C) a power boiler;

(D) an unfired steam boiler; or

(E) a process steam generator.

(4) "Certificate inspection" means the required internal or external boiler inspection, the report of which is used by the chief inspector to decide whether to issue a certificate of operation.

(5) "Certificate of operation" means a certificate issued by the executive director to allow the operation of a boiler.

(6) "Commission" means the Texas Commission of Licensing and Regulation.

(7) "Department" means the Texas Department of Licensing and Regulation.

(7-a) "Executive director" means the executive director of the department.

(8) "External inspection" means an inspection of the exterior of a boiler and its appurtenances that is made, if possible, while the boiler is in operation.

(9) "Heating boiler" means a steam heating boiler, hot water heating boiler, hot water supply boiler, or potable water heater that is directly fired with oil, gas, solar energy, electricity, coal, or other solid or liquid fuel.

(10) "High-temperature water boiler" means a water boiler designed for operation at pressures exceeding 160 pounds per square inch or temperatures exceeding 250 degrees Fahrenheit.

(11) "Hot water heating boiler" means a boiler designed for operation at a pressure not exceeding 160 pounds per square inch or temperatures not exceeding 250 degrees Fahrenheit at or near the boiler outlet.

(12) "Hot water supply boiler" means a boiler designed for operation at pressures not exceeding 160 pounds per square inch or temperatures not exceeding 250 degrees Fahrenheit at or near the boiler outlet if the boiler's:

(A) heat input exceeds 200,000 British thermal units per hour;

(B) water temperature exceeds 210 degrees Fahrenheit; or

(C) nominal water-containing capacity exceeds 120 gallons.

(13) "Inspection agency" means an authorized inspection

agency providing inspection services.

(14) "Inspector" means the chief inspector, a deputy inspector, or an authorized inspector.

(15) "Internal inspection" means a complete and thorough inspection of the interior waterside and fireside areas of a boiler as construction allows.

(16) "Nuclear boiler" means a nuclear power plant system, including its pressure vessels, piping systems, pumps, valves, and storage tanks, that produces and controls an output of thermal energy from nuclear fuel and the associated systems essential to the function of the power system.

(17) "Portable boiler" means a boiler primarily intended for use at a temporary location.

(18) "Potable water heater" means a boiler designed for operation at pressures not exceeding 160 pounds per square inch and water temperatures not exceeding 210 degrees Fahrenheit if the boiler's:

(A) heat input exceeds 200,000 British thermal units per hour; or

(B) nominal water-containing capacity exceeds 120 gallons.

(19) "Power boiler" means:

(A) a high-temperature water boiler; or

(B) a boiler in which steam is generated at a pressure exceeding 15 pounds per square inch for a purpose external to the boiler.

(20) "Process steam generator" means an evaporator, heat exchanger, or vessel in which steam is generated by the use of heat resulting from the operation of a processing system that contains a number of pressure vessels, such as used in the manufacture of chemical and petroleum products.

(21) "Repair" means the work necessary to return a boiler to a safe and satisfactory operating condition without changing the original design.

(22) "Safety appliance" means a safety device such as a safety valve or a safety relief valve for a boiler provided to diminish the danger of accidents.

(23) "Standard boiler" means a boiler that bears a Texas stamp, the stamp of a nationally recognized engineering professional society, or the stamp of any jurisdiction that has adopted a standard

of construction equivalent to the standard required by the executive director.

(23-a) "Steam cooker" means a steam heating boiler that is:

(A) designed to steam cook food;

(B) operated at a pressure not exceeding five pounds per square inch; and

(C) equipped with a safety appliance operated at a pressure not exceeding five pounds per square inch.

(24) "Steam heating boiler" means a boiler designed for operation at pressures not exceeding 15 pounds per square inch.

(25) "Unfired steam boiler" means an unfired pressure vessel in which steam is generated. The term does not include:

(A) vessels known as evaporators or heat exchangers; or

(B) vessels in which steam is generated by using the heat that results from the operation of a processing system that contains a number of pressure vessels, as used in the manufacture of chemical and petroleum products.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 229, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 352, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 5.001, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 88 (S.B. 506), Sec. 1, eff. May 18, 2013.

Acts 2017, 85th Leg., R.S., Ch. 284 (H.B. 3257), Sec. 1, eff. May 29, 2017.

SUBCHAPTER B. BOARD OF BOILER RULES

Sec. 755.011. COMPOSITION OF BOARD. (a) The Board of Boiler Rules is in the department.

(b) The board is composed of the following 11 members appointed by the presiding officer of the commission, with the commission's approval:

(1) three members representing persons who own or use boilers in this state;

(2) three members representing companies that insure boilers in this state;

(3) one member representing boiler manufacturers or installers;

(4) one member representing organizations that repair or alter boilers in this state;

(5) one member representing a labor union; and

(6) two public members.

(c) All members except the members appointed under Subsection (b)(6) must have experience with boilers. To the extent possible, at least four members should be professional engineers registered in this state.

(d) Repealed by Acts 2025, 89th Leg., R.S., Ch. 487 (S.B. 917), Sec. 2(1), eff. September 1, 2025.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 18, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 816, Sec. 5.002, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 457 (H.B. 2548), Sec. 1, eff. September 1, 2009.

Acts 2025, 89th Leg., R.S., Ch. 487 (S.B. 917), Sec. 2(1), eff. September 1, 2025.

Sec. 755.012. TERMS. Board members serve for staggered six-year terms, with the terms of three members expiring January 31 of each odd-numbered year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 755.013. PRESIDING OFFICER. The chief inspector serves as presiding officer of the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 5.003, eff. Sept. 1, 2003.

Sec. 755.014. REMOVAL OF BOARD MEMBERS; VACANCY. (a) The commission may remove a board member for inefficiency or neglect of official duty.

(b) A board member's office becomes vacant on the resignation,

death, suspension, or incapacity of the member. The presiding officer of the commission shall appoint, in the same manner as the original appointment, a person to serve for the remainder of the unexpired term.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 5.004, eff. Sept. 1, 2003.

Sec. 755.015. COMPENSATION. A board member may not receive a salary but is entitled to reimbursement for actual expenses incurred in performing board duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 755.017. POWERS AND DUTIES. The board shall advise the commission in the adoption of definitions and rules relating to the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and their appurtenances.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 5.006, eff. Sept. 1, 2003.

SUBCHAPTER C. BOILER REGISTRATION AND INSPECTION

Sec. 755.021. REGISTRATION AND CERTIFICATE. Except as provided by Section 755.022, each boiler operated in this state must:

(1) be registered with the department; and

(2) have qualified for a current certificate of operation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 755.022. EXEMPTIONS FOR CERTAIN BOILERS. (a) This chapter does not apply to:

(1) boilers owned or operated by the federal government;

(2) pressure vessels or process steam generators, other than steam collection or liberation drums of process steam generators;

(3) manually fired miniature boilers that:

(A) are constructed or maintained for locomotives, boats, tractors, or stationary engines only as a hobby for exhibition, recreation, education, or historical purposes and not for commercial use;

(B) have an inside diameter of 12 inches or less or a grate area of two square feet or less; and

(C) are equipped with a safety valve of adequate size, a water level indicator, and a pressure gauge;

(4) boilers that are designed for operation only at atmospheric pressure and that are equipped with two independent means to prevent the buildup of pressure;

(5) steam cookers;

(6) espresso machines;

(7) boilers that are a component of a medical device regulated by the United States Food and Drug Administration and are of a size that does not exceed:

(A) an inside shell diameter of 16 inches;

(B) 20 square feet of heating surface, unless the boiler is electric;

(C) five cubic feet of gross volume, excluding the casing and insulation; and

(D) an allowable working pressure of 100 pounds per square inch gauge; or

(8) unfired pressure vessels in an autoclave.

(b) Heating boilers used to heat buildings that are exclusively for residential use and that have accommodations for not more than four families are exempt from Sections 755.025, 755.027, 755.029, and 755.030.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 498, Sec. 1, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 352, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 88 (S.B. 506), Sec. 2, eff. May 18, 2013.

Acts 2017, 85th Leg., R.S., Ch. 284 (H.B. 3257), Sec. 2, eff. May 29, 2017.

Acts 2025, 89th Leg., R.S., Ch. 28 (S.B. 1185), Sec. 1, eff. September 1, 2025.

Sec. 755.023. APPOINTMENT OF INSPECTORS AND OTHER PERSONNEL. (a) The executive director shall appoint a chief inspector of boilers to administer the boiler program. The chief inspector must:

(1) be a resident of this state and a citizen of the United States;

(2) have at least five years' experience in the construction, installation, inspection, operation, maintenance, or repair of boilers; and

(3) pass a written examination that demonstrates the necessary ability to judge the safety of boilers.

(b) The chief inspector may not have a commercial interest in the manufacture, ownership, insurance, or agency of boilers or boiler appurtenances.

(c) As needed, the executive director shall appoint persons with qualifications similar to those of the chief inspector to serve as deputy inspectors.

(d) The executive director may employ clerical assistants as necessary to carry out this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.008, eff. Sept. 1, 2003.

Sec. 755.024. AUTHORIZED INSPECTORS; EXAMINATIONS. (a) To be an authorized inspector, a person must obtain a commission as a boiler inspector from the executive director and must be continuously employed by an inspection agency.

(b) The executive director, by written examination, shall determine the qualifications of an applicant for a commission to be an authorized inspector.

(c) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 5.014(1).

(d) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 5.014(1).

(e) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 5.014(1).

(f) After proper investigation, the executive director may accept an inspection commission issued to a person by any other jurisdiction that has a written examination equal to that of this state.

(g) For good cause, the executive director may rescind a commission issued by this state.

(h) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 5.014(1).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 230, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 816, Sec. 5.014(1), 26.009, eff. Sept. 1, 2003.

Sec. 755.025. INSPECTION. (a) The executive director shall require each boiler to be inspected internally and externally at the time of initial installation and at subsequent intervals as provided by this section. The executive director may provide that the inspection be performed by any inspector.

(b) Power boilers, unfired steam boilers, and steam collection or liberation drums of process steam generators must receive an annual certificate inspection and an annual external inspection.

(c) Steam heating boilers and hot water heating boilers must receive a certificate inspection biennially.

(d) Hot water supply boilers and potable water heaters must receive a certificate inspection triennially.

(e) The commission by rule shall establish the subsequent intervals and manner of inspection for a portable boiler.

(f) The executive director shall designate the manner of inspection for nuclear boilers, the form of the inspection report, and the information to be reported. The executive director and the owner of a nuclear boiler shall establish the intervals of inspection for the boiler.

(g) The executive director may authorize the inspection of a boiler at any reasonable time if the executive director determines that the boiler may be in an unsafe condition. The executive director shall notify the inspection agency that insures that boiler and request the authorized inspector employed by that agency to participate with the chief inspector or a deputy inspector in a joint inspection of the boiler not later than the 20th day after the date on which the executive director notifies the inspection agency. An additional charge may not be made for the joint inspection.

(h) Notwithstanding any other law, an e-mail address provided to the department relating to an inspection under this chapter is not confidential and is subject to disclosure under Chapter 552, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 352, Sec. 3, eff. Sept. 1, 1999; Acts

2003, 78th Leg., ch. 816, Sec. 26.010, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 284 (H.B. 3257), Sec. 3, eff. May 29, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 6.001, eff. September 1, 2019.

Sec. 755.026. EXTENSIONS. (a) With the approval of the executive director and the inspection agency that has jurisdiction for the power boiler, the interval between internal inspections may be extended to a period not exceeding a total of 60 months. For unfired steam boilers or steam collection or liberation drums of process steam generators, the inspection interval may be extended to the next scheduled downtime of the boiler, but not exceeding a total of:

(1) 84 months for unfired steam boilers;

(2) 120 months for steam collection or liberation drums of process steam generators manufactured before January 1, 1970; or

(3) 144 months for steam collection or liberation drums of process steam generators manufactured on or after January 1, 1970.

(b) The interval between internal inspections of a boiler may be extended only if:

(1) continuous water treatment under competent and experienced supervision to control and limit corrosion and deposits has been in effect since its last internal inspection;

(2) the last internal and current external inspection of the boiler indicates that the interval may safely be extended; and

(3) accurate and complete records are available that show:

(A) that since the last internal inspection samples of boiler water have been taken or monitored at regular intervals not exceeding 24 hours of operation and that the water condition in the boiler is satisfactorily controlled;

(B) the dates that the boiler was out of service since the last internal inspection and the reasons that the boiler was taken out of service; and

(C) the nature of the repairs made to the boiler and the reasons that those repairs were made.

(c) In addition to an extension authorized under Subsection (a), the executive director and the inspection agency may grant an

emergency extension for a period not exceeding 120 days to the inspection interval covered by the boiler's certificate of operation on receipt of a request for extension stating that an emergency exists. Before the extension may be granted, the inspection agency must make an external inspection of the boiler, and the conditions imposed under Subsection (b) must be met. The commissioner and the inspection agency may not grant more than one emergency extension under this subsection in an interval between internal inspections.

(c-1) The executive director and the inspection agency on request may grant an extension for a period not to exceed 24 months in addition to the extension authorized under Subsection (a)(2). The request must include a report issued by an engineer licensed by the Texas Board of Professional Engineers certifying:

(1) completion in accordance with industry standards of a quantitative engineering assessment for in-service equipment, repairs, and alterations prescribed by the National Board Inspection Code NB23; and

(2) based on the assessment, the steam collection or liberation drums of the process steam generator are safe to operate.

(d) If an extended period between internal inspections is approved by the executive director and the inspection agency, the executive director shall issue a new certificate of operation for the extended period of operation.

(e) If the interval between internal inspections of a gas fired boiler is extended under Subsection (a), the executive director and inspection agency shall require that an inspection of the gas regulator or pressure reducing valve that services the boiler be performed as part of the next regularly scheduled external certificate inspection of the boiler to verify proper venting of gas to a safe point of discharge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1242, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 352, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 18, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 816, Sec. 26.011, eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 190 (H.B. 2228), Sec. 1, eff. September 1, 2019.

Sec. 755.027. REPORTS BY INSPECTION AGENCY; JOINT INSPECTIONS. (a) Not later than the 10th day after the date on which a certificate inspection is performed by an authorized inspector, the inspection agency employing the authorized inspector shall file a report with the executive director in the manner specified by the executive director.

(b) A boiler inspected by an authorized inspector is exempt from other inspections and inspection fees under this chapter, other than an inspection authorized under Section 755.025(g).

(c) An inspection agency shall notify the executive director in writing of the cancellation or expiration of any insurance policy issued by that agency to cover a boiler located in this state, and shall include in the notice the reason for the cancellation or expiration. The notice must state the date the policy was issued and the date on which the cancellation or expiration takes effect.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 352, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 26.012, eff. Sept. 1, 2003.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 487 (S.B. 917), Sec. 1, eff. September 1, 2025.

Sec. 755.028. SPECIAL INSPECTIONS. The executive director may provide a special inspection service to the owners, operators, and manufacturers of boilers. The service may include surveys required for certification to construct, assemble, or repair boilers or pressure vessels.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.013, eff. Sept. 1, 2003.

Sec. 755.029. CERTIFICATE OF OPERATION. (a) The executive director shall issue to the owner or operator of a boiler a certificate of operation for the boiler if after a certificate inspection:

(1) the boiler is found to be in a safe condition for operation; and

(2) the owner or operator has paid the fees assessed under

Section 755.030.

(b) The certificate of operation is valid for not longer than the interval required for certificate inspections of that boiler.

(c) A certificate of operation must be posted in a conspicuous place on or near the boiler for which it is issued.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 231, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 352, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 26.014, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 6.002, eff. September 1, 2019.

Sec. 755.030. FEES. (a) In addition to the fees described by Section 51.202, Occupations Code, the commission may authorize the collection of fees for:

(1) boiler inspections, including fees for special inspections; and

(2) other activities administered by the boiler inspection section and authorized by rule of the commission.

(b) The commission shall consider the advice of the board in setting the amount of a fee for:

(1) a boiler inspection, including a fee for a special inspection;

(2) a certificate of operation;

(3) the administration of an examination under this chapter; or

(4) any other activity administered by the boiler inspection section.

(c) The fees, travel, and per diem collected under this chapter may be appropriated only to the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 474, Sec. 1, eff. June 11, 1991; Acts 2001, 77th Leg., ch. 836, Sec. 4, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.807, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 5.007, eff. Sept. 1, 2003.

Sec. 755.032. RULES. (a) The commission may adopt and enforce rules, in accordance with standard boiler usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers. The commission may adopt standards for an inspection agency to be authorized by the department to provide inspections under this chapter.

(b) The executive director may exchange information, including data on experience, with other authorities that inspect boilers or their appurtenances, to obtain information necessary to adopt rules.

(c) The executive director or a department employee may not prescribe the make, brand, or kind of boilers or any appurtenances on the boiler to purchase.

(d) The executive director or a department employee may not prescribe the make, brand, or kind of boilers to purchase.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 352, Sec. 7, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 5.008, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 574 (H.B. 3091), Sec. 1, eff. June 16, 2015.

Sec. 755.033. INTERAGENCY INSPECTION AGREEMENTS. (a) The executive director shall enter into interagency agreements with the Department of State Health Services, the Texas Commission on Fire Protection, and the Texas Department of Insurance under which inspectors, marshals, or investigators from those agencies who discover unsafe or unregistered boilers in the course and scope of inspections conducted as part of regulatory or safety programs administered by those agencies are required to report the unsafe or unregistered boilers to the executive director.

(b) The executive director may enter into analogous agreements with local fire marshals.

(c) The commission shall adopt rules relating to the terms and conditions of an interagency agreement entered into under this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 233, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 628, Sec. 8, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 816, Sec. 5.009, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1508, eff. April 2, 2015.

SUBCHAPTER D. ENFORCEMENT AND PENALTIES

Sec. 755.041. REGULATION OF UNSAFE BOILERS. (a) If an inspection shows that a boiler is unsafe, the chief inspector or any deputy inspector shall issue a written preliminary order requiring repairs and alterations as necessary to make the boiler safe for use. The inspector may also order discontinuing the use of the boiler until the repairs and alterations are made or the unsafe conditions are remedied.

(b) On written request, an owner or operator who does not comply with a preliminary order is entitled to a hearing before the executive director to show cause for not enforcing the preliminary order. If, after the hearing, the executive director determines that the boiler is unsafe and that the preliminary order should be enforced, or that other acts are necessary to make the boiler safe, the executive director may order or confirm the withholding of the certificate of operation for that boiler, and may impose additional requirements as necessary for the repair or alteration of the boiler or the correction of the unsafe conditions.

(c) The chief inspector may issue a temporary certificate of operation for a period not to exceed 30 days pending the completion of the replacement or repairs.

(d) This section does not limit the executive director's authority under Section 755.028 or the commission's authority under Section 755.032.

(e) A boiler that cannot be made safe for use shall be condemned and the use of that boiler prohibited.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 5.010, eff. Sept. 1, 2003.

Sec. 755.042. PROSECUTION; INJUNCTION. (a) A prosecution may not be maintained if the issuance or renewal of a certificate of operation has been requested for a boiler but has not been acted on. However, the executive director may petition a district court for an

injunction to restrain the operation of the boiler until the condition restraining its use is corrected and a certificate of operation is issued if the executive director determines that the operation of the boiler without a certificate of operation constitutes a serious menace to the life and safety of the persons in or about the premises. The attorney general or the district or county attorney may bring the suit, and venue is in the county in which the boiler is located or in Travis County. It is not necessary for the prosecutor to verify the pleadings or for the state to execute a bond.

(b) The executive director's affidavit that a certificate of operation or an application for a certificate does not exist for a boiler, and the affidavit of the chief inspector or a deputy inspector that the operation of the boiler constitutes a menace to the life and safety of persons in or about the premises, are sufficient proof to warrant the immediate issuance of a temporary restraining order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 234, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 816, Sec. 26.015, eff. Sept. 1, 2003.

Sec. 755.043. GENERAL CRIMINAL PENALTY. (a) A person, firm, or corporation commits an offense if:

(1) the person, firm, or corporation owns a boiler in this state, has the custody, management, use, or operation of a boiler in this state, or is otherwise subject to this chapter or a rule adopted under this chapter; and

(2) the person, firm, or corporation violates this chapter, a rule adopted under this chapter, or an order issued by the commission, the executive director, or a regularly employed inspector authorized to enforce this chapter and rules and orders.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 235, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 816, Sec. 5.011, eff. Sept. 1, 2003.

Sec. 755.045. NOTICE OF RULE OR ORDER REQUIRED BEFORE

PROSECUTION. A criminal action may not be maintained against any person relating to the violation of a rule adopted or an order issued under this chapter until the commission gives notice of the rule or order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 5.012, eff. Sept. 1, 2003.

Sec. 755.046. AFFIDAVIT OF ORDERS. An affidavit is admissible as evidence in any civil or criminal action involving an order adopted by the commission or the executive director and the publication of the order, without further proof of the order's issuance or publication or of the contents of the order, if the affidavit:

(1) is issued under the seal of the commission or the executive director;

(2) is executed by the commission, the executive director, the chief inspector, or a deputy inspector;

(3) states the terms of the order;

(4) states that the order was issued and published; and

(5) states that the order was in effect during the period specified by the affidavit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 5.013, eff. Sept. 1, 2003.

SUBCHAPTER E. REGULATION OF BOILERS AND FUEL GAS SYSTEMS

Sec. 755.071. RESTRICTION ON REGULATION. Notwithstanding any other law, a state agency or political subdivision may not restrict the use or installation of a specific fuel gas pipe product that is approved for use and installation by the International Fuel Gas Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 284 (H.B. 3257), Sec. 4, eff. May 29, 2017.

Sec. 755.072. CONFLICT OF LAW. To the extent of a conflict between this subchapter and another law, this subchapter controls.

Added by Acts 2017, 85th Leg., R.S., Ch. 284 (H.B. 3257), Sec. 4, eff. May 29, 2017.

CHAPTER 756. MISCELLANEOUS HAZARDOUS CONDITIONS

SUBCHAPTER A. COVERING WELLS, CISTERNS, AND HOLES

Sec. 756.001. COVERING LARGE WELL OR CISTERN; CRIMINAL PENALTY. (a) The owner or operator of a well or cistern that is at least 10 feet deep and not less than 10 inches nor more than six feet in diameter shall keep it entirely covered at all times except when the owner or operator is actually using the well or cistern.

(b) The cover required by this section must be capable of sustaining at least 200 pounds of weight.

(c) A person commits an offense if the person fails to cover a well or cistern as required by this section. An offense under this subsection is a misdemeanor punishable by a fine of not less than $100 or more than $500.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 756.002. COVERING OR PLUGGING SMALL WELL OR HOLE; CRIMINAL PENALTY. (a) A person who drills, digs, or otherwise creates or causes to be drilled, dug, or otherwise created a well or hole that is at least 10 feet deep and less than 10 inches in diameter may not abandon the hole unless the person first:

(1) completely fills the well or hole from its total depth to the surface; or

(2) plugs the well or hole with a permanent plug not less than 10 feet from the surface and completely fills the well or hole from the plug to the surface.

(b) A person commits an offense if the person abandons a well or hole in violation of this section. An offense under this subsection is a misdemeanor punishable by a fine of not less than $100 or more than $500.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. REFRIGERATORS AND OTHER CONTAINERS

Sec. 756.011. TYPES OF REFRIGERATORS AND CONTAINERS COVERED.

This subchapter applies only to a refrigerator, ice box, or other airtight or semi-airtight container that has:

(1) a capacity of at least 1-1/2 cubic feet;

(2) an opening of at least 50 square inches; and

(3) a door or lid equipped with a latch or other fastening device capable of securing the door or lid shut.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 756.012. LEAVING REFRIGERATOR OR CONTAINER ACCESSIBLE TO CHILDREN. (a) A person may not place a container described by Section 756.011 outside of a structure or in a warehouse, storage room, or unoccupied or abandoned structure so that the container is accessible to children.

(b) A person may not permit a container described by Section 756.011 to remain in an area specified by Subsection (a) so that the container is accessible to children.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 756.013. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 756.012.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $5 or more than $200.

(c) Each day of a continuing violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. TRENCH SAFETY

Sec. 756.021. DEFINITION. In this subchapter, "trench" has the meaning assigned by the standards adopted by the Occupational Safety and Health Administration.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 237, eff. Sept. 1, 1991.

Sec. 756.022. TRENCH EXCAVATION IN STATE. (a) The bid

documents, if bids are used, and the contract for a construction project in this state on which a contractor is employed and that includes a trench excavation exceeding a depth of five feet must include:

(1) a reference to the Occupational Safety and Health Administration standards for trench safety that will be in effect during the period of construction of the project;

(2) a copy of special shoring requirements, if any, of the state or of a political subdivision in which the construction project is located, with a separate pay item for the special shoring requirements;

(3) a copy of any geotechnical information that was obtained by the owner for use in the design of the trench safety system; and

(4) a separate pay item for trench excavation safety protection.

(b) The separate pay item for trench excavation safety protection must be based on the linear feet of trench excavated. The separate pay item for special shoring requirements, if any, of the state or of any political subdivision in which the construction project is located must be based on the square feet of shoring used.

(c) A municipality may adopt an ordinance that requires the refusal of a building permit to a person who fails to certify in writing that the requirement of Subsection (a) has been satisfied. A municipality, in lieu of or in addition to the written certification, may require an applicant for a building permit to produce for inspection or file with the municipality a copy of a contract that complies with Subsection (a) as a condition of issuance of a building permit.

(d) This section does not apply to a contract:

(1) governed by Section 756.023;

(2) governed by Subtitle D, Title 10, Government Code; or

(3) entered into by a person subject to the safety standards adopted under and the administrative penalty provisions of Subchapter E, Chapter 121, Utilities Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Redesignated from Health & Safety Code Sec. 756.021 and amended by Acts 1991, 72nd Leg., ch. 14, Sec. 237, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19(4), eff. Sept. 1, 1997;

Acts 1999, 76th Leg., ch. 62, Sec. 18.31, eff. Sept. 1, 1999.

Sec. 756.023. TRENCH EXCAVATION FOR POLITICAL SUBDIVISION. (a) On a project for a political subdivision of the state in which trench excavation will exceed a depth of five feet, the bid documents provided to all bidders and the contract must include:

(1) a reference to the Occupational Safety and Health Administration standards for trench safety in effect during the period of construction of the project;

(2) a copy of special shoring requirements, if any, of the political subdivision, with a separate pay item for the special shoring requirements;

(3) a copy of any geotechnical information that was obtained by the owner for use by the contractor in the design of the trench safety system; and

(4) a separate pay item for trench excavation safety protection.

(b) The separate pay item for trench excavation safety protection must be based on the linear feet of trench excavated. The separate pay item for special shoring requirements, if any, of the political subdivision must be based on the square feet of shoring used.

(c) A political subdivision may require a bidder to attend a prebid conference to coordinate a geotechnical investigation of the project site by bidders. In awarding a contract, a political subdivision may not consider a bid from a bidder who failed to attend a required prebid conference.

(d) This section does not apply to a person subject to the safety standards adopted under and the administrative penalty provisions of Subchapter E, Chapter 121, Utilities Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Redesignated from Health & Safety Code Sec. 756.022 and amended by Acts 1991, 72nd Leg., ch. 14, Sec. 237, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.32, eff. Sept. 1, 1999.

SUBCHAPTER D. OUTDOOR SHOOTING RANGES

Sec. 756.041. DEFINITION. In this subchapter, "outdoor

shooting range" means an outdoor shooting range, outdoor firing range, or other open property on which persons may fire a weapon for a fee or other remuneration but does not include a deer lease or other similar leases of property for the purpose of hunting or an archery range.

Added by Acts 1991, 72nd Leg., ch. 310, Sec. 1, eff. Aug. 26, 1991.

Sec. 756.0411. APPLICABILITY. This subchapter applies only to an outdoor shooting range located in a county with a population of more than 150,000.

Added by Acts 1991, 72nd Leg., ch. 310, Sec. 1, eff. Aug. 26, 1991.

Sec. 756.042. CONSTRUCTION STANDARDS. The owner of an outdoor shooting range shall construct and maintain the range according to standards that are at least as stringent as the standards printed in the National Rifle Association range manual.

Added by Acts 1991, 72nd Leg., ch. 310, Sec. 1, eff. Aug. 26, 1991.

Sec. 756.043. CIVIL PENALTY. (a) The owner of an outdoor shooting range who fails to comply with Section 756.042 is liable within 60 days after a finding of noncompliance for a civil penalty of $50 for each day of noncompliance; the aggregate amount not to exceed $500.

(b) The attorney general or the appropriate district attorney, criminal district attorney, or county attorney shall recover the civil penalty in a suit on behalf of the state. If the attorney general brings the suit, the penalty shall be deposited in the state treasury to the credit of the general revenue fund. If another attorney brings the suit, the penalty shall be deposited in the general fund of the county in which the violation occurred.

Added by Acts 1991, 72nd Leg., ch. 310, Sec. 1, eff. Aug. 26, 1991.

Sec. 756.044. CRIMINAL PENALTIES. (a) The owner of an outdoor

shooting range commits an offense if the owner intentionally or recklessly fails to comply with Section 756.042 and that failure results in injury to another person.

(b) An offense under this section is a Class C misdemeanor, except that if it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, the offense is a Class A misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 310, Sec. 1, eff. Aug. 26, 1991.

Sec. 756.045. INSURANCE REQUIRED. (a) The owner of an outdoor shooting range shall purchase and maintain an insurance policy that provides coverage of at least $500,000 for bodily injuries or death and another policy that provides that level of coverage for property damage resulting from firing any weapon while on the shooting range.

(b) The owner of an outdoor shooting range shall prominently display a sign at the shooting range stating that the owner has purchased insurance to cover bodily injury, death, or property damage occurring from activities at the shooting range.

Added by Acts 1991, 72nd Leg., ch. 310, Sec. 1, eff. Aug. 26, 1991.

SUBCHAPTER E. PUBLICLY FUNDED PLAYGROUNDS

Sec. 756.061. COMPLIANCE WITH SAFETY STANDARDS. (a) Notwithstanding any other rule or statute, and except as provided by Subsection (b), on or after September 1, 2009, public funds may not be used:

(1) to purchase playground equipment that:

(A) does not comply with each applicable provision of ASTM Standard F1487-07ae1, "Consumer Safety Performance Specification for Playground Equipment for Public Use" published by ASTM International; or

(B) has a horizontal bare metal platform or a bare metal step or slide, unless the bare metal is shielded from direct sun by a covering provided with the equipment or by a shaded area in the location where the equipment is installed;

(2) to purchase surfacing for the area under and around playground equipment if the surfacing will not comply, on completion of installation of the surfacing, with each applicable provision of

ASTM Standard F2223-04e1, "Standard Guide for ASTM Standards on Playground Surfacing" published by ASTM International; or

(3) to pay for installation of playground equipment or surfacing if the installation will not comply, on completion of the installation, with each applicable provision of the specifications described by Subdivision (1) or (2), as applicable.

(b) Public funds may be used for maintenance of playground equipment or surfacing for the area under and around playground equipment that was purchased before September 1, 2009, even if the equipment or surfacing does not comply, on completion of the maintenance, with each applicable provision of the specifications described by Subsections (a)(1) and (a)(2).

(c) This section:

(1) does not create, increase, decrease, or otherwise affect a person's liability for damages for injury, death, or other harm caused by playground equipment, surfacing, or the installation of the equipment or surfacing; and

(2) is not a waiver of sovereign immunity of any governmental entity.

Added by Acts 1995, 74th Leg., ch. 896, Sec. 1, eff. Aug. 28, 1995. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1009 (H.B. 4127), Sec. 1, eff. September 1, 2009.

SUBCHAPTER F. SECURITY BARS

Sec. 756.081. DEFINITIONS. In this chapter:

(1) "Bedroom" means an area of a dwelling intended as sleeping quarters.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(113), eff. April 2, 2015.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(113), eff. April 2, 2015.

(4) "Residential dwelling" includes a single-family home, a duplex, a triplex, an apartment, a motel or hotel, and a mobile home.

(5) "Security bars" means burglar bars or other bars located on the inside or outside of a door or window of a residential dwelling.

Added by Acts 1999, 76th Leg., ch. 1522, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(113), eff. April 2, 2015.

Sec. 756.082. SECURITY BARS ON RESIDENTIAL DWELLING. A person may not install security bars on a door or window of a bedroom in a residential dwelling unless:

(1) the security bars on at least one door or window in the bedroom have an interior release mechanism; or

(2) at least one window or door from the bedroom to the exterior may be opened for emergency escape or rescue.

Added by Acts 1999, 76th Leg., ch. 1522, Sec. 1, eff. Sept. 1, 1999.

Sec. 756.083. LABELING REQUIREMENT. (a) Except as provided by Subsection (b), a person may not sell security bars or offer security bars for sale in this state unless the security bars or their packaging are labeled in accordance with rules adopted by the state fire marshal. The required label must state the requirements of Section 756.082.

(b) A person who is not regularly and actively engaged in business as a wholesale or retail dealer may sell or offer to sell security bars in this state provided that proper written notice of the requirements of Section 756.082 is provided to the buyer in a form approved by the state fire marshal.

Added by Acts 1999, 76th Leg., ch. 1522, Sec. 1, eff. Sept. 1, 1999.

Sec. 756.084. RECOMMENDED RELEASE MECHANISM. (a) The state fire marshal or a testing laboratory under conditions and procedures approved by the state fire marshal may recommend an interior release mechanism that has been shown to be effective.

(b) The state fire marshal shall adopt rules to implement this section.

Added by Acts 1999, 76th Leg., ch. 1522, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER G. MUNICIPAL LANDSCAPING SERVICES

Sec. 756.101. AUTHORIZATION. To protect the public health, safety, or welfare, a municipality may provide landscaping services, including tree-trimming, tree disposal, remediation, cleanup, and recycling services, to any person who resides or business that operates inside or outside the corporate limits of the municipality only if the governing body of the municipality makes written findings as required by Section 756.102.

Added by Acts 2003, 78th Leg., ch. 340, Sec. 2, eff. Sept. 1, 2003.

Sec. 756.102. FINDINGS REQUIRED. The written findings must:

(1) identify the problem requiring the need for providing municipal landscaping services;

(2) identify the public health, safety, or welfare concern;

(3) describe any reasonable actions previously taken to alleviate the problem; and

(4) specify a period of definite duration necessary to address the problem.

Added by Acts 2003, 78th Leg., ch. 340, Sec. 2, eff. Sept. 1, 2003.

Sec. 756.103. EXCEPTION. The limitations and requirements of this subchapter do not apply to a municipality in times of emergency, catastrophe, or other calamity.

Added by Acts 2003, 78th Leg., ch. 340, Sec. 2, eff. Sept. 1, 2003.

SUBCHAPTER H. CONSTRUCTION AFFECTING PIPELINE EASEMENTS AND RIGHTS-OF-WAY

Sec. 756.121. DEFINITIONS. In this subchapter:

(1) "Construction" means a building, structure, driveway, roadway, or other construction any part of which is physically located on, across, over, or under the easement or right-of-way of a pipeline facility or that physically impacts or creates a risk to a pipeline facility.

(2) "Constructor" means a person that builds, operates, repairs, replaces, or maintains a construction or causes a

construction to be built, operated, repaired, maintained, or replaced.

(3) "Pipeline facility" means a pipeline used to transmit or distribute natural gas or to gather or transmit oil, gas, or the products of oil or gas.

Added by Acts 2003, 78th Leg., ch. 1082, Sec. 2(a), eff. June 20, 2003.
Renumbered from Health and Safety Code, Section 756.101 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(53), eff. September 1, 2005.

Sec. 756.122. APPLICABILITY. (a) This subchapter applies to a construction or the repair, replacement, or maintenance of a construction unless there is a written agreement, including a Texas Department of Transportation right-of-way agreement, to the contrary between the owner or operator of the affected pipeline facility and the person that places or causes a construction to be placed on the easement or right-of-way of a pipeline facility.

(b) This subchapter does not apply to:

(1) construction done by a municipality on property owned by the municipality, unless the construction is for private commercial use; or

(2) construction or repair, replacement, or maintenance of construction on property owned by a navigation district or port authority created or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

Added by Acts 2003, 78th Leg., ch. 1082, Sec. 2(a), eff. June 20, 2003.
Renumbered from Health and Safety Code, Section 756.102 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(53), eff. September 1, 2005.

Sec. 756.123. PROHIBITION OF CONSTRUCTION WITHOUT NOTICE. A person may not build, repair, replace, or maintain a construction on, across, over, or under the easement or right-of-way for a pipeline facility unless notice of the construction is given the operator of the pipeline facility and:

(1) the operator of the pipeline facility determines that the construction will not increase a risk to the public or increase a risk of a break, leak, rupture, or other damage to the pipeline facility;

(2) if the operator of the pipeline facility determines that the construction will increase risk to the public or the pipeline facility, the constructor pays the reasonable, necessary, and documented cost of the additional fortifications, barriers, conduits, or other changes or improvements necessary to protect the public or pipeline facility from that risk before proceeding with the construction;

(3) the building, repair, replacement, or maintenance is conducted under an existing written agreement; or

(4) the building, repair, replacement, or maintenance is required to be done promptly by a regulated utility company because of the effects of a natural disaster.

Added by Acts 2003, 78th Leg., ch. 1082, Sec. 2(a), eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 2, eff. September 1, 2005.
Renumbered from Health and Safety Code, Section 756.103 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(53), eff. September 1, 2005.

Sec. 756.124. CIVIL LIABILITY. A constuctor who violates this subchapter is liable to the owner or operator of a pipeline facility for damages to the facility proximately caused by the violation, including any liability the owner or operator of the pipeline facility incurs as a result of the violation. This section does not affect the right of a surface owner to recover for any damages to the owner's property.

Added by Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 2, eff. September 1, 2005.

Sec. 756.125. INJUNCTIVE RELIEF. (a) A suit for injunctive relief to prevent or abate the violation of this subchapter may be

brought by the county attorney for the county in which the pipeline facility is located, by the attorney general, or by the owner or operator of the pipeline facility.

(b) The court in which the suit is brought may grant any prohibitory or mandatory injunction the facts warrant, including a temporary restraining order, temporary injunction, or permanent injunction. The court may grant the relief without requiring a bond or other undertaking.

Added by Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 2, eff. September 1, 2005.

Sec. 756.126. SAFETY STANDARDS AND BEST PRACTICES. The Railroad Commission of Texas shall adopt and enforce rules prescribing safety standards and best practices, including those described by 49 U.S.C. Section 6105 et seq., relating to the prevention of damage by a person to a facility, including an interstate or intrastate pipeline facility, under the jurisdiction of the commission.

Added by Acts 2005, 79th Leg., Ch. 1337 (S.B. 9), Sec. 19, eff. June 18, 2005.
Renumbered from Health and Safety Code, Section 756.106 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(49), eff. September 1, 2007.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 57 (H.B. 1818), Sec. 8, eff. September 1, 2017.

CHAPTER 757. POOL YARD ENCLOSURES

Sec. 757.001. DEFINITIONS. In this chapter:

(1) "Self-closing and self-latching device" means a device that causes a gate to automatically close without human or electrical power after it has been opened and to automatically latch without human or electrical power when the gate closes.

(2) "Doorknob lock" means a lock that is in a doorknob and that is operated from the exterior by a key, card, or combination and from the interior without a key, card, or combination.

(3) "Dwelling" or "rental dwelling" means one or more rooms

rented to one or more tenants for use as a permanent residence under a lease. The term does not include a room rented to overnight guests.

(4) "French doors" means double doors, sometimes called double-hinged patio doors, that provide access from a dwelling interior to the exterior and in which each of the two doors are hinged and closable so that the edge of one door closes immediately adjacent to the edge of the other door with no partition between the doors. "French door" means either one of the two doors.

(5) "Keyed dead bolt" means a door lock that is not in the doorknob, that locks by a bolt in the doorjamb, that has a bolt with at least a one-inch throw if installed after September 1, 1993, and that is operated from the exterior by a key, card, or combination and operated from the interior by a knob or lever without a key, card, or combination. The term includes a doorknob lock that contains a bolt with at least a one-inch throw.

(6)(A) "Keyless bolting device" means a door lock not in the doorknob that locks:

(i) with a bolt with a one-inch throw into a strike plate screwed into the portion of the doorjamb surface that faces the edge of the door when the door is closed or into a metal doorjamb that serves as the strike plate, operable only by knob or lever from the door's interior and not in any manner from the door's exterior, and that is commonly known as a keyless dead bolt;

(ii) by a drop bolt system operated by placing a central metal plate over a metal doorjamb restraint which protrudes from the doorjamb and which is affixed to the doorjamb frame by means of three case-hardened screws at least three inches in length. One half of the central plate must overlap the interior surface of the door and the other half of the central plate must overlap the doorjamb when the plate is placed over the doorjamb restraint. The drop bolt system must prevent the door from being opened unless the central plate is lifted off of the doorjamb restraint by a person who is on the interior side of the door; or

(iii) by a metal bar or metal tube that is placed across the entire interior side of the door and secured in place at each end of the bar or tube by heavy-duty metal screw hooks. The screw hooks must be at least three inches in length and must be screwed into the door frame stud or wall stud on each side of the door. The bar or tube must be capable of being secured to both of

the screw hooks and must be permanently attached in some way to the door frame stud or wall stud. When secured to the screw hooks, the bar or tube must prevent the door from being opened unless the bar or tube is removed by a person who is on the interior side of the door.

(B) The term does not include a chain latch, flip latch, surface-mounted slide bolt, mortise door bolt, surface-mounted barrel bolt, surface-mounted swing bar door guard, spring-loaded nightlatch, foot bolt, or other lock or latch.

(7) "Multiunit rental complex" means two or more dwelling units in one or more buildings that are under common ownership, managed by the same owner, managing agent, or management company, and located on the same lot or tract of land or adjacent lots or tracts of land. The term includes a condominium project. The term does not include:

(A) a facility primarily renting rooms to overnight guests; or

(B) a single-family home or adjacent single-family homes that are not part of a condominium project.

(8) "Pool" means a permanent swimming pool, permanent wading or reflection pool, or permanent hot tub or spa over 18 inches deep, located at ground level, above ground, below ground, or indoors.

(9) "Pool yard" means an area that contains a pool.

(10) "Pool yard enclosure" or "enclosure" means a fence, wall, or combination of fences, walls, gates, windows, or doors that completely surround a pool.

(11) "Property owners association" means an association of property owners for a residential subdivision, condominium, cooperative, town home project, or other project involving residential dwellings.

(12) "Sliding door handle latch" means a latch or lock that is near the handle on a sliding glass door, that is operated with or without a key, and that is designed to prevent the door from being opened.

(13) "Sliding door pin lock" means a pin or rod that is inserted from the interior side of a sliding glass door at the side opposite the door's handle and that is designed to prevent the door from being opened or lifted.

(14) "Sliding door security bar" means a bar or rod that can be placed at the bottom of or across the interior side of the

fixed panel of a sliding glass door and that is designed to prevent the sliding panel of the door from being opened.

(15) "Tenant" means a person who is obligated to pay rent or other consideration and who is authorized to occupy a dwelling, to the exclusion of others, under a verbal or written lease or rental agreement.

(16) "Window latch" means a device on a window or window screen that prevents the window or window screen from being opened and that is operated without a key and only from the interior.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.002. APPLICATION. This chapter applies only to:

(1) a pool owned, controlled, or maintained by the owner of a multiunit rental complex or by a property owners association; and

(2) doors and windows of rental dwellings opening into the pool yard of a multiunit rental complex or condominium, cooperative, or town home project.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.003. ENCLOSURE FOR POOL YARD. (a) Except as otherwise provided by Section 757.005, the owner of a multiunit rental complex with a pool or a property owners association that owns, controls, or maintains a pool shall completely enclose the pool yard with a pool yard enclosure.

(b) The height of the pool yard enclosure must be at least 48 inches as measured from the ground on the side away from the pool.

(c) Openings under the pool yard enclosure may not allow a sphere four inches in diameter to pass under the pool yard enclosure.

(d) If the pool yard enclosure is constructed with horizontal and vertical members and the distance between the tops of the horizontal members is at least 45 inches, the openings may not allow a sphere four inches in diameter to pass through the enclosure.

(e) If the pool yard enclosure is constructed with horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches, the openings may not allow a sphere 1-3/4 inches in diameter to pass through the enclosure.

(f) The use of chain link fencing materials is prohibited

entirely for a new pool yard enclosure that is constructed after January 1, 1994. The use of diagonal fencing members that are lower than 49 inches above the ground is prohibited for a new pool yard enclosure that is constructed after January 1, 1994.

(g) Decorative designs or cutouts on or in the pool yard enclosure may not contain any openings greater than 1-3/4 inches in any direction.

(h) Indentations or protrusions in a solid pool yard enclosure without any openings may not be greater than normal construction tolerances and tooled masonry joints on the side away from the pool.

(i) Permanent equipment or structures may not be constructed or placed in a manner that makes them readily available for climbing over the pool yard enclosure.

(j) The wall of a building may be part of the pool yard enclosure only if the doors and windows in the wall comply with Sections 757.006 and 757.007.

(k) The owner of a multiunit rental complex with a pool or a property owners association that owns, controls, or maintains a pool is not required to:

(1) build a pool yard enclosure at specified locations or distances from the pool other than distances for minimum walkways around the pool; or

(2) conform secondary pool yard enclosures, located inside or outside the primary pool yard enclosure, to the requirements of this chapter.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.004. GATES. (a) Except as otherwise provided by Section 757.005, a gate in a fence or wall enclosing a pool yard as required by Section 757.003 must:

(1) have a self-closing and self-latching device;

(2) have hardware enabling it to be locked, at the option of whoever controls the gate, by a padlock or a built-in lock operated by key, card, or combination; and

(3) open outward away from the pool yard.

(b) Except as otherwise provided by Subsection (c) and Section 757.005, a gate latch must be installed so that it is at least 60 inches above the ground, except that it may be installed lower if:

(1) the latch is installed on the pool yard side of the gate only and is at least three inches below the top of the gate; and

(2) the gate or enclosure has no opening greater than one-half inch in any direction within 18 inches from the latch, including the space between the gate and the gate post to which the gate latches.

(c) A gate latch may be located 42 inches or higher above the ground if the gate cannot be opened except by key, card, or combination on both sides of the gate.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.005. EXISTING POOL YARD ENCLOSURES. (a) If a pool yard enclosure is constructed or modified before January 1, 1994, and no municipal ordinance containing standards for pool yard enclosures were applicable at the time of construction or modification, the enclosure must comply with the requirements of Sections 757.003 and 757.004, except that:

(1) if the enclosure is constructed with chain link metal fencing material, the openings in the enclosure may not allow a sphere 2-1/4 inches in diameter to pass through the enclosure; or

(2) if the enclosure is constructed with horizontal and vertical members and the distance between the tops of the horizontal members is at least 36 inches, the openings in the enclosure may not allow a sphere four inches in diameter to pass through the enclosure.

(b) If a pool yard enclosure is constructed or modified before January 1, 1994, and if the enclosure is in compliance with applicable municipal ordinances existing on January 1, 1994, and containing standards for pool yard enclosures, Sections 757.003, 757.004(a)(3), and 757.004(b) do not apply to the enclosure.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.006. DOOR. (a) A door, sliding glass door, or French door may not open directly into a pool yard if the date of electrical service for initial construction of the building or pool is on or after January 1, 1994.

(b) A door, sliding glass door, or French door may open

directly into a pool yard if the date of electrical service for initial construction of the building or pool is before January 1, 1994, and the pool yard enclosure complies with Subsection (c), (d), or (e), as applicable.

(c) If a door of a building, other than a sliding glass door or screen door, opens into the pool yard, the door must have a:

(1) latch that automatically engages when the door is closed;

(2) spring-loaded door-hinge pin, automatic door closer, or similar device to cause the door to close automatically; and

(3) keyless bolting device that is installed not less than 36 inches or more than 48 inches above the interior floor.

(d) If French doors of a building open to the pool yard, one of the French doors must comply with Subsection (c)(1) and the other door must have:

(1) a keyed dead bolt or keyless bolting device capable of insertion into the doorjamb above the door, and a keyless bolting device capable of insertion into the floor or threshold; or

(2) a bolt with at least a 3/4-inch throw installed inside the door and operated from the edge of the door that is capable of insertion into the doorjamb above the door and another bolt with at least a 3/4-inch throw installed inside the door and operated from the edge of the door that is capable of insertion into the floor or threshold.

(e) If a sliding glass door of a building opens into the pool yard, the sliding glass door must have:

(1) a sliding door handle latch or sliding door security bar that is installed not more than 48 inches above the interior floor; and

(2) a sliding door pin lock that is installed not more than 48 inches above the interior floor.

(f) A door, sliding glass door, or French door that opens into a pool yard from an area of a building that is not used by residents and that has no access to an area outside the pool yard is not required to have a lock, latch, dead bolt, or keyless bolting device.

(g) A keyed dead bolt, keyless bolting device, sliding door pin lock, or sliding door security bar installed before September 1, 1993, may be installed not more than 54 inches from the floor.

(h) A keyed dead bolt or keyless dead bolt, as described by Section 757.001(6)(A)(i), installed in a dwelling on or after

September 1, 1993, must have a bolt with a throw of not less than one inch.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.007. WINDOW AND WINDOW SCREENS. A wall of a building constructed before January 1, 1994, may not be used as part of a pool yard enclosure unless each window in the wall has a latch and unless each window screen on a window in the wall is affixed by a window screen latch, screws, or similar means. This section does not require the installation of window screens. A wall of a building constructed on or after January 1, 1994, may not be used as part of a pool yard enclosure unless each ground floor window in the wall is permanently closed and unable to be opened.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.008. BUILDING IN POOL YARD. Each door, sliding glass door, window, and window screen of each dwelling unit in a residential building located in the enclosed pool yard must comply with Sections 757.006 and 757.007.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.009. INSPECTION, REPAIR, AND MAINTENANCE. (a) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool shall exercise ordinary and reasonable care to inspect, maintain, repair, and keep in good working order the pool yard enclosures, gates, and self-closing and self-latching devices required by this chapter and within the control of the owner or property owners association.

(b) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool shall exercise ordinary and reasonable care to maintain, repair, and keep in good working order the window latches, sliding door handle

latches, sliding door pin locks, and sliding door security bars required by this chapter and within the control of the owner or property owners association after request or notice from the tenant that those devices are malfunctioning or in need of repair or replacement. A request or notice under this subsection may be given orally unless a written lease applicable to the tenant or written rules governing the property owners association require the request or notice to be in writing. The requirement in the lease or rules must be in capital letters and underlined or in 10-point boldfaced print.

(c) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool shall inspect the pool yard enclosures, gates, and self-closing and self-latching devices on gates no less than once every 31 days.

(d) An owner's or property owners association's duty of inspection, repair, and maintenance under this section may not be waived under any circumstances and may not be enlarged except by written agreement with a tenant or occupant of a multiunit rental complex or a member of a property owners association or as may be otherwise allowed by this chapter.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.010. COMPLIANCE WITH CHAPTER. (a) Except as provided by Subsection (b) and Section 757.011, a person who constructs or modifies a pool yard enclosure to conform with this chapter may not be required to construct the enclosure differently by a local governmental entity, common law, or any other law.

(b) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool may, at the person's option, exceed the standards of this chapter or those adopted under Section 757.011. A tenant or occupant in a multiunit rental complex and a member of a property owners association may, by express written agreement, require the owner of the complex or the association to exceed those standards.

(c) A municipality may continue to require greater overall height requirements for pool yard enclosures if the requirements

exist under the municipality's ordinances on January 1, 1994.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1509, eff. April 2, 2015.

Sec. 757.011. RULEMAKING AUTHORITY. The executive commissioner of the Health and Human Services Commission may adopt rules requiring standards for design and construction of pool yard enclosures that exceed the requirements of this chapter and that apply to all pools and pool yards subject to this chapter. An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool shall comply with and shall be liable for failure to comply with those rules to the same extent as if they were part of this chapter.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1510, eff. April 2, 2015.

Sec. 757.012. ENFORCEMENT. (a) A tenant of an owner of a multiunit rental complex, a member of a property owners association, a governmental entity, or any other person or the person's representative may maintain an action against the owner or property owners association for failure to comply with the requirements of this chapter. In that action, the person may obtain:

(1) a court order directing the owner or property owners association to comply with this chapter;

(2) a judgment against the owner or property owners association for actual damages resulting from the failure to comply with the requirements of this chapter;

(3) a judgment against the owner or property owners association for punitive damages resulting from the failure to comply with the requirements of this chapter if the actual damages to the person were caused by the owner's or property owners association's intentional, malicious, or grossly negligent actions;

(4) a judgment against the owner or property owners association for actual damages, and if appropriate, punitive damages, where the owner or association was in compliance with this chapter at the time of the pool-related damaging event but was consciously indifferent to access being repeatedly gained to the pool yard by unauthorized persons; or

(5) a judgment against the owner or property owners association for a civil penalty of not more than $5,000 if the owner or property owners association fails to comply with this chapter within a reasonable time after written notice by a tenant of the multiunit rental complex or a member of the property owners association.

(b) A court may award reasonable attorney fees and costs to the prevailing party in an action brought under Subsection (a)(5).

(c) The attorney general, a local health department, a municipality, or a county having jurisdiction may enforce this chapter by any lawful means, including inspections, permits, fees, civil fines, criminal prosecutions, injunctions, and, after required notice, governmental construction or repair of pool yard enclosures that do not exist or that do not comply with this chapter.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.013. TENANT'S REQUEST FOR REPAIRS. A tenant in a multiunit rental complex with a pool may verbally request repair of a keyed dead bolt, keyless bolting device, sliding door latch, sliding door pin lock, sliding door security bar, window latch, or window screen latch unless a provision of a written lease executed by the tenant requires that the request be made in writing and the provision is in capital letters and underlined or in 10-point boldfaced print. A request for repair may be given to the owner or the owner's managing agent.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.014. APPLICATION TO OTHER BODIES OF WATER AND RELATED FACILITIES. The owner of a multiunit rental complex or a property owners association is not required to enclose a body of water or construct barriers between the owner's or property owners

association's property and a body of water such as an ocean, bay, lake, pond, bayou, river, creek, stream, spring, reservoir, stock tank, culvert, drainage ditch, detention pond, or other flood or drainage facility.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.015. EFFECT ON OTHER LAWS. (a) The duties established by this chapter for an owner of a multiunit dwelling project, an owner of a dwelling in a condominium, cooperative, or town home project, and a property owners association supersede those established by common law, the Property Code, the Health and Safety Code, the Local Government Code other than Section 214.101, and local ordinances relating to duties to inspect, install, repair, or maintain:

(1) pool yard enclosures;

(2) pool yard enclosure gates and gate latches, including self-closing and self-latching devices;

(3) keyed dead bolts, keyless bolting devices, sliding door handle latches, sliding door security bars, self-latching and self-closing devices, and sliding door pin locks on doors that open into a pool yard area and that are owned and controlled by the owner or property owners association; and

(4) latches on windows that open into a pool yard area and that are owned and controlled by the owner or property owners association.

(b) This chapter does not affect any duties of a rental dwelling owner, lessor, sublessor, management company, or managing agent under Subchapter D, Chapter 92, Property Code.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.016. NONEXCLUSIVE REMEDIES. The remedies contained in this chapter are not exclusive and are not intended to affect existing remedies allowed by law or other procedure.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.017. INTERPRETATION AND APPLICATION. The provisions of this chapter shall be liberally construed to promote its underlying purpose which is to prevent swimming pool deaths and injuries in this state.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

CHAPTER 758. BICYCLE SAFETY

Sec. 758.001. DEFINITIONS. In this chapter:

(1) "Bicycle" means a human-powered vehicle with two wheels in tandem designed to transport by a pedaling action of a person seated on a saddle seat.

(2) "Department" means the Department of Public Safety.

(3) "Operator" means a person who travels by pedaling on a bicycle seated on a saddle seat.

(4) "Other public right-of-way" means any right-of-way, other than a public roadway or public bicycle path, that is accessible by the public and designed for use by vehicular or pedestrian traffic.

(5) "Public bicycle path" means a right-of-way under the jurisdiction and control of this state or a local political subdivision for use primarily by bicycles or by bicycles and pedestrians.

(6) "Public roadway" means a right-of-way under the jurisdiction and control of this state or a local political subdivision for use primarily by motor vehicles.

(7) "Tricycle" means a three-wheeled human-powered vehicle that is designed to have a seat no more than two feet from the ground and be used as a toy by a child younger than six years of age.

Added by Acts 1993, 73rd Leg., ch. 801, Sec. 1, eff. Jan. 1, 1994. Renumbered from Health & Safety Code Sec. 757.001 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(34), eff. Sept. 1, 1995.

Sec. 758.002. BICYCLE SAFETY EDUCATION PROGRAM. (a) The department may establish and administer a statewide bicycle safety education program and may adopt rules to implement the program. The program must include instruction concerning:

(1) the safe handling and use of bicycles;

(2) high risk traffic situations;
(3) bicycle and traffic handling skills;
(4) on-bike training;
(5) correct use of bicycle helmets; and
(6) traffic laws and regulations.

(b) The department may issue a certificate or other evidence of completion to a person who has successfully completed a bicycle education course.

(c) Subject to the establishment of a bicycle education program by the department, a person born after December 31, 1985, who resides in a metropolitan statistical area as defined by the United States Office of Management and Budget may complete a bicycle education course approved by the department before operating a bicycle on a public roadway, public bicycle path, or other public right-of-way. The course may be completed before the person's 10th birthday.

(d) The department may charge a fee for the course not to exceed $15.

(e) The department may:
(1) determine the qualifications for an instructor in the bicycle education program;
(2) use volunteer instructors; and
(3) certify organizations to recruit and train instructors for the program.

(f) In administering this section, the department may contract with an educational institution, state agency, local government, or nonprofit organization interested in bicycle education.

(g) The department may accept gifts, grants, and donations to be used in administering this section.

Added by Acts 1993, 73rd Leg., ch. 801, Sec. 1, eff. Jan. 1, 1994. Renumbered from Health & Safety Code Sec. 757.002 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(34), eff. Sept. 1, 1995.

Sec. 758.003. FUND. (a) A fee collected by the department under this chapter shall be deposited in the state treasury to the credit of the bicycle safety fund. The department by rule may establish a procedure to allow an educational institution, state agency, local government, or nonprofit organization interested in bicycle safety to retain an amount from the fees collected to cover

actual and necessary expenses.

(b) The fund may be used by the department only to:

(1) defray the costs of administering this chapter;

(2) provide a bicycle training course for a child younger than 10 years of age who comes from a low income family; and

(3) if funding permits, assist children from low income families in purchasing bicycle helmets.

Added by Acts 1993, 73rd Leg., ch. 801, Sec. 1, eff. Jan. 1, 1994. Renumbered from Health & Safety Code Sec. 757.003 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(34), eff. Sept. 1, 1995.

CHAPTER 759. ROLLER-SKATING CENTERS

Sec. 759.001. DEFINITIONS. In this chapter:

(1) "Operator" means a person who owns, controls, or has operational responsibility for a roller-skating center.

(2) "Roller-skating center" means a facility or a portion of a facility that is specifically designed for roller skating by the public.

(3) "Spectator" means an individual who is present in a roller-skating center only to observe skating activity, regardless of whether the skating activity is recreational or competitive.

Added by Acts 1993, 73rd Leg., ch. 909, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 757.001 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(35), eff. Sept. 1, 1995.

Sec. 759.002. DUTIES OF OPERATOR. An operator shall:

(1) provide at least one individual to act as a floor guard for approximately every 200 skaters;

(2) require each floor guard to:

(A) wear attire that identifies the individual as a floor guard;

(B) be on duty at all times while skating is allowed;

(C) direct and supervise skaters and spectators; and

(D) watch for foreign objects that may have fallen on the floor;

(3) inspect and maintain in good condition the roller-skating surface and the railings, kickboards, and walls surrounding

the roller-skating surface;

(4) inspect and maintain in good mechanical condition roller-skating equipment that the operator leases or rents to roller skaters;

(5) comply with the Roller-Skating Rink Safety Standards, 1980 edition, published by the Roller Skating Rink Operators Association of America;

(6) post the duties of roller skaters and spectators prescribed by this chapter in conspicuous places in the roller-skating center; and

(7) maintain the stability and legibility of all required signs, symbols, and posted notices.

Added by Acts 1993, 73rd Leg., ch. 909, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 757.002 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(35), eff. Sept. 1, 1995.

Sec. 759.003. DUTIES OF ROLLER SKATERS. (a) A roller skater:

(1) shall comply with each posted sign or warning that relates to the behavior and responsibility of the roller skater in the roller-skating center;

(2) shall obey instructions given by the operator, floor guard, or other roller-skating center personnel;

(3) shall maintain reasonable control over the speed and direction of the roller skater's skating at all times;

(4) shall be reasonably aware of other roller skaters or objects in the roller-skating center to avoid colliding with other roller skaters or objects;

(5) shall know the roller skater's ability to control the intended direction of skating and shall skate within the limits of that ability; and

(6) may not act in a manner that may cause injury to others.

(b) The conduct of a child shall be evaluated based on the child's experience, intelligence, capacity, and age to determine if the child violated this section or Section 757.004.

Added by Acts 1993, 73rd Leg., ch. 909, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 757.003 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(35), eff. Sept. 1, 1995.

Sec. 759.004. DUTY OF SPECTATOR. A spectator shall comply with each posted sign or warning that relates to the behavior of the spectator in the roller-skating center.

Added by Acts 1993, 73rd Leg., ch. 909, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 757.004 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(35), eff. Sept. 1, 1995.

Sec. 759.005. LIABILITY. (a) The liability of an operator is limited to those injuries or damages proximately caused by a breach of the operator's duties prescribed by Section 757.002.

(b) The determination of the percentage of responsibility for an injury or damage shall be made according to Chapter 33, Civil Practice and Remedies Code.

Added by Acts 1993, 73rd Leg., ch. 909, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 757.005 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(35), eff. Sept. 1, 1995.

CHAPTER 760. ICE SKATING CENTERS

Sec. 760.001. DEFINITIONS. In this chapter:

(1) "Ice skating center" means that portion of a facility that is designed for ice skating by the public.

(2) "Operator" means a person who owns, controls, or has operational responsibility for an ice skating center.

(3) "Spectator" means an individual who is present in an ice skating center only to observe ice skating, regardless of whether the skating is recreational or competitive.

Added by Acts 1997, 75th Leg., ch. 141, Sec. 1, eff. Sept. 1, 1997.

Sec. 760.002. DUTIES OF OPERATOR. An operator shall:

(1) provide at least one individual to act as a rink monitor for approximately every 200 ice skaters at any time public skating is allowed;

(2) require a rink monitor to:

(A) wear attire that identifies the individual as a rink monitor;

(B) direct and supervise skaters and spectators; and

(C) watch for and remove in a timely fashion all foreign objects that may have fallen on the ice skating surface;

(3) inspect and maintain in good condition the ice skating surface and the floors, railings, boards, and walls surrounding the ice skating surface;

(4) inspect and maintain in good mechanical condition ice skating equipment that the operator leases or rents to ice skaters;

(5) comply with the risk management guidelines for ice skating rinks endorsed by the board of directors of the Ice Skating Institute of America on August 27, 1996;

(6) post the duties of ice skaters and spectators prescribed by this chapter in conspicuous places in the ice skating center;

(7) maintain the stability and legibility of all required signs, symbols, and posted notices; and

(8) maintain liability insurance of at least $500,000 combined single limits for personal injury, death, or property damage.

Added by Acts 1997, 75th Leg., ch. 141, Sec. 1, eff. Sept. 1, 1997.

Sec. 760.003. DUTIES OF ICE SKATERS. (a) An ice skater shall:

(1) comply with each posted sign or warning that relates to the behavior and responsibility of the ice skater in the ice skating center;

(2) obey instructions given by the operator, rink monitor, or other ice skating center personnel;

(3) maintain reasonable control over the speed and direction of the ice skater's skating at all times;

(4) be reasonably aware of other ice skaters or objects in the ice skating center to avoid colliding with other ice skaters or objects; and

(5) know the ice skater's ability to control the intended direction of skating and skate within the limits of that ability.

(b) An ice skater may not act in a manner that may cause injury to others.

Added by Acts 1997, 75th Leg., ch. 141, Sec. 1, eff. Sept. 1, 1997.

Sec. 760.004. DUTY OF SPECTATOR. A spectator shall comply with each posted sign or warning that relates to the behavior of the spectator in the ice skating center.

Added by Acts 1997, 75th Leg., ch. 141, Sec. 1, eff. Sept. 1, 1997.

Sec. 760.005. DUTY OF CHILD. In determining whether the conduct of a child violates Section 760.003 or 760.004, the conduct shall be evaluated based on the child's experience, intelligence, capacity, and age.

Added by Acts 1997, 75th Leg., ch. 141, Sec. 1, eff. Sept. 1, 1997.

Sec. 760.006. LIABILITY. (a) Except for actions against an operator for gross negligence, malice, or intentional conduct, an operator is not liable in negligence for damages for personal injury, property damage, or death unless the personal injury, property damage, or death is caused by a breach of a duty prescribed in Section 760.002.

(b) Chapter 33, Civil Practice and Remedies Code, applies to an action brought against an operator.

Added by Acts 1997, 75th Leg., ch. 141, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 762. CAMPGROUND SAFETY

Sec. 762.001. DEFINITIONS. In this chapter:

(1) "Cabin" means a structure used to provide temporary sleeping quarters for transient overnight guests.

(2) "Campground" means, regardless of profit:

(A) a commercial property designed to provide cabins for transient overnight guest use; or

(B) a recreational vehicle park, as defined by Section 13.087, Water Code.

(3) "Campground operator" means a person who owns, operates, controls, or supervises a campground, regardless of profit.

(4) "Floodplain" means any area within a 100-year floodplain identified by the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. Section 4001 et seq.). This term includes any area removed from the 100-year floodplain by a letter of map amendment, a letter of map revision based on fill, or a substantially similar administrative process conducted by the Federal Emergency Management Agency.

(5) "Governmental entity" means this state or a state agency or political subdivision of this state.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 3 (S.B. 1), Sec. 6, eff. September 5, 2025.

Sec. 762.002. FLOODPLAIN SAFETY REQUIREMENTS. (a) A campground operator shall:

(1) install and maintain in each campground cabin located within the floodplain an emergency ladder capable of providing access to the cabin's roof; and

(2) develop an emergency evacuation plan for:

(A) evacuating on issuance of a flash flood or flood warning campground occupants who are at a campground area within the floodplain;

(B) evacuating campground occupants on issuance of an evacuation order by the emergency management director or coordinator designated under Section 418.1015, Government Code, for the county or, if applicable, the municipality in which the campground is located, due to a wildfire, hurricane, or other disaster; and

(C) sheltering campground occupants in place on issuance of:

(i) a tornado warning; or

(ii) an order to shelter in place issued by the emergency management director or coordinator for the county or, if applicable, the municipality in which the campground is located.

(b) A campground operator shall:

(1) implement the emergency evacuation plan developed under Subsection (a)(2)(A) on issuance by the National Weather Service of a flash flood or flood warning for an area of the campground; and

(2) implement the emergency evacuation plan developed under Subsection (a)(2)(C) on issuance by the National Weather Service of a

tornado warning for an area of the campground.

(c) A campground operator shall send a copy of an emergency evacuation plan developed under Subsection (a)(2) to:

(1) for a campground located in a municipality, the emergency management director or coordinator designated under Section 418.1015, Government Code, for the municipality; and

(2) the emergency management director or coordinator designated under Section 418.1015, Government Code, for the county.

(d) An emergency plan submitted to, received by, or accessed by an emergency management director or coordinator under Section 418.1015, Government Code, or any governmental entity under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 3 (S.B. 1), Sec. 6, eff. September 5, 2025.

Sec. 762.003. FIRE PROTECTION STANDARDS. (a) This section does not apply to a campground owned or controlled by a governmental entity.

(b) A campground must comply with the National Fire Protection Association 1194, Standard for Recreational Vehicle Parks and Campgrounds, 2021 Edition, other than Sections 1.1.1 and 5.1.1.1.

(c) A governmental entity may adopt a policy, rule, ordinance, or order to regulate environmental health and sanitation, electrical distribution system safety, liquefied petroleum gas storage and dispensing safety, or fire protection only if the policy, rule, ordinance, or order does not impose standards more stringent than the standards described under Subsection (b).

Added by Acts 2025, 89th Leg., 2nd C.S., Ch. 3 (S.B. 1), Sec. 6, eff. September 5, 2025.

Chapter 763, consisting of Secs. 763.001 to 763.003, was added by Acts 2025, 89th Leg., R.S., Ch. 375 (H.B. 742), Sec. 1.

For another Chapter 763, consisting of Secs. 763.001 to 763.003, added by Acts 2025, 89th Leg., R.S., Ch. 376 (H.B. 754), Sec. 2, see Sec. 763.001 et seq., post.

CHAPTER 763. HUMAN TRAFFICKING PREVENTION TRAINING

SUBCHAPTER A. TRAINING FOR FIRST RESPONDERS

Sec. 763.001. DEFINITIONS. In this subchapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "First responder" means a public safety employee whose duties include responding rapidly to an emergency. The term:

(A) includes:

(i) fire protection personnel, as defined by Section 419.021, Government Code; and

(ii) emergency medical services personnel, as defined by Section 773.003; and

(B) does not include:

(i) volunteer emergency services personnel;

(ii) an emergency medical services volunteer, as defined by Section 773.003; or

(iii) a peace officer or reserve law enforcement officer, as those terms are defined by Section 1701.001, Occupations Code, who is performing law enforcement duties.

(4) "Human trafficking" means conduct that constitutes an offense under Section 20A.02, Penal Code.

Added by Acts 2025, 89th Leg., R.S., Ch. 375 (H.B. 742), Sec. 1, eff. September 1, 2025.

Sec. 763.002. REQUIRED HUMAN TRAFFICKING TRAINING. A first responder, within the time prescribed by commission rule, shall successfully complete a training course approved by the executive commissioner on identifying, assisting, and reporting victims of human trafficking.

Added by Acts 2025, 89th Leg., R.S., Ch. 375 (H.B. 742), Sec. 1, eff. September 1, 2025.

Sec. 763.003. TRAINING COURSE APPROVAL. (a) The executive commissioner shall:

(1) approve training courses on human trafficking

prevention, including at least one course available without charge; and

(2) post a list of the approved training courses on the commission's Internet website.

(b) The executive commissioner shall update the list of approved training courses described by Subsection (a) as necessary and consider for approval training courses conducted by health care facilities.

Added by Acts 2025, 89th Leg., R.S., Ch. 375 (H.B. 742), Sec. 1, eff. September 1, 2025.

Chapter 763, consisting of Secs. 763.001 to 763.003, was added by Acts 2025, 89th Leg., R.S., Ch. 376 (H.B. 754), Sec. 2.

For another Chapter 763, consisting of Secs. 763.001 to 763.003, added by Acts 2025, 89th Leg., R.S., Ch. 375 (H.B. 742), Sec. 1, see Sec. 763.001 et seq., post.

CHAPTER 763. HUMAN TRAFFICKING PREVENTION TRAINING

SUBCHAPTER A. TRAINING FOR MEDICAL ASSISTANTS

Sec. 763.001. DEFINITIONS. In this subchapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Human trafficking" means conduct that constitutes an offense under Section 20A.02, Penal Code.

(4) "Medical assistant" means an individual who, under the supervision of a physician, assists with patient care management, executes administrative duties, and performs clinical procedures, including:

(A) conducting aseptic procedures;

(B) obtaining vital signs;

(C) preparing patients for the physician's care;

(D) performing venipunctures and non-intravenous injections;

(E) observing and reporting patients' symptoms;

(F) administering basic first aid;

(G) assisting with patient examinations or treatments;

(H) operating office medical equipment;

(I) collecting routine laboratory specimens, as directed by the physician;

(J) administering medication, as directed by the physician;

(K) performing basic laboratory procedures; and

(L) performing dialysis procedures, including home dialysis.

Added by Acts 2025, 89th Leg., R.S., Ch. 376 (H.B. 754), Sec. 2, eff. September 1, 2025.

Sec. 763.002. REQUIRED HUMAN TRAFFICKING TRAINING. A medical assistant, within the time prescribed by commission rule, shall successfully complete a training course approved by the executive commissioner on identifying, assisting, and reporting victims of human trafficking.

Added by Acts 2025, 89th Leg., R.S., Ch. 376 (H.B. 754), Sec. 2, eff. September 1, 2025.

Sec. 763.003. TRAINING COURSE APPROVAL. (a) The executive commissioner shall:

(1) approve training courses on human trafficking prevention, including at least one course available without charge; and

(2) post a list of the approved training courses on the commission's Internet website.

(b) The executive commissioner shall update the list of approved training courses described by Subsection (a) as necessary and consider for approval training courses conducted by health care facilities.

Added by Acts 2025, 89th Leg., R.S., Ch. 376 (H.B. 754), Sec. 2, eff. September 1, 2025.

CHAPTER 765. CRIMINAL HISTORY RECORD INFORMATION CHECKS OF EMPLOYEES OF RESIDENTIAL DWELLING PROJECTS

Sec. 765.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Public Safety.

(2) "Dwelling" means one or more rooms rented for residential purposes to one or more tenants.

(3) "Employer" means a person who employs employees to work at a residential dwelling project.

(4) "Employee" means an individual who performs services for compensation at a residential dwelling project and who is employed by the entity that owns the project or represents the owner in managing or leasing dwellings in the project. The term does not include an independent contractor.

(5) "Occupant" means an individual who resides in a dwelling in a residential dwelling project, other than:

(A) a tenant of the dwelling; or

(B) the owner or manager of the dwelling.

(6) "Residential dwelling project" means a house, condominium, apartment building, duplex, or similar facility that is used as a dwelling or a facility that provides lodging to guests for compensation including a hotel, motel, inn, bed and breakfast facility, or similar facility. The term does not include a nursing home or other related institution regulated under Chapter 242.

Added by Acts 1989, 71st Leg., ch. 1194, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993. Renumbered from Human Resources Code Sec. 135.001 and amended by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

Sec. 765.002. APPLICATION OF CHAPTER; EXCEPTION. (a) This chapter applies to each applicant for a position of employment in a residential dwelling project to whom an offer of employment is made and who, in the course and scope of the employment, may be reasonably required to have access to a dwelling in the residential dwelling project.

(b) This chapter does not apply to a person employed by an occupant or tenant of a dwelling in a residential dwelling project.

Added by Acts 1989, 71st Leg., ch. 1194, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993. Renumbered from Human Resources Code Sec. 135.002 and amended by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

Sec. 765.003. VERIFICATION OF CRIMINAL HISTORY RECORD INFORMATION. (a) An employer may request an applicant to disclose to the employer the applicant's criminal history at any time before or after an offer of employment is made to the applicant. After an offer of employment is made, the employer may verify through the department any criminal history record information that is maintained by the department relating to that applicant and that the department is authorized to release under Chapter 411, Government Code. The employer may verify the information only with the authorization of the applicant and in compliance with this section.

(b) The department may adopt rules or apply rules adopted under Section 411.086, Government Code, regarding the method of requesting information under this chapter.

(c) The department may adopt rules relating to an employer's access to criminal history record information, including requirements for submission of:

(1) the employer's complete name, current street address, and federal employer identification number;

(2) an affidavit by an authorized representative of the employer that the individual whose criminal history is requested has been offered a position of employment by the employer in a residential dwelling project and that, in the course and scope of the employment, the individual may be reasonably required to have access to a dwelling in the residential dwelling project; and

(3) the complete name, date of birth, social security number, and current street address of the individual signing the affidavit.

(d) An affidavit submitted under Subsection (c) must include a statement, executed by the individual offered the position of employment, that authorizes the employer to obtain the criminal history record of the individual.

(e) The department may not provide an employer with the criminal history record information of an applicant under this chapter unless the employer is entitled to receive the information under Section 411.118, Government Code.

(f) This chapter does not require an employer to obtain criminal history record information under this chapter.

Added by Acts 1989, 71st Leg., ch. 1194, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(57), eff. Sept. 1,

1991; Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993. Renumbered from Human Resources Code Sec. 135.003 and amended by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

Sec. 765.004. PRIVILEGE. Criminal history record information received by an employer under this chapter is privileged and is for the exclusive use of the employer. The employer may disclose the information to an authorized officer, employee, or agent of the employer only for the purpose of making a determination regarding the suitability of an individual for employment. Otherwise, an employer, or any individual to whom the employer may have disclosed information, may not release or otherwise disclose the information received under this chapter to any person or governmental entity except on court order or with the written consent of the individual being investigated.

Added by Acts 1989, 71st Leg., ch. 1194, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993. Renumbered from Human Resources Code Sec. 135.004 by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

Sec. 765.005. PENALTY. An individual who is an officer, employee, or agent of an employer and who knowingly or intentionally violates Section 765.004 or submits false information to the department commits an offense. An offense under this section is a Class A misdemeanor.

Added by Acts 1989, 71st Leg., ch. 1194, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993. Renumbered from Human Resources Code Sec. 135.005 and amended by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

Sec. 765.006. EFFECT OF SUBMISSION OF FALSE INFORMATION. An employer may terminate the employment of an individual who, at the time of the individual's application for employment or after the individual has been employed by the employer, submits false information relating to the individual's criminal history.

Added by Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993. Renumbered from V.T.C.A, Human Resources Code Sec. 135.006 by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

Sec. 765.007. OTHER INFORMATION. This chapter does not prevent an employer from asking an applicant for employment or an employee to provide other information if the request for that information is not otherwise prohibited by law.

Added by Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993. Renumbered from Human Resources Code Sec. 135.007 by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 766. FIRE SAFETY IN RESIDENTIAL DWELLINGS

SUBCHAPTER A. SMOKE DETECTORS AND FIRE SAFETY INFORMATION

Sec. 766.001. DEFINITIONS. In this chapter:

(1) "Carbon monoxide alarm" means a device that detects and sounds an alarm to indicate the presence of a harmful level of carbon monoxide gas.

(2) "Department" means the Texas Department of Insurance.

(3) "Fossil fuel" includes coal, kerosene, oil, wood, fuel gases, and other petroleum or hydrocarbon products.

(4) "One-family or two-family dwelling" means a structure that has one or two residential units that are occupied as, or designed or intended for occupancy as, a residence by individuals.

(5) "Smoke detector" means a device or a listed component of a system that detects and sounds an alarm to indicate the presence of visible or invisible products of combustion in the air.

(6) "Smoke detector for hearing-impaired persons" has the meaning assigned by Section 792.001.

Added by Acts 2007, 80th Leg., R.S., Ch. 1051 (H.B. 2118), Sec. 10, eff. September 1, 2007.

Sec. 766.002. SMOKE DETECTOR REQUIREMENT. (a) Each one-family or two-family dwelling constructed in this state must have working smoke detectors installed in the dwelling in accordance with the smoke detector requirements of the building code in effect in the

political subdivision in which the dwelling is located, including performance, location, and power source requirements.

(b) If a one-family or two-family dwelling does not comply with the smoke detector requirements of the building code in effect in the political subdivision in which the dwelling is located, any home improvement to the dwelling that requires the issuance of a building permit must include the installation of smoke detectors in accordance with the building code in effect in the political subdivision in which the dwelling is located, including performance, location, and power source requirements.

Added by Acts 2007, 80th Leg., R.S., Ch. 1051 (H.B. 2118), Sec. 10, eff. September 1, 2007.

Sec. 766.0021. SMOKE DETECTOR FOR HEARING-IMPAIRED PERSONS. (a) A purchaser under a written contract for the sale of a one-family or two-family dwelling may require the seller to install smoke detectors for hearing-impaired persons if:

(1) the purchaser or a member of the purchaser's family who will reside in the dwelling is a hearing-impaired person;

(2) the purchaser provides written evidence of the hearing impairment signed by a licensed physician; and

(3) not later than the 10th day after the effective date of the contract, the purchaser requests in writing that the seller install smoke detectors for hearing-impaired persons and specifies the locations in the dwelling where the smoke detectors are to be installed.

(b) If the seller is required to install smoke detectors for hearing-impaired persons under Subsection (a), the seller and purchaser may agree:

(1) which party will bear the cost of installing the smoke detectors; and

(2) which brand of smoke detectors to install.

(c) The seller must install the smoke detectors not later than the closing date of the sale of the dwelling.

(d) A purchaser may terminate the contract to purchase the dwelling if the seller fails to install smoke detectors for hearing-impaired persons as required by this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1051 (H.B. 2118), Sec. 10,

eff. September 1, 2007.

Sec. 766.0025. FRATERNITY AND SORORITY HOUSES. (a) In this section, "fraternity or sorority house" means a dwelling that:

(1) is a separate structure and that is not a multiunit residential property composed of multiple independent residential units; and

(2) serves as living quarters for members of a fraternity or sorority.

(b) The owner of a fraternity or sorority house must have working smoke detectors installed in the fraternity house or sorority house in accordance with the smoke detector requirements of the building code in effect in the political subdivision in which the fraternity or sorority house is located, including performance, location, and power source requirements.

Added by Acts 2007, 80th Leg., R.S., Ch. 1051 (H.B. 2118), Sec. 10, eff. September 1, 2007.

Sec. 766.003. INFORMATION RELATING TO FIRE SAFETY AND CARBON MONOXIDE DANGERS. (a) The department shall prepare information of public interest relating to:

(1) fire safety in the home; and

(2) the dangers of carbon monoxide.

(b) The information must inform the public about:

(1) ways to prevent fires in the home, and actions to take if a fire occurs in the home;

(2) the need to test smoke detectors every month to ensure the smoke detector is working;

(3) replacing the battery in a battery-operated smoke detector every six months;

(4) the need to have fire safety equipment in the home, including fire extinguishers and emergency escape ladders;

(5) the need to develop and practice a fire escape plan;

(6) the availability of carbon monoxide detectors;

(7) using carbon monoxide alarms as a backup to prevent carbon monoxide poisoning; and

(8) the need to properly use and maintain fossil fuel-

burning appliances.

(c) The department shall distribute the information described by this section to the public in any manner the department determines is cost-effective, including providing the information on the department's Internet website and publishing informational pamphlets.

Added by Acts 2007, 80th Leg., R.S., Ch. 1051 (H.B. 2118), Sec. 10, eff. September 1, 2007.

SUBCHAPTER B. FIRE PROTECTION SPRINKLER SYSTEMS IN CERTAIN RESIDENTIAL HIGH-RISE BUILDINGS IN CERTAIN COUNTIES

Sec. 766.051. DEFINITIONS. In this subchapter:

(1) "Fire protection sprinkler system" means an assembly of underground or overhead piping or conduits that conveys water with or without other agents to dispersal openings or devices to:

(A) extinguish, control, or contain fire; and

(B) provide protection from exposure to fire or the products of combustion.

(2) "Residential high-rise building" means a building used primarily for a residential purpose and that extends 75 feet or more from the ground.

Added by Acts 2015, 84th Leg., R.S., Ch. 871 (H.B. 3089), Sec. 2, eff. September 1, 2015.

Sec. 766.052. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a residential high-rise building:

(1) that is located in a county with a population of more than 1.5 million in which more than 70 percent of the population resides in a single municipality;

(2) in which at least 50 percent of the residents are elderly individuals, individuals with a disability, or individuals with a mobility impairment; and

(3) that is not designated as a historically or archaeologically significant site by the Texas Historical Commission or the governing body of the county or municipality in which the building is located.

Added by Acts 2015, 84th Leg., R.S., Ch. 871 (H.B. 3089), Sec. 2, eff.

September 1, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 102, eff. September 1, 2023.

Sec. 766.053. FIRE PROTECTION SPRINKLER SYSTEMS REQUIRED; STANDARD. (a) A residential high-rise building must be equipped with a complete fire protection sprinkler system that is in good working order and is in compliance with this section.

(b) The governing body of a municipality in which a residential high-rise building subject to this subchapter is located or, if the building is not located in a municipality, the commissioners court of the county in which the building is located shall adopt a standard for the installation of fire protection sprinkler systems in a residential high-rise building.

(c) The standard adopted must be in compliance with National Fire Protection Association 13: Standard for the Installation of Sprinkler Systems. Until the governing body of the municipality or commissioners court of the county, as applicable, adopts a standard as required by this section, the standard is the Standard for the Installation of Sprinkler Systems of the National Fire Protection Association, as that standard existed on September 1, 2015.

Added by Acts 2015, 84th Leg., R.S., Ch. 871 (H.B. 3089), Sec. 2, eff. September 1, 2015.

For expiration of this section, see Subsection (i).

Sec. 766.054. PHASE-IN COMPLIANCE FOR OWNERS OF CERTAIN RESIDENTIAL HIGH-RISE BUILDINGS. (a) This section applies only to an owner of a residential high-rise building built before September 1, 2015.

(b) Not later than September 1, 2018, an owner of a residential high-rise building shall provide notice of the owner's intent to comply with this subchapter to:

(1) if the building is located in a municipality, the appropriate code official of the municipality in which the building is located; or

(2) if the building is not located in a municipality, the

county clerk of the county in which the building is located.

(c) Not later than September 1, 2021, the owner of a residential high-rise building shall install a water supply on all floors of the building in accordance with National Fire Protection Association 13: Standard for the Installation of Sprinkler Systems.

(d) Not later than September 1, 2024, the owner of a residential high-rise building shall install a fire protection sprinkler system in accordance with this subchapter on at least 50 percent of the floors of the building.

(e) Not later than September 1, 2027, the owner of a residential high-rise building shall install a fire protection sprinkler system in accordance with this subchapter on all floors of the building.

(f) Notwithstanding Subsections (b), (c), (d), and (e), an owner of multiple residential high-rise buildings built before September 1, 2015, is considered to have met the requirements of this section if a fire protection sprinkler system is installed on all floors of:

(1) at least 33 percent of the owner's residential high-rise buildings not later than September 1, 2021;

(2) at least 66 percent of the owner's residential high-rise buildings not later than September 1, 2024; and

(3) all of the owner's residential high-rise buildings not later than September 1, 2027.

(g) If a residential high-rise building is a condominium as defined by Section 81.002 or 82.003, Property Code, the apartment or unit owners of the condominium may comply with this subchapter by acting jointly through the council of owners or unit owners' association, as applicable, of the condominium.

(h) For purposes of Sections 766.055 and 766.056, a residential high-rise building is in compliance with this subchapter if the owner of the building has met the requirements of this section.

(i) This section expires September 1, 2028.

Added by Acts 2015, 84th Leg., R.S., Ch. 871 (H.B. 3089), Sec. 2, eff. September 1, 2015.

Sec. 766.055. INJUNCTION. (a) The attorney general, the county attorney of a county in which a residential high-rise building

is located, or the district attorney of a county in which the building is located may bring an action in the name of the state for an injunction to enforce this subchapter against the owner or person in charge of a residential high-rise building not in compliance with this subchapter.

(b) The action must be brought in the district court of the county in which the residential high-rise building is located.

(c) The attorney general, county attorney of the county in which the residential high-rise building is located, or district attorney of the county in which the building is located, as applicable, shall give the owner or person in charge of the building notice of the time and place of a hearing for an action brought under this section not later than the 10th day before the date of the hearing.

(d) A district judge may issue a mandatory injunction against the owner or person in charge of a residential high-rise building not in compliance with this subchapter to enforce this subchapter. Violation of an injunction issued under this section constitutes contempt of court and is punishable in the manner provided for contempt.

Added by Acts 2015, 84th Leg., R.S., Ch. 871 (H.B. 3089), Sec. 2, eff. September 1, 2015.

Sec. 766.056. CRIMINAL PENALTY. (a) A person commits an offense if the person is the owner of a residential high-rise building that is not in compliance with this subchapter.

(b) A person commits an offense if the person serves as an agent for an owner who is not a resident of this state in the care, management, supervision, control, or rental of a residential high-rise building not in compliance with this subchapter.

(c) An offense under this section is punishable by a fine of not more than $10,000.

Added by Acts 2015, 84th Leg., R.S., Ch. 871 (H.B. 3089), Sec. 2, eff. September 1, 2015.

CHAPTER 767. REGULATION OF CERTAIN GROUP HOMES

Sec. 767.001. DEFINITION. In this chapter, "group home" means

an establishment that:

(1) provides, in one or more buildings, lodging to three or more residents who are unrelated by blood or marriage to the owner of the establishment; and

(2) provides those residents with community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication but does not provide personal care services as defined by Section 247.002.

Added by Acts 2023, 88th Leg., R.S., Ch. 141 (S.B. 188), Sec. 1, eff. September 1, 2023.
Redesignated from Health and Safety Code, Chapter 769 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(23), eff. September 1, 2025.
Redesignated and amended from Health and Safety Code, Chapter 769 by Acts 2025, 89th Leg., R.S., Ch. 799 (S.B. 1137), Sec. 1, eff. September 1, 2025.

Sec. 767.002. EXEMPTIONS. This chapter does not apply to:

(1) a person who holds a license issued under Chapter 142, 242, 246, 247, or 252;

(2) a person, establishment, or facility exempt from licensing under Section 142.003(a)(19), 242.003(3), or 247.004(4);

(3) a hotel as defined by Section 156.001, Tax Code;

(4) a retirement community;

(5) a monastery or convent;

(6) a child-care facility as defined by Section 42.002, Human Resources Code;

(7) a family violence shelter center as defined by Section 51.002, Human Resources Code; or

(8) a sorority or fraternity house or other dormitory associated with an institution of higher education.

Added by Acts 2023, 88th Leg., R.S., Ch. 141 (S.B. 188), Sec. 1, eff. September 1, 2023.
Redesignated from Health and Safety Code, Chapter 769 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(23), eff. September 1, 2025.
Redesignated and amended from Health and Safety Code, Chapter 769 by

Acts 2025, 89th Leg., R.S., Ch. 799 (S.B. 1137), Sec. 1, eff. September 1, 2025.

Sec. 767.003. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR APPLICANTS AND EMPLOYEES; CRIMINAL PENALTY. (a) An owner or operator of a group home shall obtain criminal history record information maintained by the Department of Public Safety of the State of Texas on each individual who is an applicant for employment with or an employee of the group home.

(b) An owner or operator of a group home may not hire or continue to employ an individual for whom the owner or operator obtains criminal history record information on the applicant's or employee's conviction of an offense under Chapter 19, 20, 20A, 21, 22, 25, 28, 29, 30, 31, 32, 33, 33A, 34, 35, 35A, or 71, Penal Code, or Section 48.015, 48.02, 48.03, or 48.04, Penal Code, or any other offense punishable as a Class A misdemeanor or a felony.

(c) An owner or operator of a group home who violates Subsection (b) commits an offense. An offense under this section is a Class A misdemeanor.

Added by Acts 2023, 88th Leg., R.S., Ch. 141 (S.B. 188), Sec. 1, eff. September 1, 2023.
Redesignated from Health and Safety Code, Chapter 769 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(23), eff. September 1, 2025.
Redesignated and amended from Health and Safety Code, Chapter 769 by Acts 2025, 89th Leg., R.S., Ch. 799 (S.B. 1137), Sec. 1, eff. September 1, 2025.

Sec. 767.004. GROUP HOME CONSULTANT REFERRALS; CRIMINAL PENALTY. (a) In this section, "group home consultant" means a person with knowledge of group homes who:

(1) refers potential residents of a group home to specific group homes; and

(2) collects compensation for the referral.

(b) Except as provided by Subsection (c) and subject to Subsection (d), a group home consultant may not refer a potential resident to a group home operated by a person who does not hold a

license or permit for the group home issued in accordance with applicable state laws or local regulations.

(c) Subject to Subsection (d), a group home consultant may refer a potential resident to an unlicensed or unpermitted group home only if:

(1) no group home is licensed or permitted to operate in the geographic region where the potential resident desires to reside; or

(2) the potential resident or potential resident's family cannot afford the cost of residing in a licensed or permitted group home referred by the group home consultant in the region where the potential resident desires to reside.

(d) Before referring a potential resident to an unlicensed or unpermitted group home, a group home consultant must inform the potential resident of any complaints against the group home of which the consultant has actual knowledge.

(e) A group home consultant who violates this section commits an offense. An offense under this section is a Class B misdemeanor.

Redesignated from Health and Safety Code, Chapter 769 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(23), eff. September 1, 2025.
Redesignated and amended from Health and Safety Code, Chapter 769 by Acts 2025, 89th Leg., R.S., Ch. 799 (S.B. 1137), Sec. 1, eff. September 1, 2025.

CHAPTER 768. CHILDREN PARTICIPATING IN RODEOS

Sec. 768.001. DEFINITIONS. In this chapter:

(1) "Bull riding helmet" means a rodeo helmet that is designed to provide substantial protection for a person's head and face during bull riding.

(2) "Child" means a person under 18 years of age.

(3) "Department" means the Department of State Health Services.

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Protective vest" means protective clothing that covers a person's chest and torso to prevent or mitigate injury to those areas.

(6) "Rodeo" means an exhibition or competition, without regard to whether the participants are compensated, involving activities related to cowboy skills, including:

(A) riding a horse, with or without a saddle, with the goal of remaining on the horse while it attempts to throw off the rider;

(B) riding a bull;

(C) roping an animal, including roping as part of a team;

(D) wrestling a steer; and

(E) riding a horse in a pattern around preset barrels or other obstacles.

Added by Acts 2009, 81st Leg., R.S., Ch. 868 (S.B. 2505), Sec. 1, eff. June 19, 2009.

Sec. 768.002. PROTECTIVE GEAR REQUIRED FOR CHILDREN ENGAGING IN CERTAIN RODEO ACTIVITIES. (a) A child may not engage in, and a parent or legal guardian of the child may not knowingly or recklessly permit the child to engage in, bull riding, including engaging in bull riding outside a rodeo for the purpose of practicing bull riding, unless the child is wearing a bull riding helmet and a protective vest.

(b) To satisfy the requirements of this section, a helmet or protective vest must meet the standards adopted under Section 768.004.

(c) In a cause of action in which damages are sought for injuries or death suffered by a child in connection with bull riding, the failure of the child or of the parent or legal guardian of the child to comply with this chapter does not constitute responsibility causing or contributing to the cause of the child's injuries or death for purposes of Chapter 33, Civil Practice and Remedies Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 868 (S.B. 2505), Sec. 1, eff. June 19, 2009.

Sec. 768.003. RODEOS ASSOCIATED WITH SCHOOL. (a) This section applies only to a primary or secondary school that sponsors, promotes, or otherwise is associated with a rodeo in which children

who attend the school are likely to participate.

(b) A primary or secondary school to which this section applies shall, before the first rodeo associated with the school in each school year, conduct a mandatory educational program on safety, including the proper use of protective gear, for children planning to participate in the rodeo. The educational program may consist of an instructional video, subject to department approval.

(c) A child may not participate in a rodeo associated with the child's school during a school year unless the child has completed the educational program under Subsection (b) not more than one year before the first day of the rodeo.

Added by Acts 2009, 81st Leg., R.S., Ch. 868 (S.B. 2505), Sec. 1, eff. June 19, 2009.

Sec. 768.004. RULES. (a) The executive commissioner by rule shall adopt standards for:

(1) bull riding helmets; and

(2) protective vests.

(b) For purposes of this section, the executive commissioner may adopt standards established under federal law or adopted by a federal agency or a nationally recognized organization.

(c) The executive commissioner shall adopt rules establishing requirements for the educational program under Section 768.003.

Added by Acts 2009, 81st Leg., R.S., Ch. 868 (S.B. 2505), Sec. 1, eff. June 19, 2009.

Chapter 769, consisting of Secs. 769.001 to 769.002, was added by Acts 2023, 88th Leg., R.S., Ch. 931 (S.B. 12), Sec. 1.

For another Chapter 769, consisting of Secs. 769.001 to 769.003, added by Acts 2023, 88th Leg., R.S., Ch. 141 (S.B. 188), Sec. 1, see Sec. 769.001 et seq., post.

CHAPTER 769. SEXUALLY ORIENTED PERFORMANCES

Sec. 769.001. DEFINITIONS. In this chapter:

(1) "Premises" has the meaning assigned by Section 46.03, Penal Code.

(2) "Sexually oriented performance" has the meaning

assigned by Section 43.28, Penal Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 931 (S.B. 12), Sec. 1, eff. September 1, 2023.

Sec. 769.002. CERTAIN SEXUALLY ORIENTED PERFORMANCES PROHIBITED ON PREMISES OF COMMERCIAL ENTERPRISE; CIVIL PENALTY; INJUNCTION. (a) A person who controls the premises of a commercial enterprise may not allow a sexually oriented performance to be presented on the premises in the presence of an individual younger than 18 years of age.

(b) A person who violates this section is liable to this state for a civil penalty of not more than $10,000 for each violation.

(c) The attorney general may bring an action to:

(1) recover the civil penalty imposed under this section; or

(2) obtain a temporary or permanent injunction to restrain the violation.

(d) An action under this section may be brought in a district court in:

(1) Travis County; or

(2) a county in which any part of the violation occurs.

(e) The attorney general shall deposit a civil penalty collected under this section in the state treasury to the credit of the general revenue fund.

(f) The attorney general may recover reasonable expenses incurred in bringing an action under this section, including court costs, attorney's fees, investigative costs, witness fees, and deposition expenses.

Added by Acts 2023, 88th Leg., R.S., Ch. 931 (S.B. 12), Sec. 1, eff. September 1, 2023.

SUBTITLE B. EMERGENCIES

CHAPTER 771. STATE ADMINISTRATION OF EMERGENCY COMMUNICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 771.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Commission on State Emergency Communications.

(2) "Business service user" means a user of business

service that provides telecommunications service, including 9-1-1 service, to end users through a publicly or privately owned telephone switch.

(3) "Emergency communication district" means:

(A) a public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or

(B) a district created under Subchapter B, C, D, F, G, or H, Chapter 772.

(4) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 4, Sec. 73.01, eff. September 28, 2011.

(5) "Local exchange service provider" means a telecommunications carrier providing telecommunications service in a local exchange service area under a certificate of public convenience and necessity issued by the Public Utility Commission of Texas.

(5-a) "Next generation 9-1-1 service" has the meaning assigned by 47 U.S.C. Section 942.

(5-b) "Next generation 9-1-1 service fund" means the next generation 9-1-1 service fund established under Section 771.0713.

(6) "9-1-1 service" means a communications service that connects users to a public safety answering point through a 9-1-1 system. The term includes next generation 9-1-1 service.

(7) "Public agency" means the state, a municipality, a county, an emergency communication district, a regional planning commission, an appraisal district, or any other political subdivision or district that provides, participates in the provision of, or has authority to provide fire-fighting, law enforcement, ambulance, medical, 9-1-1, or other emergency services.

(8) "Public safety agency" means the division of a public agency that provides fire-fighting, police, medical, or other emergency services, or a private entity that provides emergency medical or ambulance services.

(9) "Public safety answering point" means a continuously operated communications facility that is assigned the responsibility to receive 9-1-1 calls and, as appropriate, to dispatch public safety services or to extend, transfer, or relay 9-1-1 calls to appropriate public safety agencies.

(10) "Regional planning commission" means a planning commission established under Chapter 391, Local Government Code.

(11) "Business service" means a telecommunications service

classified as a business service under rules adopted by the Public Utility Commission of Texas or under the applicable tariffs of the principal service supplier.

(12) "Wireless service provider" means a provider of commercial mobile service under Section 332(d), Federal Telecommunications Act of 1996 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66), and includes a provider of wireless two-way communication service, radio-telephone communications related to cellular telephone service, network radio access lines or the equivalent, and personal communication service. The term does not include a provider of:

(A) a service whose users do not have access to 9-1-1 service;

(B) a communication channel used only for data transmission;

(C) a wireless roaming service or other nonlocal radio access line service; or

(D) a private telecommunications service.

(13) "Wireless telecommunications connection" means any voice-capable wireless communication mobile station that is provided to a customer by a wireless service provider.

(14) "Service provider" means a local exchange service provider, a wireless service provider, and any other provider of local exchange access lines or equivalent local exchange access lines.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 735, Sec. 1, eff. June 16, 1993; Acts 1993, 73rd Leg., ch. 936, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1246, Sec. 1, eff; Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1405, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1406, Sec. 1, eff. Aug. 30, 1999.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.01, eff. September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.02, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 1, eff.

September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 2, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 2, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 830 (H.B. 2911), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

Sec. 771.031. COMPOSITION OF COMMISSION. (a) The Commission on State Emergency Communications is composed of nine appointed members and three ex officio members as provided by this section.

(b) The following individuals serve as nonvoting ex officio members:

(1) the executive director of the Public Utility Commission of Texas, or an individual designated by the executive director;

(2) the executive director of the Department of Information Resources, or an individual designated by the executive director; and

(3) the executive commissioner of the Health and Human Services Commission, or an individual designated by the executive commissioner.

(c) The lieutenant governor and the speaker of the house of representatives each shall appoint two members as representatives of the general public.

(d) The governor shall appoint:

(1) one member who serves on the governing body of a regional planning commission;

(2) one member who serves as a director of or is on the governing body of an emergency communication district;

(3) one member who serves on the governing body of a county;

(4) one member who serves on the governing body of a home-rule municipality that operates a 9-1-1 system that is independent of the state's system; and

(5) one member as a representative of the general public.

(e) Appointed members of the commission serve staggered terms of six years, with the terms of one-third of the members expiring September 1 of each odd-numbered year.

(f) A vacancy in an appointed position on the commission shall

be filled in the same manner as the position of the member whose departure created the vacancy.

(g) The governor shall designate an appointed member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 638, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1405, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 2.06, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 1, eff. September 1, 2009.

Sec. 771.0315. ELIGIBILITY FOR MEMBERSHIP OR TO BE GENERAL COUNSEL. (a) A person is not eligible for appointment under Section 771.031 to represent the general public if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of telecommunications;

(2) is employed by or participates in the management of a business entity or other organization receiving money from the commission;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving money from the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the commission other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

(b) In this subsection, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. A person may not be a member of the commission and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for

purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of telecommunications or emergency communications;

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of telecommunications or emergency communications;

(3) the person is an officer, employee, or paid consultant of a Texas association of regional councils; or

(4) the person's spouse is an officer, manager, or paid consultant of a Texas association of regional councils.

(c) A person may not be a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

(d) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 4, eff. Sept. 1, 1999.

Sec. 771.0316. GROUNDS FOR REMOVAL OF COMMISSION MEMBER. (a) It is a ground for removal from the commission that a member:

(1) does not have at the time of taking office the qualifications required by Section 771.031;

(2) does not maintain during service the qualifications required by Section 771.031;

(3) is ineligible for membership under Section 771.031 or 771.0315;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the commission.

(b) The validity of an action of the commission is not affected

by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 4, eff. Sept. 1, 1999.

Sec. 771.032. APPLICATION OF SUNSET ACT. The Commission on State Emergency Communications is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2029.

Added by Acts 1995, 74th Leg., ch. 970, Sec. 2.01, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 511 (H.B. 1861), Sec. 1, eff. June 17, 2011.

Acts 2021, 87th Leg., R.S., Ch. 850 (S.B. 713), Sec. 3.03, eff. June 16, 2021.

Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 1.12, eff. June 18, 2023.

Sec. 771.033. MEETINGS. The commission shall meet in Austin and at other places fixed by the commission at the call of the presiding officer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 6, eff. Sept. 1, 1999.

Sec. 771.034. EXPENSES. The expenses of a member of the commission shall be paid as provided by the General Appropriations Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 7, eff. Sept. 1, 1999.

Sec. 771.035. STAFF; PERSONNEL POLICIES. (a) The commission may employ persons as necessary to carry out its functions.

(b) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(c) The policy statement must include:

(1) personnel policies, including policies related to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the commission to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the commission's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(d) The policy statement must be:

(1) updated annually;

(2) reviewed by the state Commission on Human Rights for compliance with Subsection (c)(1); and

(3) filed with the governor's office.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 8, eff. Sept. 1, 1999.

Sec. 771.036. STANDARDS OF CONDUCT. The executive director or the executive director's designee shall provide to members of the commission and to employees of the commission, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of

conduct for state officers or employees.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 9, eff. Sept. 1, 1999.

Sec. 771.037. COMMISSION MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the commission;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

(4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget of the commission;

(6) the results of the most recent formal audit of the commission;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict of interest laws; and

(8) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program, regardless of whether the attendance of the program occurs before or after the person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 10, eff. Sept. 1, 1999.

Sec. 771.038. PUBLIC COMMENTS. The commission shall develop

and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 11, eff. Sept. 1, 1999.

Sec. 771.039. COMPLAINTS. (a) The commission shall maintain a file on each written complaint filed with the commission. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the commission;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(b) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) The commission, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 12, eff. Sept. 1, 1999.

Sec. 771.040. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2011, 82nd Leg., R.S., Ch. 511 (H.B. 1861), Sec. 2, eff. June 17, 2011.

SUBCHAPTER C. ADMINISTRATION OF STATE EMERGENCY COMMUNICATIONS

Sec. 771.051. POWERS AND DUTIES OF COMMISSION. (a) The commission is the state's authority on emergency communications. The commission shall:

(1) administer the implementation of statewide 9-1-1 service and the poison control network, including poison control centers under Chapter 777;

(2) develop minimum performance standards for equipment and operation of 9-1-1 service to be followed in developing regional plans under Section 771.055, including requirements that the plans provide for:

(A) automatic number identification by which the telephone number of the caller is automatically identified at the public safety answering point receiving the call; and

(B) other features the commission considers appropriate;

(3) examine and approve or disapprove regional plans as provided by Section 771.056;

(4) recommend minimum training standards, assist in training, and provide assistance in the establishment and operation of 9-1-1 service;

(5) allocate money to prepare and operate regional plans as provided by Section 771.056;

(6) develop and provide public education materials and

training;

(7) plan, implement, operate, and maintain poison control center databases and assist in planning, supporting, and facilitating 9-1-1 databases, as needed;

(8) provide grants or contracts for services that enhance the effectiveness of 9-1-1 service;

(9) coordinate emergency communications services and providers;

(10) make reasonable efforts to gain voluntary cooperation in the commission's activities of emergency communications authorities and providers outside the commission's jurisdiction, including:

(A) making joint communications to state and federal regulators; and

(B) arranging cooperative purchases of equipment or services; and

(11) accept, receive, and deposit in its account in the general revenue fund gifts, grants, and royalties from public and private entities. Gifts, grants, and royalties may be used for the purposes of the commission.

(b) The commission shall comply with state laws requiring state agencies, boards, or commissions generally to submit appropriations requests to the Legislative Budget Board and the governor and to develop a strategic plan for operations.

(c) The commission may obtain a commercial license or sublicense to sell 9-1-1 or poison control public education and training materials in this state or in other states. The commission may use all profits from sales for purposes of the commission.

(d) The commission shall develop and implement policies that clearly separate the policy making responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 36, Sec. 1.05, eff. April 19, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1377, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1405, Sec. 13, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 2, eff.

September 1, 2009.

Sec. 771.0511. EMERGENCY SERVICES INTERNET PROTOCOL NETWORK; EMERGENCY COMMUNICATIONS ADVISORY COMMITTEE. (a) In this section:

(1) "Advisory committee" means the Emergency Communications Advisory Committee.

(2) "State-level emergency services Internet Protocol network" means a private Internet Protocol network or Virtual Private Network that:

(A) is used for communications between and among public safety answering points and other entities that support or are supported by public safety answering points in providing emergency call handling and response; and

(B) will be a part of the Texas Next Generation Emergency Communications System.

(b) The commission, with the assistance of an advisory committee, may coordinate the development, implementation, and management of an interconnected, state-level emergency services Internet Protocol network.

(c) If the commission acts under Subsection (b), the commission shall establish policy and oversee agency involvement in the development and implementation of the interconnected, state-level emergency services Internet Protocol network.

(d) If the commission acts under Subsection (b), the commission shall appoint an advisory committee. The advisory committee must include at least:

(1) one representative from a regional planning commission;

(2) one representative from an emergency communication district, as that term is defined by Section 771.001(3)(A); and

(3) one representative from an emergency communication district, as that term is defined by Section 771.001(3)(B).

(e) In appointing members of an advisory committee, the commission shall consult with regional planning commissions and emergency communication districts throughout the state. The commission shall ensure that each member of the advisory committee has appropriate training, experience, and knowledge in 9-1-1 systems and network management to assist in the implementation and operation of a complex network.

Added by Acts 2011, 82nd Leg., R.S., Ch. 511 (H.B. 1861), Sec. 3, eff. June 17, 2011.

Sec. 771.0512. OBLIGATIONS OR REQUIREMENTS CONCERNING VOICE OVER INTERNET PROTOCOL, INTERNET PROTOCOL ENABLED SERVICE, OR COMMERCIAL MOBILE SERVICE OR WIRELINE SERVICE. Defining "9-1-1 service" as a communications service and other amendments effective September 1, 2013, do not expand or change the authority or jurisdiction of a public agency or the commission over commercial mobile service or wireline service including Voice over Internet Protocol service or Internet Protocol enabled service or expand the authority of a public agency or the commission to assess 911 fees. Nothing in this chapter affects Section 52.002(d), Utilities Code. In this section, "Voice over Internet Protocol service," "Internet Protocol enabled service," and "commercial mobile service" have the meanings assigned by Sections 51.002 and 51.003, Utilities Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 10, eff. September 1, 2013.

Sec. 771.052. AGENCY COOPERATION. Each public agency and regional planning commission shall cooperate with the commission to the fullest extent possible.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 14, eff. Sept. 1, 1999.

Sec. 771.053. STATEWIDE LIMITATION ON LIABILITY OF SERVICE PROVIDERS AND CERTAIN PUBLIC OFFICERS. (a) A service provider of communications service involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, a developer of software used in providing 9-1-1 service, a third party or other entity involved in providing 9-1-1 service, or an officer, director, or employee of the service provider, manufacturer, developer, third party, or other entity involved in providing 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence,

recklessness, or intentional misconduct.

(b) A member of the commission or of the governing body of a public agency is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission causing the claim, damage, or loss violates a statute or ordinance applicable to the action.

(c) This section shall be interpreted to provide protection relating to confidentiality and immunity and protection from liability with at least the same scope and to at least the same extent as described by federal law, including 47 U.S.C. Section 615a and 47 U.S.C. Section 1472.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 2, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1405, Sec. 15, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 3, eff. September 1, 2013.

Sec. 771.054. EFFECT OF CHAPTER ON EMERGENCY COMMUNICATION DISTRICTS. Except as expressly provided by this chapter, this chapter does not affect the existence or operation of an emergency communication district or prevent the addition of territory to the area served by an emergency communication district as provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 771.055. STRATEGIC PLANNING. (a) Each regional planning commission shall develop a regional plan for the establishment and operation of 9-1-1 service throughout the region that the regional planning commission serves. The 9-1-1 service must meet the standards established by the commission.

(b) A regional plan must describe how the 9-1-1 service is to be administered. The 9-1-1 service may be administered by an emergency communication district, municipality, or county, by a combination formed by interlocal contract, or by other appropriate

means as determined by the regional planning commission. In a region in which one or more emergency communication districts exist, a preference shall be given to administration by those districts and expansion of the area served by those districts.

(c) A regional plan must be updated at least once every state fiscal biennium and must include:

(1) a description of how money allocated to the region under this chapter is to be allocated in the region;

(2) projected financial operating information for the two state fiscal years following the submission of the plan; and

(3) strategic planning information for the five state fiscal years following submission of the plan.

(d) In a region in which one or more emergency communication districts exist, if a district chooses to participate in the regional plan, the district shall assist in the development of the regional plan.

(e) For each state fiscal biennium, the commission shall prepare a strategic plan for statewide 9-1-1 service for the following five state fiscal years using information from the strategic information contained in the regional plans and provided by emergency communication districts and home-rule municipalities that operate 9-1-1 systems independent of the state system. The commission shall present the strategic plan to the governor and the Legislative Budget Board, together with the commission's legislative appropriations request. The strategic plan must:

(1) include a survey of the current performance, efficiency, and degree of implementation of emergency communications services throughout the whole state;

(2) provide an assessment of the progress made toward meeting the goals and objectives of the previous strategic plan and a summary of the total expenditures for emergency communications services in this state;

(3) provide a strategic direction for emergency communications services in this state;

(4) establish goals and objectives relating to emergency communications in this state;

(5) provide long-range policy guidelines for emergency communications in this state;

(6) identify major issues relating to improving emergency communications in this state;

(7) identify priorities for this state's emergency communications system; and

(8) detail the financial performance of each regional planning commission in implementing emergency communications service including an accounting of administrative expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 16, eff. Sept. 1, 1999.

Sec. 771.056. SUBMISSION OF REGIONAL PLAN TO COMMISSION. (a) The regional planning commission shall submit a regional plan, or an amendment to the plan, to the commission for approval or disapproval.

(b) In making its determination, the commission shall consider whether the plan or amendment satisfies the standards established by the commission under this chapter, the cost and effectiveness of the plan or amendment, and the appropriateness of the plan or amendment in the establishment of statewide 9-1-1 service.

(c) The commission shall notify a regional planning commission of the approval or disapproval of the plan or amendment not later than the 90th day after the date the commission receives an administratively complete plan or amendment. If the commission disapproves the plan, it shall specify the reasons for disapproval and set a deadline for submission of a modified plan.

(d) If the commission approves the plan, it shall allocate to the region from the money collected under Sections 771.071, 771.0711, and 771.072 and appropriated to the commission the amount that the commission considers appropriate to operate 9-1-1 service in the region according to the plan and contracts executed under Section 771.078.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 17, eff. Sept. 1, 1999.

Sec. 771.057. AMENDMENT OF PLAN. A regional plan may be amended according to the procedure determined by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 18, eff. Sept. 1, 1999.

Sec. 771.058. OPTIONAL PARTICIPATION IN PLAN. (a) In a county with a population of 120,000 or less, the county or another public agency, other than the state, located in the county is not required to participate in the regional plan applicable to the regional planning commission in which it is located, and the fee imposed under this chapter may not be charged to a customer in the county or territory of the public agency other than the county, unless the county or other public agency chooses to participate in the plan by resolution of its governing body.

(b) On approval by the commission, an emergency communication district may choose to participate in the regional plan applicable to the regional planning commission region in which the district is located. An emergency communication district described by Section 771.001(3)(A) may choose to participate in the regional plan by resolution of its governing body or by adoption of an ordinance. An emergency communication district described by Section 771.001(3)(B) may choose to participate in the regional plan by order of the district's board after a public hearing held in the manner required for a public hearing on the continuation of the district under the law governing the district. Following the adoption of the resolution, ordinance, or order and approval by the commission, the regional planning commission shall amend the regional plan to take into account the participation of the emergency communication district.

(c) Participation in the regional plan by an emergency communication district does not affect the organization or operation of the district, except that the district may not collect an emergency communication fee or other special fee for 9-1-1 service not permitted by this chapter. Participation by the district in the plan does not affect the district's authority to set its own fees in the territory under its jurisdiction on January 1, 1988. Participation in the regional plan by a public agency or group of public agencies operating as an emergency communication district as provided by Subsection (d) does not affect the authority of the public agency or group of public agencies to set its own fees in territory:

(1) under its jurisdiction at the time of recognition; or

(2) added to the district after the recognition.

(d) In a county with a population of 120,000 or less, a public agency or group of public agencies acting jointly that contracted

with a service provider before September 1, 1987, to provide 9-1-1 service by resolution of its governing body may withdraw from a regional plan in which it chooses to participate. A public agency or group of public agencies that withdraws from a regional plan under this subsection shall be recognized and operate as an emergency communication district in the agency's or group's geographic jurisdiction. As an emergency communication district, the public agency or group of agencies:

(1) is governed by Subchapter D, Chapter 772; and

(2) may collect all fees authorized by that subchapter or other applicable law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 670, Sec. 2, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1405, Sec. 19, eff. Sept. 1, 1999.

Sec. 771.059. TARGET DATE FOR STATEWIDE NEXT GENERATION 9-1-1 SERVICE. Before September 1, 2025, all parts of the state must be covered by next generation 9-1-1 service.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 830 (H.B. 2911), Sec. 2, eff. September 1, 2021.

Sec. 771.060. BUSINESS PROVIDING RESIDENTIAL TELEPHONE SWITCHES. A business service user that provides residential facilities and owns or leases a private telephone switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1 service that a service supplier is providing to other residential end users in the area participating in the regional plan under Section 771.051(a)(2).

Added by Acts 1993, 73rd Leg., ch. 936, Sec. 3, eff. Aug. 30, 1993.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 11.005, eff. September 1, 2023.

Sec. 771.061. STATEWIDE CONFIDENTIALITY OF INFORMATION. (a) Information that a service provider of communications service is required to furnish to a governmental entity, including a regional planning commission, emergency communications district, or public safety answering point, in providing 9-1-1 service or that a service provider, third party, or other entity voluntarily furnishes at the request of a governmental entity in providing 9-1-1 service is confidential and is not available for public inspection. Information that is contained in an address database maintained by a governmental entity or a third party used in providing 9-1-1 service is confidential and is not available for public inspection. The service provider or third party is not liable to any person who uses a 9-1-1 service for the release of information furnished by the service provider or third party in providing 9-1-1 service, unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

(b) Information that a service provider furnishes to the commission or an emergency communication district to verify or audit emergency service fees or surcharge remittances and that includes access line or market share information of an individual service provider is confidential and not available for public inspection.

(c) This section shall be interpreted to provide protection relating to confidentiality and immunity and protection from liability with at least the same scope and to at least the same extent as described by federal law, including 47 U.S.C. Section 615a and 47 U.S.C. Section 1472.

Added by Acts 1997, 75th Leg., ch. 1377, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 20, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 4, eff. September 1, 2013.

Sec. 771.062. LOCAL ADOPTION OF STATE RULE. (a) An emergency communication district may adopt any provision of this chapter or any commission rule. The commission may enforce a provision or rule adopted by an emergency communication district under this section.

(b) The commission shall maintain and update at least annually

a list of provisions or rules that have been adopted by emergency communication districts under this section.

(c) An emergency communication district or home-rule municipality that operates a 9-1-1 system independent of the state system may voluntarily submit strategic planning information to the commission for use in preparing the strategic plan for statewide 9-1-1 service. This information as determined by the commission, if reported, may:

(1) include a survey of the current performance, efficiency, and degree of implementation of emergency communications services;

(2) detail the progress made toward meeting the goals and objectives of the previous strategic plan;

(3) describe the strategic direction, goals, and objectives for emergency communications services;

(4) identify major issues, long-range policy guidelines, and priorities relating to improving emergency communications services; and

(5) detail the financial performance of each district in implementing emergency communications services.

(d) The commission shall establish reasonable guidelines for use by districts and home-rule municipalities in preparing information for the strategic plan for statewide 9-1-1 services. These guidelines shall include the time frames of information and instructions for submission.

Added by Acts 1997, 75th Leg., ch. 1377, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 21, eff. Sept. 1, 1999.

Sec. 771.063. DEFINITION OF LOCAL EXCHANGE ACCESS LINE AND EQUIVALENT LOCAL EXCHANGE ACCESS LINE. (a) The advisory commission shall determine by rulemaking what constitutes a local exchange access line and an equivalent local exchange access line for all 9-1-1 emergency services fees imposed statewide.

(b) By October 1, 1999, the advisory commission shall adopt definitions of a local exchange access line and an equivalent local exchange access line that exclude a line from a telecommunications service provider to an Internet service provider for the Internet

service provider's data modem lines used only to provide its Internet access service and that are not capable of transmitting voice messages.

(c) The advisory commission shall annually review the definitions of a local exchange access line and an equivalent local exchange access line to address technical and structural changes in the provision of telecommunications and data services. In that annual review, the advisory commission may include previously excluded Internet service provider data modem lines if it determines that circumstances have changed sufficiently enough that 9-1-1 emergency calls through those lines are done on a regular basis or that the data lines are voice-capable or that the lines are functionally equivalent.

(d) An emergency communication district described by Section 771.001(3)(A) or (B) that has not participated in a regional plan shall use the advisory commission's definitions of a local exchange access line and an equivalent local exchange access line for purposes of imposing its emergency service fees and may not impose an emergency service fee on any line excluded from the advisory commission's definitions.

(e) A service provider shall collect and remit the emergency service fees to the advisory commission or the appropriate emergency communication district, as applicable, in accordance with the advisory commission's definition of a local exchange access line and an equivalent local exchange access line.

Added by Acts 1999, 76th Leg., ch. 1203, Sec. 1, eff. June 18, 1999.

SUBCHAPTER D. FINANCING STATE EMERGENCY COMMUNICATIONS

Sec. 771.071. EMERGENCY SERVICE FEE. (a) Except as otherwise provided by this subchapter, the commission may impose a 9-1-1 emergency service fee on each local exchange access line or equivalent local exchange access line, including lines of customers in an area served by an emergency communication district participating in the applicable regional plan. If a business service user provides residential facilities, each line that terminates at a residential unit, and that is a communication link equivalent to a residential local exchange access line, shall be charged the 9-1-1 emergency service fee. The fee may not be imposed on a line to coin-

operated public telephone equipment or to public telephone equipment operated by coin or by card reader. The fee may also not be imposed on any line that the commission excluded from the definition of a local exchange access line or an equivalent local exchange access line pursuant to Section 771.063.

(b) The amount of the fee may not exceed 50 cents a month for each line.

(c) The commission may set the fee in a different amount in each regional planning commission region based on the cost of providing 9-1-1 service to each region.

(d) The fee does not apply to an emergency communication district not participating in the applicable regional plan. A customer in an area served by an emergency communication district not participating in the regional plan may not be charged a fee under this section. Money collected under this section may not be allocated to an emergency communication district not participating in the applicable regional plan.

(e) A service provider shall collect the fees imposed on its customers under this section. Not later than the 30th day after the last day of the month in which the fees are collected, the service provider shall deliver the fees to the comptroller. The comptroller shall deposit money from the fees to the credit of the 9-1-1 services fee account in the general revenue fund. The comptroller may establish alternative dates for payment of fees under this section, provided that the required payment date be no earlier than the 30th day after the last day of the reporting period in which the fees are collected.

(f) The commission shall distribute money appropriated to the commission from the 9-1-1 services fee fund to regional planning commissions for use in providing 9-1-1 services as provided by contracts executed under Section 771.078. The regional planning commissions shall distribute the money to public agencies for use in providing those services.

(g) Repealed by Acts 1999, 76th Leg., ch. 1045, Sec. 18, eff. June 18, 1999.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 4, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 1157, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1045, Sec. 18, eff. June 18, 1999, Acts 1999, 76th

Leg., ch. 1203, Sec. 2, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1405, Sec. 22, eff. Sept; 1, 1999; Acts 2001, 77th Leg., ch. 1158, Sec. 80, eff. Jan. 1, 2002.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.03, eff. September 28, 2011.

Sec. 771.0711. EMERGENCY SERVICE FEE FOR WIRELESS TELECOMMUNICATIONS CONNECTIONS. (a) To provide for automatic number identification and automatic location identification of wireless 9-1-1 calls, the commission shall impose on each wireless telecommunications connection a 9-1-1 emergency service fee. A political subdivision may not impose another fee on a wireless service provider or subscriber for 9-1-1 emergency service.

(b) A wireless service provider shall collect the fee in an amount equal to 50 cents a month for each wireless telecommunications connection from its subscribers and shall pay the money collected to the comptroller not later than the 30th day after the last day of the month during which the fees were collected. The comptroller may establish alternative dates for payment of fees under this section. The wireless service provider may retain an administrative fee of one percent of the amount collected. The comptroller shall deposit the money from the fees to the credit of the 9-1-1 services fee account. Until deposited to the credit of the 9-1-1 services fee account as required by Subsection (c), money the comptroller collects under this subsection remains in a trust fund with the state treasury.

(c) Money collected under Subsection (b) may be used only for services related to 9-1-1 services, including automatic number identification and automatic location information services, or as authorized by Section 771.079(c). Not later than the 15th day after the end of the month in which the money is collected, the commission shall distribute to each emergency communication district that does not participate in the state system a portion of the money that bears the same proportion to the total amount collected that the population of the area served by the district bears to the population of the state. The remaining money collected under Subsection (b) shall be deposited to the 9-1-1 services fee account.

(d) A service provider of telecommunications service involved in providing wireless 9-1-1 service is not liable for any claim,

damage, or loss arising from the provision of wireless 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

(e) A member of the commission, the governing body of a public agency, or the Department of Information Resources is not liable for any claim, damage, or loss arising from the provision of wireless 9-1-1 service unless the act or omission causing the claim, damage, or loss violates a statute or ordinance applicable to the action.

(f) A wireless service provider is not required to take legal action to enforce the collection of any wireless 9-1-1 service fee. The comptroller may establish collection procedures and recover the cost of collection from the subscriber liable for the fee. The comptroller may institute legal proceedings to collect a fee and in those proceedings is entitled to recover from the subscriber court costs, attorney's fees, and interest on the amount delinquent.

(g) Repealed by Acts 2021, 87th Leg., R.S., Ch. 830 (H.B. 2911), Sec. 4, eff. September 1, 2021.

(h) Information that a wireless service provider is required to furnish to a governmental entity in providing 9-1-1 service is confidential and exempt from disclosure under Chapter 552, Government Code. The wireless service provider is not liable to any person who uses a 9-1-1 service created under this subchapter for the release of information furnished by the wireless service provider in providing 9-1-1 service. Information that is confidential under this section may be released only for budgetary calculation purposes and only in aggregate form so that no provider-specific information may be extrapolated.

(i) Nothing in this section may be construed to apply to wireline 9-1-1 service.

(j) Repealed by Acts 2021, 87th Leg., R.S., Ch. 830 (H.B. 2911), Sec. 4, eff. September 1, 2021.

Added by Acts 1997, 75th Leg., ch. 1246, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 23, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1158, Sec. 81, eff. Jan. 1, 2002. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 2.07, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 6, eff. June

14, 2013.

Acts 2021, 87th Leg., R.S., Ch. 830 (H.B. 2911), Sec. 4, eff. September 1, 2021.

Sec. 771.0712. PREPAID 9-1-1 EMERGENCY SERVICE FEE. (a) To ensure that all 9-1-1 agencies under Section 418.051, Government Code, are adequately funded, beginning on June 1, 2010, a prepaid wireless 9-1-1 emergency services fee of two percent of the purchase price of each prepaid wireless telecommunications service purchased by any method, shall be collected by the seller from the consumer at the time of each retail transaction of prepaid wireless telecommunications service occurring in this state and remitted to the comptroller consistent with Chapter 151, Tax Code, and distributed consistent with the procedures in place for the emergency services fee in Section 771.0711, Health and Safety Code. A seller may deduct and retain two percent of prepaid wireless 9-1-1 emergency services fees that it collects under this section to offset its costs in administering this fee.

(b) The comptroller shall adopt rules to implement this section by June 1, 2010.

(c) A seller who fails to file a report or remit a fee collected or payable as provided by this section and comptroller rules shall pay five percent of the amount due and payable as a penalty, and if the seller fails to file the report or remit the fee within 30 days after the day the fee or report is due, the seller shall pay an additional five percent of the amount due and payable as an additional penalty.

(d) In addition to any other penalty authorized by this section, a seller who fails to file a report as provided by this section shall pay a penalty of $50. The penalty provided by this subsection is assessed without regard to whether the seller subsequently files the report or whether any taxes were due from the seller for the reporting period under the required report.

(e) A marketplace provider, as defined by Section 151.0242(a), Tax Code, shall:

(1) collect on behalf of the seller the fee imposed by this section on a sale made through the marketplace; and

(2) after making the deduction authorized to be made by a seller under Subsection (a), remit the fee to the comptroller in the

same manner a seller remits collected fees under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 3.03a, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 14.10, eff. October 1, 2011.
Acts 2021, 87th Leg., R.S., Ch. 569 (S.B. 477), Sec. 3, eff. July 1, 2022.

For expiration of this section, see Subsection (g).

Sec. 771.0713. NEXT GENERATION 9-1-1 SERVICE FUND. (a) The next generation 9-1-1 service fund is created as a fund in the state treasury outside the general revenue fund.

(b) Notwithstanding any other law and except as provided by federal law, the comptroller shall transfer to the credit of the next generation 9-1-1 service fund any amount available from federal money provided to this state from the Coronavirus State and Local Fiscal Recovery Funds under Section 9901 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2) or from any other state or federal governmental source for purposes of this chapter, including money appropriated or otherwise credited to the fund. The comptroller shall transfer the money as soon as practicable following:

(1) the receipt by this state of a sufficient amount of federal money for the transfer; or

(2) the effective date of the most recent legislative appropriation for purposes of this chapter.

(c) Money deposited to the credit of the next generation 9-1-1 service fund may be used only for the purpose of supporting the deployment and reliable operation of next generation 9-1-1 service, including the costs of equipment, operations, and administration. Money in the fund may be distributed to only the commission and emergency communication districts and must be used in a manner that complies with federal law.

(c-1) Except as provided by Subsection (c-2), the commission shall distribute from money appropriated to the commission for purposes of this chapter to each emergency communications district that does not participate in the state system a portion of the appropriated money in an amount proportional to the population of the

area served by the district compared to the population of this state.

(c-2) For each emergency communication district created under Chapter 772 that is entitled to a portion of the money distributed under Subsection (c-1), the commission shall:

(1) reduce the portion to which that district is entitled by an amount equal to nine percent of that portion and distribute that resulting amount in equal shares to all the emergency communication districts created under Chapter 772; and

(2) distribute to that district the remainder of the portion to which the district is entitled under Subsection (c-1) that is not distributed under Subdivision (1).

(c-3) The remaining money appropriated to the commission for purposes of this chapter that is not otherwise distributed under Subsection (c-1) or (c-2) shall be deposited to the 9-1-1 services fee account.

(d) Interest earned on money deposited to the credit of the next generation 9-1-1 service fund is exempt from Section 404.071, Government Code. Interest on money in the fund shall be retained in the fund.

(e) The comptroller may issue guidelines for use by the commission and emergency communication districts in implementing this section.

(f) All money in the fund from the Coronavirus State and Local Fiscal Recovery Funds under Section 9901 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2) shall be distributed in accordance with this section not later than August 31, 2024, and all money distributed under this section from the Coronavirus State and Local Fiscal Recovery Funds under Section 9901 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2) shall be spent not later than December 31, 2026, for the deployment and reliable operation of next generation 9-1-1 service.

(g) This section expires December 31, 2028.

Added by Acts 2021, 87th Leg., R.S., Ch. 830 (H.B. 2911), Sec. 3, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 189 (H.B. 3290), Sec. 1, eff. September 1, 2023.

Sec. 771.072. EQUALIZATION SURCHARGE. (a) In addition to the fees imposed under Sections 771.071 and 771.0711, the commission shall impose a 9-1-1 equalization surcharge on each local exchange access line or equivalent local exchange access line and each wireless telecommunications connection. The surcharge may not be imposed on:

(1) a line to coin-operated public telephone equipment or to public telephone equipment operated by coin or by card reader;

(2) any line that the commission excluded from the definition of a local exchange access line or an equivalent local exchange access line under Section 771.063; or

(3) any wireless telecommunications connection that constitutes prepaid wireless telecommunications service subject to Section 771.0712.

(b) The surcharge must be a fixed amount, not to exceed 10 cents per month for each local exchange access line, equivalent local exchange access line, or wireless telecommunications connection.

(c) Except as provided by Section 771.073(f), each service provider shall collect the surcharge imposed on its customers under this section and shall deliver the surcharges to the comptroller not later than the date specified by the comptroller, provided that the required payment date be no earlier than the 30th day after the last day of the reporting period in which the surcharge is collected. If the comptroller does not specify a date, the provider shall deliver the surcharges to the comptroller not later than the 30th day after the last day of the month in which the surcharges are collected.

(d) From the revenue received from the surcharge imposed under this section, not more than 40 percent of the amount derived from the application of the surcharge shall be allocated to regional planning commissions or other public agencies designated by the regional planning commissions for use in carrying out the regional plans provided for by this chapter. The allocations to the regional planning commissions are not required to be equal, but should be made to carry out the policy of this chapter to implement 9-1-1 service statewide. Money collected under this section may be allocated to an emergency communication district regardless of whether the district is participating in the applicable regional plan.

(e) From the revenue received from the surcharge imposed by this section, not more than 60 percent of the amount derived from the application of the surcharge shall be periodically allocated to fund

grants awarded under Section 777.009 and other activities related to the poison control centers as required by Chapter 777.

(f) The comptroller shall deposit the surcharges and any prior balances in accounts in the general revenue fund in the state treasury until they are allocated to regional planning commissions, other 9-1-1 jurisdictions, and regional poison control centers in accordance with this section. From those accounts, the amount necessary for the commission to fund approved plans of regional planning commissions and regional poison control centers and to carry out its duties under this chapter shall be appropriated to the commission. Section 403.095, Government Code, does not apply to an account established by this subsection.

(g) Notwithstanding any other law, revenue derived from the equalization surcharge imposed under this section may be appropriated to the commission only for the purposes described by Section 771.156 and Sections 773.122 through 773.124.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 36, Sec. 1.06, eff. Aug. 31, 1994; Acts 1993, 73rd Leg., ch. 670, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 4, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1045, Sec. 15, eff. June 18, 1999, Acts 1999, 76th Leg., ch. 1405, Sec. 24, eff. Sept; 1, 1999; Acts 2001, 77th Leg., ch. 1158, Sec. 82, eff. Jan. 1, 2002.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.04, eff. September 28, 2011.

Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 2, eff. September 1, 2023.

Sec. 771.0725. ESTABLISHMENT OF RATES FOR FEES. (a) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 448, Sec. 1, eff. September 1, 2013.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 448, Sec. 1, eff. September 1, 2013.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 448, Sec. 1, eff. September 1, 2013.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 448, Sec. 1, eff. September 1, 2013.

(e) The commission shall establish the rate for the equalization surcharge imposed under Section 771.072 for each state fiscal biennium in an amount that ensures the aggregate of the anticipated surcharges collected from all customers for the following 12 months does not exceed the aggregate of the surcharges collected from all customers during the preceding 12 months. Any change in the equalization surcharge rate may not become effective before the 90th day after the date notice of the change is provided by the commission to the service providers.

Added by Acts 1997, 75th Leg., ch. 1241, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.33, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1405, Sec. 25, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.05, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 448 (S.B. 809), Sec. 1, eff. September 1, 2013.

Sec. 771.073. COLLECTION OF FEES AND SURCHARGES. (a) A customer on which a fee or surcharge is imposed under this subchapter is liable for the fee or surcharge in the same manner as the customer is liable for the charges for services provided by the service provider. The service provider shall collect the fees and surcharges in the same manner it collects those charges for service, except that the service provider is not required to take legal action to enforce the collection of the fees or surcharges. Other than the fee imposed under Section 771.0712, a fee or surcharge imposed under this subchapter must be either stated separately on the customer's bill or combined in an appropriately labeled single line item on the customer's bill with all other fees and surcharges that are imposed under this subchapter or that are imposed for 9-1-1 emergency service by a political subdivision. A service provider that combines the fees and surcharges into a single line item for billing purposes must maintain books and records reflecting the collection of each separate fee and surcharge.

(b) A business service user that provides residential

facilities and owns or leases a private telephone switch used to provide telephone service to facility residents shall collect the 9-1-1 emergency service fee and transmit the fees monthly to the comptroller. A business service user that does not collect and remit the 9-1-1 emergency service fee as required is subject to a civil cause of action. A court may award to the comptroller court costs, attorney's fees, and interest on the amount delinquent, to be paid by the nonpaying business service user. A certificate of the comptroller specifying the unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(c) The comptroller may establish collection procedures and recover the cost of collection from the customer liable for the fee or surcharge. The comptroller may institute legal proceedings to collect a fee or surcharge and in those proceedings is entitled to recover from the customer court costs, attorney's fees, and an interest on the amount delinquent.

(d) A service provider may not disconnect services for nonpayment of a fee or surcharge imposed under this subchapter.

(e) A service provider collecting fees or surcharges under this subchapter may retain as an administrative fee an amount equal to one percent of the total amount collected.

(f) The commission may establish payment schedules and minimum payment thresholds for fees and surcharges imposed under this subchapter.

(g) A 9-1-1 service provider is responsible for correctly billing and remitting applicable 9-1-1 fees, charges, and equalization surcharges. Any 9-1-1 fees, charges, or equalization surcharges erroneously billed to a subscriber by a 9-1-1 service provider and erroneously remitted to the commission or an emergency communication district may not be recovered from the commission or emergency communication district unless the fees or charges were adjusted due to a refund to the subscriber by the local exchange carrier or interexchange carrier.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 5, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 5, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1377, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1405, Sec. 26, eff. Sept. 1, 1999; Acts 2001, 77th Leg.,

ch. 1158, Sec. 83, eff. Jan. 1, 2002.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.06, eff. September 28, 2011.

Sec. 771.0735. SOURCING OF CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES. The federal Mobile Telecommunications Sourcing Act (4 U.S.C. Sections 116-126) governs the sourcing of charges for mobile telecommunications services. In accordance with that Act:

(1) mobile telecommunications services provided in a taxing jurisdiction to a customer, the charges for which are billed by or for the customer's home service provider, shall be deemed to be provided by the customer's home service provider;

(2) all charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider in accordance with the Act are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through, and no other taxing jurisdiction may impose taxes, charges, or fees on charges for such mobile telecommunications services; and

(3) the fee and the surcharge imposed on wireless telecommunications bills shall be administered in accordance with Section 151.061, Tax Code.

Added by Acts 2001, 77th Leg., ch. 370, Sec. 4, eff. Aug. 1, 2002.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.07, eff. September 28, 2011.

Sec. 771.074. EXEMPTION. A fee or surcharge authorized by this subchapter, Chapter 772, or a home-rule municipality may not be imposed on or collected from the state or the federal government.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1377, Sec. 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1158, Sec. 84, eff. Jan. 1, 2002.

Sec. 771.075. USE OF REVENUE. Except as provided by Section 771.0751, 771.072(e), 771.072(f), or 771.073(e), fees and surcharges collected under this subchapter may be used only for planning, development, provision, and enhancement of the effectiveness of 9-1-1 service as approved by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 670, Sec. 4, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 936, Sec. 6, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 6, eff; Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1405, Sec. 27, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 258, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1324, Sec. 1, eff. June 20, 2003.

Text of section added by Acts 2003, 78th Leg., ch. 1324, Sec. 2

For text of section as added by Acts 2003, 78th Leg., ch. 258, Sec. 2, see other Sec. 771.0751

Sec. 771.0751. USE OF REVENUE IN CERTAIN COUNTIES. (a) This section applies only to the use of fees and surcharges collected under this subchapter in the county that has the highest population within a region subject to this subchapter.

(b) In addition to use authorized or required by Section 771.072(e) or (f), 771.073(e), or 771.075, fees and surcharges collected under this subchapter may be used for any costs considered necessary by the commission and attributable to:

(1) designing a 9-1-1 system; or

(2) obtaining and maintaining equipment and personnel necessary to establish and operate:

(A) a public safety answering point and related operations; or

(B) other related answering points and operations.

Added by Acts 2003, 78th Leg., ch. 1324, Sec. 2, eff. June 20, 2003.

Text of section added by Acts 2003, 78th Leg., ch. 258, Sec. 2

For text of section as added by Acts 2003, 78th Leg., ch. 1324, Sec. 2, see other Sec. 771.0751

Sec. 771.0751. USE OF REVENUE IN CERTAIN COUNTIES. (a) This section applies only to the use of fees and surcharges collected under this subchapter in a county subject to this subchapter with a population of at least 1.2 million.

(b) In addition to use authorized or required by Section 771.072(e) or (f), 771.073(e), or 771.075, fees and surcharges collected under this subchapter may be used for any costs considered necessary by the commission and attributable to:

(1) designing a 9-1-1 system; or

(2) obtaining and maintaining equipment and personnel necessary to establish and operate:

(A) a public safety answering point and related operations; or

(B) other related answering points and operations.

Added by Acts 2003, 78th Leg., ch. 258, Sec. 2, eff. June 18, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 50, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 103, eff. September 1, 2023.

Sec. 771.076. AUDITS. (a) The commission or an employee of the commission may notify the comptroller of any irregularity that may indicate that an audit of a service provider collecting a fee or surcharge under this subchapter is warranted. The comptroller also may audit a service provider at the comptroller's discretion, without first receiving a notification from the commission or an employee of the commission. The cost of the audit shall not be assessed against the service provider. The commission may require at its own expense that an audit be conducted of a public agency receiving money under this chapter.

(b) If the comptroller conducts an audit of a service provider that collects and disburses fees or surcharges under this subchapter, the comptroller shall also audit those collections and disbursements to determine if the provider is complying with this chapter.

(c) At the request of the Public Utility Commission of Texas, the state auditor may audit a regional planning commission or other public agency designated by the regional planning commission that

receives money under this subchapter.

(d) The audit of a public agency under Subsection (a) or (c) must be limited to the collection, remittance, and expenditure of money collected under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1241, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1405, Sec. 28, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1158, Sec. 85, eff. Jan. 1, 2002.

Sec. 771.077. COLLECTION OF FEES AND SURCHARGES. (a) The comptroller may establish collection procedures to collect past due amounts and may recover the costs of collection from a service provider or business service user that fails to timely deliver the fees and the equalization surcharge to the comptroller. Subtitles A and B, Title 2, Tax Code, apply to the administration and collection of amounts by the comptroller under this subchapter.

(b) The comptroller may establish procedures to be used by the commission to notify the comptroller of a service provider's or business service user's failure to timely deliver the fees or surcharges.

(c) The comptroller shall deposit amounts received as costs of collection in the general revenue fund.

(d) The comptroller shall:

(1) remit to the commission money collected under this section for fees provided by Section 771.0711 and associated late penalties;

(2) deposit to the 9-1-1 services fee account any money collected under this section for fees provided by Section 771.071 and associated late penalties; and

(3) deposit to the account as authorized by Section 771.072 any money collected under this section for fees provided by Section 771.072 and associated late penalties.

(e) The commission shall:

(1) deposit or distribute the money remitted under Subsection (d)(1) as Section 771.0711 provides for fees received under that section; and

(2) distribute the money remitted under Subsection (d)(2) and appropriated to the commission under contracts as provided by

Section 771.078(b)(1).

Added by Acts 1995, 74th Leg., ch. 638, Sec. 7, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 29, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1158, Sec. 86, eff. Jan. 1, 2002.

Sec. 771.078. CONTRACTS FOR SERVICES. (a) The commission shall contract with regional planning commissions for the provision of 9-1-1 service. The commission by rule shall adopt standard provisions for the contracts.

(b) In making contracts under this section, the commission shall ensure that each regional planning commission receives money for 9-1-1 service in two separately computed amounts as provided by this subsection. The commission must provide each regional planning commission with:

(1) an amount of money equal to the total of the revenue from the emergency service fees collected under Section 771.071 that is deposited in the treasury and appropriated to the commission multiplied by a fraction, the numerator of which is the amount of those fees collected from the region and the denominator of which is the total amount of those fees collected in this state; and

(2) an amount of money equal to the total of the revenue from the emergency service fee for wireless telecommunications connections under Section 771.0711 that is deposited in the treasury and appropriated to the commission multiplied by a fraction, the numerator of which is the population of the region and the denominator of which is the population of this state.

(c) Contracts under this section must provide for:

(1) the reporting of financial information regarding administrative expenses by regional planning commissions in accordance with generally accepted accounting principles;

(2) the reporting of information regarding the current performance, efficiency, and degree of implementation of emergency communications services in each regional planning commission's service area;

(3) the collection of efficiency data on the operation of 9-1-1 answering points;

(4) standards for the use of answering points and the creation of new answering points;

(5) quarterly disbursements of money due under the contract, except as provided by Subdivision (6);

(6) the commission to withhold disbursement to a regional planning commission that does not follow a standard imposed by the contract, a commission rule, or a statute; and

(7) a means for the commission to give an advance on a quarterly distribution under the contract to a regional planning commission that has a financial emergency.

(d) Not more than 10 percent of the money received by a regional planning commission under Subsection (b) may be used for the regional planning commission's indirect costs. In this subsection, "indirect costs" means costs that are not directly attributable to a single action of a commission. The governor shall use the federal Office of Management and Budget circulars A-87 and A-122 or use any rules relating to the determination of indirect costs adopted under Chapter 783, Government Code, in administering this section.

(e) The commission may allocate surcharges under Section 771.072(d) by means of a contract under this section.

(f) Promptly after the commission receives a request from a regional planning commission, the commission shall provide the regional planning commission with adequate documentation and financial records of the amount of money collected in that region or of an amount of money allocated to the regional planning commission in accordance with this section.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 30, eff. Sept. 1, 1999.

Sec. 771.079. 9-1-1 SERVICES FEE FUND. (a) The 9-1-1 services fee fund is an account in the general revenue fund.

(b) The account consists of:

(1) fees deposited in the fund as provided by Sections 771.071 and 771.0711;

(2) money deposited to the account under Section 771.0713(c-3); and

(3) notwithstanding Section 404.071, Government Code, all interest attributable to money held in the account.

(c) Except as provided by Subsection (c-1), money in the account may be appropriated only to the commission for planning, development, provision, or enhancement of the effectiveness of 9-1-1

service or for contracts with regional planning commissions for 9-1-1 service, including for the purposes of:

(1) maintaining 9-1-1 service levels while providing for a transition to a system capable of addressing newer technologies and capable of addressing other needs;

(2) planning and deploying statewide, regional, and local emergency network systems; and

(3) updating geospatial mapping technologies.

(c-1) The legislature may appropriate money from the account to provide assistance to volunteer fire departments under Subchapter G, Chapter 614, Government Code, only if:

(1) the purposes described by Subsection (c) have been accomplished or are fully funded for the fiscal period for which an appropriation under this subsection is made; and

(2) all other sources of revenue dedicated for the purposes of providing assistance to volunteer fire departments under Subchapter G, Chapter 614, Government Code, are obligated for the fiscal period for which an appropriation under this subsection is made.

(d) Section 403.095, Government Code, does not apply to the account.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 31, eff. Sept. 1, 1999. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 7, eff. June 14, 2013.

Acts 2023, 88th Leg., R.S., Ch. 189 (H.B. 3290), Sec. 2, eff. September 1, 2023.

SUBCHAPTER E. EMERGENCY MEDICAL DISPATCH RESOURCE CENTERS

Sec. 771.102. ESTABLISHMENT OF THE EMERGENCY MEDICAL DISPATCH RESOURCE CENTERS PROGRAM. (a) The commission, with the assistance of the advisory council appointed under Section 773.012, shall administer the program in which emergency medical dispatchers located in regional emergency medical dispatch resource centers are used to provide life-saving and other emergency medical instructions to persons who need guidance while awaiting the arrival of emergency medical personnel. The purpose of a regional emergency medical

dispatch resource center is not to dispatch personnel or equipment resources but to serve as a resource to provide pre-arrival instructions that may be accessed by selected public safety answering points that are not adequately staffed or funded to provide those services.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 457 , Sec. 7, eff. September 1, 2015.

(c) The commission, with the assistance of the advisory council, shall:

(1) design criteria and protocols and provide oversight as needed to conduct the program;

(2) collect the necessary data to evaluate the program; and

(3) report its findings to the legislature.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1196 (H.B. 1412), Sec. 1, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 457 (H.B. 479), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 457 (H.B. 479), Sec. 7, eff. September 1, 2015.

Sec. 771.103. PARTICIPATION IN PROGRAM. (a) The commission shall determine which public safety answering points are interested in participating in the program.

(b) Participating public safety answering points must agree to participate in any required training and to provide regular reports required by the commission for the program.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1196 (H.B. 1412), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 457 (H.B. 479), Sec. 2, eff. September 1, 2015.

Sec. 771.104. SELECTION OF PROGRAM PARTICIPANTS AND REGIONAL EMERGENCY MEDICAL DISPATCH RESOURCE CENTERS. (a) The commission, with the assistance of the advisory council, may select public safety answering points to participate in the program or to serve as regional emergency medical dispatch resource centers. A public safety answering point may participate in the program and serve as a regional emergency medical dispatch resource center. A public safety answering point selected for the program or to serve as a resource center must:

(1) have a fully functional quality assurance program that measures each emergency medical dispatcher's compliance with the medical protocol;

(2) have dispatch personnel who meet the requirements for emergency medical dispatcher certification or the equivalent as determined by the Department of State Health Services;

(3) use emergency medical dispatch protocols approved by a physician medical director knowledgeable in emergency medical dispatch;

(4) have sufficient experience in providing pre-arrival instructions; and

(5) have sufficient resources to handle the additional workload and responsibilities of the program.

(b) In selecting an existing public safety answering point to act as a resource center, the commission shall consider a public safety answering point's ability to keep records and produce reports to measure the effectiveness of the program. The commission shall share information regarding a public safety answering point's abilities with the advisory council.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1196 (H.B. 1412), Sec. 3, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 457 (H.B. 479), Sec. 2, eff. September 1, 2015.

Sec. 771.105. CRITERIA FOR EMERGENCY MEDICAL DISPATCH INTERVENTION. The commission, with the assistance of the advisory council, shall define criteria that establish the need for emergency medical dispatch intervention to be used by participating public safety answering points to determine which calls are to be transferred to the regional emergency medical dispatch resource center for emergency medical dispatch intervention.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2015, 84th Leg., R.S., Ch. 457 (H.B. 479), Sec. 2, eff. September 1, 2015.

Sec. 771.106. FUNDING OF PROGRAM. (a) State funds may be appropriated to the commission to fund the program.

(b) The commission may seek grant funding for the program.

(c) A political subdivision that participates in the program may pay an appropriate share of the cost of the program.

(d) The provisions in this subchapter that require the commission to conduct and evaluate the program are contingent on the commission receiving funding in accordance with this section. If a sufficient number of political subdivisions in a region that could be served by a program offer to pay the commission an amount that in the aggregate, together with any other funding received under this section, is sufficient to fund the program for the region, the commission:

(1) shall enter into contracts with the offering political subdivisions under which each will pay an appropriate share of the cost; and

(2) when the amount under the signed contracts, together with any other funding received under this section, is sufficient to fund the program for the region, shall implement the program for the

region.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 167, Sec. 1, eff. May 27, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1196 (H.B. 1412), Sec. 4, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 457 (H.B. 479), Sec. 3, eff. September 1, 2015.

Sec. 771.107. REPORT TO LEGISLATURE. The commission shall biennially report its findings to the governor, the presiding officer of each house of the legislature, and the advisory council no later than January 1 of each odd-numbered year.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 167, Sec. 2, eff. May 27, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1196 (H.B. 1412), Sec. 5, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 457 (H.B. 479), Sec. 4, eff. September 1, 2015.

Sec. 771.108. LIABILITY. The operations of the regional emergency medical dispatch resource center are considered to be the provision of 9-1-1 services for purposes of Section 771.053. Employees of and volunteers at the center have the same protection from liability as a member of the governing body of a public agency under Section 771.053.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Sec. 771.109. WORK GROUP. (a) The commission may appoint a program work group to assist the commission in implementing and evaluating the program and preparing a report on the commission's findings.

(b) A member of the work group receives no additional compensation for serving on the program work group and may not be reimbursed for travel or other expenses incurred while conducting the business of the program work group.

(c) The program work group is not subject to Chapter 2110, Government Code.

Added by Acts 2003, 78th Leg., ch. 167, Sec. 3, eff. May 27, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1196 (H.B. 1412), Sec. 6, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 457 (H.B. 479), Sec. 5, eff. September 1, 2015.

For expiration of this subchapter, see Section 771.160.

SUBCHAPTER F. NEXT GENERATION 9-1-1 TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES PILOT PROJECT

Sec. 771.151. DEFINITIONS. In this subchapter:

(1) "Center" means the area health education center at the Texas Tech University Health Sciences Center that meets the requirements of 42 U.S.C. Section 294a and has been awarded federal funding as an area health education center.

(2) "Emergency medical services" means services used to respond to an individual's perceived need for immediate medical care and to prevent death or aggravation of physiological or psychological illness or injury.

(3) "Emergency medical services provider" means a person who uses or maintains emergency medical services vehicles, medical equipment, and emergency medical services personnel to provide

emergency medical services.

(4) "Emergency prehospital care" means care provided to a sick or injured individual before or during transportation of the individual to a medical facility, and includes any necessary stabilization of the individual in connection with that transportation.

(5) "Pilot project" means a pilot project established under Section 771.152.

(6) "Regional trauma resource center" means a trauma facility the center selects to participate in the pilot project.

(7) "Rural area" means:

(A) a county with a population of 50,000 or less; or

(B) a large, isolated, and sparsely populated area of a county with a population of more than 50,000.

(8) "Telehealth service" and "telemedicine medical service" have the meanings assigned by Section 111.001, Occupations Code.

(9) "Trauma facility" means a health care facility equipped and staffed to provide comprehensive treatment of seriously injured individuals as part of an emergency medical services and trauma care system.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

Sec. 771.152. ESTABLISHMENT OF PILOT PROJECT. (a) The commission, with the assistance of the center, shall establish a pilot project to provide emergency medical services instruction and emergency prehospital care instruction through a telemedicine medical service or telehealth service provided by regional trauma resource centers to:

(1) health care providers in rural area trauma facilities; and

(2) emergency medical services providers in rural areas.

(b) The commission shall provide technical assistance to the center in implementing the pilot project.

(c) The center, with the assistance of the commission, shall:

(1) design criteria and protocols for each telemedicine medical service or telehealth service offered and the related instruction, and provide the oversight necessary to conduct the pilot

project;

(2) define criteria to determine when a telemedicine medical service or telehealth service that provides instruction for emergency medical services, emergency prehospital care, and trauma care should be transferred to an emergency medical resource center for intervention; and

(3) collect the data necessary to evaluate the project.

(d) The center may make available appropriate resources for individuals who do not speak English.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

Sec. 771.153. PERSONNEL. The center shall provide the telemedicine medical service or telehealth service and related instruction for the pilot project through health care providers in regional trauma resource centers, including physicians, pharmacists, emergency medical personnel, and other health professionals.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

Sec. 771.154. PARTICIPATION IN PILOT PROJECT. (a) The center shall determine the trauma facilities and emergency medical services providers interested in participating in the pilot project.

(b) A trauma facility or emergency medical services provider participating in the pilot project must agree to successfully complete any required training and to provide all reports required by the center for the project.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

Sec. 771.155. SELECTION OF PILOT PROJECT PARTICIPANTS AND REGIONAL TRAUMA RESOURCE CENTERS. (a) The center, with the assistance of the commission, may select trauma facilities and emergency medical services providers to participate in the pilot project and select trauma facilities to serve as regional trauma

resource centers.

(b) The center may not select a trauma facility to participate in the pilot project or to serve as a regional trauma resource center unless the facility:

(1) has a quality assurance program that measures each health care provider's compliance with the medical protocol;

(2) uses emergency medical services and emergency prehospital care protocols approved by a physician medical director knowledgeable in emergency medical services and emergency prehospital care;

(3) has experience in providing emergency medical services and emergency prehospital care that the center determines is sufficient; and

(4) has resources sufficient to provide the additional telemedicine medical services or telehealth services and related instruction required for the project in addition to the health care services the facility already provides.

(c) In selecting a trauma facility to serve as a regional trauma resource center, the center shall consider the facility personnel's ability to maintain records and produce reports to measure the effectiveness of the pilot project. The center shall share information regarding that ability with the commission.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

Sec. 771.156. FUNDING OF PILOT PROJECT. (a) Money collected under Section 771.072(f) may be appropriated to the commission to fund the pilot project.

(b) The center may seek grants to fund the pilot project.

(c) A political subdivision with a trauma facility that participates in the pilot project may pay part of the project costs.

(d) If a sufficient number of political subdivisions in a region that may be served by the pilot project agree to pay the center an amount that together with other funding received under this section is sufficient to fund the project for the region, the center shall:

(1) contract with the political subdivisions for each subdivision to pay an appropriate share of the cost; and

(2) implement the project for the region when the amounts agreed to in the contracts and any other funding received under this section are sufficient to fund the project for the region.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

Sec. 771.157. REPORT TO LEGISLATURE. The center, in cooperation with the commission, shall report its findings to the governor and the presiding officer of each house of the legislature not later than December 31, 2028.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

Sec. 771.158. LIABILITY. The operations of the center and a regional trauma resource center are considered to be the provision of 9-1-1 services for purposes of Section 771.053. Employees of and volunteers at the regional trauma resource center have the same protection from liability as a member of the governing body of a public agency under Section 771.053.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

Sec. 771.159. PROJECT WORK GROUP. (a) The center may appoint a project work group to assist the center in developing, implementing, and evaluating the pilot project and preparing a report on the center's findings.

(b) A member of the project work group is not entitled to compensation for serving on the project work group and may not be reimbursed for travel or other expenses incurred while conducting the business of the project work group.

(c) The project work group is not subject to Chapter 2110, Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

Sec. 771.160. EXPIRATION. This subchapter expires September 1, 2029.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

CHAPTER 771A. ACCESS TO EMERGENCY COMMUNICATIONS SERVICES IN GENERAL

Sec. 771A.001. DIRECT ACCESS TO 9-1-1 SERVICE REQUIRED. (a) In this chapter:

(1) "9-1-1 service" means a communications service that connects users to a public safety answering point through a 9-1-1 system.

(2) "Business service user" means a user of business service that provides telecommunications service, including 9-1-1 service, to end users through a publicly or privately owned or controlled telephone switch.

(3) "Commission" means the Commission on State Emergency Communications.

(4) "Emergency communication district" means:

(A) a public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or

(B) a district created under Subchapter B, C, D, F, or G, Chapter 772.

(5) "Internet Protocol enabled service" has the meaning assigned by Section 51.002, Utilities Code.

(6) "Telephone system" includes a multiline telephone system.

(b) This section applies to the extent the section is not inconsistent with or preempted by federal law.

(c) Notwithstanding any other law, a business service user that owns or controls a telephone system or an equivalent system that uses Internet Protocol enabled service and provides outbound dialing capacity or access shall configure the telephone system or equivalent system to allow a person initiating a 9-1-1 call on the system to directly access 9-1-1 service by dialing the digits 9-1-1 without an additional code, digit, prefix, postfix, or trunk-access code.

(d) A business service user that provides residential or business facilities, owns or controls a telephone system or an equivalent system that uses Internet Protocol enabled service, and provides outbound dialing capacity or access shall configure the telephone system or equivalent system to provide a notification to a central location on the site of the residential or business facility when a person within the residential or business facility dials 9-1-1 if the system is able to be configured to provide the notification without an improvement to the system's hardware. This subsection does not require a business service user to have a person available at the central location to receive a notification.

(e) The commission or the applicable emergency communication district shall grant a one-year waiver of the requirements under this section to a business service user if:

(1) the requirements would be unduly and unreasonably cost prohibitive for a business service user to comply with; and

(2) the business service user provides an affidavit not later than September 1 of each year stating:

(A) the manufacturer and model number of the telephone system or equivalent system that needs to be reprogrammed or replaced;

(B) that the business service user made a good faith attempt to reprogram or replace the system; and

(C) if the telephone system or equivalent system does not comply with Subsection (c), that the business service user agrees to place an instructional sticker immediately adjacent to each telephone that is accessed using the noncompliant system indicating that during the waiver period the telephone is unable to directly dial 9-1-1 and providing instructions for accessing 9-1-1 in case of an emergency. The instructional sticker must be printed in at least 16-point boldface type in a contrasting color using a font that is easily readable.

(f) The commission may adopt rules to implement this section for areas that are governed by a regional plan, and an emergency communication district may adopt those rules in accordance with Section 771.062.

(g) On the request of the business service user, the commission, an emergency communication district, or a home-rule municipality that independently operates a 9-1-1 system shall provide assistance to a business service user that is within the applicable

governmental entity's jurisdiction in complying with this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 21 (S.B. 788), Sec. 2, eff. May 15, 2015.

CHAPTER 772. LOCAL ADMINISTRATION OF EMERGENCY COMMUNICATIONS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 772.001. DEFINITIONS. In this chapter:

(1) "Automatic location identification" means a feature corresponding to automatic number identification by which the number provided by the automatic number identification feature is matched with the address or location of the telephone from which the call is made and is presented to the public safety answering point along with the number in a computerized 9-1-1 system.

(2) "Automatic number identification" means a feature that enables a service supplier to identify the telephone number of a caller and that operates by forwarding the caller's telephone number to the public safety answering point, where the data is received by equipment that translates it into a visual display.

(3) "Base rate" means the rate or rates billed by a service supplier, as stated in the service supplier's charges approved by the appropriate regulatory authority, that represent the service supplier's recurring charges for local exchange access lines or their equivalent, exclusive of all taxes, fees, license costs, or similar charges.

(4) "Dispatch method" means the method of responding to a telephone request for emergency service by which a public safety answering point decides on the proper action to be taken and dispatches, when necessary, the appropriate emergency service unit.

(4-a) "Emergency services district" means an emergency services district created under Chapter 775.

(5) "Local exchange access lines" means all types of lines or trunks that connect a service user to the service supplier's local telephone exchange office.

(6) "9-1-1 service" means a communications service that connects users to a public safety answering point through a 9-1-1 system.

(7) "9-1-1 system" means a system of processing emergency 9-1-1 calls.

(8) "Participating jurisdiction" means a public agency that by vote consents to receive 9-1-1 service from an emergency communication district.

(9) "Principal service supplier" means the entity that provides the most central office lines to an emergency communication district.

(10) "Private safety entity" means a private entity that provides emergency fire-fighting, ambulance, or medical services.

(11) "Public agency" means a municipality or county in this state that provides or has authority to provide fire-fighting, law enforcement, ambulance, medical, or other emergency services.

(12) "Public safety agency" means the division of a public agency that provides fire-fighting, law enforcement, ambulance, medical, or other emergency services.

(13) "Public safety answering point" means a communications facility that:

(A) is operated continuously;

(B) is assigned the responsibility to receive 9-1-1 calls and, as appropriate, to dispatch emergency response services directly or to transfer or relay emergency 9-1-1 calls to other public safety agencies;

(C) is the first point of reception by a public safety agency of a 9-1-1 call; and

(D) serves the jurisdictions in which it is located or other participating jurisdictions.

(14) "Relay method" means the method of responding to a telephone request for emergency service by which a public safety answering point notes pertinent information and relays that information to the appropriate public safety agency or other provider of emergency services for appropriate action.

(15) "Selective routing" means the feature provided with computerized 9-1-1 service by which 9-1-1 calls are automatically routed to the answering point serving the place from which the call originates.

(16) "Service supplier" means an entity providing local exchange access lines to a service user in an emergency communication district.

(17) "Service user" means a person that is provided local exchange access lines, or their equivalent, in an emergency communication district.

(18) "Transfer method" means the method of responding to a telephone request for emergency service by which a public safety answering point transfers the call directly to the appropriate public safety agency or other provider of emergency services for appropriate action.

(19) "Data base" means the information stored in a management system that is a system of manual procedures and computer programs used to create, store, and update the data required for the selective routing and automatic location identification features in the provision of computerized 9-1-1 service.

(20) "Business service user" means a user of business service that provides telecommunications service, including 9-1-1 service, to end users through a publicly or privately owned telephone switch.

(21) "Business service" means a telecommunications service classified as a business service under rules adopted by the Public Utility Commission of Texas or under the applicable tariffs of the principal service supplier.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 7, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 8, eff. Sept. 1, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 5, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1194 (H.B. 4350), Sec. 1, eff. June 14, 2019.

Sec. 772.002. INFORMATION RELATING TO COLLECTION AND REMITTANCE OF 9-1-1 EMERGENCY SERVICE FEE. (a) This section applies only to a district created under this chapter that collects a 9-1-1 emergency service fee from a service supplier or business service user. This section does not apply to an incumbent local exchange company as defined in Section 51.002, Utilities Code.

(b) The board of managers of a district by order may require a service supplier or business service user to provide to the district any information the board requires so long as that information and the format requested are readily available for the service provider's records to determine whether the service provider or business service

user is correctly billing and collecting the 9-1-1 emergency service fee and remitting the fee to the district. The information required from a service provider under this subsection may include:

(1) the number of local exchange access lines that the service provider has in the district; and

(2) the number of those local exchange access lines that the Commission on State Emergency Communications excluded from the definition of a local exchange access line or an equivalent local exchange access line under Section 771.063.

(c) The district shall maintain the confidentiality of information provided under this section that a service provider or business service user claims is confidential for competitive purposes. The confidential information is exempt from disclosure under Chapter 552, Government Code.

(d) The district may bring suit to enforce this section or to collect fees billed and collected by a service provider or business service user but not remitted to the district. In a proceeding to collect unremitted fees, a sworn affidavit of the district specifying the amount of unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(e) The Public Utility Commission of Texas may impose an administrative penalty under Subchapter B, Chapter 15, Utilities Code, against a service provider who is a person regulated under the Utilities Code if the person:

(1) does not provide information required by a district under this section; or

(2) bills and collects a 9-1-1 emergency service fee as required by this chapter but does not remit the fee to the appropriate district.

Added by Acts 2005, 79th Leg., Ch. 952 (H.B. 1583), Sec. 1, eff. September 1, 2005.

Sec. 772.003. OBLIGATIONS OR REQUIREMENTS CONCERNING VOICE OVER INTERNET PROTOCOL, INTERNET PROTOCOL ENABLED SERVICE, OR COMMERCIAL MOBILE SERVICE OR WIRELINE SERVICE. Defining "9-1-1 service" as a communications service and other amendments effective September 1, 2013, do not expand or change the authority or jurisdiction of a public agency or the commission over commercial mobile service or

wireline service including Voice over Internet Protocol service or Internet Protocol enabled service or expand the authority of a public agency or the commission to assess 911 fees. Nothing in this chapter affects Section 52.002(d), Utilities Code. In this section, "Voice over Internet Protocol service," "Internet Protocol enabled service," and "commercial mobile service" have the meanings assigned by Sections 51.002 and 51.003, Utilities Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 11, eff. September 1, 2013.

SUBCHAPTER B. EMERGENCY COMMUNICATION DISTRICTS: COUNTIES WITH POPULATION OVER 3.3 MILLION

Sec. 772.101. SHORT TITLE. This subchapter may be cited as the 9-1-1 Emergency Number Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.102. PURPOSE. It is the purpose of this subchapter to establish the number 9-1-1 as the primary emergency telephone number for use by certain local governments in this state and to encourage units of local government and combinations of the units to develop and improve emergency communication procedures and facilities in a manner that makes possible the quick response to any person calling the telephone number 9-1-1 seeking police, fire, medical, rescue, and other emergency services. To this purpose the legislature finds that:

(1) it is in the public interest to shorten the time required for a citizen to request and receive emergency aid;

(2) there exist thousands of different emergency telephone numbers throughout the state, and telephone exchange boundaries and central office service areas do not necessarily correspond to public safety and political boundaries;

(3) a dominant part of the state's population is located in rapidly expanding metropolitan areas that generally cross the boundary lines of local jurisdictions and often extend into two or more counties; and

(4) provision of a single, primary three-digit emergency number through which emergency services can be quickly and

efficiently obtained would provide a significant contribution to law enforcement and other public safety efforts by making it less difficult to notify public safety personnel quickly.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.103. DEFINITIONS. In this subchapter:

(1) "Board" means the board of managers of a district.

(2) "District" means a communication district created under this subchapter.

(3) "Principal municipality" means the municipality with the largest population in a county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.104. APPLICATION OF SUBCHAPTER. This subchapter applies to a county with a population of more than 3.3 million and the adjacent territory described by Section 772.105 in which a district was created under Chapter 97, Acts of the 68th Legislature, Regular Session, 1983, before January 1, 1988.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 41, eff. Sept. 1, 2001.

Sec. 772.105. TERRITORY OF DISTRICT. (a) The territory of a district consists of:

(1) the territory of the county for which the district is established; and

(2) for each municipality partially located in the county for which the district is established, the territory of that municipality located in another county.

(b) If a municipality that is part of a district annexes territory that is not part of the district, the annexed territory becomes part of the district.

(c) A public agency located wholly or partly in a county adjoining the county for which the district is created and that has received 9-1-1 service through a regional planning commission interlocal agreement with the district for at least 10 years may

become part of the district by resolution of the agency's governing body and approval by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2005, 79th Leg., Ch. 314 (S.B. 621), Sec. 1, eff. September 1, 2005.

Sec. 772.106. BOARD OF MANAGERS. (a) The district is governed by a board of managers consisting of:

(1) one member appointed by the commissioners court of the county;

(2) two members appointed by the mayor of the principal municipality, with approval of the city council;

(3) one member appointed jointly by the volunteer fire departments operating in whole or part in the district, with the selection process coordinated by the county fire marshal;

(4) one member appointed jointly by the municipalities other than the principal municipality that are participating jurisdictions; and

(5) one member appointed by the principal service supplier.

(b) The board member appointed by the principal service supplier is a nonvoting member.

(c) Board members are appointed for staggered terms of two years, with three members' terms expiring each year.

(d) A board member may be removed from office at will by the entity that appointed the member.

(e) A vacancy on the board shall be filled for the remainder of the term in the manner provided for the original appointment to that position.

(f) Board members serve without compensation. The district shall pay all expenses necessarily incurred by the board in performing its functions under this subchapter.

(g) The board may appoint from among its membership a presiding officer and any other officers it considers necessary.

(h) The director of the district or a board member may be appointed as secretary of the board. The board shall require the secretary to keep suitable records of all proceedings of each board meeting. After each meeting the presiding officer or other member

presiding at the meeting shall read and sign the record and the secretary shall attest the record.

(i) A majority of the voting members of the board constitutes a quorum.

(j) Voting members of the board may meet in executive session in accordance with Chapter 551, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995.

Sec. 772.107. POWERS AND DUTIES OF BOARD. (a) The board shall name, control, and manage the district.

(b) The board may adopt rules for the operation of the district.

(c) The board may contract with any public or private entity to carry out the purposes of this subchapter, including the operation of a 9-1-1 system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.108. DIRECTOR OF DISTRICT. (a) The board shall appoint a director of the district and shall establish the director's compensation. The director must be qualified by training and experience for the position.

(b) The board may remove the director at any time.

(c) With the board's approval, the director may employ any experts, employees, or consultants that the board considers necessary to carry out the purposes of this subchapter.

(d) The director shall perform all duties that the board requires and shall supervise as general manager the operations of the district subject to any limitations prescribed by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.109. BUDGET; ANNUAL REPORT; AUDIT. (a) The director shall prepare under the direction of the board an annual budget for the district. To be effective, the budget must be approved by the board and then presented to and approved by the

commissioners court of the county for which the district is established and the governing body of the principal municipality. A revision of the budget must be approved by the same entities in the same manner as the budget.

(b) As soon as practicable after the end of each district fiscal year, the director shall prepare and present to the board and to all participating public agencies in writing a sworn statement of all money received by the district and how the money was disbursed or otherwise disposed of during the preceding fiscal year. The report must show in detail the operations of the district for the period covered by the report.

(c) The board shall perform an independent financial audit of the district annually.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.110. ESTABLISHMENT OF 9-1-1 SERVICE. (a) A district shall provide 9-1-1 service to each participating jurisdiction through one or a combination of the following methods and features or equivalent state-of-the-art technology:

(1) the transfer method;

(2) the relay method;

(3) the dispatch method;

(4) automatic number identification;

(5) automatic location identification; or

(6) selective routing.

(b) A district shall provide 9-1-1 service using one or both of the following plans:

(1) the district may design, implement, and operate a 9-1-1 system for each participating jurisdiction with the consent of the jurisdiction; or

(2) the district may design, implement, and operate a 9-1-1 system for two or more participating jurisdictions with the consent of each of those jurisdictions if a joint operation would be more economically feasible than separate systems for each jurisdiction.

(c) Under either plan authorized by Subsection (b), the final plans for the particular system must have the approval of each participating jurisdiction covered by the system.

(d) The district shall recommend minimum standards for a 9-1-1

system. A 9-1-1 system in a district under this subchapter must be computerized.

(e) 9-1-1 service is mandatory for each individual telephone subscriber in the district and is not an optional service under any definitions of terms relating to telephone service.

(f) A service supplier involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, or an officer or employee of a service supplier involved in providing 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 638, Sec. 9, eff. Sept. 1, 1995.

Sec. 772.111. PRIMARY EMERGENCY TELEPHONE NUMBER. The digits 9-1-1 are the primary emergency telephone number in a district. A public safety agency whose services are available through a 9-1-1 system may maintain a separate number or numbers for emergencies and shall maintain a separate number or numbers for nonemergency telephone calls.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.112. TRANSMITTING REQUESTS FOR EMERGENCY AID. (a) A 9-1-1 system established under this subchapter must be capable of transmitting requests for fire-fighting, law enforcement, ambulance, and medical services to a public safety agency or agencies that provide the requested service at the place from which the call originates. A 9-1-1 system may also provide for transmitting requests for other emergency services such as poison control, suicide prevention, and civil defense.

(b) A public safety answering point may transmit emergency response requests to private safety entities, with the approval of the board and the consent of each participating jurisdiction and emergency services district serving the relevant area. A participating jurisdiction's or emergency services district's consent may be withdrawn at any time.

(c) With the consent of a participating jurisdiction, a privately owned automatic intrusion alarm or other privately owned automatic alerting device may be installed to cause the number 9-1-1 to be dialed in order to gain access to emergency services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1194 (H.B. 4350), Sec. 2, eff. June 14, 2019.

Sec. 772.113. POWERS OF DISTRICT. (a) The district is a public body corporate and politic, exercising public and essential governmental functions and having all the powers necessary or convenient to carry out the purposes and provisions of this subchapter, including the capacity to sue or be sued.

(b) To fund the district, the district may receive federal, state, county, or municipal funds and private funds and may spend those funds for the purpose of this subchapter. The board shall determine the method and sources of funding for the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.114. 9-1-1 EMERGENCY SERVICE FEE. (a) The board may impose a 9-1-1 emergency service fee on service users in the district if authorized to do so by a majority of the votes cast in the election to confirm the creation of the district and by a majority vote of the governing body of each participating jurisdiction. For purposes of this subsection, the jurisdiction of the county is the unincorporated area of the county.

(b) The fee may be imposed only on the base rate charge or its equivalent, excluding charges for coin-operated telephone equipment. The fee may not be imposed on more than 100 local exchange access lines or their equivalent for a single business entity at a single location, unless the lines are used by residents of the location. The fee may also not be imposed on any line that the Advisory Commission on State Emergency Communications excluded from the definition of a local exchange access line or an equivalent local exchange access line pursuant to Section 771.063. If a business service user provides residential facilities, each line that

terminates at a residential unit and that is a communication link equivalent to a residential local exchange access line, shall be charged the 9-1-1 emergency service fee. The fee must have uniform application and must be imposed in each participating jurisdiction.

(c) The rate of the fee may not exceed six percent of the monthly base rate charged a service user by the principal service supplier in the participating jurisdiction.

(d) The board shall set the amount of the fee each year as part of the annual budget. The board shall notify each service supplier of a change in the amount of the fee not later than the 91st day before the date the change takes effect.

(e) In imposing the fee, the board shall attempt to match the district's revenues to its operating expenditures and to provide reasonable reserves for contingencies and for the purchase and installation of 9-1-1 emergency service equipment. If the revenue received from the fee exceeds the amount of money needed to fund the district, the board by resolution shall reduce the rate of the fee to an amount adequate to fund the district as required by this subsection or suspend the imposition of the fee. If the board suspends the imposition of the fee, the board by resolution may reinstitute the fee if money received by the district is not adequate to fund the district.

(f) In a public agency whose governing body at a later date votes to receive 9-1-1 service from the district, at a later date, the fee is imposed beginning on the date specified by the board. The board may charge the incoming agency an additional amount of money to cover the initial cost of providing 9-1-1 service to that agency. The fee authorized to be charged in a district applies to new territory added to the district under Section 772.105(b) when the territory becomes part of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 8, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1203, Sec. 3, eff. June 18, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1342 (S.B. 314), Sec. 1, eff. September 1, 2005.

Sec. 772.115. COLLECTION OF FEE. (a) Each billed service user

is liable for the fee imposed under Section 772.114 until the fee is paid to the service supplier. The fee must be added to and stated separately in the service user's bill from the service supplier. The service supplier shall collect the fee at the same time as the service charge to the service user in accordance with the regular billing practice of the service supplier. A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall collect the 9-1-1 emergency service fee and transmit the fees monthly to the district.

(b) The amount collected by a service supplier from the fee is due quarterly. The service supplier shall remit the amount collected in a calendar quarter to the district not later than the 60th day after the last day of the calendar quarter. With each payment the service supplier shall file a return in a form prescribed by the board.

(c) Both a service supplier and a business service user under Subsection (a) shall maintain records of the amount of fees it collects for at least two years after the date of collection. The board may require at the board's expense an annual audit of a service supplier's books and records or the books and records of a business service user described by Subsection (a) with respect to the collection and remittance of the fees.

(d) A business service user that does not collect and remit the 9-1-1 emergency service fee as required is subject to a civil cause of action under Subsection (g). A sworn affidavit by the district specifying the unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(e) A service supplier is entitled to retain an administrative fee from the amount of fees it collects. The amount of the administrative fee is two percent of the amount of fees it collects under this section.

(f) A service supplier is not required to take any legal action to enforce the collection of the 9-1-1 emergency service fee. However, the service supplier shall provide the district with an annual certificate of delinquency that includes the amount of all delinquent fees and the name and address of each nonpaying service user. The certificate of delinquency is prima facie evidence that a fee included in the certificate is delinquent. A service user account is considered delinquent if the fee is not paid to the

service supplier before the 31st day after the payment due date stated on the user's bill from the service supplier.

(g) The district may institute legal proceedings to collect fees not paid and may establish internal collection procedures and recover the cost of collection from the nonpaying service user. If legal proceedings are established, the court may award the district court costs, attorney's fees, and interest to be paid by the nonpaying service user. A delinquent fee accrues interest at an annual rate of 12 percent beginning on the date the payment becomes due.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 9, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 10, eff. Sept. 1, 1995.

Sec. 772.116. DISTRICT DEPOSITORY. (a) The board shall select a depository for the district in the manner provided by law for the selection of a county depository.

(b) A depository selected by the board is the district's depository for two years after the date of its selection and until a successor depository is selected and qualified.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.117. ALLOWABLE EXPENSES. Allowable operating expenses of a district include all costs attributable to designing a 9-1-1 system and to all equipment and personnel necessary to establish and operate a public safety answering point and other related answering points that the board considers necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.118. NUMBER AND LOCATION IDENTIFICATION. (a) As part of computerized 9-1-1 service, a service supplier shall furnish for each call the telephone number of the subscribers and the address associated with the number.

(b) A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone

switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1 service that a service supplier is required to provide under Subsection (a) to other residential end users in the district.

(c) Information furnished under this section is confidential and is not available for public inspection.

(d) A service supplier or a business service user under Subsection (b) is not liable to a person who uses a 9-1-1 system created under this subchapter for the release to the district of the information specified in Subsections (a) and (b).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 10, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 11, eff. Sept. 1, 1995.

Sec. 772.119. PUBLIC REVIEW. (a) Periodically, the board shall solicit public comments and hold a public review hearing on the continuation of the district and the 9-1-1 emergency service fee. The first hearing shall be held three years after the date the order certifying the creation of the district is filed with the county clerk. Subsequent hearings shall be held three years after the date each order required by Subsection (d) is adopted.

(b) The board shall publish notice of the time and place of the hearing once a week for two consecutive weeks in a daily newspaper of general circulation published in the district. The first notice must be published not later than the 16th day before the date set for the hearing.

(c) At the hearing, the board shall also solicit comments on the participation of the district in the applicable regional plan for 9-1-1 service under Chapter 771. After the hearing, the board may choose to participate in the regional plan as provided by that chapter.

(d) After the hearing, the board shall adopt an order on the continuation or dissolution of the district and the 9-1-1 emergency service fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.120. DISSOLUTION PROCEDURES. (a) If a district is

dissolved, 9-1-1 service must be discontinued on the date of the dissolution. The commissioners court of the county in which the principal part of the district was located shall assume the assets of the district and pay the district's debts. If the district's assets are insufficient to retire all existing debts of the district on the date of dissolution, the commissioners court shall continue to impose the 9-1-1 service fee, and each service supplier shall continue to collect the fee for the commissioners court. Proceeds from the imposition of the fee by the county after dissolution of the district may be used only to retire the outstanding debts of the district.

(b) The commissioners court shall retire the district's debts to the extent practicable according to the terms of the instruments creating the debts and the terms of the orders and resolutions authorizing creation of the debts.

(c) The commissioners court by order may adopt the rules necessary to administer this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.121. ISSUANCE OF BONDS. The board may issue and sell bonds in the name of the district to finance:

(1) the acquisition by any method of facilities, equipment, or supplies necessary for the district to begin providing 9-1-1 service to all participating jurisdictions; or

(2) the installation of equipment necessary for the district to begin providing 9-1-1 service to all participating jurisdictions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.122. REPAYMENT OF BONDS. The board may provide for the payment of principal of and interest on the bonds by pledging all or any part of the district's revenues from the 9-1-1 emergency service fee or from other sources.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.123. ADDITIONAL SECURITY FOR BONDS. (a) The bonds

may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the district and rights appurtenant to those properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security of the bonds.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on the properties, may contain provisions prescribed by the board for the security of the bonds and the preservation of the trust estate, may make provisions for amendment or modification, and may make provisions for investment of funds of the district.

(c) A purchaser under a sale under the deed of trust or mortgage lien is the absolute owner of the properties and rights purchased and may maintain and operate them.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.124. FORM OF BONDS. (a) A district may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate permitted by state law.

(c) A district's bonds and interest coupons, if any, are investment securities under the terms of Chapter 8, Business & Commerce Code, may be issued registrable as to principal or as to both principal and interest, and may be made redeemable before maturity, at the option of the district, or contain a mandatory redemption provision.

(d) A district may issue its bonds in the form, denominations, and manner and under the terms, and the bonds shall be signed and executed, as provided by the board in the resolution or order authorizing their issuance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.125. PROVISIONS OF BONDS. (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the board may provide for the flow of funds and the

establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds, and may make additional covenants with respect to the bonds, the pledged revenues, and the operation and maintenance of any facilities the revenue of which is pledged.

(b) The orders or resolutions of the board authorizing the issuance of bonds may also prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(c) The orders or resolutions of the board issuing bonds may contain other provisions and covenants as the board may determine.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.126. APPROVAL AND REGISTRATION OF BONDS. (a) Bonds issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, the attorney general shall approve them. On approval by the attorney general, the comptroller shall register the bonds.

(c) After the approval and registration of bonds, the bonds are incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with their terms for all purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.127. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of its outstanding bonds, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate or rates permitted by state law.

(c) Refunding bonds may be payable from the same source as the bonds being refunded or from other sources.

(d) The refunding bonds must be approved by the attorney general in the same manner as the district's other bonds and shall be registered by the comptroller on the surrender and cancellation of the bonds being refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount sufficient to pay the principal of the bonds being refunded and interest on those bonds accruing to their maturity dates or to their option dates if the bonds have been duly called for payment before maturity according to their terms shall be deposited in the place or places at which the bonds being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) In lieu of the method set forth in Subsections (a)-(f), a district may refund bonds, notes, or other obligations as provided by the general laws of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.128. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS. (a) District bonds are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company;

(6) a fiduciary;

(7) a trustee;

(8) a guardian; and

(9) a sinking fund of a municipality, county, school district, and other political subdivision of the state and other public funds of the state and its agencies, including the permanent

school fund.

(b) District bonds are eligible to secure deposits of public funds of the state and municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.129. TAX STATUS OF BONDS. Because a district created under this subchapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds, and profits made in the sale of the bonds are exempt from taxation by the state or by any municipality, county, special district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. EMERGENCY COMMUNICATION DISTRICTS: COUNTIES WITH POPULATION OVER 1.5 MILLION

Sec. 772.201. SHORT TITLE. This subchapter may be cited as the Emergency Communication District Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.202. PURPOSE. It is the purpose of this subchapter to establish the number 9-1-1 as the primary emergency telephone number for use by certain local governments in this state and to encourage units of local government and combinations of those units to develop and improve emergency communication procedures and facilities in a manner that will make possible the quick response to any person calling the telephone number 9-1-1 seeking police, fire, medical, rescue, and other emergency services. To this purpose the legislature finds that:

(1) it is in the public interest to shorten the time required for a citizen to request and receive emergency aid;

(2) there exist thousands of different emergency telephone numbers throughout the state, and telephone exchange boundaries and

central office service areas do not necessarily correspond to public safety and political boundaries;

(3) a dominant part of the state's population is located in rapidly expanding metropolitan areas that generally cross the boundary lines of local jurisdictions and often extend into two or more counties; and

(4) provision of a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained would provide a significant contribution to law enforcement and other public safety efforts by making it less difficult to notify public safety personnel quickly.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.203. DEFINITIONS. In this subchapter:

(1) "Board" means the board of managers of a district.

(2) "Director" means the director of communication for a district.

(3) "District" means an emergency communication district created under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.204. APPLICATION OF SUBCHAPTER. This subchapter applies to a county with a population of more than 1.5 million in which an emergency communication district was created under Chapter 7, Acts of the 68th Legislature, 2nd Called Session, 1984, before January 1, 1988.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 51, eff. September 1, 2011.

Sec. 772.205. ADDITIONAL TERRITORY. (a) If a municipality that is part of a district annexes territory that is not part of the district, the annexed territory becomes part of the district.

(b) A public agency located in the county for which the

district is created or a public agency located in whole or part in a county adjoining the county for which the district is created, by resolution adopted by its governing body and approved by the board of the district, may become part of the district and subject to its benefits and requirements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.206. BOARD OF MANAGERS. (a) A district is governed by a board of managers consisting of:

(1) one member appointed by the commissioners court of the county for which the district is established;

(2) two members appointed by the governing body of the most populous municipality located wholly or partly in the county for which the district is established, if that municipality has a population of more than 150,000, or, if that municipality has a population of 150,000 or less, one member appointed by the governing body;

(3) one member appointed by the governing body of the second most populous municipality located wholly or partly in the county for which the district is established;

(4) one member appointed by the governing body of the third most populous municipality located wholly or partly in the county for which the district is established;

(5) one member appointed by the principal service supplier;

(6) one member appointed by the governing body of the most populous municipality that is a member of the district and is located wholly outside the county for which the district is established; and

(7) one member appointed as provided by this section to represent the other municipalities located wholly or partly in the district.

(b) The board member appointed by the principal service supplier is a nonvoting member.

(c) The board member appointed under Subsection (a)(7) is appointed by the mayor's council established to administer urban development block grant funds, if one exists in the district. Otherwise, the member is appointed by the other members of the board on the advice and recommendation of the governing bodies of all the municipalities represented by the member. The governing bodies of

those municipalities, by agreement of their presiding officers, shall set the time and place to meet and the procedures for selecting the board member.

(d) Board members are appointed for staggered terms of two years, with as near as possible to one-half of the members' terms expiring each year.

(e) A board member may be removed from office at will by the entity that appointed the member.

(f) A vacancy on the board shall be filled for the remainder of the term in the manner provided for the original appointment to that position.

(g) Board members serve without compensation. The district shall pay all expenses necessarily incurred by the board in performing its functions under this subchapter.

(h) The board may appoint from among its membership a presiding officer and any other officers it considers necessary.

(i) The director or a board member may be appointed as secretary of the board. The board shall require the secretary to keep suitable records of all proceedings of each board meeting. After each meeting the presiding officer at the meeting shall read and sign the record and the secretary shall attest the record.

(j) Voting members of the board may meet in executive session in accordance with Chapter 551, Government Code.

(k) A majority of the voting members of the board constitutes a quorum.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 238, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1288, Sec. 1, eff. Sept. 1, 2001.

Sec. 772.207. POWERS AND DUTIES OF BOARD. (a) The board shall control and manage the district.

(b) The board may adopt rules for the operation of the district.

(c) The board may contract with any public or private entity to carry out the purposes of this subchapter, including the operation of a 9-1-1 system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.208. DIRECTOR OF DISTRICT. (a) The board shall appoint a director of communication for the district and shall establish the director's compensation. The director must be qualified by training and experience for the position.

(b) The board may remove the director at any time.

(c) With the board's approval, the director may employ any experts, employees, or consultants that the director considers necessary to carry out the purposes of this subchapter.

(d) The director shall perform all duties that the board requires and shall supervise as general manager the operations of the district subject to any limitations prescribed by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.209. BUDGET; ANNUAL REPORT; AUDIT. (a) The director shall prepare under the direction of the board an annual budget for the district. To be effective, the budget must:

(1) be approved by the board;

(2) be presented to the commissioners court of the county in which the majority of the district is located;

(3) be presented to the governing body of each municipality eligible to appoint a member of the board of managers under Sections 772.206(a)(2)-(4) and (6);

(4) be presented to the governing body of each other participating jurisdiction as provided by Subsection (b); and

(5) subject to Subsection (c), be approved by a majority of the entities to which the budget must be presented under Subdivisions (2) through (4).

(b) For purposes of Subsection (a)(4), the proposed budget must be presented to:

(1) the mayor's council established to administer urban development block grant funds, if one exists in the district; or

(2) if a mayor's council does not exist in the district, the governing bodies of the other participating jurisdictions.

(c) For the purpose of determining approval by a majority under Subsection (a)(5) if the budget is required to be presented under Subsection (b)(2), the other participating jurisdictions are

considered to be acting jointly as one entity.

(d) A revision of the budget must be approved in the same manner as the budget.

(e) As soon as practicable after the end of each district fiscal year, the director shall prepare and present to the board and to each participating jurisdiction in writing a sworn statement of all money received by the district and how the money was used during the preceding fiscal year. The report must state in detail the operations of the district for the fiscal year covered by the report.

(f) The board shall have an independent financial audit of the district performed annually.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1288, Sec. 2, eff. Sept. 1, 2001.

Sec. 772.210. ESTABLISHMENT OF 9-1-1 SERVICE. (a) A district shall provide 9-1-1 service to each participating jurisdiction through one or a combination of the following methods and features:

(1) the transfer method;

(2) the relay method;

(3) the dispatch method;

(4) automatic number identification;

(5) automatic location identification;

(6) selective routing; or

(7) any equivalent method.

(b) A district shall provide 9-1-1 service using one or both of the following plans:

(1) the district may design, implement, and operate a 9-1-1 system for each participating jurisdiction with the consent of the jurisdiction; or

(2) the district may design, implement, and operate a 9-1-1 system for two or more participating jurisdictions with the consent of each of those jurisdictions if a joint operation would be more economically feasible than separate systems for each jurisdiction.

(c) Under either plan authorized by Subsection (b), the final plans for the particular system must have the approval of each participating jurisdiction covered by the system.

(d) The district shall recommend minimum standards for a 9-1-1 system. A 9-1-1 system in a district created under this subchapter

must be computerized.

(e) A service supplier involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, or an officer or employee of a service supplier involved in providing 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 638, Sec. 12, eff. Sept. 1, 1995.

Sec. 772.211. PRIMARY EMERGENCY TELEPHONE NUMBER. The digits 9-1-1 are the primary emergency telephone number in a district. A public safety agency whose services are available through a 9-1-1 system may maintain a separate number or numbers for emergencies and shall maintain a separate number or numbers for nonemergency telephone calls.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.212. TRANSMITTING REQUESTS FOR EMERGENCY AID. (a) A 9-1-1 system established under this subchapter must be capable of transmitting requests for fire-fighting, law enforcement, ambulance, and medical services to a public safety agency or agencies that provide the requested service at the place from which the call originates. A 9-1-1 system may also provide for transmitting requests for other emergency services, such as poison control, suicide prevention, and civil defense, with the approval of the board and the consent of the participating jurisdiction.

(b) A public safety answering point may transmit emergency response requests to private safety entities, with the approval of the board and the consent of each participating jurisdiction and emergency services district serving the relevant area. A participating jurisdiction's or emergency services district's consent may be withdrawn at any time.

(c) With the consent of a participating jurisdiction, a privately owned automatic intrusion alarm or other privately owned automatic alerting device may be installed to cause the number 9-1-1

to be dialed in order to gain access to emergency services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1194 (H.B. 4350), Sec. 3, eff. June 14, 2019.

Sec. 772.213. POWERS OF DISTRICT. (a) The district is a body corporate and politic, exercising public and essential governmental functions and having all the powers necessary or convenient to carry out the purposes and provisions of this subchapter, including the capacity to sue or be sued.

(b) To fund the district, the district may apply for, accept, and receive federal, state, county, or municipal funds and private funds and may spend those funds for the purposes of this subchapter. The board shall determine the method and sources of funding for the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.214. 9-1-1 EMERGENCY SERVICE FEE. (a) The board may impose a 9-1-1 emergency service fee on service users in the district.

(b) The fee may be imposed only on the base rate charge or its equivalent, excluding charges for coin-operated telephone equipment. The fee may not be imposed on more than 100 local exchange access lines or their equivalent for a single business entity at a single location, unless the lines are used by residents of the location. The fee may also not be imposed on any line that the Advisory Commission on State Emergency Communications excluded from the definition of a local exchange access line or an equivalent local exchange access line pursuant to Section 771.063. If a business service user provides residential facilities, each line that terminates at a residential unit and that is a communication link equivalent to a residential local exchange access line shall be charged the 9-1-1 emergency service fee. The fee must have uniform application and must be imposed in each participating jurisdiction.

(c) The rate of the fee may not exceed six percent of the monthly base rate charged a service user by the principal service

supplier in the participating jurisdiction.

(d) The board shall set the amount of the fee each year as part of the annual budget. The board shall notify each service supplier of a change in the amount of the fee not later than the 91st day before the date the change takes effect.

(e) In imposing the fee, the board shall attempt to match the district's revenues to its operating expenditures and to provide reasonable reserves for contingencies and for the purchase and installation of 9-1-1 emergency service equipment. If the revenue received from the fee exceeds the amount of money needed to fund the district, the board by resolution shall reduce the rate of the fee to an amount adequate to fund the district or suspend the imposition of the fee. If the board suspends the imposition of the fee, the board by resolution may reinstitute the fee if money received by the district is not adequate to fund the district.

(f) In a public agency whose governing body at a later date votes to receive 9-1-1 service from the district, the fee is imposed beginning on the date the board approves making the public agency a participating jurisdiction. The fee authorized to be charged in a district applies to new territory added to the district when the territory becomes part of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 11, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1203, Sec. 4, eff. June 18, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1340 (S.B. 171), Sec. 1, eff. September 1, 2005.

Sec. 772.215. COLLECTION OF FEE. (a) Each billed service user is liable for the fee imposed under Section 772.214 until the fee is paid to the service supplier. The fee must be added to and stated separately in the service user's bill from the service supplier. The service supplier shall collect the fee at the same time as the service charge to the service user in accordance with the regular billing practice of the service supplier. A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall collect the 9-1-1 emergency service fee and

transmit the fees monthly to the district.

(b) The amount collected by a service supplier from the fee is due monthly. The service supplier shall remit the amount collected in a calendar month to the district not later than the 60th day after the last day of the calendar month. With each payment the service supplier shall file a return in a form prescribed by the board.

(c) Both a service supplier and a business service user under Subsection (a) shall maintain records of the amount of fees it collects for at least two years after the date of collection. The board may require at the board's expense an annual audit of a service supplier's books and records or the books and records of a business service user described by Subsection (a) with respect to the collection and remittance of the fees.

(d) A business service user that does not collect and remit the 9-1-1 emergency service fee as required is subject to a civil cause of action under Subsection (g). A sworn affidavit by the district specifying the unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(e) A service supplier is entitled to retain an administrative fee from the amount of fees it collects. The amount of the administrative fee is two percent of the amount of fees it collects under this section.

(f) A service supplier is not required to take any legal action to enforce the collection of the 9-1-1 emergency service fee. However, the service supplier shall provide the district with an annual certificate of delinquency that includes the amount of all delinquent fees and the name and address of each nonpaying service user. The certificate of delinquency is prima facie evidence that a fee included in the certificate is delinquent. A service user account is considered delinquent if the fee is not paid to the service supplier before the 31st day after the payment due date stated on the user's bill from the service supplier.

(g) The district may institute legal proceedings to collect fees not paid and may establish internal collection procedures and recover the cost of collection from the nonpaying service user. If the district prevails in legal proceedings instituted to collect a fee, the court may award the district court costs, attorney's fees, and interest in addition to other amounts recovered. A delinquent fee accrues interest at an annual rate of 12 percent beginning on the date the payment becomes due.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 12, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 13, eff. Sept. 1, 1995.

Sec. 772.216. DISTRICT DEPOSITORY. (a) The board shall select a depository for the district in the manner provided by law for the selection of a county depository.

(b) A depository selected by the board is the district's depository for two years after the date of its selection and until a successor depository is selected and qualified.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.217. ALLOWABLE EXPENSES. Allowable operating expenses of a district include all costs attributable to designing and operating a 9-1-1 system and costs for related services that the board considers necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 39, Sec. 1, eff. Sept. 1, 2003.

Sec. 772.218. NUMBER AND LOCATION IDENTIFICATION. (a) As part of computerized 9-1-1 service, a service supplier shall furnish for each call the telephone number of the subscriber and the address associated with the number.

(b) A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1 service that a service supplier is required to provide under Subsection (a) to other residential end users in the district.

(c) Information furnished under this section is confidential and is not available for public inspection.

(d) A business service user that owns or leases a publicly or privately owned telephone switch used to provide telephone services to nonaffiliated businesses shall provide to those business end users the same level of 9-1-1 service that a service supplier is required to provide under Subsection (a) to other business end users in the

district.

(e) A business service user that owns or leases a publicly or privately owned telephone switch used to consolidate telephone services at two or more physical addresses shall provide a level of 9-1-1 service that identifies an accurate physical address and telephone number for each 9-1-1 call. For purposes of this section, each floor of a multitenant building is a different physical address.

(f) A hotel, motel, or similar lodging facility that does not operate with a 24-hour, seven-day on-site telephone operator must use a system that furnishes the telephone number and location of the individual unit from which a 9-1-1 call is placed.

(g) A service supplier, business service user, or lodging facility that implements the network and database enhancements necessary to provide a service described in Subsection (b), (d), (e), or (f), including a supplier, user, or facility that is not required to provide the service, is not liable to a person who uses a 9-1-1 system created under this subchapter for the release to the district of the information specified in this section.

(h) Subsections (d) and (e) do not apply to a telecommunications system installed by a public school district or a state agency.

(i) Subsections (d), (e), and (f) apply only to a telecommunications system installed on or after September 1, 2003.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 13, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 14, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 84, Sec. 1, eff. Sept. 1, 2003.

Sec. 772.219. PUBLIC REVIEW. (a) Periodically, the board shall solicit public comments and hold a public review hearing on the continuation of the district and the 9-1-1 emergency service fee. The first hearing shall be held three years after the date the order certifying the creation of the district is filed with the county clerk. Subsequent hearings shall be held three years after the date each order required by Subsection (d) is adopted.

(b) The board shall publish notice of the time and place of the hearing once a week for two consecutive weeks in a daily newspaper of general circulation published in the district. The first notice must

be published not later than the 16th day before the date set for the hearing.

(c) At the hearing, the board shall also solicit comments on the participation of the district in the applicable regional plan for 9-1-1 service under Chapter 771. After the hearing, the board may choose to participate in the regional plan as provided by that chapter.

(d) After the hearing, the board shall adopt an order on the continuation or dissolution of the district and the 9-1-1 emergency service fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.220. DISSOLUTION PROCEDURES. (a) If a district is dissolved, 9-1-1 service must be discontinued on the date of the dissolution. The commissioners court of the county in which the district was located shall assume the assets of the district and pay the district's debts. If the district's assets are insufficient to retire the outstanding bonded indebtedness of the district, the commissioners court shall continue to impose the 9-1-1 service fee, and each service supplier shall continue to collect the fee for the commissioners court. Proceeds from the imposition of the fee after dissolution of the district may be used only to retire the outstanding bonded indebtedness of the district.

(b) The commissioners court shall retire the district's indebtedness to the extent practicable according to the terms of the bonds and the terms of the orders and resolutions authorizing issuance of the bonds.

(c) The commissioners court by order may adopt the rules necessary to administer this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.221. ISSUANCE OF BONDS. The board may issue and sell bonds in the name of the district to finance:

(1) the acquisition by any method of facilities, equipment, or supplies necessary for the district to begin providing 9-1-1 service to all participating jurisdictions; and

(2) the installation of equipment necessary for the

district to begin providing 9-1-1 service to all participating jurisdictions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.222. REPAYMENT OF BONDS. The board may provide for the payment of the principal of and interest on the bonds by pledging all or any part of the district's revenues from the 9-1-1 emergency service fee or from other sources.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.223. ADDITIONAL SECURITY FOR BONDS. (a) The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the district and rights appurtenant to those properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security of the bonds.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on the properties, may include provisions prescribed by the board for the security of the bonds and the preservation of the trust estate and may make provisions for investment of funds of the district.

(c) A purchaser under a sale under the deed of trust or mortgage lien is the absolute owner of the properties and rights purchased and may maintain and operate them.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.224. FORM OF BONDS. (a) A district may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate permitted by state law.

(c) A district's bonds and interest coupons, if any, are investment securities under the terms of Chapter 8, Business & Commerce Code, may be issued registrable as to principal or as to

both principal and interest, and may be made redeemable before maturity, at the option of the district, or contain a mandatory redemption provision.

(d) A district may issue its bonds in the form, denominations, and manner and under the terms, and the bonds shall be signed and executed, as provided by the board in the resolution or order authorizing their issuance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.225. PROVISIONS OF BONDS. (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the board may provide for the flow of funds and the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds and may make additional covenants with respect to the bonds, the pledged revenues, and the operation and maintenance of any facilities, the revenue of which is pledged.

(b) The orders or resolutions of the board authorizing the issuance of bonds may also prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(c) The orders or resolutions of the board issuing bonds may contain other provisions and covenants as the board may determine.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.226. APPROVAL AND REGISTRATION OF BONDS. (a) Bonds issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, the attorney general shall approve them. On approval by the attorney general, the comptroller shall register the bonds.

(c) After the approval and registration of bonds, the bonds are incontestable in any court or other forum for any reason and are

valid and binding obligations according to their terms for all purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.227. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of its outstanding bonds, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate or rates permitted by state law.

(c) Refunding bonds may be payable from the same source as the bonds being refunded or from other sources.

(d) The refunding bonds must be approved by the attorney general as provided by Section 772.226 and shall be registered by the comptroller on the surrender and cancellation of the bonds being refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount sufficient to pay the principal of the bonds being refunded and interest on those bonds accruing to their maturity dates or to their option dates if the bonds have been duly called for payment before maturity according to their terms shall be deposited in the place or places at which the bonds being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) In lieu of the method set forth in Subsections (a)-(f), a district may refund bonds, notes, or other obligations as provided by the general laws of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.228. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS. (a) District bonds are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company;

(6) a fiduciary;

(7) a trustee;

(8) a guardian; and

(9) a sinking fund of a municipality, county, school district, and other political subdivision of the state and other public funds of the state and its agencies, including the permanent school fund.

(b) District bonds are eligible to secure deposits of public funds of the state and municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.229. TAX STATUS OF BONDS. Because a district created under this subchapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds and profits made in the sale of the bonds are exempt from taxation by the state or by any municipality, county, special district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. EMERGENCY COMMUNICATION DISTRICTS: COUNTIES WITH POPULATION OVER 20,000

Sec. 772.301. SHORT TITLE. This subchapter may be cited as the Emergency Telephone Number Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.302. PURPOSE. It is the purpose of this subchapter to establish the number 9-1-1 as the primary emergency telephone number for use by certain local governments in this state and to encourage units of local government and combinations of those units to develop and improve emergency communication procedures and facilities in a manner that will make possible the quick response to any person calling the telephone number 9-1-1 seeking police, fire, medical, rescue, and other emergency services. To this purpose the legislature finds that:

(1) it is in the public interest to shorten the time required for a citizen to request and receive emergency aid;

(2) there exist thousands of different emergency telephone numbers throughout the state, and telephone exchange boundaries and central office service areas do not necessarily correspond to public safety and political boundaries;

(3) a dominant part of the state's population is located in rapidly expanding metropolitan areas that generally cross the boundary lines of local jurisdictions and often extend into two or more counties; and

(4) provision of a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained would provide a significant contribution to law enforcement and other public safety efforts by making it less difficult to notify public safety personnel quickly.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.303. DEFINITIONS. In this subchapter:

(1) "Board" means the board of managers of a district.

(2) "Director" means the director of communication for a district.

(3) "District" means an emergency communication district created under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.304. APPLICATION OF SUBCHAPTER. (a) This subchapter applies only to a county with a population of more than 20,000 or to a group of two or more contiguous counties each with a population of

20,000 or more in which an emergency communication district was created under Chapter 288, Acts of the 69th Legislature, Regular Session, 1985, before January 1, 1988, or to a public agency or group of public agencies that withdraws from participation in a regional plan under Section 771.058(d).

(b) This subchapter does not affect the authority of a public agency to operate under another law authorizing the creation of a district in which 9-1-1 service is provided.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 32, eff. Sept. 1, 1999.

Sec. 772.305. ADDITIONAL TERRITORY. (a) If a municipality that is part of a district annexes territory that is not part of the district, the annexed territory becomes part of the district.

(b) A public agency located in whole or part in a county adjoining the district, by resolution adopted by its governing body and approved by the board of the district, may become part of the district and subject to its benefits and requirements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.3051. REMOVAL OF CERTAIN MUNICIPAL TERRITORY. (a) A municipality that is a participating jurisdiction may request that the municipality be removed from the district if the municipality operated a consolidated public safety answering point with at least three emergency communication districts described by Section 771.001(3)(A) for at least a three-year period before September 1, 2019.

(b) The board of a district that receives a request under Subsection (a) shall approve the request and, not later than the 91st day before the date the removal will take effect, notify each service supplier providing service in the district of the scheduled removal. The removal must take effect on a date that:

(1) allows the board to comply with the notice requirements of this section; and

(2) is not later than the 180th day after the date the board receives the request.

(c) Removal of a municipality under this section does not

diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other obligations of the district.

(d) If a municipality is removed under this section, the municipality shall compensate the district in an amount equal to the municipality's pro rata share of the district's indebtedness at the time the municipality is removed. The district shall apply compensation received from a municipality under this subsection exclusively to the payment of the municipality's pro rata share of the district's indebtedness.

Added by Acts 2019, 86th Leg., R.S., Ch. 819 (H.B. 2461), Sec. 1, eff. June 10, 2019.

Sec. 772.306. BOARD OF MANAGERS. (a) A district is governed by a board of managers.

(b) If the most populous municipality in the district has a population of more than 140,000, the board consists of:

(1) one member for each county in the district appointed by the commissioners court of each county;

(2) two members appointed by the governing body of the most populous municipality in the district;

(3) one member appointed by the governing body of the second most populous municipality in the district;

(4) one member appointed as provided by this section to represent the other municipalities located in whole or part in the district; and

(5) one member appointed by the principal service supplier.

(c) If Subsection (b) does not apply to a district, the board consists of:

(1) the following members representing the county or counties in the district:

(A) if the district contains only one county, two members appointed by the commissioners court of the county;

(B) if the district originally contained only one county but contains more than one county when the appointment is made, two members appointed by the commissioners court of the county in which the district was originally located, and one member appointed by the commissioners court of each other county in the district; or

(C) if the district originally contained more than one county and the district contains more than one county when the appointment is made, one member appointed by the commissioners court of each county in the district;

(2) two members appointed jointly by the majority vote of the municipalities voting on the appointment and located in whole or part in the district;

(3) one member appointed jointly by the volunteer fire departments operating wholly or partly in the district, with the appointment process coordinated by the county fire marshal or marshals of the county or counties in the district; and

(4) one member appointed by the principal service supplier.

(d) The board member appointed by the principal service supplier is a nonvoting member. If the board is appointed under Subsection (c), the principal service supplier may waive its right to appoint the board member and designate another service supplier serving all or part of the district to make the appointment.

(e) The board member appointed under Subsection (b)(4) is appointed by the mayor's council established to administer urban development block grant funds, if one exists in the district. Otherwise, the member is appointed by the other members of the board on the advice and recommendation of the governing bodies of all the municipalities represented by the member.

(f) The initial board members appointed by municipalities under Subsection (c)(2) are appointed by all the municipalities located in whole or part in the district.

(g) Board members are appointed for staggered terms of two years, with as near as possible to one-half of the members' terms expiring each year.

(h) A board member may be removed from office at will by the entity that appointed the member.

(i) A vacancy on the board shall be filled for the remainder of the term in the manner provided for the original appointment to that position.

(j) Board members serve without compensation. The district shall pay all expenses necessarily incurred by the board in performing its functions under this subchapter.

(k) The board may appoint from among its membership a presiding officer and any other officers it considers necessary.

(l) The director or a board member may be appointed as

secretary of the board. The board shall require the secretary to keep suitable records of all proceedings of each board meeting. After each meeting the presiding officer at the meeting shall read and sign the record and the secretary shall attest the record.

(m) Voting members of the board may meet in executive session in accordance with Chapter 551, Government Code.

(n) A majority of the voting members of the board constitutes a quorum.

(o) In a district subject to this subchapter located wholly in a county with a population of less than 40,000, the board consists of:

(1) the appropriate members listed in Subsection (c); and

(2) a peace officer licensed under Chapter 1701, Occupations Code, appointed by the county sheriff.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 638, Sec. 15, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 901, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 622 (H.B. 1187), Sec. 1, eff. June 19, 2009.

Acts 2021, 87th Leg., R.S., Ch. 239 (H.B. 1228), Sec. 1, eff. September 1, 2021.

Sec. 772.307. POWERS AND DUTIES OF BOARD. (a) The board shall control and manage the district.

(b) The board may adopt rules for the operation of the district.

(c) The board may contract with any public or private entity to carry out the purposes of this subchapter, including the operation of a 9-1-1 system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.308. DIRECTOR OF DISTRICT. (a) The board shall appoint a director of communication for the district and shall establish the director's compensation. The director must be qualified by training and experience for the position.

(b) The board may remove the director at any time.

(c) With the board's approval, the director may employ any experts, employees, or consultants that the director considers necessary to carry out the purposes of this subchapter.

(d) The director shall perform all duties that the board requires and shall supervise as general manager the operations of the district subject to any limitations prescribed by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.309. BUDGET; ANNUAL REPORT; AUDIT. (a) The director shall prepare under the direction of the board an annual budget for the district. To be effective, the budget must:

(1) be approved by the board;

(2) be presented to and approved by the commissioners court of each county in the district;

(3) be presented to and approved by the governing body of the most populous municipality in the district, if that municipality has a population of more than 140,000; and

(4) be presented to the governing body of each other participating jurisdiction and approved by a majority of those jurisdictions.

(b) The board shall submit a draft of the proposed budget to the governing bodies of the participating jurisdictions not later than the 45th day before the date the board adopts the budget. The participating jurisdictions shall review the proposed budget and submit any comments regarding the budget to the board.

(c) If the governing body of a county, municipality, or other participating jurisdiction does not approve or disapprove the budget before the 61st day after the date the body received the proposed budget for review, the budget is approved by operation of law.

(d) A revision of the budget must be approved in the same manner as the budget.

(e) As soon as practicable after the end of each district fiscal year, the director shall prepare and present to the board and to each participating jurisdiction in writing a sworn statement of all money received by the district and how the money was used during the preceding fiscal year. The report must show in detail the operations of the district for the fiscal year covered by the report.

(f) The board shall have an independent financial audit of the district performed annually.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1406, Sec. 2, eff. Aug. 30, 1999.

Sec. 772.310. ESTABLISHMENT OF 9-1-1 SERVICE. (a) A district shall provide 9-1-1 service to each participating jurisdiction through one or a combination of the following methods and features:

(1) the transfer method;

(2) the relay method;

(3) the dispatch method;

(4) automatic number identification;

(5) automatic location identification;

(6) selective routing; or

(7) any equivalent method.

(b) A district shall provide 9-1-1 service using one or both of the following plans:

(1) the district may design, implement, and operate a 9-1-1 system for each participating jurisdiction with the consent of the jurisdiction; or

(2) the district may design, implement, and operate a 9-1-1 system for two or more participating jurisdictions with the consent of each of those jurisdictions if a joint operation would be more economically feasible than separate systems for each jurisdiction.

(c) Under either plan authorized by Subsection (b), the final plans for the particular system must have the approval of each participating jurisdiction covered by the system.

(d) The district shall recommend minimum standards for a 9-1-1 system.

(e) A service supplier involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, or an officer or employee of a service supplier involved in providing 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 638, Sec. 16, eff. Sept. 1, 1995.

Sec. 772.311. PRIMARY EMERGENCY TELEPHONE NUMBER. The digits 9-1-1 are the primary emergency telephone number in a district. A public safety agency whose services are available through a 9-1-1 system may maintain a separate number or numbers for emergencies and shall maintain a separate number or numbers for nonemergency telephone calls.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.312. TRANSMITTING REQUESTS FOR EMERGENCY AID. (a) A 9-1-1 system established under this subchapter must be capable of transmitting requests for fire-fighting, law enforcement, ambulance, and medical services to a public safety agency or agencies that provide the requested service at the place from which the call originates. A 9-1-1 system may also provide for transmitting requests for other emergency services such as poison control, suicide prevention, and civil defense.

(b) A public safety answering point may transmit emergency response requests to private safety entities, with the approval of the board and the consent of each participating jurisdiction and emergency services district serving the relevant area. A participating jurisdiction's or emergency services district's consent may be withdrawn at any time.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1194 (H.B. 4350), Sec. 4, eff. June 14, 2019.

Sec. 772.313. POWERS OF DISTRICT. (a) The district is a body corporate and politic, exercising public and essential governmental functions and having all the powers necessary or convenient to carry out the purposes and provisions of this subchapter, including the capacity to sue or be sued.

(b) To fund the district, the district may apply for, accept, and receive federal, state, county, or municipal funds and private funds and may spend those funds for the purposes of this subchapter.

The board shall determine the method and sources of funding for the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.314. 9-1-1 EMERGENCY SERVICE FEE. (a) The board may impose a 9-1-1 emergency service fee on service users in the district.

(b) The fee may be imposed only on the base rate charge or its equivalent, excluding charges for coin-operated telephone equipment. The fee may not be imposed on more than 100 local exchange access lines or their equivalent for a single business entity at a single location, unless the lines are used by residents of the location. The fee may also not be imposed on any line that the Advisory Commission on State Emergency Communications excluded from the definition of a local exchange access line or an equivalent local exchange access line pursuant to Section 771.063. If a business service user provides residential facilities, each line that terminates at a residential unit and that is a communication link equivalent to a residential local exchange access line shall be charged the 9-1-1 emergency service fee. The fee must have uniform application and must be imposed in each participating jurisdiction.

(c) The rate of the fee may not exceed six percent of the monthly base rate in a service year charged a service user by the principal service supplier in the participating jurisdiction. For purposes of this subsection, the jurisdiction of the county is the unincorporated area of the county.

(c-1) The board may impose the fee at the rate authorized by Subsection (c) regardless of whether an election was held for the district under Chapter 288 (S.B. 750), Acts of the 69th Legislature, Regular Session, 1985, or former Article 1432e, Vernon's Texas Civil Statutes, at which the voters authorized a different rate.

(d) The board shall set the amount of the fee each year as part of the annual budget. The board shall notify each service supplier of a change in the amount of the fee not later than the 91st day before the date the change takes effect.

(e) In imposing the fee, the board shall attempt to match the district's revenues to its operating expenditures and to provide reasonable reserves for contingencies and for the purchase and

installation of 9-1-1 emergency service equipment. If the revenue generated by the fee exceeds the amount of money needed to fund the district, the board by resolution shall reduce the rate of the fee to an amount adequate to fund the district or suspend the imposition of the fee. If the board suspends the imposition of the fee, the board by resolution may reinstitute the fee if money generated by the district is not adequate to fund the district.

(f) In a public agency whose governing body at a later date votes to receive 9-1-1 service from the district, the fee is imposed beginning on the date specified by the board. The board may charge the incoming agency an additional amount of money to cover the initial cost of providing 9-1-1 service to that agency. The fee authorized to be charged in a district applies to new territory added to the district when the territory becomes part of the district.

(g) For the purposes of this section, the jurisdiction of the county is the unincorporated area of the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 14, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1203, Sec. 5, eff. June 18, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 819 (H.B. 2461), Sec. 2, eff. June 10, 2019.

Sec. 772.315. COLLECTION OF FEE. (a) Each billed service user is liable for the fee imposed under Section 772.314 until the fee is paid to the service supplier. The fee must be added to and stated separately in the service user's bill from the service supplier. The service supplier shall collect the fee at the same time as the service charge to the service user in accordance with the regular billing practice of the service supplier. A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall collect the 9-1-1 emergency service fee and transmit the fees monthly to the district.

(b) The amount collected by a service supplier from the fee is due monthly. The service supplier shall remit the amount collected in a calendar month to the district not later than the 60th day after the last day of the calendar month. With each payment the service

supplier shall file a return in a form prescribed by the board.

(c) Both a service supplier and a business service user under Subsection (a) shall maintain records of the amount of fees it collects for at least two years after the date of collection. The board may require at the board's expense an annual audit of a service supplier's books and records or the books and records of a business service user described by Subsection (a) with respect to the collection and remittance of the fees.

(d) A business service user that does not collect and remit the 9-1-1 emergency service fee as required is subject to a civil cause of action under Subsection (g). A sworn affidavit by the district specifying the unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(e) A service supplier is entitled to retain an administrative fee from the amount of fees it collects. The amount of the administrative fee is two percent of the amount of fees it collects under this section.

(f) A service supplier is not required to take any legal action to enforce the collection of the 9-1-1 emergency service fee. However, the service supplier shall provide the district with an annual certificate of delinquency that includes the amount of all delinquent fees and the name and address of each nonpaying service user. The certificate of delinquency is prima facie evidence that a fee included in the certificate is delinquent. A service user account is considered delinquent if the fee is not paid to the service supplier before the 31st day after the payment due date stated on the user's bill from the service supplier.

(g) The district may institute legal proceedings to collect fees not paid and may establish internal collection procedures and recover the cost of collection from the nonpaying service user. If the district prevails in legal proceedings instituted to collect a fee, the court may award the district court costs, attorney's fees, and interest in addition to other amounts recovered. A delinquent fee accrues interest at an annual rate of 12 percent beginning on the date the payment becomes due.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 15, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 17, eff. Sept. 1, 1995.

Sec. 772.316. DISTRICT DEPOSITORY. (a) The board shall select a depository for the district in the manner provided by law for the selection of a county depository.

(b) A depository selected by the board is the district's depository for two years after the date of its selection and until a successor depository is selected and qualified.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.317. ALLOWABLE EXPENSES. Allowable operating expenses of a district include all costs attributable to designing a 9-1-1 system and to all equipment and personnel necessary to establish and operate a public safety answering point and other related answering points that the board considers necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.318. NUMBER AND LOCATION IDENTIFICATION. (a) As part of computerized 9-1-1 service, a service supplier shall furnish current telephone numbers of subscribers and the addresses associated with the numbers on a call-by-call basis.

(b) A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1 service that a service supplier is required to provide under Subsection (a) to other residential end users in the district.

(c) Information furnished under this section is confidential and is not available for public inspection.

(d) A service supplier or business service user under Subsection (b) is not liable to a person who uses a 9-1-1 system created under this subchapter for the release to the district of the information specified in Subsections (a) and (b).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 16, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 18, eff. Sept. 1, 1995.

Sec. 772.319. PUBLIC REVIEW. (a) Periodically, the board shall solicit public comments and hold a public review hearing on the continuation of the district and the 9-1-1 emergency service fee. The first hearing shall be held three years after the date the order certifying the creation of the district is filed with the county clerks. Subsequent hearings shall be held three years after the date each order required by Subsection (d) is adopted.

(b) The board shall publish notice of the time and place of the hearing once a week for two consecutive weeks in a daily newspaper of general circulation published in the district. The first notice must be published not later than the 16th day before the date set for the hearing.

(c) At the hearing, the board shall also solicit comments on the participation of the district in the applicable regional plan for 9-1-1 service under Chapter 771. After the hearing, the board may choose to participate in the regional plan as provided by that chapter.

(d) After the hearing, the board shall adopt an order on the continuation or dissolution of the district and the 9-1-1 emergency service fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.320. DISSOLUTION PROCEDURES. (a) If a district is dissolved, 9-1-1 service must be discontinued on the date of the dissolution. The commissioners court of the county in which the district was located or, if the district contains more than one county, the commissioners courts of those counties acting jointly, shall assume the assets of the district and pay the district's debts. If the district's assets are insufficient to retire all existing debts of the district on the date of dissolution, the commissioners court or courts acting jointly shall continue to impose the 9-1-1 service fee, and each service supplier shall continue to collect the fee for the commissioners court or courts. Proceeds from the imposition of the fee after dissolution of the district may be used only to retire the outstanding debts of the district.

(b) The commissioners court or courts shall retire the district's debts to the extent practicable according to the terms of the instruments creating the debts and the terms of the orders and

resolutions authorizing creation of the debts.

(c) The commissioners court or courts by order may adopt the rules necessary to administer this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.321. ISSUANCE OF BONDS. The board may issue and sell bonds in the name of the district to finance:

(1) the acquisition by any method of facilities, equipment, or supplies necessary for the district to begin providing 9-1-1 service to all participating jurisdictions; and

(2) the installation of equipment necessary for the district to begin providing 9-1-1 service to all participating jurisdictions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.322. REPAYMENT OF BONDS. The board may provide for the payment of the principal of and interest on the bonds by pledging all or any part of the district's revenues from the 9-1-1 emergency service fee or from other sources.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.323. ADDITIONAL SECURITY FOR BONDS. (a) The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the district and the rights appurtenant to those properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security of the bonds.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on the properties, may include provisions prescribed by the board for the security of the bonds and the preservation of the trust estate and may make provisions for investment of funds of the district.

(c) A purchaser under a sale under the deed of trust or mortgage lien is the absolute owner of the properties and rights

purchased and may maintain and operate them.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.324. FORM OF BONDS. (a) A district may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate permitted by state law.

(c) A district's bonds and interest coupons, if any, are investment securities under the terms of Chapter 8, Business & Commerce Code, may be issued registrable as to principal or as to both principal and interest, and may be made redeemable before maturity, at the option of the district, or contain a mandatory redemption provision.

(d) A district may issue its bonds in the form, denominations, and manner and under the terms, and the bonds shall be signed and executed, as provided by the board in the resolution or order authorizing their issuance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.325. PROVISIONS OF BONDS. (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the board may provide for the flow of funds and the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds and may make additional covenants with respect to the bonds, the pledge revenues, and the operation and maintenance of any facilities the revenue of which is pledged.

(b) The orders or resolutions of the board authorizing the issuance of bonds may also prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(c) The orders or resolutions of the board issuing bonds may contain other provisions and covenants as the board may determine.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.326. APPROVAL AND REGISTRATION OF BONDS. (a) Bonds issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, the attorney general shall approve them. On approval by the attorney general, the comptroller shall register the bonds.

(c) After the approval and registration of bonds, the bonds are incontestable in any court or other forum for any reason and are valid and binding obligations according to their terms for all purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.327. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of its outstanding bonds, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate or rates permitted by state law.

(c) Refunding bonds may be payable from the same source as the bonds being refunded or from other sources.

(d) The refunding bonds must be approved by the attorney general as provided by Section 772.326 and shall be registered by the comptroller on the surrender and cancellation of the bonds refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount sufficient to pay the principal of the bonds being refunded and interest on those bonds accruing to their maturity dates or to their option dates if the bonds have been duly called for payment before maturity according to their terms shall be deposited in the place or places at which the bonds being refunded are payable. The comptroller shall

register the refunding bonds without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) In lieu of the method set forth in Subsections (a)-(f), a district may refund bonds, notes, or other obligations as provided by the general laws of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.328. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS. (a) District bonds are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company;

(6) a fiduciary;

(7) a trustee;

(8) a guardian; and

(9) a sinking fund of a municipality, county, school district, and other political subdivision of the state and other public funds of the state and its agencies, including the permanent school fund.

(b) District bonds are eligible to secure deposits of public funds of the state and municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.329. TAX STATUS OF BONDS. Because a district created under this subchapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds, and profits made in the sale of the bonds are exempt from taxation by the state or by any municipality, county, special district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. EMERGENCY COMMUNICATION SERVICE: COUNTIES WITH POPULATION OVER 2.5 MILLION

Sec. 772.402. APPLICATION OF SUBCHAPTER. This subchapter applies only to a county having a population of more than 2.5 million in which a communication district has not been created under Subchapter B.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 52, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 106, eff. September 1, 2023.

Sec. 772.403. IMPLEMENTATION OF 9-1-1 SERVICE AND FEE. (a) A county to which this subchapter applies may implement a system for providing 9-1-1 service in the unincorporated areas of the county and may impose a service fee on local exchange telephone service customers in the area served. The fee may not be imposed on any line that the Advisory Commission on State Emergency Communications excluded from the definition of a local exchange access line or an equivalent local exchange access line pursuant to Section 771.063. If a business service user provides residential facilities, each line that terminates at a residential unit and that is a communication link equivalent to a residential local exchange access line shall be charged the 9-1-1 emergency service fee.

(b) The commissioners court shall set the fee in an amount reasonable to cover the costs of providing the 9-1-1 service.

(c) Revenue from the fee may be used only for the planning, development, and provision of 9-1-1 service.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 17, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1203, Sec. 6, eff. June 18, 1999.

Sec. 772.404. COLLECTION OF FEE. (a) A telecommunications

carrier providing local exchange service in a county that imposes a fee under this subchapter shall collect the fees and deliver them to the commissioners court not later than the 60th day after the last day of the month during which the fees were collected.

(b) A customer on whom a fee is imposed under this subchapter is liable for the fee in the same manner the customer is liable for charges for service provided by the local exchange service provider. The fee must be stated separately in the customer's bill.

(c) A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall collect the 9-1-1 emergency service fee and transmit the fees monthly to the county.

(d) A local exchange service provider collecting fees under this subchapter may retain as an administrative fee an amount equal to two percent of the total amount of the fees it collects.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 18, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 19, eff. Sept. 1, 1995.

Sec. 772.405. AUDIT OF SERVICE PROVIDER. The commissioners court of a county may require at the county's expense an audit of a local exchange service provider collecting fees or surcharges under this subchapter. The audit must be limited to the collection and remittance of money collected under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.406. NUMBER AND LOCATION IDENTIFICATION. A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1 service relating to number and location identification that a service supplier provides to other residential end users in the county.

Added by Acts 1993, 73rd Leg., ch. 936, Sec. 19, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 638, Sec. 20, eff. Sept. 1,

1995.

Sec. 772.407. LIABILITY OF SERVICE PROVIDERS. A service supplier involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, or an officer or employee of a service supplier involved in providing 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

Added by Acts 1995, 74th Leg., ch. 638, Sec. 21, eff. Sept. 1, 1995.

SUBCHAPTER F. CONSOLIDATED DISTRICTS

Sec. 772.451. CONSOLIDATION PROCEDURE. (a) Two or more districts governed by this chapter may consolidate into a single district as provided by this section.

(b) If the board of managers of each district to be consolidated finds that the consolidation of the districts would benefit the participating jurisdictions of the district, the board may call and hold an election in the district's participating jurisdictions to approve the consolidation.

(c) The election in each district must be held on the same uniform election date provided by Chapter 41, Election Code.

(d) Each district shall pay the election expenses for its participating jurisdictions.

(e) The ballot for the election to approve the consolidation must be printed to permit voting for or against the proposition that the district may consolidate with other named districts.

Added by Acts 1999, 76th Leg., ch. 1406, Sec. 3, eff. Aug. 30, 1999.

Sec. 772.452. CONSOLIDATION PLANNING. (a) If a majority of the voters voting at the election approve the consolidation, the board of managers of the district shall conduct a planning meeting with the boards of managers of the other districts whose voters have approved the consolidation.

(b) The meeting must be a public meeting. At the meeting, the

boards of managers shall devise a consolidation plan to:

(1) combine the debts and assets of the districts;

(2) pay outstanding bonds of the districts and issue refunding bonds as necessary to pay the bonds;

(3) impose a uniform 9-1-1 emergency service fee; and

(4) adjust the membership and qualifications of the board of managers of the consolidated district.

(c) If a consolidated district is not created under Section 772.453 before the first anniversary of the date of the election held under Section 772.451, a consolidated district may not be created until:

(1) the districts make another finding that the consolidation would benefit the participating jurisdictions; and

(2) the consolidation is approved at another election held under Section 772.451.

Added by Acts 1999, 76th Leg., ch. 1406, Sec. 3, eff. Aug. 30, 1999.

Sec. 772.453. CREATION OF CONSOLIDATED DISTRICT. (a) When the board of managers of each district has adopted the same consolidation plan, the combined boards of managers shall declare the consolidated district created.

(b) If the board of managers of a district does not agree to a consolidation plan, the remaining districts may consolidate on the terms of a mutually agreeable consolidation plan.

Added by Acts 1999, 76th Leg., ch. 1406, Sec. 3, eff. Aug. 30, 1999.

Sec. 772.454. BOARD OF MANAGERS. (a) The consolidated district is governed by a board of managers appointed in accordance with the order issued by the temporary board of managers under Subsection (b). The members of the boards of managers of all the districts consolidated serve as a temporary board until all members of the initial board of managers are appointed and qualify. The temporary board has all authority necessary to operate and administer the district.

(b) Before the 45th day after the date the district is created, the temporary board of managers by order shall adjust the membership of the board. The order must be substantially in accordance with the

consolidation plan and must specify:

(1) the number of members of the board;

(2) the entity or combination of entities that appoints each member;

(3) whether each member may or may not vote; and

(4) the term of each member of the initial board so that as near to one-half of the members as is practical serve terms that expire in even-numbered years and the remaining members serve terms that expire in odd-numbered years.

(c) The order issued under Subsection (b) must preserve as nearly as possible the proportional representation of interests exhibited by the memberships of the boards of managers of the several districts before consolidation.

Added by Acts 1999, 76th Leg., ch. 1406, Sec. 3, eff. Aug. 30, 1999.

Sec. 772.455. GOVERNANCE OF CONSOLIDATED DISTRICT. The consolidated district and its board of managers are governed by the provisions of this chapter that governed the most populous of the districts before the consolidation, except as provided by this subchapter.

Added by Acts 1999, 76th Leg., ch. 1406, Sec. 3, eff. Aug. 30, 1999.

SUBCHAPTER G. REGIONAL EMERGENCY COMMUNICATIONS DISTRICTS: STATE PLANNING REGION WITH POPULATION OVER 1.5 MILLION

Sec. 772.501. SHORT TITLE. This subchapter may be cited as the Regional Emergency Communications District Act.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.502. DEFINITIONS. In this subchapter:

(1) "Board" means the board of managers of a district.

(2) "District" means a regional emergency communications district created under this subchapter.

(3) "Participating jurisdiction" means a county or principal municipality that adopts a resolution to participate in a

district created under this subchapter.

(4) "Principal municipality" means the municipality with the largest population in a region.

(5) "Region" means a state planning region established under Chapter 391, Local Government Code.

(6) "Regional planning commission" means a commission or council of governments created under Chapter 391, Local Government Code, for a designated region.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.503. APPLICATION OF SUBCHAPTER. This subchapter applies to a region:

(1) with a population of more than 1.5 million;

(2) composed of counties and municipalities that operate a 9-1-1 system solely through a regional planning commission; and

(3) in which the governing bodies of each county and the principal municipality in the region adopt a resolution under Section 772.504 to participate in the district.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.504. CREATION OF DISTRICT. (a) A district is created when the governing bodies of each county and the principal municipality in a region adopt a resolution approving the district's creation and the county's or municipality's participation in the district. The district's creation is effective on the date the last county or municipal governing body in the region adopts the resolution.

(b) The district shall file with the county clerk of each county in which the district is located a certificate declaring the creation of the district.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.505. POLITICAL SUBDIVISION; DISTRICT POWERS. (a) A district is a political subdivision of this state created to carry out essential governmental functions.

(b) A district may exercise all powers necessary or convenient to carry out the purposes and provisions of this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.506. TERRITORY OF DISTRICT. (a) The territory of a district consists of:

(1) the territory of the region in which the district is established; and

(2) for each municipality partially located in the region, the territory of that municipality located in another region.

(b) If a municipality in the district annexes territory that is outside the boundaries of the district, the annexed territory becomes part of the district.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.507. BOARD. (a) A district is governed by a board of managers composed of the members of the governing body of the regional planning commission for the region in which the district is established. Service on the board by a member of the governing body is an additional duty of the member's office or employment.

(b) A board member serves without compensation. The district shall pay all reasonable expenses necessarily incurred by the board member in performing the board's functions under this subchapter.

(c) A majority of the voting members of the board constitutes a quorum.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.508. POWERS AND DUTIES OF BOARD. (a) The board shall name, control, and manage the district.

(b) The board may adopt orders, rules, and policies governing the operations of the board and the district.

(c) The board may contract with any person to carry out the purposes of this subchapter.

(d) The board shall determine the nature and sources of funding for the district. The board may accept grants or other funding from the federal or state government, a county, a municipality, or a private person.

(e) The board may sue in the district's name.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.509. ADVISORY COMMITTEE. (a) The board shall appoint an advisory committee consisting of representatives of the participating jurisdictions. The advisory committee shall review, advise, and provide recommendations to the board on district issues, including equipment, training, budget, and general operational issues.

(b) An advisory committee member must have the training and experience necessary to perform the duties assigned by the board.

(c) Chapter 2110, Government Code, does not apply to the advisory committee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.510. DIRECTOR OF DISTRICT; STAFF. (a) The executive director of the regional planning commission in the district's region serves as director of the district.

(b) The director shall:

(1) perform all duties required by the board;

(2) ensure that board policies and procedures are implemented for the purposes of this subchapter; and

(3) assign employees of the regional planning commission to perform duties under this subchapter as necessary to carry out the district's operations.

(c) The director may use district money to compensate an employee assigned duties under this subchapter and the director.

(d) The director and an employee assigned duties under this subchapter are employees of the regional planning commission for all purposes.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.511. BUDGET; ANNUAL REPORT; AUDIT. (a) The director shall prepare, under the direction of the board, an annual budget for the district. The budget and any revision of the budget must be approved by the board.

(b) As soon as practicable after the end of each district fiscal year, the director shall prepare and present to the board a written report of all money received by the district and how the money was spent during the preceding fiscal year. The report must show, in detail, the operations of the district for the period covered by the report.

(c) The board annually shall have an independent financial audit made of the district.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.512. PROVISION OF 9-1-1 SERVICE. (a) A district shall provide 9-1-1 service to each participating jurisdiction through one or a combination of the following methods and features or equivalent state-of-the-art technology:

(1) the transfer method;

(2) the relay method;

(3) the dispatch method;

(4) automatic number identification;

(5) automatic location identification; or

(6) selective routing.

(b) The district shall recommend minimum standards for a 9-1-1 system. The 9-1-1 system must be computerized.

(c) For each individual telephone subscriber in the district, 9-1-1 service is mandatory and is not an optional service under any definition of terms relating to telephone service.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.513. LIABILITY. A service supplier involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, or an officer or employee of a service supplier involved in providing 9-1-1 service may not be held liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.514. PRIMARY EMERGENCY TELEPHONE NUMBER. The digits 9-1-1 are the primary emergency telephone number in a district. A public safety agency whose services are available through a 9-1-1 system:

(1) may maintain a separate number for an emergency telephone call; and

(2) shall maintain a separate number for a nonemergency telephone call.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.515. TRANSMITTING REQUESTS FOR EMERGENCY AID. (a) A 9-1-1 system established under this subchapter must be capable of transmitting requests for firefighting, law enforcement, ambulance, and medical services to a public safety agency that provides the requested service at the location from which the call originates. A 9-1-1 system may provide for transmitting requests for other emergency services, including poison control, suicide prevention, and civil defense.

(b) A public safety answering point may transmit emergency response requests to private safety entities, with the approval of the board and the consent of each participating jurisdiction and

emergency services district serving the relevant area. A participating jurisdiction's or emergency services district's consent may be withdrawn at any time.

(c) With the consent of a participating jurisdiction, a privately owned automatic intrusion alarm or other privately owned automatic alerting device may be installed to cause the number 9-1-1 to be dialed to gain access to emergency services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1194 (H.B. 4350), Sec. 5, eff. June 14, 2019.

Sec. 772.516. 9-1-1 EMERGENCY SERVICE FEE. (a) The board may impose a 9-1-1 emergency service fee on service users in the district.

(b) The fee may be imposed only on the base rate charge or the charge's equivalent, excluding charges for coin-operated telephone equipment. The fee may not be imposed on:

(1) more than 100 local exchange access lines or the lines' equivalent for a single business entity at a single location, unless the lines are used by residents of the location; or

(2) any line that the Commission on State Emergency Communications has excluded from the definition of a local exchange access line or equivalent local exchange access line under Section 771.063.

(c) If a business service user provides residential facilities, each line that terminates at a residential unit and is a communication link equivalent to a residential local exchange access line shall be charged the 9-1-1 emergency service fee. The fee must have uniform application throughout the district and be imposed in each participating jurisdiction in the district.

(d) The rate of the fee may not exceed six percent of the monthly base rate the principal service supplier in the participating jurisdiction charges a service user.

(e) The board shall set the amount of the fee each year as part of the annual budget. The board shall notify each service supplier of a change in the amount of the fee not later than the 91st day

before the date the change takes effect.

(f) In imposing the fee, the board shall attempt to match the district's revenues to the district's operating expenditures and to provide reasonable reserves for contingencies and for the purchase and installation of 9-1-1 emergency service equipment. If the revenue received from the fee exceeds the amount of money needed to fund the district, the board by resolution shall reduce the rate of the fee to an amount adequate to fund the district as required by this subsection or suspend the imposition of the fee. If the board suspends the imposition of the fee, the board by resolution may reinstitute the fee if money received by the district is not adequate to fund the district.

(g) For a county or municipality whose governing body at a later date votes to receive 9-1-1 service from the district, the fee is imposed beginning on the date specified by the board. The board may charge the incoming county or municipality an additional amount of money to cover the initial cost of providing 9-1-1 service to that county or municipality. The fee authorized to be charged in a district applies to new territory added to the district under Section 772.506(b) when the territory becomes part of the district.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.517. COLLECTION OF FEE. (a) Each billed service user is liable for the fee imposed under Section 772.516 until the fee is paid to the service supplier. The fee must be added to and stated separately in the service user's bill from the service supplier. The service supplier shall collect the fee at the same time as the service charge to the service user in accordance with the service supplier's regular billing practice. A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall collect the 9-1-1 emergency service fee and transmit the fees monthly to the district.

(b) The amount collected by a service supplier from the fee is due quarterly. The service supplier shall remit the amount collected in a calendar quarter to the district not later than the 60th day after the last day of the calendar quarter. With each payment, the

service supplier shall file a return in a form prescribed by the board.

(c) Both a service supplier and a business service user under Subsection (a) shall maintain records of the amount of fees the service supplier or business service user collects until at least the second anniversary of the date of collection. The board may require, at the board's expense, an annual audit of the service supplier's or business service user's books and records with respect to the collection and remittance of the fees.

(d) A business service user that does not collect and remit the 9-1-1 emergency service fee as required is subject to a civil cause of action under Subsection (g). A sworn affidavit by the district specifying the unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(e) A service supplier may retain an administrative fee of two percent of the amount of fees the service supplier collects under this section.

(f) A service supplier is not required to take any legal action to enforce the collection of the 9-1-1 emergency service fee. The service supplier shall provide the district with an annual certificate of delinquency that includes the amount of all delinquent fees and the name and address of each nonpaying service user. The certificate of delinquency is prima facie evidence that a fee included in the certificate is delinquent and of the amount of the delinquent fee. A service user account is considered delinquent if the fee is not paid to the service supplier before the 31st day after the payment due date stated on the user's bill from the service supplier.

(g) The district may file legal proceedings against a service user to collect fees not paid by the service user and may establish internal collection procedures and recover the cost of collection from the nonpaying service user. If legal proceedings are filed by the district, the court may award costs, attorney's fees, and interest to be paid by the nonpaying service user. A delinquent fee accrues interest at the legal rate beginning on the date the payment becomes due.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.518. DISTRICT DEPOSITORY. (a) The board shall select a depository for the district in the manner provided by law for the selection of a county depository.

(b) A depository selected by the board is the district's depository until the second anniversary of the date of selection and until a successor depository is selected and qualified.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.519. ALLOWABLE EXPENSES. A district's allowable operating expenses include all costs attributable to designing a 9-1-1 system and all equipment and personnel necessary to establish and operate a public safety answering point and other related operations that the board considers necessary.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.520. NUMBER AND LOCATION IDENTIFICATION. (a) As part of computerized 9-1-1 service, a service supplier shall furnish, for each call, the telephone number of the subscriber and the address associated with the number.

(b) A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1 service that a service supplier is required to provide under Subsection (a) to other residential end users in the district.

(c) Information furnished under this section is confidential and is not available for public inspection.

(d) A service supplier or business service user under Subsection (b) may not be held liable to a person who uses a 9-1-1 system created under this subchapter for the release to the district of the information specified in Subsections (a) and (b).

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.521. PUBLIC REVIEW. (a) Periodically, the board shall solicit public comments and hold a public review hearing on the continuation of the district and the 9-1-1 emergency service fee. The first hearing shall be held on or before the third anniversary of the date of the district's creation. Subsequent hearings shall be held on or before the third anniversary of the date each resolution required by Subsection (c) is adopted.

(b) The board shall publish notice of the time and place of a hearing once a week for two consecutive weeks in a daily newspaper of general circulation published in the district. The first notice must be published not later than the 16th day before the date set for the hearing.

(c) After the hearing, the board shall adopt a resolution on the continuation or dissolution of the district and the 9-1-1 emergency service fee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.522. DISSOLUTION PROCEDURES. (a) If a district is dissolved, 9-1-1 service must be discontinued. The regional planning commission for the district's region shall assume the district's assets, provide 9-1-1 service, and pay the district's debts. If the district's assets are insufficient to retire all existing debts of the district on the date of dissolution, the regional planning commission shall continue to impose the 9-1-1 emergency service fee, and each service supplier shall continue to collect the fee for the regional planning commission. Proceeds from the imposition of the fee by the regional planning commission after dissolution of the district may be used only to retire the outstanding debts of the district.

(b) The regional planning commission shall retire the district's debts to the extent practicable according to the terms of the instruments creating the debts and the terms of the resolutions authorizing creation of the debts.

(c) The governing body of the regional planning commission for the district's region may adopt rules necessary to administer this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff.

September 1, 2013.

Sec. 772.523. ISSUANCE OF BONDS. The board may issue bonds in the name of the district to finance:

(1) the acquisition by any method of facilities, equipment, or supplies necessary for the district to provide 9-1-1 service to each participating jurisdiction; or

(2) the installation of equipment necessary for the district to provide 9-1-1 service to each participating jurisdiction.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.524. REPAYMENT OF BONDS. The board may provide for the payment of principal of and interest on district bonds by pledging all or part of the district's revenues from the 9-1-1 emergency service fee or from other sources.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.525. ADDITIONAL SECURITY FOR BONDS. (a) District bonds may be additionally secured by a deed of trust or mortgage lien on all or part of the district's physical properties and rights appurtenant to the properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and any other power necessary for the further security of the bonds.

(b) The bond trust indenture, regardless of the existence of a deed of trust or mortgage lien on the properties, may:

(1) contain provisions prescribed by the board for the security of the bonds and the preservation of the trust estate; and

(2) make provisions for:

(A) amendment or modification; and

(B) investment of district funds.

(c) A purchaser under a sale under the deed of trust or mortgage lien is the absolute owner of the properties and rights purchased and may maintain and operate the properties.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.526. FORM OF BONDS. (a) A district may issue bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 25 years after the bonds' date of issuance. Bonds shall bear interest at any rate permitted by state law.

(c) A district's bonds and interest coupons:

(1) are investment securities under Chapter 8, Business & Commerce Code;

(2) may be issued registrable as to principal or to both principal and interest; and

(3) may be made redeemable before maturity or contain a mandatory redemption provision at the option of the district.

(d) A district may issue bonds in the form, denomination, and manner and under the terms and conditions provided by the board in the resolution authorizing the bonds' issuance. The bonds must be signed and executed as provided by the board in the resolution.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.527. PROVISIONS OF BONDS. (a) In this section, "resolution" means a board resolution authorizing the issuance of bonds, including refunding bonds.

(b) In a resolution, the board may:

(1) provide for the flow of funds and the establishment and maintenance of an interest and sinking fund, reserve fund, or other fund; and

(2) make additional covenants with respect to the bonds, the pledged revenues, and the operation and maintenance of any facilities the revenue of which is pledged.

(c) A resolution may:

(1) prohibit the further issuance of bonds or other obligations payable from the pledged revenue; or

(2) reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with

or subordinate to the lien and pledge in support of the bonds being issued.

(d) A resolution may contain other provisions and covenants determined by the board.

(e) The board may adopt and have executed any other proceedings or instruments necessary or convenient for issuance of bonds.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.528. APPROVAL AND REGISTRATION OF BONDS. (a) Bonds issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, the attorney general shall approve the bonds. On approval by the attorney general, the comptroller shall register the bonds.

(c) After approval and registration, the bonds are incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with the bonds' terms for all purposes.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.529. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of the district's outstanding bonds, including matured and unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise, as determined by the board, not more than 25 years after the bonds' date of issuance. Bonds shall bear interest at any rate permitted by state law.

(c) Refunding bonds may be payable from the same source as the bonds being refunded or from other sources.

(d) Refunding bonds must be approved by the attorney general in the same manner as the district's other bonds. The comptroller shall register the refunding bonds on the surrender and cancellation of the bonds being refunded.

(e) A resolution authorizing the issuance of refunding bonds

may provide that the bonds be sold and the proceeds deposited in a place at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount sufficient to pay the principal of the bonds being refunded and interest on those bonds accruing to the bonds' maturity dates or option dates, if the bonds have been duly called for payment before maturity according to the bonds' terms, must be deposited in the place at which the bonds being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of the bonds being refunded.

(f) A refunding may be accomplished in one or more installment deliveries. Refunding bonds and the bonds' interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) Instead of the method set forth in Subsections (a)-(f), a district may refund bonds, notes, or other obligations as provided by the general laws of this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.530. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS. (a) District bonds are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a credit union;

(4) a trust company;

(5) a savings and loan association;

(6) an insurance company;

(7) a fiduciary;

(8) a trustee;

(9) a guardian; and

(10) a sinking fund of a municipality, county, school district, special district, and other political subdivision of this state and other public funds of this state and state agencies, including the permanent school fund.

(b) District bonds may secure deposits of public funds of the state or a municipality, county, school district, or other political

subdivision of this state. The bonds are lawful and sufficient security for deposits to the extent of the bonds' value if accompanied by all unmatured coupons.

(c) District bonds are authorized investments under Chapter 2256, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.531. EXEMPTION FROM TAXATION. A bond issued by the district under this subchapter, any transaction relating to the bond, and profits made in the sale or redemption of the bond are exempt from taxation by the state or by any municipality, county, special district, or other political subdivision of this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.532. TRANSFER OF ASSETS. If a regional emergency communications district is established under this subchapter, the regional planning commission for the region in which the district is established may transfer to the district any land, buildings, improvements, equipment, and other assets acquired by the regional planning commission in relation to the provision of 9-1-1 service.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

SUBCHAPTER H. REGIONAL EMERGENCY COMMUNICATION DISTRICTS: STATE PLANNING REGIONS WITH 9-1-1 POPULATION SERVED LESS THAN 1.5 MILLION

Sec. 772.601. SHORT TITLE. This subchapter may be cited as the Regional Emergency Communication Districts Act.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.602. DEFINITIONS. In this subchapter:

(1) "9-1-1 region" means the portion of a state planning region established under Chapter 391, Local Government Code, composed of counties and municipalities that on September 1, 2015, exclusively received 9-1-1 system services provided by a 9-1-1 system operated through a regional planning commission.

(2) "Board" means the board of managers of a district.

(3) "District" means a regional emergency communication district created under this subchapter.

(4) "Regional planning commission" means a commission or council of governments created under Chapter 391, Local Government Code, for a designated region.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.603. APPLICATION OF SUBCHAPTER. (a) This subchapter applies to a 9-1-1 region:

(1) in which the total population served by the 9-1-1 system operated through a regional planning commission was less than 1.5 million on September 1, 2015; and

(2) in which the governing bodies of each participating county and municipality in the 9-1-1 region adopt a resolution under Section 772.604 to participate in the district.

(b) This subchapter does not affect:

(1) a public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service;

(2) a district created under Subchapter B, C, D, F, or G; or

(3) the distribution of funds under Section 771.072.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.604. CREATION OF DISTRICT. (a) A district is created when the governing bodies of each participating county and municipality in a 9-1-1 region adopt a resolution approving the district's creation. The district's creation is effective on the date the last resolution is adopted by a participating county or

municipality.

(b) The district shall file with the county clerk of each county in which the district is located a certificate declaring the creation of the district.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.605. POLITICAL SUBDIVISION; DISTRICT POWERS. (a) A district is a political subdivision of this state created to carry out essential governmental functions.

(b) A district may exercise all powers necessary to carry out the purposes and provisions of this subchapter.

(c) A district created under this subchapter may enter into an interlocal agreement with an emergency communication district established under Subchapter B, C, D, F, or G to promote enhanced public safety and increased fiscal and service efficiencies.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.606. TERRITORY OF DISTRICT. The territory of a district:

(1) consists of the territory of each participating county or municipality located in a 9-1-1 region; and

(2) does not include any land that is located in the territory of an emergency communication district authorized under Subchapter B, C, D, F, or G.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.607. BOARD OF MANAGERS. (a) A district is governed by a board of managers.

(b) A district's initial board is composed of members who are appointed by the governing bodies of each participating county and municipality. At least two-thirds of the initial board members must be elected officials of the participating counties and

municipalities.

(c) The initial board appointed under Subsection (b) shall establish the size of the board and the qualifications of board members.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.608. POWERS AND DUTIES OF BOARD. (a) The board shall name, control, and manage the district.

(b) The board shall approve, adopt, and amend an annual budget.

(c) The board may adopt orders, rules, bylaws, policies, and procedures governing the operations of the board and the district.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.609. DIRECTOR OF DISTRICT; STAFF; FISCAL AND ADMINISTRATIVE AGENT. (a) The regional planning commission for the 9-1-1 region in which the district is established shall serve as the fiscal and administrative agent for the district.

(b) The executive director of the regional planning commission for the 9-1-1 region may serve as director of the district.

(c) The director is responsible for:

(1) performing all duties required by the board;

(2) ensuring that board policies and procedures are implemented for the purposes of this subchapter;

(3) preparing an annual budget; and

(4) employing and assigning employees of the regional planning commission to perform duties under this subchapter in accordance with the district's approved annual budget.

(d) The director may use district money to compensate an employee assigned duties under this subchapter.

(e) The director and an employee assigned duties under this subchapter are employees of the regional planning commission for all purposes.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.610. AUDIT AND REPORTING REQUIREMENTS. The district shall prepare an annual report that includes:

(1) the amount and source of funds received by the district;

(2) the amount and source of funds spent by the district; and

(3) the results of an audit of the district's affairs prepared by an independent certified public accountant in compliance with the district's policies and procedures.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.611. PROVISION OF 9-1-1 SERVICE. (a) A district shall provide 9-1-1 service to each participating county or municipality through one or a combination of the following methods and features or equivalent state-of-the-art technology:

(1) the transfer method;

(2) the relay method;

(3) the dispatch method;

(4) automatic number identification;

(5) automatic location identification; or

(6) selective routing.

(b) The district shall design, implement, and operate a 9-1-1 system for each participating county and municipality in the district.

(c) For each individual telephone subscriber in the district, 9-1-1 service is mandatory and is not an optional service under any definition of terms relating to telephone service.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.612. LIABILITY. The liability protection provided by Section 771.053 applies to services provided under this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff.

September 1, 2015.

Sec. 772.613. PRIMARY EMERGENCY TELEPHONE NUMBER. The digits 9-1-1 are the primary emergency telephone number in a district. A public safety agency whose services are available through a 9-1-1 system:

(1) may maintain a separate number for an emergency telephone call; and

(2) shall maintain a separate number for a nonemergency telephone call.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.614. TRANSMITTING REQUESTS FOR EMERGENCY AID. (a) A 9-1-1 system established under this subchapter must be capable of transmitting requests for firefighting, law enforcement, ambulance, and medical services to a public safety agency that provides the requested service at the location from which the call originates. A 9-1-1 system may provide for transmitting requests for other emergency services, including poison control, suicide prevention, and civil defense.

(b) A public safety answering point may transmit emergency response requests to private safety entities, with the approval of the board and the consent of each participating jurisdiction and emergency services district serving the relevant area. A participating jurisdiction's or emergency services district's consent may be withdrawn at any time.

(c) With the consent of a participating county or municipality, a privately owned automatic intrusion alarm or other privately owned automatic alerting device may be installed to cause the number 9-1-1 to be dialed to gain access to emergency services.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1194 (H.B. 4350), Sec. 6, eff. June 14, 2019.

Sec. 772.615. 9-1-1 EMERGENCY SERVICE FEE. (a) The board may impose a 9-1-1 emergency service fee on service users in the district.

(b) The fee may be imposed only on the base rate charge or the charge's equivalent, excluding charges for coin-operated telephone equipment. The fee may not be imposed on:

(1) more than 100 local exchange access lines or the lines' equivalent for a single business entity at a single location, unless the lines are used by residents of the location; or

(2) any line that the Commission on State Emergency Communications has excluded from the definition of a local exchange access line or equivalent local exchange access line under Section 771.063.

(c) If a business service user provides residential facilities, each line that terminates at a residential unit and is a communication link equivalent to a residential local exchange access line shall be charged the 9-1-1 emergency service fee. The fee must have uniform application throughout the district and be imposed in each participating county or municipality in the district.

(d) The amount of the fee may not exceed 50 cents per month for each line.

(e) The board shall set the amount of the fee each year as part of the annual budget. The board shall notify each service supplier of a change in the amount of the fee not later than the 91st day before the date the change takes effect.

(f) In imposing the fee, the board shall attempt to match the district's revenues to the district's operating expenditures, including the current and planned expenditures for the purchase, installation, and maintenance of 9-1-1 emergency services in accordance with the district's approved annual budget and operating policies.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.616. COLLECTION OF FEE. (a) A service supplier or a business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall collect the

fees imposed on a customer under Section 772.615.

(b) Not later than the 30th day after the last day of the month in which the fees are collected, the service supplier or business service user shall deliver the fees to the district in the manner determined by the district. The district may establish an alternative date for payment of fees under this section, provided that the required payment date is not earlier than the 30th day after the last day of the report period in which the fees are collected. The service supplier or business service user shall file with each payment to the district a receipt in the form prescribed by the district.

(c) Both a service supplier and a business service user under Subsection (a) shall maintain records of the amount of fees the service supplier or business service user collects until at least the second anniversary of the date of collection. The board may require, at the board's expense, an annual audit of the service supplier's or business service user's books and records with respect to the collection and remittance of the fees.

(d) A business service user that does not collect and remit the 9-1-1 emergency service fee as required is subject to a civil cause of action under Subsection (g). A sworn affidavit by the district specifying the unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(e) A service supplier may retain an administrative fee of two percent of the amount of fees the service supplier collects under this section.

(f) A service supplier is not required to take any legal action to enforce the collection of the 9-1-1 emergency service fee. The service supplier shall provide the district with an annual certificate of delinquency that includes the amount of all delinquent fees and the name and address of each nonpaying service user. The certificate of delinquency is prima facie evidence that a fee included in the certificate is delinquent and of the amount of the delinquent fee. A service user account is considered delinquent if the fee is not paid to the service supplier before the 31st day after the payment due date stated on the user's bill from the service supplier.

(g) The district may file legal proceedings against a service user to collect fees not paid by the service user and may establish internal collection procedures and recover the cost of collection

from the nonpaying service user. If the district prevails in a legal proceeding filed under this subsection, the court shall award costs, attorney's fees, and interest to be paid by the nonpaying service user. A delinquent fee accrues interest at the legal rate beginning on the date the payment becomes due.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.617. DISTRICT DEPOSITORY. The board shall select a depository for the district in the manner provided by law.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.618. ALLOWABLE EXPENSES. A district's allowable operating expenses include all costs attributable to designing a 9-1-1 system and all equipment and personnel necessary to establish and maintain a public safety answering point and other related operations that the board considers necessary.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.619. NUMBER AND LOCATION IDENTIFICATION. (a) As part of 9-1-1 service, a service supplier shall furnish, for each call, the telephone number of the subscriber and the address associated with the number.

(b) A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1 service that a service supplier is required to provide under Subsection (a) to other residential end users in the district.

(c) Information furnished under this section is confidential and is not available for public inspection.

(d) A service supplier or business service user under Subsection (b) may not be held liable to a person who uses a 9-1-1

system created under this subchapter for the release to the district of the information specified in Subsections (a) and (b).

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.620. PUBLIC REVIEW. (a) Periodically, the board shall solicit public comments and hold a public review hearing on the continuation of the district and the 9-1-1 emergency service fee. The first hearing shall be held on or before the third anniversary of the date of the district's creation. Subsequent hearings shall be held on or before the third anniversary of the date each resolution required by Subsection (c) is adopted.

(b) The board shall publish notice of the time and place of a hearing once a week for two consecutive weeks in a daily newspaper of general circulation published in the district. The first notice must be published not later than the 16th day before the date set for the hearing.

(c) After the hearing, the board shall adopt a resolution on the continuation or dissolution of the district and the 9-1-1 emergency service fee.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.621. DISSOLUTION PROCEDURES. (a) If a district is dissolved, 9-1-1 service must be discontinued in compliance with the district's policies and bylaws and must be administered in accordance with Chapter 771.

(b) The regional planning commission for the district's 9-1-1 region shall assume the district's assets, provide 9-1-1 service, and pay the district's debts. If the district's assets are insufficient to retire all existing debts of the district on the date of dissolution, the regional planning commission shall continue to impose the 9-1-1 emergency service fee in compliance with Section 772.615, and each service supplier shall continue to collect the fee for the regional planning commission. Proceeds from the imposition of the fee by the regional planning commission after dissolution of the district may be used only to retire the outstanding debts of the

district.

(c) The regional planning commission shall retire the district's debts to the extent practicable according to the terms of the instruments creating the debts and the terms of the resolutions authorizing creation of the debts.

(d) The governing body of the regional planning commission for the district's 9-1-1 region may adopt rules necessary to administer this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.622. TRANSFER OF ASSETS. If a district is established under this subchapter, the regional planning commission for the 9-1-1 region in which the district is established may transfer to the district any land, buildings, improvements, equipment, and other assets acquired by the regional planning commission in relation to the provision of 9-1-1 service in accordance with Chapter 771.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

CHAPTER 773. EMERGENCY MEDICAL SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 773.001. SHORT TITLE. This chapter may be cited as the Emergency Health Care Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 1, eff. September 1, 2005.

Sec. 773.002. PURPOSE. The purpose of this chapter is to provide for the prompt and efficient transportation of sick and injured patients, after necessary stabilization, and to encourage public access to that transportation in each area of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.003. DEFINITIONS. In this chapter:

(1) "Advanced life support" means emergency prehospital care that uses invasive medical acts.

(2) "Basic life support" means emergency prehospital care that uses noninvasive medical acts.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(114), eff. April 2, 2015.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(114), eff. April 2, 2015.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(114), eff. April 2, 2015.

(6) "Commissioner" means the commissioner of state health services.

(7) "Department" means the Department of State Health Services.

(7-a) "Emergency medical care" means bona fide emergency services provided after the sudden onset of a medical or traumatic condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any bodily organ or part.

(8) "Emergency medical services" means services used to respond to an individual's perceived need for immediate medical care and to prevent death or aggravation of physiological or psychological illness or injury.

(9) "Emergency medical services and trauma care system" means an arrangement of available resources that are coordinated for the effective delivery of emergency health care services in geographical regions consistent with planning and management standards.

(10) "Emergency medical services personnel" means:

(A) emergency care attendant;

(B) emergency medical technicians;

(C) advanced emergency medical technicians;

(D) emergency medical technicians--paramedic; or

(E) licensed paramedic.

(11) "Emergency medical services provider" means a person who uses or maintains emergency medical services vehicles, medical equipment, and emergency medical services personnel to provide emergency medical services.

(12) "Emergency medical services vehicle" means:

(A) a basic life-support emergency medical services vehicle;

(B) an advanced life-support emergency medical services vehicle;

(C) a mobile intensive-care unit; or

(D) a specialized emergency medical services vehicle.

(13) "Emergency medical services volunteer" means emergency medical services personnel who provide emergency prehospital care without remuneration, except reimbursement for expenses.

(14) "Emergency medical services volunteer provider" means an emergency medical services provider that has at least 75 percent of its total personnel as volunteers and is recognized as a Section 501(c)(3) nonprofit corporation by the Internal Revenue Service.

(15) "Emergency prehospital care" means care provided to the sick or injured before or during transportation to a medical facility, and includes any necessary stabilization of the sick or injured in connection with that transportation.

(15-a) "Epinephrine auto-injector" means a disposable medical drug delivery device that contains a premeasured single dose of epinephrine intended for use to treat anaphylaxis.

(15-b) "Epinephrine delivery system" means a medical delivery device approved by the United States Food and Drug Administration that delivers a dose of epinephrine intended for use to treat anaphylaxis, including:

(A) an epinephrine auto-injector; and

(B) an epinephrine nasal spray.

(15-c) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(16) "First responder organization" means a group or association of certified emergency medical services personnel that, working in cooperation with a licensed emergency medical services provider, provides immediate on-scene care to ill or injured persons but does not transport those persons.

(17) "Governmental entity" means a county, municipality, school district, or special district or authority created in

accordance with the Texas Constitution.

(18) "Medical supervision" means direction given to emergency medical services personnel by a licensed physician under Subtitle B, Title 3, Occupations Code, and the rules adopted under that subtitle by the Texas Medical Board.

(19) "Trauma facility" means a health care facility that is capable of comprehensive treatment of seriously injured persons and is a part of an emergency medical services and trauma care system.

(20) "Trauma patient" means a critically injured person who has been:

(A) evaluated by a physician, a registered nurse, or emergency medical services personnel; and

(B) found to require medical care in a trauma facility.

(21) [Blank].

(22) "Trauma services" includes services provided to a severely or seriously injured patient who has a principal diagnosis listed in the Injuries and Poisonings Chapter of the International Classification of Diseases, Clinical Modification.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 239, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 605, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 853, Sec. 3, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 915, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 435, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1377, Sec. 2.02, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.808, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 2, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(29), eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1511, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(114), eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 67 (S.B. 1619), Sec. 22, eff. May 19, 2025.

Sec. 773.004. VEHICLES AND PERSONNEL EXCLUDED FROM CHAPTER. (a) This chapter does not apply to:

(1) air transfer that does not advertise as an ambulance service and that is not licensed by the department;

(2) the use of ground or air transfer vehicles to transport sick or injured persons in a casualty situation that exceeds the basic vehicular capacity or capability of emergency medical services providers in the area;

(3) an industrial ambulance; or

(4) a physician, registered nurse, or other health care practitioner licensed by this state unless the health care practitioner staffs an emergency medical services vehicle regularly.

(b) In this section, "industrial ambulance" means a vehicle owned and operated by an industrial facility that is not available for hire or use by the public except to assist the local community in a disaster or when existing ambulance service is not available, and includes a ground vehicle at an industrial site used:

(1) for the initial transportation or transfer of the unstable urgently sick or injured; or

(2) to transport from the job site to an appropriate medical facility a person who becomes sick, injured, wounded, or otherwise incapacitated in the course of employment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 240, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 605, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 376, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 305 (S.B. 521), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1034 (H.B. 1126), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 14(a), eff. September 1, 2007.

Sec. 773.0043. FIRE FIGHTER EXEMPTION FOR CERTAIN PATIENTS; MEDICAL TREATMENT AND TRANSPORT OPERATING GUIDELINES. (a) In this section, "fire fighter" means:

(1) an individual who is defined as fire protection

personnel under Section 419.021, Government Code; or

(2) an individual who is a volunteer fire fighter certified by the Texas Commission on Fire Protection or the State Firefighters' and Fire Marshals' Association of Texas.

(b) Notwithstanding Section 773.041, a fire fighter, regardless of whether the fire fighter is licensed as an emergency medical services provider, may transport a sick or injured patient to a health care facility in a vehicle other than an emergency medical services vehicle if:

(1) the appropriate emergency medical services provider:

(A) is notified of the patient's clinical condition; and

(B) is unable to provide emergency medical services imminently at the patient's location; and

(2) the medical treatment and transport operating guidelines for the patient's apparent clinical condition authorize transport of the patient in a vehicle other than an emergency medical services vehicle.

(c) Each trauma service area regional advisory council shall develop the medical treatment and transport operating guidelines necessary to implement this section for the area served by the council and provide notice of the guidelines to the emergency medical services providers and fire fighters in that area.

Added by Acts 2023, 88th Leg., R.S., Ch. 122 (H.B. 624), Sec. 1, eff. September 1, 2023.

Sec. 773.0045. TEMPORARY EXEMPTIONS FOR EMERGENCY MEDICAL SERVICES PERSONNEL PRACTICING IN RURAL AREA. (a) In this section, "rural area" means:

(1) a county with a population of 50,000 or less; or

(2) a relatively large, isolated, and sparsely populated area in a county with a population of more than 50,000.

(b) The department on a case-by-case basis may temporarily exempt emergency medical services personnel who primarily practice in a rural area from a requirement imposed either by Section 773.050 or 773.055 or by a department rule adopted under Section 773.050 or 773.055 if specific circumstances that affect the rural area served by the emergency medical services personnel justify the exemption.

The department may temporarily exempt the emergency medical services personnel from a requirement imposed:

(1) by a department rule adopted under Section 773.050 or 773.055 only if the department finds that, under the circumstances, imposing the requirement would not be in the best interests of the people in the rural area who are served by the emergency medical services personnel; and

(2) by Section 773.050 or 773.055 only if the department finds that, under the circumstances, there is a substantial risk that imposing the requirement will detrimentally affect the health or safety of one or more persons in the affected rural area or hinder the ability of emergency medical services personnel who practice in the area to alleviate a threat to the health or safety of one or more persons in the area.

(c) The exemption must be in writing, include the findings required by Subsection (b), and expire at a stated time. The written findings must be accompanied by a concise and explicit statement that specifically describes the circumstances that support the finding.

(d) In granting the exemption, the department in writing must require the affected emergency medical services personnel or the appropriate emergency medical services provider to adopt a written plan under which the applicable requirement will be met as soon as possible.

(e) A temporary exemption under this section may allow emergency medical services personnel who are applicants for certification at a higher level of training to temporarily practice at the higher level.

Added by Acts 2003, 78th Leg., ch. 848, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1512, eff. April 2, 2015.

Sec. 773.006. FUND FOR EMERGENCY MEDICAL SERVICES, TRAUMA FACILITIES, AND TRAUMA CARE SYSTEMS. (a) The fund for emergency medical services, trauma facilities, and trauma care systems is established as an account in the general revenue fund. Money in the account may be appropriated only to the department for the purposes specified by Section 773.122.

(b) The account is composed of money deposited to the account under Article 102.0185, Code of Criminal Procedure.

(c) Section 404.071, Government Code, does not apply to the account.

Added by Acts 2003, 78th Leg., ch. 1213, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1513, eff. April 2, 2015.

Sec. 773.007. SUPERVISION OF EMERGENCY PREHOSPITAL CARE. (a) The provision of advanced life support must be under medical supervision and a licensed physician's control.

(b) The provision of basic life support may be under medical supervision and a licensed physician's control.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.008. CONSENT FOR EMERGENCY CARE. Consent for emergency care of an individual is not required if:

(1) the individual is:

(A) unable to communicate because of an injury, accident, or illness or is unconscious; and

(B) suffering from what reasonably appears to be a life-threatening injury or illness;

(2) a court of record orders the treatment of an individual who is in an imminent emergency to prevent the individual's serious bodily injury or loss of life; or

(3) the individual is a minor who is suffering from what reasonably appears to be a life-threatening injury or illness and whose parents, managing or possessory conservator, or guardian is not present.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.009. LIMITATION ON CIVIL LIABILITY. A person who authorizes, sponsors, supports, finances, or supervises the functions of emergency room personnel and emergency medical services personnel

is not liable for civil damages for an act or omission connected with training emergency medical services personnel or with services or treatment given to a patient or potential patient by emergency medical services personnel if the training, services, or treatment is performed in accordance with the standard of ordinary care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.011. SUBSCRIPTION PROGRAMS. (a) An emergency medical services provider may create and operate a subscription program to fund and provide emergency medical services.

(b) The executive commissioner shall adopt rules establishing minimum standards for the creation and operation of a subscription program.

(c) The executive commissioner shall adopt a rule that requires an emergency medical services provider to secure a surety bond in the amount of sums to be subscribed before soliciting subscriptions and creating and operating a subscription program. The surety bond must be issued by a company that is licensed by or eligible to do business in this state.

(d) The executive commissioner may adopt rules for waiver of the surety bond.

(e) The Insurance Code does not apply to a subscription program established under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 242, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 915, Sec. 2, eff. Aug. 28, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1514, eff. April 2, 2015.

Sec. 773.012. ADVISORY COUNCIL. (a) The governor shall appoint an advisory council to advise the department regarding matters related to the responsibilities of the executive commissioner, commissioner, and department under this chapter. In making appointments to the advisory council, the governor shall ensure that approximately one-half of the members of the advisory council are residents of rural areas of the state.

(b) The advisory council is composed of the following 19 members appointed by the governor:

(1) a board-certified emergency physician, appointed from a list of names recommended by a statewide professional association of emergency physicians;

(2) a licensed physician who is an emergency medical services medical director, appointed from a list of names recommended by a statewide professional association of emergency medical services medical directors;

(3) a registered nurse, appointed from a list of names recommended by a statewide professional association of emergency nurses;

(4) a fire chief for a municipality that provides emergency medical services, appointed from a list of names recommended by a statewide fire chiefs association;

(5) an officer or employee of a private provider of emergency medical services who is involved with the development of a Texas Trauma System, appointed from a list of names recommended by a statewide association of private providers of emergency medical services;

(6) a volunteer who provides emergency medical services, appointed from a list of names recommended by a statewide association of volunteers;

(7) an educator in the field of emergency medical services;

(8) a member of an emergency medical services air medical team or unit, appointed from a list of names recommended by a statewide emergency medical services air medical association;

(9) a representative of a fire department that provides emergency medical services, appointed from a list of names recommended by a statewide association of firefighters;

(10) a representative of hospitals who is affiliated with a hospital that is a designated trauma facility in an urban community, appointed from a list of names recommended by a statewide association of hospitals;

(11) a representative of hospitals, who is affiliated with a hospital that is a designated trauma facility in a rural community, appointed from a list of names recommended by a statewide association of hospitals;

(12) a representative of a county provider of emergency

medical services;

(13) one licensed physician who is a pediatrician with trauma or emergency care expertise;

(14) one trauma surgeon;

(15) one registered nurse with trauma expertise;

(16) a representative of a stand-alone emergency medical services agency in a municipality or taxing district, appointed from a list of names recommended by a statewide association representing emergency medical services agencies;

(17) a certified paramedic, appointed from a list of names recommended by a statewide association representing emergency medical services agencies or emergency medical services personnel; and

(18) two representatives of the general public who are not qualified to serve under another subdivision of this subsection.

(c) A person may not be a public member of the advisory council if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of emergency medical services;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the department;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the department; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the department other than reimbursement authorized by law for advisory council membership, attendance, or expenses.

(d) In this subsection, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. A person may not be a member of the advisory council if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of emergency medical services; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of emergency medical services.

(e) A person may not be a member of the advisory council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(f) Members of the advisory council serve staggered six-year terms with the terms of six or seven members expiring January 1 of each even-numbered year. A vacancy on the advisory council is filled in the same manner as the original appointment for the unexpired term.

(g) The governor shall appoint the presiding officer of the advisory council.

(h) A member of the advisory council serves without compensation. Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory council.

(i) The advisory council shall meet at least quarterly in the city of Austin. The advisory council shall meet as provided by procedural rules adopted by the advisory council or at the call of the presiding officer. The advisory council may appoint committees it considers necessary to perform its duties.

(j) The advisory council periodically shall review department rules relating to this chapter and may recommend changes in those rules to the department. The department shall ensure that the advisory council is given adequate time and opportunity to review and comment on each rule proposed for adoption by the executive commissioner under this chapter, including the amendment or repeal of an existing rule, but not including an emergency rule.

(k) The advisory council shall assess the need for emergency medical services in the rural areas of the state.

(l) The advisory council shall develop a strategic plan for:

(1) refining the educational requirements for certification and maintaining certification as emergency medical services personnel; and

(2) developing emergency medical services and trauma care systems.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.01, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 874, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1515, eff.

April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1084 (H.B. 1869), Sec. 1, eff. June 14, 2019.

Sec. 773.013. PEER ASSISTANCE PROGRAM. The department may establish, approve, and fund a peer assistance program in accordance with Section 467.003 and department rules.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1516, eff. April 2, 2015.

Sec. 773.014. ADMINISTRATION OF EPINEPHRINE BY EMERGENCY MEDICAL SERVICES PERSONNEL. (a) An emergency medical services provider and a first responder organization may acquire and possess epinephrine delivery systems in accordance with this section. Emergency medical services personnel may carry and administer epinephrine delivery systems in accordance with this section.

(b) The executive commissioner shall adopt rules designed to protect the public health and safety to implement this section. The rules must provide that emergency medical services personnel may administer an epinephrine delivery system to another only if the person has successfully completed a training course, approved by the department, in the use of the device that is consistent with the national standard training curriculum for emergency medical technicians.

(c) An emergency medical services provider or first responder organization may acquire, possess, maintain, and dispose of epinephrine delivery systems, and emergency medical services personnel may carry, maintain, administer, and dispose of epinephrine delivery systems, only in accordance with:

(1) rules adopted under this section; and

(2) a delegated practice agreement that provides for medical supervision by a licensed physician who either:

(A) acts as a medical director for an emergency medical services system or a licensed hospital; or

(B) has knowledge and experience in the delivery of

emergency care.

(c-1) A licensed physician acting as a medical director for an emergency medical services system may restrict the use and administration of epinephrine delivery systems to certain emergency medical services personnel of the system through:

(1) the delegated practice agreement; or

(2) the adoption of policies governing the use of the epinephrine delivery systems by personnel within the system.

(d) Emergency medical services personnel who administer epinephrine delivery systems to others shall immediately report the use to the physician supervising the activities of the emergency medical services personnel.

(e) The administration of an epinephrine delivery system to another under this section is considered to be the administration of emergency care for the purposes of any statute relating to liability for the provision of emergency care. The administration of an epinephrine delivery system to another in accordance with the requirements of this section does not constitute the unlawful practice of any health care profession.

(f) A person otherwise authorized to sell or provide an epinephrine delivery system to another may sell or provide the epinephrine delivery systems to an emergency medical services provider or a first responder organization authorized to acquire and possess the epinephrine delivery systems under this section.

(g) This section does not prevent emergency medical services personnel who are also licensed health care professionals under another health care licensing law and who are authorized to acquire, possess, and administer an epinephrine delivery system under the other health care licensing law from acting under the other law.

(h) This section does not impose a standard of care not otherwise required by law.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 4, eff. Jan. 1, 2002; Acts 2001, 77th Leg., ch. 1131, Sec. 1, eff. Jan. 1, 2002.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1079 (H.B. 2827), Sec. 1, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1517, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1321 (H.B. 4260), Sec. 1, eff.

September 1, 2019.

Acts 2025, 89th Leg., R.S., Ch. 67 (S.B. 1619), Sec. 23, eff. May 19, 2025.

Sec. 773.0145. POSSESSION AND ADMINISTRATION OF EPINEPHRINE BY CERTAIN ENTITIES. (a) Repealed by Acts 2025, 89th Leg., R.S., Ch. 715 (H.B. 163), Sec. 2, eff. September 1, 2025.

(a-1) This section does not apply to an entity that is required by another law to adopt and implement a policy governing the maintenance, administration, and disposal of epinephrine delivery systems by the entity.

(b) Repealed by Acts 2025, 89th Leg., R.S., Ch. 715 (H.B. 163), Sec. 2, eff. September 1, 2025.

(c) An entity in this state, including a governmental entity, may adopt a policy regarding the maintenance, administration, and disposal of epinephrine delivery systems.

(d) A policy adopted under Subsection (c) must provide that only an entity employee or volunteer who is authorized and trained may administer an epinephrine delivery system to a person who is reasonably believed to be experiencing anaphylaxis on the premises of the entity.

(e) The executive commissioner shall adopt rules regarding the maintenance, administration, and disposal of an epinephrine delivery system by an entity subject to a policy adopted under Subsection (c). The rules must establish:

(1) the number of epinephrine delivery systems and the dosages of the epinephrine delivery systems available at each entity;

(2) the process for each entity to verify the inventory of epinephrine delivery systems at regular intervals for expiration and replacement; and

(3) the amount of training required for an entity employee or volunteer to administer an epinephrine delivery system.

(f) Each entity that adopts a policy under Subsection (c) must have at least one entity employee or volunteer authorized and trained to administer an epinephrine delivery system present during all hours the entity is open to the public or to the population that the entity serves, as applicable.

(g) The supply of epinephrine delivery systems at each entity must:

(1) be stored in accordance with the manufacturer's instructions in a secure location; and

(2) be easily accessible to an entity employee or volunteer authorized and trained to administer an epinephrine delivery system.

(h) Each entity that adopts a policy under Subsection (c) is responsible for training the entity's employees and volunteers in the administration of an epinephrine delivery system.

(i) Employee and volunteer training under this section must:

(1) include information on:

(A) the signs and symptoms of anaphylaxis;

(B) the recommended dosages for an adult and a child;

(C) the administration of an epinephrine delivery system;

(D) the implementation of emergency procedures, if necessary, after administering an epinephrine delivery system; and

(E) the proper disposal of used or expired epinephrine delivery systems; and

(2) be completed annually in a formal training session or through online education.

(j) Each entity shall maintain records on the training completed by each employee and volunteer under this section.

(k) A physician or person who has been delegated prescriptive authority under Chapter 157, Occupations Code, may prescribe epinephrine delivery systems in the name of an entity.

(l) A physician or other person who prescribes epinephrine delivery systems under Subsection (k) shall provide the entity with a standing order for the administration of an epinephrine delivery system to a person reasonably believed to be experiencing anaphylaxis.

(m) The standing order under Subsection (l) is not required to be patient-specific, and the epinephrine delivery system may be administered to a person without a previously established physician-patient relationship.

(n) Notwithstanding any other law, supervision or delegation by a physician is considered adequate if the physician:

(1) periodically reviews the order; and

(2) is available through direct telecommunication as needed for consultation, assistance, and direction.

(o) For purposes of Subsection (n)(2), a person who has been delegated prescriptive authority under Chapter 157, Occupations Code,

is not engaged in the unauthorized practice of telemedicine or acting outside the person's scope of practice by consulting a physician as provided by that subdivision when prescribing an epinephrine delivery system in accordance with this section.

(p) An order issued under this section must contain:

(1) the name and signature of the prescriber;

(2) the name of the entity to which the order is issued;

(3) the quantity of epinephrine delivery systems to be obtained and maintained under the order; and

(4) the date of issue.

(q) A pharmacist may dispense an epinephrine delivery system to an entity without requiring the name or any other identifying information relating to the user.

(r) A person who in good faith takes, or fails to take, any action under this section is immune from civil or criminal liability or disciplinary action resulting from that action or failure to act, including:

(1) issuing an order for epinephrine delivery systems;

(2) supervising or delegating the administration of an epinephrine delivery system;

(3) possessing, maintaining, storing, or disposing of an epinephrine delivery system;

(4) prescribing an epinephrine delivery system;

(5) dispensing an epinephrine delivery system;

(6) administering, or assisting in administering, an epinephrine delivery system;

(7) providing, or assisting in providing, training, consultation, or advice in the development, adoption, or implementation of policies, guidelines, rules, or plans; or

(8) undertaking any other act permitted or required under this section.

(s) The immunities and protections provided by this section are in addition to other immunities or limitations of liability provided by law.

(t) Notwithstanding any other law, this section does not create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides a basis for a cause of action for an act or omission under this section.

(u) A cause of action does not arise from an act or omission described by this section.

(v) An entity and entity employees or volunteers are immune from suit resulting from an act, or failure to act, under this section, including an act or failure to act under related policies and procedures.

(w) An act or failure to act by entity employees or volunteers under this section, including an act or failure to act under related policies and procedures, is the exercise of judgment or discretion on the part of the entity employee or volunteer and is not considered to be a ministerial act for purposes of liability of the entity.

Added by Acts 2019, 86th Leg., R.S., Ch. 1321 (H.B. 4260), Sec. 2, eff. September 1, 2019.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 13, eff. September 1, 2021.

Acts 2025, 89th Leg., R.S., Ch. 67 (S.B. 1619), Sec. 24, eff. May 19, 2025.

Acts 2025, 89th Leg., R.S., Ch. 715 (H.B. 163), Sec. 1, eff. September 1, 2025.

Acts 2025, 89th Leg., R.S., Ch. 715 (H.B. 163), Sec. 2, eff. September 1, 2025.

Sec. 773.015. IDENTIFICATION OF CERTAIN PATIENTS RECEIVING EMERGENCY PREHOSPITAL CARE. Emergency medical services personnel or emergency room medical or admissions personnel may take the thumbprint of a person who receives emergency prehospital care if the person:

(1) does not possess personal identification at the time the care is administered;

(2) is unconscious;

(3) is transported across the Texas-Mexico border by ambulance or helicopter while receiving emergency prehospital care; and

(4) is delivered to a hospital that has digital fingerprinting capabilities.

Added by Acts 2005, 79th Leg., Ch. 517 (H.B. 805), Sec. 1, eff. September 1, 2005.

Sec. 773.016. DUTIES OF EMERGENCY MEDICAL SERVICES PERSONNEL; CERTAIN EMERGENCY PREHOSPITAL CARE SITUATIONS. (a) In this section, "cardiopulmonary resuscitation" has the meaning assigned by Section 166.002.

(b) Emergency medical services personnel who are providing emergency prehospital care to a person are subject to Chapter 166, including Section 166.102.

(c) If a person's personal physician is present and assumes responsibility for the care of the person under the applicable requirements of Chapter 197, Title 22, Texas Administrative Code, while the person is receiving emergency prehospital care, the physician may order the termination of cardiopulmonary resuscitation only if, based on the physician's professional medical judgment, the physician determines that resuscitation should be discontinued.

(d) If a person's personal physician is not present or does not assume responsibility for the care of the person while the person is receiving emergency prehospital care, the emergency medical services system's medical director or online physician:

(1) shall be responsible for directing the emergency medical services personnel who are providing emergency prehospital care to the person; and

(2) may order the termination of cardiopulmonary resuscitation only if, based on the medical director's or online physician's professional medical judgment, the medical director or online physician determines that resuscitation should be discontinued.

Added by Acts 2011, 82nd Leg., R.S., Ch. 710 (H.B. 577), Sec. 2, eff. June 17, 2011.

Sec. 773.017. USE OF CERTAIN EXTERNAL MOTOR VEHICLE MARKINGS OR FEATURES PROHIBITED; CRIMINAL OFFENSE. (a) A person may not operate a motor vehicle in this state that resembles an emergency medical services vehicle unless the person uses the motor vehicle:

(1) as an emergency medical services vehicle under this chapter; or

(2) for other legitimate governmental functions, including police or firefighting services.

(b) A motor vehicle resembles an emergency medical services

vehicle if the motor vehicle has on the exterior of the motor vehicle any of the following markings or features:

(1) the word "ambulance" or a derivation of that word;

(2) a star of life as trademarked by the National Highway Traffic Safety Administration;

(3) a Maltese cross commonly used by fire departments;

(4) forward-facing flashing red, white, or blue lights;

(5) a siren;

(6) the words "critical care transport," "emergency," "emergency medical services," or "mobile intensive care unit"; or

(7) the acronym "EMS" or "MICU".

(c) A person commits an offense if the person violates this section. An offense under this subsection is a Class C misdemeanor.

(d) This section does not apply to a motor vehicle bearing a license plate issued or approved under Section 504.501 or 504.502, Transportation Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 253 (H.B. 1249), Sec. 1, eff. September 1, 2017.

SUBCHAPTER B. STATE PLAN FOR EMERGENCY SERVICES

Sec. 773.021. STATE PLAN. (a) The department shall develop a state plan for the prompt and efficient delivery of adequate emergency medical services to acutely sick or injured persons.

(b) The state plan must include an emergency radio communication plan to be used by local governments and districts that provide emergency medical services to develop an emergency radio communication network linking emergency medical services providers with local hospitals or trauma centers.

(c) The advisory council shall consider the department's actions under Subsection (a), and the department shall review the council's recommendations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 488, Sec. 1, eff. June 12, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1518, eff. April 2, 2015.

Sec. 773.022. SERVICE DELIVERY AREAS. The department shall divide the state into emergency medical services delivery areas that coincide, to the extent possible, with other regional planning areas.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1519, eff. April 2, 2015.

Sec. 773.023. AREA PLANS. (a) The department shall:

(1) identify all public or private agencies and institutions that are used or may be used for emergency medical services in each delivery area; and

(2) enlist the cooperation of all concerned agencies and institutions in developing a well-coordinated plan for delivering emergency medical services in each delivery area.

(b) A delivery area plan must include an interagency communications network that facilitates prompt and coordinated response to medical emergencies by the Department of Public Safety, local police departments, ambulance personnel, medical facilities, and other concerned agencies and institutions.

(c) A delivery area plan may include the use of helicopters that may be available from the Department of Public Safety, the National Guard, or the United States Armed Forces.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1520, eff. April 2, 2015.

Sec. 773.024. FEDERAL PROGRAMS. The department is the state agency designated to develop state plans required for participation in federal programs involving emergency medical services. The department may receive and disburse available federal funds to implement the service programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1521, eff.

April 2, 2015.

Sec. 773.025. ACCESSIBILITY OF TRAINING. (a) The department shall identify all individuals and public or private agencies and institutions that are or may be engaged in emergency medical services training in each delivery area.

(b) A delivery area plan must include provisions for encouraging emergency medical services training so as to reduce the cost of training to emergency medical services providers and to make training more accessible to low population or remote areas.

(c) A governmental entity that sponsors or wishes to sponsor an emergency medical services provider may request the department to provide emergency medical services training for emergency care attendants at times and places that are convenient for the provider's personnel, if the training is not available locally.

(d) A governmental entity or nongovernmental organization that sponsors or wishes to sponsor an emergency medical services provider or first responder organization in a rural or underserved area may request the department to provide or facilitate the provision of initial training for emergency care attendants, if the training is not available locally. The department shall ensure that the training is provided. The department shall provide the training without charge, or contract with qualified instructors to provide the training without charge, to students who agree to perform emergency care attendant services for at least one year with the local emergency medical services provider or first responder organization. The training must be provided at times and places that are convenient to the students. The department shall require that at least three students are scheduled to take any class offered under this subsection.

(e) To facilitate all levels of emergency medical services training, the department shall consult with and solicit comment from emergency medical services providers, first responder organizations, persons who provide emergency medical services training, and other entities interested in emergency medical services training programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 874, Sec. 5, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1522, eff. April 2, 2015.

SUBCHAPTER C. LICENSES, CERTIFICATION, AND QUALIFICATIONS

Sec. 773.041. LICENSE OR CERTIFICATE REQUIRED. (a) A person may not operate, conduct, or maintain an emergency medical service, advertise that the person is an emergency medical services provider, or otherwise engage in or profess to be engaged in the provision of emergency medical services unless the person holds a license as an emergency medical services provider issued by the department in accordance with this chapter.

(a-1) A person may not transport a patient by stretcher in a vehicle unless the person holds a license as an emergency medical services provider issued by the department in accordance with this chapter. For purposes of this subsection, "person" means an individual, corporation, organization, government, governmental subdivision or agency, business, trust, partnership, association, or any other legal entity.

(b) A person may not practice as any type of emergency medical services personnel unless the person is certified under this chapter and rules adopted under this chapter.

(c) A certificate or license issued under this chapter is not transferable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 244, eff. Sept. 1, 1991. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 14(b), eff. September 1, 2007.

Sec. 773.0415. LIMITATION ON INFORMATION REQUIRED FOR CERTIFICATE RENEWAL. The requirements and procedures adopted by the executive commissioner for the renewal of a certificate to practice as emergency medical services personnel issued under this chapter:

(1) may not require an applicant to provide unchanged criminal history information already included in one or more of the applicant's previous applications for certification or for certificate renewal filed with the department; and

(2) may require the applicant to provide only information relevant to the period occurring since the date of the applicant's last application for certification or for certificate renewal, as applicable, including information relevant to any new requirement applicable to the certificate held by the applicant.

Added by Acts 2009, 81st Leg., R.S., Ch. 332 (H.B. 846), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1523, eff. April 2, 2015.

Sec. 773.042. BASIC LIFE-SUPPORT EMERGENCY MEDICAL SERVICES PROVIDER QUALIFICATIONS. A provider qualifies as a basic life-support emergency medical services provider if it provides a vehicle that is designed for transporting the sick or injured, has personnel and sufficient equipment and supplies for providing basic life support, and is capable of providing emergency and nonemergency transportation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 3, eff. Aug. 28, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 305 (S.B. 521), Sec. 2, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1034 (H.B. 1126), Sec. 5, eff. September 1, 2005.

Sec. 773.043. ADVANCED LIFE-SUPPORT EMERGENCY MEDICAL SERVICES PROVIDER QUALIFICATIONS. A provider qualifies as an advanced life-support emergency medical services provider if it:

(1) meets the requirements of a basic life-support emergency medical services provider; and

(2) has personnel and sufficient equipment and supplies for providing intravenous therapy and endotracheal or esophageal intubation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 4, eff. Aug. 28, 1995.

Sec. 773.044. MOBILE INTENSIVE-CARE PROVIDER QUALIFICATIONS. A provider qualifies as a mobile intensive-care provider if it:

(1) meets the requirements of an advanced life-support emergency medical services provider; and

(2) has personnel and sufficient equipment and supplies to provide cardiac monitoring, defibrillation, cardioversion, drug therapy, and two-way radio communication.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 5, eff. Aug. 28, 1995.

Sec. 773.045. SPECIALIZED EMERGENCY MEDICAL SERVICES PROVIDER QUALIFICATIONS. (a) A provider using a vehicle, including a helicopter, boat, fixed-wing aircraft, or ground vehicle, qualifies as a specialized emergency medical services provider if:

(1) the vehicle is designed for transporting the sick or injured by air, water, or ground transportation; and

(2) the provider has personnel and sufficient equipment and supplies to provide for the specialized needs of the patient transported.

(b) A rotor or fixed-wing aircraft and staff based in this state and used to transport a patient by stretcher and that holds itself out as an air ambulance service is required to be licensed by the department.

(c) An air ambulance company based in another state that transports patients from a point in this state is required to be licensed by the department as an emergency medical services provider. The department shall issue a license to an air ambulance company under this subsection if the company applies as required by this chapter and has met the qualifications specified in department rules for safely transporting patients. An air ambulance company accredited by the Commission on Accreditation of Medical Transport Systems is rebuttably presumed to have met the department's qualifications.

(d) An air ambulance company licensed under Subsection (c) must include information regarding the physical location of the company's base operations in any advertising by the company in this state.

This subsection does not prohibit an air ambulance company with multiple locations from listing those locations in advertising, provided that the air ambulance company meets all the provisions of this chapter.

(e) An air ambulance company that is not located in this state and that advertises within this state must have at least one physical location in this state.

(f) This section does not require an air transportation provider to be licensed if, in addition to the company's normal air transportation service, the air transportation company provides only voluntary, mercy-flight transportation at the company's own expense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 245, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 376, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 915, Sec. 6, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 1182, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1524, eff. April 2, 2015.

Sec. 773.046. EMERGENCY CARE ATTENDANT QUALIFICATIONS. (a) An individual qualifies as an emergency care attendant if the individual is certified by the department as minimally proficient to provide emergency prehospital care by providing initial aid that promotes comfort and avoids aggravation of an injury or illness.

(b) The department may not require an individual to have a high school diploma or a high school equivalency certificate for certification as an emergency care attendant under this chapter if the individual certifies that the individual will serve only as an emergency care attendant volunteer during the certification period.

(c) The executive commissioner shall adopt rules as necessary to administer this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 246, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 1035, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1525, eff. April 2, 2015.

Sec. 773.047. EMERGENCY MEDICAL TECHNICIAN QUALIFICATIONS. An individual qualifies as an emergency medical technician if the individual is certified by the department as minimally proficient to perform emergency prehospital care that is necessary for basic life support and that includes cardiopulmonary resuscitation and the control of hemorrhaging.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 247, eff. Sept. 1, 1991.

Sec. 773.048. ADVANCED EMERGENCY MEDICAL TECHNICIAN QUALIFICATIONS. An individual qualifies as an advanced emergency medical technician if the individual is certified by the department as minimally proficient to provide emergency prehospital care by initiating under medical supervision certain procedures, including intravenous therapy and endotracheal or esophageal intubation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 248, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1526, eff. April 2, 2015.

Sec. 773.049. EMERGENCY MEDICAL TECHNICIAN--PARAMEDIC QUALIFICATIONS. An individual qualifies as an emergency medical technician-paramedic if the individual is certified by the department as minimally proficient to provide advanced life support that includes initiation under medical supervision of certain procedures, including intravenous therapy, endotracheal or esophageal intubation, electrical cardiac defibrillation or cardioversion, and drug therapy.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 249, eff. Sept. 1, 1991.

Sec. 773.0495. LICENSED PARAMEDIC QUALIFICATIONS. An individual qualifies as a licensed paramedic if the department

determines that the individual is minimally proficient to provide advanced life support that includes initiation under medical supervision of certain procedures, including intravenous therapy, endotracheal or esophageal intubation, electrical cardiac defibrillation or cardioversion, and drug therapy. In addition, a licensed paramedic must complete a curriculum that includes college-level course work in accordance with department rules.

Added by Acts 1997, 75th Leg., ch. 435, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1526, eff. April 2, 2015.

Sec. 773.0496. SCOPE OF EMERGENCY MEDICAL TECHNICIAN-PARAMEDIC AND LICENSED PARAMEDIC DUTIES. (a) In this section:

(1) "Advanced life support" means health care provided to sustain life in an emergency, life-threatening situation. The term includes the initiation of intravenous therapy, endotracheal or esophageal intubation, electrical cardiac defibrillation or cardioversion, and drug therapy procedures.

(2) "Direct supervision" means supervision of an emergency medical technician-paramedic or licensed paramedic by a licensed physician who is present in the same area or an area adjacent to the area where an emergency medical technician-paramedic or licensed paramedic performs a procedure and who is immediately available to provide assistance and direction during the performance of the procedure.

(b) Notwithstanding other law, a person who is certified under this chapter as an emergency medical technician-paramedic or a licensed paramedic, is acting under the delegation and direct supervision of a licensed physician, and is authorized to provide advanced life support by a health care facility may in accordance with department rules provide advanced life support in the facility's emergency or urgent care clinical setting, including a hospital emergency room and a freestanding emergency medical care facility.

Added by Acts 2015, 84th Leg., R.S., Ch. 1054 (H.B. 2020), Sec. 1, eff. June 19, 2015.
Added by Acts 2015, 84th Leg., R.S., Ch. 1226 (S.B. 1899), Sec. 1, eff. June 19, 2015.

Sec. 773.050. MINIMUM STANDARDS. (a) Each basic life-support emergency medical services vehicle when in service must be staffed by at least two individuals certified as emergency care attendants or certified at a higher level of training.

(b) The executive commissioner by rule shall establish minimum standards for:

(1) staffing an advanced life-support emergency medical services vehicle, a mobile intensive-care unit, or a specialized emergency medical services vehicle;

(2) emergency medical services personnel certification and performance, including provisional certification, certification, decertification, recertification, suspension, emergency suspension, and probation;

(3) the approval of courses and training programs, the certification of program instructors, examiners, and course coordinators for emergency medical services personnel training, and the revocation and probation of an approval or certification;

(4) examinations of emergency medical services personnel;

(5) medical supervision of basic and advanced life-support systems;

(6) granting, suspending, and revoking a license for emergency medical services providers; and

(7) emergency medical services vehicles.

(c) The executive commissioner shall consider the education, training, criminal background, and experience of allied health professionals in adopting the minimum standards for emergency medical services personnel certification and may establish criteria for interstate reciprocity of emergency medical services personnel. Each out-of-state application for certification must be accompanied by a nonrefundable fee of not more than $120. The executive commissioner may also establish criteria for out-of-country emergency medical services personnel certification. Each out-of-country application for certification must be accompanied by a nonrefundable fee of not more than $180.

(c-1) In this subsection, "United States military" means the United States Army, the United States Navy, the United States Air Force, the United States Marine Corps, the United States Coast Guard, any reserve or auxiliary component of any of those services, or the

National Guard. The executive commissioner by rule shall provide that an individual is eligible for emergency medical services personnel certification through reciprocity if the individual:

(1) successfully completed emergency medical services training provided by the United States military;

(2) has emergency medical services personnel credentials from the United States military; and

(3) is certified by the National Registry of Emergency Medical Technicians.

(d) The executive commissioner may not adopt a rule that requires any system, service, or agency to provide advanced life-support or staffing beyond basic life-support levels except for providers of:

(1) advanced life-support emergency medical services;

(2) mobile intensive care; or

(3) specialized emergency medical services.

(e) The executive commissioner shall adopt minimum standards for recognition of first responder organizations.

(f) The executive commissioner shall recognize, prepare, or administer continuing education programs for certified personnel. A certificate holder must participate in the programs to the extent required by the executive commissioner to remain certified.

(g) Rules adopting minimum standards under this section shall require:

(1) an emergency medical services vehicle to be equipped with an epinephrine delivery system to treat anaphylaxis; and

(2) emergency medical services personnel to complete continuing education training in the administration of anaphylaxis treatment.

(h) The department may provide a prescreening criminal history record check for an emergency medical services personnel applicant to determine the applicant's eligibility to receive certification before enrollment in the educational and training requirements mandated by the executive commissioner. The executive commissioner by rule may prescribe a reasonable fee for the costs associated with prescreening to charge each applicant who requests prescreening. The department shall collect the prescribed fee.

(i) The department may develop and administer at least twice each calendar year a jurisprudence examination to determine the knowledge that an applicant for an emergency medical services

provider license or emergency medical services personnel certification has of this chapter, department rules, and any other applicable laws affecting the applicant's activities regulated under this chapter. Department rules must specify who must take the examination on behalf of an entity applying for an emergency medical services provider license.

(j) Consistent with rules adopted under Section 773.112, the executive commissioner by rule shall require that each applicable emergency medical services provider have a plan for providing a dialysis patient who places an emergency 9-1-1 telephone call during a declared disaster an alternative mode of transportation directly to and from an outpatient end stage renal disease facility if the patient's normal and alternative modes of transportation cannot be used during the disaster. An emergency medical services provider's plan under this subsection may prioritize providing transportation for a patient suffering from an acute emergency condition over transportation for a dialysis patient. For purposes of this subsection:

(1) "Disaster" has the meaning assigned by Section 418.004, Government Code. The term includes a disaster declared by:

(A) the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.); and

(B) the governor under Section 418.014, Government Code.

(2) "End stage renal disease facility" has the meaning assigned by Section 251.001.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 250, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 605, Sec. 3, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 251, Sec. 1, eff. May 23, 1993; Acts 1995, 74th Leg., ch. 915, Sec. 7, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 1411, Sec. 19.02, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1079 (H.B. 2827), Sec. 2, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1149 (H.B. 2845), Sec. 2, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 970 (H.B. 1960), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1527, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1226 (S.B. 1899), Sec. 2, eff. June 19, 2015.

Acts 2023, 88th Leg., R.S., Ch. 966 (S.B. 2133), Sec. 1, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 67 (S.B. 1619), Sec. 25, eff. May 19, 2025.

Sec. 773.0505. RULES REGARDING ADVERTISING OR COMPETITIVE BIDDING. (a) The executive commissioner may not adopt rules restricting advertising or competitive bidding by a license or certificate holder except to prohibit false, misleading, or deceptive practices.

(b) In rules to prohibit false, misleading, or deceptive practices, the executive commissioner may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license or certificate holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license or certificate holder; or

(4) restricts the license or certificate holder's advertisement under a trade name.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.03, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1528, eff. April 2, 2015.

Sec. 773.051. MUNICIPAL REGULATION. A municipality may establish standards for an emergency medical services provider that are stricter than the minimum standards of this chapter and department rules adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 8, eff. Aug. 28, 1995.

Sec. 773.052. VARIANCES. (a) An emergency medical services provider with a specific hardship may apply to the department for a variance from a rule adopted under this chapter.

(b) On receipt of a request for a variance, the department shall consider any relevant factors, including:

(1) the nearest available service;

(2) geography; and

(3) demography.

(c) The department shall grant to an emergency medical services provider who is the sole provider for a service area a variance from the minimum staffing standards for the provision of emergency medical services in that service area.

(d) An applicant for a variance under Subsection (c) must submit a letter to the department from the commissioners court of the county or the governing body of the municipality in which the provider intends to operate an emergency medical services vehicle in the provision of emergency medical services in a service area of the county or municipality.

(e) The department shall grant a variance under Subsection (c) if the department determines that the provider qualifies and may deny the variance if the department determines that the provider does not qualify. The department shall give a provider whose application is denied the opportunity for a contested case hearing under Chapter 2001, Government Code.

(f) The department shall issue an emergency medical services license to a provider granted a variance under this section. The license is subject to annual review by the department. A provider is encouraged to upgrade staffing to meet the minimum standards set by the rules adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 251, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 605, Sec. 4, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(b), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1529, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 95 (S.B. 1588), Sec. 1, eff. September 1, 2023.

Sec. 773.054. APPLICATIONS FOR PERSONNEL CERTIFICATION AND TRAINING PROGRAM APPROVAL. (a) This section applies to an application for:

(1) examination for certification of emergency medical services personnel;

(2) approval of a course or training program; or

(3) certification of a program instructor, examiner, or course coordinator.

(b) Each application must be made to the department on a form prescribed by the department and under department rules.

(c) Each application under Subsection (a)(3) must be accompanied by a nonrefundable fee of not more than $30 for a program instructor or examiner or $60 for a course coordinator. The department may not require a fee for a certification from an instructor, examiner, or coordinator who does not receive compensation for providing services.

(d) Each application under Subsection (a)(2) must be accompanied by a nonrefundable fee of not more than $30 for a basic course or training program or $60 for an advanced course or training program. The department may not require a fee for approval of a course or training program if the course coordinator or sponsoring agency does not receive compensation for providing the course or training program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 253, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 915, Sec. 9, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(c), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1530, eff. April 2, 2015.

Sec. 773.055. CERTIFICATION OF EMERGENCY MEDICAL SERVICES PERSONNEL. (a) A nonrefundable fee must accompany each application for emergency medical services personnel certification. The fee may

not exceed:

(1) $90 for an emergency medical technician-paramedic or advanced emergency medical technician;

(2) $60 for an emergency medical technician or emergency care attendant;

(3) $90 for recertification of an emergency medical technician-paramedic or advanced emergency medical technician;

(4) $60 for recertification of an emergency medical technician or emergency care attendant; or

(5) $120 for certification or recertification of a licensed paramedic.

(b) Except as provided by Subsection (c), the department shall notify each examinee of the results of an examination for certification not later than the 30th day after the date on which the examination is administered.

(c) The department shall notify an examinee of the results of an examination not later than the 14th day after the date on which the department receives the results if the examination is graded or reviewed by a national testing service. If the notice of the examination results will be delayed longer than 90 days after the examination date, the department shall notify each examinee of the reason for the delay before the 90th day.

(d) The department shall furnish a person who fails an examination for certification with an analysis of the person's performance on the examination if requested in writing by that person. The executive commissioner may adopt rules to allow a person who fails the examination to retake all or part of the examination. A fee of not more than $30 must accompany each application for reexamination.

(e) The department shall issue certificates to emergency medical services personnel who meet the minimum standards for personnel certification adopted under Section 773.050. A certificate is valid for four years from the date of issuance. The department shall charge a fee of not more than $10 to replace a lost certificate.

(f) A fee required by this section is the obligation of the applicant but may be paid by the emergency medical services provider. If an applicant is required to be certified as a condition of employment, the emergency medical services provider shall pay for all fees required by this section, except for a fee to replace a lost

certificate, in addition to any other compensation paid to that applicant if the provider is a municipality. A municipality that requires a fire fighter to be certified as emergency medical services personnel shall pay the fees required by this section.

(g) The executive commissioner by rule may adopt a system under which certificates expire on various dates during the year. For the year in which the certificate expiration date is changed, the department shall prorate certificate fees on a monthly basis so that each certificate holder pays only that portion of the certificate fee that is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the total certificate renewal fee is payable.

(h) The department shall ensure that the written examinations and any other tests that the department requires a person to take and pass to obtain or retain certification as emergency medical services personnel shall be administered during the course of a year at various locations around the state so that a person who resides in any part of the state will be able to take the examinations or tests without having to travel a distance that as a practical matter requires either travel by air or an overnight stay.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 254, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 251, Sec. 2, eff. May 23, 1993; Acts 1995, 74th Leg., ch. 915, Sec. 10, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 435, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 19.04, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(d), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1531, eff. April 2, 2015.

Sec. 773.0551. DISEASE PREVENTION AND PREPAREDNESS INFORMATION ON CERTIFICATION OF EMERGENCY MEDICAL SERVICES PERSONNEL. (a) In this section:

(1) "Applicant" means an individual who files an application for certification or recertification as emergency medical services personnel under Section 773.055.

(2) "Immunization registry" means the immunization registry

established under Section 161.007.

(b) The executive commissioner by rule shall adopt a system under which the Health and Human Services Commission provides an applicant immunization information. The system must require the commission to provide:

(1) if the applicant's immunization history is included in the immunization registry, written notice of the applicant's immunization history, using information from the immunization registry; or

(2) if the applicant's immunization history is not included in the immunization registry, the following information:

(A) details about the program developed under Section 161.00707; and

(B) the specific risks to emergency medical services personnel when responding rapidly to an emergency of exposure to and infection by a potentially serious or deadly communicable disease that an immunization may prevent.

Added by Acts 2019, 86th Leg., R.S., Ch. 240 (H.B. 1418), Sec. 1, eff. May 27, 2019.

Sec. 773.056. APPROVAL OF TRAINING PROGRAMS; CERTIFICATION OF INSTRUCTORS, EXAMINERS, AND COORDINATORS. (a) The department shall approve each course or training program that meets the minimum standards adopted under Section 773.050.

(b) The department shall issue a certificate to each program instructor, examiner, or course coordinator who meets the minimum standards adopted under Section 773.050. The certificate is valid for two years. The department shall charge a fee of not more than $10 to replace a lost or stolen certificate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 255, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 915, Sec. 11, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(e), eff. Sept. 1, 2003.

Sec. 773.057. EMERGENCY MEDICAL SERVICES PROVIDERS LICENSE. (a) An emergency medical services provider must submit an application for a license in accordance with procedures prescribed by

the executive commissioner.

(b) A nonrefundable application and vehicle fee determined by the executive commissioner by rule must accompany each application. The application fee may not exceed $500 for each application and the vehicle fee may not exceed $180 for each emergency medical services vehicle operated by the provider.

(c) The department may delegate vehicle inspections to the commissioners court of a county or the governing body of a municipality. The delegation must be made:

(1) at the request of the commissioners court or governing body; and

(2) in accordance with criteria and procedures adopted by the executive commissioner.

(d) The commissioners court of a county or governing body of a municipality that conducts inspections under Subsection (c) shall collect and retain the fee for vehicles it inspects.

(e) In addition to any other qualifications that an emergency medical services provider must possess to obtain the type of license sought, all emergency medical services providers must possess the qualifications required for a basic emergency medical services provider under Section 773.042.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 256, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 915, Sec. 12, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(f), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 305 (S.B. 521), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1034 (H.B. 1126), Sec. 6, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1532, eff. April 2, 2015.

Sec. 773.0571. REQUIREMENTS FOR PROVIDER LICENSE. The department shall issue to an emergency medical services provider applicant a license that is valid for two years if the department is satisfied that:

(1) the applicant has adequate staff to meet the staffing

standards prescribed by this chapter and the rules adopted under this chapter;

(2) each emergency medical services vehicle is adequately constructed, equipped, maintained, and operated to render basic or advanced life support services safely and efficiently;

(3) the applicant offers safe and efficient services for emergency prehospital care and transportation of patients;

(4) the applicant:

(A) possesses sufficient professional experience and qualifications to provide emergency medical services; and

(B) has not been excluded from participation in the state Medicaid program;

(5) the applicant holds a letter of approval issued under Section 773.0573 by the governing body of the municipality or the commissioners court of the county in which the applicant is located and is applying to provide emergency medical services, as applicable;

(6) the applicant employs a medical director;

(7) the applicant operates out of a physical location in compliance with Section 773.05715;

(8) the applicant owns or has a long-term lease agreement for all equipment necessary for safe operation of an emergency medical services provider, as provided by Section 773.05716; and

(9) the applicant complies with the rules adopted under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 257, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 13, eff. Aug. 28, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9(a), eff. September 1, 2013.

Reenacted and amended by Acts 2015, 84th Leg., R.S., Ch. 1226 (S.B. 1899), Sec. 3, eff. June 19, 2015.

Sec. 773.05711. ADDITIONAL EMERGENCY MEDICAL SERVICES PROVIDER LICENSE REQUIREMENTS. (a) In addition to the requirements for obtaining or renewing an emergency medical services provider license

under this subchapter, a person who applies for a license or for a renewal of a license must:

(1) provide the department with a letter of credit issued by a federally insured bank or savings institution in the amount of:

(A) $100,000 for the initial license and for renewal of the license on the second anniversary of the date the initial license is issued;

(B) $75,000 for renewal of the license on the fourth anniversary of the date the initial license is issued;

(C) $50,000 for renewal of the license on the sixth anniversary of the date the initial license is issued; and

(D) $25,000 for renewal of the license on the eighth anniversary of the date the initial license is issued;

(2) if the applicant participates in the medical assistance program operated under Chapter 32, Human Resources Code, the Medicaid managed care program operated under Chapters 540 and 540A, Government Code, or the child health plan program operated under Chapter 62 of this code, provide the Health and Human Services Commission with a surety bond in the amount of $50,000; and

(3) submit for approval by the department the name and contact information of the provider's administrator of record who satisfies the requirements under Section 773.05712.

(b) An emergency medical services provider that is directly operated by a governmental entity is exempt from this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 2, eff. September 1, 2013.
Added by Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9(b), eff. September 1, 2013.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.63, eff. April 1, 2025.

Sec. 773.05712. ADMINISTRATOR OF RECORD. (a) The administrator of record for an emergency medical services provider licensed under this subchapter:

(1) may not be employed or otherwise compensated by another private for-profit emergency medical services provider;

(2) must meet the qualifications required for an emergency

medical technician or other health care professional license or certification issued by this state; and

(3) must submit to a criminal history record check at the applicant's expense.

(b) Section 773.0415 does not apply to information an administrator of record is required to provide under this section.

(c) An administrator of record initially approved by the department may be required to complete an education course for new administrators of record. The executive commissioner shall recognize, prepare, or administer the education course for new administrators of record, which must include information about the laws and department rules that affect emergency medical services providers.

(d) An administrator of record approved by the department under Section 773.05711(a) annually must complete at least eight hours of continuing education following initial approval. The executive commissioner shall recognize, prepare, or administer continuing education programs for administrators of record, which must include information about changes in law and department rules that affect emergency medical services providers.

(e) Subsection (a)(2) does not apply to an emergency medical services provider that held a license on September 1, 2013, and has an administrator of record who has at least eight years of experience providing emergency medical services.

(f) An emergency medical services provider that is directly operated by a governmental entity is exempt from this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 2, eff. September 1, 2013.
Added by Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9(b), eff. September 1, 2013.

Sec. 773.05713. REPORT TO LEGISLATURE. Not later than December 1 of each even-numbered year, the department shall electronically submit a report to the lieutenant governor, the speaker of the house of representatives, and the standing committees of the house and senate with jurisdiction over the department on the effect of Sections 773.05711 and 773.05712 that includes:

(1) the total number of applications for emergency medical

services provider licenses submitted to the department and the number of applications for which licenses were issued or licenses were denied by the department;

(2) the number of emergency medical services provider licenses that were suspended or revoked by the department for violations of those sections and a description of the types of violations that led to the license suspension or revocation;

(3) the number of occurrences and types of fraud committed by licensed emergency medical services providers related to those sections;

(4) the number of complaints made against licensed emergency medical services providers for violations of those sections and a description of the types of complaints, reported in the manner required by Section 773.0605(d); and

(5) the status of any coordination efforts of the department and the Texas Medical Board related to those sections.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 2, eff. September 1, 2013.
Added by Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9(b), eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1226 (S.B. 1899), Sec. 4, eff. June 19, 2015.

Sec. 773.05715. PHYSICAL LOCATION REQUIRED. (a) An emergency medical services provider must have a permanent physical location as the provider's primary place of business. An applicant for an emergency medical services provider license must demonstrate proof of the location of the primary place of business in the manner required by the department.

(b) The physical location may be owned or leased by the emergency medical services provider.

(c) The emergency medical services provider must remain in the same physical location for the period of licensure, unless the department approves a change in location.

(d) The emergency medical services provider must maintain all patient care records in the physical location that is the provider's primary place of business, unless the department approves an

alternate location.

(e) Only one emergency medical services provider may operate out of a single physical location.

Added by Acts 2015, 84th Leg., R.S., Ch. 1226 (S.B. 1899), Sec. 5, eff. June 19, 2015.

Sec. 773.05716. NECESSARY EQUIPMENT. (a) An emergency medical services provider must own or hold a long-term lease for all equipment necessary for the safe operation of an emergency medical services provider, including emergency medical services vehicles, heart rate monitors, defibrillators, stretchers, and any other equipment the department determines is required.

(b) An applicant for an emergency medical services provider license must demonstrate proof of compliance with this section in the manner required by the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 1226 (S.B. 1899), Sec. 5, eff. June 19, 2015.

Sec. 773.0572. PROVISIONAL LICENSES. The executive commissioner by rule shall establish conditions under which an emergency medical services provider who fails to meet the minimum standards prescribed by this chapter may be issued a provisional license. The department may issue a provisional license to an emergency medical services provider under this chapter if the department finds that issuing the license would serve the public interest and that the provider meets the requirements of the rules adopted under this section. A nonrefundable fee of not more than $30 must accompany each application for a provisional license.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 258, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 14, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(g), eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1533, eff. April 2, 2015.

Sec. 773.0573. LETTER OF APPROVAL FROM LOCAL GOVERNMENTAL ENTITY. (a) An emergency medical services provider applicant must obtain a letter of approval from:

(1) the governing body of the municipality in which the applicant is located and is applying to provide emergency medical services; or

(2) if the applicant is not located in a municipality, the commissioners court of the county in which the applicant is located and is applying to provide emergency medical services.

(b) A governing body of a municipality or a commissioners court of a county may issue a letter of approval to an emergency medical services provider applicant who is applying to provide emergency medical services in the municipality or county only if the governing body or commissioners court determines that:

(1) the addition of another licensed emergency medical services provider will not interfere with or adversely affect the provision of emergency medical services by the licensed emergency medical services providers operating in the municipality or county;

(2) the addition of another licensed emergency medical services provider will remedy an existing provider shortage that cannot be resolved through the use of the licensed emergency medical services providers operating in the municipality or county; and

(3) the addition of another licensed emergency medical services provider will not cause an oversupply of licensed emergency medical services providers in the municipality or county.

(c) An emergency medical services provider is prohibited from expanding operations to or stationing any emergency medical services vehicles in a municipality or county other than the municipality or county from which the provider obtained the letter of approval under this section until after the second anniversary of the date the provider's initial license was issued, unless the expansion or stationing occurs in connection with:

(1) a contract awarded by another municipality or county for the provision of emergency medical services;

(2) an emergency response made in connection with an existing mutual aid agreement; or

(3) an activation of a statewide emergency or disaster response by the department.

(d) This section does not apply to:

(1) renewal of an emergency medical services provider

license; or

(2) a municipality, county, emergency services district, hospital, or emergency medical services volunteer provider organization in this state that applies for an emergency medical services provider license.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 3, eff. September 1, 2013.
Added by Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9(c), eff. September 1, 2013.

Sec. 773.058. VOLUNTEERS EXEMPT FROM FEES. An individual who is an emergency medical services volunteer is exempt from the payment of fees under Section 773.055 if the individual does not receive compensation for providing emergency medical services. If an individual accepts compensation during the certification period, the individual shall pay to the department a prorated application fee for the duration of the certification period. In this section, "compensation" does not include reimbursement for actual expenses for medical supplies, gasoline, clothing, meals, and insurance incurred in providing emergency medical services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 259, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 605, Sec. 5, eff. Sept. 1, 1991.

Sec. 773.0581. PROVIDERS EXEMPT FROM FEES. (a) An emergency medical services provider is exempt from the payment of fees under this subchapter if the provider uses emergency medical services volunteers exclusively to provide emergency prehospital care. However, an emergency medical services provider is not disqualified from the exemption if the provider compensates physicians who provide medical supervision and not more than five full-time staff or their equivalent.

(b) This chapter does not prohibit an emergency medical services provider who uses volunteer emergency medical services personnel but has more than five paid staff from using the word "volunteer" in advertising if the organization is composed of at least 75 percent volunteer personnel.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 260, eff. Sept. 1, 1991.

Sec. 773.059. LATE RECERTIFICATION. (a) A person who is otherwise eligible to renew a certificate may renew an unexpired certificate by paying the required renewal fee to the department before the expiration date of the certificate. A person whose certificate has expired may not engage in activities that require certification until the certificate has been renewed.

(b) A person whose certificate has been expired for 90 days or less may renew the certificate by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose certificate has been expired for more than 90 days but less than one year may renew the certificate by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose certificate has been expired for one year or more may not renew the certificate. The person may become certified by complying with the requirements and procedures, including the examination requirements, for an original certification.

(e) A person who was certified in this state, moved to another state, and is currently certified or licensed and has been in practice in the other state for the two years preceding the date of application may become certified without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for certification.

(f) Not later than the 30th day before the date a person's certificate is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

(g) A person certified by the department who is deployed in support of military, security, or other action by the United Nations Security Council, a national emergency declared by the president of the United States, or a declaration of war by the United States Congress is eligible for recertification under Section 773.050 on the person's demobilization for one calendar year after the date of demobilization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 261, eff. Sept. 1, 1991; Acts

1991, 72nd Leg., ch. 605, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 251, Sec. 3, eff. May 23, 1993; Acts 1999, 76th Leg., ch. 1411, Sec. 19.05, eff. Sept. 1, 1999.

Sec. 773.060. DISPOSITION OF FUNDS. (a) The department shall account for all fees and other funds it receives under this chapter.

(b) The department shall deposit the fees and other funds in the state treasury to the credit of the bureau of emergency management account in the general revenue fund. The account may be used only to administer this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1534, eff. April 2, 2015.

Sec. 773.0605. COMPLAINTS AND INVESTIGATIONS. (a) The department shall track and keep records of:

(1) each complaint received by the department regarding emergency medical services providers and emergency medical services personnel;

(2) each investigation initiated by the department under this chapter; and

(3) each disciplinary action initiated by the department under this chapter.

(b) The department shall develop a formal process to refer complaints outside the department's jurisdiction to the appropriate agency for disposition.

(c) The department shall track the types of complaints received outside the department's jurisdiction. The department shall separately track complaints outside the department's jurisdiction relating to potential billing fraud and make information relating to those complaints available to the appropriate state agency.

(d) The department shall annually report statistical information regarding each complaint received, and each investigation or disciplinary action initiated, under this chapter. The report must include:

(1) the reason and basis for each complaint;

(2) the origin of each investigation, including whether the investigation:

(A) resulted from a complaint brought by a consumer;

(B) resulted from a complaint brought by another source; or

(C) was initiated by the department in the absence of a complaint;

(3) the average time to resolve each complaint from the date the complaint is received;

(4) the disposition of each investigation, including:

(A) the number of investigations commenced in which no disciplinary action was taken, and the reasons no disciplinary action was taken;

(B) the number of investigations resulting in disciplinary action, and the disciplinary actions taken; and

(C) the number of complaints referred to another agency for disposition; and

(5) the number, type, and age of each open investigation at the end of each fiscal year.

(e) The department shall make the report required by Subsection (d) available to the public through publication on the department's website and on request.

(f) The department may not include in the report required by Subsection (d) any information, including personal information, that could be used to identify an individual involved in or the location of a complaint that has been dismissed or has not reached a final determination.

Added by Acts 2015, 84th Leg., R.S., Ch. 1226 (S.B. 1899), Sec. 6, eff. June 19, 2015.

Sec. 773.061. DISCIPLINARY ACTIONS. (a) For a violation of this chapter or a rule adopted under this chapter, the department shall revoke, suspend, or refuse to renew a license or certificate of or shall reprimand:

(1) emergency medical services personnel;

(2) a program instructor, examiner, or course coordinator; and

(3) an emergency medical services provider license holder.

(a-1) In addition to other permissible actions or penalties and regardless of whether an emergency medical services provider is directly operated by a governmental entity, the department may revoke, suspend, or refuse to renew a license or certificate of the provider if the department confirms that the provider has:

(1) intentionally submitted incorrect information required under Section 38.006, Insurance Code; or

(2) engaged in a pattern of violations of Section 1271.159, 1275.054, 1301.166, 1551.231, 1575.174, or 1579.112, Insurance Code.

(b) For a violation of this chapter or a rule adopted under this chapter, the department shall revoke, suspend, or refuse to renew approval of a course or training program.

(c) For a violation of this chapter or a rule adopted under this chapter, the department may place on emergency suspension emergency medical services personnel.

(d) The department may place on probation a course or training program or a person, including emergency medical services personnel, an emergency medical services provider license holder, or a program instructor, examiner, or course coordinator, whose certificate, license, or approval is suspended. If a suspension is probated, the department may require the person or the sponsor of a course or training program, as applicable:

(1) to report regularly to the department on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the department; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(e) Except as provided by Section 773.062, the procedures by which the department takes action under this section and the procedures by which that action is appealed are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(f) The department may not take disciplinary action against a person described by Subsection (a)(1) based on the person's participation in peer-to-peer support and other peer-to-peer services and may not consider the person's participation during any disciplinary proceeding under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 262, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1411, Sec. 19.06, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1535, eff. April 2, 2015.

Acts 2025, 89th Leg., R.S., Ch. 708 (H.B. 35), Sec. 3, eff. September 1, 2025.

Acts 2025, 89th Leg., R.S., Ch. 784 (S.B. 916), Sec. 1, eff. September 1, 2025.

Sec. 773.0611. INSPECTIONS. (a) The department or its representative may enter an emergency medical services vehicle or the premises of an emergency medical services provider's place of business at reasonable times to ensure compliance with this chapter and the rules adopted under this chapter.

(b) The department or its representative may conduct an unannounced inspection of a vehicle or a place of business if the department has reasonable cause to believe that a person is in violation of this chapter or a rule adopted under this chapter.

(c) The executive commissioner shall adopt rules for unannounced inspections authorized under this section. The department or its representative shall perform unannounced inspections in accordance with those rules. An emergency medical services provider shall pay to the department a nonrefundable fee of not more than $30 if reinspection is necessary to determine compliance with this chapter and the rules adopted under this chapter.

(d) The department may use an inspection performed by an entity to which the department has delegated inspection authority as a basis for a disciplinary action under Section 773.061.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 263, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 15, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(h), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1536, eff.

April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1226 (S.B. 1899), Sec. 7, eff. June 19, 2015.

Sec. 773.0612. ACCESS TO RECORDS. (a) The department or its representative is entitled to access to records and other documents maintained by a person that are directly related to patient care or to emergency medical services personnel to the extent necessary to enforce this chapter and the rules adopted under this chapter. A person who holds a license or certification or an applicant for a certification or license is considered to have given consent to a representative of the department entering and inspecting a vehicle or place of business in accordance with this chapter.

(b) A report, record, or working paper used or developed in an investigation under this section is confidential and may be used only for purposes consistent with department rules.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 264, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1537, eff. April 2, 2015.

Sec. 773.0613. INFORMATION REPORT TO DEPARTMENT. (a) An emergency medical services provider licensed under this chapter shall annually submit a report to the department containing information relating to the number and types of runs the emergency medical services provider makes.

(b) The executive commissioner shall adopt rules relating to the type of information an emergency medical services provider must provide under this section and the manner in which the information must be provided.

(c) The department shall post the information the department receives under Subsection (a) in summary form on the department's Internet website. The department may not post any health information that is made confidential by another statute.

Added by Acts 2003, 78th Leg., ch. 871, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1538, eff.

April 2, 2015.

Sec. 773.0614. AUTHORITY TO REVOKE, SUSPEND, DISQUALIFY FOR, OR DENY CERTIFICATION OF EMERGENCY MEDICAL SERVICES PERSONNEL FOR CERTAIN CRIMINAL OFFENSES. (a) In addition to the grounds under Section 773.061, the department may suspend or revoke a certificate, disqualify a person from receiving a certificate, or deny a person the opportunity to take a certification examination on the grounds that the person has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, an offense that directly relates to the duties and responsibilities of emergency medical services personnel.

(b) For purposes of Subsection (a), the department may not consider offenses described by Section 542.304, Transportation Code.

(c) A certificate holder's certificate shall be revoked if the certificate holder has been convicted of or placed on deferred adjudication community supervision or deferred disposition for:

(1) an offense listed in Article 42A.054(a)(2), (3), (4), (7), (8), (9), (11), or (18), Code of Criminal Procedure; or

(2) an offense, other than an offense described by Subdivision (1), committed on or after September 1, 2009, for which the person is subject to registration under Chapter 62, Code of Criminal Procedure.

Added by Acts 2009, 81st Leg., R.S., Ch. 1149 (H.B. 2845), Sec. 3, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 757 (H.B. 1476), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1539, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.71, eff. January 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1094 (H.B. 2048), Sec. 4, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1137 (H.B. 2758), Sec. 4, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 1115 (H.B. 1227), Sec. 2, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 793 (S.B. 1021), Sec. 2, eff. September 1, 2025.

Sec. 773.06141. SUSPENSION, REVOCATION, OR DENIAL OF EMERGENCY MEDICAL SERVICES PROVIDER LICENSE. (a) The department may suspend, revoke, or deny an emergency medical services provider license on the grounds that the provider's administrator of record, employee, or other representative:

(1) has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, an offense that directly relates to the duties and responsibilities of the administrator, employee, or representative, other than an offense described by Section 542.304, Transportation Code;

(2) has been convicted of or placed on deferred adjudication community supervision or deferred disposition for an offense, including:

(A) an offense listed in Article 42A.054(a)(2), (3), (4), (7), (8), (9), (11), or (18), Code of Criminal Procedure; or

(B) an offense, other than an offense described by Subdivision (1), for which the person is subject to registration under Chapter 62, Code of Criminal Procedure; or

(3) has been convicted of Medicare or Medicaid fraud, has been excluded from participation in the state Medicaid program, or has a hold on payment for reimbursement under the state Medicaid program under Subchapter G, Chapter 544, Government Code.

(b) An emergency medical services provider that is directly operated by a governmental entity is exempt from this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 4, eff. September 1, 2013.
Added by Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9(d), eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1540, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.72, eff. January 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1094 (H.B. 2048), Sec. 5, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1137 (H.B. 2758), Sec. 5, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.64, eff. April 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 1115 (H.B. 1227), Sec. 3, eff. September 1, 2023.

Acts 2025, 89th Leg., R.S., Ch. 793 (S.B. 1021), Sec. 3, eff. September 1, 2025.

Sec. 773.0615. FACTORS CONSIDERED IN SUSPENSION, REVOCATION, OR DENIAL OF CERTIFICATE. (a) In determining whether an offense directly relates to the duties and responsibilities of emergency medical services personnel under Section 773.0614(a), the department shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring certification to engage in emergency medical services;

(3) the extent to which certification might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of emergency medical services personnel.

(b) In determining the fitness to perform the duties and discharge the responsibilities of emergency medical services personnel for a person who has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, a crime the department shall consider, in addition to the factors listed in Subsection (a):

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated, after release, or since imposition of community supervision or deferred adjudication; and

(6) other evidence of the person's fitness, including letters of recommendation from:

(A) prosecutors, law enforcement officers, correctional officers, or community supervision officers who prosecuted, arrested, or had custodial or other responsibility for the person;

(B) the sheriff or chief of police in the community where the person resides; and

(C) any other person in contact with the person.

(c) The applicant or certificate holder has the responsibility, to the extent possible, to obtain and provide to the department the recommendations of the persons required by Subsection (b)(6).

(d) In addition to providing evidence related to the factors under Subsection (b), the applicant or certificate holder shall furnish proof in the form required by the department that the applicant or certificate holder has:

(1) maintained a record of steady employment;

(2) supported the applicant's or certificate holder's dependents;

(3) maintained a record of good conduct; and

(4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant or certificate holder has been convicted, been placed on community supervision, or received deferred adjudication.

Added by Acts 2009, 81st Leg., R.S., Ch. 1149 (H.B. 2845), Sec. 3, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1541, eff. April 2, 2015.

Sec. 773.0616. PROCEEDINGS GOVERNED BY ADMINISTRATIVE PROCEDURE ACT; GUIDELINES. (a) A proceeding to consider the issues under Section 773.0615 is governed by Chapter 2001, Government Code.

(b) The executive commissioner shall issue guidelines relating to the department's decision-making under Sections 773.0614 and 773.0615. The guidelines must state the reasons a particular crime is considered to relate to emergency medical services personnel and include any other criterion that may affect the decisions of the department.

(c) The executive commissioner shall file the guidelines with the secretary of state for publication in the Texas Register.

(d) The department annually shall issue any amendments to the guidelines.

Added by Acts 2009, 81st Leg., R.S., Ch. 1149 (H.B. 2845), Sec. 3, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1542, eff. April 2, 2015.

Sec. 773.0617. NOTICE AND REVIEW OF SUSPENSION, REVOCATION, DISQUALIFICATION FOR, OR DENIAL OF CERTIFICATION. (a) If the department suspends or revokes a certification, denies a person a certificate, or denies the opportunity to be examined for a certificate under Section 773.0614, the department shall notify the person in writing of:

(1) the reason for the suspension, revocation, denial, or disqualification;

(2) the review procedure provided by Subsection (b); and

(3) the earliest date the person may appeal the action of the department.

(b) A person whose certificate has been suspended or revoked or who has been denied a certificate or the opportunity to take an examination and who has exhausted the person's administrative appeals may file an action in the district court in Travis County for review of the evidence presented to the department and the decision of the department.

(c) The petition for an action under Subsection (b) must be filed not later than the 30th day after the date the department's decision is final.

Added by Acts 2009, 81st Leg., R.S., Ch. 1149 (H.B. 2845), Sec. 3, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1543, eff. April 2, 2015.

Sec. 773.062. EMERGENCY SUSPENSION. (a) The commissioner

shall issue an emergency order to suspend a certificate or license issued under this chapter if the commissioner has reasonable cause to believe that the conduct of any certificate or license holder creates an imminent danger to the public health or safety.

(b) An emergency suspension is effective immediately without a hearing on notice to the certificate or license holder. Notice must also be given to the sponsoring governmental entity if the holder is a provider exempt from payment of fees under Section 773.0581.

(c) The holder may request in writing a hearing on the emergency suspension. The department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office shall conduct the hearing not earlier than the 10th day or later than the 30th day after the date on which the request is received by the department, shall make findings of fact, and shall issue a written proposal for decision regarding whether the department should continue, modify, or rescind the suspension. The department's hearing rules and Chapter 2001, Government Code, govern the hearing and any appeal from a disciplinary action related to the hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 265, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1544, eff. April 2, 2015.

Sec. 773.063. CIVIL PENALTY. (a) The attorney general, a district attorney, or a county attorney may bring a civil action to compel compliance with this chapter or to enforce a rule adopted under this chapter.

(b) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law. The civil penalty may not exceed $250 a day for each violation.

(c) Civil penalties recovered in a suit brought by the state at the department's request shall be deposited in the state treasury to the credit of the general revenue fund.

(d) Civil penalties recovered in a suit brought by a local

government shall be paid to the local government that brought the suit. A municipality or county is encouraged to use the amount of recovered penalties that exceed the cost of bringing suit to improve the delivery of emergency medical services in the municipality or county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.064. CRIMINAL PENALTIES. (a) A person commits an offense if the person knowingly practices as, attempts to practice as, or represents himself to be an emergency medical technician-paramedic, advanced emergency medical technician, emergency medical technician, emergency care attendant, or licensed paramedic and the person does not hold an appropriate certificate issued by the department under this chapter. An offense under this subsection is a Class A misdemeanor.

(b) An emergency medical services provider commits an offense if the provider knowingly advertises or causes the advertisement of a false, misleading, or deceptive statement or representation concerning emergency medical services staffing, equipment, and vehicles. An offense under this subsection is a Class A misdemeanor.

(c) A person commits an offense if the person knowingly uses or permits to be used a vehicle that the person owns, operates, or controls to transport a sick or injured person unless the person is licensed as an emergency medical services provider by the department. An offense under this subsection is a Class A misdemeanor.

(d) It is an exception to the application of Subsection (c) that the person transports a sick or injured person:

(1) to medical care as an individual citizen not ordinarily engaged in that activity;

(2) in a casualty situation that exceeds the basic vehicular capacity or capability of an emergency medical services provider; or

(3) as an emergency medical services provider in a vehicle for which a variance has been granted under Section 773.052.

(e) Venue for prosecution of an offense under this section is in the county in which the offense is alleged to have occurred.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 266, eff. Sept. 1, 1991; Acts

1997, 75th Leg., ch. 435, Sec. 4, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1545, eff. April 2, 2015.

Sec. 773.065. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against an emergency medical services provider or a course coordinator who violates this chapter or a rule adopted or an order issued under this chapter.

(b) In determining the amount of the penalty, the department shall consider:

(1) the emergency medical services provider's or course coordinator's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the emergency medical services provider's or course coordinator's demonstrated good faith; and

(5) any other matter as justice may require.

(c) The penalty may not exceed $7,500 for each violation. The executive commissioner by rule shall establish gradations of penalties in accordance with the relative seriousness of the violation.

(d) Each day a violation continues may be considered a separate violation.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 7, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 16, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 435, Sec. 5, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(i), eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1546, eff. April 2, 2015.

Sec. 773.066. ASSESSMENT OF ADMINISTRATIVE PENALTY. (a) An administrative penalty may be assessed only after an emergency medical services provider or course coordinator charged with a violation is provided notice and given an opportunity to request a hearing.

(b) If a hearing is held, the department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office shall conduct the hearing, make findings of fact, and issue to the department a written proposal for decision regarding whether the emergency medical services provider or course coordinator committed a violation and the amount of any penalty to be assessed.

(c) If the emergency medical services provider or course coordinator charged with the violation does not request a hearing, the department shall determine whether the provider or course coordinator committed a violation and the amount of any penalty to be assessed.

(d) After making a determination under this section that a penalty is to be assessed against an emergency medical services provider or a course coordinator, the department shall issue an order requiring that the emergency medical services provider or course coordinator pay the penalty.

(e) Not later than the 30th day after the date an order is issued under Subsection (d), the department shall give written notice of the order to the emergency medical services provider or course coordinator.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(114), eff. April 2, 2015.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 7, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 17, eff. Aug. 28, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1547, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(114), eff. April 2, 2015.

Sec. 773.067. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date on which an order charging the emergency medical services provider or course coordinator with a penalty is final as provided by Chapter 2001, Government Code, the person charged shall:

(1) pay the penalty in full;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(c) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(d) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(e) Judicial review of the order of the department:

(1) is instituted by filing a petition as provided by

Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(f) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(g) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 7, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 915, Sec. 18, eff. Aug. 28, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1548, eff. April 2, 2015.

Sec. 773.069. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the department may bring a civil action to recover an administrative penalty assessed under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 7, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1549, eff. April 2, 2015.

Sec. 773.070. DENIAL OF CERTIFICATION OR LICENSURE FOR FAILURE TO PROVIDE CERTAIN CRIMINAL HISTORY RECORD INFORMATION. The department may deny licensure or certification to an applicant who does not provide a complete set of the required fingerprints to obtain criminal history record information.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 7, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 790, Sec. 46(17), eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1550, eff. April 2, 2015.

Sec. 773.071. FEES. (a) To the extent feasible, the executive commissioner by rule shall set the fees under this subchapter in amounts necessary for the department to recover the cost of administering this subchapter.

(b) Subsection (a) does not apply to fees for which Section 773.059 prescribes the method for determining the amount of the fees.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.84(j), eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1551, eff. April 2, 2015.

SUBCHAPTER D. CONFIDENTIAL COMMUNICATIONS

Sec. 773.091. CONFIDENTIAL COMMUNICATIONS. (a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

(c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

(d) This subchapter governs confidential communications or records concerning a patient regardless of when the patient received the services of emergency medical services personnel or a physician providing medical supervision.

(e) Notwithstanding Rule 501, Texas Rules of Evidence, the privilege of confidentiality may be claimed in any criminal, civil, or administrative proceeding and may be claimed by the patient or the emergency medical services personnel or physician acting on the patient's behalf.

(f) If the emergency medical services personnel or physician claims the privilege of confidentiality on behalf of the patient, the authority to do so is presumed in the absence of evidence to the contrary.

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services. Nothing in this subsection shall be construed as requiring or permitting emergency services personnel to make a diagnosis.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.008, eff. Sept. 1, 2001.

Sec. 773.092. EXCEPTIONS. (a) Exceptions to the confidentiality or privilege in court or administrative proceedings exist:

(1) when proceedings are brought by the patient against emergency medical services personnel, a physician providing medical supervision, or an emergency medical services provider, and in any criminal proceeding or certification revocation or license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claim or defense of emergency medical

services personnel, a physician providing medical supervision, or an emergency medical services provider;

(2) when the patient or someone authorized to act on behalf of the patient submits a written consent to release any of the confidential information as provided by Section 773.093;

(3) when the purpose of the proceedings is to substantiate and collect on a claim for emergency medical services rendered to the patient;

(4) in any civil litigation or administrative proceeding, if relevant, brought by the patient or someone on the patient's behalf, if the patient is attempting to recover monetary damages for any physical or mental condition, including death of the patient;

(5) when the proceeding is a disciplinary investigation or proceeding against emergency medical services personnel conducted under this chapter, provided that the department shall protect the identity of any patient whose medical records are examined, unless the patient is covered under Subdivision (1) or has submitted written consent to the release of the patient's emergency medical services records under Section 773.093; or

(6) when the proceeding is a criminal prosecution in which the patient is a victim, witness, or defendant.

(b) Information under Subsection (a)(4) is discoverable in any court or administrative proceeding in this state if the court or administrative body has jurisdiction of the subject matter, pursuant to rules of procedure specified for the matter.

(c) Subsection (a)(5) does not authorize the release of confidential information to instigate or substantiate criminal charges against a patient.

(d) Confidential records or communications are not discoverable in a criminal proceeding until the court in which the prosecution is pending makes an in camera determination as to the relevancy of the records or communications or any portion of the records or communications. A determination that confidential records or communications are discoverable is not a determination as to the admissibility of the records or communications.

(e) Communications and records that are confidential under this section may be disclosed to:

(1) medical or law enforcement personnel if the emergency medical services personnel, the physician providing medical supervision, or the emergency medical services provider determines

that there is a probability of imminent physical danger to any person or if there is a probability of immediate mental or emotional injury to the patient;

(2) governmental agencies if the disclosure is required or authorized by law;

(3) qualified persons to the extent necessary for management audits, financial audits, program evaluation, system improvement, or research, except that any report of the research, audit, or evaluation may not directly or indirectly identify a patient;

(4) any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information as provided by Section 773.093;

(5) the department for data collection or complaint investigation;

(6) other emergency medical services personnel, other physicians, and other personnel under the direction of a physician who are participating in the diagnosis, evaluation, or treatment of a patient; or

(7) individuals, corporations, or governmental agencies involved in the payment or collection of fees for emergency medical services rendered by emergency medical services personnel.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 435, Sec. 6, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1552, eff. April 2, 2015.

Sec. 773.093. CONSENT. (a) Consent for the release of confidential information must be in writing and signed by the patient, a parent or legal guardian if the patient is a minor, a legal guardian if the patient has been adjudicated incompetent to manage the patient's personal affairs, an attorney ad litem appointed for the patient, or a personal representative if the patient is deceased. The written consent must specify:

(1) the information or records to be covered by the release;

(2) the reasons or purpose for the release; and

(3) the person to whom the information is to be released.

(b) The patient or other person authorized to consent may withdraw consent to the release of any information by submitting a written notice of withdrawal to the person or program to which consent was provided. Withdrawal of consent does not affect any information disclosed before the date on which written notice of the withdrawal was received.

(c) A person who receives information made confidential by this chapter may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release the information was obtained.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 8, eff. Sept. 1, 1991.

Sec. 773.094. INJUNCTION; DAMAGES. A person aggrieved by an unauthorized disclosure of communications or records that are confidential under this subchapter may petition the district court of the county in which the person resides or, in the case of a nonresident of the state, a district court of Travis County for appropriate injunctive relief. The petition takes precedence over all civil matters on the docketed court except those matters to which equal precedence on the docket is granted by law. A person injured by an unauthorized disclosure of communications or records that are confidential under this subchapter may bring an action for damages.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 8, eff. Sept. 1, 1991.

Sec. 773.095. RECORDS AND PROCEEDINGS CONFIDENTIAL. (a) The proceedings and records of organized committees of hospitals, medical societies, emergency medical services providers, emergency medical services and trauma care systems, or first responder organizations relating to the review, evaluation, or improvement of an emergency medical services provider, a first responder organization, an emergency medical services and trauma care system, or emergency medical services personnel are confidential and not subject to disclosure by court subpoena or otherwise.

(b) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.

(c) This section does not apply to records made or maintained in the regular course of business by an emergency medical services provider, a first responder organization, or emergency medical services personnel.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 435, Sec. 7, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 874, Sec. 6, eff. Sept. 1, 2001.

Sec. 773.096. IMMUNITY FOR COMMITTEE MEMBERS. A member of an organized committee under Section 773.095 is not liable for damages to a person for an action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the committee member.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 8, eff. Sept. 1, 1991.

SUBCHAPTER E. EMERGENCY MEDICAL SERVICES AND TRAUMA CARE SYSTEMS

Sec. 773.111. LEGISLATIVE FINDINGS. (a) The legislature finds that death caused by injury is the leading cause of death for persons one through 44 years of age, and the third overall cause of death for all ages. Effective emergency medical services response and resuscitation systems, medical care systems, and medical facilities reduce the occurrence of unnecessary mortality.

(b) It is estimated that trauma costs more than $63 million a day nationally, which includes lost wages, medical expenses, and indirect costs. Proportionately, this cost to Texas would be more than $4 million a day. Many hospitals provide emergency medical care to patients who are unable to pay for catastrophic injuries directly or through an insurance or entitlement program.

(c) In order to improve the health of the people of the state, it is necessary to improve the quality of emergency and medical care to the people of Texas who are victims of unintentional, life-threatening injuries by encouraging hospitals to provide trauma care and increasing the availability of emergency medical services.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991.

Redesignated from Health & Safety Code Sec. 773.081 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991.

Sec. 773.112. RULES. (a) The executive commissioner by rule shall adopt minimum standards and objectives to implement emergency medical services and trauma care systems. The executive commissioner by rule shall provide for the designation of trauma facilities and for triage, transfer, and transportation policies. The executive commissioner shall consider guidelines adopted by the American College of Surgeons and the American College of Emergency Physicians in adopting rules under this section.

(b) The rules must provide specific requirements for the care of trauma patients, must ensure that the trauma care is fully coordinated with all hospitals and emergency medical services in the delivery area, and must reflect the geographic areas of the state, considering time and distance.

(c) The rules must include:

(1) prehospital care management guidelines for triage and transportation of trauma patients;

(2) flow patterns of trauma patients and geographic boundaries regarding trauma patients;

(3) assurances that trauma facilities will provide quality care to trauma patients referred to the facilities;

(4) minimum requirements for resources and equipment needed by a trauma facility to treat trauma patients;

(5) standards for the availability and qualifications of the health care personnel, including physicians and surgeons, treating trauma patients within a facility;

(6) requirements for data collection, including trauma incidence reporting, system operation, and patient outcome;

(7) requirements for periodic performance evaluation of the system and its components; and

(8) assurances that designated trauma facilities will not refuse to accept the transfer of a trauma patient from another facility solely because of the person's inability to pay for services or because of the person's age, sex, race, religion, or national origin.

(d) Repealed by Acts 2023, 88th Leg., R.S., Ch. 966 (S.B. 2133), Sec. 2, eff. September 1, 2023.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.082 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 623, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1553, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1554, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 961 (S.B. 1876), Sec. 2, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 966 (S.B. 2133), Sec. 2, eff. September 1, 2023.

Sec. 773.113. DUTIES OF DEPARTMENT. (a) The department shall:

(1) develop and monitor a statewide emergency medical services and trauma care system;

(2) designate trauma facilities;

(3) develop and maintain a trauma reporting and analysis system to:

(A) identify severely injured trauma patients at each health care facility in this state;

(B) identify the total amount of uncompensated trauma care expenditures made each fiscal year by each health care facility in this state; and

(C) monitor trauma patient care in each health care facility, including each designated trauma center, in emergency medical services and trauma care systems in this state; and

(4) provide for coordination and cooperation between this state and any other state with which this state shares a standard metropolitan statistical area.

(b) The department may grant an exception to a rule adopted under Section 773.112 if it finds that compliance with the rule would not be in the best interests of the persons served in the affected local emergency medical services and trauma care delivery area.

(c) The department shall develop performance measures for regional advisory councils in trauma service areas to:

(1) promote the provision of a minimum level of emergency medical services in a trauma service area in accordance with the

rules adopted under Section 773.112;

(2) promote the provision of quality care and service by the emergency medical services and trauma care system in accordance with the rules adopted under Section 773.112; and

(3) maximize the accuracy of information provided by a regional advisory council to the department for increased council effectiveness.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.083 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1555, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1556, eff. April 2, 2015.

Sec. 773.114. SYSTEM REQUIREMENTS. (a) Each emergency medical services and trauma care system must have:

(1) local or regional medical control for all field care and transportation, consistent with geographic and current communications capability;

(2) triage, transport, and transfer protocols; and

(3) one or more hospitals categorized according to trauma care capabilities using standards adopted by department rule.

(b) This subchapter does not prohibit a health care facility from providing services that it is authorized to provide under a license issued to the facility by the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.084 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1557, eff. April 2, 2015.

Sec. 773.1141. INFORMATION, GUIDELINES, AND PROTOCOLS RELATED TO CERTAIN PATIENT TRANSFERS AND RELATED SERVICES. (a) This section applies only to a trauma service area regional advisory council

serving a geographic area that includes:

(1) at least one county located on the international border of this state; and

(2) at least one county adjacent to the Gulf of Mexico.

(b) For each trauma service area regional advisory council to which this section applies, the executive commissioner by rule shall:

(1) require the council to create an advisory committee composed of equally represented designated trauma hospital system members located within the geographic boundaries of the council or require the council to direct an existing advisory committee of the council established for a purpose similar to that described by this subsection to:

(A) develop guidelines for patient transfers; and

(B) periodically review patient transfers to ensure compliance with applicable guidelines;

(2) for the purpose of ensuring that patients located in the council's geographic boundaries receive health care at the health care facility closest to and most appropriate for the patients, require the council to develop regional protocols and processes to assist the council in managing the dispatch, triage, transport, and transfer of patients; and

(3) require each hospital and emergency medical services provider operating within the council's geographic boundaries to collect and report to the council data on patients transferred outside the council's geographic boundaries.

Added by Acts 2021, 87th Leg., R.S., Ch. 882 (S.B. 1397), Sec. 1, eff. June 16, 2021.

Sec. 773.115. TRAUMA FACILITIES. (a) The department may designate trauma facilities that are a part of an emergency medical services and trauma care system. A trauma facility shall be designated by the level of trauma care and services provided in accordance with the American College of Surgeons guidelines for level I and II trauma facilities and department rules for level III and IV trauma facilities. In adopting rules under this section, the executive commissioner may consider trauma caseloads, geographic boundaries, or minimum population requirements, but the department may not deny designation solely on these criteria. The executive

commissioner may not set an arbitrary limit on the number of facilities designated as trauma facilities.

(b) A health care facility may apply to the department for designation as a trauma facility, and the department shall grant the designation if the facility meets the requirements for designation prescribed by department rules.

(c) A health care facility may not use the terms "trauma facility," "trauma hospital," "trauma center," or similar terminology in its signs or advertisements or in the printed materials and information it provides to the public unless the facility has been designated as a trauma facility under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.085 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 435, Sec. 8, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 874, Sec. 7, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1558, eff. April 2, 2015.

Sec. 773.1151. USE OF TELEMEDICINE MEDICAL SERVICE BY CERTAIN TRAUMA FACILITIES. (a) In this section, "telemedicine medical service" has the meaning assigned by Section 111.001, Occupations Code.

(b) A health care facility located in a county with a population of less than 30,000 may satisfy a Level IV trauma facility designation requirement relating to physicians through the use of telemedicine medical service in which an on-call physician who has special competence in the care of critically injured patients provides patient assessment, diagnosis, consultation, or treatment or transfers medical data to a physician, advanced practice registered nurse, or physician assistant located at the facility.

(c) In establishing the requirements for designating a facility as a Level IV trauma facility, the executive commissioner may not adopt rules that:

(1) require the physical presence or physical availability of a physician who has special competence in the care of critically injured patients; or

(2) prohibit the use of telemedicine medical service that meets the requirements of Subsection (b).

Added by Acts 2019, 86th Leg., R.S., Ch. 254 (H.B. 871), Sec. 1, eff. September 1, 2019.

Sec. 773.116. FEES. (a) The department shall charge a fee to a health care facility that applies for initial or continuing designation as a trauma facility.

(b) The executive commissioner by rule shall set the amount of the fee schedule for initial or continuing designation as a trauma facility according to the number of beds in the health care facility. The amount of the fee may not exceed:

(1) $5,000 for a Level I or II facility;

(2) $2,500 for a Level III facility; or

(3) $1,000 for a Level IV facility.

(c) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.84(l).

(d) To the extent feasible, the executive commissioner by rule shall set the fee in an amount necessary for the department to recover the cost directly related to designating trauma facilities under this subchapter.

(e) This section does not restrict the authority of a health care facility to provide a service for which it has received a license under other state law.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.086 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.84(k), (l), eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1559, eff. April 2, 2015.

Sec. 773.117. DENIAL, SUSPENSION, OR REVOCATION OF DESIGNATION. (a) The department may deny, suspend, or revoke a health care facility's designation as a trauma facility if the facility fails to comply with the rules adopted under this subchapter.

(b) The denial, suspension, or revocation of a designation by the department and the appeal from that action are governed by the

department's rules for a contested case hearing and by Chapter 2001, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.087 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 773.119. GRANT PROGRAM. (a) The department shall establish a program to award grants to initiate, expand, maintain, and improve emergency medical services and to support medical systems and facilities that provide trauma care.

(b) The executive commissioner by rule shall establish eligibility criteria for awarding the grants. The rules must require the department to consider:

(1) the need of an area for the provision of emergency medical services or trauma care and the extent to which the grant would meet the identified need;

(2) the availability of personnel and training programs;

(3) the availability of other funding sources;

(4) the assurance of providing quality services;

(5) the use or acquisition of helicopters for emergency medical evacuation; and

(6) the development or existence of an emergency medical services system.

(c) The department may approve grants according to department rules. A grant awarded under this section is governed by Chapter 783, Government Code, and by the rules adopted under that chapter.

(d) The department may require a grantee to provide matching funds equal to not more than 75 percent of the amount of the grant.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.089 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1560, eff. April 2, 2015.

Sec. 773.120. ACCEPTANCE OF GIFTS. A trauma facility or an

emergency medical services and trauma care system may accept gifts or other contributions for the purposes of this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.090 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991.

Sec. 773.122. PAYMENTS FROM THE ACCOUNTS. (a) The commissioner, with advice and counsel from the chairpersons of the trauma service area regional advisory councils, shall use money in the accounts established under Sections 771.072(f) and 773.006 to fund county and regional emergency medical services, designated trauma facilities, and trauma care systems in accordance with this section.

(a-1) A grant recipient may not before the fourth anniversary of the date a grant is awarded under Subsection (a) dispose of an ambulance for which the total costs of purchasing the ambulance were paid only from grants awarded under Subsection (a) or Section 780.004(a) unless the grant recipient obtains the department's prior approval.

(b) The commissioner shall maintain a reserve of $500,000 of money appropriated from the accounts for extraordinary emergencies.

(c) In any fiscal year the commissioner shall use 50 percent of the appropriated money remaining from the accounts, after any amount necessary to maintain the reserve established by Subsection (b) is deducted, to fund, in connection with an effort to provide coordination with the appropriate trauma service area, the cost of supplies, operational expenses, education and training, equipment, vehicles, and communications systems for local emergency medical services. The money shall be distributed on behalf of eligible recipients in each county to the trauma service area regional advisory council for that county. To receive a distribution under this subsection, the regional advisory council must be incorporated as an entity that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under Section 501(c)(3) of the code. The share of the money allocated to the eligible recipients in a county's geographic area shall be based on the relative geographic size and population of the county and on the relative

number of emergency or trauma care runs performed by eligible recipients in the county. Money that is not disbursed by a regional advisory council to eligible recipients for approved functions by the end of the fiscal year in which the funds were disbursed may be retained by the regional advisory council to be used during the following fiscal year in accordance with this subsection. Money that is not disbursed by the regional advisory council during the following fiscal year shall be returned to the account.

(d) In any fiscal year, the commissioner may use not more than 20 percent of the appropriated money remaining from the accounts, after any amount necessary to maintain the reserve established by Subsection (b) is deducted, for operation of the 22 trauma service areas and for equipment, communications, and education and training for the areas. Money distributed under this subsection shall be distributed on behalf of eligible recipients in each county to the trauma service area regional advisory council for that county. To receive a distribution under this subsection, the regional advisory council must be incorporated as an entity that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under Section 501(c)(3) of the code. A regional advisory council's share of money distributed under this section shall be based on the relative geographic size and population of each trauma service area and on the relative amount of trauma care provided. Money that is not disbursed by a regional advisory council to eligible recipients for approved functions by the end of the fiscal year in which the funds were disbursed may be retained by the regional advisory council to be used during the following fiscal year in accordance with this subsection. Money that is not disbursed by the regional advisory council during the following fiscal year shall be returned to the account.

(e) In any fiscal year, the commissioner may use not more than three percent of the appropriated money from the accounts after any amount necessary to maintain the reserve established by Subsection (b) is deducted to fund the administrative costs of the department associated with administering the state emergency medical services program, the trauma program, and the accounts and to fund the costs of monitoring and providing technical assistance for those programs and the accounts.

(f) In any fiscal year, the commissioner shall use at least 27

percent of the appropriated money remaining from the accounts after any amount necessary to maintain the reserve established by Subsection (b) is deducted and the money from the accounts not otherwise distributed under this section to fund a portion of the uncompensated trauma care provided at facilities designated as state trauma facilities by the department. The administrator of a designated facility may request a regional advisory council chairperson to petition the department for disbursement of funds to a designated trauma facility in the chairperson's trauma service area that has provided uncompensated trauma care. Funds may be disbursed under this subsection based on a proportionate share of uncompensated trauma care provided in the state and may be used to fund innovative projects to enhance the delivery of patient care in the overall emergency medical services and trauma care system.

(g) The department shall review the percentages for disbursement of funds in the accounts on an annual basis and shall make recommendations for proposed changes to ensure that appropriate and fair funding is provided under this section.

Added by Acts 1997, 75th Leg., ch. 1157, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1045, Sec. 16, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1411, Sec. 19.07, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1213, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 638 (S.B. 901), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1561, eff. April 2, 2015.

Sec. 773.123. CONTROL OF EXPENDITURES FROM ACCOUNTS. Money distributed from the accounts established under Sections 771.072(f) and 773.006 shall be used in accordance with Section 773.122 on the authorization of the executive committee of the trauma service area regional advisory council.

Added by Acts 1997, 75th Leg., ch. 1157, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1045, Sec. 17, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1411, Sec. 19.08, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1213, Sec. 3, eff. Sept. 1, 2003.

Sec. 773.124. LOSS OF FUNDING ELIGIBILITY. For a period of not less than one year or more than three years, as determined by the department, the department may not disburse money under Section 773.122 to a trauma service area regional advisory council, county, municipality, or local recipient that the department finds used money in violation of that section.

Added by Acts 1997, 75th Leg., ch. 1157, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 19.09, eff. Sept. 1, 1999.

SUBCHAPTER F. MEDICAL INFORMATION PROVIDED BY CERTAIN EMERGENCY MEDICAL SERVICES CALL TAKERS

Sec. 773.141. DEFINITIONS. In this subchapter:

(1) "Emergency call" means a telephone call or other similar communication from a member of the public, as part of a 9-1-1 system or otherwise, made to obtain emergency medical services.

(2) "Emergency medical services call taker" means a person who, as a volunteer or employee of a public agency, as that term is defined by Section 771.001, receives emergency calls.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1563, eff. April 2, 2015.

Sec. 773.142. APPLICATION OF SUBCHAPTER. This subchapter does not apply to a physician or other licensed person who may provide medical information under law.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.

Sec. 773.143. PROVISION OF MEDICAL INFORMATION. An emergency medical services call taker may provide medical information to a member of the public during an emergency call if:

(1) the call taker has successfully completed an emergency

medical services call taker training program and holds a certificate issued under Section 773.144; and

(2) the information provided substantially conforms to the protocol for delivery of the information adopted by the executive commissioner under Section 773.145.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1564, eff. April 2, 2015.

Sec. 773.144. TRAINING PROGRAMS. (a) The department may offer emergency medical services call taker training programs and may approve training programs offered by other persons. The executive commissioner by rule shall establish minimum standards for approval of training programs and certification and decertification of program instructors.

(b) The provider of an emergency medical services call taker training program shall issue an emergency medical services call taker a certificate evidencing completion of the training program. The executive commissioner by rule may require that, before issuance of the certificate, the call taker successfully complete an examination administered by the department, by the provider of the training program, or by another person.

(c) The executive commissioner by rule may provide that a certificate issued under Subsection (b) expires at the end of a specified period not less than one year after the date on which the certificate is issued and may adopt requirements, including additional training or examination, for renewal of the certificate.

(d) The executive commissioner by rule may adopt other requirements relating to emergency medical services call taker training programs. The establishment of minimum standards under this section does not prohibit the entity that is employing or accepting the volunteer services of the emergency medical services call taker from imposing additional training standards or procedures.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1565, eff. April 2, 2015.

Sec. 773.145. MEDICAL INFORMATION. The executive commissioner by rule shall adopt a protocol that must be used to provide medical information under Section 773.143. The protocol may include the use of a flash-card system or other similar system designed to make the information readily accessible to the emergency medical services call taker in an understandable form.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1566, eff. April 2, 2015.

Sec. 773.146. LIMITATION ON CIVIL LIABILITY. (a) An emergency medical services call taker who holds a certificate under Section 773.144 is not liable for damages that arise from the provision of medical information according to the protocol adopted under Section 773.145 if the information is provided in good faith. This subsection does not apply to an act or omission of the call taker that constitutes gross negligence, recklessness, or intentional misconduct. This subsection does not affect any liability imposed on a public agency for the conduct of the emergency medical services call taker under Section 101.062, Civil Practice and Remedies Code.

(b) Section 101.062, Civil Practice and Remedies Code, governs the liability of a public agency the employees or volunteers of which provide medical information under this subchapter.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1567, eff. April 2, 2015.

Sec. 773.147. FEES. (a) The executive commissioner by rule may adopt fees for:

(1) training programs provided by the department under Section 773.144; and

(2) the approval of program instructors and of training programs offered by other persons.

(b) The fees adopted under this section may not exceed the amount necessary for the department to recover the cost of administering this subchapter.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1568, eff. April 2, 2015.

SUBCHAPTER G. PEDIATRIC EMERGENCY MEDICAL SERVICES

Sec. 773.171. EMERGENCY MEDICAL SERVICES FOR CHILDREN PROGRAM. (a) The emergency medical services for children program is in the department.

(b) The department shall provide coordination and support for a statewide pediatric emergency services system.

(c) The department may solicit, receive, and spend funds it receives from the federal government and public or private sources to carry out the purposes of this subchapter.

Added by Acts 1993, 73rd Leg., ch. 513, Sec. 1, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1569, eff. April 2, 2015.

Sec. 773.173. RULES. (a) On the recommendation of the advisory council, the executive commissioner shall adopt minimum standards and objectives to implement a pediatric emergency services system, including rules that:

(1) provide guidelines for categorization of a facility's pediatric capability;

(2) provide for triage, transfer, and transportation policies for pediatric care;

(3) establish guidelines for:

(A) prehospital care management for triage and

transportation of a pediatric patient;

(B) prehospital and hospital equipment that is necessary and appropriate for the care of a pediatric patient;

(C) necessary pediatric emergency equipment and training in long-term care facilities; and

(D) an interhospital transfer system for a critically ill or injured pediatric patient; and

(4) provide for data collection and analysis.

(b) The executive commissioner and the advisory council shall consider guidelines endorsed by the American Academy of Pediatrics and the American College of Surgeons in recommending and adopting rules under this section.

(c) The department may grant an exception to a rule adopted under this section if it finds that compliance with the rule would not be in the best interests of persons served in the affected local pediatric emergency medical services system.

(d) This subchapter does not prohibit a health care facility from providing services that it is authorized to provide under a license issued to the facility by the department.

Added by Acts 1993, 73rd Leg., ch. 513, Sec. 1, eff. Aug. 30, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1570, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1571, eff. April 2, 2015.

SUBCHAPTER H. EMERGENCY STROKE SERVICES

Sec. 773.201. LEGISLATIVE INTENT. The legislature finds that a strong system for stroke survival is needed in the state's communities in order to treat stroke victims in a timely manner and to improve the overall treatment of stroke victims. Therefore, the legislature intends to construct an emergency treatment system in this state so that stroke victims may be quickly identified and transported to and treated in appropriate stroke treatment facilities.

Added by Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 3, eff. September 1, 2005.

Sec. 773.202. DEFINITIONS. In this subchapter:

(1) "Advisory council" means the advisory council established under Section 773.012.

(2) "Stroke committee" means the committee appointed under Section 773.203.

(3) "Stroke facility" means a health care facility that:

(A) is capable of primary or comprehensive treatment of stroke victims;

(B) is part of an emergency medical services and trauma care system as defined by Section 773.003;

(C) has a health care professional available 24 hours a day, seven days a week who is knowledgeable about stroke care and capable of carrying out acute stroke therapy; and

(D) records patient treatment and outcomes.

Added by Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 3, eff. September 1, 2005.

Sec. 773.203. STROKE COMMITTEE. (a) The advisory council shall appoint a stroke committee to assist the advisory council in the development of a statewide stroke emergency transport plan and stroke facility criteria.

(b) The stroke committee must include the following members:

(1) a licensed physician appointed from a list of physicians eligible for accreditation in vascular neurology from the Accreditation Council for Graduate Medical Education, recommended by a statewide organization of neurologists;

(2) a licensed interventional neuroradiologist appointed from a list of neuroradiologists recommended by a statewide organization of radiologists;

(3) a neurosurgeon with stroke expertise;

(4) a member of the Texas Council on Cardiovascular Disease and Stroke who has expertise in stroke care;

(5) a licensed physician appointed from a list of physicians recommended by a statewide organization of emergency physicians;

(6) a neuroscience registered nurse with stroke expertise; and

(7) a volunteer member of a nonprofit organization

specializing in stroke treatment, prevention, and education.

(c) Chapter 2110, Government Code, does not apply to the stroke committee.

Added by Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 3, eff. September 1, 2005.

Sec. 773.204. DUTIES OF STROKE COMMITTEE; DEVELOPMENT OF STROKE EMERGENCY TRANSPORT PLAN AND STROKE FACILITY CRITERIA. (a) The advisory council, with the assistance of the stroke committee and in collaboration with the Texas Council on Cardiovascular Disease and Stroke, shall develop a statewide stroke emergency transport plan and stroke facility criteria.

(b) The stroke emergency transport plan must include:

(1) training requirements on stroke recognition and treatment, including emergency screening procedures;

(2) a list of appropriate early treatments to stabilize patients;

(3) protocols for rapid transport to a stroke facility when rapid transport is appropriate and it is safe to bypass another health care facility; and

(4) plans for coordination with statewide agencies or committees on programs for stroke prevention and community education regarding stroke and stroke emergency transport.

(c) In developing the stroke emergency transport plan and stroke facility criteria, the stroke committee shall consult the criteria for stroke facilities established by national medical organizations such as The Joint Commission.

Added by Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 3, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1572, eff. April 2, 2015.

Sec. 773.205. RULES. The executive commissioner may adopt rules regarding a statewide stroke emergency transport plan and stroke facility criteria based on recommendations from the advisory council.

Added by Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 3, eff. September 1, 2005.

SUBCHAPTER I. EMERGENCY MEDICAL SERVICES ASSISTANCE PROGRAM

Sec. 773.251. DEFINITIONS. In this subchapter:

(1) "Educational curriculum" means a distance-learning emergency medical services curriculum that provides remote courses of instruction and training to emergency medical services personnel who serve a rural area.

(2) "General academic teaching institution," "medical and dental unit," "other agency of higher education," and "public technical institute" have the meanings assigned by Section 61.003, Education Code.

(3) "Program" means the emergency medical services assistance program established under this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 1009 (H.B. 1407), Sec. 1, eff. September 1, 2017.

Sec. 773.252. ESTABLISHMENT OF PROGRAM. (a) The department shall establish the emergency medical services assistance program to provide financial and educational assistance to eligible emergency medical services providers.

(b) The program includes grants to eligible emergency medical services providers and an educational curriculum to provide training to rural emergency medical services personnel.

Added by Acts 2017, 85th Leg., R.S., Ch. 1009 (H.B. 1407), Sec. 1, eff. September 1, 2017.

Sec. 773.253. RULES. (a) The executive commissioner shall adopt rules necessary to implement this subchapter, including rules for:

(1) determining eligibility under the program;

(2) establishing requirements for the educational curriculum; and

(3) establishing requirements for a general academic teaching institution, medical and dental unit, other agency of higher

education, or public technical institute that develops and offers the educational curriculum.

(b) The rules must require that:

(1) an emergency medical services provider demonstrate financial need to be eligible for assistance under the program;

(2) a general academic teaching institution, medical and dental unit, other agency of higher education, or public technical institute applying to offer the educational curriculum demonstrate the qualifications necessary to develop and offer the educational curriculum; and

(3) the educational curriculum provide to rural emergency medical services personnel the remote instructional courses and training necessary for the personnel to achieve department certification under Subchapter C.

Added by Acts 2017, 85th Leg., R.S., Ch. 1009 (H.B. 1407), Sec. 1, eff. September 1, 2017.

Sec. 773.254. APPLICATION BY EMERGENCY MEDICAL SERVICES PROVIDER. (a) An emergency medical services provider may apply to the department in the form and manner provided by department rule to receive assistance under the program.

(b) If the department determines an applicant is eligible for assistance under the program, the department may provide a grant under Section 773.257 to the applicant.

Added by Acts 2017, 85th Leg., R.S., Ch. 1009 (H.B. 1407), Sec. 1, eff. September 1, 2017.

Sec. 773.255. EDUCATIONAL CURRICULUM. (a) A general academic teaching institution, medical and dental unit, other agency of higher education, or public technical institute may apply to the department in the form and manner provided by department rule to develop and offer the educational curriculum under this subchapter.

(b) The department may contract with not more than three qualified general academic teaching institutions, medical and dental units, other agencies of higher education, or public technical institutes to develop and offer the educational curriculum under this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 1009 (H.B. 1407), Sec. 1, eff. September 1, 2017.

Sec. 773.256. ADMINISTRATIVE SUPPORT. The department may provide administrative support to the program.

Added by Acts 2017, 85th Leg., R.S., Ch. 1009 (H.B. 1407), Sec. 1, eff. September 1, 2017.

Sec. 773.257. GRANTS. (a) The commissioner may use money from the permanent fund for emergency medical services and trauma care established under Section 403.106, Government Code, to provide grants, in addition to funding available from other sources, to emergency medical services providers applying for assistance under the program or to provide funding to a general academic teaching institution, medical and dental unit, other agency of higher education, or public technical institute offering the educational curriculum under this subchapter.

(b) The commissioner shall ensure that at least 60 percent of the grants provided under this section are provided to emergency medical services providers that serve a rural area.

(c) The executive commissioner by rule shall establish a procedure for the Governor's EMS and Trauma Advisory Council to establish priorities for issuance of grants under this section.

(d) The department shall distribute grants under this section in accordance with the requirements of Subsection (b) and the grant priorities established under Subsection (c).

Added by Acts 2017, 85th Leg., R.S., Ch. 1009 (H.B. 1407), Sec. 1, eff. September 1, 2017.

CHAPTER 774. LOCAL PROVISION OF EMERGENCY MEDICAL SERVICES

Sec. 774.001. MUTUAL ASSISTANCE AMONG MUNICIPALITIES AND COUNTIES IN PROVIDING EMERGENCY MEDICAL SERVICES. (a) On request, a county shall provide emergency medical services for a municipality within that county or for a county bordering that county if:

(1) an agreement has been executed between the county and the requesting municipality or county;

(2) an emergency exists in the requesting municipality or county;

(3) the requesting municipality or county is temporarily unable to provide its own emergency medical services;

(4) the request is for services that the county receiving the request provides or contracts to provide for persons within its jurisdiction; and

(5) the county providing the services will be able to provide reasonable protection to persons within its jurisdiction while providing services for the requesting municipality or county.

(b) On request, a municipality shall provide emergency medical services for the county in which that municipality is located or for a municipality located within 30 miles of that municipality if:

(1) an agreement has been executed between the municipality and the requesting municipality or county;

(2) an emergency exists in the requesting municipality or county;

(3) the requesting municipality or county is temporarily unable to provide its own emergency medical services;

(4) the request is for services that the municipality receiving the request provides or contracts to provide for persons within its jurisdiction; and

(5) the municipality providing the services will be able to provide reasonable protection to persons within its jurisdiction while providing services for the requesting municipality or county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 774.002. EDUCATIONAL INCENTIVE PAY FOR EMERGENCY MEDICAL TECHNICIANS. (a) A municipality or other political subdivision that employs emergency medical technicians may pay educational incentive pay to employees holding certificates from the Department of State Health Services as emergency medical technicians.

(b) The educational incentive pay is in addition to any other form of compensation provided by law for emergency medical technicians.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1573, eff.

April 2, 2015.

Sec. 774.003. EMERGENCY AMBULANCE SERVICE PROVIDED BY COUNTIES. (a) The commissioners court of a county may provide for emergency ambulance service in the county, including the provision of necessary equipment, personnel, and maintenance for the service.

(b) In providing for the services authorized by Subsection (a), a commissioners court may enter into exclusive agreements with any municipality, hospital district, sheriff's office, fire department, private ambulance service, or other agency or entity that the commissioners court finds to be suitably organized to provide efficient emergency ambulance service in the county. The governing body of a municipality or hospital district in which emergency ambulance service is to be rendered must approve an agreement made with the commissioners court to provide that service in the municipality or hospital district.

(c) A commissioners court operating under this section may expend county funds to defray the expense of establishing, operating, and maintaining the emergency ambulance service in the county. The funds may be expended whether the service is provided directly by the county or by agreement with some other governmental agency or private entity.

(d) A commissioners court providing emergency ambulance service under this section shall establish reasonable fees for the service. The commissioners court or any other agency or entity performing the service may charge and collect the fees.

(e) A commissioners court may make special provisions for rendering emergency ambulance service to indigent persons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 20, eff. Aug. 28, 1995.

Sec. 774.004. MUNICIPAL POLICE OFFICER RESPONSE ACCOMPANYING MUNICIPAL AMBULANCE RESPONSE OUTSIDE MUNICIPALITY. (a) This section applies to an agreement between two municipalities under Section 774.001(b) or between a county and a municipality under Section 774.001(b) or 774.003.

(b) The agreement may authorize police officers employed by the

responding municipality to secure the scene of an emergency, accident, fire, or disaster to which the municipality's emergency ambulance service responds under the agreement.

Added by Acts 2005, 79th Leg., Ch. 479 (H.B. 233), Sec. 1, eff. June 17, 2005.

CHAPTER 775. EMERGENCY SERVICES DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 775.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of emergency services commissioners.

(2) "District" means an emergency services district created under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.002. LIBERAL CONSTRUCTION. This chapter and a proceeding under this chapter shall be liberally construed to achieve the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.003. AUTHORIZATION. An emergency services district may be organized as provided by Article III, Section 48-e, of the Texas Constitution, as proposed by S.J.R. No. 27, Acts of the 70th Legislature, Regular Session, 1987, and adopted by the voters at an election held November 3, 1987, and by this chapter to protect life and health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 775.011. PETITION FOR CREATION OF DISTRICT LOCATED WHOLLY IN ONE COUNTY. (a) Before a district located wholly in one county may be created, the county judge of that county must receive a petition signed by at least 100 qualified voters who own taxable real

property in the proposed district. If there are fewer than 100 of those voters, the petition must be signed by a majority of those voters.

(b) The name of the district proposed by the petition must be "_____ County Emergency Services District No. _____," with the name of the county and the proper consecutive number inserted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.012. PETITION FOR CREATION OF DISTRICT LOCATED IN MORE THAN ONE COUNTY. (a) Before a district that contains territory located in more than one county may be created, the county judge of each county in which the proposed district will be located must receive a petition signed by at least 100 qualified voters who own taxable real property that is located in the county in which that judge presides and in the proposed district. If there are fewer than 100 of those voters, the petition must be signed by a majority of those voters.

(b) The name of the district proposed by the petition must be "_____ Emergency Services District No. _____." The name of each county must be inserted in the first blank, and the next available district number must be inserted into the second blank.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 496, Sec. 1, eff. Sept. 1, 1999.

Sec. 775.013. CONTENTS OF PETITION. (a) The petition prescribed by Section 775.011 or 775.012 must show:

(1) that the district is to be created and is to operate under Article III, Section 48-e, Texas Constitution, and Chapter 775;

(2) the name of the proposed district;

(3) the proposed district's boundaries as designated by metes and bounds or other sufficient legal description;

(4) the services that the proposed district will provide;

(5) that the creation of the proposed district complies with Sections 775.020 and 775.0205;

(6) the mailing address of each petitioner; and

(7) the name of each municipality whose consent must be

obtained under Section 775.014.

(a-1) A statement that the boundaries of the district are coextensive with the boundaries of another political subdivision, as those boundaries exist on a particular date, is a sufficient legal description for purposes of Subsection (a)(3).

(b) The petition must contain an agreement signed by at least two petitioners that obligates them to pay not more than $150 of the costs incident to the formation of the district, including the costs of publishing notices, election costs, and other necessary and incidental expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1333, Sec. 1, eff. June 16, 2001; Acts 2001, 77th Leg., ch. 886, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 235, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10.009, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 87 (S.B. 718), Sec. 1, eff. May 17, 2005.

Sec. 775.014. CREATION OF DISTRICT THAT INCLUDES MUNICIPAL TERRITORY. (a) Before a district may be created that contains territory in a municipality's limits or extraterritorial jurisdiction, a written request to be included in the district must be presented to the municipality's governing body after the petition is filed under Section 775.015. Except as provided by Subsection (c), that territory may not be included in the district unless the municipality's governing body gives its written consent on or before the 60th day after the date on which the municipality receives the request.

(b) If the municipality's governing body does not consent to inclusion within the 60-day period prescribed by Subsection (a), a majority of the qualified voters and the owners of at least 50 percent of the territory in the municipality's limits or extraterritorial jurisdiction that would have been included in the district may petition the governing body to make fire control and emergency medical and ambulance services available. The petition must be submitted to the governing body not later than the 90th day

after the date on which the municipality receives the request under Subsection (a).

(c) If the municipality's governing body refuses or fails to act on the petition requesting fire protection and emergency medical and ambulance services within six months after the date on which the petition submitted under Subsection (b) is received, the governing body's refusal or failure to act constitutes consent for the territory that is the subject of the petition to be included in the proposed district.

(d) If the proposed district will include territory designated by a municipality as an industrial district under Section 42.044, Local Government Code, consent to include the industrial district must be obtained from the municipality's governing body in the same manner provided by this section for obtaining consent to include territory within the limits or extraterritorial jurisdiction of a municipality.

(e) If the municipality's governing body consents to inclusion of territory within its limits or extraterritorial jurisdiction, or in an industrial district, the territory may be included in the district in the same manner as other territory is included under this chapter.

(f) A governing body's consent to include territory in the district and to initiate proceedings to create a district as prescribed by this chapter expires six months after the date on which the consent is given.

(g) This section does not apply if the proposed district contains territory in the unincorporated area of a county with a population of 3.3 million or more.

Without reference to the amendment of this subsection, this subsection was repealed by Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 7(1), eff. March 1, 2024.

(h) The governing body of a municipality with a population of more than one million may negotiate with the commissioners court of a county with a population of less than 2.1 million that is the county in which the majority of the territory inside the municipality's corporate boundaries is located conditions under which the municipality will grant its consent to the inclusion of its extraterritorial jurisdiction in the district. The negotiated conditions may:

(1) limit the district's ability to incur debt;

(2) require the district to ensure that its equipment is compatible with the municipality's equipment; and

(3) require the district to enter into mutual aid agreements.

(i) If a request under this section is submitted to a municipality that has a population of more than one million and the majority of the territory inside the municipality's corporate boundaries is located inside a county with a population of less than 2.1 million, the request must include:

(1) a copy of the petition submitted under Section 775.015; and

(2) a sufficient legal description of the portion of the municipality and its extraterritorial jurisdiction that would be included in the district territory.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 5, Sec. 1, eff. Feb. 28, 1991; Acts 1999, 76th Leg., ch. 496, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 886, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 53, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 1, eff. March 1, 2024.

Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 7(1), eff. March 1, 2024.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 107, eff. September 1, 2023.

Sec. 775.015. FILING OF PETITION AND NOTICE OF HEARING. (a) If the petition is in proper form, the county judge may receive the petition and shall file the petition with the county clerk.

(b) At the next regular or special session of the commissioners court held after the petition is filed with the county clerk, the commissioners court shall set a place, date, and time for the hearing to consider the petition.

(c) The county clerk shall give notice of the hearing. The notice must state:

(1) that creation of a district is proposed;

(2) that the district is to be created and is to operate under Article III, Section 48-e, of the Texas Constitution, as proposed by S.J.R. No. 27, Acts of the 70th Legislature, Regular Session, 1987, and adopted by the voters at an election held November 3, 1987;

(3) the name of the proposed district;

(4) the district's boundaries as stated in the petition;

(5) the place, date, and time of the hearing; and

(6) that each person who has an interest in the creation of the district may attend the hearing and present grounds for or against creation of the district.

(d) The county clerk shall retain a copy of the notice and shall deliver sufficient copies of the notice to the sheriff for posting and publication as prescribed by Subsection (e).

(e) Not later than the 21st day before the date on which the hearing will be held, the sheriff shall post one copy of the notice at the courthouse door. The sheriff shall also have the notice published in a newspaper of general circulation in the proposed district once a week for two consecutive weeks. The first publication must occur not later than the 21st day before the date on which the hearing will be held.

(f) The return of each officer executing notice must:

(1) be endorsed or attached to a copy of the notice;

(2) show the execution of the notice;

(3) specify each date on which the notice was posted or published; and

(4) include a printed copy of the published notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.016. HEARING. (a) At the time and place set for the hearing or at a later date then set, the commissioners court shall consider the petition and each issue relating to creation of the district.

(b) Any interested person may appear before the commissioners court in person or by attorney to support or oppose the creation of the district and may offer pertinent testimony.

(c) The commissioners court has exclusive jurisdiction to determine each issue relating to the creation of the district and may

issue incidental orders it considers proper in relation to the issues before the commissioners court. The commissioners court may adjourn the hearing as necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 886, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 2, eff. March 1, 2024.

Sec. 775.017. PETITION APPROVAL. (a) If after the hearing the commissioners court finds that creation of the district is feasible and will promote the public safety, welfare, health, and convenience of persons residing in the proposed district, the commissioners court shall grant the petition and fix the district's boundaries. If the proposed district, according to its boundaries stated in the petition, is located wholly in a county with a population of more than 3.3 million, the commissioners court may amend the petition to change the boundaries of the proposed district if the commissioners court finds the change is necessary or desirable. For the purposes of this provision, the population of the county is determined according to the most recent federal decennial census available at the time the petition is filed.

(b) If the proposed district will include territory in the municipal limits or extraterritorial jurisdiction of one or more municipalities, the commissioners court of the county in which the municipality is located must determine if the district would still meet the requirements prescribed by Subsection (a) if the territory in the municipality's limits or extraterritorial jurisdiction is excluded from the district. The commissioners court must make this finding for each municipality the territory of which will be included in the district.

(c) If the commissioners court finds that the proposed district does not meet the requirements prescribed by Subsection (a), the commissioners court shall deny the petition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 269, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 886, Sec. 4, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 54, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 3, eff. March 1, 2024.

Sec. 775.018. ELECTION. (a) On the granting of a petition, the commissioners court shall order an election to confirm the district's creation and authorize the imposition of a tax not to exceed the rate allowed by Section 48-e, Article III, Texas Constitution.

(b) Repealed by Acts 2005, 79th Leg., Ch. 123, Sec. 2, eff. September 1, 2005.

(c) If the petition indicates that the proposed district will contain territory in more than one county, the commissioners court may not order an election until the commissioners court of each county in which the district will be located has granted the petition.

(d) Subject to Section 4.003, Election Code, the notice of the election shall be given in the same manner as the notice of the petition hearing.

(e) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

(f) If the territory of a district proposed under this chapter overlaps with the boundaries of another district created under this chapter, the commissioners court of each county in which the proposed district is located shall send to the board of the existing district a copy of the petition for creation of the proposed district. This subsection does not apply to a proposed district located wholly in a county with a population of more than three million.

(g) The board of the existing district shall adopt a statement before the date of the election required by this section that specifies the types of emergency services the existing district will provide or continue to provide in the overlapping territory if the proposed district is created. This subsection does not apply to a proposed district located wholly in a county with a population of more than three million.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., ch. 14, Sec. 270, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 294, Sec. 1, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 496, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 886, Sec. 5, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1140, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 123 (S.B. 1621), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 123 (S.B. 1621), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 1, eff. June 17, 2011.

Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 4, eff. March 1, 2024.

Sec. 775.019. ELECTION RESULT AND COMMISSIONERS COURT ORDER. (a) A district is created and organized under this chapter if a majority of the votes cast in the election favor creation of the district.

(b) A district may not include territory in a municipality's limits or extraterritorial jurisdiction unless a majority of the voters residing in that territory who vote at the election vote in favor of creating the district and imposing a tax. The exclusion of that territory does not affect the creation of a district that includes the remainder of the proposed territory if the commissioners court's findings under Section 775.017 are favorable to the district's creation.

(c) Repealed by Acts 1991, 72nd Leg., ch. 620, Sec. 2, eff. June 16, 1991.

(d) If a majority of those voting at the election vote against creation of the district, the commissioners court may not order another election for at least one year after the date of the official canvass of the most recent election concerning creation of the district. A subsequent election must be held in the same manner provided by this chapter for the original creation election.

(e) When a district is created, the commissioners court of each county in which the district is located shall enter in its minutes an order that reads substantially as follows:

Whereas, at an election held on the _____ day of _____,

19___, in that part of _____ County, State of Texas, described as (insert description unless the district is countywide), there was submitted to the qualified voters the question of whether that territory should be formed into an emergency services district under state law; and

Whereas, at the election _____ votes were cast in favor of formation of the district and _____ votes were cast against formation; and

Whereas, the formation of the emergency services district received the affirmative vote of the majority of the votes cast at the election as provided by law;

Now, therefore, the Commissioners Court of _____ County, State of Texas, finds and orders that the tract described in this order has been duly and legally formed into an emergency services district (or a portion thereof) under the name of _____, under Article III, Section 48-e, of the Texas Constitution, as proposed by S.J.R. No. 27, Acts of the 70th Legislature, Regular Session, 1987, and adopted by the voters at an election held November 3, 1987, and has the powers vested by law in the district.

(f) Repealed by Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 7(2), eff. March 1, 2024.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 620, Sec. 2, eff. June 16, 1991; Acts 2001, 77th Leg., ch. 886, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 5, eff. March 1, 2024.

Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 7(2), eff. March 1, 2024.

Sec. 775.020. OVERLAPPING DISTRICTS LOCATED WHOLLY IN POPULOUS COUNTY. (a) This section applies only to a district located wholly in a county with a population of more than three million.

(b) If the territory in a district created under this chapter overlaps with the boundaries of another district created under this chapter, a district converted under this chapter, or a district converted under former Section 794.100, the most recently created district may not provide services in the overlapping territory that

duplicate the services provided by the other district at the time the overlapping district was created.

(c) For purposes of this section, a district is created on the date on which the election approving its creation was held. If the elections approving the creation of two or more districts are held on the same date, the most recently created district is the district for which the hearing regarding approval of the petition for creation of the district was most recently held.

(d) The creation of a district with boundaries that overlap the boundaries of another district does not affect the validity of either district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1333, Sec. 2, eff. June 16, 2001; Acts 2003, 78th Leg., ch. 1204, Sec. 1.001, eff. Sept. 1, 2003.

Sec. 775.0205. OVERLAPPING DISTRICTS. (a) If the territory in a district created under this chapter overlaps with the boundaries of another district created under this chapter, the most recently created district may not provide services in the overlapping territory that duplicate the services described in the statement required by Section 775.018(g).

(b) If the territory in more than two districts overlaps, the commissioners court of the county in which the most recently created district is located by order shall exclude the overlapping territory from that district.

(c) For purposes of this section, a district is created on the date on which the election approving its creation was held. If the elections approving the creation of two or more districts are held on the same date, the most recently created district is the district for which the hearing regarding approval of the petition for creation of the district was most recently held.

(d) The creation of a district with boundaries that overlap the boundaries of another district does not affect the validity of either district.

(d-1) The legislature finds that the performance of non-duplicative emergency services in the overlapping territory of emergency service districts is complementary to and not in conflict with the powers and duties of the respective districts.

(d-2) A person may serve as an emergency services commissioner of a district created under this chapter at the same time that the person serves as an emergency services commissioner of another district with overlapping territory created under this chapter.

(d-3) A person serving as a commissioner of more than one district under this section:

(1) may receive compensation for serving on only one board; and

(2) is entitled to reimbursement for reasonable and necessary expenses incurred in performing official duties for both boards.

(e) This section does not apply to a district located wholly in a county with a population of more than three million.

Added by Acts 2001, 77th Leg., ch. 1333, Sec. 3, eff. June 16, 2001. Amended by Acts 2003, 78th Leg., ch. 1204, Sec. 1.002, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 2, eff. June 17, 2011.

Sec. 775.021. EXCLUSION OF TERRITORY LOCATED WITHIN OTHER TAXING AUTHORITY. (a) This section applies only to a district located in whole or in part in a county that:

(1) borders the Gulf of Mexico; and

(2) has a population of less than 1.5 million.

(b) The board of a district may exclude from the district the territory located within the boundaries of another taxing authority if the other taxing authority provides the same services to the territory as those provided by the district.

(c) The board, at its discretion, may hold a hearing to consider the exclusion of the territory.

(d) The board shall hold a hearing to consider the exclusion of the territory if the board receives a petition requesting a hearing on the issue that is signed by at least five percent of the qualified voters who own taxable real property in the district. A petition submitted under this subsection must describe the proposed new boundaries of the district or describe the boundaries of the territory to be excluded from the district.

(e) The board shall issue a notice of a hearing to be held under Subsection (c) or (d). The provisions of Section 775.015 relating to the procedure for issuing notice of a hearing to create the district apply to the notice for the hearing under this section. The notice must state:

(1) the proposed new boundaries of the district or of the territory to be excluded;

(2) the time and place of the hearing; and

(3) that each person who has an interest in the exclusion or nonexclusion of the territory may attend the hearing and present the person's opinion for or against the exclusion of the territory.

(f) After the hearing the board either may order an election on the question of the exclusion of the territory or may declare by resolution the territory excluded from the district. However, the board may not declare the territory as excluded if the owners of at least three percent of the property located in the district protest the exclusion.

(g) If the board excludes the territory by resolution, the board shall state in the resolution the new boundaries of the district. The board shall file a copy of the resolution in the office of the county clerk of each county in which the district is located. The county clerk of each affected county shall record the resolution in the county records. After the resolution is recorded, the excluded territory is no longer a part of the district.

(h) The board shall order an election on the question of exclusion if:

(1) the owners of at least three percent of the property located in the district protest the exclusion; or

(2) the board:

(A) despite the lack of a protest, refuses to exclude the territory; and

(B) after refusing to exclude the territory, receives a petition requesting an election that is signed by a majority of the qualified voters who own taxable real property in the territory proposed to be excluded.

(i) Except as otherwise required by the Election Code, the election notice, the manner and time of giving the notice, and the manner of holding the election are governed by the applicable provisions of this chapter relating to the original election to create the district.

(j) If a majority of the voters voting in the election favor excluding the territory from the district, the board shall enter an order declaring the territory excluded from the district and stating the new boundaries of the district. The board shall file a copy of the order in the office of the county clerk of each county in which the district is located. The county clerk of each affected county shall record the order in the county records. After the order is recorded, the excluded territory is no longer a part of the district.

(k) If a majority of the voters voting in the election do not favor excluding the territory, the board may not act on a petition to exclude all or part of the territory until the first anniversary of the date of the most recent election to exclude the territory from the district.

(l) The exclusion of territory under this section does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other obligations of the district.

(m) Territory excluded under this section is not released from the payment of its pro rata share of the district's indebtedness. The district shall continue to levy taxes each year on the excluded territory at the same rate levied on territory in the district until the taxes collected from the excluded territory equal its pro rata share of the indebtedness of the district at the time the territory was excluded. The taxes collected under this subsection shall be applied exclusively to the payment of the excluded territory's pro rata share of the indebtedness. The owner of all or part of the excluded territory may pay in full, at any time, the owner's share of the pro rata share of the district's indebtedness.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 271, eff. Sept. 1, 1991.

Sec. 775.022. REMOVAL OF TERRITORY BY MUNICIPALITY. (a) If a municipality completes all other procedures necessary to annex territory in a district, including the preparation of a service plan if required by Section 43.056, Local Government Code, the municipality intends to remove the territory from the district, and the municipality is capable at the time of the removal of being the sole provider of emergency services to the territory by the use of municipal personnel or by some method other than by use of the district, the municipality shall send written notice of those facts,

and the completed service plan, if applicable, to the board not later than the 30th day after completing the necessary procedures. The municipality must send the notice to the secretary of the board by certified mail, return receipt requested. The territory remains part of the district and does not become part of the municipality until the secretary of the board receives the notice and the board by resolution disannexes the territory from the district. The board must send a copy of the resolution to the municipality by certified mail, return receipt requested, not later than the 30th day after the date on which the board adopts the resolution. If the governing body of the municipality disagrees with the board's determination that the municipal services will not meet or exceed the level of service provided by the district, the municipality may adopt a resolution stating the grounds for the disagreement and requesting arbitration in the manner provided by Section 775.0221. If the board determines that the municipal services planned to be provided in the territory will not meet or exceed the level of service provided by the district in the territory, the board shall adopt that determination in a resolution and may not by resolution disannex the territory from the district. If the board determines that municipal services planned to be provided in the territory will meet or exceed the level of service provided by the district in the territory at the time of disannexation, the board shall by resolution disannex the territory from the district, notify the appraisal district to change its records to show that the territory has been disannexed from the district, and cease to provide further services to the residents of that territory. This subsection does not require a municipality to remove from a district territory the municipality has annexed. For the purposes of this subsection, "level of service" for fire and emergency medical protection means the location, deployment, and response time of fire suppression or medical resources originally dispatched to a structural or wildland fire or emergency medical incident.

(a-1) A board is considered to have approved a disannexation of territory under Subsection (a) if the board fails to provide to the municipality a resolution disapproving or approving the disannexation before the 30th day after the date the board receives the notice under Subsection (a) from the municipality.

(b) The disannexation of territory under this section does not diminish or impair the rights of the holders of any outstanding and

unpaid bonds, warrants, or other obligations of the district including loans and lease-purchase agreements.

(c) If a municipality removes territory from a district that the municipality has annexed, the municipality shall compensate the district immediately after disannexation of the territory under Subsection (a) in an amount equal to the annexed territory's pro rata share of the district's bonded and other indebtedness as computed according to the formula in Subsection (e) or (e-1), whichever yields the greater amount. The district shall apply compensation received from a municipality under this subsection exclusively to the payment of the annexed territory's pro rata share of the district's bonded and other indebtedness.

(d) On the district's request, a municipality shall purchase from the district at fair market value any real or personal property used to provide emergency services in territory disannexed under this section.

(e) Unless Subsection (e-1) would yield a greater amount, the amount of compensation under Subsection (c) shall be determined by multiplying the district's total indebtedness at the time of the annexation by a fraction the numerator of which is the assessed value of the property to be annexed based on the most recent certified county property tax rolls at the time of annexation and the denominator of which is the total assessed value of the property of the district based on the most recent certified county property tax rolls at the time of annexation.

(e-1) Unless Subsection (e) would yield a greater amount, the amount of compensation under Subsection (c) shall be determined by multiplying the district's total indebtedness at the time of the annexation by a fraction:

(1) the numerator of which is the assessed value of the property to be annexed based on the most recent certified county property tax rolls at the time of annexation plus the total amount of the district's sales and use tax revenue collected by retailers located in the property to be annexed in the 12 months preceding the date of annexation, as reported by the comptroller; and

(2) the denominator of which is the total assessed value of the property of the district based on the most recent certified county property tax rolls at the time of annexation plus the total amount of the district's sales and use tax revenue collected by retailers located in the district in the 12 months preceding the date

of annexation, as reported by the comptroller.

(f) For purposes of this section, total indebtedness includes loans and lease-purchase agreements but does not include:

(1) a loan or lease-purchase agreement the district enters into after the district receives notice of the municipality's intent to annex district territory; or

(2) any indebtedness attributed to any real or personal property that the district requires a municipality to purchase under Subsection (d).

(g) The amount of compensation under Subsection (c) shall be determined under Subsection (e) regardless of whether Subsection (e-1) would yield a greater amount if:

(1) the municipality has a population of more than one million and the majority of the territory inside the municipality's corporate boundaries is located inside a county with a population of less than 2.1 million; and

(2) the municipality and the district enter into an agreement on or before September 1, 2019, regarding the district's bonded and other indebtedness.

Added by Acts 1991, 72nd Leg., ch. 620, Sec. 1, eff. June 16, 1991. Amended by Acts 1997, 75th Leg., ch. 392, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 496, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 235, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 907, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1363 (S.B. 1596), Sec. 1, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 618 (S.B. 1083), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 6, eff. March 1, 2024.

Acts 2025, 89th Leg., R.S., Ch. 1036 (S.B. 2965), Sec. 1, eff. September 1, 2025.

Sec. 775.0221. ARBITRATION REGARDING REMOVED TERRITORY. (a) The municipality and the district shall negotiate an agreement on the amount of compensation required under Section 775.022. If the

municipality and the district cannot reach an agreement, the municipality and the district shall resolve the dispute using binding arbitration.

(a-1) If the governing body of a municipality adopts a resolution under Section 775.022 disputing the determination of the board of a district that municipal services will not meet or exceed the level of service provided by the district and requesting arbitration, the municipality and the district shall resolve the dispute using binding arbitration.

(b) A request for binding arbitration must be in writing and may not be made before the 60th day after the date the municipality receives, as applicable:

(1) a resolution from the district under Section 775.022 determining that municipal services will not meet or exceed the level of service provided by the district; or

(2) notice from the district regarding the amount of compensation required under Section 775.022.

(c) The municipality and the district must agree on the arbitrator. If the parties cannot agree on the appointment of an arbitrator before the 11th business day after the date arbitration is requested, the mayor of the municipality shall immediately request a list of seven neutral arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service or their successors in function. An arbitrator included in the list must be a resident of this state and may not be a resident of a county in which any part of the municipality or any part of the district is located. The municipality and the district must agree on the appointment of an arbitrator included in the list. If the municipality and the district cannot agree on the arbitrator before the 11th business day after the date the list is provided to the parties, each party or the party's designee may alternately strike a name from the list. The remaining person on the list shall be appointed as the arbitrator. In this subsection, "business day" means a day other than a Saturday, Sunday, or state or national holiday.

(d) The arbitrator shall:

(1) set a hearing to be held not later than the 10th day after the date the arbitrator is appointed; and

(2) notify the parties to the arbitration in writing of the time and place of the hearing not later than the eighth day before

the date of the hearing.

(e) The arbitrator may:

(1) receive in evidence any documentary evidence or other information the arbitrator considers relevant;

(2) administer oaths; and

(3) issue subpoenas to require:

(A) the attendance and testimony of witnesses; and

(B) the production of books, records, and other evidence relevant to an issue presented to the arbitrator for determination.

(f) Unless the parties to the dispute agree otherwise, the arbitrator shall complete the hearing within two consecutive days. The arbitrator shall permit each party one day to present evidence and other information. The arbitrator, for good cause shown, may schedule an additional hearing to be held not later than the seventh day after the date of the first hearing. Unless otherwise agreed to by the parties, the arbitrator must issue a decision in writing and deliver a copy of the decision to the parties not later than the 14th day after the date of the final hearing.

(g) The municipality and the district shall share the cost of arbitration.

Added by Acts 2003, 78th Leg., ch. 235, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 907, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 1036 (S.B. 2965), Sec. 2, eff. September 1, 2025.

Sec. 775.0235. REMOVAL OF CERTAIN TERRITORY ON REQUEST OF MUNICIPALITY. (a) The board shall remove territory from a district as provided by this section, on request of a municipality, if the territory:

(1) was included in the corporate limits of the municipality at the time the territory was first included in the district;

(2) is included in any part of a district that is composed of two or more territories that are not contiguous to each other; and

(3) is surrounded on at least three sides by territory

inside the municipal boundaries of a municipality with a population of 400,000 or more.

(b) The board shall, on request of the municipality, immediately disannex the territory from the district and shall cease to provide further services to the residents of that territory.

(c) On request by the municipality, in connection with a disannexation under Subsection (b), the board shall immediately disannex all territory in the district that is included in the municipality's extraterritorial jurisdiction and shall cease to provide further services to the residents of such additional territory.

(d) The disannexation of territory under this section does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other obligations of the district.

(e) If territory is disannexed under this section, the municipality shall compensate the district in an amount equal to the disannexed territory's pro rata share of the district's indebtedness at the time the territory is disannexed. The district shall apply compensation received from a municipality under this subsection exclusively to the payment of the disannexed territory's pro rata share of the district's indebtedness.

(f) On the district's request, a municipality shall purchase from the district at fair market value any real or personal property used to provide emergency services in territory disannexed under this section. If any part of the indebtedness for which the district receives compensation under Subsection (e) was for the purchase of the real or personal property that the municipality purchases under this subsection, the fair market value of that property for the purpose of this subsection is reduced by a percentage equal to the disannexed territory's pro rata share under Subsection (e).

Added by Acts 1999, 76th Leg., ch. 475, Sec. 1, eff. Sept. 1, 1999.

Sec. 775.024. CONSOLIDATION OF EMERGENCY SERVICES DISTRICTS. (a) Two or more emergency services districts may consolidate into a single emergency services district as provided by this section. Before consolidating, the board of each district must:

(1) determine that consolidation would allow the districts to provide services more economically and efficiently; and

(2) adopt a joint order of consolidation that includes:

(A) the name and proposed territory of the consolidated district;

(B) the proposed date on which the existing districts dissolve and the consolidated district is created and will start offering services;

(C) if the maximum ad valorem tax rates in the districts are different, a statement that the districts will consolidate only if voters approve an equalized ad valorem tax rate at the election required by Section 775.0241; and

(D) a statement that the district will be consolidated only if the residents of the district and the residents of at least one other district approve the consolidation in an election held for that purpose.

(b) The boards shall agree on a name for the proposed consolidated district and choose five commissioners from among the membership of the boards to serve on the initial board for the proposed district. The boards shall agree to stagger the terms appropriately.

(c) If the boards do not make the appointments before the 31st day after the date the boards adopted the joint order:

(1) for a consolidated district to which Section 775.0345 or 775.035 does not apply, the commissioners court shall appoint five commissioners to the board of the consolidated district; or

(2) for a consolidated district to which Section 775.0345 or 775.035 does apply, the board of the consolidated district is initially composed of the two commissioners from each existing board who have served the longest terms.

(c-1) The number of initial emergency services commissioners on a board described by Subsection (c)(2) is not required to be five.

(d) The ballot for the election to approve a consolidation shall be printed to permit voting for or against the proposition: "The consolidation of the _____ (insert district names) to create the _____ (insert name of proposed district), which assumes all outstanding debts of the existing districts." The ballot shall include a proposition for an election required under Section 775.0241, if applicable.

(e) If a majority of the voters voting in at least two of the districts proposed to be consolidated favor the consolidation, the consolidated district is created and is composed of the districts

that favored the consolidation. If less than a majority of the voters voting in any of the districts are in favor of the consolidation, that district is not part of any consolidated district.

(f) The consolidated district is created on the latest of:

(1) the date stated in the joint order;

(2) the date the consolidation is approved in an election described by Subsection (d); or

(3) the date the maximum ad valorem tax rate the consolidated district may impose under Section 775.0241 is established, if necessary.

(g) The consolidated district assumes all powers, rights, duties, assets, and liabilities of the former districts without a change in status. The consolidation does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or obligations of the district.

(h) For a consolidated district to which Section 775.0345 or 775.035 applies, the initial commissioners of the consolidated district serve until the next available uniform election date after the date the joint order is adopted and that allows sufficient time to comply with other requirements of law. After an election is held under Section 775.0345 or 775.035:

(1) the two commissioners who receive the fewest votes of the elected commissioners serve terms ending on December 31 of the second year following the year in which the election is held; and

(2) the remaining elected commissioners serve terms ending on December 31 of the fourth year following the year in which the election is held.

Added by Acts 2005, 79th Leg., Ch. 1101 (H.B. 2235), Sec. 1, eff. June 18, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 3, eff. June 17, 2011.

Sec. 775.0241. TAXES FOR CONSOLIDATED DISTRICT. (a) If two districts that want to consolidate under Section 775.024 have different maximum ad valorem tax rates, the board of the district with the lower maximum ad valorem tax rate shall order an election in

its district under Section 775.0745 to authorize the imposition of taxes in the territory of that district at a maximum rate that equals the maximum rate authorized in the district with the higher maximum rate.

(b) If a majority of the voters do not favor the increase in the maximum ad valorem tax rate under Subsection (a), the districts may not proceed with the consolidation.

(c) If the districts have different sales and use tax rates, the board of the consolidated district shall:

(1) designate the territory of the former districts as subdistricts;

(2) continue to impose the sales and use tax in each subdistrict at the rate the tax was imposed by the former district; and

(3) send to the comptroller by registered or certified mail:

(A) a copy of the joint order described by Section 775.024(a)(2); and

(B) a map of the consolidated district that clearly shows the territory of each subdistrict.

(d) Subsection (c) does not limit the authority of the board of the consolidated district to order an election under Section 775.0752 in a subdistrict or in the entire district.

Added by Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 4, eff. June 17, 2011.

Sec. 775.025. EXCLUSION OF CERTAIN TERRITORY SUBJECT TO ASSESSMENTS. (a) The board shall hold a hearing to consider the exclusion from the district of territory in a planned community if the board receives a petition requesting a hearing on the issue that is signed by at least five percent of the qualified voters residing in the territory proposed to be excluded from the district. A petition submitted under this subsection must describe the boundaries of the territory to be excluded from the district.

(b) The board shall give notice of a hearing under this section. The procedure under Section 775.015 for issuing notice of a hearing to create the district applies to the notice under this section. The notice must state:

(1) the boundaries of the territory proposed to be excluded;

(2) the time and place of the hearing; and

(3) that each person who has an interest in the exclusion or nonexclusion of the territory may attend the hearing and present the person's opinion for or against the exclusion of the territory.

(c) After the hearing, if the board finds that the entity responsible for administering and collecting the ad valorem or annual variable budget based assessments in the territory to be excluded provides or contracts for the provision of substantially the same services as provided by the district, the board shall:

(1) order an election on the question of exclusion; or

(2) declare by resolution the territory excluded from the district.

(d) The board may not exclude territory by resolution if at least three percent of the qualified voters residing in the territory to be excluded from the district protest the exclusion in writing at the hearing.

(e) In a resolution excluding territory, the board shall describe the new boundaries of the district.

(f) The board shall order an election in the territory proposed to be excluded on the question of exclusion if:

(1) at least three percent of the qualified voters residing in the territory to be excluded protest the exclusion in writing at the hearing; or

(2) the board:

(A) despite the lack of a sufficient protest, refuses to exclude the territory; and

(B) not later than the 90th day after refusing to exclude the territory, receives a petition requesting an election that is signed by at least 10 percent of the qualified voters residing in the territory proposed to be excluded.

(g) Except as otherwise provided by the Election Code, the provisions of this chapter relating to the election creating the district apply to the election notice, the manner and time of giving the notice, and the manner of holding the election under this section.

(h) For purposes of the election, the order calling the election shall divide the territory proposed to be excluded from the district into one or more precincts.

(i) If a majority of the votes in an election favor excluding the territory from the district, the board shall enter an order declaring the territory excluded from the district and describing the new boundaries of the district.

(j) The board shall file a copy of a resolution or order with the county clerk of each county in which the district is located. Each county clerk shall record the resolution or order. After the resolution or order is recorded, the excluded territory is no longer part of the district.

(k) If a majority of the votes in the election are against excluding the territory, the board may not act on a petition to exclude all or any part of the territory before the first anniversary of the date of the most recent election to exclude the territory.

(l) The exclusion of territory under this section does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other district obligations. The district shall continue to impose taxes each year on the excluded territory at the same rate imposed on other territory in the district until the total amount of taxes collected from the excluded territory equals its pro rata share of the indebtedness of the district at the time the territory was excluded. The taxes collected under this subsection shall be applied only to the payment of the excluded territory's pro rata share of indebtedness. The owner of all or part of the excluded territory at any time may pay in full the owner's share of the excluded territory's pro rata share of the district's indebtedness at the time the territory was excluded.

(m) On or after the date on which the appropriate county clerk records the resolution or order excluding the territory from the district, the district or a fire department or ambulance service that contracts with the district is not required to provide to the excluded territory emergency service facilities, emergency services, or other services to protect the life and health of residents in the territory.

(n) For purposes of Subsection (o)(1), land ownership that is separated only by the claim of title by the state to the beds and banks of rivers or streams is considered contiguous. Land ownership that is separated by a farm-to-market road right-of-way, whether fee simple ownership or an easement, is not considered contiguous.

(o) In this section:

(1) "Planned community" means a planned community of 15,000

or more acres of land originally established under the Urban Growth and New Community Development Act of 1970 (42 U.S.C. Section 4501 et seq.) that is:

(A) located in a county adjacent to a county with a population of 2,800,000 or more according to the most recent federal census; and

(B) subject to restrictive covenants containing ad valorem or annual variable budget based assessments on real property for use in part to finance services of the same general type provided by the district.

(2) "Territory in a planned community" means territory that:

(A) on the effective date of this section comprises all or part of a planned community; or

(B) on the effective date of this section is contiguous to a planned community and later becomes part of that planned community.

Added by Acts 1997, 75th Leg., ch. 1424, Sec. 1, eff. June 20, 1997. Amended by:

Acts 2005, 79th Leg., Ch. 3 (S.B. 267), Sec. 1, eff. April 22, 2005.

Acts 2005, 79th Leg., Ch. 3 (S.B. 267), Sec. 2, eff. April 22, 2005.

Acts 2005, 79th Leg., Ch. 3 (S.B. 267), Sec. 3, eff. April 22, 2005.

Sec. 775.026. CONVERSION OF RURAL FIRE PREVENTION DISTRICTS TO EMERGENCY SERVICES DISTRICTS. (a) Each rural fire prevention district created under former Chapter 794 is converted to an emergency services district operating under this chapter.

(b) The name of a district converted under this section is changed to "___ Emergency Services District No. ___," with the name of the county or counties in which the district is located and an appropriate number inserted to distinguish one district from another district.

(c) The emergency services district to which a rural fire prevention district converts assumes all obligations and outstanding indebtedness of the rural fire prevention district.

(d) A fire commissioner of a rural fire prevention district is an emergency services commissioner of the converted district on conversion of the district under this section and shall serve until the term for which the commissioner was appointed or elected expires.

Added by Acts 2003, 78th Leg., ch. 1204, Sec. 1.003, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 383 (S.B. 1435), Sec. 1, eff. September 1, 2005.

SUBCHAPTER C. ORGANIZATION, POWERS, AND DUTIES

Sec. 775.031. DISTRICT POWERS. (a) A district is a political subdivision of the state. To perform the functions of the district and to provide emergency services, a district may:

(1) acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or an interest in property;

(2) enter into and perform necessary contracts;

(3) appoint and employ necessary officers, agents, and employees;

(4) sue and be sued;

(5) impose and collect taxes as prescribed by this chapter;

(6) accept and receive donations;

(7) lease, own, maintain, operate, and provide emergency services vehicles and other necessary or proper apparatus, instrumentalities, equipment, and machinery to provide emergency services;

(8) construct, lease, own, and maintain real property, improvements, and fixtures necessary to house, repair, and maintain emergency services vehicles and equipment;

(9) contract with other entities, including other districts or municipalities, to make emergency services facilities and emergency services available to the district;

(10) contract with other entities, including other districts or municipalities, for reciprocal operation of services and facilities if the contracting parties find that reciprocal operation would be mutually beneficial and not detrimental to the district;

(11) borrow money; and

(12) perform other acts necessary to carry out the intent

of this chapter.

(b) A district located wholly within a county with a population of more than 3.3 million may not provide fire prevention or fire-fighting services unless the district:

(1) was originally a rural fire prevention district and was converted to an emergency services district under this chapter or former Section 794.100; or

(2) is created after September 1, 2003.

(b-1) A district that was formerly a rural fire prevention district that is not otherwise prohibited by statute from providing fire prevention or fire-fighting services may provide those services.

(c) A district may contract with the state or a political subdivision for law enforcement services or for enforcement of the district's fire code. A district may commission a peace officer or employ a person who holds a permanent peace officer license issued under Section 1701.307, Occupations Code, as a peace officer.

(d) A district is not required to perform all the functions authorized by this chapter. A district may be created to provide limited services.

(e) Repealed by Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 7(3), eff. March 1, 2024.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 272, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 392, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 496, Sec. 5, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 272, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 886, Sec. 7, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 235, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1204, Sec. 1.004, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 55, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 791 (S.B. 1425), Sec. 1, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 7(3), eff. March 1, 2024.

Sec. 775.0315. LEGAL REPRESENTATION. (a) This section applies only to a district located wholly in a county with a population of 2.1 million or more in which two or more cities with a population of 350,000 or more are located.

(b) A district may employ or contract with private legal counsel to represent the district on any legal matter. If the district does not employ or contract with private legal counsel on a legal matter, the county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters shall represent the district.

(c) A district that receives legal services from a county attorney, district attorney, or criminal district attorney may employ additional private legal counsel on the board's determination that additional counsel is advisable. A district that contracts or employs private legal counsel under Subsection (b) may request and receive additional legal services from the county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters on the board's determination that additional counsel is necessary.

(d) If the district receives legal services from a county attorney, district attorney, or criminal district attorney, the district shall contribute money to be credited to the county's general fund account for the county attorney, district attorney, or criminal district attorney, as appropriate, in amounts sufficient to pay all additional salaries and expenses incurred by that officer in performing the duties required by the district.

Added by Acts 2015, 84th Leg., R.S., Ch. 402 (H.B. 2038), Sec. 1, eff. June 10, 2015.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 108, eff. September 1, 2023.

Sec. 775.032. CERTAIN BUSINESSES NOT SUBJECT TO AD VALOREM TAX OR DISTRICT POWERS. (a) A business entity is not subject to the ad valorem tax authorized by this chapter or subject to the district's powers if the business entity:

(1) provides its own fire prevention and fire control services and owns or operates fire-fighting equipment or systems

equivalent to or better than standards developed by the National Fire Protection Association or another nationally recognized association and for which the business entity receives the appropriate approval from the Texas Industrial Emergency Services Board of the State Firemen's and Fire Marshals' Association of Texas;

(2) provides and operates its own equipped industrial ambulance with a licensed driver and provides industrial victim care by an emergency care attendant trained to provide the equivalent of ordinary basic life support, as defined by Section 773.003; and

(3) provides ordinary emergency services for the business entity, such as emergency response, as defined by 29 C.F.R. Sec. 1910.120, rescue, disaster planning, or security services, as recognized by the Texas Industrial Emergency Services Board of the State Firemen's and Fire Marshals' Association of Texas, and provides the equipment, training, and facilities necessary to safely handle emergencies and protect the business entity and its neighbors in the community.

(b) This section shall not be construed to exempt a business from a sales and use tax authorized by Section 775.0751.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 273, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 1204, Sec. 1.005, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 558 (H.B. 1267), Sec. 1, eff. September 1, 2005.

Sec. 775.033. LIABILITY OF DISTRICT. (a) A district is not liable for a claim arising from the act or omission of an employee or volunteer under an oral or written contract with the district if the act or omission:

(1) is in the course and scope of the employee's or volunteer's duties for the district;

(2) takes place during the provision of emergency services;

(3) is not in violation of a statute or ordinance applicable to emergency action; and

(4) is not wilful or wantonly negligent.

(b) This section does not expand the liability of a district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.034. APPOINTMENT OF BOARD IN DISTRICT LOCATED WHOLLY IN ONE COUNTY. (a) The commissioners court of a county in which a single-county district is located shall appoint a five-member board of emergency services commissioners to serve as the district's governing body. To serve as a member of the board a person must be:

(1) at least 18 years of age; and

(2) a resident citizen of the state and:

(A) a qualified voter within areas served by the district; or

(B) the owner of land subject to taxation in the district.

(b) Except as prescribed by Subsection (c), commissioners serve two-year terms.

(c) After the votes are canvassed and the commissioners court enters the order creating the district, the commissioners court shall appoint the initial emergency services commissioners to serve until January 1 of the year following the district election. On January 1, the court shall designate three of those emergency services commissioners to serve a two-year term and two of those emergency services commissioners to serve a one-year term.

(d) On January 1 of each year, the commissioners court shall appoint a successor for each emergency services commissioner whose term has expired.

(e) The commissioners court shall fill a vacancy on the board for the remainder of the unexpired term.

(f) A member of the board who, because of municipal annexation, is no longer a qualified voter of an area served by the district or no longer owns land subject to taxation by the district may continue to serve until the expiration of the member's term.

(g) The commissioners court shall consider relevant factors in determining the individuals to appoint as emergency services commissioners, including whether the individuals have knowledge that relates to fire prevention or emergency medical services and that is relevant to the common policies and practices of the board.

(h) This section does not apply to a district located wholly in a county:

(1) with a population of more than three million;

(2) with a population of more than 200,000 that borders Lake Palestine; or

(3) with a population of less than 200,000 that borders another state and the Gulf Intracoastal Waterway.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 496, Sec. 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 272, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 235, Sec. 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 1, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. 1265), Sec. 1, eff. September 1, 2013.

Sec. 775.0341. APPOINTMENT OF BOARD IN CERTAIN DISTRICTS LOCATED IN MORE THAN ONE COUNTY. (a) This section applies only to a district that was authorized to have a board of emergency services commissioners appointed under former Section 776.0345 and that is located:

(1) partly in a county with a population of less than 22,000; and

(2) partly in a county with a population of more than 54,000.

(b) A five-member board of emergency services commissioners appointed under this section serves as the district's governing body. A commissioner serves a two-year term.

(c) The commissioners court of the smallest county in which the district is located shall appoint two commissioners to the board. The commissioners court of the largest county in which the district is located shall appoint three commissioners to the board.

(d) To be eligible for appointment as an emergency services commissioner under this section, a person must be at least 18 years of age and reside in the district. Two commissioners must reside in the smallest county in which the district is located, and three commissioners must reside in the largest county in which the district is located.

(e) On January 1 of each year, a commissioners court shall

appoint a successor for each emergency services commissioner appointed by that commissioners court whose term has expired.

(f) The appropriate commissioners court shall fill a vacancy on the board for the remainder of the unexpired term.

Added by Acts 2017, 85th Leg., R.S., Ch. 220 (H.B. 2788), Sec. 1, eff. May 29, 2017.

Sec. 775.0345. ELECTION OF BOARD IN CERTAIN COUNTIES. (a) This section applies only to a district located wholly in a county:

(1) with a population of more than three million;

(2) with a population of more than 200,000 that borders Lake Palestine; or

(3) with a population of less than 200,000 that borders another state and the Gulf Intracoastal Waterway.

(b) The governing body of a district consists of a five-person board of emergency services commissioners elected as prescribed by this section. Except as provided by Subsections (h) and (h-1), emergency services commissioners serve four-year terms.

(b-1) Notwithstanding Subsection (b), the governing body of a district described by Subsection (a)(2) is governed by a five-member board of emergency services commissioners elected from single-member districts. One director is elected from each single-member district. As soon as possible after the district is created, the commissioners court of the county in which the district is located shall divide the district into five numbered single-member districts.

(c) After a district is created, the county judge shall establish a convenient day provided by Section 41.001, Election Code, to conduct an election to elect the initial emergency services commissioners.

(d) To be eligible to be a candidate for emergency services commissioner, a person must be at least 18 years of age and a resident of the district.

(d-1) Notwithstanding Subsection (d), to be eligible to be a candidate for emergency services commissioner in a single-member district on an initial board in a district described by Subsection (a)(2), a person must be at least 18 years of age and a resident of that single-member district.

(e) A candidate for emergency services commissioner on an

initial board must give the voter registrar of the county a sworn notice of the candidate's intention to run for office. The notice must state the person's name, age, and address and state that the person is serving notice of intent to run for emergency services commissioner. If the person intends to run for emergency services commissioner in a single-member district in a district described by Subsection (a)(2), the notice must also specify the single-member district the person seeks to represent. On receipt of the notice, the voter registrar of the county shall have the candidate's name placed on the ballot.

(f) The voter registrar of the county shall appoint an election judge to certify the results of the election.

(g) After the election is held, the voter registrar or deputy registrar of the county shall prepare a sworn statement of the election costs incurred by the county. The statement shall be given to the newly elected board, which shall order the appropriate official to reimburse the county for the county's election costs.

(h) The initial emergency services commissioners' terms of office begin 30 days after canvassing of the election results. The two commissioners who received the fewest votes serve a term that expires on December 31 of the second year following the year in which the election was held. The other emergency services commissioners serve terms that expire on December 31 of the fourth year following the year in which the election was held.

(h-1) Notwithstanding Subsection (h), the five initial emergency services commissioners elected from single-member districts in a district described by Subsection (a)(2) shall draw lots to determine which two commissioners serve terms that expire on December 31 of the second year following the year in which the election was held and which three commissioners serve terms that expire on December 31 of the fourth year following the year in which the election was held.

(i) The board shall hold the general election for commissioner every two years on an authorized uniform election date as provided by Chapter 41, Election Code. The board may change the election date from one authorized election date to another authorized election date and shall adjust the terms of office to conform to the new election date.

(j) Subchapter C, Chapter 146, Election Code, applies to a write-in candidate for emergency services commissioner under this

section in the same manner it applies to a write-in candidate for a city office under that subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 2, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 454 (H.B. 2529), Sec. 1, eff. January 1, 2010.
Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. 1265), Sec. 2, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. 1265), Sec. 3, eff. September 1, 2013.
Acts 2021, 87th Leg., R.S., Ch. 72 (H.B. 2494), Sec. 1, eff. September 1, 2021.

Sec. 775.035. ELECTION OF BOARD IN DISTRICT LOCATED IN MORE THAN ONE COUNTY. (a) The governing body of a district located in more than one county consists of a five-person board of emergency services commissioners elected as prescribed by this section. Except as provided by Subsection (g), emergency services commissioners serve four-year terms.

(b) After a district located in more than one county is created, the county judges of each county in the district shall mutually establish a convenient day provided by Section 41.001, Election Code, to conduct an election to elect the initial emergency services commissioners.

(c) To be eligible to be a candidate for emergency services commissioner of a district located in more than one county, a person must be at least 18 years of age and a resident of the district.

(d) A candidate for emergency services commissioner must give the county clerk of each county in the district a sworn notice of the candidate's intention to run for office. The notice must state the person's name, age, and address and state that the person is serving notice of intent to run for emergency services commissioner. On receipt of the notice, the county clerk shall have the candidate's name placed on the ballot.

(e) The county clerks of each county in the district shall jointly appoint an election judge to certify the results of the election.

(f) After the election is held, the county clerk of each county or the clerk's deputy shall prepare a sworn statement of the election costs incurred by the county. The statement shall be given to the newly elected board, which shall order the appropriate official to reimburse each county for the county's election costs.

(g) The initial emergency services commissioners' terms of office begin 30 days after canvassing of the election results. The two commissioners who received the fewest votes serve a term that expires on December 31 of the second year following the year in which the election was held. The other emergency services commissioners serve terms that expire on December 31 of the fourth year following the year in which the election was held.

(h) The general election for commissioner shall be held every two years on an authorized uniform election date as provided by Chapter 41, Election Code. The board may change the election date from one authorized election date to another authorized election date and shall adjust the terms of office to conform to the new election date.

(i) Subchapter C, Chapter 146, Election Code, applies to a write-in candidate for emergency services commissioner under this section in the same manner it applies to a write-in candidate for a city office under that subchapter.

(j) This section does not apply to a district described by Section 775.0341.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 496, Sec. 7, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 272, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 384 (S.B. 1437), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 454 (H.B. 2529), Sec. 2, eff. January 1, 2010.

Acts 2017, 85th Leg., R.S., Ch. 220 (H.B. 2788), Sec. 2, eff. May 29, 2017.

Sec. 775.0355. DISQUALIFICATION OF EMERGENCY SERVICES COMMISSIONERS IN CERTAIN COUNTIES. (a) In this section, "emergency services organization" means:

(1) a volunteer fire department;

(2) a career or combination fire department;

(3) a municipal fire department;

(4) an emergency medical services organization under the jurisdiction of the Department of State Health Services;

(5) any other agency under the jurisdiction of the state fire marshal's office; or

(6) any other organization or corporation that governs an emergency services organization.

(b) This section applies only to a district located wholly in a county:

(1) with a population of more than three million;

(2) with a population of more than 200,000 that borders Lake Palestine; or

(3) with a population of less than 200,000 that borders another state and the Gulf Intracoastal Waterway.

(c) A person is disqualified from serving as an emergency services commissioner if that person:

(1) is related within the third degree of affinity or consanguinity to:

(A) a person providing professional services to the district;

(B) a commissioner of the same district; or

(C) a person who is an employee or volunteer of an emergency services organization providing emergency services to the district;

(2) is an employee of a commissioner of the same district, attorney, or other person providing professional services to the district;

(3) is serving as an attorney, consultant, or architect or in some other professional capacity for the district or an emergency services organization providing emergency services to the district; or

(4) fails to maintain the qualifications required by law to serve as a commissioner.

(d) Any rights obtained by a third party through official action of a board covered by this section are not impaired or affected by the disqualification under this section of an emergency services commissioner to serve, provided that the third party had no knowledge, at the time the rights were obtained, of the fact that the

commissioner was disqualified to serve.

Added by Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 3, eff. September 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. 1265), Sec. 4, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. 1265), Sec. 5, eff. September 1, 2013.

Sec. 775.036. POWERS AND DUTIES OF BOARD. (a) The board shall:

(1) hold regular monthly meetings and other meetings as necessary;

(2) keep minutes and records of its acts and proceedings;

(3) give reports required by the state fire marshal, commissioner of health, and other authorized persons;

(4) on a written request from the commissioners court of a county in which the district is located received on or before December 31, give a written report not later than February 1 of the following year to the commissioners court regarding the district's budget, tax rate, and debt service for the preceding fiscal year; and

(5) administer the district in accordance with this chapter.

(b) The board may adopt and enforce a fire code, including fines for any violations, that does not conflict with a fire code adopted by any county that also contains within its boundaries any portion of the land contained in the district and may require inspections in the district relating to the causes and prevention of fires and medical emergencies, except as provided by Section 775.031(b). The fire code must be similar to standards adopted by a nationally recognized standards-making association. The board may not enforce the district's fire code within the boundaries of a municipality that has adopted a fire code, except for an area that has been annexed only for limited purposes in which the municipality does not enforce a fire code. The board of a district located wholly within a county with a population of three million or more may not adopt a fire code or a fine for a violation of the district's fire code unless the commissioners court of the county consents to the

adoption of the code or fine.

(b-1) If a county that contains within its boundaries any portion of the land contained in the district adopts a fire code after the district adopts a code under Subsection (b), the board may continue to enforce its fire code in the area subject to the county fire code. To the extent of any conflict between the county's code and the district's code, the more stringent provision prevails.

(c) The board may promote educational programs it considers proper to help carry out the purposes of this chapter.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 308, Sec. 4, eff. June 19, 2009.

(e) Chapter 551, Government Code, does not apply to a meeting of a committee:

(1) of the board if less than a board quorum attends; or

(2) composed of representatives of more than one board, if less than a quorum of any of the boards attends.

(f) Each January, the board shall publish the street address of the district's administrative office in eight-point type in the legal notices section of a newspaper of general circulation in the district. In a district's first year of operation, the board shall publish the notice not later than the 60th day after the date the initial board is appointed.

(g) The board may commission a peace officer or employ a person who holds a permanent peace officer license issued under Section 1701.307, Occupations Code, to inspect for fire hazards any structure, appurtenance, fixture, or other real property located in the district. The board may adopt procedures to order the owner or occupant of the property that fails an inspection to correct the hazardous situation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 274, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 195, Sec. 1, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 282, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 496, Sec. 8, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 272, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 235, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 5, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 308 (H.B. 527), Sec. 1, eff. June

19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 308 (H.B. 527), Sec. 4, eff. June 19, 2009.

Sec. 775.0362. LIMIT ON REGULATION OF FIREWORKS. Except as provided by Section 775.0363, the district may not regulate the sale, use, or transportation of fireworks.

Added by Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 5, eff. June 17, 2011.

Sec. 775.0363. REGULATION OF FIREWORKS. The district may adopt a rule relating to fireworks that is the same as or less stringent than a rule adopted or enforced by the commissioner of insurance and the state fire marshal under Chapter 2154, Occupations Code, relating to retail fireworks stands, fireworks bulk manufacturing and storage facilities, fireworks sales buildings, or any other structure used in public pyrotechnic displays to which the rules adopted under Chapter 2154, Occupations Code, apply.

Added by Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 5, eff. June 17, 2011.

Sec. 775.0365. BOARD TRAINING. (a) An emergency services commissioner shall complete at least six hours of continuing education relating to the performance of the duties of an emergency services commissioner at least once in a two-year period.

(b) Continuing education instruction required by Subsection (a) must be certified by an institution of higher education as defined by Section 61.003, Education Code.

(c) For purposes of Subsection (a), an emergency services commissioner may carry forward from one two-year period to the next two-year period not more than three continuing education hours that the commissioner completes in excess of the required six hours.

(d) For purposes of removal under Section 775.0422 or 775.0423, "incompetency" includes the failure of an emergency services commissioner to comply with Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 6, eff. June 17, 2011.

Sec. 775.0366. SERVICE CONTRACTS. (a) In this section, "local government" has the meaning assigned by Section 791.003, Government Code.

(b) The board may contract with a local government, including another district, to provide staff, facilities, equipment, programs, or services the board considers necessary to provide or obtain emergency services that the district or the local government is authorized to provide.

(c) A person acting under a contract under this section, including an emergency services commissioner, does not, because of that action, hold more than one civil office of emolument or more than one office of honor, trust, or profit.

(d) Except as provided by Subsection (e), if a district contracts with a local government under this section to provide or obtain emergency services, the district is responsible for any civil liability that arises from furnishing those services if the district would have been responsible for furnishing the services in the absence of the contract.

(e) The parties to a contract between governmental entities under this section may agree to assign responsibility for civil liability that arises from services provided under the contract in any manner agreed to by the parties. The parties must assign that responsibility in a written provision of the contract that specifically refers to this subsection and states that the assignment of liability is intended to be different from liability otherwise assigned under Subsection (d).

(f) This section does not change the liability limits and immunities for a governmental unit under Chapter 101, Civil Practice and Remedies Code, or other law.

(g) A contract under this section is not a joint enterprise for liability purposes.

Added by Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 6, eff. June 17, 2011.

Sec. 775.037. OFFICERS OF BOARD. (a) The emergency services commissioners shall elect from among their members a president, vice-president, secretary, treasurer, and assistant treasurer to perform the duties usually required of the respective offices. The office of secretary and treasurer may be combined.

(b) The treasurer must execute and file with the county clerk a bond conditioned on the faithful execution of the treasurer's duties. The treasurer of a district located in more than one county shall file the bond with the county clerk of the county with the largest population in the district. The county judge of the county in which the bond is to be filed must determine the amount and sufficiency of the bond before it is filed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.038. COMPENSATION; CONFLICT OF INTEREST. (a) Repealed by Acts 2017, 85th Leg., R.S., Ch. 219 (H.B. 2504), Sec. 2, eff. September 1, 2017.

(a-1) A commissioner of a district is entitled to receive compensation in the same manner and amount as are provided by Section 49.060, Water Code.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 219 (H.B. 2504), Sec. 2, eff. September 1, 2017.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 219 (H.B. 2504), Sec. 2, eff. September 1, 2017.

(d) Commissioners are subject to Chapter 171, Local Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 392, Sec. 3, eff. Sept. 1, 1997. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 219 (H.B. 2504), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 219 (H.B. 2504), Sec. 2, eff. September 1, 2017.

Sec. 775.039. DIFFERENTIAL PAY AND BENEFITS FOR EMPLOYEES OF EMERGENCY SERVICES DISTRICTS. (a) A board may provide differential pay to a district employee who is a member of the state military

forces or a reserve component of the United States armed forces who is called to active duty if:

(1) the board adopts a policy providing for differential pay for all similarly situated employees; and

(2) the employee's military pay is less than the employee's gross pay from the district.

(b) The combination of differential pay and military pay may not exceed the employee's actual gross pay from the district.

(c) For purposes of this section, military pay does not include money the employee receives:

(1) for service in a combat zone;

(2) as hardship pay; or

(3) for being separated from the employee's family.

(d) The differential pay provided by Subsection (a) begins when the benefits allowed under Section 437.202, Government Code, are exhausted and continues until the employee's active military duty terminates.

(e) The board may extend the insurance benefits provided by the district to a district employee who is a member of the state military forces or a reserve component of the United States armed forces who is called to active duty and to the employee's dependents. The extension period begins when the benefits allowed under Section 437.202, Government Code, are exhausted and continues until the employee's active military duty terminates.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1097 (S.B. 1477), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.12, eff. September 1, 2013.

Sec. 775.040. FEES FOR PROVIDING SERVICES. A district, or a person authorized by contract on the district's behalf, may charge a reasonable fee for emergency services performed for or on behalf of a person or entity, including a fee for responding to a false alarm or for a fire code inspection.

Added by Acts 1997, 75th Leg., ch. 392, Sec. 4, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 496, Sec. 9, eff. Sept. 1, 1999.

Sec. 775.041. FEE PAYMENT AND COLLECTION. (a) A fee imposed by a district under Section 775.040 must be paid within a reasonable amount of time as established by the district.

(b) If the fee has not been paid in the amount of time established by the district, the district may collect the fee by filing a complaint in the appropriate court of jurisdiction in the county in which the district's principal office or meeting place is located.

(c) If the district prevails in any suit to collect the fee, it may, in the same action, recover reasonable fees for attorneys, expert witnesses, and other costs incurred by the district in the suit. The court shall determine the amount of the attorney's fees.

Added by Acts 1999, 76th Leg., ch. 496, Sec. 10, eff. Sept. 1, 1999.

Sec. 775.042. REMOVAL OF BOARD MEMBER BY BOARD. (a) A board may remove a member if:

(1) the member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board; and

(2) the other members of the board unanimously vote to remove that member.

(b) Not later than the 30th day after the date of a vote to remove a member under Subsection (a), that member may file a written appeal for reinstatement to the commissioners court of the county in which a single-county district is located or, if the district is located in more than one county, the commissioners court of the county where the member resides. The court may reinstate the member if it finds the removal unwarranted after considering:

(1) a reason for an absence;

(2) the time and place of a missed meeting;

(3) the business conducted at a missed meeting; and

(4) any other factors or circumstances the court considers relevant.

(c) The validity of a board action is not affected because it is taken when a ground for removal of a board member exists.

Added by Acts 1999, 76th Leg., ch. 496, Sec. 10, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 308 (H.B. 527), Sec. 3, eff. June 19, 2009.

Sec. 775.0422. REMOVAL OF APPOINTED BOARD MEMBER BY COMMISSIONERS COURT. (a) This section does not apply to a district unless the commissioners court of the county in which the district is located adopts this section by resolution.

(a-1) This section applies only to an appointed board member. This section does not apply to a board member who:

(1) is elected; or

(2) is appointed to fill a vacancy in an elected board member position.

(b) The commissioners court of the county in which a district is located, by an order adopted by a majority vote after a hearing, may remove a board member for:

(1) incompetency, as defined by Section 87.011, Local Government Code;

(2) official misconduct, as defined by Section 87.011, Local Government Code; or

(3) misconduct, as defined by Section 178.001, Local Government Code.

(b-1) Section 551.0745, Government Code, applies to a deliberation regarding a removal of a board member in the same manner as that section applies to a deliberation regarding a dismissal of a member of an advisory body.

(c) Not later than the 30th day before the date on which the hearing is held, a commissioners court seeking removal under this section must:

(1) notify the board members that it is considering that action; and

(2) provide the board member with an opportunity to show cause why the board member should not be removed.

(d) The validity of a board action is not affected because it is taken when a ground for removal of a board member exists.

Added by Acts 2009, 81st Leg., R.S., Ch. 308 (H.B. 527), Sec. 2, eff. June 19, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 116 (H.B. 1917), Sec. 1, eff. May

21, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 116 (H.B. 1917), Sec. 2, eff. May 21, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 7, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 8, eff. June 17, 2011.

Sec. 775.0423. REMOVAL OF ELECTED BOARD MEMBER. (a) This section applies only to a board member who:

(1) is elected; or

(2) is appointed to fill a vacancy in an elected board member position.

(b) A board member may be removed using the procedures provided by Chapter 87, Local Government Code, for:

(1) incompetency, as defined by Section 87.011, Local Government Code;

(2) official misconduct, as defined by Section 87.011, Local Government Code;

(3) intoxication, as described by Section 87.013, Local Government Code; or

(4) misconduct, as defined by Section 178.001, Local Government Code.

(c) The validity of a board action is not affected because it is taken when a ground for removal of a board member exists.

Added by Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 9, eff. June 17, 2011.

Sec. 775.043. EXEMPTION FROM INVESTMENT TRAINING. (a) Section 2256.008, Government Code, does not apply to an officer or employee of a district created under this chapter.

(b) A district may invest funds only in the authorized investments set forth under Government Code Section 2256.009 (obligations of, or guaranteed by governmental entities), 2256.010 (certificates of deposit and share certificates), or 2256.016 (investment pools), unless the treasurer, chief financial officer (if not the treasurer), and the investment officer of the district attend

and successfully complete the training requirements under Section 2256.008, Government Code.

Added by Acts 1999, 76th Leg., ch. 914, Sec. 1, eff. June 18, 1999. Renumbered from Health & Safety Code Sec. 775.041 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(80), eff. Sept. 1, 2001.

Sec. 775.044. VACANCY ON BOARD OF DISTRICT LOCATED IN MORE THAN ONE COUNTY. (a) Not later than the 90th day after a board vacancy for a district located in more than one county occurs, the remaining board members shall appoint a person to fill the unexpired term.

(b) If the board has not filled the vacancy before the 91st day after the date of the vacancy, the commissioners court of the county where the previous board member resided shall appoint a person to fill the vacancy.

(c) A person appointed under this section must be eligible to serve under Section 775.035.

Added by Acts 2005, 79th Leg., Ch. 384 (S.B. 1437), Sec. 2, eff. September 1, 2005.

Sec. 775.0445. VACANCY ON BOARD OF DISTRICT LOCATED IN CERTAIN COUNTIES. (a) In this section, "vacancy" means a vacancy in the office of director that occurs for any reason, including an office that is vacant because:

(1) a director was disqualified under Section 775.0355; or

(2) no candidate filed for election to the office.

(b) This section applies only to a district located wholly in a county:

(1) with a population of more than three million;

(2) with a population of more than 200,000 that borders Lake Palestine; or

(3) with a population of less than 200,000 that borders another state and the Gulf Intracoastal Waterway.

(c) Not later than the 90th day after a board vacancy occurs, the remaining board members shall appoint a person to fill the unexpired term.

(d) A person appointed under this section must be eligible to serve under Section 775.0345.

Added by Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 4, eff. September 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. 1265), Sec. 6, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. 1265), Sec. 7, eff. September 1, 2013.

Sec. 775.045. APPLICABILITY OF CERTAIN LAWS. (a) Except as provided by Subsection (b), notwithstanding any other law:

(1) Section 1301.551(i), Occupations Code, applies to a district as if the district were a municipality; and

(2) Section 233.062, Local Government Code, applies to a district as if the district were in an unincorporated area of a county.

(b) Subsection (a) does not apply to a district:

(1) that before February 1, 2013, has adopted a fire code, fire code amendments, or other requirements in conflict with Subsection (a); and

(2) whose territory is located:

(A) in or adjacent to a general law municipality with a population of less than 4,000 that is served by a water control and improvement district governed by Chapter 51, Water Code; and

(B) in a county that has a population of more than 1.2 million and is adjacent to a county with a population of more than 600,000.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1363 (S.B. 1596), Sec. 2, eff. September 1, 2013.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 109, eff. September 1, 2023.

SUBCHAPTER D. CHANGE IN BOUNDARIES OR DISSOLUTION OF DISTRICT

Sec. 775.051. EXPANSION OF DISTRICT TERRITORY. (a) Qualified voters who own taxable real property in a defined territory that is not included in a district may file a petition with the secretary of the board requesting the inclusion of the territory in the district.

The petition must be signed by at least 50 qualified voters who own taxable real property in the territory or a majority of those voters, whichever is less.

(b) The board by order shall set a time and place to hold a hearing on the petition to include the territory in the district. The hearing may be held not earlier than the 31st day after the date on which the board issues the order.

(c) The secretary of the board shall give notice of the hearing. The notice must contain the time and place for the hearing and a description of the territory proposed to be annexed into the district.

(d) The secretary shall:

(1) post copies of the notice in three public places in the district and one public place in the territory proposed to be annexed into the district for at least 15 days before the date of the hearing; and

(2) not later than the 16th day before the date on which the hearing will be held, publish the notice once in a newspaper of general circulation in the county.

(e) If after the hearing the board finds that annexation of the territory into the district would be feasible and would benefit the district, the board may approve the annexation by a resolution entered in its minutes. The board is not required to include all of the territory described in the petition if the board finds that a change is necessary or desirable.

(f) Annexation of territory is final when approved by a majority of the voters at an election held in the district and by a majority of the voters at a separate election held in the territory to be annexed. If the district has outstanding debts or taxes, the voters in the election to approve the annexation must also determine if the annexed territory will assume its proportion of the debts or taxes if added to the district.

(g) The election ballots shall be printed to provide for voting for or against the following, as applicable:

(1) "Adding (description of territory to be added) to the _____ Emergency Services District."

(2) "(Description of territory to be added) assuming its proportionate share of the outstanding debts and taxes of the _____ Emergency Services District, if it is added to the district."

(h) The election notice, the manner and time of giving the notice, and the manner of holding the election are governed by the other provisions of this chapter relating to those matters to the extent that those provisions can be made applicable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.052. PETITION FOR DISSOLUTION; NOTICE OF HEARING. (a) Before a district may be dissolved, the district's board must receive a petition signed by at least 10 percent of the registered voters in the district.

(b) If the petition is in proper form, the board shall set a place, date, and time for a hearing to consider the petition.

(c) The board shall give notice of the hearing. The notice must include:

(1) the name of the district;

(2) a description of the district's boundaries;

(3) the proposal that the district be dissolved; and

(4) the place, date, and time of the hearing on the petition.

(d) The notice shall be published in a newspaper of general circulation in the district once a week for two consecutive weeks. The first publication must occur not later than the 21st day before the date on which the hearing will be held.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.053. HEARING. (a) At the hearing on the petition to dissolve the district, the board shall consider the petition and each issue relating to the dissolution of the district.

(b) Any interested person may appear before the board to support or oppose the dissolution.

(c) The board shall grant or deny the petition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.054. ELECTION TO CONFIRM DISSOLUTION. (a) On the granting of a petition to dissolve the district, the board shall

order an election to confirm the district's dissolution.

(b) Notice of the election shall be given in the same manner as the notice of the petition hearing.

(c) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with the requirements of law and that occurs after the date on which the board grants the petition.

(d) The ballot shall be printed to provide for voting for or against the following: "Dissolving the _____ Emergency Services District."

(e) A copy of the tabulation of results shall be filed with the county clerk of each county in which the district is located.

(f) If a majority of those voting at the election vote to dissolve the district, the board shall proceed with dissolution. An election to create a new district in the boundaries of the old district may not be held for at least one year after dissolution.

(g) If a majority of those voting at the election vote against dissolving the district, the board may not order another election on the issue before the first anniversary of the date of the canvass of the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.055. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) After a vote to dissolve a district, the board shall continue to control and administer the property, debts, and assets of the district until all funds are disposed of and all district debts are paid or settled.

(b) The board may not dispose of the district's assets except for due compensation unless the debts are transferred to another governmental entity or agency within or embracing the district and the transfer will benefit the district's residents.

(c) After the board issues the dissolution order, the board shall:

(1) determine the debt owed by the district; and

(2) impose on the property included in the district's tax rolls a tax that is in proportion of the debt to the property value.

(d) Each taxpayer may pay the tax imposed by the district under this section at once.

(e) The board may institute a suit to enforce payment of taxes and to foreclose liens to secure the payment of taxes due the district.

(f) When all outstanding debts and obligations of the district are paid, the board shall order the secretary to return the pro rata share of all unused tax money to each district taxpayer. A taxpayer may request that the taxpayer's share of surplus tax money be credited to the taxpayer's county taxes. If a taxpayer requests the credit, the board shall direct the secretary to transmit the funds to the county tax assessor-collector.

(g) After the district pays all its debts and disposes of all its assets and funds as prescribed by this section, the board shall file a written report with the commissioners court of each county in which the district is located setting forth a summary of the board's actions in dissolving the district. Not later than the 10th day after the date it receives the report and determines that the requirements of this section have been fulfilled, the commissioners court of each county shall enter an order dissolving the district.

(h) Each emergency services commissioner is discharged from liability under the emergency services commissioner's bond on entry of the order prescribed by Subsection (g).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.056. TRANSFER OF TERRITORY BETWEEN DISTRICTS. (a) After a hearing, a district may make mutually agreeable changes in boundaries with another district, provided that the maximum tax rate authorized for such a district does not exceed the maximum tax rate previously authorized for any territory added to that district. The districts shall agree on an effective date for the changes in boundaries.

(b) The changes in boundaries under this section do not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other district obligations.

(c) A district shall compensate the district that loses territory in an amount equal to that territory's pro rata share of the losing district's bonded and other indebtedness based on the unpaid principal balances and the actual property values at the time the changes in boundaries are made. The district that loses

territory shall apply compensation received from the annexing district under this subsection exclusively to the payment of the annexed territory's pro rata share of the losing district's bonds or other debt.

Added by Acts 2001, 77th Leg., ch. 1140, Sec. 5, eff. Sept. 1, 2001. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 10, eff. June 17, 2011.

SUBCHAPTER E. FINANCES AND BONDS

Sec. 775.071. LIMITATION ON INDEBTEDNESS. (a) Except as provided by Subsection (b), a district may not contract for an amount of indebtedness in any one year that is in excess of the funds then on hand and anticipated revenues for the year.

(b) This section does not apply to Sections 775.051, 775.072, 775.076, 775.077, 775.078, and 775.085.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 496, Sec. 11, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1140, Sec. 6, eff. Sept. 1, 2001.

Sec. 775.072. DEPOSITORIES. (a) The board shall designate one or more banks to serve as depositories for district funds.

(b) The board shall deposit all district funds in a depository bank, except that the board:

(1) may deposit funds pledged to pay bonds or notes with banks named in the trust indenture or in the bond or note resolution; and

(2) shall remit funds for the payment of the principal of and interest on bonds and notes to the bank of payment.

(c) The district may not deposit funds in a depository or trustee bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation unless the excess funds are secured in the manner provided by law for the security of county funds.

(d) The resolution or trust indenture securing the bonds or notes may require that any or all of the funds must be secured by obligations of or unconditionally guaranteed by the federal

government.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.073. EXPENDITURES. (a) Except as otherwise provided by this section, district funds may be disbursed only by check, draft, order, or other instrument that:

(1) is signed by at least a majority of the board's commissioners; or

(2) is signed by the treasurer, or by the assistant treasurer if the treasurer is absent or unavailable, and countersigned by the president, or by the vice president if the president is absent or unavailable.

(b) The board by resolution may allow a district employee who has executed a bond in an amount equal to the amount required for the district treasurer to sign an instrument to disburse district funds. An expenditure of more than $50,000 may not be paid unless the expenditure is presented to the board and the board approves the expenditure.

(c) The board may authorize the disbursement of district funds transferred by federal reserve wire system. The board by resolution may authorize wire transfers to accounts in the district's name or accounts not in the district's name.

(d) Any property, including an interest in property, purchased or leased using district funds, wholly or partly, must remain the property of the district, regardless of whether the property is used by a third party under a contract for services or otherwise, until the property is disposed of in accordance with Section 775.0735.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 816, Sec. 1, eff. Aug. 28, 1995. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1107 (H.B. 3798), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 411 (H.B. 2519), Sec. 1, eff. September 1, 2015.

Acts 2025, 89th Leg., R.S., Ch. 908 (S.B. 2778), Sec. 1, eff. September 1, 2025.

Sec. 775.0735. DISPOSITION OF PROPERTY. (a) The district may dispose of property owned by the district only by:

(1) selling the property to a third party following the procedures authorized under Section 263.001, 263.007, or 263.008, Local Government Code;

(2) selling or disposing of the property following the procedures authorized under Subchapter D, Chapter 263, Local Government Code;

(3) selling or disposing of the property in accordance with Subchapter J; or

(4) selling the property using an Internet auction site.

(b) The district may contract with a private vendor to assist with the sale of the property.

(c) The district shall sell the property using the method of sale that the board determines is the most advantageous to the district under the circumstances. The board shall adopt rules establishing guidelines for making that determination.

(d) In using an Internet auction site to sell property under this section, the district shall post the property on the site for at least 10 days.

(e) The district may reject any or all bids or proposals for the purchase of the property.

Added by Acts 2015, 84th Leg., R.S., Ch. 411 (H.B. 2519), Sec. 2, eff. September 1, 2015.

Sec. 775.074. AD VALOREM TAX. (a) The board shall annually impose an ad valorem tax on all real and personal property located in the district and subject to district taxation for the district's support and the purposes authorized by this chapter.

(b) If a district issues bonds or notes that are payable wholly from ad valorem taxes, the board shall, when bonds or notes are authorized, set a tax rate that is sufficient to pay the principal of and interest on the bonds or notes as the interest and principal come due and to provide reserve funds if prescribed in the resolution authorizing, or the trust indenture securing, the bonds or notes.

(c) If a district issues bonds or notes that are payable from ad valorem taxes and from revenues, income, or receipts of the district, the board shall, when the bonds or notes are authorized,

set a tax rate that is sufficient to pay the principal of and interest on the bonds and notes and to create and maintain any reserve funds.

(d) In establishing the rate of the ad valorem tax to be collected for a year, the board shall consider the money that will be available to pay the principal of and interest on any bonds or notes issued and to create any reserve funds to the extent and in the manner permitted by the resolution authorizing, or the trust indenture securing, the bonds or notes.

(d-1) The board may not set the tax rate for a fiscal year before the date the board adopts a budget for that fiscal year.

(e) The board shall certify the ad valorem tax rate to the county tax assessor-collector, who is the assessor-collector for the district.

(f) Repealed by Acts 1999, 76th Leg. ch. 496, Sec. 14, eff. September 1, 1999.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 275, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 496, Sec. 14, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 11, eff. June 17, 2011.

Sec. 775.0745. ELECTION TO INCREASE TAX RATE. (a) If the board decides to increase the maximum tax rate of the district to any rate at or below the rate allowed by this chapter or Section 48-e, Article III, Texas Constitution, the board must order an election to authorize the increase. The proposition on the ballot must state the proposed maximum tax rate to be authorized at the election.

(b) The board shall give notice of the election as provided by Section 4.003, Election Code. The notice shall contain the information required by Section 4.004, Election Code.

(c) The election shall be held on the first uniform election date provided by the Election Code after the date of the board's order that allows sufficient time to comply with any requirements of law.

(d) If a majority of the votes cast in the election favor the

increase in the maximum tax rate, the maximum tax rate for the district is increased to the rate authorized by the election. The increase in the maximum tax rate does not apply to a tax year for which the board adopts a tax rate before the date of the election.

(e) Repealed by Acts 2005, 79th Leg., Ch. 123, Sec. 2, eff. September 1, 2005.

Added by Acts 2001, 77th Leg., ch. 1140, Sec. 3, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1204, Sec. 1.007, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 123 (S.B. 1621), Sec. 2, eff. September 1, 2005.

Sec. 775.075. REDUCTION OF AD VALOREM TAX RATE. (a) The qualified voters of a district may petition in the manner provided by Sections 775.052 through 775.054 for dissolution of a district to reduce the ad valorem tax rate of the district.

(b) The petition must state the new tax rate desired by the voters.

(c) The tax rate may not be reduced below the rate needed to pay any outstanding bonded indebtedness.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 2, eff. Sept. 1, 1989.

Sec. 775.0751. SALES AND USE TAX. (a) A district may adopt a sales and use tax, change the rate of its sales and use tax, or abolish its sales and use tax at an election held as provided by Section 775.0752. The district may impose the tax at a rate from one-eighth of one percent to two percent in increments of one-eighth of one percent. Revenue from the tax may be used for any purpose for which ad valorem tax revenue of the district may be used.

(b) Chapter 323, Tax Code, applies to the application, collection, and administration of the tax imposed under this section. The comptroller may make rules for the collection and administration of this tax in the same manner as for a tax imposed under Chapter 323, Tax Code. Where a county and a hospital district both impose a

sales and use tax, the comptroller may by rule provide for proportionate allocation of sales and use tax collections between a county and a hospital district on the basis of the period of time each tax is imposed and the relative tax rates.

(c) Except as provided by Subsection (c-1), a district may not adopt a tax under this section or increase the rate of the tax if as a result of the adoption of the tax or the tax increase the combined rate of all sales and use taxes imposed by the district and other political subdivisions of this state having territory in the district would exceed two percent at any location in the district.

(c-1) A district that otherwise would be precluded from adopting a sales and use tax under Subsection (c) may adopt a sales and use tax, change the rate of its sales and use tax, or abolish its sales and use tax at an election held as provided by Section 775.0752, if the board:

(1) excludes from the applicability of any proposed sales and use tax any territory in the district where the sales and use tax is then at two percent; and

(2) not later than the 30th day after the date on which the board issues the election order, gives, for informational purposes, written or oral notice on the proposed imposition, increase, or abolition of the sales and use tax, including the reasons for the proposed change, to the commissioners court of each county in which the district is located.

(d) If the voters of a district approve the adoption of the tax or an increase in the tax rate at an election held on the same election date on which another political subdivision of this state adopts a sales and use tax or approves the increase in the rate of its sales and use tax and as a result the combined rate of all sales and use taxes imposed by the district and other political subdivisions of this state having territory in the portion of the district in which the district sales and use tax will apply would exceed two percent at any location in that portion of the district, the election to adopt a sales and use tax or to increase the rate of the sales and use tax in the district under this subchapter has no effect.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 235, Sec. 7, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 6, eff. Sept. 1,

2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1385 (S.B. 1502), Sec. 1, eff. June 15, 2007.
Acts 2017, 85th Leg., R.S., Ch. 604 (S.B. 1727), Sec. 1, eff. June 9, 2017.

Sec. 775.0752. SALES AND USE TAX ELECTION PROCEDURES. (a) Except as otherwise provided by this subchapter, an election to adopt or abolish a district's sales and use tax or to change the rate of the tax is governed by the provisions of Subchapter E, Chapter 323, Tax Code, applicable to an election to adopt or abolish a county sales and use tax.

(b) An election is called by the adoption of a resolution by the board. The board shall call an election if a number of qualified voters of the district equal to at least five percent of the number of registered voters in the district petitions the board to call the election.

(c) At an election to adopt the tax, the ballot shall be prepared to permit voting for or against the proposition: "The adoption of a local sales and use tax in (name of district) at the rate of (proposed tax rate) percent."

(d) At an election to abolish the tax, the ballot shall be prepared to permit voting for or against the proposition: "The abolition of the local sales and use tax in (name of district)."

(e) At an election to change the rate of the tax, the ballot shall be prepared to permit voting for or against the proposition: "The (increase or decrease, as applicable) in the rate of the local sales and use tax imposed by (name of district) from (tax rate on election date) percent to (proposed tax rate) percent."

(f) At an election described by Section 775.0751(c-1) to adopt the tax, the ballot shall be prepared to permit voting for or against the proposition: "The adoption of a local sales and use tax in (name of district) at a rate not to exceed (proposed tax rate) percent in any location in the district."

Added by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 3, eff. Sept. 1, 1989.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 604 (S.B. 1727), Sec. 2, eff. June 9, 2017.

Sec. 775.0753. SALES AND USE TAX EFFECTIVE DATE; BOUNDARY CHANGE. (a) The adoption or abolition of the tax or change in the tax rate takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete calendar quarter occurring after the date on which the comptroller receives a notice of the results of the election.

(b) If the comptroller determines that an effective date provided by Subsection (a) will occur before the comptroller can reasonably take the action required to begin collecting the tax or to implement the abolition of the tax or the tax rate change, the effective date may be extended by the comptroller until the first day of the next succeeding calendar quarter.

(c) Except as provided by Section 775.0754, the provisions of Section 321.102, Tax Code, governing the application of a municipal sales and use tax in the event of a change in the boundaries of a municipality apply to the application of a tax imposed under this chapter in the event of a change in the district's boundaries.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 3, eff. Sept. 1, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1060 (H.B. 3159), Sec. 1, eff. September 1, 2013.

Sec. 775.0754. SALES AND USE TAX AGREEMENT WITH MUNICIPALITY AFTER ANNEXATION. (a) This section applies when:

(1) a municipality annexes for full purposes part of a district that imposes a sales and use tax; and

(2) the annexed area is not removed from the district.

(b) The municipality and the district may, before or after the annexation, agree on an allocation between the municipality and the district of revenue from the sales and use tax imposed in the annexed area.

(c) Under policies and procedures that the comptroller considers reasonable, the comptroller shall pay the amounts agreed to

between the municipality and the district.

(d) A municipality that enters into an agreement under this section is not required to provide emergency services in that annexed territory. To the extent of a conflict between this subsection and Section 43.056, Local Government Code, or any other law, this subsection controls.

(e) Section 321.102(f), Tax Code, does not apply if the municipality and the district enter into an agreement under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1060 (H.B. 3159), Sec. 2, eff. September 1, 2013.

Sec. 775.076. BONDS AND NOTES AUTHORIZED. (a) The board may issue bonds and notes as prescribed by this chapter to perform any of its powers.

(a-1) Before the board may issue bonds or notes authorized by this section, the commissioners court of each county in which the district is located must approve the issuance of the bonds or notes by a majority vote. This subsection does not apply to a district located wholly in a county with a population of more than three million.

(b) The board may issue bonds and notes in one or more issues or series that are payable from and secured by liens on and pledges of:

(1) ad valorem taxes;

(2) all or part of the district's revenues, income, or receipts; or

(3) a combination of those taxes, revenues, income, and receipts.

(c) The bonds and notes may be issued to mature in not more than 40 years from the date of their issuance.

(d) Provision may be made for the subsequent issuance of additional parity bonds or notes or subordinate lien bonds or notes under terms and conditions stated in the resolution authorizing the issuance of the bonds or notes.

(e) to (g) Repealed by Acts 2001, 77th Leg., ch. 1140, Sec. 23(2), eff. Sept. 1, 2001.

(h) If provided by the resolution, the proceeds from the sale

of the bonds or notes may be used for:

(1) paying interest on the bonds or notes during the period of the acquisition or construction of a facility to be provided through the issuance of the bonds or notes;

(2) paying expenses of operation and maintenance of the facility;

(3) creating a reserve fund to pay the principal of and interest on the bonds or notes; and

(4) creating other funds.

(i) As provided in the resolution, proceeds from the sale of the bonds and notes may be placed on time deposit or invested until needed.

(j) If the bonds or notes are issued payable by a pledge of revenues, income, or receipts, the district may pledge all or any part of its revenues, income, or receipts from fees, rentals, rates, charges, and proceeds and payments from contracts to the payment of the bonds or notes, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds or notes. The pledged fees, rentals, rates, charges, proceeds, and payments must be established and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for:

(1) all payments of principal, interest, and any other amounts required in connection with the bonds or notes; and

(2) the payment of expenses in connection with the bonds or notes and the operation, maintenance, and other expenses in connection with the facilities to the extent required by the resolution authorizing, or the trust indenture securing, the issuance of the bonds or notes.

(k) The district shall impose a tax as prescribed by Section 775.074 if the bonds or notes are payable wholly or partly from ad valorem taxes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1140, Sec. 7, 23(2), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 235, Sec. 8, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 5, eff. September 1, 2007.

Sec. 775.077. ELECTION TO APPROVE BONDS AND NOTES. (a) A district may not authorize bonds and notes secured in whole or in part by taxes unless a majority of the district's qualified voters who vote at an election ordered for that purpose approve the issuance of the bonds and notes.

(b) The board may order an election on the bonds and notes. The order must contain the same information contained in the notice of the election.

(c) The board shall publish notice of the election at least once in a newspaper of general circulation in the district. The notice must be published not later than the 31st day before election day.

(d) In addition to the contents of the notice required by the Election Code, the notice must state:

(1) the amount of bonds or notes to be authorized; and

(2) the maximum maturity of the bonds or notes.

(e) At an election to approve bonds or notes payable wholly from ad valorem taxes, the ballots must be printed to provide for voting for or against the following: "The issuance of (bonds or notes) and the levy of taxes for payment of the (bonds or notes)."

(f) At an election to approve bonds or notes payable from both ad valorem taxes and revenues, the ballots must be printed to provide for voting for or against the following: "The issuance of (bonds or notes) and the pledge of net revenues and the levy of ad valorem taxes adequate to provide for the payment of the (bonds or notes)."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.078. BOND ANTICIPATION NOTES. (a) A district may issue bond anticipation notes from time to time to carry out one or more of its powers.

(b) The bond anticipation notes may be secured by a pledge of all or part of the district's ad valorem taxes and revenues, income, or receipts.

(c) A district may from time to time authorize the issuance of bonds to provide proceeds to pay the principal of and interest on bond anticipation notes. The bonds must be secured by a pledge of

all or part of the district's ad valorem taxes or revenues, income, or receipts and may be issued on a parity with or subordinate to outstanding district bonds.

(d) If the resolution authorizing the issuance of, or the trust indenture securing, the bond anticipation notes includes a covenant that the notes are payable from the proceeds of the subsequently issued bonds, it is not necessary for the district to demonstrate, in order to receive the approval of the attorney general or registration by the comptroller, that the ad valorem taxes or revenues, income, or receipts that may be pledged to payment of the notes will be sufficient to pay the principal of and interest on the notes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.082. AUDIT OF DISTRICT IN LESS POPULOUS COUNTIES. (a) The county auditor of a county that contains any part of the district shall have access to the books, records, officials, and assets of the district.

(b) A district shall prepare and file with the commissioners court of each county that contains any part of the district on or before June 1 of each year an audit report of the district's fiscal accounts and records. The audit shall be performed and the report shall be prepared at the expense of the district. The county auditor, with the approval of the commissioners court, shall adopt rules relating to the format of the audit and report. If a district is located in more than one county, the county auditors, with the approval of the commissioners court of each county in which the district is located, shall adopt uniform rules relating to the format of the audit and report.

(c) The person who performs the audit and issues the report must be an independent certified public accountant or firm of certified public accountants licensed in this state, unless the commissioners court by order requires the audit to be performed by the county auditor at least 120 days before the end of the district's fiscal year.

(d) The commissioners court, on application made to the commissioners court by the district, may extend up to an additional 30 days the deadline for filing the audit report.

(e) If the district fails to complete and file the audit report

within the time provided by Subsection (b) or (d), the commissioners court may order the county auditor to perform the audit and issue the report. If a district is located in more than one county, the commissioners court of each county in which the district is located shall designate by joint order a county auditor of one of the counties to perform the audit and issue the report.

(e-1) When a district located wholly in one county fails to complete and file the audit report by September 1 of each year and a county auditor is not ordered to prepare the report, the president and treasurer of the board are removed from the board and the commissioners court shall fill the vacancies as provided by Section 775.034.

(f) The district shall pay all costs incurred by the county auditor to perform an audit and issue the report required by this section, unless otherwise ordered by the commissioners court or by joint order of the commissioners courts, if the district is located in more than one county.

(g) This section does not apply to a district located wholly in a county with a population of more than three million.

Added by Acts 1993, 73rd Leg., ch. 195, Sec. 2, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 392, Sec. 5, eff. Sept. 1, 1997. Amended by:

Acts 2005, 79th Leg., Ch. 120 (S.B. 1436), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 6, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 7, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 12, eff. June 17, 2011.

Sec. 775.0821. ALTERNATIVE TO AUDIT OF DISTRICT IN LESS POPULOUS COUNTIES. (a) This section applies only to a district to which Section 775.082 applies that:

(1) did not have any outstanding bonds secured by ad valorem taxes or any outstanding liabilities secured by ad valorem taxes having a term of more than one year during the previous fiscal year;

(2) did not receive more than a total of $250,000 in gross receipts from operations, loans, taxes, or contributions during the previous fiscal year; and

(3) did not have a total of more than $250,000 in cash and temporary investments during the previous fiscal year.

(b) Instead of filing an audit report under Section 775.082, a district to which this section applies may file compiled financial statements with the commissioners court of each county in which any part of the district is located.

(c) The district must file with the compiled financial statements an affidavit signed by an authorized district representative attesting to the accuracy and authenticity of the statements.

(d) The provisions of Section 775.082 relating to deadlines for filing an audit and the procedures and penalties relating to the failure of a district to file an audit apply to the filing of compiled financial statements under this section.

(e) A district that files compiled financial statements in accordance with Subsection (b) and that maintains an Internet website shall have posted on the district's website the compiled financial statements for the most recent three years.

Added by Acts 2013, 83rd Leg., R.S., Ch. 719 (H.B. 3764), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1068 (H.B. 2257), Sec. 1, eff. September 1, 2015.

Sec. 775.0825. AUDIT OF DISTRICT IN CERTAIN POPULOUS COUNTIES. (a) This section applies only to a district located wholly in a county with a population of more than three million.

(b) A district shall prepare on or before July 1 of each year an audit of the district's fiscal accounts and records.

(c) The audit shall be performed and the report shall be prepared at the expense of the district.

(d) The audit shall be available for review and inspection at the administrative office of the district.

(e) A copy of the audit shall be filed with the clerk of the county commissioner's court within 30 days after receipt by the

board.

Added by Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 8, eff. September 1, 2007.

Sec. 775.083. ANNUAL REPORT. (a) On or before January 1 of each year, a district shall file with the Texas Division of Emergency Management an annual report that includes the following:

(1) the district's name;

(2) the name of each county in which the district is located;

(3) the district's business address;

(4) the name, mailing address, and term of office of each commissioner;

(5) the name, mailing address, and term of office of the district's general manager, executive director, and fire chief;

(6) the name of each legal counsel or other consultant for the district; and

(7) the district's annual budget and tax rate for the preceding fiscal year.

(b) The Texas Division of Emergency Management may not charge a fee for filing the report.

(c) The Texas Division of Emergency Management shall develop and maintain an Internet-based system that enables:

(1) a district to securely file the report and update the district's information; and

(2) the public to view, in a searchable format, the reports filed by districts under this section.

(d) If the information included in a district's annual report changes, the district shall update the district's information using the Internet-based system before the end of the calendar quarter in which the district's information changes.

Added by Acts 1997, 75th Leg., ch. 392, Sec. 6, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 235, Sec. 9, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 112 (H.B. 1918), Sec. 98, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 1019 (H.B. 1510), Sec. 2, eff. September 1, 2017.

Sec. 775.084. COMPETITIVE BIDS. (a) Except as provided by Subsection (i), the board must submit to competitive bids an expenditure of more than $100,000 for:

(1) one item or service; or

(2) more than one of the same or a similar type of item or service in a fiscal year.

(b) The board shall request bids on items to be purchased or leased or services to be performed as provided by this subsection. The board shall notify suppliers, vendors, or providers by advertising for bids or by providing at least three suppliers, vendors, or purchasers with written notice by mail of the intended purchase. If the board decides to advertise for bids, the advertisement must be published in accordance with Section 262.025(a), Local Government Code. If the board receives fewer than three bids in response to the advertisement, the board shall give written notice directly to at least three suppliers, vendors, or providers of the intended purchase. If three suppliers, vendors, or providers are not available or known to the board, the board shall give written notice by mail directly to each supplier, vendor, or provider known to the board.

(c) The advertisement or notice for competitive bidding must:

(1) describe the work to be performed or the item to be purchased or leased;

(2) state the location at which the bidding documents, plans, specifications, or other data may be examined; and

(3) state the time and place for submitting bids and the time and place that bids will be opened.

(d) The board may not prepare restrictive bid specifications.

(e) Bids may be opened only by the board at a public meeting or by a district officer or employee at or in a district office.

(f) The board may reject any bid. The board may not award a contract to a bidder who is not the lowest bidder unless, before the bid is awarded, the lowest bidder is given notice of the proposed award and an opportunity to appear before the board or its designated representative and present evidence concerning the bidder's responsibility.

(g) A contract awarded in violation of this section is void.

(h) This section applies to an expenditure of district tax

revenues by any party or entity for the purchase of services, vehicles, equipment, or goods.

(i) This section does not apply to:

(1) the purchase or lease of real property;

(2) an item or service that the board determines can be obtained from only one source;

(3) a contract for fire extinguishment and suppression services, emergency rescue services, or ambulance services;

(4) an emergency expenditure;

(5) the purchase of vehicle fuel;

(6) the purchase of firefighter bunker gear;

(7) the purchase of insurance coverage; or

(8) repairs funded by a payment made under an insurance claim.

(j) Subsection (i) does not prohibit the board from soliciting competitive bids for any item, service, or contract listed in Subsection (i).

(k) A contract for a public works project must be administered in the manner provided by Subchapter B or H, Chapter 271, Local Government Code, except as provided by this section.

Added by Acts 1997, 75th Leg., ch. 392, Sec. 7, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 235, Sec. 10, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 8, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1304 (H.B. 2957), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1248 (H.B. 2667), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1272 (H.B. 3517), Sec. 8, eff. September 1, 2007.

Acts 2025, 89th Leg., R.S., Ch. 256 (S.B. 1173), Sec. 2, eff. September 1, 2025.

Sec. 775.085. LOAN FOR REAL PROPERTY OR EMERGENCY SERVICES EQUIPMENT. (a) The board, on the behalf of the district, may borrow money and make other financial arrangements to purchase real property or emergency services equipment or construct emergency services facilities in the amount and subject to a rate of interest or other

conditions the board considers advisable.

(b) To secure a loan under this section, the board may pledge:

(1) tax revenues or funds on hand that are not otherwise pledged to pay a debt of the district; or

(2) the real property acquired or improved or equipment acquired with the borrowed money.

(c) If tax revenues are pledged to pay a loan, the loan must mature not later than the:

(1) 10th anniversary of the date the loan is made, if the loan is for equipment; or

(2) 20th anniversary of the date the loan is made, if the loan is for real property.

(d) Section 775.077 does not apply to a loan secured under this section, including a loan made before the effective date of this subsection.

Added by Acts 1999, 76th Leg., ch. 496, Sec. 13, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1140, Sec. 8, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 235, Sec. 11, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 9, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 13, eff. June 17, 2011.

SUBCHAPTER F. FIRE MARSHAL

Sec. 775.101. CREATION. (a) A district may create the office of district fire marshal if a county in which the district is located does not have a county fire marshal.

(b) The district shall appoint an individual to serve in the office of fire marshal.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.102. TERM. The fire marshal serves a two-year term.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.1025. CERTIFICATION REQUIREMENTS FOR DISTRICTS LOCATED

IN CERTAIN COUNTIES. (a) This section applies only to a district wholly located in a county with a population of 100,000 or more.

(b) The fire marshal shall hold the following certifications issued by the Texas Commission on Fire Protection:

(1) head of a prevention-only fire department certification not later than 12 months after the date the marshal is initially appointed;

(2) a fire marshal basic certification not later than 24 months after the date the marshal is initially appointed; and

(3) a fire protection personnel certification not later than 12 months after the date the marshal is initially appointed.

(c) If acting as a peace officer, the fire marshal and any related officer, inspector, and investigator must hold a permanent peace officer license issued under Chapter 1701, Occupations Code.

(d) If acting under fire marshal authority to conduct or supervise arson investigations or fire inspections, the fire marshal or the marshal's employees must hold certifications required for fire inspection by the Texas Commission on Fire Protection under Chapter 419, Government Code.

Added by Acts 2025, 89th Leg., R.S., Ch. 443 (H.B. 3687), Sec. 1, eff. September 1, 2025.

Sec. 775.103. BOND. The fire marshal shall post a bond in the amount required by the district and conditioned on the faithful and strict performance of the fire marshal's duties under this subchapter.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.104. CONFLICT OF INTEREST. The fire marshal may not:

(1) have a direct or indirect financial interest in the sale of fire-fighting equipment; or

(2) be engaged in the business of fire insurance.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.105. ADMINISTRATIVE SUPPORT. The district may provide

facilities, equipment, transportation, employees, and other services and assistance to the fire marshal, including investigators.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.106. JURISDICTION. (a) Except as provided by Section 775.107 or 775.115, the fire marshal may not exercise the powers granted under this subchapter in:

(1) the territory of a municipality that has a municipal fire marshal; or

(2) the territory of a county that has a county fire marshal.

(b) This subchapter does not change or otherwise limit the authority of any state agency to prevent and extinguish forest and grass fires.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.107. TRANSFER OF JURISDICTION. (a) This section applies if:

(1) a county in which a district is located creates a county fire marshal under Subchapter B, Chapter 352, Local Government Code; or

(2) a municipality located in the district creates a municipal fire marshal.

(b) Not later than the 30th day after the creation of the county or municipal fire marshal, the jurisdiction of the district fire marshal in that county or municipality ceases. The new county or municipal fire marshal shall assume control over any pending investigations, court proceedings, or other matters being handled by the district fire marshal in the county or municipality.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.108. GENERAL POWERS AND DUTIES. The fire marshal shall:

(1) investigate the cause, origin, and circumstances of each fire that damages property;

(2) determine whether the fire was caused by negligent or intentional conduct; and

(3) enforce all state, county, and district orders and rules that relate to fires, explosions, or damages caused by a fire or an explosion.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.109. INVESTIGATIONS. (a) The fire marshal shall begin an investigation within 24 hours after notification of a fire. The 24-hour period does not include Sunday.

(b) The fire marshal may investigate attempted fires.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.110. INSPECTION. (a) The fire marshal may, at any time of day, enter and inspect:

(1) property where a fire has occurred; and

(2) property adjacent to where a fire occurred.

(b) The fire marshal shall conduct this inspection in a manner least inconvenient to any persons living on the property.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.111. INSPECTION FOR FIRE HAZARDS. (a) In this section, "fire hazard" means any of the following conditions that endanger the safety of a structure or its occupants and promote or cause fire or combustion:

(1) the presence of a flammable substance;

(2) a dangerous or dilapidated wall, ceiling, or other structural element;

(3) improper lighting, heating, or other facilities;

(4) the presence of a dangerous chimney, flue, pipe, main, or stove, or of dangerous wiring; or

(5) dangerous storage.

(b) In the interest of safety and fire prevention, the fire marshal may inspect for fire hazards any structure, appurtenance, fixture, or real property located in the district and within 200 feet

of a structure, appurtenance, or fixture. If the fire marshal determines the presence of a fire hazard, the fire marshal may order the owner or occupant of the premises to correct the hazardous situation.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.112. RECORDS. The fire marshal shall keep a record of each fire that the fire marshal is required to investigate. The record must include the facts, statistics, and circumstances determined by the investigation, including the origin of the fire and the estimated amount of the loss.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.113. ADDITIONAL INVESTIGATION POWERS. (a) If the fire marshal determines that further investigation of a fire or of an attempt to set a fire is necessary, the fire marshal may:

(1) subpoena witnesses to testify regarding the fire or attempt;

(2) administer oaths to the witnesses;

(3) take and preserve written statements, including statements under oath such as an affidavit or deposition; and

(4) require the production of a document or item related to the investigation.

(b) As part of an investigation, the fire marshal may:

(1) conduct an investigation or examination in private;

(2) exclude a person who is not under examination; and

(3) separate witnesses from each other until each witness is examined.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.114. INSURANCE. (a) An action taken by the fire marshal in the investigation of a fire does not affect the rights of a policyholder or of an insurer regarding a loss caused by the fire.

(b) The records of an investigation by the fire marshal relating to the detection, investigation, or prosecution of a crime

may be admitted in evidence in the trial of a civil action unless those records are subject to an exception under Sections 552.108(a)(1) and (b)(1), Government Code.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.115. COOPERATION WITH OTHER FIRE MARSHALS. (a) The district fire marshal shall cooperate with the state fire marshal to conduct:

(1) fire prevention activities;

(2) fire-fighting activities; and

(3) fire investigations.

(b) The district fire marshal shall aid or conduct an investigation in a municipality or a county if requested by the municipality or the county.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.116. ENFORCEMENT. (a) The fire marshal shall file in court a complaint charging arson, attempted arson, conspiracy to defraud, or any other related crime against a person the fire marshal believes to be guilty.

(b) The fire marshal shall file charges in court against a witness who refuses to cooperate with the investigation.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.117. SERVICE OF PROCESS. A constable or sheriff may serve process under this subchapter. The process must be signed by the fire marshal.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.118. CRIMINAL PENALTY; CONTEMPT OF FIRE INVESTIGATION. (a) A person commits an offense if the person is a witness in connection with an investigation by the fire marshal and:

(1) refuses to be sworn;

(2) refuses to appear and testify; or

(3) fails to produce to the fire marshal any document or item relating to an investigation under this subchapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $25.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.119. CRIMINAL PENALTY; FAILURE TO COMPLY WITH ORDER. (a) An owner or occupant of real property who is subject to an order issued by the fire marshal commits an offense if the person fails to comply with the order.

(b) An offense under this section is a Class B misdemeanor.

(c) Each failure to comply with an order is a separate offense.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

SUBCHAPTER G. HAZARDOUS MATERIALS

Sec. 775.151. DEFINITIONS. In this subchapter:

(1) "Hazardous material" means a flammable material, an explosive, a radioactive material, a hazardous waste, a toxic substance, or related material, including a substance defined as a "hazardous substance," "hazardous material," "toxic substance," or "solid waste" under:

(A) the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended;

(B) the federal Resource Conservation and Recovery Act of 1976 (42 U.S. C. Section 6901 et seq.), as amended;

(C) the federal Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), as amended; or

(D) Chapter 361.

(2) "Responsible party" means a person:

(A) involved in the possession, ownership, or transportation of a hazardous material that is released or abandoned; or

(B) who has legal liability for the causation of an incident resulting in the release or abandonment of a hazardous material.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 6, eff. Sept. 1, 2001.

Sec. 775.152. HAZARDOUS MATERIALS SERVICE. A district may provide hazardous materials services, including a response to an incident involving hazardous material that has been:

(1) leaked, spilled, or otherwise released; or

(2) abandoned.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 6, eff. Sept. 1, 2001.

Sec. 775.153. FEE FOR PROVIDING HAZARDOUS MATERIALS SERVICE; EXCEPTION. (a) A district, or a person authorized by contract on the district's behalf, may charge a reasonable fee to a responsible party for responding to a hazardous materials service call.

(b) An individual who is a responsible party does not have to pay the fee if:

(1) the individual is not involved in the possession, ownership, or transportation of the hazardous material as the employee, agent, or servant of another person;

(2) the individual is involved solely for private, noncommercial purposes related to the individual's own property and the individual receives no compensation for any services involving the hazardous materials; and

(3) the hazardous materials possessed, owned, or being transported by the individual are in forms, quantities, and containers ordinarily available for sale as consumer products to members of the general public.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 6, eff. Sept. 1, 2001.

Sec. 775.154. EXEMPTION FOR GOVERNMENTAL ENTITIES. This subchapter does not apply to hazardous materials owned or possessed by a governmental entity.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 6, eff. Sept. 1, 2001.

SUBCHAPTER H. CHANGE IN BOUNDARIES OF DISTRICT WITH PLANNED

COMMUNITY

Sec. 775.201. DEFINITION. In this subchapter, "planned community" means a planned community of 25,000 or more acres of land originally established under the Urban Growth and New Community Development Act of 1970 (42 U.S.C. Section 4501 et seq.) that is:

(1) located wholly or partly in a county with a population of 2.8 million or more; and

(2) subject to restrictive covenants containing ad valorem or annual variable budget-based assessments on real property for use in part to finance services of the same general type provided by the district.

Added by Acts 2007, 80th Leg., R.S., Ch. 828 (H.B. 492), Sec. 1, eff. September 1, 2007.

Sec. 775.202. AGREEMENT ON BOUNDARIES WITH PROPERTY OWNERS IN PLANNED COMMUNITY. (a) After a hearing, a district located wholly in a county with a population of 2.8 million or more may exclude territory by making changes in the district's boundaries in accordance with an agreement among the district and the owners of two-thirds or more in acreage and two-thirds or more in taxable value, according to the most recent certified county property tax rolls, of a defined area of territory of a planned community.

(b) The agreement must be in writing and describe:

(1) the affected territory by metes and bounds, including the changes in the boundaries to be made;

(2) the amount of any compensation to be paid to the district under Section 775.205;

(3) the effective date for the changes in boundaries; and

(4) any other applicable terms.

Added by Acts 2007, 80th Leg., R.S., Ch. 828 (H.B. 492), Sec. 1, eff. September 1, 2007.

Sec. 775.203. NOTICE OF HEARING. (a) The board secretary shall give notice of the hearing.

(b) The notice must contain the time and place for the hearing and a description of the territory proposed to be excluded.

(c) The secretary shall:

(1) post copies of the notice for at least 15 days before the date of the hearing in three public places in the district, one of which must be in the territory proposed to be excluded; and

(2) not later than the 16th day before the date on which the hearing is held, publish the notice once in a newspaper of general circulation in each county in which the excluded territory is located.

Added by Acts 2007, 80th Leg., R.S., Ch. 828 (H.B. 492), Sec. 1, eff. September 1, 2007.

Sec. 775.204. ADOPTION OF AGREEMENT AND APPROVAL OF EXCLUSION. After the hearing, if the board finds that the exclusion of the territory would be feasible and would benefit the district, the board shall by a resolution entered in its minutes:

(1) adopt the agreement; and

(2) approve the exclusion.

Added by Acts 2007, 80th Leg., R.S., Ch. 828 (H.B. 492), Sec. 1, eff. September 1, 2007.

Sec. 775.205. EFFECT OF ADOPTION OF AGREEMENT AND APPROVAL OF EXCLUSION. (a) After adoption and approval under Section 775.204, the district's tax on the property in the excluded territory continues until all agreed compensation has been paid in full.

(b) The district shall apply the compensation received under this section toward the payment of the obligations described by Subsection (c).

(c) The agreement must provide for the excluded territory to compensate the district in an amount equal to the excluded territory's pro rata share of the outstanding and unpaid bonds, warrants, or other direct and indirect obligations, including loans and lease-purchase agreements and written funding assistance agreements of the district and any not-for-profit fire departments and ambulance agencies or associations, for the financing and payment for firefighting, emergency medical service and emergency rescue equipment, fire and ambulance stations, or similar long-term capital assets to serve the district.

(d) The excluded territory's pro rata share is the unpaid

principal balances of the outstanding loans and other obligations enumerated by Subsection (c) multiplied by a fraction, the numerator of which is the taxable value of the property in the excluded territory and the denominator of which is the taxable value of the entire district, including the excluded territory. The taxable value calculated under this subsection for property in the excluded territory, including as part of the entire district, does not include any special appraisal or exemptions for the property.

(e) The agreement to compensate the district does not include the following expenses incurred by the district after the boundaries change:

(1) expenses for district operations and maintenance; and

(2) expenses for district services.

(f) The agreement to compensate the district is required regardless of whether the loans and other obligations are subject to non-appropriation by the district or termination by either party before payment in full of the unpaid principal balance.

Added by Acts 2007, 80th Leg., R.S., Ch. 828 (H.B. 492), Sec. 1, eff. September 1, 2007.

Sec. 775.206. NO EFFECT ON OUTSTANDING OBLIGATIONS. A change in boundaries under this subchapter does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other district obligations.

Added by Acts 2007, 80th Leg., R.S., Ch. 828 (H.B. 492), Sec. 1, eff. September 1, 2007.

SUBCHAPTER I. DIVISION OF DISTRICT

Sec. 775.221. AUTHORITY TO DIVIDE DISTRICT. (a) This subchapter applies only to a district located wholly in:

(1) a county with a population of 20,000 or less; or

(2) a county with a population of more than 30,000 but less than 41,000 that is adjacent to a county with a population of more than 200,000 but less than 233,500.

(b) The board of a district described by Subsection (a) may create a new district by disannexing territory from the existing district and ordering a new district to be created in the disannexed

territory in the manner provided by this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1241 (H.B. 3203), Sec. 1, eff. September 1, 2019.
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 110, eff. September 1, 2023.

Sec. 775.222. PETITION FOR DIVISION; NOTICE OF HEARING. (a) Before the existing district may be divided, the district's board must receive a petition for division signed by at least seven percent of the district's qualified voters or at least 100 of the district's qualified voters, whichever is the lesser number.

(b) A petition for division must include:

(1) the name of the new district to be created; and

(2) a description of the territory proposed to be the new district's territory.

(c) On receipt of a petition in the proper form, the board shall set a place, date, and time for a hearing to consider the petition.

(d) The board shall issue a notice of the hearing that includes:

(1) the name of the proposed district;

(2) a description of the proposed district's boundaries; and

(3) the place, date, and time of the hearing on the petition.

(e) The board shall publish the notice in a newspaper of general circulation in the district once a week for two consecutive weeks. The first publication must occur not later than the 21st day before the date on which the hearing will be held.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

Sec. 775.223. HEARING ON DIVISION OF DISTRICT. (a) At the hearing on the petition for division of the existing district, the

board shall consider the petition and each issue relating to the division of the district.

(b) Any interested person may appear before the board to support or oppose the division.

(c) The board shall approve the petition not later than the 10th day after the date of the hearing if the board finds that:

(1) the petition contains the number of signatures required under Section 775.222(a); and

(2) the proposed division is feasible.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1241 (H.B. 3203), Sec. 2, eff. September 1, 2019.

Sec. 775.224. APPEAL. A resident of the district or an owner of real or personal property located in the district may appeal the board's decision on the division of the district by filing an appeal in the district court in the county in which a district is located only on the basis that the board incorrectly tabulated the number of signatures on the petition.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

Sec. 775.225. ELECTION TO CONFIRM DIVISION. (a) On granting a petition to divide the district, the board shall order an election to be held in the territory of the proposed new district to confirm the division of the existing district.

(b) Notice of the election shall be given in the same manner as the notice of hearing under Section 775.222.

(c) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with the requirements of law.

(d) The ballot shall be printed to provide for voting for or against the proposition: "Dividing the _____ Emergency Services District to create a new emergency services district."

(e) If a majority of voters voting at the election vote to

divide the district, the board shall order the division.

(f) If a majority of those voting at the election vote against dividing the existing district, the board may not order another election on the issue before the first anniversary of the date of the canvass of the election.

(g) The existing district and the new district each shall pay a pro rata share of the cost of an election held under this section, based on the assessed value of real property in each district subject to ad valorem taxation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

Sec. 775.226. DIVISION ORDER. A board order to divide a district must:

(1) disannex the land of the new district from the existing district contingent on the approval of the creation of the new district at the election held under this subchapter;

(2) create the new district in accordance with this chapter;

(3) name the new district; and

(4) include the metes and bounds description of the territory of the new district and the existing district after disannexation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

Sec. 775.227. ADMINISTRATION OF DISTRICTS AFTER DIVISION. (a) The existing board continues in existence to govern the territory of the existing district after disannexation.

(b) If the new district is located wholly in one county, the commissioners court shall appoint a board in the manner described by Section 775.034 not later than the 14th day after the date of the board order dividing the district.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

Sec. 775.228. TAXATION FOR OUTSTANDING BONDED DEBT. The disannexation of territory from a district under this subchapter does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other obligations of that district. Property disannexed under this subchapter is not released from its pro rata share of any of the district's bonded indebtedness on the date of the disannexation, and the district may continue to tax property in the disannexed territory until that debt is paid as if the territory had not been disannexed.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

Sec. 775.229. FURTHER DIVISION PROHIBITED. Once a district has been divided under this subchapter, neither the existing district nor the new district may be divided under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

SUBCHAPTER J. SURPLUS AND SALVAGE PROPERTY

Sec. 775.251. SALE AND DISPOSITION OF SURPLUS OR SALVAGE PROPERTY. (a) In this section:

(1) "Salvage property" means personal property, other than wastepaper, that because of use, time, or accident is so damaged, used, or consumed that it has no value for the purpose for which it was originally intended.

(2) "Surplus property" means personal property that is in excess of the needs of its owner, that is not required for the owner's foreseeable needs, and that possesses some usefulness for the purpose for which it was intended or for some other purpose.

(3) "Volunteer fire department" means an association that:

(A) operates firefighting equipment;

(B) is organized primarily to provide and actively provides firefighting services;

(C) does not pay its members compensation other than nominal compensation; and

(D) does not distribute any of its income to its members, officers, or governing body, other than for reimbursement of

expenses.

(b) Notwithstanding other law, a district may sell surplus firefighting equipment, including equipment described by Sections 419.040 and 419.041, Government Code, to any volunteer fire department or district in this state for fair market value if the equipment:

(1) met the National Fire Protection Association Standards at the original time of purchase; and

(2) at the time of the sale:

(A) meets the National Fire Protection Association Standards in effect at the original time of purchase; or

(B) meets the National Fire Protection Association Standards in effect.

(c) A district may contract to supply surplus property to any volunteer fire department or district in this state at fair market value.

(d) A district may sell salvage property to any person in this state for fair market value. If a district is unable to sell the property for fair market value, the district may destroy or otherwise dispose of the property as worthless.

(e) The district may determine the fair market value of surplus and salvage property sold under Subsections (b), (c), and (d).

Added by Acts 2009, 81st Leg., R.S., Ch. 537 (S.B. 1485), Sec. 1, eff. September 1, 2009.
Redesignated from Health and Safety Code, Subchapter I, Chapter 775 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(31), eff. September 1, 2011.

SUBCHAPTER K. DISTRICTS IN CERTAIN COUNTIES

Sec. 775.301. DEFINITION. In this subchapter, "commissioners court" means the commissioners court of a county that:

(1) borders the United Mexican States;

(2) contains a municipality with a population of more than 500,000; and

(3) appoints a board of emergency services commissioners under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 21 (S.B. 332), Sec. 1, eff. September 1, 2013.

Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 111, eff. September 1, 2023.

Sec. 775.302. APPLICABILITY. (a) This subchapter applies only to a district that is located wholly in a county:
(1) that borders the United Mexican States;
(2) that contains a municipality with a population of more than 500,000; and
(3) for which the commissioners court appoints a board of emergency services commissioners under Section 775.034.
(b) This subchapter controls over a provision of this chapter or other law to the extent of a conflict.

Added by Acts 2013, 83rd Leg., R.S., Ch. 21 (S.B. 332), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 112, eff. September 1, 2023.

Sec. 775.303. DELEGATION OR WAIVER BY COMMISSIONERS COURT. (a) The commissioners court may adopt a resolution to:
(1) delegate to the board of a district a duty assigned to the commissioners court under this subchapter that relates to that district; or
(2) waive a requirement in this subchapter that the commissioners court approve an action of a district.
(b) A resolution adopted under this section may apply to more than one board or district.
(c) The commissioners court may by resolution terminate the delegation of a duty or the waiver of an approval requirement.

Added by Acts 2013, 83rd Leg., R.S., Ch. 21 (S.B. 332), Sec. 1, eff. September 1, 2013.

Sec. 775.304. POWERS RELATING TO DISTRICT PROPERTY, FACILITIES, AND EQUIPMENT. (a) The commissioners court may establish policies and procedures the board must comply with when:

(1) constructing, purchasing, acquiring, contracting for, leasing, adding to, maintaining, operating, developing, regulating, selling, exchanging, or conveying real or personal property, a property right, equipment, goods, services, a facility, or a system to maintain a building or other facility or to provide a service to or required by the district; or

(2) providing services through and using public funds for a volunteer fire department or emergency service provider.

(b) The policies and procedures:

(1) may include requiring the board to submit to the commissioners court periodic reports on the district's compliance with the policies and procedures;

(2) must establish the types of transactions, including maximum dollar amounts, the board may make when conducting an activity described by Subsection (a) without the approval of the commissioners court, if any;

(3) must designate by name, title, or position a person in the county as the primary point of contact between the commissioners court and the board; and

(4) may not be established until the commissioners court consults with the board.

(c) This section does not authorize the commissioners court or the board to use real or personal property, a property right, equipment, a facility, or a system to provide a telecommunications service, advanced communications service, or information service as defined by 47 U.S.C. Section 153, or a video service as defined by Section 66.002, Utilities Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 21 (S.B. 332), Sec. 1, eff. September 1, 2013.

Sec. 775.305. BUDGET. (a) The commissioners court shall establish a schedule for a district to prepare an annual budget, tax rate calculations and notices, and a recommended tax rate and to submit the budget, calculations, notices, and recommendation to the commissioners court for final approval.

(b) The schedule must take into account requirements of this chapter, Chapter 26, Tax Code, and Section 21, Article VIII, Texas Constitution, applicable to adopting a district tax rate and provide

the commissioners court a reasonable amount of time to review the submissions required under Subsection (a).

(c) The board shall:

(1) prepare an annual budget and submit the budget to the commissioners court for final approval according to the schedule established under this section; and

(2) submit to the commissioners court and the county auditor tax rate calculations and notices and a recommended tax rate according to the schedule established under this section.

(d) If the commissioners court does not approve or deny a budget submitted to the commissioners court under this section before the 31st day after the date the budget is submitted, the commissioners court is considered to have approved the budget.

(e) If the commissioners court does not approve or deny a tax rate recommended to the commissioners court under this section before the 31st day after the date the recommended tax rate is submitted, the commissioners court is considered to have approved the recommended tax rate and the recommended tax rate is the rate for the year in which the rate is recommended.

Added by Acts 2013, 83rd Leg., R.S., Ch. 21 (S.B. 332), Sec. 1, eff. September 1, 2013.

Sec. 775.306. BUSINESS PARTICIPATION. The board shall encourage and promote participation by all sectors of the business community, including small businesses and businesses owned by members of a minority group or by women, in the process by which the district enters into contracts. The board shall develop a plan for the district to identify and remove barriers that do not have a definite or objective relationship to quality or competence and that unfairly discriminate against small businesses and businesses owned by members of a minority group or by women. These barriers may include contracting procedures and contract specifications or conditions.

Added by Acts 2013, 83rd Leg., R.S., Ch. 21 (S.B. 332), Sec. 1, eff. September 1, 2013.

CHAPTER 777. REGIONAL POISON CONTROL CENTERS

Sec. 777.001. REGIONAL POISON CONTROL CENTERS. (a) Six

regional centers for poison control are designated as the regional poison control centers for the state as follows:

(1) The University of Texas Medical Branch at Galveston;

(2) the Dallas County Hospital District/North Texas Poison Center;

(3) The University of Texas Health Science Center at San Antonio;

(4) the University Medical Center of El Paso, El Paso County Hospital District;

(5) the Texas Tech University Health Sciences Center at Amarillo; and

(6) Scott and White Memorial Hospital, Temple, Texas.

(b) The poison control centers shall coordinate poison control activities within the designated health and human services regions for the state. The Commission on State Emergency Communications shall adopt rules designating the region for each poison control center. The Commission on State Emergency Communications may adopt rules permitting poison control centers to provide services for regions served by other poison control centers in this state as necessary to maximize efficient use of resources and provide appropriate services in each region.

(c) The Commission on State Emergency Communications may standardize the operations of and implement management controls to improve the efficiency of regional poison control centers.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 27.01, eff. September 28, 2011.

Sec. 777.002. TELEPHONE SERVICES. (a) A poison control center established by this chapter shall provide a 24-hour toll-free telephone referral and information service for the public and health care professionals according to the requirements of the American Association of Poison Control Centers.

(b) Each public safety answering point, as that term is defined

by Section 771.001, shall have direct telephone access to at least one poison control center. Regional poison information services may be available directly from the center for the region or from another poison control center but shall be available through all 9-1-1 services in the region, as the term "9-1-1 service" is defined by Section 771.001. The 9-1-1 service calls pertaining to poisonings may be routed to a poison control answering site, if possible, if the routing does not adversely affect the immediate availability of poisoning management services.

(c) A poison control center shall ensure that poison control activities within the designated region meet the criteria established by the American Association of Poison Control Centers. A center may meet the criteria directly or may affiliate with other poison control centers or poison treatment facilities, if possible. A center shall ensure that treatment facilities and services are available within the region and shall identify and make available to the public and to appropriate health professionals information concerning analytical toxicology, emergency and critical care, and extracorporeal capabilities within the region.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 41, Sec. 2, eff. Sept. 1, 1997.

Sec. 777.003. COMMUNITY PROGRAMS AND ASSISTANCE. A poison control center shall provide:

(1) community education programs on poison prevention methods to inform the public, such as presentations to persons attending a primary or secondary school, a parent-teacher association meeting, an employee safety meeting at an industrial company, or other interested groups;

(2) information and education to health professionals involved in the management of poison and overdose victims, including information regarding appropriate therapeutic use of medications, their compatibility and stability, and adverse drug reactions and interactions;

(3) professional and technical assistance to state agencies requesting toxicologic assistance; and

(4) consultation services concerning medical toxicology, for which a fee may be charged in an amount set by the institution in

which the center is located to cover the costs of the service.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.

Sec. 777.004. STAFF. (a) A poison control center established under this chapter shall use physicians, pharmacists, nurses, other professionals, and support personnel trained in various aspects of toxicology and poison control and prevention.

(b) A poison control center shall make available resources, if possible, to accommodate persons who do not speak English.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.

Sec. 777.005. RESEARCH PROGRAMS. (a) A poison control center may conduct a toxicology poison treatment research program to improve treatments for poisoning victims and to reduce the severity of injuries from poisonings.

(b) A poison control center may accept grants or contributions from public or private sources to be used for research.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.

Sec. 777.006. INFORMATION AT BIRTH. The Commission on State Emergency Communications shall assist the regional poison control centers in providing informational packets on poison prevention to parents of newborns.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 5, eff. September 1, 2009.

Sec. 777.007. STATE LIABILITY. The state shall indemnify a poison control center and an employee of a poison control center under Chapter 104, Civil Practice and Remedies Code.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.

Sec. 777.008. COORDINATING COMMITTEE. (a) The coordinating committee on poison control shall coordinate the activities of the regional poison control centers designated under Section 777.001(a) and advise the Commission on State Emergency Communications.

(b) The committee is composed of:

(1) one public member appointed by the Commission on State Emergency Communications;

(2) six members who represent the six regional poison control centers, one appointed by the chief executive officer of each center;

(3) one member appointed by the commissioner of state health services; and

(4) one member who is a health care professional designated as the poison control program coordinator appointed by the Commission on State Emergency Communications.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 6, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1574, eff. April 2, 2015.

Sec. 777.009. FUNDING. (a) The Commission on State Emergency Communications shall establish a program to award grants to fund the regional poison control centers.

(b) The Commission on State Emergency Communications shall adopt rules to establish criteria for awarding the grants. The rules must require the agency to consider:

(1) the need of the region based on population served for poison control services and the extent to which the grant would meet the identified need;

(2) the assurance of providing quality services;

(3) the availability of other funding sources;

(4) achieving or maintaining certification as a poison control center with the American Association of Poison Control Centers;

(5) maintenance of effort; and

(6) the development or existence of telecommunications systems.

(c) The Commission on State Emergency Communications may approve grants according to commission rules. A grant awarded under this section is governed by Chapter 783, Government Code, and the rules adopted under that chapter.

(d) The Commission on State Emergency Communications may accept gifts or grants from any source for purposes of this chapter.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 6, eff. September 1, 2009.

Sec. 777.010. OUT-OF-REGION SERVICES; SERVICES FOR PRIVATE ENTITIES. (a) On approval by and in coordination with the governor, the Commission on State Emergency Communications may enter into a contract for the provision of telephone referral and information services or any program or service described by Section 777.003 to any person, including:

(1) another state or a political subdivision of another state; and

(2) another country or a political subdivision of another country.

(b) The Commission on State Emergency Communications shall contract with one or more regional poison control centers to provide the services required under a contract entered into under Subsection (a). The commission may not enter into a contract under this subsection if, in the opinion of the commission, the regional poison control center's performance of the contract would result in a diminishment in the services provided in the region.

(c) A contract described by Subsection (a) must recover the cost of providing the services and may include a reasonable additional amount to support poison control center services in this state. Revenue from a contract described by Subsection (a) must be deposited to the credit of the regional poison control services account.

Added by Acts 1997, 75th Leg., ch. 41, Sec. 3, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 7, eff. September 1, 2009.

Sec. 777.011. REGIONAL POISON CONTROL SERVICES ACCOUNT. The regional poison control services account is an account in the general revenue fund. The account is composed of money deposited to the account under Section 777.010(c). Money in the account may be appropriated only to the Commission on State Emergency Communications:

(1) for administration of and payment for contracts entered into under Section 777.010(b); and

(2) to fund grants awarded under Section 777.009.

Added by Acts 1997, 75th Leg., ch. 41, Sec. 3, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 8, eff. September 1, 2009.

Sec. 777.012. NUMBER AND LOCATION IDENTIFICATION SERVICE. (a) In this section:

(1) "Service provider" means an entity providing local exchange access lines to a service user and includes a business service user that provides residential facilities and owns or leases a public or private telephone switch used to provide telephone service to facility residents.

(2) "Service user" means a person that is provided local exchange access lines, or their equivalent.

(b) A service provider shall furnish to a poison control center for each call to an emergency line of the center the telephone number of the subscribers and the address associated with the number.

(c) Information furnished to a poison control center under this section is confidential and is not available for public inspection. Information contained in an address database used to provide the number or location identification information under this section is confidential and is not available for public inspection. The service provider or a third party that maintains an address database is not liable to any person for the release of information furnished by the

service provider or third party in providing number or location identification information under this section, unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 33, eff. Sept. 1, 1999.

Sec. 777.013. COOPERATION AND COORDINATION WITH THE DEPARTMENT OF STATE HEALTH SERVICES. (a) The Department of State Health Services, on request of the Commission on State Emergency Communications, shall provide epidemiological support to the regional poison control centers under this chapter to:

(1) maximize the use of data collected by the poison control network;

(2) assist the regional poison control centers with quality control and quality assurance;

(3) assist with research; and

(4) coordinate poison control activities with other public health activities.

(b) Each regional poison control center shall provide the Department of State Health Services with access to all data and information collected by the regional poison control center for public health activities and epidemiological and toxicological investigations.

(c) The Commission on State Emergency Communications and the Department of State Health Services shall enter into a memorandum of understanding that delineates the responsibilities of each agency under this section and amend the memorandum of understanding as necessary to reflect the changes in those responsibilities.

Added by Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 9, eff. September 1, 2009.

CHAPTER 778. EMERGENCY MANAGEMENT ASSISTANCE COMPACT

Sec. 778.001. EXECUTION OF INTERSTATE COMPACT. This state enacts the Emergency Management Assistance Compact and enters into the compact with all other states legally joining in the compact in substantially the following form:

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

ARTICLE I--PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state(s), whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II--GENERAL IMPLEMENTATION

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the Federal Government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be

understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III--PARTY STATE RESPONSIBILITIES

A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

i. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.

ii. Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

iii. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

iv. Assist in warning communities adjacent to or crossing the state boundaries.

v. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

vi. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

vii. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

B. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized

representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within 30 days of the verbal request. Requests shall provide the following information:

i. A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

ii. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

iii. The specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

ARTICLE IV--LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as

the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving state(s), whichever is longer.

ARTICLE V--LICENSES AND PERMITS

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI--LIABILITY

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII--SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII--COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid

pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX--REIMBURSEMENT

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

ARTICLE X--EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI--IMPLEMENTATION

A. This compact shall become operative immediately upon its enactment into law by any two (2) states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 30 days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

ARTICLE XII--VALIDITY

This compact shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

ARTICLE XIII--ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code.

Added by Acts 1997, 75th Leg., ch. 169, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 778A. RECOGNITION OF EMERGENCY MEDICAL SERVICES PERSONNEL LICENSURE INTERSTATE COMPACT ("REPLICA")

Sec. 778A.001. EXECUTION OF INTERSTATE COMPACT. This state enacts the EMS Personnel Licensure Interstate Compact and enters into the compact with all other states legally joining in the compact in

substantially the following form:

EMS PERSONNEL LICENSURE INTERSTATE COMPACT.

Section 1. PURPOSE. In order to protect the public through verification of competency and ensure accountability for patient care related activities all states license emergency medical services (EMS) personnel, such as emergency medical technicians (EMTs), advanced EMTs and paramedics. This compact is intended to facilitate the day to day movement of EMS personnel across state boundaries in the performance of their EMS duties as assigned by an appropriate authority and authorize state EMS offices to afford immediate legal recognition to EMS personnel licensed in a member state. This compact recognizes that states have a vested interest in protecting the public's health and safety through their licensing and regulation of EMS personnel and that such state regulation shared among the member states will best protect public health and safety. This compact is designed to achieve the following purposes and objectives:

1. increase public access to EMS personnel;

2. enhance the states' ability to protect the public's health and safety, especially patient safety;

3. encourage the cooperation of member states in the areas of EMS personnel licensure and regulation;

4. support licensing of military members who are separating from an active duty tour and their spouses;

5. facilitate the exchange of information between member states regarding EMS personnel licensure, adverse action and significant investigatory information;

6. promote compliance with the laws governing EMS personnel practice in each member state; and

7. invest all member states with the authority to hold EMS personnel accountable through the mutual recognition of member state licenses.

Section 2. DEFINITIONS. In this compact:

A. "Advanced emergency medical technician (AEMT)" means: an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

B. "Adverse action" means: any administrative, civil, equitable or criminal action permitted by a state's laws which may be imposed against licensed EMS personnel by a state EMS authority or state court, including, but not limited to, actions against an individual's

license such as revocation, suspension, probation, consent agreement, monitoring or other limitation or encumbrance on the individual's practice, letters of reprimand or admonition, fines, criminal convictions and state court judgments enforcing adverse actions by the state EMS authority.

C. "Alternative program" means: a voluntary, non-disciplinary substance abuse recovery program approved by a state EMS authority.

D. "Certification" means: the successful verification of entry-level cognitive and psychomotor competency using a reliable, validated, and legally defensible examination.

E. "Commission" means: the national administrative body of which all states that have enacted the compact are members.

F. "Emergency medical technician (EMT)" means: an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

G. "Home state" means: a member state where an individual is licensed to practice emergency medical services.

H. "License" means: the authorization by a state for an individual to practice as an EMT, AEMT, paramedic, or a level in between EMT and paramedic.

I. "Medical director" means: a physician licensed in a member state who is accountable for the care delivered by EMS personnel.

J. "Member state" means: a state that has enacted this compact.

K. "Privilege to practice" means: an individual's authority to deliver emergency medical services in remote states as authorized under this compact.

L. "Paramedic" means: an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

M. "Remote state" means: a member state in which an individual is not licensed.

N. "Restricted" means: the outcome of an adverse action that limits a license or the privilege to practice.

O. "Rule" means: a written statement by the interstate commission promulgated pursuant to Section 12 of this compact that is of general applicability; implements, interprets, or prescribes a policy or provision of the compact; or is an organizational, procedural, or practice requirement of the commission and has the

force and effect of statutory law in a member state and includes the amendment, repeal, or suspension of an existing rule.

P. "Scope of practice" means: defined parameters of various duties or services that may be provided by an individual with specific credentials. Whether regulated by rule, statute, or court decision, it tends to represent the limits of services an individual may perform.

Q. "Significant investigatory information" means:

1. investigative information that a state EMS authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proved true, would result in the imposition of an adverse action on a license or privilege to practice; or

2. investigative information that indicates that the individual represents an immediate threat to public health and safety regardless of whether the individual has been notified and had an opportunity to respond.

R. "State" means: any state, commonwealth, district, or territory of the United States.

S. "State EMS authority" means: the board, office, or other agency with the legislative mandate to license EMS personnel.

Section 3. HOME STATE LICENSURE. A. Any member state in which an individual holds a current license shall be deemed a home state for purposes of this compact.

B. Any member state may require an individual to obtain and retain a license to be authorized to practice in the member state under circumstances not authorized by the privilege to practice under the terms of this compact.

C. A home state's license authorizes an individual to practice in a remote state under the privilege to practice only if the home state:

1. currently requires the use of the National Registry of Emergency Medical Technicians (NREMT) examination as a condition of issuing initial licenses at the EMT and paramedic levels;

2. has a mechanism in place for receiving and investigating complaints about individuals;

3. notifies the commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding an individual;

4. no later than five years after activation of the

compact, requires a criminal background check of all applicants for initial licensure, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation with the exception of federal employees who have suitability determination in accordance with 5 C.F.R. Section 731.202 and submit documentation of such as promulgated in the rules of the commission; and

5. complies with the rules of the commission.

Section 4. COMPACT PRIVILEGE TO PRACTICE. A. Member states shall recognize the privilege to practice of an individual licensed in another member state that is in conformance with Section 3.

B. To exercise the privilege to practice under the terms and provisions of this compact, an individual must:

1. be at least 18 years of age;

2. possess a current unrestricted license in a member state as an EMT, AEMT, paramedic, or state recognized and licensed level with a scope of practice and authority between EMT and paramedic; and

3. practice under the supervision of a medical director.

C. An individual providing patient care in a remote state under the privilege to practice shall function within the scope of practice authorized by the home state unless and until modified by an appropriate authority in the remote state as may be defined in the rules of the commission.

D. Except as provided in Section 4.C. of this compact, an individual practicing in a remote state will be subject to the remote state's authority and laws. A remote state may, in accordance with due process and that state's laws, restrict, suspend, or revoke an individual's privilege to practice in the remote state and may take any other necessary actions to protect the health and safety of its citizens. If a remote state takes action it shall promptly notify the home state and the commission.

E. If an individual's license in any home state is restricted or suspended, the individual shall not be eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored.

F. If an individual's privilege to practice in any remote state is restricted, suspended, or revoked the individual shall not be eligible to practice in any remote state until the individual's privilege to practice is restored.

Section 5. CONDITIONS OF PRACTICE IN A REMOTE STATE. An

individual may practice in a remote state under a privilege to practice only in the performance of the individual's EMS duties as assigned by an appropriate authority, as defined in the rules of the commission, and under the following circumstances:

1. the individual originates a patient transport in a home state and transports the patient to a remote state;

2. the individual originates in the home state and enters a remote state to pick up a patient and provide care and transport of the patient to the home state;

3. the individual enters a remote state to provide patient care and/or transport within that remote state;

4. the individual enters a remote state to pick up a patient and provide care and transport to a third member state; or

5. other conditions as determined by rules promulgated by the commission.

Section 6. RELATIONSHIP TO EMERGENCY MANAGEMENT ASSISTANCE COMPACT. Upon a member state's governor's declaration of a state of emergency or disaster that activates the Emergency Management Assistance Compact (EMAC), all relevant terms and provisions of EMAC shall apply and to the extent any terms or provisions of this compact conflicts with EMAC, the terms of EMAC shall prevail with respect to any individual practicing in the remote state in response to such declaration.

Section 7. VETERANS, SERVICE MEMBERS SEPARATING FROM ACTIVE DUTY MILITARY, AND THEIR SPOUSES. A. Member states shall consider a veteran, active military service member, and member of the National Guard and Reserves separating from an active duty tour, and a spouse thereof, who holds a current valid and unrestricted NREMT certification at or above the level of the state license being sought as satisfying the minimum training and examination requirements for such licensure.

B. Member states shall expedite the processing of licensure applications submitted by veterans, active military service members, and members of the National Guard and Reserves separating from an active duty tour, and their spouses.

C. All individuals functioning with a privilege to practice under this section remain subject to the adverse actions provisions of Section 8 of this compact.

Section 8. ADVERSE ACTIONS. A. A home state shall have exclusive power to impose adverse action against an individual's

license issued by the home state.

B. If an individual's license in any home state is restricted or suspended, the individual shall not be eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored.

1. All home state adverse action orders shall include a statement that the individual's compact privileges are inactive. The order may allow the individual to practice in remote states with prior written authorization from both the home state and remote state's EMS authority.

2. An individual currently subject to adverse action in the home state shall not practice in any remote state without prior written authorization from both the home state and remote state's EMS authority.

C. A member state shall report adverse actions and any occurrences that the individual's compact privileges are restricted, suspended, or revoked to the commission in accordance with the rules of the commission.

D. A remote state may take adverse action on an individual's privilege to practice within that state.

E. Any member state may take adverse action against an individual's privilege to practice in that state based on the factual findings of another member state, so long as each state follows its own procedures for imposing such adverse action.

F. A home state's EMS authority shall investigate and take appropriate action with respect to reported conduct in a remote state as it would if such conduct had occurred within the home state. In such cases, the home state's law shall control in determining the appropriate adverse action.

G. Nothing in this compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain non-public if required by the member state's laws. Member states must require individuals who enter any alternative programs to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

Section 9. ADDITIONAL POWERS INVESTED IN A MEMBER STATE'S EMS AUTHORITY. A member state's EMS authority, in addition to any other powers granted under state law, is authorized under this compact to:

1. issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence; subpoenas issued by a member state's EMS authority for the attendance and testimony of witnesses, and/or the production of evidence from another member state, shall be enforced in the remote state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings; the issuing state EMS authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and

2. issue cease and desist orders to restrict, suspend, or revoke an individual's privilege to practice in the state.

Section 10. ESTABLISHMENT OF THE INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE. A. The compact states hereby create and establish a joint public agency known as the Interstate Commission for EMS Personnel Practice.

1. The commission is a body politic and an instrumentality of the compact states.

2. Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings. 1. Each member state shall have and be limited to one delegate. The responsible official of the state EMS authority or his designee shall be the delegate to this compact for each member state. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the member state in which the vacancy exists. In the event that more than one board, office, or other agency with the legislative mandate to license EMS personnel at and above the level of EMT exists, the governor of the state will determine which entity will be responsible for assigning the delegate.

2. Each delegate shall be entitled to one vote with regard

to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

3. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

4. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Section 12 of this compact.

5. The commission may convene in a closed, non-public meeting if the commission must discuss:

a. non-compliance of a member state with its obligations under the compact;

b. the employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

c. current, threatened, or reasonably anticipated litigation;

d. negotiation of contracts for the purchase or sale of goods, services, or real estate;

e. accusing any person of a crime or formally censuring any person;

f. disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. disclosure of investigatory records compiled for law enforcement purposes;

i. disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or

j. matters specifically exempted from disclosure by federal or member state statute.

6. If a meeting, or portion of a meeting, is closed pursuant to this section, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

C. The commission shall, by a majority vote of the delegates, prescribe bylaws and/or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including but not limited to:

1. establishing the fiscal year of the commission;

2. providing reasonable standards and procedures:

a. for the establishment and meetings of other committees; and

b. governing any general or specific delegation of any authority or function of the commission;

3. providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the membership votes to close a meeting in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed;

4. establishing the titles, duties and authority, and reasonable procedures for the election of the officers of the commission;

5. providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission; notwithstanding any civil service or other similar laws of any member state, the bylaws shall exclusively govern the personnel policies and programs of the commission;

6. promulgating a code of ethics to address permissible and prohibited activities of commission members and employees;

7. providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment and/or reserving of all of its debts and obligations;

8. the commission shall publish its bylaws and file a copy thereof, and a copy of any amendment thereto, with the appropriate agency or officer in each of the member states, if any;

9. the commission shall maintain its financial records in accordance with the bylaws; and

10. the commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

D. The commission shall have the following powers:

1. the authority to promulgate uniform rules to facilitate and coordinate implementation and administration of this compact; the rules shall have the force and effect of law and shall be binding in all member states;

2. to bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state EMS authority or other regulatory body responsible for EMS personnel licensure to sue or be sued under applicable law shall not be affected;

3. to purchase and maintain insurance and bonds;

4. to borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

5. to hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact, and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

6. to accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the commission shall strive to avoid any appearance of impropriety and/or conflict of interest;

7. to lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any

property, real, personal or mixed; provided that at all times the commission shall strive to avoid any appearance of impropriety;

8. to sell convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

9. to establish a budget and make expenditures;

10. to borrow money;

11. to appoint committees, including advisory committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

12. to provide and receive information from, and to cooperate with, law enforcement agencies;

13. to adopt and use an official seal; and

14. to perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of EMS personnel licensure and practice.

E. Financing of the Commission. 1. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.

4. The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the member states, except by and with the authority of the member state.

5. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements

of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

F. Qualified Immunity, Defense, and Indemnification. 1. The members, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The commission shall defend any member, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

Section 11. COORDINATED DATABASE. A. The commission shall

provide for the development and maintenance of a coordinated database and reporting system containing licensure, adverse action, and significant investigatory information on all licensed individuals in member states.

B. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the coordinated database on all individuals to whom this compact is applicable as required by the rules of the commission, including:

1. identifying information;

2. licensure data;

3. significant investigatory information;

4. adverse actions against an individual's license;

5. an indicator that an individual's privilege to practice is restricted, suspended or revoked;

6. non-confidential information related to alternative program participation;

7. any denial of application for licensure, and the reason or reasons for such denial; and

8. other information that may facilitate the administration of this compact, as determined by the rules of the commission.

C. The coordinated database administrator shall promptly notify all member states of any adverse action taken against, or significant investigative information on, any individual in a member state.

D. Member states contributing information to the coordinated database may designate information that may not be shared with the public without the express permission of the contributing state.

E. Any information submitted to the coordinated database that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the coordinated database.

Section 12. RULEMAKING. A. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any member state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

D. Prior to promulgation and adoption of a final rule or rules by the commission, and at least 60 days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

1. on the website of the commission; and

2. on the website of each member state EMS authority or the publication in which each state would otherwise publish proposed rules.

E. The notice of proposed rulemaking shall include:

1. the proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

2. the text of the proposed rule or amendment and the reason for the proposed rule;

3. a request for comments on the proposed rule from any interested person; and

4. the manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

G. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. at least 25 persons;

2. a governmental subdivision or agency; or

3. an association having at least 25 members.

H. If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than 5 business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person

requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the commission from making a transcript or recording of the hearing if it so chooses.

4. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

J. The commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.

L. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. meet an imminent threat to public health, safety, or welfare;

2. prevent a loss of commission or member state funds;

3. meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

4. protect public health and safety.

M. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be

made in writing, and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

Section 13. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT. A. Oversight.

1. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the commission.

3. The commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission shall render a judgment or order void as to the commission, this compact, or promulgated rules.

B. Default, Technical Assistance, and Termination. 1. If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:

a. provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the commission; and

b. provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the compact shall be imposed only after all other means of securing compliance have been

exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

4. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.

6. The defaulting state may appeal the action of the commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution. 1. Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and non-member states.

2. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement. 1. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. By majority vote, the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

Section 14. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND

AMENDMENT. A. The compact shall come into effect on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.

B. Any state that joins the compact subsequent to the commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission shall have the full force and effect of law on the day the compact becomes law in that state.

C. Any member state may withdraw from this compact by enacting a statute repealing the same.

1. A member state's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's EMS authority to comply with the investigative and adverse action reporting requirements of this compact prior to the effective date of withdrawal.

D. Nothing contained in this compact shall be construed to invalidate or prevent any EMS personnel licensure agreement or other cooperative arrangement between a member state and a non-member state that does not conflict with the provisions of this compact.

E. This compact may be amended by the member states. No amendment to this compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

Section 15. CONSTRUCTION AND SEVERABILITY. This compact shall be liberally construed so as to effectuate the purposes thereof. If this compact shall be held contrary to the constitution of any state member thereto, the compact shall remain in full force and effect as to the remaining member states. Nothing in this compact supersedes state law or rules related to licensure of EMS agencies.

Added by Acts 2015, 84th Leg., R.S., Ch. 778 (H.B. 2498), Sec. 1, eff. September 1, 2015.

CHAPTER 779. AUTOMATED EXTERNAL DEFIBRILLATORS

Sec. 779.001. DEFINITION. In this chapter, "automated external defibrillator" means a heart monitor and defibrillator that:

(1) has received approval from the United States Food and Drug Administration of its premarket notification filed under 21 U.S.C. Section 360(k), as amended;

(2) is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and is capable of determining, without interpretation of cardiac rhythm by an operator, whether defibrillation should be performed; and

(3) on determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.

Sec. 779.003. ACQUISITION, MAINTENANCE, AND INSPECTION OF AUTOMATED EXTERNAL DEFIBRILLATOR. A person or entity that owns or leases an automated external defibrillator shall:

(1) maintain and test the automated external defibrillator according to the manufacturer's guidelines; and

(2) conduct a monthly inspection to verify the automated external defibrillator:

(A) is placed at its designated location;

(B) reasonably appears to be ready for use; and

(C) does not reasonably appear to be damaged in a manner that could prevent operation.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 545 (S.B. 199), Sec. 1, eff. September 1, 2021.

Sec. 779.004. USING AN AUTOMATED EXTERNAL DEFIBRILLATOR. A person or entity that provides emergency care to a person in cardiac arrest by using an automated external defibrillator shall promptly notify the local emergency medical services provider.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.

Sec. 779.005. NOTIFYING LOCAL EMERGENCY MEDICAL SERVICES PROVIDER. When a person or entity acquires an automated external defibrillator, the person or entity shall notify the local emergency medical services provider of the existence, location, and type of automated external defibrillator.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.

Sec. 779.006. LIABILITY EXEMPTION. (a) Unless the conduct is wilfully or wantonly negligent, a physician who prescribes or is otherwise involved in the acquisition of an automated external defibrillator and any person or entity that provides training in the use of an automated external defibrillator are not liable for civil damages related to:

(1) the prescription, acquisition, or training in the use of the automated external defibrillator; or

(2) any use or attempted use of or the failure to use the automated external defibrillator.

(b) Any person or entity that acquires an automated external defibrillator and any person or entity that owns, occupies, manages, or is otherwise responsible for the designated location where the automated external defibrillator is placed are not liable for civil damages related to the use or attempted use of or the failure to use the automated external defibrillator unless the conduct is wilfully or wantonly negligent.

(c) The immunity provided by this section is in addition to any other immunity or limitations of liability provided by other law.

(d) The immunity described by this section applies regardless of whether the person who uses, attempts to use, or fails to use the automated external defibrillator received training in the use of an automated external defibrillator.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 545 (S.B. 199), Sec. 2, eff. September 1, 2021.

Sec. 779.007. POSSESSION OF AUTOMATED EXTERNAL DEFIBRILLATORS. Each person or entity, other than a licensed practitioner, that

acquires an automated external defibrillator that has not been approved by the United States Food and Drug Administration for over-the-counter sale shall ensure that:

(1) the automated external defibrillator has been delivered to that person or entity by a licensed practitioner in the course of his professional practice or upon a prescription or other order lawfully issued in the course of his professional practice; or

(2) if the automated external defibrillator is acquired for the purpose of sale or lease, the person or entity shall be in conformance with the applicable requirements found in Section 483.041, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 38 (H.B. 92), Sec. 1, eff. May 8, 2007.

Sec. 779.008. HOSPITAL EXEMPTION. This chapter shall not apply to hospitals licensed under Chapter 241, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 780. TRAUMA FACILITIES AND EMERGENCY MEDICAL SERVICES

Sec. 780.001. DEFINITIONS. In this chapter:

(1) "Account" means the designated trauma facility and emergency medical services account established under Section 780.003.

(2) "Commissioner" means the commissioner of state health services.

(3) "Department" means the Department of State Health Services.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.02, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1123 (H.B. 2470), Sec. 1, eff. September 1, 2005.

Sec. 780.002. CERTAIN DEPOSITS TO ACCOUNT. The comptroller

shall deposit any gifts, grants, donations, and legislative appropriations made for the purposes of the designated trauma facility and emergency medical services account established under Section 780.003 to the credit of the account.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.02, eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 2.05, eff. Jan. 11, 2004.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1094 (H.B. 2048), Sec. 6, eff. September 1, 2019.

Sec. 780.003. ACCOUNT. (a) The designated trauma facility and emergency medical services account is created as a dedicated account in the general revenue fund of the state treasury. Money in the account may be appropriated only to:

(1) the department for the purposes described by Section 780.004; or

(2) the Texas Higher Education Coordinating Board for graduate-level:

(A) medical education programs; or

(B) nursing education programs.

(b) The account is composed of money deposited to the credit of the account under Sections 542.4031, 709.002, and 1006.153, Transportation Code, and under Section 780.002 of this code.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 448 , Sec. 46(3), eff. September 1, 2015.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.02, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 8, eff. June 14, 2013.
Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 23, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 46(3), eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 372 (H.B. 1631), Sec. 4, eff. June 2, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1094 (H.B. 2048), Sec. 7, eff.

September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.008, eff. September 1, 2021.

Sec. 780.004. PAYMENTS FROM THE ACCOUNT. (a) The commissioner:

(1) with advice and counsel from the chairpersons of the trauma service area regional advisory councils, shall use money appropriated from the account established under this chapter to fund designated trauma facilities, county and regional emergency medical services, and trauma care systems in accordance with this section; and

(2) after consulting with the executive commissioner of the Health and Human Services Commission, may transfer to an account in the general revenue fund money appropriated from the account established under this chapter to maximize the receipt of federal funds under the medical assistance program established under Chapter 32, Human Resources Code, and to fund provider reimbursement payments as provided by Subsection (j).

(a-1) A grant recipient may not before the fourth anniversary of the date a grant is awarded under Subsection (a) dispose of an ambulance for which the total costs of purchasing the ambulance were paid only from grants awarded under Subsection (a) or Section 773.122(a) unless the grant recipient obtains the department's prior approval.

(b) In each fiscal year, the commissioner shall reserve $500,000 of any money appropriated from the account for extraordinary emergencies. Money that is not spent in a fiscal year shall be transferred to the reserve for the following fiscal year.

(c) In any fiscal year, the commissioner shall use at least 94 percent of the money appropriated from the account, after any amount the commissioner is required by Subsection (b) to reserve is deducted, to fund a portion of the uncompensated trauma care provided at facilities designated as state trauma facilities by the department or an undesignated facility in active pursuit of designation. Funds may be disbursed under this subsection based on a proportionate share of uncompensated trauma care provided in the state and may be used to fund innovative projects to enhance the delivery of patient care in the overall emergency medical services and trauma care system.

(d) In any fiscal year, the commissioner shall use three percent of the money appropriated from the account, after any amount the commissioner is required by Subsection (b) to reserve is deducted, to fund, in connection with an effort to provide coordination with the appropriate trauma service area, the cost of supplies, operational expenses, education and training, equipment, vehicles, and communications systems for local emergency medical services. The money shall be distributed on behalf of eligible recipients in each county to the trauma service area regional advisory council for that county. To receive a distribution under this subsection, the regional advisory council must be incorporated as an entity that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under Section 501(c)(3) of that code. The share of the money allocated to the eligible recipients in a county's geographic area shall be based on the relative geographic size and population of the county and on the relative number of emergency or trauma care runs performed by eligible recipients in the county. Money that is not disbursed by a regional advisory council to eligible recipients for approved functions by the end of the fiscal year in which the funds were disbursed may be retained by the regional advisory council for use in the following fiscal year in accordance with this subsection. Money that is not disbursed by the regional advisory council in that following fiscal year shall be returned to the department to be used in accordance with Subsection (c).

(e) In any fiscal year, the commissioner shall use two percent of the money appropriated from the account, after any amount the commissioner is required by Subsection (b) to reserve is deducted, for operation of the 22 trauma service areas and for equipment, communications, and education and training for the areas. Money distributed under this subsection shall be distributed on behalf of eligible recipients in each county to the trauma service area regional advisory council for that county. To receive a distribution under this subsection, the regional advisory council must be incorporated as an entity that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under Section 501(c)(3) of that code. A regional advisory council's share of money distributed under this section shall be based on the

relative geographic size and population of each trauma service area and on the relative amount of trauma care provided. Money that is not disbursed by a regional advisory council to eligible recipients for approved functions by the end of the fiscal year in which the funds were disbursed may be retained by the regional advisory council for use in the following fiscal year in accordance with this subsection. Money that is not disbursed by the regional advisory council in that following fiscal year shall be returned to the department to be used in accordance with Subsection (c).

(f) In any fiscal year, the commissioner may use not more than one percent of money appropriated from the account, after any amount the commissioner is required by Subsection (b) to reserve, to fund the administrative costs of the bureau of emergency management of the department associated with administering the trauma program, the state emergency medical services program, and the account and to fund the costs of monitoring and providing technical assistance for those programs and that account.

(g) In a trauma service area that includes a county with a population of 3.3 million or more, a trauma service area regional advisory council may enter into an agreement with a regional council of governments to execute its responsibilities and functions under this chapter.

(h) For purposes of this section "pursuit of designation" means:

(1) submission of an application with the state or appropriate agency for trauma verification and designation;

(2) submission of data to the department trauma registry;

(3) participation in trauma service area regional advisory council initiatives; and

(4) creation of a hospital trauma performance committee.

(i) This subsection applies only to an undesignated facility that applies for trauma verification and designation after September 1, 2005, and is in active pursuit of designation. The facility must file a statement of intent to seek the designation, comply with Subsection (h) not later than the 180th day after the date the statement of intent is filed, and notify the department of the facility's compliance with that subsection. If trauma designation is not attained by an undesignated facility in active pursuit of designation on or before the second anniversary of the date the facility notified the department of the facility's compliance with

Subsection (h), any funds received by the undesignated facility for unreimbursed trauma services must be returned to the state.

(j) Money in the account described by Subsection (a)(2) may be appropriated only to the Health and Human Services Commission to fund provider reimbursement payments under the medical assistance program established under Chapter 32, Human Resources Code, including reimbursement enhancements to the statewide dollar amount (SDA) rate used to reimburse designated trauma hospitals under the program.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.02, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1123 (H.B. 2470), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 638 (S.B. 901), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.14, eff. September 28, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1094 (H.B. 2048), Sec. 8, eff. September 1, 2019.

Sec. 780.005. CONTROL OF EXPENDITURES FROM THE ACCOUNT. Money distributed under Section 780.004 shall be used in compliance with Section 780.004 on the authorization of the executive committee of the trauma service area regional advisory council.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.02, eff. Sept. 1, 2003.

Sec. 780.006. LOSS OF FUNDING ELIGIBILITY. For a period of not less than one year or more than three years, as determined by the commissioner, the department may not disburse money under Section 780.004 to a county, municipality, or local recipient that the commissioner finds used money in violation of that section.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.02, eff. Sept. 1, 2003.

CHAPTER 784. CRITICAL INCIDENT STRESS MANAGEMENT AND CRISIS RESPONSE SERVICES

Sec. 784.001. DEFINITIONS. In this chapter:

(1) "Crisis response service" means consultation, risk assessment, referral, and on-site crisis intervention services provided by an emergency response team member to an emergency service provider affected by a crisis or disaster.

(2) "Critical incident stress" means the acute or cumulative psychological stress or trauma that an emergency service provider may experience in providing emergency services in response to a critical incident, including a crisis, disaster, or emergency. The stress or trauma is an unusually strong emotional, cognitive, or physical reaction that has the potential to interfere with normal functioning, including:

(A) physical and emotional illness;

(B) failure of usual coping mechanisms;

(C) loss of interest in the job;

(D) personality changes; and

(E) loss of ability to function.

(3) "Critical incident stress management service" means a service providing a process of crisis intervention designed to assist an emergency service provider in coping with critical incident stress. The term includes consultation, counseling, debriefing, defusing, intervention services, case management services, prevention, and referral.

(4) "Emergency response team member" means an individual providing critical incident stress management services or crisis response services, or both, who is designated by an appropriate state or local governmental unit to provide those services as a member of an organized team or in association with the governmental unit.

(5) "Emergency service provider" means an individual who provides emergency response services, including a law enforcement officer, firefighter, emergency medical services provider, dispatcher, or rescue service provider.

Added by Acts 2011, 82nd Leg., R.S., Ch. 651 (S.B. 1065), Sec. 1, eff. September 1, 2011.

Sec. 784.002. CLOSED MEETINGS. (a) Except as provided by

Subsection (b) and notwithstanding Chapter 551, Government Code, or any other law, a meeting in which critical incident stress management services or crisis response services are provided to an emergency service provider:

(1) is closed to the general public; and

(2) may be closed to any individual who was not directly involved in the critical incident or crisis.

(b) Subsection (a) does not apply if:

(1) the emergency service provider or the legal representative of the provider expressly agrees that the meeting may be open to the general public or to certain individuals; or

(2) the emergency service provider is deceased.

Added by Acts 2011, 82nd Leg., R.S., Ch. 651 (S.B. 1065), Sec. 1, eff. September 1, 2011.

Sec. 784.003. CONFIDENTIALITY. (a) Except as otherwise provided by this section:

(1) a communication made by an emergency service provider to an emergency response team member while the provider receives critical incident stress management services or crisis response services is confidential and may not be disclosed in a civil, criminal, or administrative proceeding; and

(2) a record kept by an emergency response team member relating to the provision of critical incident stress management services or crisis response services to an emergency service provider by the team is confidential and is not subject to subpoena, discovery, or introduction into evidence in a civil, criminal, or administrative proceeding.

(b) A court in a civil or criminal case or the decision-making entity in an administrative proceeding may allow disclosure of a communication or record described by Subsection (a) if the court or entity finds that the benefit of allowing disclosure of the communication or record is more important than protecting the privacy of the individual.

(c) A communication or record described by Subsection (a) is not confidential if:

(1) the emergency response team member reasonably needs to make an appropriate referral of the emergency service provider to or

consult about the provider with another member of the team or an appropriate professional associated with the team;

(2) the communication conveys information that the emergency service provider is or appears to be an imminent threat to the provider or anyone else;

(3) the communication conveys information relating to a past, present, or future criminal act that does not directly relate to the critical incident or crisis;

(4) the emergency service provider or the legal representative of the provider expressly agrees that the communication or record is not confidential; or

(5) the emergency service provider is deceased.

(d) A communication or record described by Subsection (a) is not confidential to the extent that it conveys information concerning the services and care provided to or withheld by the emergency service provider to an individual injured in the critical incident or during the crisis.

Added by Acts 2011, 82nd Leg., R.S., Ch. 651 (S.B. 1065), Sec. 1, eff. September 1, 2011.

Sec. 784.004. LIMITATION ON LIABILITY. (a) Except as provided by Subsection (b), an emergency response team or an emergency response team member providing critical incident stress management services or crisis response services is not liable for damages, including personal injury, wrongful death, property damage, or other loss related to the team's or member's act, error, or omission in the performance of the services, unless the act, error, or omission constitutes wanton, wilful, or intentional misconduct.

(b) Subsection (a) limits liability for damages in any civil action, other than an action under Chapter 74, Civil Practice and Remedies Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 651 (S.B. 1065), Sec. 1, eff. September 1, 2011.

CHAPTER 785. SEARCH AND RESCUE DOGS

Sec. 785.001. DEFINITIONS. In this chapter:

(1) "Handler" means a person who handles a search and

rescue dog and who is certified by the National Association for Search and Rescue or another state or nationally recognized search and rescue agency.

(2) "Housing accommodations" has the meaning assigned by Section 121.002(3), Human Resources Code.

(3) "Public facility" means a facility described by Section 121.002(5), Human Resources Code.

(4) "Search and rescue dog" means a canine that is trained or being trained to assist a nationally recognized search and rescue agency in search and rescue activities.

Added by Acts 2013, 83rd Leg., R.S., Ch. 466 (S.B. 1010), Sec. 1, eff. September 1, 2013.

Sec. 785.002. DISCRIMINATION PROHIBITED. (a) The owner, manager, or operator of a public facility, or an employee or other agent of the owner, manager, or operator, may not deny a search and rescue dog admittance to the facility.

(b) The owner, manager, or operator of a public facility, or an employee or other agent of the owner, manager, or operator, may not deny a search and rescue dog's handler admittance to the facility because of the presence of the handler's search and rescue dog.

(c) The owner, manager, or operator of a common carrier, airplane, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation operating within this state, or an employee or other agent of the owner, manager, or operator, may not:

(1) refuse to accept as a passenger a search and rescue dog or the dog's handler; or

(2) require the dog's handler to pay an additional fare because of the search and rescue dog.

(d) The discrimination prohibited by this section includes:

(1) refusing to allow a search and rescue dog or the dog's handler to use or be admitted to a public facility;

(2) a ruse or subterfuge calculated to prevent or discourage a search and rescue dog or the dog's handler from using or being admitted to a public facility; and

(3) failing to make a reasonable accommodation in a policy, practice, or procedure to allow a search and rescue dog or the dog's

handler to be admitted to a public facility.

(e) A policy relating to the use of a public facility by a designated class of persons from the general public may not prohibit the use of the particular public facility by a search and rescue dog or the dog's handler.

(f) A search and rescue dog's handler is entitled to full and equal access, in the same manner as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in this state, subject to any condition or limitation established by law that applies to all persons, except that the handler may not be required to pay an extra fee or charge or security deposit for the search and rescue dog.

Added by Acts 2013, 83rd Leg., R.S., Ch. 466 (S.B. 1010), Sec. 1, eff. September 1, 2013.

Sec. 785.003. PENALTY FOR DISCRIMINATION. (a) A person who violates Section 785.002 commits an offense. An offense under this subsection is a misdemeanor punishable by a fine of not less than $300 or more than $1,000.

(b) It is a defense to prosecution under Subsection (a) that the actor requested the search and rescue dog handler's credentials under Section 785.005 and the handler failed to provide the actor with the credentials.

Added by Acts 2013, 83rd Leg., R.S., Ch. 466 (S.B. 1010), Sec. 1, eff. September 1, 2013.

Sec. 785.004. RESPONSIBILITIES OF HANDLERS; CIVIL LIABILITY. (a) A handler who accompanies a search and rescue dog shall keep the dog properly harnessed or leashed. A person may maintain a cause of action against a dog's handler for personal injury, property damage, or death resulting from the failure of the dog's handler to properly harness or leash the dog under the same law applicable to other causes brought for the redress of injuries caused by animals.

(b) The handler of a search and rescue dog is liable for any property damage caused by the search and rescue dog to a public facility or to housing accommodations.

(c) A governmental unit, as defined by Section 101.001, Civil

Practice and Remedies Code, is subject to liability under this section only as provided by Chapter 101, Civil Practice and Remedies Code. A public servant, as defined by Section 108.001, Civil Practice and Remedies Code, is subject to liability under this section only as provided by Chapter 108, Civil Practice and Remedies Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 466 (S.B. 1010), Sec. 1, eff. September 1, 2013.

Sec. 785.005. CANINE HANDLER CREDENTIALS. A person may ask a search and rescue dog handler to display proof that the handler is a person with a certification issued by the National Association for Search and Rescue or another state or nationally recognized search and rescue agency.

Added by Acts 2013, 83rd Leg., R.S., Ch. 466 (S.B. 1010), Sec. 1, eff. September 1, 2013.

CHAPTER 786. SENIOR RETIREMENT COMMUNITIES

Sec. 786.001. DEFINITIONS. In this chapter:

(1) "Common amenity" means an amenity or service offered or provided to residents of a multiunit residential property.

(2) "Resident" means an individual who resides in a senior retirement community as a unit owner or tenant.

(3) "Senior retirement community" means a residential community or a portion of a residential community:

(A) described by Section 301.043, Property Code;

(B) that contains not fewer than 20 residential units in one or more multiunit buildings that are available to own, rent, or lease; and

(C) that provides common amenities.

(4) "Senior retirement community contract" means a contract with a resident of a senior retirement community for providing a common amenity to the resident.

(5) "Unit" means a physical portion of a residential property designated for separate ownership or occupancy.

Added by Acts 2025, 89th Leg., R.S., Ch. 495 (S.B. 1283), Sec. 1, eff.

September 1, 2025.

Sec. 786.002. EXEMPTIONS. This chapter does not apply to:

(1) a health care institution as defined by Section 74.001, Civil Practice and Remedies Code;

(2) a boarding home facility as defined by Section 260.001 that holds a permit issued under Chapter 260;

(3) a supportive housing facility for elderly individuals operated under Section 202, the National Housing Act (12 U.S.C. Section 1701q);

(4) a center for independent living as defined by Section 702 of the federal Rehabilitation Act of 1973 (29 U.S.C. Section 796a); or

(5) any other facility that is regulated by the Health and Human Services Commission or in accordance with rules adopted by the Centers for Medicare and Medicaid Services.

Added by Acts 2025, 89th Leg., R.S., Ch. 495 (S.B. 1283), Sec. 1, eff. September 1, 2025.

Sec. 786.003. REQUIREMENTS RELATING TO RESIDENT SAFETY FROM CRIMINAL ACTIVITY. (a) A senior retirement community shall:

(1) conduct for each retirement community employee a criminal history record check using the computerized criminal history system maintained by the Department of Public Safety of the State of Texas;

(2) disclose in the senior retirement community contract whether the retirement community requires each business hired by the retirement community to provide services at the retirement community to conduct a criminal history record check of each of the business's employees who will provide services at the retirement community; and

(3) maintain a resident safety and communications policy regarding criminal activity that poses a risk to residents, which must require the retirement community to send to each resident and post in a conspicuous manner at a location on the retirement community premises where the retirement community posts other community notices a written notice containing information on:

(A) known reports of potential criminal activity made

to law enforcement from or at the retirement community not later than two business days after the date the report is made; and

(B) known instances of criminal trespassing at the retirement community not later than two business days after the trespassing is reported or occurs.

(b) For purposes of providing notice under the policy adopted by a senior retirement community under Subsection (a)(3) relating to a reportable incident described by that subdivision, the retirement community:

(1) may provide for the removal of the personal identifying information of an individual who is involved in the reportable incident to prevent the individual's identification; and

(2) may not refuse to provide the notice based solely on concerns related to the disclosure of the individual's personal identifying information.

(c) A senior retirement community may not be held civilly or criminally liable for the retirement community's compliance with Subsection (a)(1) or (3).

(d) A senior retirement community may not:

(1) prevent or inhibit a resident from or penalize a resident for communicating with a law enforcement officer, social worker, family member, or other interested person regarding the safety and security of the retirement community; or

(2) prevent a law enforcement officer or court officer from entering a common area of the retirement community to conduct a voluntary interview with a resident as part of an investigation into criminal activity at the retirement community.

Added by Acts 2025, 89th Leg., R.S., Ch. 495 (S.B. 1283), Sec. 1, eff. September 1, 2025.

SUBTITLE C. FIRE

CHAPTER 791. FIRE ESCAPES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 791.001. DEFINITIONS. In this chapter:

(1) "Owner" includes an individual, firm, association, or private corporation.

(2) "Story" has its usual architectural meaning and includes:

(A) a basement that extends five feet or more above the grade line on one or more sides of a building;

(B) a balcony or mezzanine floor of a building;

(C) a roof garden; or

(D) an attic used for any purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.002. FIRE ESCAPE REQUIRED. (a) The owner of a building shall equip the building with at least one fire escape and with additional fire escapes as required by Subchapters C and D if the building has at least:

(1) three stories and is used as a facility subject to Subchapter C; or

(2) two stories and is used as a school.

(b) A fire escape required by this chapter must meet the specifications provided by this chapter for an exterior stairway fire escape, an exterior chute fire escape, a combination of those exterior fire escapes, or an interior fire escape.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.003. COMPLIANCE. A building constructed after September 1, 1925, and subject to this chapter shall be equipped with fire escapes and must meet all other requirements of this chapter before the building is wholly or partially occupied or used.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.004. EXEMPTIONS. (a) This chapter does not apply to the construction of a structure in a municipality that has in effect a nationally recognized model building code governing the construction if the building code requires at least one one-hour fire-resistive means of escape with a total width equal to or greater than the total exit width required under this chapter for a structure of three or more stories.

(b) This chapter does not apply to a grain elevator constructed of:

(1) steel;

(2) steel and concrete; or

(3) wood if fewer than five persons are employed at the grain elevator.

(c) This chapter does not apply to a county courthouse that:

(1) was constructed before September 1, 1989; and

(2) is located in a county with a population of less than 50,000.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 171 (S.B. 888), Sec. 1, eff. May 24, 2023.

Sec. 791.005. LOCATION OF FIRE ESCAPES. Consistent with accessibility, each fire escape subject to this chapter must be located as far as possible from stairways, elevator hatchways, and other openings in the floors of the building served by the fire escape. If possible, each fire escape must be located at the end of a hallway or unobstructed passageway and as far apart as is consistent with the construction and location of the building.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.006. INSPECTION; APPROVAL. (a) A fire escape subject to this chapter and each extension or addition to that fire escape shall be inspected before being approved for use.

(b) The inspection may be conducted by:

(1) the state fire marshal;

(2) an inspector of the State Board of Insurance;

(3) the chief of a municipal fire department; or

(4) a municipal fire marshal.

(c) A fire escape or an addition or extension to a fire escape may not be approved unless it meets the requirements of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.007. TESTS; AFFIDAVIT. (a) The person who erects a

fire escape shall test the fire escape, on its completion and before final approval of the fire escape, by the application of a live load of 160 pounds per square foot of area of balcony floor and stair treads, or a dead load of 240 pounds per square foot of area of balcony floor and stair treads. The weight must be simultaneously imposed on each balcony and the stairways connecting the balconies that lead both up and down.

(b) Sand, gravel, concrete blocks, or any other suitable commodity may be used in performing the tests. The load must be accurately weighed and applied as specified in this section.

(c) A dead load must be placed in position in whole or in part by mechanical means without a person present on the fire escape when the test is made. A live load must be placed in position by mechanical means or by persons, and persons must be present on the fire escape as part of the load when the test is made.

(d) The person who erects the fire escape shall conduct the tests in the presence of:

(1) the state fire marshal;

(2) an appointed representative of the state fire marshal;

(3) the chief of a fire department; or

(4) a municipal fire marshal.

(e) If an official listed in Subsection (d) cannot be present to witness the test, any of the officials instead may accept an affidavit from the person who erects the fire escape that states that the minimum required test has been made and that the fire escape has passed the test.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. MINIMUM SPECIFICATIONS FOR FIRE ESCAPES

Sec. 791.011. GENERAL REQUIREMENTS. (a) A fire escape shall be constructed and arranged in a manner that:

(1) permits exit on the fire escape from each floor of the building above the first floor; and

(2) provides an uninterrupted exit from the building to the grade.

(b) The materials, construction, erection, and test of a fire escape must comply with the minimum specifications established under this subchapter for that type of fire escape.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.012. MINIMUM SPECIFICATIONS FOR EXTERIOR STAIRWAY FIRE ESCAPES. (a) An exterior stairway fire escape is a structure that:

(1) is located on the exterior of a building;

(2) is constructed of iron, steel, or reinforced concrete; and

(3) consists of balconies and stairways.

(b) An exterior stairway fire escape may be constructed in:

(1) superimposed form;

(2) straight run form;

(3) superimposed form with intermediate balconies; or

(4) a combination of those forms.

(c) The balconies for a superimposed form stairway fire escape attached to the building at two or more floors must equal in length the horizontal length of the stair runs plus an amount at each end equal to the width of the stairs. Each balcony must be as long as the width of the exit opening in the building wall and must be at least 50 inches wide inside the balcony railings.

(d) The balconies for a superimposed form stairway fire escape with intermediate balconies attached to the building at two or more floors must be at least equal in width to the combined width of the stairways connected by the balconies leading both up and down. The landings at the head and foot of the stairs must be as deep as the width of the stairs and as long as the width of the exit opening in the building wall.

(e) The balconies for a straight run form stairway fire escape must be at least equal in width to the width of the stairs and as long as the width of the exit opening in the building wall.

(f) The floor of an iron or steel balcony must be either solid or slatted. If solid, the floor must have a scored surface to prevent slipping and, to provide drainage, must be pitched at a slope of not less than one-half inch in 10 feet. If slatted, the slats may not be placed more than three-quarters inch apart and must be secured with rivets or bolts. Material used in the floor must be at least three-sixteenths inch thick.

(g) The railing enclosures of a balcony must be at least two feet nine inches high. If of vertical and horizontal slat or grill construction, a space between slats or within the grill may not have

a horizontal width of more than eight inches. If of truss construction, the span of a panel may not exceed three feet. An opening in the railing enclosures on any type of construction may not exceed two square feet. A railing enclosure must be free throughout its length from obstructions that tend to break handholds, and the passage space must be smooth and free from obstructions or projections. A railing enclosure must be designed to withstand a horizontal pressure of 200 pounds per running foot of railing without serious deflection.

(h) A balcony must be anchored to the building with bolts at least one inch in diameter, extending through the wall of the building and provided with a wall bearing plate on the interior that is at least five inches square and three-eighths inch thick, or must be anchored by such bolts set in concrete or masonry or made integral in new buildings. A balcony may not be placed above or more than one foot below the top of the sill of the exit opening in the building wall and preferably should be level with the sill.

(i) A concrete balcony must meet the requirements of this section and must be made of reinforced concrete composed of one part cement, two parts sand, and four parts stone or gravel. The railing enclosure of a concrete balcony must meet the specifications of this section or be made of reinforced concrete, with balusters spaced not more than one foot apart.

(j) The pitch of a fire escape stairway may not exceed 45 degrees.

(k) The stairway treads must be at least eight inches wide, excluding nosings, and at least 24 inches long. Treads must be placed so that the rise, either open or closed, does not exceed eight inches. If solid, treads must have a scored surface. If slatted, the slats must be placed not more than three-quarters inch apart and be well secured by bolts or rivets. Material used in the treads must be at least three-sixteenths inch thick.

(l) Railings must be provided on both sides of stairs. The railings must be at least two feet nine inches high, measured vertically from the center of the stair treads, and must be supported by balusters spaced not more than one foot apart. If an intermediate rail is provided, it shall be provided halfway between the top rail and the stair stringers and the balusters must be placed not more than five feet apart. Stair railings must permit at least 24 inches of unobstructed passageway and must be designed to withstand a

horizontal pressure of 200 pounds per running foot of railing without serious deflection.

(m) Concrete stairs must comply with the requirements of this section and must be made of reinforced concrete composed in the same mix as provided by Subsection (i). Railing enclosures for concrete stairs must be either as provided by Subsection (g) or of reinforced concrete balustrade with balusters spaced not more than one foot apart.

(n) Stairways must be built stationary to grade where possible and must be built stationary to grade for buildings such as schools or hospitals.

(o) If a fire escape terminates over a street, alley, private driveway, or other similar situation and terminates in a hinged and counterbalanced section of stairway, the construction of that section of stairs must conform to the stationary parts of the stairway and must be balanced so that the weight of one person on the third or fourth tread will lower the stairway to the landing. Bearings for counterbalanced stairs must be either bronze bushings or have sufficient clearance to prevent sticking caused by corrosion. A latch or lock may not be attached to the counterbalanced stairs in the up position, but a latch must be provided to hold the stairs in the down position when they have been swung to the ground. The connection between stair railings on the stationary part of the stairway and the counterbalanced part of the stairway must be designed to prevent the probability of injury to persons who use the fire escape. If necessary, a suitable opening must be provided in any awning, roof, or other intervening obstruction to admit the counterbalanced stairs and permit the passage of persons on the stairs.

(p) The fire escape must be connected to the roof of the building to which it is attached. If the roof of the building is designed in such a way that escape by way of the roof may be necessary, the fire escape must extend to the roof. If the connection is only for use by the fire department, it must be made with a gooseneck-type ladder with stringers made of material at least three-eighths inch thick, and rungs at least three-quarters inch in diameter, 16 inches long, and not more than 14 inches apart. The ladder must be anchored to the wall.

(q) The minimum unobstructed width of an exterior passageway in the fire escape, whether parallel to the building or at right angles

to it, is 24 inches.

(r) The clearance at all points on balconies and stairs, as measured vertically, must be at least six feet six inches.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.013. MINIMUM SPECIFICATIONS FOR EXTERIOR CHUTE FIRE ESCAPES. (a) An exterior chute fire escape is a structure that is located on the exterior of a building and constructed of iron or steel and that consists of balconies and a straight or spiral gravity chute.

(b) An exterior straight chute fire escape may be in:

(1) superimposed form parallel to or at right angles to the building;

(2) straight run form parallel to or at right angles to the building; or

(3) a combination of those two forms.

(c) An exterior spiral chute fire escape must be constructed in a spiral form around a central column and must rest on and be anchored to a concrete base at least 18 inches thick.

(d) The chute and any intervening balconies must be constructed in a manner that provides a continuous gravity slide from the top floor to the grade and must be accessible from all floors of the building. An exterior straight chute must be placed at an angle that does not exceed 45 degrees.

(e) The balconies must meet the specifications imposed under Section 791.012 for the balconies of exterior stairway fire escapes.

(f) A straight chute must be composed of material equal to at least 14-gauge iron or steel. A spiral chute must be composed of material equal to at least 16-gauge iron or steel. The material used must be blue annealed or of equal type and must be capable of taking a smooth or polished surface.

(g) The interior of a straight chute must be 20 inches wide and 18 inches deep, and in cross section must have a concave bottom and straight sides. The interior of a spiral chute must be at least 30 inches wide. The interior of either form of chute must be free from obstructions or sharp edges.

(h) The top edges of a straight chute must be stiffened and protected throughout the length of the chute with iron or steel

angles free from sharp edges. The angles must be of the size necessary to carry the maximum possible load. The chute must be reinforced crosswise underneath with iron or steel angles.

(i) The slideway of a spiral chute must be banked at the outer edge to prevent a passenger from being thrown against a guardrail or enclosure and must be enclosed by either a continuous wall or guardrail at least 30 inches high constructed of at least 18-gauge iron or steel. A spiral chute may not terminate more than two feet above the grade and must be constructed and arranged so that a normal landing is in a standing position.

(j) A landing composed of the same material as the chute must be provided at the lower end of a straight chute and must be of sufficient length in proportion to the length of the chute and the concavity of its surface to check the momentum attained through gravity and to provide a safe stop. The landing must be six inches wider than the chute on each side if wall construction does not interfere and must be without sharp edges or ragged projections. The landing must rest on and be anchored to a concrete base at least six inches thick.

(k) All rivets exposed inside a chute and on the top side of a landing of a straight chute must be countersunk and ground smooth.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.014. MINIMUM SPECIFICATIONS FOR INTERIOR FIRE ESCAPES. (a) An interior fire escape may be:

(1) a stairway composed of iron, steel, or concrete; or

(2) a straight or spiral chute composed of iron or steel.

(b) The fire escape must be enclosed with a noncombustible material. All door and window openings in the enclosure must be protected with self-closing fireproof shutters.

(c) Balconies or landings used with an interior fire escape must meet the construction requirements imposed under Section 791.012, except that a balcony used with an interior fire escape must permit at least 40 inches of unobstructed passageway, and the balconies or landings must be located on a level with the floors of the building.

(d) The stairs of an interior stairway fire escape must meet the requirements imposed under Section 791.012, except that the

stairs must permit at least 40 inches of unobstructed passageway in all parts. An interior stairway fire escape may not use stairs of the types known as "spirals" or "winders".

(e) An interior stairway fire escape must be continuous, starting at the ground floor, and may not descend to any basement. It must extend through the roof of the building and must terminate in a penthouse constructed of noncombustible material equipped with a self-closing fire door as specified in this section.

(f) An interior chute fire escape must meet the requirements of Section 791.013.

(g) An interior fire escape must be accessible from all parts of the building it is designed to serve. Each lobby, hall, or passageway that leads to a fire escape and is used in connection with it must be at least 36 inches wide and at least six feet six inches high and must be level with the floor on which the fire escape opens and which it serves. The fire escape must be constructed at the lower end in a manner that permits direct exit to the outside of the building at the grade.

(h) The enclosing walls of an interior fire escape may be constructed of:

(1) brick;

(2) plain solid concrete;

(3) reinforced stone or gravel concrete;

(4) reinforced cinder concrete;

(5) hollow terra-cotta blocks;

(6) hollow concrete blocks composed of stone or cinder concrete mortar;

(7) gypsum blocks; or

(8) metal lath on steel studding.

(i) If the enclosing walls are of brick or plain solid concrete, they must be at least eight inches thick for the top 30 feet, increasing four inches in thickness for each lower section of 30 feet or fraction of 30 feet, or at least eight inches thick for the entire height if the walls are wholly supported at intervals not to exceed 30 feet. If the enclosing walls are of reinforced stone or gravel concrete, they must be at least five inches thick for the top 30 feet, increasing two inches in thickness for each lower section of 30 feet or fraction of 30 feet, or at least three inches thick for the entire height if supported at vertical intervals not to exceed 20 feet and if braced as necessary with lateral supports or suitable

steel uprights. If the enclosing walls are of reinforced cinder concrete, the concrete must be at least five inches thick for the entire height of the enclosing walls, and the walls must be supported at vertical intervals not to exceed 15 feet and must be braced as necessary with lateral supports or suitable steel uprights.

(j) If the enclosing walls are composed of hollow terra-cotta blocks, the blocks must be laid in cement mortar, and the walls must be at least five inches thick overall. If the enclosing walls are composed of hollow concrete blocks of either stone or cinder concrete mortar, the enclosing walls must be at least five inches thick overall. If the walls are constructed of gypsum blocks, the blocks may be either solid or hollow but must contain not more than 25 percent by weight of cinders, asbestos fiber, wood chips, or vegetable fiber. The gypsum blocks must be laid in gypsum plaster or cement mortar tempered with lime, and the enclosing walls must be at least five inches thick overall. If the walls are constructed of metal lath on steel studding, they must be covered with portland cement mortar or gypsum plaster of a finished thickness of at least two inches in the case of solid partitions or of at least three inches in the case of hollow partitions. Each opening in a wall or partition must have substantial steel framing, the vertical members of which must be securely attached to the floor construction above and below.

(k) Each door opening in an interior fire escape must be protected by the use of an automatic or self-closing fire door of standard manufacture, bearing the Underwriters Laboratory label. If an automatic fire door is used, it must be enclosed in a recessed partition. All doors must be arranged and equipped to remain in closed positions at all times and under all conditions except during actual use.

(l) Each window opening must be equipped with a metal sash bearing the Underwriters Laboratory label and with wire glass.

(m) Each interior fire escape must be provided at each landing with at least one light equal in power to a 10-watt electric globe. The lighting must be on a separate circuit from that of the rest of the building and must be designed to operate if the regular lighting system of the building is disabled.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.015. EXIT LIGHTS; GUIDE SIGNS. (a) At least one red light must be installed and maintained in good condition at each exit to a fire escape in a building subject to Section 791.002. An exit light must be painted with the words "fire escape exit."

(b) One guide sign must be installed and maintained in good condition at each hallway intersection. An additional guide sign must be provided for every 25 lineal feet of hallway leading to a fire escape. A guide sign must be painted with the words "fire escape" and with an arrow or hand pointing to the nearest fire escape exit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.016. PAINTING AND MAINTENANCE REQUIREMENTS. (a) A fire escape constructed of iron or steel must be painted with at least two coats of good metallic paint when erected. The fire escape must be repainted at least every two years or more frequently if necessary to preserve the fire escape from rust or climatic influences.

(b) The slideway of a straight or spiral chute fire escape must be thoroughly cleaned and painted at least once each year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. ADDITIONAL FIRE ESCAPE REQUIREMENTS FOR CERTAIN FACILITIES

Sec. 791.021. ADDITIONAL FIRE ESCAPES FOR CERTAIN FACILITIES. (a) This section applies to:

(1) a hospital;

(2) a seminary;

(3) a college;

(4) an academy;

(5) a school;

(6) a dormitory;

(7) a hotel or other facility for the accommodation of transient guests;

(8) a lodging house, apartment house, rooming house, or boardinghouse;

(9) a lodge hall;

(10) a theater or other public place of amusement; or

(11) any other facility used for public gatherings.

(b) Each facility subject to this section and Section 791.002 that has a lot area greater than 5,000 square feet shall provide, in addition to the fire escape required by Section 791.002, one additional fire escape for:

(1) each 5,000 square feet of area in excess of the initial 5,000 square feet; and

(2) the area in excess of the largest multiple of 5,000 square feet contained in the facility's lot area if that excess is more than 2,000 square feet.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.022. ADDITIONAL FIRE ESCAPES FOR CERTAIN OFFICE BUILDINGS, STORES, OR INDUSTRIAL PLANTS. (a) This section applies to:

(1) an office building;

(2) a wholesale or retail mercantile establishment or store;

(3) a workshop or manufacturing establishment; or

(4) an industrial plant.

(b) Each facility subject to this section and Section 791.002 that has a lot area greater than 6,000 square feet shall provide, in addition to the fire escape required by Section 791.002, one additional fire escape for:

(1) each 6,000 square feet of area in excess of the initial 6,000 square feet; and

(2) the area in excess of the largest multiple of 6,000 square feet contained in the facility's lot area if that excess is more than 2,500 square feet.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.023. ADDITIONAL FIRE ESCAPES FOR CERTAIN WAREHOUSES AND MILLS. (a) This section applies to a warehouse, storehouse, or mill building.

(b) Each facility subject to this section and Section 791.002 that has a lot area greater than 8,000 square feet shall provide, in

addition to the fire escape required by Section 791.002, one additional fire escape for:

(1) each 8,000 square feet of area in excess of the initial 8,000 square feet; and

(2) the area in excess of the largest multiple of 8,000 square feet contained in the facility's lot area if that excess is more than 3,500 square feet.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.024. ADDITIONAL FIRE ESCAPES FOR NONSCHOOL PUBLIC BUILDINGS. (a) This section applies to a building, other than a school building, that is owned by this state or by a municipality or county of this state and in which public assemblies or sleeping apartments are permitted on any floor above the first floor.

(b) Each building subject to this section and Section 791.002 that has a lot area greater than 5,000 square feet shall provide, in addition to the fire escape required by Section 791.002, one additional fire escape for:

(1) each 5,000 square feet of area in excess of the initial 5,000 square feet; and

(2) the area in excess of the largest multiple of 5,000 square feet contained in the building's lot area if that excess is more than 2,000 square feet.

(c) Each person who has charge or supervision of a facility subject to this section, or who has charge or supervision of the letting of contracts for the construction of the facility, shall comply with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. ADDITIONAL FIRE ESCAPE REQUIREMENTS FOR CERTAIN SCHOOL BUILDINGS

Sec. 791.031. DEFINITIONS. (a) In this subchapter, "story" means the space between two successive floor levels of a building, and a basement is a story if the floor level immediately above the basement is at least 10 feet above the grade line on at least one side of the building.

(b) In this subchapter, types of construction are classified as

"fireproof," "semifireproof," or "ordinary," as those terms are defined in the most recent edition of the building code published by the successor organization to the National Board of Fire Underwriters.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.032. APPLICATION. This subchapter applies to a building in which a school of any kind is conducted and that is:

(1) at least two stories high; and

(2) owned by a school district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.033. COMPLIANCE REQUIREMENTS. Each person who has charge or supervision of a school building subject to this subchapter, or who has charge or supervision of the letting of contracts for the construction of the building, shall comply with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.034. ADMINISTRATION; ENFORCEMENT. (a) The state fire marshal shall administer and supervise the enforcement of this subchapter and Section 791.024.

(b) The state fire marshal, an inspector of the State Board of Insurance, the chief of any fire department, and any municipal fire marshal shall enforce this subchapter and Section 791.024 by all lawful means.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.035. FIRE ESCAPE REQUIREMENT. (a) A school building of at least three stories and of fireproof construction, semifireproof construction, or ordinary construction shall have one fire escape for each group of 250 pupils, or each major fraction of that number, who are housed in the building at a level above the

first floor.

(b) A school building of two stories and of ordinary construction shall have one fire escape for each group of 250 pupils, or each major fraction of that number, who are housed in the building at a level above the first floor.

(c) A school building of two stories that is of fireproof or semifireproof construction or that has stairways and hallways of that type of construction is not required to have a fire escape.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.036. REQUIRED TYPES OF FIRE ESCAPES; SPECIFICATIONS. (a) A fire escape for a school building constructed before March 17, 1950, may be either an interior fire escape or an exterior fire escape.

(b) A school building constructed on or after March 17, 1950, that consists of at least three stories of fireproof construction or at least two stories of ordinary construction shall have interior fire escapes.

(c) An exterior fire escape for a school building constructed before March 17, 1950, may be:

(1) an iron, steel, or concrete stairway;

(2) an iron or steel straight chute;

(3) an iron or steel spiral chute; or

(4) a fire escape that is a combination of those types.

(d) Exterior fire escapes used in school buildings must meet the construction requirements of this section or similar construction requirements approved by the successor organization to the National Board of Fire Underwriters. Except as otherwise provided by this section, exterior fire escapes must be:

(1) constructed throughout of noncombustible materials;

(2) designed for a live load of 100 pounds per square foot; and

(3) supported by vertical steel columns.

(e) If it is impossible to use vertical steel columns in the construction of an exterior fire escape, the use of steel brackets with bolts extending through the entire thickness of the wall may be approved.

(f) The landings and treads of exterior fire escapes must be of

solid hatched steel plate or of steel gratings with interstices that do not exceed three-fourths inch and must be designed so that any accumulation of ice and snow is reduced to a minimum.

(g) The guardrails of exterior fire escapes must be at least three feet six inches high and must be substantially constructed. The guardrails must be faced either with heavy wire mesh or by steel balusters or rails not more than 9-1/2 inches o.c.

(h) The fire escape must have handrails on each side of the stairs that must be securely attached to the guardrails or to the building walls. Handrails must be two feet four inches to two feet six inches above the nosings.

(i) The calculated live load of an exterior fire escape must be clearly stated on the plans submitted for approval.

(j) Exterior fire escapes must be:

(1) free from obstruction;

(2) constructed in a manner that provides a safe exit for children;

(3) conveniently accessible from each floor above the first floor; and

(4) of sufficient width and strength so that each step and landing may accommodate two adults at the same time.

(k) If the Texas Education Agency approves that construction as providing a convenient and safe passage, doorways may be used as exits from each floor. The base of a doorway must be at the same level as the corresponding floor of the building and the landing of the fire escape to which the doorway leads. A doorway must be at least three feet wide and six feet six inches high and must be fitted with panic hardware approved by the successor organization to the National Board of Fire Underwriters. If there are two or more rooms or hallways adjacent and convenient to the landing of a fire escape, each room or hallway must have a doorway leading to that landing.

(l) The design of an interior fire escape used in a school building must meet the specifications required under Section 791.014, and must have:

(1) stairs and landings at least three feet six inches long and at least three feet wide;

(2) treads at least nine inches wide with a one inch nosing; and

(3) risers of not more than 7-1/4 inches.

(m) A rise in a single run may not exceed nine feet six inches.

A longer run must be interrupted by landings at least as deep as the width of the stairs.

(n) Stairs must extend continuously to the ground. Counterbalanced or swinging sections may not be approved.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.51, eff. Sept. 1, 1997.

Sec. 791.037. EXTERIOR FIRE ESCAPE EXITS. (a) An exit door leading to an exterior fire escape must open on a landing that is at least the width of the doors. The door must swing outward and be:

(1) at least three feet by six feet six inches;

(2) glazed with wire glass; and

(3) level at the bottom with the floors of the rooms or hallways and landings that it serves.

(b) An exit door may be secured only by panic hardware approved by the successor organization to the National Board of Fire Underwriters. Hooks, latches, bolts, locks, and similar devices are prohibited.

(c) A window may not be used as a means of access to an exterior fire escape.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.038. WINDOWS. A window located beneath or within 10 feet of a fire escape must be glazed with wire glass.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. ENFORCEMENT AND PENALTY PROVISIONS

Sec. 791.051. ENFORCEMENT. (a) The attorney general, the county attorney of a county in which a building is maintained in violation of this chapter, or the district attorney of a district in which such a building is located may bring an action in the name of the state for an injunction or other process to enforce this chapter against the owner or person in charge of the building.

(b) The action shall be brought in the district court of the county in which the building is located.

(c) The action may be prosecuted by the attorney general, the county attorney, or the district attorney on that person's own motion, or on the relation of any individual, including the state fire marshal, an inspector of the State Board of Insurance, the chief of a municipal fire department, or a municipal fire marshal.

(d) A district judge may issue a mandatory injunction or other writ against a person to enforce this chapter. Disobedience of the injunction constitutes contempt of court and is punishable in the manner provided for contempt.

(e) The court may hear the case and may grant an injunction after the defendant has received 10 days' notice of the time and place set for the hearing on the injunction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.052. CRIMINAL PENALTY. (a) A person commits an offense if the person obstructs a fire escape or a hallway or entrance leading to a fire escape in a manner that prevents free access to or use of the fire escape. A door equipped with a lock requiring a key to operate is an obstruction.

(b) A person commits an offense if the person is the owner of a building required to be equipped with fire escapes and the person fails or refuses to comply with this chapter.

(c) A person commits an offense if the person serves as an agent in the care, management, supervision, control, or renting of a building for an owner who is not a resident of this state and the owner fails or refuses to comply with this chapter as it applies to that building.

(d) An offense under this section is punishable by a fine of not less than $20 or more than $50. If the defendant is a corporation, each officer or member of the board of directors of the corporation is subject to the fine.

(e) Each day's failure or refusal to comply constitutes a separate offense. Each day that an agent represents a nonresident owner who is not in compliance constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 792. SMOKE DETECTORS IN HOTELS

Sec. 792.001. DEFINITIONS. In this chapter:

(1) "Hotel" means a building in which members of the public obtain sleeping accommodations for consideration, including a hotel, motel, tourist home, tourist house, tourist court, hostel, lodging house, rooming house, or inn. The term does not include:

(A) a hospital, sanitarium, or nursing home; or

(B) a building in which all or substantially all of the occupants have the right to use or possess their sleeping accommodations for at least 28 consecutive days.

(2) "Person" has the meaning assigned by Section 1.07, Penal Code.

(3) "Smoke detector" means a device that is:

(A) designed to detect the presence of visible or invisible products of combustion in the air; and

(B) designed with an alarm audible throughout the room in which it is installed to alert the occupants of the room of the presence of visible or invisible products of combustion in the air of the room.

(4) "Smoke detector for hearing-impaired persons" means a smoke detector that, in addition to the sound alarm, uses a xenon design strobe light with a visible effective intensity of not less than 100 candela, as tested and labeled in accordance with ANSI/UL Standard 1638, and with a flash rate of not less than 60 nor more than 120 flashes per minute.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 792.002. SMOKE DETECTORS IN HOTELS; CRIMINAL PENALTY. (a) A person who operates a hotel commits an offense if the person:

(1) does not maintain a smoke detector in good working order in every room of the hotel that is regularly used for sleeping;

(2) does not maintain smoke detectors for hearing-impaired persons as prescribed by Subsection (b); or

(3) does not comply with the requirements of Subsection (c) if a hotel patron requests a room with a smoke detector for hearing-impaired persons.

(b) A person who operates a hotel shall maintain one smoke detector for hearing-impaired persons for each 60, or fraction of 60, rooms of the hotel that are regularly used for sleeping, except that

the operator is not required to maintain more than five smoke detectors for hearing-impaired persons.

(c) If a hotel patron requests a room with a smoke detector for hearing-impaired persons, the operator of the hotel shall:

(1) assign the patron to a room in which a hard-wired smoke detector for hearing-impaired persons has been properly installed; or

(2) install in the patron's room a portable smoke detector for hearing-impaired persons using a receptacle that cannot be controlled by a wall switch.

(d) An offense under this section is a Class B misdemeanor.

(e) A person commits a separate offense under this section on each calendar day the person commits the offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 792.003. SMOKE DETECTOR LIST. (a) To qualify for use under this chapter, a smoke detector must be listed by the state fire marshal after the device has been tested and shown to be effective by the state fire marshal or by a testing laboratory under conditions and procedures approved by the state fire marshal.

(b) In lieu of or in addition to the list made under Subsection (a), the state fire marshal may substitute or use a list of devices that comply with standards of manufacture and installation adopted under Article 5.43-2, Insurance Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 628, Sec. 9, eff. Sept. 1, 1991.

CHAPTER 793. DISABLING FIRE EXIT ALARMS

Sec. 793.001. DEFINITIONS. In this chapter:

(1) "Fire exit" means a door, window, or other means of egress from a building that has been expressly designated as a fire escape or emergency exit by a sign, light, or other device located on or in the immediate vicinity of the fire escape or exit.

(2) "Fire exit alarm" means a device designed to sound an alarm when a fire exit is opened or an attempt to open a fire exit is made.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 793.002. CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person intentionally or knowingly causes a fire exit alarm to fail to sound an alarm; and

(2) the person is not authorized to do so by a person having lawful custody or control of the building or the part of the building in which the fire exit is located.

(b) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 795. USE OF CERTAIN FIRE TRUCKS

Sec. 795.001. DEFINITION. In this chapter, "fire department" means:

(1) a volunteer fire department; or

(2) a department of a municipality, county, or special district or authority that provides fire-fighting services.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 279, eff. Sept. 1, 1991.

Sec. 795.002. GOOD AND DEPENDABLE CONDITION REQUIRED. (a) This chapter applies only to a fire truck in a good and dependable operating condition. A fire truck is considered to be in a good and dependable operating condition if:

(1) the truck complies with the standards established by or under state law for the operating condition of a fire truck; and

(2) the fire department that uses the truck has secured certification by an underwriters laboratory that meets NATIONAL FIRE PROTECTION STANDARDS 1901.

(b) A fire truck may not be considered to be in a condition other than a good and dependable operating condition solely because the truck is 25 years old or older.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 279, eff. Sept. 1, 1991.

Sec. 795.003. CERTAIN RESTRICTIONS INVOLVING AGE OF FIRE TRUCK PROHIBITED. A contract, including any form of an insurance contract, or an order, ordinance, rule, or similar decree of a local government or state agency may not:

(1) restrict a fire department from using a fire truck that is 25 years old or older; or

(2) prevent any benefit from being claimed because the claim arises out of circumstances in which a fire truck that is 25 years old or older is used.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 279, eff. Sept. 1, 1991.

CHAPTER 796. CIGARETTE FIRE SAFETY STANDARDS

Sec. 796.001. DEFINITIONS. In this chapter:

(1) "Agent" means a person licensed by the comptroller to purchase and affix adhesive or meter stamps on packages of cigarettes.

(2) "Cigarette" means a roll for smoking:

(A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; or

(B) that is wrapped in any substance containing tobacco that, because of the roll's appearance, the type of tobacco used in the filler, or the roll's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette.

(3) "Manufacturer" means:

(A) a person that manufactures or otherwise produces cigarettes for sale in this state, including cigarettes intended to be sold through an importer; or

(B) the first purchaser that intends to resell in this state cigarettes manufactured anywhere that the original manufacturer does not intend to be sold in this state.

(4) "Retailer" means a person, other than a wholesale dealer, engaged in selling cigarettes or tobacco products.

(5) "Sale" means any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means or any agreement. The term includes, in addition to sales using cash or credit, the giving of a cigarette as a sample, prize, or gift and the exchange of a cigarette for any consideration

other than money.

(6) "Sell" means to sell or to offer or agree to sell.

(7) "Wholesale dealer" means a person who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, including a person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in premises owned or occupied by another person.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.002. REQUIREMENTS FOR SALE OF CIGARETTE. A cigarette may not be sold or offered for sale in this state unless:

(1) the cigarette has been tested in accordance with Section 796.003;

(2) the cigarette meets the performance standard under Section 796.003;

(3) a written certification has been filed by the manufacturer with the state fire marshal in accordance with Section 796.005; and

(4) the cigarette has been marked in accordance with Section 796.006.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.003. TESTING. (a) A manufacturer of cigarettes shall ensure that tests on cigarettes are conducted:

(1) in accordance with Standard Test Method for Measuring the Ignition Strength of Cigarettes, E2187-04, by the American Society of Testing and Materials, as that standard existed on January 1, 2007;

(2) on 10 layers of filter paper; and

(3) in a complete test trial of 40 replica tests.

(b) Not more than 25 percent of the cigarettes tested in a test trial in accordance with this section may exhibit full-length burns.

(c) The performance standard required by this section shall only be applied to a complete test trial.

(d) A written certification shall be based on testing conducted

by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization, or another comparable accreditation standard required by the state fire marshal.

(e) A laboratory testing in accordance with this section shall implement a quality control and quality assurance program to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. The program must include a procedure to determine the repeatability of the testing results. The repeatability value may not be greater than 0.19. For purposes of this subsection, "repeatability value" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time.

(f) The state fire marshal may adopt a subsequent ASTM Standard Test Method for Measuring the Ignition Strength of Cigarettes on finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the performance standard in Subsection (b).

(g) A cigarette submitted for testing that uses lowered permeability bands in the cigarette paper to comply with the performance standard under this section must have at least two nominally identical bands on the paper surrounding the tobacco column and at least one complete band not less than 15 millimeters from the lighting end of the cigarette. A cigarette on which the bands are positioned by design must have at least two bands located not less than 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or 10 millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

(h) This section does not require additional testing if a cigarette is tested in a manner that is consistent with this chapter for any other purpose.

(i) Testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the performance standard required under this section shall be conducted in accordance with this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff.

January 1, 2009.

Sec. 796.004. ALTERNATIVE TEST METHODS. (a) A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with Section 796.003 shall propose a test method and performance standard for the cigarette to the state fire marshal. If the state fire marshal determines that the performance standard proposed by the manufacturer is equivalent to the performance standard under Section 796.003, the manufacturer may use the proposed test method.

(b) Unless the state fire marshal demonstrates a reasonable basis why an alternative test should not be accepted under this chapter, the state fire marshal shall authorize a manufacturer to employ the alternative test method and performance standard to certify a cigarette for sale in this state if the state fire marshal:

(1) determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this chapter; and

(2) finds that the officials responsible for implementing those requirements have approved an alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.005. CERTIFICATION. (a) Before a cigarette may be sold or offered for sale in this state, the cigarette's manufacturer must certify in writing to the state fire marshal that the cigarette has been tested in accordance with and meets the performance standard in Section 796.003 or 796.004.

(b) A certification filed under this section must include the following information:

(1) brand or trade name on the package;

(2) style, such as light or ultra light;

(3) length in millimeters;

(4) circumference in millimeters;

(5) flavor, such as menthol or chocolate, if applicable;

(6) filter or nonfilter;

(7) package description, such as soft pack or box;

(8) marking approved in accordance with Section 796.006;

(9) the name, address, and telephone number of the laboratory, if different from the manufacturer that conducted the test; and

(10) the date that the testing occurred.

(c) The state fire marshal shall retain a copy of a certification and provide a copy to the comptroller to ensure compliance with this chapter.

(d) A cigarette certified under this section shall be recertified every three years.

(e) For each cigarette included in a certification, a manufacturer shall pay to the state fire marshal a fee in the amount of $250, to be deposited only to the Texas Department of Insurance operating account in the general revenue fund.

(f) A cigarette certified under this section that is altered by the manufacturer in a way likely to alter its compliance with the reduced cigarette ignition propensity standards required by this chapter may not be sold or offered for sale in this state unless the manufacturer retests the cigarette in accordance with Section 796.003 or 796.004 and maintains the records required by Section 796.007.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.006. MARKING OF PACKAGE. (a) A manufacturer shall mark, in eight-point or larger type, cigarettes certified by the manufacturer in accordance with Section 796.005 to indicate compliance with the requirements of Section 796.003. The marking must consist of:

(1) modification of the product Universal Product Code to include a visible mark printed at or around the area of the Universal Product Code and permanently stamped, engraved, embossed, or printed in conjunction with the Universal Product Code;

(2) a visible combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the

cigarette package or cellophane wrap; or

(3) other printed, stamped, engraved, or embossed text that indicates that the cigarettes meet the standards of this chapter.

(b) A manufacturer shall present its proposed marking to the state fire marshal for approval. Proposed markings are considered approved if the state fire marshal fails to disapprove the proposed markings on or before the 10th business day after the date the proposed markings are received. The state fire marshal must approve a marking:

(1) in use and approved for sale in another state; or

(2) with the letters "FSC" for Fire Standards Compliant appearing in eight-point or larger type and permanently printed, stamped, engraved, or embossed on the package at or near the Universal Product Code.

(c) A manufacturer shall use only one type of marking and shall apply the marking uniformly to all packages, including packs, cartons, and cases, and brands marketed by the manufacturer in this state.

(d) A manufacturer may not modify its approved marking unless the state fire marshal has approved the modification.

(e) A manufacturer shall provide sufficient copies of an illustration of the package marking to a wholesale dealer and agent to which the manufacturer sells cigarettes and provide sufficient copies of an illustration of the package marking used by the manufacturer under this section for each retailer to which the wholesale dealers or agents will sell cigarettes. A wholesale dealer and an agent shall provide a copy of package markings received from a manufacturer to a retail dealer to which the wholesale dealer or agent sells cigarettes. A wholesale dealer, agent, and retail dealer shall permit the state fire marshal, the comptroller, and the attorney general to inspect markings of cigarette packaging marked in accordance with this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.007. MANUFACTURER RECORDS AND REPORTING. (a) A manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for the previous three

years and shall make copies of the reports available to the state fire marshal on the state fire marshal's written request.

(b) A manufacturer that fails to make copies of the reports available not later than 60 days after the date the manufacturer receives a written request shall be subject to a civil penalty, imposed as provided by Section 796.010, in an amount not to exceed $10,000 per violation. Each day that the manufacturer does not make the copies available is a separate violation.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.008. RULES. The state fire marshal may adopt rules to administer this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.009. INSPECTION. (a) The state fire marshal may inspect the records and the stock of cigarettes of a person who manufactures, stores, or sells cigarettes to establish whether the person is complying with this chapter.

(b) The comptroller may, in the course of an inspection under Chapter 154, Tax Code, inspect cigarettes for a marking required under Section 796.006 and report the comptroller's findings to the state fire marshal.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.010. CIVIL PENALTY; INJUNCTION. (a) A person who knowingly violates this chapter or a rule adopted under this chapter is subject to a civil penalty in the following amounts:

(1) if the person is a manufacturer, wholesale dealer, or agent knowingly selling or offering to sell a cigarette in violation of this chapter, a civil penalty not to exceed $100 for each pack of cigarettes sold or offered for sale, but not more than $100,000 for all violations occurring within a 30-day period;

(2) if the person is a retailer knowingly selling or offering to sell a cigarette in violation of this chapter, a civil penalty not to exceed $100 for each pack of cigarettes sold or offered for sale, but not more than $25,000 for all violations occurring within a 30-day period;

(3) if the person knowingly makes a false certification under Section 796.005, a civil penalty not to exceed $75,000 for a first violation or $250,000 for a second or subsequent violation; and

(4) if the person violates another provision of this chapter, other than Section 796.007(b), or another rule adopted under this chapter, a civil penalty not to exceed $1,000 for a first violation or $5,000 for a second or subsequent violation.

(b) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule or order adopted under this chapter, the attorney general, as determined by the attorney general or on request of the state fire marshal, may bring a civil action in a district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment of a civil penalty; or

(3) both injunctive relief and a civil penalty.

(c) A cigarette sold or offered for sale in violation of this chapter is subject to forfeiture under Chapter 154, Tax Code, except that before a forfeited cigarette may be destroyed, the true holder of the trademark rights in the cigarette brand must be permitted to inspect the cigarette.

(d) A civil penalty collected under this section shall be deposited to the credit of the fire prevention and public safety account.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.011. FIRE PREVENTION AND PUBLIC SAFETY ACCOUNT. (a) The fire prevention and public safety account is a separate account in the general revenue fund.

(b) The account consists of civil penalties collected under Section 796.010.

(c) Money in the account may be appropriated only to the state

fire marshal to support fire safety and prevention programs.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.012. SALE OUTSIDE OF TEXAS. This chapter does not prohibit a person from manufacturing or selling cigarettes that do not meet the requirements of this chapter if:

(1) the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States; and

(2) the person has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.013. INTERPRETATION. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform this chapter with the laws of those states that have enacted reduced cigarette ignition propensity laws.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.014. CONSUMER TESTING. This chapter does not prohibit the sale of a cigarette solely for the purpose of the cigarette's assessment conducted by a manufacturer, or under the control and direction of a manufacturer, to evaluate consumer acceptance of the cigarette by using only the quantity of cigarettes that is reasonably necessary for the assessment.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.015. LOCAL REGULATION. A political subdivision of this state may not adopt or enforce any ordinance or other regulation conflicting with, or preempted by, any provision of this chapter or

with any policy of this state expressed by this chapter, whether that policy be expressed by inclusion of a provision in the chapter or by exclusion of that subject from the chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.016. FEDERAL REGULATION. On and after the date that a federal reduced cigarette ignition propensity standard that preempts this chapter is adopted and becomes effective, this chapter has no effect.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.017. REPORTS. Not later than January 1 of each odd-numbered year, the state fire marshal shall:

(1) review the effectiveness of this chapter;

(2) submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the appropriate committees of the legislature on the state fire marshal's administration of this chapter; and

(3) make recommendations to improve the effectiveness of this chapter, if appropriate.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

CHAPTER 797. PORTABLE FIRE EXTINGUISHERS

Sec. 797.001. DEFINITIONS. In this chapter:

(1) "NFPA" means the National Fire Protection Association.

(2) "Portable fire extinguisher" means a device that contains liquid, powder, or gases for suppressing or extinguishing fires.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1004 (H.B. 2447), Sec. 1, eff. September 1, 2013.

Sec. 797.002. PORTABLE FIRE EXTINGUISHERS. A person may not use the term "portable fire extinguisher" or "fire extinguisher" in the sale or advertisement of an aerosol fire suppression device or similar fire suppression device unless the device conforms to NFPA Standard 10 (2010), "Standard for Portable Fire Extinguishers," or a successor standard adopted by the commissioner of insurance that is at least as stringent as the NFPA Standard 10, and is specifically listed for that use by a testing laboratory approved by the Texas Department of Insurance.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1004 (H.B. 2447), Sec. 1, eff. September 1, 2013.

SUBTITLE D. INTERAGENCY SAFETY INITIATIVES

CHAPTER 810. INTERAGENCY REPORTABLE CONDUCT SEARCH ENGINE

Sec. 810.001. DEFINITIONS. In this chapter:

(1) "Client" means a child, an individual with a disability, or an elderly individual receiving services or care from a participating state agency, a designated user, or a facility or entity that is licensed, certified, or otherwise regulated by a participating state agency.

(2) "Department" means the Department of Information Resources.

(3) "Designated user" means a person designated by the department or a participating state agency under Section 810.004 to use the search engine.

(4) "License" has the meaning assigned by Section 2001.003, Government Code.

(5) "Participating state agency" means a state agency listed in Section 810.002.

(6) "Reportable conduct" means a participating state agency's determination:

(A) that an individual engaged in abuse, neglect, exploitation, or misconduct; and

(B) for which the agency has:

(i) provided any required notice or opportunity to contest the determination; and

(ii) issued a final determination.

(7) "Search engine" means the interagency reportable

conduct search engine established under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff. September 1, 2023.

Sec. 810.002. APPLICABILITY. This chapter applies to the following state agencies:

(1) the Department of Family and Protective Services;

(2) the Health and Human Services Commission;

(3) the Texas Education Agency;

(4) the Texas Juvenile Justice Department; and

(5) the comptroller of public accounts.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff. September 1, 2023.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 2 (S.B. 2), Sec. 5, eff. September 1, 2025.

Sec. 810.003. ESTABLISHMENT OF INTERAGENCY REPORTABLE CONDUCT SEARCH ENGINE. (a) The department, in collaboration with each participating state agency, shall establish an interagency reportable conduct search engine for persons to search information on reportable conduct in accordance with this chapter and rules adopted under this chapter maintained by:

(1) the Department of Family and Protective Services in the central registry established under Section 261.002, Family Code;

(2) the Health and Human Services Commission in the employee misconduct registry established under Chapter 253;

(3) the Texas Education Agency in the registry established under Section 22A.151, Education Code; and

(4) the Texas Juvenile Justice Department in the integrated certification information system and in any informal list the Texas Juvenile Justice Department maintains.

(b) The department shall ensure the search engine results are machine-readable and accessible to each participating state agency and designated users in accordance with this chapter for the purpose of identifying individuals who may be ineligible for employment, a contract, certification, or licensure based on reportable conduct.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff. September 1, 2023.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 1138 (S.B. 571), Sec. 2.18, eff. June 20, 2025.

Sec. 810.004. ELIGIBILITY TO ACCESS SEARCH ENGINE; USER CREDENTIALS. (a) The executive head of each participating state agency shall designate agency employees or contractors who are eligible to access the search engine and the agency's automation systems to determine whether an individual has engaged in reportable conduct.

(b) In addition to the eligible individuals described by Subsection (a), each participating state agency shall designate additional users who are eligible to access the search engine and may require those users to determine whether an individual has engaged in reportable conduct. The additional designated users may include controlling persons, hiring managers, or administrators of:

(1) licensed or certified long-term care providers, including:

(A) home and community support services agencies licensed under Chapter 142;

(B) nursing facilities licensed under Chapter 242;

(C) assisted living facilities licensed under Chapter 247;

(D) prescribed pediatric extended care centers licensed under Chapter 248A;

(E) intermediate care facilities for individuals with an intellectual disability licensed under Chapter 252;

(F) state supported living centers, as defined by Section 531.002; and

(G) day activity and health services facilities licensed under Chapter 103, Human Resources Code;

(2) providers under a Section 1915(c) waiver program, as defined by Section 521.0001, Government Code;

(3) juvenile probation departments and registered juvenile justice facilities;

(4) independent school districts, districts of innovation, open-enrollment charter schools, other charter entities, as defined

by Section 22A.001, Education Code, regional education service centers, education shared services arrangements, or any other educational entity or provider that is authorized to access the registry established under Section 22A.151, Education Code;

(5) private schools that:

(A) offer a course of instruction for students in this state in one or more grades from prekindergarten through grade 12; and

(B) are:

(i) accredited by an organization recognized by the Texas Education Agency or the Texas Private School Accreditation Commission;

(ii) listed in the database of the National Center for Education Statistics of the United States Department of Education; or

(iii) otherwise authorized by Texas Education Agency rule to access the search engine; and

(6) nonprofit teacher organizations approved by the commissioner of education for the purpose of participating in the tutoring program established under Section 33.913, Education Code.

(c) The department and each participating state agency shall develop a process to issue user credentials to each designated user that authorizes the user to access the search engine. The process must require the revocation of user credentials for a person who is no longer eligible to access the search engine.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff. September 1, 2023.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 9.006, eff. September 1, 2025.

Acts 2025, 89th Leg., R.S., Ch. 1138 (S.B. 571), Sec. 2.19, eff. June 20, 2025.

Sec. 810.005. INFORMATION ACCESSIBLE THROUGH SEARCH ENGINE; ADDITIONAL INFORMATION SHARING. (a) For each individual identified by a participating state agency as having engaged in reportable conduct, the search engine results for that individual must include:

(1) the individual's full name;

(2) at least one of the following:

(A) the individual's date of birth; or

(B) the last four digits of the individual's social security number;

(3) at least one of the following:

(A) information relevant to determining whether the individual is eligible for employment, a contract, certification, or licensure; or

(B) the type or a description of the reportable conduct;

(4) any available date on which:

(A) the reportable conduct occurred; or

(B) a final determination was issued on the reportable conduct; and

(5) the participating state agency that maintains the reportable conduct information.

(b) An individual who engaged in reportable conduct that requires the individual's inclusion in search engine results is not entitled to notice or an opportunity for a hearing before the individual's information is included in the search engine results or shared with the department, a participating state agency, or a designated user in accordance with this chapter and rules adopted under this chapter.

(c) A participating state agency may share with other participating agencies additional information on an individual included in search engine results to supplement the information contained in those results for purposes authorized under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff. September 1, 2023.

Sec. 810.006. REQUIRED SEARCH QUERY AND USE OF SEARCH ENGINE RESULTS. (a) Each participating state agency and designated user shall conduct a search query using the search engine to determine whether an individual who may have access to a client has engaged in reportable conduct and, if the individual has engaged in reportable conduct, whether the individual is ineligible for:

(1) employment, a volunteer position, or a contract with

the agency, the user, or a facility or entity licensed, certified, or otherwise regulated by the agency; or

(2) licensure or certification by the agency in a profession or for the operation of a facility or entity that the agency regulates.

(b) A participating state agency's or designated user's determination under Subsection (a) that an individual is ineligible for employment, a volunteer position, a contract, a license, or a certification must be based on standards authorized or required by law, including agency rules.

(c) A participating state agency or designated user must conduct a search query required under Subsection (a) before the agency or user employs, places in a volunteer position, enters into a contract with, or issues a license or certification to an individual. Each participating state agency by rule shall establish procedures for conducting periodic search queries using the search engine to monitor whether an individual the agency or a designated user employs, places in a volunteer position, contracts with, or issues a license or certification to engages in reportable conduct.

(d) Each participating state agency, including the Texas Education Agency in collaboration with the State Board for Educator Certification, by rule may:

(1) authorize an individual who is determined to have engaged in reportable conduct to be employed or placed in a volunteer position by, enter into a contract with, or receive a license or certification from the agency or a designated user in accordance with standards prescribed by agency rules and as otherwise permitted by law; and

(2) prescribe the manner in which information contained in search engine results may be used based on:

(A) the nature of the reportable conduct;

(B) the date the reportable conduct occurred;

(C) the severity of the reportable conduct; and

(D) any other factors the agency determines necessary.

(e) Notwithstanding any provision of this chapter, a private school is not required to conduct search queries using the search engine for the purposes described by this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff. September 1, 2023.

Sec. 810.007. NOTICE AND HEARING. (a) A participating state agency or designated user that does not enter into a contract with or issue a license or certification to an individual based on a determination of the individual's ineligibility under Section 810.006 shall notify the individual of that determination.

(b) Each participating state agency may provide an individual to whom notice is provided under this section an opportunity for a hearing regarding the determination of the individual's ineligibility under Section 810.006 on the individual's written request. The hearing must be conducted in accordance with Chapter 2001, Government Code.

(c) Notwithstanding any other law, in a hearing conducted under this section a participating state agency:

(1) is not required to prove that an individual engaged in reportable conduct; and

(2) must prove by a preponderance of the evidence that an individual is ineligible under Section 810.006.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff. September 1, 2023.

Sec. 810.008. OFFICE OF INTERAGENCY COORDINATION ON REPORTABLE CONDUCT. (a) The Office of Interagency Coordination on Reportable Conduct is established within the Department of Family and Protective Services to facilitate:

(1) coordination among the department and each participating state agency in administering this chapter; and

(2) communication between the department, each participating state agency, designated users, interested persons, and the public regarding any relevant search engine information.

(b) The Department of Family and Protective Services, in collaboration with the department and each other participating state agency, shall adopt rules on the establishment and operation of the Office of Interagency Coordination on Reportable Conduct.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff. September 1, 2023.

Sec. 810.009. MEMORANDUM OF UNDERSTANDING. The department and each participating state agency shall enter into a memorandum of understanding on the implementation and administration of this chapter. The memorandum must specify each agency's roles and duties with respect to establishing and maintaining the search engine.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff. September 1, 2023.

Sec. 810.010. CONFIDENTIALITY. Information contained in search engine results and additional information shared by a participating state agency under Section 810.005(c), including documents, is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff. September 1, 2023.

CHAPTER 811. EMPLOYMENT REQUIREMENTS FOR CERTAIN FACILITIES TO PREVENT PHYSICAL OR SEXUAL ABUSE OF CHILDREN

Sec. 811.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Department" means the Texas Juvenile Justice Department.

(3) "Facility" means:

(A) a residential treatment facility or group home licensed or otherwise regulated by the commission;

(B) a juvenile detention facility regulated by the department; or

(C) a shelter operated by or under the authority of a county or municipality that provides temporary living accommodations for individuals who are homeless.

Added by Acts 2025, 89th Leg., R.S., Ch. 614 (H.B. 3153), Sec. 1, eff. September 1, 2025.

Sec. 811.002. APPLICABILITY. This chapter applies only to the

following governmental entities:

(1) the commission;

(2) the department;

(3) a county; and

(4) a municipality.

Added by Acts 2025, 89th Leg., R.S., Ch. 614 (H.B. 3153), Sec. 1, eff. September 1, 2025.

Sec. 811.003. REQUIRED CRIMINAL HISTORY RECORD INFORMATION REVIEW AND EMPLOYMENT VERIFICATION. (a) A governmental entity to which this chapter applies shall ensure each facility the entity regulates or operates reviews state criminal history record information and conducts an employment verification for each person:

(1) who is:

(A) an applicant selected for employment with the facility;

(B) an employee of the facility;

(C) an applicant selected for a volunteer position with the facility;

(D) a volunteer with the facility;

(E) an applicant selected for an independent contractor position with the facility; or

(F) an independent contractor of the facility; and

(2) who may be placed in direct contact with a child receiving services at the facility.

(b) For purposes of Subsection (a)(2), a person may be placed in direct contact with a child if the person's position potentially requires the person to:

(1) provide care, supervision, or guidance to a child;

(2) exercise any form of control over a child; or

(3) routinely interact with a child.

(c) In conducting an employment verification under Subsection (a), the facility must, to the extent possible, contact the previous employers listed in the submitted application materials for each applicant.

(d) Each facility shall obtain electronic updates from the Department of Public Safety of arrests and convictions for each person:

(1) described by Subsection (a)(1)(B), (D), or (F); and

(2) who continues as an employee, volunteer, or independent contractor or who otherwise continues to be placed in direct contact with a child at the facility.

(e) A facility that submits a name for a background and criminal history check in accordance with Section 42.056, Human Resources Code, and rules adopted under that section for each person described by Subsection (a) is considered to be in compliance with the requirements of this section.

(f) The executive commissioner of the commission may adopt rules as necessary to implement this section, including rules on existing employment verification procedures for residential treatment facilities that satisfy the requirements of this section.

Added by Acts 2025, 89th Leg., R.S., Ch. 614 (H.B. 3153), Sec. 1, eff. September 1, 2025.

Sec. 811.004. EFFECT OF CERTAIN CRIMINAL CONVICTIONS. (a) A facility may not offer a person an employment, volunteer, or independent contractor position and must terminate the person's position if, based on a criminal history record information review, an employment verification, or a background and criminal history check conducted in accordance with Section 42.056, Human Resources Code, of that person, the facility discovers the person engaged in physical or sexual abuse of a child constituting an offense under Section 21.02, 22.011, 22.021, or 25.02, Penal Code.

(b) A separation agreement for a facility employee, volunteer, or independent contractor may not include a provision that prohibits disclosure to a prospective employer of conduct constituting an offense under Section 21.02, 22.011, 22.021, or 25.02, Penal Code.

Added by Acts 2025, 89th Leg., R.S., Ch. 614 (H.B. 3153), Sec. 1, eff. September 1, 2025.

Sec. 811.005. TRAINING REQUIREMENTS. A facility must provide training to each employee, volunteer, or independent contractor who may be placed in direct contact with a child. The training must include:

(1) recognition of the signs of physical and sexual abuse

and reporting requirements for suspected physical and sexual abuse;

(2) the facility's policies related to reporting of physical and sexual abuse; and

(3) methods for maintaining professional and appropriate relationships with children.

Added by Acts 2025, 89th Leg., R.S., Ch. 614 (H.B. 3153), Sec. 1, eff. September 1, 2025.

TITLE 10. HEALTH AND SAFETY OF ANIMALS
CHAPTER 821. TREATMENT AND DISPOSITION OF ANIMALS
SUBCHAPTER A. TREATMENT OF ANIMALS

Sec. 821.001. DEFINITION. In this subchapter, "animal" includes every living nonhuman creature.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1593, eff. April 2, 2015.

Sec. 821.002. TREATMENT OF IMPOUNDED ANIMALS. (a) A person who impounds or causes the impoundment of an animal under state law or municipal ordinance shall supply the animal with sufficient wholesome food and water during its confinement.

(b) If an animal impounded under Subsection (a) continues to be without necessary food and water for more than 12 successive hours, any person may enter the pound or corral as often as necessary to supply the animal with necessary food and water. That person may recover the reasonable cost of the food and water from the owner of the animal. The animal is not exempt from levy and sale on execution of a judgment issued to recover those costs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 821.003. TREATMENT OF LIVE BIRDS. (a) This section applies to a person who receives live birds for transportation or for confinement:

(1) on wagons or stands;

(2) by a person who owns a grocery store, commission house, or other market house; or

(3) by any other person if the birds are to be closely confined.

(b) The person shall immediately place the birds in coops, crates, or cages that are made of open slats or wire on at least three sides and that are of a height so that the birds can stand upright without touching the top.

(c) The person shall keep clean water and suitable food in troughs or other receptacles in the coops, crates, or cages. The troughs or other receptacles must be easily accessible to the confined birds and must be placed so that the birds cannot defile their contents.

(d) The person shall keep the coops, crates, or cages in a clean and wholesome condition and may place in each coop, crate, or cage only the number of birds that have room to move around and to stand without crowding each other.

(e) The person may not expose the birds to undue heat or cold and shall immediately remove all injured, diseased, or dead birds from the coops, crates, or cages.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 821.004. KNOWLEDGE OR ACTS OF CORPORATE AGENT OR EMPLOYEE. The knowledge and acts of an agent or employee of a corporation in regard to an animal transported, owned, or used by or in the custody of the corporation are the knowledge and acts of the corporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. DISPOSITION OF CRUELLY TREATED ANIMALS

Sec. 821.021. DEFINITIONS. In this subchapter:

(1) "Cruelly treated" includes tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, caused to fight with another animal, or subjected to conduct prohibited by Section 21.09, Penal Code.

(2) "Nonprofit animal welfare organization" means a nonprofit organization that has as its purpose:

(A) the prevention of cruelty to animals; or

(B) the sheltering of, caring for, and providing homes for lost, stray, and abandoned animals.

(3) "Owner" includes a person who owns or has custody or control of an animal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1278 (H.B. 963), Sec. 1, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 739 (S.B. 1232), Sec. 6, eff. September 1, 2017.

Sec. 821.0211. ADDITIONAL DEFINITION. In this subchapter, "magistrate" means any officer as defined in Article 2A.151, Code of Criminal Procedure, except that the term does not include justices of the supreme court, judges of the court of criminal appeals, or courts of appeals, judges or associate judges of statutory probate courts, or judges or associate judges of district courts that give preference to family law matters or family district courts under Subchapter D, Chapter 24, Government Code.

Acts 2003, 78th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 10, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.126, eff. January 1, 2025.

Sec. 821.022. SEIZURE OF CRUELLY TREATED ANIMAL. (a) If a peace officer or an officer who has responsibility for animal control in a county or municipality has reason to believe that an animal has been or is being cruelly treated, the officer may apply to a justice court or magistrate in the county or to a municipal court in the municipality in which the animal is located for a warrant to seize the animal.

(b) On a showing of probable cause to believe that the animal has been or is being cruelly treated, the court or magistrate shall issue the warrant and set a time within 10 calendar days of the date

of issuance for a hearing in the appropriate justice court or municipal court to determine whether the animal has been cruelly treated.

(c) The officer executing the warrant shall cause the animal to be impounded and shall give written notice to the owner of the animal of the time and place of the hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 387, Sec. 1, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 1043, Sec. 2, eff. Sept. 1, 2003.

Sec. 821.023. HEARING; ORDER OF DISPOSITION OR RETURN OF ANIMAL. (a) A finding in a court of competent jurisdiction that the owner of an animal is guilty of an offense under Section 42.09 or 42.092, Penal Code, involving the animal is prima facie evidence at a hearing authorized by Section 821.022 that the animal has been cruelly treated.

(a-1) A finding in a court of competent jurisdiction that a person is guilty of an offense under Section 21.09, Penal Code, is prima facie evidence at a hearing authorized by Section 821.022 that any animal in the person's possession has been cruelly treated, regardless of whether the animal was subjected to conduct prohibited by Section 21.09, Penal Code.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 576 (S.B. 762), Sec. 2, and Ch. 739 (S.B. 1232), Sec. 8, eff. September 1, 2017.

(c) Each interested party is entitled to an opportunity to present evidence at the hearing.

(d) If the court finds that the animal's owner has cruelly treated the animal, the owner shall be divested of ownership of the animal, and the court shall:

(1) order a public sale of the animal by auction;

(2) order the animal given to a municipal or county animal shelter or a nonprofit animal welfare organization; or

(3) order the animal humanely destroyed if the court decides that the best interests of the animal or that the public health and safety would be served by doing so.

(e) After a court finds that an animal's owner has cruelly treated the animal, the court shall order the owner to pay all court costs, including:

(1) the administrative costs of:

(A) investigation;

(B) expert witnesses; and

(C) conducting any public sale ordered by the court; and

(2) the costs incurred by a municipal or county animal shelter or a nonprofit animal welfare organization in:

(A) housing and caring for the animal during its impoundment; and

(B) humanely destroying the animal if destruction is ordered by the court.

(e-1) After a court finds that an animal's owner has cruelly treated the animal, the court shall determine the estimated costs likely to be incurred by a municipal or county animal shelter or a nonprofit animal welfare organization to house and care for the impounded animal during the appeal process.

(e-2) After making the determination under Subsection (e-1), the court at the time of entering the judgment shall set the amount of bond for an appeal equal to the sum of:

(1) the amount of the court costs ordered under Subsection (e); and

(2) the amount of the estimated costs determined under Subsection (e-1).

(e-3) A court may not require a person to provide a bond in an amount greater than or in addition to the amount determined by the court under Subsection (e-2) to perfect an appeal under Section 821.025.

(e-4) Notwithstanding any other law, the amount of court costs that a court may order under Subsection (e) and the amount of bond that a court determines under Subsection (e-2) are excluded in determining the court's jurisdiction under Subtitle A, Title 2, Government Code.

(f) The court may order that an animal disposed of under Subsection (d)(1) or (d)(2) be spayed or neutered at the cost of the receiving party.

(g) The court shall order the animal returned to the owner if the court does not find that the animal's owner has cruelly treated the animal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., ch. 157, Sec. 1, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 14.43, 14.44, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1043, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 886 (H.B. 2328), Sec. 4, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1278 (H.B. 963), Sec. 2, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 576 (S.B. 762), Sec. 2, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 739 (S.B. 1232), Sec. 7, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 739 (S.B. 1232), Sec. 8, eff. September 1, 2017.

Sec. 821.024. SALE OR DISPOSITION OF CRUELLY TREATED ANIMAL. (a) Notice of an auction ordered under this subchapter must be posted on a public bulletin board where other public notices are posted for the county or municipality. At the auction, a bid by the former owner of a cruelly treated animal or the owner's representative may not be accepted.

(b) Proceeds from the sale of the animal shall be applied first to any costs owed by the former owner under Section 821.023(e). The officer conducting the auction shall pay any excess proceeds to the justice or municipal court ordering the auction. The court shall return the excess proceeds to the former owner of the animal.

(c) If the officer is unable to sell the animal at auction, the officer may cause the animal to be humanely destroyed or may give the animal to a municipal or county animal shelter or a nonprofit animal welfare organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 387, Sec. 2, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 1043, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1278 (H.B. 963), Sec. 3, eff. September 1, 2011.

Sec. 821.025. APPEAL. (a) An owner divested of ownership of an animal under Section 821.023 may appeal the order to a county court or county court at law in the county in which the justice or municipal court is located.

(b) As a condition of perfecting an appeal, not later than the 10th calendar day after the date the order is issued, the owner must file a notice of appeal and a cash bond or surety bond in an amount set by the court under Section 821.023(e-2).

(c) Not later than the fifth calendar day after the date the notice of appeal and bond is filed, the court from which the appeal is taken shall deliver a copy of the clerk's record to the clerk of the county court or county court at law to which the appeal is made.

(d) Not later than the 10th calendar day after the date the county court or county court at law, as appropriate, receives a copy of the clerk's record, the court shall consider the matter de novo and dispose of the appeal. A party to the appeal is entitled to a jury trial on request.

(e) The decision of the county court or county court at law under this section is final and may not be further appealed.

(f) Notwithstanding Section 30.00014, Government Code, or any other law, a person filing an appeal from a municipal court under Subsection (a) is not required to file a motion for a new trial to perfect an appeal.

(g) Notwithstanding any other law, a county court or a county court at law has jurisdiction to hear an appeal filed under this section.

(h) While an appeal under this section is pending, the animal may not be:

(1) sold or given away as provided by Sections 821.023 and 821.024; or

(2) destroyed, except under circumstances which would require the humane destruction of the animal to prevent undue pain to or suffering of the animal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1043, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1351 (S.B. 408), Sec. 11(a), eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1278 (H.B. 963), Sec. 4, eff.

September 1, 2011.

Sec. 821.026. CONFLICT OF LAWS. In the event of a conflict between this subchapter and another provision of any other law relating to an appeal of a disposition regarding a cruelly treated animal, including the bond required for that appeal, this subchapter controls.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1278 (H.B. 963), Sec. 5, eff. September 1, 2011.

SUBCHAPTER C. EUTHANASIA OF ANIMALS

Sec. 821.051. DEFINITIONS. In this subchapter:

(1) "Animal" has the meaning assigned by Section 821.001.

(2) "Animal shelter" means a facility that collects, impounds, or keeps stray, homeless, abandoned, or unwanted animals.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(118), eff. April 2, 2015.

(4) "Department" means the Department of State Health Services.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 23 (S.B. 360), Sec. 1, eff. May 10, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(118), eff. April 2, 2015.

Sec. 821.052. METHODS OF EUTHANASIA. (a) A person may euthanize a dog or cat in the custody of an animal shelter only by administering sodium pentobarbital.

(b) A person may euthanize all other animals in the custody of an animal shelter, including birds and reptiles, only in accordance with the applicable methods, recommendations, and procedures set forth in the edition of the American Veterinary Medical Association Guidelines for the Euthanasia of Animals that is approved by the

executive commissioner.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 23 (S.B. 360), Sec. 2, eff. May 10, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1594, eff. April 2, 2015.

Sec. 821.053. REQUIREMENTS FOR USE OF SODIUM PENTOBARBITAL. (a) The executive commissioner by rule shall establish the requirements and procedures for administering sodium pentobarbital to euthanize an animal in the custody of an animal shelter.

(b) A person may administer sodium pentobarbital to euthanize an animal in the custody of an animal shelter only in accordance with the requirements and procedures established by department rule.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Jan. 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1595, eff. April 2, 2015.

Sec. 821.054. REQUIREMENTS FOR USE OF COMMERCIALLY COMPRESSED CARBON MONOXIDE. (a) The executive commissioner by rule shall establish:

(1) standards for a carbon monoxide chamber used to euthanize an animal to which Section 821.052(b) applies; and

(2) requirements and procedures for administering commercially compressed carbon monoxide to euthanize an animal to which Section 821.052(b) applies.

(b) A person administering commercially compressed carbon monoxide to euthanize an animal to which Section 821.052(b) applies:

(1) may use only a carbon monoxide chamber that meets the standards established by department rule; and

(2) may administer the commercially compressed carbon monoxide only in accordance with the requirements and procedures established by department rule.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Jan. 1, 2005.

Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 23 (S.B. 360), Sec. 3, eff. May 10, 2013.

Sec. 821.055. TRAINING FOR EUTHANASIA TECHNICIANS. (a) A person may not euthanize an animal in the custody of an animal shelter unless the person has successfully completed, not more than three years before the date the person euthanizes the animal, a training course in the proper methods and techniques for euthanizing animals. The training course curriculum must include:
(1) the pharmacology, proper administration, and storage of euthanasia solutions;
(2) federal and state law regulating the storage and accountability of euthanasia solutions;
(3) euthanasia technician stress management;
(4) proper restraint and handling of an animal during euthanasia;
(5) the procedures for administering commercially compressed carbon monoxide to an animal;
(6) techniques for verifying an animal's death; and
(7) the proper disposal of a euthanized animal.
(b) The department must approve the sponsors and curriculum of the training course required by this section.
(c) This section does not apply to a person licensed to practice veterinary medicine in this state.
(d) Notwithstanding Subsection (a), an employee of an animal shelter is not required to have successfully completed the training course before the 120th day following the date of initial employment.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Jan. 1, 2005.

Sec. 821.056. OFFENSE AND PENALTY. (a) A person commits an offense if the person violates this subchapter or a rule adopted under this subchapter.
(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1596, eff.

April 2, 2015.

Sec. 821.057. INJUNCTION. A court of competent jurisdiction, on the petition of any person, may prohibit by injunction the substantial violation of this subchapter or a rule adopted under this subchapter.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1597, eff. April 2, 2015.

SUBCHAPTER E. UNLAWFUL RESTRAINT OF DOG

Sec. 821.101. DEFINITIONS. In this subchapter:

(1) "Adequate shelter" means a sturdy structure:

(A) that provides the dog protection from inclement weather; and

(B) with dimensions that allow the dog while in the shelter to stand erect, sit, turn around, and lie down in a normal position.

(2) "Collar" means a band of material specifically designed to be placed around the neck of a dog.

(3) "Harness" means a set of straps constructed of nylon, leather, or similar material, specifically designed to restrain or control a dog.

(4) "Inclement weather" includes rain, hail, sleet, snow, high winds, extreme low temperatures, or extreme high temperatures.

(5) "Owner" means a person who owns or has custody or control of a dog.

(6) "Properly fitted" means, with respect to a collar or harness, a collar or harness that:

(A) is appropriately sized for the dog based on the dog's measurements and body weight;

(B) does not choke the dog or impede the dog's normal breathing or swallowing; and

(C) does not cause pain or injury to the dog.

(7) "Restraint" means a chain, rope, tether, leash, cable, or other device that attaches a dog to a stationary object or trolley

system.

Added by Acts 2021, 87th Leg., 3rd C.S., Ch. 6 (S.B. 5), Sec. 1, eff. January 18, 2022.

Sec. 821.102. UNLAWFUL RESTRAINT OF DOG; OFFENSE. (a) An owner may not leave a dog outside and unattended by use of a restraint unless the owner provides the dog access to:

(1) adequate shelter;

(2) an area that allows the dog to avoid standing water and exposure to excessive animal waste;

(3) shade from direct sunlight; and

(4) potable water.

(b) An owner may not restrain a dog outside and unattended by use of a restraint that:

(1) is a chain;

(2) has weights attached;

(3) is shorter in length than the greater of:

(A) five times the length of the dog, as measured from the tip of the dog's nose to the base of the dog's tail; or

(B) 10 feet; or

(4) is attached to a collar or harness not properly fitted.

(c) A person commits an offense if the person knowingly violates this section. The restraint of each dog that is in violation is a separate offense.

(d) An offense under this section is a Class C misdemeanor, except that the offense is a Class B misdemeanor if the person has previously been convicted under this section.

(e) If conduct constituting an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2021, 87th Leg., 3rd C.S., Ch. 6 (S.B. 5), Sec. 1, eff. January 18, 2022.

Sec. 821.103. EXCEPTIONS. (a) Section 821.102 does not apply to:

(1) the use of a restraint on a dog in a public camping or recreational area in compliance with the requirements of the public

camping or recreational area as defined by a federal, state, or local authority or jurisdiction;

(2) the use of a restraint on a dog while the owner and dog engage in, or actively train for, an activity conducted under a valid license issued by this state provided the activity is associated with the use or presence of a dog;

(3) the use of a restraint on a dog while the owner and dog engage in conduct directly related to the business of shepherding or herding cattle or livestock;

(4) the use of a restraint on a dog while the owner and dog engage in conduct directly related to the business of cultivating agricultural products;

(5) a dog left unattended in an open-air truck bed only for the time reasonably necessary for the owner to complete a temporary task that requires the dog to be left unattended in the truck bed;

(6) a dog taken by the owner, or another person with the owner's permission, from the owner's residence or property and restrained by the owner or the person for not longer than the time necessary for the owner to engage in an activity that requires the dog to be temporarily restrained; or

(7) a dog restrained while the owner and dog are engaged in, or actively training for, hunting or field trialing.

(b) Section 821.102(b)(3) does not apply to a restraint attached to a trolley system that allows a dog to move along a running line for a distance equal to or greater than the lengths specified under that subdivision.

(c) This subchapter does not prohibit a person from walking a dog with a handheld leash.

Added by Acts 2021, 87th Leg., 3rd C.S., Ch. 6 (S.B. 5), Sec. 1, eff. January 18, 2022.

Sec. 821.104. EFFECT OF SUBCHAPTER ON OTHER LAW. This subchapter does not preempt a local regulation relating to the restraint of a dog or affect the authority of a political subdivision to adopt or enforce an ordinance or requirement relating to the restraint of a dog if the regulation, ordinance, or requirement:

(1) is compatible with and equal to or more stringent than a requirement prescribed by this subchapter; or

(2) relates to an issue not specifically addressed by this subchapter.

Added by Acts 2021, 87th Leg., 3rd C.S., Ch. 6 (S.B. 5), Sec. 1, eff. January 18, 2022.

CHAPTER 822. REGULATION OF ANIMALS

SUBCHAPTER A. GENERAL PROVISIONS; DOGS THAT ATTACK PERSONS OR ARE A DANGER TO PERSONS

Sec. 822.001. DEFINITIONS. In this subchapter:

(1) "Animal control authority" means a municipal or county animal control office with authority over the area in which the dog is kept or the county sheriff in an area that does not have an animal control office.

(2) "Serious bodily injury" means an injury characterized by severe bite wounds or severe ripping and tearing of muscle that would cause a reasonably prudent person to seek treatment from a medical professional and would require hospitalization without regard to whether the person actually sought medical treatment.

(3) "Dangerous dog," "dog," "owner," and "secure enclosure" have the meanings assigned by Section 822.041.

(4) "Secure" means to take steps that a reasonable person would take to ensure a dog remains on the owner's property, including confining the dog in an enclosure that is capable of preventing the escape or release of the dog.

Amended by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. 1355), Sec. 3, eff. September 1, 2007.

Sec. 822.0011. APPLICATION TO CERTAIN PROPERTY. For purposes of this subchapter, a person's property includes property the person is entitled to possess or occupy under a lease or other agreement.

Added by Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. 1355), Sec. 4, eff. September 1, 2007.

Sec. 822.0012. ANIMAL CONTROL AUTHORITY IN CERTAIN MUNICIPALITIES. (a) This section applies only to an incorporated municipality that has a population of more than 1,000 and that is the county seat of a county with a population of 1,380 or more but less than 1,600.

(b) Notwithstanding the definition in Section 822.001(1), for purposes of this subchapter the police department of a municipality described by Subsection (a) is the animal control authority for the municipality in all areas in which a dog is kept and that are subject to the authority of the police department.

Added by Acts 2017, 85th Leg., R.S., Ch. 976 (S.B. 2283), Sec. 1, eff. September 1, 2017.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 113, eff. September 1, 2023.

Sec. 822.002. SEIZURE OF A DOG CAUSING DEATH OF OR SERIOUS BODILY INJURY TO A PERSON. (a) A justice court, county court, or municipal court shall order the animal control authority to seize a dog and shall issue a warrant authorizing the seizure:

(1) on the sworn complaint of any person, including the county attorney, the city attorney, or a peace officer, that the dog has caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person; and

(2) on a showing of probable cause to believe that the dog caused the death of or serious bodily injury to the person as stated in the complaint.

(b) The animal control authority shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 822.001 and amended by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.

Sec. 822.003. HEARING. (a) The court shall set a time for a hearing to determine whether the dog caused the death of or serious

bodily injury to a person by attacking, biting, or mauling the person. The hearing must be held not later than the 10th day after the date on which the warrant is issued.

(b) The court shall give written notice of the time and place of the hearing to:

(1) the owner of the dog or the person from whom the dog was seized; and

(2) the person who made the complaint.

(c) Any interested party, including the county attorney or city attorney, is entitled to present evidence at the hearing.

(d) The court shall order the dog destroyed if the court finds that the dog caused the death of a person by attacking, biting, or mauling the person. If that finding is not made, the court shall order the dog released to:

(1) its owner;

(2) the person from whom the dog was seized; or

(3) any other person authorized to take possession of the dog.

(e) The court may order the dog destroyed if the court finds that the dog caused serious bodily injury to a person by attacking, biting, or mauling the person. If that finding is not made, the court shall order the dog released to:

(1) its owner;

(2) the person from whom the dog was seized; or

(3) any other person authorized to take possession of the dog.

(f) The court may not order the dog destroyed if the court finds that the dog caused the serious bodily injury to a person by attacking, biting, or mauling the person and:

(1) the dog was being used for the protection of a person or person's property, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and:

(A) the enclosure was reasonably certain to prevent the dog from leaving the enclosure on its own and provided notice of the presence of a dog; and

(B) the injured person was at least eight years of age, and was trespassing in the enclosure when the attack, bite, or mauling occurred;

(2) the dog was not being used for the protection of a person or person's property, the attack, bite, or mauling occurred in

an enclosure in which the dog was being kept, and the injured person was at least eight years of age and was trespassing in the enclosure when the attack, bite, or mauling occurred;

(3) the attack, bite, or mauling occurred during an arrest or other action of a peace officer while the peace officer was using the dog for law enforcement purposes;

(4) the dog was defending a person from an assault or person's property from damage or theft by the injured person; or

(5) the injured person was younger than eight years of age, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and the enclosure was reasonably certain to keep a person younger than eight years of age from entering.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 822.002 and amended by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.

Sec. 822.004. DESTRUCTION OF DOG. The destruction of a dog under this subchapter must be performed by:

(1) a licensed veterinarian;

(2) personnel of a recognized animal shelter or humane society who are trained in the humane destruction of animals; or

(3) personnel of a governmental agency responsible for animal control who are trained in the humane destruction of animals.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 822.003 by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.

Sec. 822.005. ATTACK BY DOG. (a) A person commits an offense if the person is the owner of a dog and the person:

(1) with criminal negligence, as defined by Section 6.03, Penal Code, fails to secure the dog and the dog makes an unprovoked attack on another person that occurs at a location other than the owner's real property or in or on the owner's motor vehicle or boat and that causes serious bodily injury, as defined by Section 1.07, Penal Code, or death to the other person; or

(2) knows the dog is a dangerous dog by learning in a manner described by Section 822.042(g) that the person is the owner

of a dangerous dog, and the dangerous dog makes an unprovoked attack on another person that occurs at a location other than a secure enclosure in which the dog is restrained in accordance with Subchapter D and that causes serious bodily injury, as defined by Section 822.001, or death to the other person.

(b) An offense under this section is a felony of the third degree unless the attack causes death, in which event the offense is a felony of the second degree.

(c) If a person is found guilty of an offense under this section, the court may order the dog destroyed by a person listed in Section 822.004.

(d) A person who is subject to prosecution under this section and under any other law may be prosecuted under this section, the other law, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 822.004 and amended by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. 1355), Sec. 5, eff. September 1, 2007.

Sec. 822.006. DEFENSES. (a) It is a defense to prosecution under Section 822.005(a) that the person is a veterinarian, a veterinary clinic employee, a peace officer, a person employed by a recognized animal shelter, or a person employed by this state or a political subdivision of this state to deal with stray animals and has temporary ownership, custody, or control of the dog in connection with that position.

(b) It is a defense to prosecution under Section 822.005(a) that the person is an employee of the Texas Department of Criminal Justice or a law enforcement agency and trains or uses dogs for law enforcement or corrections purposes and is training or using the dog in connection with the person's official capacity.

(c) It is a defense to prosecution under Section 822.005(a) that the person is a dog trainer or an employee of a guard dog company under Chapter 1702, Occupations Code, and has temporary ownership, custody, or control of the dog in connection with that position.

(d) It is a defense to prosecution under Section 822.005(a) that the person is a person with a disability and uses the dog to provide assistance, the dog is trained to provide assistance to a person with a disability, and the person is using the dog to provide assistance in connection with the person's disability.

(e) It is a defense to prosecution under Section 822.005(a) that the person attacked by the dog was at the time of the attack engaged in conduct prohibited by Chapters 19, 20, 21, 22, 28, 29, and 30, Penal Code.

(f) It is an affirmative defense to prosecution under Section 822.005(a) that, at the time of the conduct charged, the person and the dog are participating in an organized search and rescue effort at the request of law enforcement.

(g) It is an affirmative defense to prosecution under Section 822.005(a) that, at the time of the conduct charged, the person and the dog are participating in an organized dog show or event sponsored by a nationally recognized or state-recognized kennel club.

(h) It is an affirmative defense to prosecution under Section 822.005(a) that, at the time of the conduct charged, the person and the dog are engaged in:

(1) a lawful hunting activity; or

(2) a farming or ranching activity, including herding livestock, typically performed by a working dog on a farm or ranch.

(i) It is a defense to prosecution under Section 822.005(a) that, at the time of the conduct charged, the person's dog was on a leash and the person:

(1) was in immediate control of the dog; or

(2) if the person was not in control of the dog, the person was making immediate and reasonable attempts to regain control of the dog.

Added by Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. 1355), Sec. 6, eff. September 1, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1598, eff. April 2, 2015.

Sec. 822.007. LOCAL REGULATION OF DOGS. This subchapter does not prohibit a municipality or county from adopting leash or

registration requirements applicable to dogs.

Added by Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. 1355), Sec. 6, eff. September 1, 2007.

SUBCHAPTER B. DOGS AND COYOTES THAT ARE A DANGER TO ANIMALS

Sec. 822.011. DEFINITIONS. In this subchapter:

(1) "Dog or coyote" includes a crossbreed between a dog and a coyote.

(2) "Livestock" includes exotic livestock as defined by Section 161.001, Agriculture Code.

Added by Acts 2003, 78th Leg., ch. 1002, Sec. 1, eff. Sept. 1, 2003.

Sec. 822.012. CERTAIN DOGS AND COYOTES PROHIBITED FROM RUNNING AT LARGE; CRIMINAL PENALTY. (a) The owner, keeper, or person in control of a dog or coyote that the owner, keeper, or person knows is accustomed to run, worry, or kill livestock, domestic animals, or fowls may not permit the dog or coyote to run at large.

(b) A person who violates this section commits an offense. An offense under this subsection is punishable by a fine of not more than $100.

(c) Each time a dog or coyote runs at large in violation of this section constitutes a separate offense.

Added by Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 822.011 and amended by Acts 2003, 78th Leg., ch. 1002, Sec. 1, eff. Sept. 1, 2003.

Sec. 822.013. DOGS OR COYOTES THAT ATTACK ANIMALS. (a) A dog or coyote that is attacking, is about to attack, or has recently attacked livestock, domestic animals, or fowls may be killed by:

(1) any person witnessing the attack; or

(2) the attacked animal's owner or a person acting on behalf of the owner if the owner or person has knowledge of the attack.

(b) A person who kills a dog or coyote as provided by this section is not liable for damages to the owner, keeper, or person in

control of the dog or coyote.

(c) A person who discovers on the person's property a dog or coyote known or suspected of having killed livestock, domestic animals, or fowls may detain or impound the dog or coyote and return it to its owner or deliver the dog or coyote to the local animal control authority. The owner of the dog or coyote is liable for all costs incurred in the capture and care of the dog or coyote and all damage done by the dog or coyote.

(d) The owner, keeper, or person in control of a dog or coyote that is known to have attacked livestock, domestic animals, or fowls shall control the dog or coyote in a manner approved by the local animal control authority.

(e) A person is not required to acquire a hunting license under Section 42.002, Parks and Wildlife Code, to kill a dog or coyote under this section.

Added by Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 822.033 and amended by Acts 2003, 78th Leg., ch. 1002, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER C. COUNTY REGISTRATION AND REGULATION OF DOGS

Sec. 822.021. APPLICATION TO COUNTIES THAT ADOPT SUBCHAPTER. This subchapter applies only to a county that adopts this subchapter by a majority vote of the qualified voters of the county voting at an election held under this subchapter. This subchapter shall not apply to any county or municipality that enacts or has enacted registration or restraint laws pursuant to Chapter 826 (Rabies Control Act of 1981).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 489, Sec. 1, eff. Aug. 28, 1995.

Sec. 822.022. PETITION FOR ELECTION. (a) On receiving a petition signed by at least 100 qualified property taxpaying voters of the county or a majority of the qualified property taxpaying voters of the county, whichever is less, the commissioners court of a county shall order an election to determine whether the registration of and registration fee for dogs will be required in the county.

(b) The election shall be held on the first authorized uniform

election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.023. NOTICE. In addition to the notice required by Section 4.003, Election Code, notice of an election under this subchapter shall be published at least once in an English language newspaper of general circulation in the county. If there is no English language newspaper of general circulation in the county, the notice shall be posted at the courthouse door for at least one week before the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.024. BALLOT PROPOSITION. The ballot for an election under this subchapter shall be printed to provide for voting for or against the proposition: "Registration of and registration fee for dogs."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.025. ELECTION RESULT. (a) If a majority of those voting at the election vote in favor of the measure, the requirement that dogs be registered takes effect in the county on the 10th day after the date on which the result of the election is declared.

(b) The county judge shall issue a proclamation declaring the result of the election if the vote is in favor of the measure. The proclamation shall be published at least once in an English language newspaper of general circulation in the county or, if there is no English language newspaper of general circulation in the county, the proclamation shall be posted at the courthouse door.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.026. INTERVAL BETWEEN ELECTIONS. (a) If the result of an election is against the registration of and registration fee

for dogs, another election on that subject may not be held for six months after the date of the election.

(b) If the result of an election is for the registration of and registration fee for dogs, an election to repeal the registration and fee may not be held for two years from the date of the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.027. REGISTRATION TAGS AND CERTIFICATE. (a) The commissioners court of a county shall furnish the county treasurer the necessary dog identification tags.

(b) The tags must be numbered consecutively and must be printed or impressed with the name of the county issuing the tags.

(c) The county treasurer shall assign a registration number to each dog registered with the county and shall give the owner or person having control of the dog the identification tag and a registration certificate.

(d) The county treasurer shall record the registration of a dog, including the age, breed, color, sex, and registration date of the dog. If the registration information is not recorded on microfilm, as may be permitted under other law, it shall be recorded in a book kept for that purpose.

(e) If the ownership of a dog is transferred, the dog's registration certificate shall be transferred to the new owner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.028. REGISTRATION FEE. (a) An owner of a dog registered under this subchapter must pay a registration fee of $1. However, the commissioners court of the county may set the fee in an amount of more than $1 but not more than $5, and if the court sets the amount of the fee the owner must pay that amount.

(b) Registration is valid for one year from the date of registration.

(c) If a dog is moved to another county, the owner may present the registration certificate to the county treasurer of the county to which the dog is moved and receive without additional cost a registration certificate. The new registration certificate is valid for one year from the date of registration in the county from which

the dog was moved.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 870, Sec. 1, eff. June 14, 2001.

Sec. 822.029. DISPOSITION OF FEE. (a) The fee collected for the registration of a dog shall be deposited to the credit of a special fund of the county and used only to:

(1) defray the cost of administering this subchapter in the county, including the costs of registration and the identification tags; and

(2) reimburse the owner of any sheep, goats, calves, or other domestic animals or fowls killed in the county by a dog not owned by the person seeking reimbursement.

(b) Reimbursement under Subsection (a)(2) shall be made on the order of the commissioners court only on satisfactory proof of the killing.

(c) The commissioners court shall determine the amount and time of reimbursement. If there is insufficient money in the fund to reimburse all injured persons in full, reimbursement shall be made on a pro rata basis.

(d) The county treasurer shall keep an accurate record showing all amounts received into and paid from the fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.030. REGISTRATION REQUIRED; EXCEPTION FOR TEMPORARY VISITS. (a) The owner or person having control of a dog six months of age or older in a county that has adopted this subchapter must register the dog not later than the 30th day after the date on which the proclamation is published or adopted.

(b) A dog brought into a county for not more than 10 days for breeding purposes, trial, or show is not required to be registered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.031. UNREGISTERED DOGS PROHIBITED FROM RUNNING AT LARGE. The owner or person having control of a dog at least six

months of age in a county adopting this subchapter may not allow the dog to run at large unless the dog:

(1) is registered under this subchapter with the county in which the dog runs at large; and

(2) has fastened about its neck a dog identification tag issued by the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.035. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally:

(1) fails or refuses to register a dog required to be registered under this subchapter;

(2) fails or refuses to allow a dog to be killed when ordered by the proper authorities to do so; or

(3) violates this subchapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $100, confinement in the county jail for not more than 30 days, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. DANGEROUS DOGS

Sec. 822.041. DEFINITIONS. In this subchapter:

(1) "Animal control authority" means a municipal or county animal control office with authority over the area where the dog is kept or a county sheriff in an area with no animal control office.

(2) "Dangerous dog" means a dog that:

(A) makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or

(B) commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.

(3) "Dog" means a domesticated animal that is a member of the canine family.

(4) "Secure enclosure" means a fenced area or structure that is:

(A) locked;

(B) capable of preventing the entry of the general public, including children;

(C) capable of preventing the escape or release of a dog;

(D) clearly marked as containing a dangerous dog; and

(E) in conformance with the requirements for enclosures established by the local animal control authority.

(5) "Owner" means a person who owns or has custody or control of the dog.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.

Sec. 822.0411. ANIMAL CONTROL AUTHORITY IN CERTAIN MUNICIPALITIES. (a) This section applies only to an incorporated municipality that has a population of more than 1,000 and that is the county seat of a county with a population of 1,380 or more but less than 1,600.

(b) Notwithstanding the definition in Section 822.041(1), for purposes of this subchapter the police department of a municipality described by Subsection (a) is the animal control authority for the municipality in all areas in which a dog is kept and that are subject to the authority of the police department.

Added by Acts 2017, 85th Leg., R.S., Ch. 976 (S.B. 2283), Sec. 2, eff. September 1, 2017.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 114, eff. September 1, 2023.

Sec. 822.042. REQUIREMENTS FOR OWNER OF DANGEROUS DOG. (a) Not later than the 30th day after a person learns that the person is the owner of a dangerous dog, the person shall:

(1) register the dangerous dog with the animal control authority for the area in which the dog is kept;

(2) restrain the dangerous dog at all times on a leash in the immediate control of a person or in a secure enclosure;

(3) obtain liability insurance coverage or show financial responsibility in an amount of at least $100,000 to cover damages resulting from an attack by the dangerous dog causing bodily injury to a person and provide proof of the required liability insurance coverage or financial responsibility to the animal control authority for the area in which the dog is kept; and

(4) comply with an applicable municipal or county regulation, requirement, or restriction on dangerous dogs.

(b) The owner of a dangerous dog who does not comply with Subsection (a) shall deliver the dog to the animal control authority not later than the 30th day after the owner learns that the dog is a dangerous dog.

(c) If, on application of any person, a justice court, county court, or municipal court finds, after notice and hearing as provided by Section 822.0423, that the owner of a dangerous dog has failed to comply with Subsection (a) or (b), the court shall order the animal control authority to seize the dog and shall issue a warrant authorizing the seizure. The authority shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions.

(d) The owner shall pay any cost or fee assessed by the municipality or county related to the seizure, acceptance, impoundment, or destruction of the dog. The governing body of the municipality or county may prescribe the amount of the fees.

(e) Subject to Subsection (e-1), the court shall order the animal control authority to humanely destroy the dog if the owner has not complied with Subsection (a) before the 11th day after the date on which the dog is seized or delivered to the authority. The court shall order the authority to return the dog to the owner if the owner complies with Subsection (a) before the 11th day after the date on which the dog is seized or delivered to the authority.

(e-1) Notwithstanding any other law or local regulation:

(1) any order to destroy a dog is stayed for a period of 10 calendar days from the date the order is issued, during which period the dog's owner may file a notice of appeal; and

(2) a court, including a justice court, may not order the destruction of a dog during the pendency of an appeal under Section 822.0424.

(f) The court may order the humane destruction of a dog if the owner of the dog has not been located before the 15th day after the

seizure and impoundment of the dog.

(g) For purposes of this section, a person learns that the person is the owner of a dangerous dog when:

(1) the owner knows of an attack described in Section 822.041(2)(A) or (B);

(2) the owner receives notice that a justice court, county court, or municipal court has found that the dog is a dangerous dog under Section 822.0423; or

(3) the owner is informed by the animal control authority that the dog is a dangerous dog under Section 822.0421.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 96, Sec. 1, eff. May 17, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 530 (H.B. 1436), Sec. 1, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 899 (H.B. 3340), Sec. 1, eff. September 1, 2021.

Sec. 822.0421. DETERMINATION THAT DOG IS DANGEROUS. (a) If a person reports an incident described by Section 822.041(2), the animal control authority may investigate the incident. If, after receiving the sworn statements of any witnesses, the animal control authority determines the dog is a dangerous dog, the animal control authority shall notify the owner in writing of the determination.

(b) Notwithstanding any other law, including a municipal ordinance, an owner, not later than the 15th day after the date the owner is notified that a dog owned by the owner is a dangerous dog, may appeal the determination of the animal control authority to a justice, county, or municipal court of competent jurisdiction.

(c) To file an appeal under Subsection (b), the owner must:

(1) file a notice of appeal of the animal control authority's dangerous dog determination with the court;

(2) attach a copy of the determination from the animal control authority; and

(3) serve a copy of the notice of appeal on the animal control authority by mailing the notice through the United States Postal Service.

(d) An owner may appeal the decision of the justice or municipal court under Subsection (b) in the manner described by Section 822.0424.

Added by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 530 (H.B. 1436), Sec. 2, eff. September 1, 2015.

Sec. 822.0422. REPORTING OF INCIDENT IN CERTAIN COUNTIES AND MUNICIPALITIES. (a) This section applies only to a county with a population of more than 2,800,000, to a county in which the commissioners court has entered an order electing to be governed by this section, and to a municipality in which the governing body has adopted an ordinance electing to be governed by this section.

(b) A person may report an incident described by Section 822.041(2) to a municipal court, a justice court, or a county court. The owner of the dog shall deliver the dog to the animal control authority not later than the fifth day after the date on which the owner receives notice that the report has been filed. The authority may provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog.

(c) If the owner fails to deliver the dog as required by Subsection (b), the court shall order the animal control authority to seize the dog and shall issue a warrant authorizing the seizure. The authority shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog. The owner shall pay any cost incurred in seizing the dog.

(d) The court shall determine, after notice and hearing as provided in Section 822.0423, whether the dog is a dangerous dog.

(e) The court, after determining that the dog is a dangerous dog, may order the animal control authority to continue to impound the dangerous dog in secure and humane conditions until the court orders disposition of the dog under Section 822.042 and the dog is returned to the owner or destroyed.

(f) The owner shall pay a cost or fee assessed under Section 822.042(d).

Added by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 96, Sec. 2, eff. May 17, 1999.

Sec. 822.0423. HEARING. (a) The court, on receiving a report of an incident under Section 822.0422 or on application under Section 822.042(c), shall set a time for a hearing to determine whether the dog is a dangerous dog or whether the owner of the dog has complied with Section 822.042. The hearing must be held not later than the 10th day after the date on which the dog is seized or delivered.

(b) The court shall give written notice of the time and place of the hearing to:

(1) the owner of the dog or the person from whom the dog was seized; and

(2) the person who made the complaint.

(c) Any interested party, including the county or city attorney, is entitled to present evidence at the hearing.

(c-1) The court shall determine the estimated costs to house and care for the impounded dog during the appeal process and shall set the amount of bond for an appeal adequate to cover those estimated costs.

(d) An owner or person filing the action may appeal the decision of the municipal or justice court in the manner described by Section 822.0424.

Added by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 530 (H.B. 1436), Sec. 3, eff. September 1, 2015.

Sec. 822.0424. APPEAL. (a) A party to an appeal under Section 822.0421(d) or a hearing under Section 822.0423 may appeal the decision to a county court or county court at law in the county in which the justice or municipal court is located and is entitled to a jury trial on request.

(b) As a condition of perfecting an appeal, not later than the 10th calendar day after the date the decision is issued, the appellant must file a notice of appeal and, if applicable, an appeal bond in the amount determined by the court from which the appeal is taken.

(c) Notwithstanding Section 30.00014, Government Code, or any other law, a person filing an appeal from a municipal court under Subsection (a) is not required to file a motion for a new trial to perfect an appeal.

(d) A decision of a county court or county court at law under this section may be appealed in the same manner as an appeal for any other case in a county court or county court at law.

(e) Notwithstanding any other law, a county court or a county court at law has jurisdiction to hear an appeal filed under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 530 (H.B. 1436), Sec. 4, eff. September 1, 2015.

Sec. 822.043. REGISTRATION. (a) An animal control authority for the area in which the dog is kept shall annually register a dangerous dog if the owner:

(1) presents proof of:

(A) liability insurance or financial responsibility, as required by Section 822.042;

(B) current rabies vaccination of the dangerous dog; and

(C) the secure enclosure in which the dangerous dog will be kept; and

(2) pays an annual registration fee of $50.

(b) The animal control authority shall provide to the owner registering a dangerous dog a registration tag. The owner must place the tag on the dog's collar.

(c) If an owner of a registered dangerous dog sells or moves the dog to a new address, the owner, not later than the 14th day after the date of the sale or move, shall notify the animal control authority for the area in which the new address is located. On presentation by the current owner of the dangerous dog's prior registration tag and payment of a fee of $25, the animal control authority shall issue a new registration tag to be placed on the dangerous dog's collar.

(d) An owner of a registered dangerous dog shall notify the office in which the dangerous dog was registered of any attacks the dangerous dog makes on people.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.

Sec. 822.044. ATTACK BY DANGEROUS DOG. (a) A person commits an offense if the person is the owner of a dangerous dog and the dog makes an unprovoked attack on another person outside the dog's enclosure and causes bodily injury to the other person.

(b) An offense under this section is a Class C misdemeanor.

(c) If a person is found guilty of an offense under this section, the court may order the dangerous dog destroyed by a person listed in Section 822.004.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 669, Sec. 8, eff. September 1, 2007.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. 1355), Sec. 7, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. 1355), Sec. 8, eff. September 1, 2007.

Sec. 822.045. VIOLATIONS. (a) A person who owns or keeps custody or control of a dangerous dog commits an offense if the person fails to comply with Section 822.042 or Section 822.0422(b) or an applicable municipal or county regulation relating to dangerous dogs.

(b) Except as provided by Subsection (c), an offense under this section is a Class C misdemeanor.

(c) An offense under this section is a Class B misdemeanor if it is shown on the trial of the offense that the defendant has previously been convicted under this section.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997.

Sec. 822.046. DEFENSE. (a) It is a defense to prosecution under Section 822.044 or Section 822.045 that the person is a veterinarian, a peace officer, a person employed by a recognized animal shelter, or a person employed by the state or a political

subdivision of the state to deal with stray animals and has temporary ownership, custody, or control of the dog in connection with that position.

(b) It is a defense to prosecution under Section 822.044 or Section 822.045 that the person is an employee of the institutional division of the Texas Department of Criminal Justice or a law enforcement agency and trains or uses dogs for law enforcement or corrections purposes.

(c) It is a defense to prosecution under Section 822.044 or Section 822.045 that the person is a dog trainer or an employee of a guard dog company under Chapter 1702, Occupations Code.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.809, eff. Sept. 1, 2001.

Sec. 822.047. LOCAL REGULATION OF DANGEROUS DOGS. A county or municipality may place additional requirements or restrictions on dangerous dogs if the requirements or restrictions:

(1) are not specific to one breed or several breeds of dogs; and

(2) are more stringent than restrictions provided by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.

SUBCHAPTER E. DANGEROUS WILD ANIMALS

Sec. 822.101. DEFINITIONS. In this subchapter:

(1) "Animal registration agency" means the municipal or county animal control office with authority over the area where a dangerous wild animal is kept or a county sheriff in an area that does not have an animal control office.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(119), eff. April 2, 2015.

(3) "Commercial activity" means:

(A) an activity involving a dangerous wild animal conducted for profit that is not inherent to the animal's nature;

(B) an activity for which a fee is charged and that is entertainment using or an exhibition of the animal; or

(C) the selling, trading, bartering, or auctioning of a dangerous wild animal or a dangerous wild animal's body parts.

(4) "Dangerous wild animal" means:

(A) a lion;

(B) a tiger;

(C) an ocelot;

(D) a cougar;

(E) a leopard;

(F) a cheetah;

(G) a jaguar;

(H) a bobcat;

(I) a lynx;

(J) a serval;

(K) a caracal;

(L) a hyena;

(M) a bear;

(N) a coyote;

(O) a jackal;

(P) a baboon;

(Q) a chimpanzee;

(R) an orangutan;

(S) a gorilla; or

(T) any hybrid of an animal listed in this subdivision.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Owner" means any person who owns, harbors, or has custody or control of a dangerous wild animal.

(6) "Person" means an individual, partnership, corporation, trust, estate, joint stock company, foundation, or association of individuals.

(7) "Primary enclosure" means any structure used to immediately restrict an animal to a limited amount of space, including a cage, pen, run, room, compartment, or hutch.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1599, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(119), eff. April 2, 2015.

Sec. 822.102. APPLICABILITY OF SUBCHAPTER. (a) This subchapter does not apply to:

(1) a county, municipality, or agency of the state or an agency of the United States or an agent or official of a county, municipality, or agency acting in an official capacity;

(2) a research facility, as that term is defined by Section 2(e), Animal Welfare Act (7 U.S.C. Section 2132), and its subsequent amendments, that is licensed by the secretary of agriculture of the United States under that Act;

(3) an organization that is an accredited member of the Association of Zoos and Aquariums;

(4) an injured, infirm, orphaned, or abandoned dangerous wild animal while being transported for care or treatment;

(5) an injured, infirm, orphaned, or abandoned dangerous wild animal while being rehabilitated, treated, or cared for by a licensed veterinarian, an incorporated humane society or animal shelter, or a person who holds a rehabilitation permit issued under Subchapter C, Chapter 43, Parks and Wildlife Code;

(6) a dangerous wild animal owned by and in the custody and control of a transient circus company that is not based in this state if:

(A) the animal is used as an integral part of the circus performances; and

(B) the animal is kept within this state only during the time the circus is performing in this state or for a period not to exceed 30 days while the circus is performing outside the United States;

(7) a dangerous wild animal while in the temporary custody or control of a television or motion picture production company during the filming of a television or motion picture production in this state;

(8) a dangerous wild animal owned by and in the possession, custody, or control of a college or university solely as a mascot for the college or university;

(9) a dangerous wild animal while being transported in interstate commerce through the state in compliance with the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments and the regulations adopted under that Act;

(10) a nonhuman primate owned by and in the control and custody of a person whose only business is supplying nonhuman primates directly and exclusively to biomedical research facilities and who holds a Class "A" or Class "B" dealer's license issued by the secretary of agriculture of the United States under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments;

(11) a dangerous wild animal that is:

(A) owned by or in the possession, control, or custody of a person who is a participant in a species survival plan of the Association of Zoos and Aquariums for that species; and

(B) an integral part of that species survival plan; and

(12) in a county west of the Pecos River that has a population of less than 25,000, a cougar, bobcat, or coyote in the possession, custody, or control of a person that has trapped the cougar, bobcat, or coyote as part of a predator or depredation control activity.

(b) This subchapter does not require a municipality that does not have an animal control office to create that office.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 31, eff. June 18, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1600, eff. April 2, 2015.

Sec. 822.103. CERTIFICATE OF REGISTRATION; FEES. (a) A person may not own, harbor, or have custody or control of a dangerous wild animal for any purpose unless the person holds a certificate of registration for that animal issued by an animal registration agency.

(b) A certificate of registration issued under this subchapter is not transferrable and is valid for one year after its date of issuance or renewal unless revoked.

(c) The animal registration agency may establish and charge reasonable fees for application, issuance, and renewal of a certificate of registration in order to recover the costs associated with the administration and enforcement of this subchapter. The fee charged to an applicant may not exceed $50 for each animal registered

and may not exceed $500 for each person registering animals, regardless of the number of animals owned by the person. The fees collected under this section may be used only to administer and enforce this subchapter.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.104. CERTIFICATE OF REGISTRATION APPLICATION. (a) An applicant for an original or renewal certificate of registration for a dangerous wild animal must file an application with an animal registration agency on a form provided by the animal registration agency.

(b) The application must include:

(1) the name, address, and telephone number of the applicant;

(2) a complete identification of each animal, including species, sex, age, if known, and any distinguishing marks or coloration that would aid in the identification of the animal;

(3) the exact location where each animal is to be kept;

(4) a sworn statement that:

(A) all information in the application is complete and accurate; and

(B) the applicant has read this subchapter and that all facilities used by the applicant to confine or enclose the animal comply with the requirements of this subchapter; and

(5) any other information the animal registration agency may require.

(c) An applicant shall include with each application:

(1) the nonrefundable fee;

(2) proof, in a form acceptable by the animal registration agency, that the applicant has liability insurance, as required by Section 822.107;

(3) a color photograph of each animal being registered taken not earlier than the 30th day before the date the application is filed;

(4) a photograph and a statement of the dimensions of the primary enclosure in which each animal is to be kept and a scale diagram of the premises where each animal will be kept, including the location of any perimeter fencing and any residence on the premises;

and

(5) if an applicant holds a Class "A" or Class "B" dealer's license or Class "C" exhibitor's license issued by the secretary of agriculture of the United States under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments, a clear and legible photocopy of the license.

(d) In addition to the items required under Subsection (c), an application for renewal must include a statement signed by a veterinarian licensed to practice in this state stating that the veterinarian:

(1) inspected each animal being registered not earlier than the 30th day before the date of the filing of the renewal application; and

(2) finds that the care and treatment of each animal by the owner meets or exceeds the standards prescribed under this subchapter.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.105. DENIAL OR REVOCATION OF CERTIFICATE OF REGISTRATION; APPEAL. (a) If the animal registration agency finds that an application for an original or renewal certificate of registration under this subchapter does not meet the requirements of Section 822.104 or, after inspection, that an applicant has not complied with this subchapter, the animal registration agency shall deny the applicant a certificate of registration and give the applicant written notice of the denial and the reasons for the denial.

(b) If the animal registration agency finds, after inspection, that a registered owner provided false information in or in connection with the application or has not complied with this subchapter, the animal registration agency shall revoke the certificate of registration and give the owner written notice of the revocation and the reasons for the revocation.

(c) A person may appeal the denial of an original or renewal certificate of registration or the revocation of a certificate of registration to the justice court for the precinct in which the animal is located or the municipal court in the municipality in which the animal is located not later than the 15th day after the date the

certificate of registration is denied or revoked. Either party may appeal the decision of the justice or municipal court to a county court or county court at law in the county in which the justice or municipal court is located. The decision of the county court or county court at law may not be appealed.

(d) The filing of an appeal of the denial or revocation of a certificate of registration under Subsection (c) stays the denial or revocation until the court rules on the appeal.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.106. DISPLAY OF CERTIFICATE OF REGISTRATION. (a) A holder of a certificate of registration shall prominently display the certificate at the premises where each animal that is the subject of the certificate of registration is kept.

(b) Not later than the 10th day after the date a person receives a certificate of registration, the person shall file a clear and legible copy of the certificate of registration with the Department of State Health Services. The executive commissioner shall establish a procedure for filing a certificate of registration and by rule shall establish a reasonable fee to be collected by the department in an amount sufficient to recover the cost associated with filing a certificate of registration under this subsection.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1601, eff. April 2, 2015.

Sec. 822.107. LIABILITY INSURANCE. An owner of a dangerous wild animal shall maintain liability insurance coverage in an amount of not less than $100,000 for each occurrence for liability for damages for destruction of or damage to property and death or bodily injury to a person caused by the dangerous wild animal.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.108. INSPECTION. An owner of a dangerous wild animal,

at all reasonable times, shall allow the animal registration agency, its staff, its agents, or a designated licensed veterinarian to enter the premises where the animal is kept and to inspect the animal, the primary enclosure for the animal, and the owner's records relating to the animal to ensure compliance with this subchapter.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.109. RELOCATION OR DISPOSITION OF ANIMAL. (a) An owner of a dangerous wild animal may not permanently relocate the animal unless the owner first notifies the animal registration agency in writing of the exact location to which the animal will be relocated and provides the animal registration agency, with respect to the new location, the information required by Section 822.104.

(b) Within 10 days after the death, sale, or other disposition of the animal, the owner of the animal shall notify the animal registration agency in writing of the death, sale, or other disposition.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.110. ATTACK BY ANIMAL; ESCAPE OF ANIMAL; LIABILITY. (a) An owner of a dangerous wild animal shall notify the animal registration agency of any attack of a human by the animal within 48 hours of the attack.

(b) An owner of a dangerous wild animal shall immediately notify the animal registration agency and the local law enforcement agency of any escape of the animal.

(c) An owner of a dangerous wild animal that escapes is liable for all costs incurred in apprehending and confining the animal.

(d) An animal registration agency, a law enforcement agency, or an employee of an animal registration agency or law enforcement agency is not liable to an owner of a dangerous wild animal for damages arising in connection with the escape of a dangerous wild animal, including liability for damage, injury, or death caused by the animal during or after the animal's escape, or for injury to or death of the animal as a result of apprehension or confinement of the animal after escape.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.111. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER; CAGING REQUIREMENTS AND STANDARDS. (a) The executive commissioner by rule shall establish caging requirements and standards for the keeping and confinement of a dangerous wild animal to ensure that the animal is kept in a manner and confined in a primary enclosure that:

(1) protects and enhances the public's health and safety;

(2) prevents escape by the animal; and

(3) provides a safe, healthy, and humane environment for the animal.

(b) An owner of a dangerous wild animal shall keep and confine the animal in accordance with the caging requirements and standards established by the executive commissioner.

(c) An animal registration agency may approve a deviation from the caging requirements and standards established by the executive commissioner, only if:

(1) the animal registration agency has good cause for the deviation; and

(2) the deviation:

(A) does not compromise the public's health and safety;

(B) does not reduce the total area of the primary enclosure below that established by the executive commissioner; and

(C) does not otherwise adversely affect the overall welfare of the animal involved.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1602, eff. April 2, 2015.

Sec. 822.112. CARE, TREATMENT, AND TRANSPORTATION OF ANIMAL. (a) For each dangerous wild animal, the owner shall comply with all applicable standards of the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments and the regulations adopted under that Act relating to:

(1) facilities and operations;

(2) animal health and husbandry; and

(3) veterinary care.

(b) An owner of a dangerous wild animal shall maintain a separate written log for each dangerous wild animal documenting the animal's veterinary care and shall make the log available to the animal registration agency or its agent on request. The log must:

(1) identify the animal treated;

(2) provide the date of treatment;

(3) describe the type or nature of treatment; and

(4) provide the name of the attending veterinarian, if applicable.

(c) When transporting a dangerous wild animal, the owner of the animal, or a designated carrier or intermediate handler of the animal, shall comply with all transportation standards that apply to that animal under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments or the regulations adopted under that Act.

(d) A person is exempt from the requirements of this section if the person is caring for, treating, or transporting an animal for which the person holds a Class "A" or Class "B" dealer's license or a Class "C" exhibitor's license issued by the secretary of agriculture of the United States under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.113. OFFENSE AND PENALTY. (a) A person commits an offense if the person violates Section 822.103(a), Section 822.106, or Section 822.110(a) or (b). Each animal with respect to which there is a violation and each day that a violation continues is a separate offense.

(b) A person commits an offense if the person knowingly sells or otherwise transfers ownership of a dangerous wild animal to a person who does not have a certificate of registration for that animal as required by this subchapter.

(c) An offense under this section is a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.114. CIVIL PENALTY. (a) A person who violates

Section 822.103(a) is liable for a civil penalty of not less than $200 and not more than $2,000 for each animal with respect to which there is a violation and for each day the violation continues.

(b) The county or municipality in which the violation occurs may sue to collect a civil penalty. A civil penalty collected under this subsection may be retained by the county or municipality.

(c) The county or municipality in which the violation occurs may also recover the reasonable costs of investigation, reasonable attorney's fees, and reasonable expert witness fees incurred by the animal registration agency in the civil action. Costs or fees recovered under this subsection shall be credited to the operating account from which payment for the animal registration agency's expenditures was made.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.115. INJUNCTION. Any person who is directly harmed or threatened with harm by a violation of this subchapter or a failure to enforce this subchapter may sue an owner of a dangerous wild animal to enjoin a violation of this subchapter or to enforce this subchapter.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.116. EFFECT OF SUBCHAPTER ON OTHER LAW. (a) This subchapter does not affect the applicability of any other law, rule, order, ordinance, or other legal requirement of this state or a political subdivision of this state.

(b) This subchapter does not prevent a municipality or county from prohibiting or regulating by ordinance or order the ownership, possession, confinement, or care of a dangerous wild animal.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

CHAPTER 823. ANIMAL SHELTERS

Sec. 823.001. DEFINITIONS. In this chapter:

(1) "Animal shelter" means a facility that keeps or legally impounds stray, homeless, abandoned, or unwanted animals.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(120), eff. April 2, 2015.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(120), eff. April 2, 2015.

(4) "Department" means the Department of State Health Services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1603, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(120), eff. April 2, 2015.

Sec. 823.002. EXEMPTION FOR CERTAIN COUNTIES, CLINICS, AND FACILITIES. This chapter does not apply to:

(1) a county having a population of less than 75,000;

(2) a veterinary medicine clinic; or

(3) a livestock commission facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 280, eff. Sept. 1, 1991.

Sec. 823.003. STANDARDS FOR ANIMAL SHELTERS; CRIMINAL PENALTY. (a) Each animal shelter operated in this state shall comply with the standards for:

(1) housing and sanitation as provided in Chapter 826 for quarantine and impoundment facilities; and

(2) animal control officer training adopted under Chapter 829.

(b) An animal shelter shall separate animals in its custody at all times by species, by sex (if known), and if the animals are not related to one another, by size.

(c) An animal shelter may not confine healthy animals with sick, injured, or diseased animals.

(d) Each person who operates an animal shelter shall employ a veterinarian at least once a year to inspect the shelter to determine whether it complies with the requirements of this chapter and Chapter 829. The veterinarian shall file copies of the veterinarian's report

with the person operating the shelter and with the department on forms prescribed by the department.

(e) The executive commissioner of the Health and Human Services Commission may require each person operating an animal shelter to keep records of the date and disposition of animals in its custody, to maintain the records on the business premises of the animal shelter, and to make the records available for inspection at reasonable times.

(f) A person commits an offense if the person substantially violates this section. An offense under this subsection is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1604, eff. April 2, 2015.

Sec. 823.004. MICROCHIP SCAN REQUIRED. As soon as practicable after an animal is placed in the custody of an animal shelter or a releasing agency as defined by Section 828.001, including an animal rescue organization, the shelter, agency, or organization shall scan the animal to determine whether a microchip is implanted in the animal.

Added by Acts 2021, 87th Leg., R.S., Ch. 136 (H.B. 604), Sec. 1, eff. September 1, 2021.

Sec. 823.005. ADVISORY COMMITTEE. (a) The governing body of a county or municipality in which an animal shelter is located shall appoint an advisory committee to assist in complying with the requirements of this chapter.

(b) The advisory committee must be composed of at least one licensed veterinarian, one county or municipal official, one person whose duties include the daily operation of an animal shelter, and one representative from an animal welfare organization.

(c) The advisory committee shall meet at least three times a year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 823.007. INJUNCTION. A court of competent jurisdiction may, on the petition of any person, prohibit by injunction the substantial violation of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 823.008. ENFORCEMENT BY COUNTY. (a) A county may enforce this chapter.

(b) This section does not authorize a county to establish standards for operating an animal shelter.

(c) A county may not enforce this chapter at an animal shelter operated by a municipality.

Added by Acts 2009, 81st Leg., R.S., Ch. 924 (H.B. 3004), Sec. 1, eff. June 19, 2009.

Sec. 823.009. CIVIL PENALTY. (a) A person may not cause, suffer, allow, or permit a violation of this chapter or a rule adopted under this chapter.

(b) A person who violates this chapter or a rule adopted under this chapter shall be assessed a civil penalty. A civil penalty under this chapter may not be less than $100 or more than $500 for each violation and for each day of a continuing violation. This subsection does not apply at an animal shelter operated by a municipality.

(c) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted under this chapter, the county or municipality in which the violation occurs may institute a civil suit in district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment and recovery of the civil penalty; or

(3) both injunctive relief and the civil penalty.

(d) A bond is not required in an action brought under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 924 (H.B. 3004), Sec. 1, eff. June 19, 2009.

CHAPTER 824. KENNELS

Sec. 824.001. DEFINITIONS. In this chapter:

(1) "Fire protection sprinkler system" has the meaning assigned by Section 766.051.

(2) "Kennel" means a facility, including a veterinary medicine clinic, that provides boarding and related services to dogs or cats for breeding, sheltering, training, hunting, or similar purposes in exchange for compensation or other consideration.

Added by Acts 2023, 88th Leg., R.S., Ch. 294 (H.B. 2063), Sec. 1, eff. September 1, 2023.

Sec. 824.002. EXCEPTIONS TO APPLICABILITY OF CHAPTER. This chapter does not apply to:

(1) an animal shelter as defined by Chapter 823; or

(2) a kennel that boards not more than three dogs or cats at any time.

Added by Acts 2023, 88th Leg., R.S., Ch. 294 (H.B. 2063), Sec. 1, eff. September 1, 2023.

Sec. 824.003. REQUIRED INFORMED CONSENT FOR BOARDING OR PROVIDING SERVICES TO DOG OR CAT TO BE LEFT UNATTENDED. A kennel owner or operator who is boarding or providing services to a dog or cat at the kennel may not leave the dog or cat unattended without an employee present unless:

(1) the kennel owner or operator provides to the owner of the dog or cat written notice that:

(A) the dog or cat will be left unattended at the kennel without an employee present during the hours specified in the notice; and

(B) if the kennel is not equipped with a functioning fire protection sprinkler system, the facility does not have a fire protection sprinkler system; and

(2) the owner of the dog or cat provides to the kennel

owner or operator a signed document consenting to the dog or cat being left unattended as provided in the notice.

Added by Acts 2023, 88th Leg., R.S., Ch. 294 (H.B. 2063), Sec. 1, eff. September 1, 2023.

Sec. 824.004. CIVIL PENALTY. (a) A kennel owner or operator who violates Section 824.003 is liable for a civil penalty in an amount equal to $500 for each animal subject to the violation and for each day the violation continues.

(b) The attorney general or the appropriate district or county attorney may:

(1) bring an action on behalf of this state to collect the civil penalty under this section; and

(2) recover attorney's fees and costs incurred in bringing the action.

Added by Acts 2023, 88th Leg., R.S., Ch. 294 (H.B. 2063), Sec. 1, eff. September 1, 2023.

CHAPTER 825. PREDATORY ANIMALS AND ANIMAL PESTS

SUBCHAPTER A. COOPERATION BETWEEN STATE AND FEDERAL AGENCIES IN CONTROLLING PREDATORY ANIMALS AND RODENTS

Sec. 825.001. COOPERATION BETWEEN STATE AND FEDERAL AGENCIES IN CONTROLLING PREDATORY ANIMALS AND RODENTS. The state shall cooperate through The Texas A&M University System with the appropriate federal officers and agencies in controlling coyotes, mountain lions, bobcats, Russian boars, and other predatory animals and in controlling prairie dogs, pocket gophers, jackrabbits, ground squirrels, rats, and other rodent pests to protect livestock, food and feed supplies, crops, and ranges.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.002. COOPERATIVE AGREEMENT. The director of the Texas Agricultural Extension Service shall execute a cooperative agreement with the appropriate federal officers or agencies to perform the cooperative work in predatory animal and rodent control in the manner

and under the regulations stated in the agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.003. EXPENDITURE OF APPROPRIATIONS. The state funds appropriated to administer this subchapter shall be spent in amounts as authorized by the Board of Regents of The Texas A&M University System and disbursed on vouchers or payrolls certified by the director of the extension service.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.004. APPROPRIATIONS BY LOCAL GOVERNMENTS. The commissioners court of a county or the governing body of a municipality may appropriate funds to perform predatory animal and rodent control work described by this subchapter and, in cooperation with federal and state authorities, may employ labor and purchase and provide supplies required to effectively perform that work.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.005. SALE OF FURS, SKINS, AND SPECIMENS. (a) Except as provided by Subsection (b), all furs, skins, and specimens of value taken by hunters or trappers paid from state funds under this subchapter shall be sold under rules adopted by The Texas A&M University System. The proceeds of the sales shall be deposited to the credit of the fund established for predatory animal and rodent control.

(b) Any specimen taken under this subchapter may be presented free of charge to any state, county, or federal institution for scientific purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.006. BOUNTIES PROHIBITED. (a) A hunter or trapper acting under this subchapter may not collect a bounty from a county or any other source for an animal taken under this subchapter.

(b) The scalp of each animal taken under this subchapter shall be destroyed and each skin that has commercial value shall be sold.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.007. CONSTRUCTION WITH PARKS AND WILDLIFE CODE. Section 71.004(b), Parks and Wildlife Code, does not apply to a hunter or trapper while performing duties under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.008. TAMPERING WITH TRAPS; CRIMINAL PENALTY. (a) A person commits an offense if the person maliciously or wilfully tampers with all or any part of a trap set under this subchapter or removes a trap from the position in which it is placed by a hunter or trapper acting under this subchapter.

(b) An offense under this section is punishable by a fine of not less than $50 or more than $200.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.009. STEALING TRAPS; CRIMINAL PENALTY. (a) A person commits an offense if the person steals or fraudulently takes a trap belonging to the state or the United States Department of the Interior.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $100 or more than $200.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.010. STEALING ANIMALS FROM TRAPS; CRIMINAL PENALTY. (a) A person commits an offense if the person steals an animal listed in Section 825.001 from a trap set under this subchapter or takes the animal from the trap without authority.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $100 or more than $200.

(c) An animal stolen or taken in violation of this section is

the property of the state. A complaint alleging a violation of this section must allege that the animal is owned by the state, and the only proof necessary to establish ownership shall consist of proving that the animal was taken from a trap that had been set by a hunter or trapper acting under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. PURCHASE OF POISON TO DESTROY CERTAIN ANIMAL PESTS

Sec. 825.021. COMMISSIONERS COURT MAY PURCHASE POISON. (a) The commissioners court of a county may purchase poisons and related accessories required by citizens of the county to destroy prairie dogs, wildcats, gophers, ground squirrels, wolves, coyotes, rats, English sparrows, and ravens.

(b) The commissioners court may furnish the poison to citizens of the county free or at cost.

(c) The commissioners court shall pay for the poison from the general fund of the county and shall deposit the proceeds of any sale to the credit of that fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.022. NOTICE CONCERNING POISON. (a) The commissioners court of a county acting under this subchapter shall determine the days on which the poison will be put out and shall give notice at least 20 days before the first day it is put out.

(b) The notice required by this section must be:

(1) published in at least one county newspaper, if one is available, for three successive issues; and

(2) posted in public places.

(c) The notice must state when the poison will be put out, the fact that it may be obtained from the commissioners court, and the terms on which it may be obtained.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.024. DUTIES OF LAND HOLDERS, LESSEES, AND TENANTS. (a) Each land holder whose premises are infested with any pests

listed in Section 825.021 shall obtain and apply the poison as provided in the plans furnished by the commissioner of agriculture.

(b) Each lessee or tenant occupying any premises under contract shall obtain the poison and destroy any pests listed in Section 825.021 that infest the premises. Any expenses incurred under this subsection by a lessee or tenant shall be charged against the landowner and are collectible as any other valid debt.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. BOUNTIES FOR PREDATORY ANIMALS

Sec. 825.031. BOUNTIES FOR PREDATORY ANIMALS. (a) The commissioners court of a county may pay bounties for killing predatory animals not listed on any state or federal protected species list.

(b) The commissioners court may determine which animals are predatory animals in that county.

(c) The commissioners court may determine the amount of a bounty to be paid under this section for each animal. The bounty shall be paid from the general fund of the county by a warrant drawn on that fund by the county judge on presentation of proof of destruction required by the commissioners court. A bounty paid under this section may not exceed $50 for each animal unless approved by the Texas Parks and Wildlife Commission.

(d) The commissioners court may determine eligibility criteria for receiving a bounty under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 84, Sec. 1,2, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1279, Sec. 1, eff. Aug. 30, 1999.

Sec. 825.032. ANGELINA, HENDERSON, OR TRINITY COUNTY: WOLVES AND OTHER PREDATORY ANIMALS. (a) The Commissioners Court of Angelina, Henderson, or Trinity County may pay bounties for the destruction of wolves and other predatory animals in the county.

(b) The commissioners court may, by resolution entered on its minutes, provide for the destruction of wolves and other predatory animals, the method of destruction and proof necessary to entitle the person destroying the animal to receive the bounty, and the amount of

the bounty to be paid for each animal.

(c) A bounty paid under this section shall be paid by warrant drawn on the general fund of the county by the county judge on presentation of proof of destruction required by the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.033. ARANSAS, BEE, REFUGIO, OR SAN PATRICIO COUNTY: RATTLESNAKES, WOLVES, COYOTES, PANTHERS, BOBCATS, AND OTHER PREDATORY ANIMALS. (a) The Commissioners Court of Aransas, Bee, Refugio, or San Patricio County may pay bounties for the destruction of rattlesnakes, wolves, coyotes, panthers, bobcats, and other predatory animals in the county to preserve game and to protect the interests of livestock and poultry raisers.

(b) The commissioners court may set the bounty in an amount not to exceed:

(1) $5 for each wolf, coyote, panther, or bobcat;

(2) 50 cents for each raccoon, skunk, opossum, or other similar animal; and

(3) 10 cents for each rattlesnake.

(c) The commissioners court shall, by resolution entered on its minutes, specify the amount of the bounty to be paid for each animal and prescribe regulations and require proof necessary to protect the county's interest.

(d) The bounties paid under this section shall be paid by warrant drawn on the general fund of the county by the county judge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.034. PANOLA COUNTY: WOLVES. (a) The Commissioners Court of Panola County may pay bounties on wolves in order to preserve game.

(b) The commissioners court may set the bounty in an amount not to exceed $25 for each wolf killed. The bounty shall be paid from the general fund of the county.

(c) The commissioners court may adopt rules necessary to protect the interest of the county and may require proof necessary to assure that one wolf has been killed for each wolf paid for.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.035. BORDEN COUNTY: RABBITS. (a) The Commissioners Court of Borden County may pay bounties for lawfully killing wild rabbits in the county to prevent property damage.

(b) The bounty may not exceed 10 cents for each rabbit and shall be paid from the general fund of the county.

(c) The commissioners court may adopt rules necessary to protect the interest of the county and may require proof necessary to assure that one rabbit has been killed for each rabbit paid for.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.036. PRAIRIE DOGS. Prairie dogs are a public nuisance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.037. EFFECT OF OTHER LAWS. This subchapter does not authorize:

(1) the killing of an animal if the killing is prohibited by federal or state law or rule; or

(2) the payment of a bounty for killing an animal if the killing is prohibited by federal or state law or rule.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. CONTROL OF PREDATORY ANIMALS

Sec. 825.051. MUNICIPAL CONTROL OF COYOTES. A municipality with a population density of more than 2,500 persons per square mile may capture, relocate, or euthanize a coyote located within the municipality or the municipality's extraterritorial jurisdiction. The municipality may request assistance from Texas Wildlife Services to capture, relocate, or euthanize a coyote.

Added by Acts 2019, 86th Leg., R.S., Ch. 1333 (H.B. 4544), Sec. 1, eff. June 14, 2019.

CHAPTER 826. RABIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 826.001. SHORT TITLE. This chapter may be cited as the Rabies Control Act of 1981.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.002. DEFINITIONS. In this chapter:

(1) "Animal" means a warm-blooded animal.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(121), eff. April 2, 2015.

(3) "Cat" means Felis catus.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(121), eff. April 2, 2015.

(5) "Department" means the Department of State Health Services.

(6) "Dog" means Canis familiaris.

(7) "Epizootic" means the occurrence in a given geographic area or population of cases of a disease clearly in excess of the expected frequency.

(7-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(8) "Licensed veterinarian" means a veterinarian licensed to practice veterinary medicine in one or more of the 50 states.

(9) "Quarantine" means strict confinement of an animal specified in an order of the department or its designee:

(A) on the private premises of the animal's owner or at a facility approved by the department or its designee; and

(B) under restraint by closed cage or paddock or in any other manner approved by department rule.

(10) "Rabies" means an acute viral disease of man and animal affecting the central nervous system and usually transmitted by an animal bite.

(11) "Stray" means roaming with no physical restraint beyond the premises of an animal's owner or keeper.

(12) "Livestock" means an animal raised for human consumption or an equine animal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 1, eff. May 5, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1605, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(121), eff. April 2, 2015.

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF EXECUTIVE COMMISSIONER, DEPARTMENT, AND LOCAL GOVERNMENTS

Sec. 826.011. GENERAL POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND DEPARTMENT. (a) The department or its designee, with the cooperation of the governing bodies of counties and municipalities, shall administer the rabies control program established by this chapter.

(b) The executive commissioner shall adopt rules necessary to effectively administer this chapter.

(c) The department or its designee may enter into contracts or agreements with public or private entities to carry out this chapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

(d) Subject to any limitations or conditions prescribed by the legislature, the department or its designee may seek, receive, and spend funds received through appropriations, grants, or donations from public or private sources for the rabies control program established by this chapter.

(e) The department or its designee may compile, analyze, publish, and distribute information relating to the control of rabies for the education of physicians, veterinarians, public health personnel, and the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1607, eff. April 2, 2015.

Sec. 826.012. MINIMUM STANDARDS FOR RABIES CONTROL. This chapter and the rules adopted by the executive commissioner under

this chapter are the minimum standards for rabies control.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1608, eff. April 2, 2015.

Sec. 826.013. COUNTIES AND MUNICIPALITIES MAY ADOPT CHAPTER. The governing body of a municipality or the commissioners court of a county may adopt this chapter and the standards adopted by the executive commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1609, eff. April 2, 2015.

Sec. 826.014. COUNTIES MAY ADOPT ORDINANCES AND RULES. (a) The commissioners court of a county may adopt ordinances or rules that establish a local rabies control program in the county and set local standards that are compatible with and equal to or more stringent than the program established by this chapter and the department rules adopted under this chapter.

(b) County ordinances or rules adopted under this section supersede this chapter and the department rules adopted under this chapter within that county so that dual enforcement will not occur.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1610, eff. April 2, 2015.

Sec. 826.015. MUNICIPALITIES MAY ADOPT ORDINANCES OR RULES. (a) The governing body of a municipality may adopt ordinances or rules that establish a local rabies control program in the municipality and set local standards that are compatible with and equal to or more stringent than:

(1) the ordinances or rules adopted by the county in which

the municipality is located; and

(2) the program established by this chapter and the department rules adopted under this chapter.

(b) Municipal ordinances or rules adopted under this section supersede ordinances or rules adopted by the county in which the municipality is located, this chapter, and the department rules adopted under this chapter within that municipality so that multiple enforcement will not occur.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1611, eff. April 2, 2015.

Sec. 826.016. CONTRACTS. The governing body of a municipality and the commissioners court of a county may enter into contracts or agreements with public or private entities to carry out the activities required or authorized under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.017. DESIGNATION OF LOCAL RABIES CONTROL AUTHORITY. (a) The commissioners court of each county and the governing body of each municipality shall designate an officer to act as the local rabies control authority for the purposes of this chapter.

(b) Except as restricted by department rule, the officer designated as the local rabies control authority may be the county health officer, municipal health officer, animal control officer, peace officer, or any entity that the commissioners court or governing body considers appropriate.

(c) Among other duties, the local rabies control authority shall enforce:

(1) this chapter and the department rules that comprise the minimum standards for rabies control;

(2) the ordinances or rules of the municipality or county that the local rabies control authority serves; and

(3) the rules adopted by the executive commissioner under the area rabies quarantine provisions of Section 826.045.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 2, eff. May 5, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1612, eff. April 2, 2015.

Sec. 826.018. LOCAL RABIES CONTROL PROGRAMS. (a) This section applies to a veterinarian who:

(1) is employed by a county or municipality; and

(2) administers or supervises the administration of rabies vaccine as part of a local rabies control program established by a county or municipality under this chapter.

(b) A veterinarian described by Subsection (a) is not required to establish a veterinarian-client-patient relationship before administering rabies vaccine or supervising the administration of rabies vaccine.

(c) To the extent of any conflict between this section and any other law or rule relating to the administration of rabies vaccine, this section controls.

Added by Acts 2015, 84th Leg., R.S., Ch. 52 (H.B. 1740), Sec. 1, eff. May 21, 2015.

SUBCHAPTER C. RABIES VACCINATIONS

Sec. 826.021. VACCINATION OF DOGS AND CATS REQUIRED. (a) Except as otherwise provided by department rule, the owner of a dog or cat shall have the animal vaccinated against rabies by the time the animal is four months of age and at regular intervals thereafter as prescribed by department rule.

(b) A veterinarian who vaccinates a dog or cat against rabies shall issue to the animal's owner a vaccination certificate in a form that meets the minimum standards approved by the executive commissioner.

(c) A county or municipality may not register or license an animal that has not been vaccinated in accordance with this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1613, eff.

April 2, 2015.

Sec. 826.0211. CONFIDENTIALITY OF CERTAIN INFORMATION IN RABIES VACCINATION CERTIFICATE; CRIMINAL PENALTY. (a) Information contained in a rabies vaccination certificate or in any record compiled from the information contained in one or more certificates that identifies or tends to identify an owner or an address, telephone number, or other personally identifying information of an owner of a vaccinated animal is confidential and not subject to disclosure under Chapter 552, Government Code. The information contained in the certificate or record may not include the social security number or the driver's license number of the owner of the vaccinated animal.

(b) The information may be disclosed only to a governmental entity or a person that, under a contract with a governmental entity, provides animal control services or animal registration services for the governmental entity for purposes related to the protection of public health and safety. A governmental entity or person that receives the information, including a county or municipality that registers dogs and cats under Subchapter D, must maintain the confidentiality of the information, may not disclose the information under Chapter 552, Government Code, and may not use the information for a purpose that does not directly relate to the protection of public health and safety.

(c) A person commits an offense if the person distributes information that is confidential under this section. An offense under this subsection is a misdemeanor punishable by:

(1) a fine of not more than $1,000;

(2) confinement in the county jail for not more than 180 days; or

(3) both the fine and confinement.

Added by Acts 1999, 76th Leg., ch. 1069, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 1235 (H.B. 1426), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 686 (H.B. 1728), Sec. 1, eff. June 15, 2007.

Sec. 826.022. VACCINATION; CRIMINAL PENALTY. (a) A person commits an offense if the person fails or refuses to have each dog or cat owned by the person vaccinated against rabies and the animal is required to be vaccinated under:

(1) Section 826.021 and department rules; or

(2) ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

(b) An offense under this section is a Class C misdemeanor.

(c) If on the trial of an offense under this section the court finds that the person has been previously convicted of an offense under this section, the offense is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 3, eff. May 5, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1614, eff. April 2, 2015.

Sec. 826.023. USE AND SALE OF RABIES VACCINE. (a) Rabies vaccine for animals may be administered only by or under the direct supervision of a veterinarian.

(b) A veterinarian may not administer or directly supervise the administration of rabies vaccine in this state unless the person is:

(1) licensed by the State Board of Veterinary Medical Examiners to practice veterinary medicine; or

(2) practicing veterinary medicine on an installation of the armed forces or National Guard.

(c) A person may not sell or distribute rabies vaccine for animals to any person except a licensed veterinarian or to a person working in a veterinary clinic who accepts the vaccine on behalf of the veterinarian.

(d) This section does not prohibit a pharmacy licensed by the Texas State Board of Pharmacy from supplying rabies vaccine for animals to a licensed veterinarian.

(e) This section does not prohibit a veterinarian licensed by the State Board of Veterinary Medical Examiners from selling or dispensing rabies vaccine to an individual with whom the veterinarian has a veterinarian-client-patient relationship as described by Chapter 801, Occupations Code, for the sole purpose of allowing that

individual to administer the rabies vaccine to that individual's own livestock.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 5, eff. May 5, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 14.810, eff. Sept. 1, 2001.

Sec. 826.024. USE AND SALE OF RABIES VACCINE; CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) administers or attempts to administer rabies vaccine in a manner not authorized by Section 826.023;

(2) dispenses or attempts to dispense rabies vaccine in a manner not authorized by Section 826.023; or

(3) sells or distributes rabies vaccine for animals in violation of Section 826.023(c).

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.025. PROVISION OF VACCINE AND SERUM. (a) The department may provide vaccine and hyperimmune serum in accordance with department policies or procedures for the use and benefit of a person exposed, or suspected of having been exposed, to rabies.

(b) In accordance with department rules and eligibility standards, the department is entitled to be reimbursed by or on behalf of the person receiving the vaccine or serum for actual costs incurred in providing the vaccine or serum.

(c) At the written request of the department, the attorney general or the county or district attorney for the county in which the recipient of the vaccine or serum resides may bring suit or start other proceedings in the name of the state to collect the reimbursement owed the department for the vaccine or serum.

(d) A suit or other proceeding may be brought against:

(1) the recipient;

(2) the parent, guardian, or other person legally responsible for the support of the recipient; or

(3) a responsible third party.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1615, eff. April 2, 2015.

SUBCHAPTER D. REGISTRATION AND RESTRAINT OF DOGS AND CATS

Sec. 826.031. REGISTRATION OF DOGS AND CATS BY LOCAL GOVERNMENTS. (a) The governing body of a municipality and the commissioners court of a county may adopt ordinances or rules under Section 826.014 or 826.015 requiring the registration of each dog and cat within the jurisdiction of the municipality or county.

(b) A dog or cat may not be subject to dual registration.

(c) The enforcing agency may collect a fee set by ordinance for the registration of each dog or cat and may retain the fees collected. The fees may be used only to help defray the cost of administering this chapter or the ordinances or rules of the enforcing agency within its jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.0311. CONFIDENTIALITY OF CERTAIN INFORMATION IN DOG AND CAT REGISTRY; CRIMINAL PENALTY. (a) Information that is contained in a municipal or county registry of dogs and cats under Section 826.031 that identifies or tends to identify the owner or an address, telephone number, or other personally identifying information of the owner of the registered dog or cat is confidential and not subject to disclosure under Chapter 552, Government Code. The information contained in the registry may not include the social security number or the driver's license number of the owner of the registered animal.

(b) The information may be disclosed only to a governmental entity or a person that, under a contract with a governmental entity, provides animal control services or animal registration services for the governmental entity for purposes related to the protection of public health and safety. A governmental entity or person that receives the information must maintain the confidentiality of the information, may not disclose the information under Chapter 552, Government Code, and may not use the information for a purpose that does not directly relate to the protection of public health and

safety.

(c) A person commits an offense if the person distributes information that is confidential under this section. An offense under this subsection is a misdemeanor punishable by:

(1) a fine of not more than $1,000;

(2) confinement in the county jail for not more than 180 days; or

(3) both the fine and confinement.

Added by Acts 1999, 76th Leg., ch. 1069, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 686 (H.B. 1728), Sec. 2, eff. June 15, 2007.

Sec. 826.032. REGISTRATION; CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person fails or refuses to register or present for registration a dog or cat owned by the person; and

(2) the animal is required to be registered under the ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.033. RESTRAINT, IMPOUNDMENT, AND DISPOSITION OF DOGS AND CATS. (a) The governing body of a municipality and the commissioners court of a county may adopt ordinances or rules under Section 826.014 or 826.015 to require that:

(1) each dog or cat be restrained by its owner;

(2) each stray dog or cat be declared a public nuisance;

(3) each unrestrained dog or cat be detained or impounded by the local rabies control authority or that officer's designee;

(4) each stray dog or cat be impounded for a period set by ordinance or rule; and

(5) a humane disposition be made of each unclaimed stray dog or cat on the expiration of the required impoundment period.

(b) A jurisdiction may not be subject to dual restraint ordinances or rules.

(c) The enforcing agency may adopt an ordinance setting a fee for the impoundment and board of a dog or cat during the impoundment period. The animal's owner must pay the fee before the animal may be released.

(d) The enforcing agency shall deposit the fees collected in the treasury of the enforcing agency. The fees may be used only to help defray the cost of administering this chapter or the ordinances or rules of the enforcing agency within its jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 6, eff. May 5, 1995.

Sec. 826.034. RESTRAINT; CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person fails or refuses to restrain a dog or cat owned by the person; and

(2) the animal is required to be restrained under the ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. REPORTS AND QUARANTINE

Sec. 826.041. REPORTS OF RABIES. (a) A person who knows of an animal bite or scratch to an individual that the person could reasonably foresee as capable of transmitting rabies, or who knows of an animal that the person suspects is rabid, shall report the incident or animal to the local rabies control authority of the county or municipality in which the person lives, in which the animal is located, or in which the exposure occurs.

(b) The report must include:

(1) the name and address of the victim and of the animal's owner, if known; and

(2) any other information that may help in locating the victim or animal.

(c) The local rabies control authority shall investigate a report filed under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 7, eff; May 5, 1995.

Sec. 826.042. QUARANTINE OF ANIMALS. (a) The executive commissioner shall adopt rules governing the testing of quarantined animals and the procedure for and method of quarantine.

(b) The local rabies control authority or a veterinarian shall quarantine or test in accordance with department rules any animal that the local rabies control authority or veterinarian has probable cause to believe is rabid, may have been exposed to rabies, or may have exposed a person to rabies.

(c) An owner shall submit for quarantine an animal that:

(1) is reported to be rabid or to have exposed an individual to rabies; or

(2) the owner knows or suspects is rabid or has exposed an individual to rabies.

(d) The owner shall submit the animal to the local rabies control authority of the county or municipality in which the exposure occurs.

(e) A veterinarian shall quarantine an animal that:

(1) is in the possession of the veterinarian; and

(2) the veterinarian knows or suspects is rabid or has exposed an individual to rabies.

(f) At the time an owner submits for quarantine an animal described by Subsection (b), the veterinarian or local rabies control authority, as applicable, shall:

(1) provide written notification to the animal's owner of the date the animal enters quarantine and the date the animal will be released from quarantine;

(2) obtain and retain with the animal's records a written statement signed by the animal's owner and a supervisor employed by the veterinarian or local rabies control authority acknowledging that the information required by Subdivision (1) has been provided to the animal's owner; and

(3) provide the animal's owner a copy of the signed written statement obtained under Subdivision (2).

(g) A veterinarian or local rabies control authority, as applicable, shall identify each animal quarantined under this section with a placard or other marking on the animal's kennel that indicates

the animal is quarantined under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 8, eff. May 5, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1616, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 1, eff. September 1, 2017.

Sec. 826.043. RELEASE OR DISPOSITION OF QUARANTINED ANIMAL. (a) If a veterinarian determines that a quarantined animal does not show the clinical signs of rabies, the veterinarian or local rabies control authority shall release the animal to its owner when the quarantine period ends if:

(1) the owner has an unexpired rabies vaccination certificate for the animal; or

(2) the animal is vaccinated against rabies by a licensed veterinarian at the owner's expense.

(b) If a veterinarian determines that a quarantined animal shows the clinical signs of rabies, the veterinarian or local rabies control authority shall humanely destroy the animal. If an animal dies or is destroyed while in quarantine, the veterinarian or local rabies control authority shall remove the head or brain of the animal and submit it to the nearest department laboratory for testing.

(c) The owner of an animal that is quarantined under this chapter shall pay to the veterinarian or local rabies control authority the reasonable costs of the quarantine and disposition of the animal. The veterinarian or local rabies control authority may bring suit to collect those costs. The county in which the veterinarian is located may reimburse the veterinarian in a reasonable amount set by the county for the costs of the quarantine and disposition of an animal whose owner is unable to pay.

(d) Except as provided by Subsection (e), the veterinarian or local rabies control authority may sell the animal and retain the proceeds or keep, grant, or destroy an animal if the owner or custodian does not take possession of the animal before the fourth day following the final day of the quarantine period.

(e) A veterinarian or local rabies control authority may not

destroy an animal following the final day of the quarantine period unless the veterinarian or local rabies control authority has notified the animal's owner, if available, of the animal's scheduled destruction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 9, eff. May 5, 1995.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 2, eff. September 1, 2017.

Sec. 826.044. QUARANTINE; CRIMINAL PENALTY. (a) A person commits an offense if the person fails or refuses to quarantine or present for quarantine or testing an animal that:

(1) is required to be placed in quarantine or presented for testing under Section 826.042 and department rules; or

(2) is required to be placed in quarantine under ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1617, eff. April 2, 2015.

Sec. 826.045. AREA RABIES QUARANTINE. (a) If rabies is known to exist in an area, the department or its designee may declare an area rabies quarantine to prevent or contain a rabies epizootic.

(b) On the declaration that a quarantine exists, the executive commissioner shall:

(1) define the borders of the quarantine area; and

(2) adopt permanent or emergency rules.

(c) The rules adopted under Subsection (b)(2) may include conditions for the restraint of carnivorous animals and the transportation of carnivorous animals into and out of the quarantine area.

(d) The quarantine remains in effect until the 181st day after the date on which the last case of rabies is diagnosed in a dog, cat,

or other animal species that caused the department or its designee to declare a quarantine, unless the department or its designee, by declaration, removes the quarantine before that date.

(e) While the quarantine is in effect, the rules adopted by the executive commissioner supersede all other applicable ordinances or rules applying to the quarantine area and apply until the department or its designee removes the quarantine by declaration or until the rules expire or are revoked by the executive commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1618, eff. April 2, 2015.

Sec. 826.046. VIOLATION OF AREA RABIES QUARANTINE; CRIMINAL PENALTY. (a) A person commits an offense if the person violates or attempts to violate a department rule adopted under Section 826.045 governing an area rabies quarantine.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1619, eff. April 2, 2015.

Sec. 826.047. LIMITATION ON LIABILITY. A veterinarian performing duties under this chapter is not liable to the owner of an animal for the death of or injury to the animal except in a case of wilful misconduct or gross negligence.

Added by Acts 1995, 74th Leg., ch. 44, Sec. 11, eff. May 5, 1995.

Sec. 826.048. EXEMPTION FROM QUARANTINE REQUIREMENT FOR POLICE SERVICE ANIMALS. (a) In this section, "handler or rider" and "police service animal" have the meanings assigned by Section 38.151, Penal Code.

(b) A police service animal is exempt from the quarantine requirement of this subchapter if the animal bites a person while the

animal is under routine veterinary care or while the animal is being used for law enforcement, corrections, prison or jail security, or investigative purposes. If after biting the person the animal exhibits any abnormal behavior, the law enforcement agency and the animal's handler or rider shall make the animal available within a reasonable time for testing by the local health authority.

Added by Acts 2001, 77th Leg., ch. 979, Sec. 2, eff. Sept. 1, 2001.

SUBCHAPTER F. QUARANTINE AND IMPOUNDMENT FACILITIES

Sec. 826.051. MINIMUM STANDARDS FOR QUARANTINE AND IMPOUNDMENT FACILITIES. (a) The executive commissioner shall adopt rules governing the types of facilities that may be used to quarantine animals.

(b) The executive commissioner by rule shall establish minimum standards for impoundment facilities and for the care of impounded animals.

(c) In accordance with department rules, a local rabies control authority may contract with one or more public or private entities to provide and operate a quarantine facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 12, eff. May 5, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1620, eff. April 2, 2015.

Sec. 826.052. INSPECTIONS. An employee of the department, on the presentation of appropriate credentials to the local rabies control authority or the authority's designee, may conduct a reasonable inspection of a quarantine or impoundment facility at a reasonable hour to determine if the facility complies with:

(1) the minimum standards adopted by the executive commissioner for those facilities; and

(2) the requirements for animal control officer training adopted under Chapter 829.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 13, eff. May 5, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 3, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1621, eff. April 2, 2015.

Sec. 826.053. HEARING. (a) A person aggrieved by an action of the department in amending, limiting, suspending, or revoking any approval required of the department by this chapter may request a hearing.

(b) A hearing held under this section must be conducted in accordance with Chapter 2001, Government Code, and the department's formal hearing rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1622, eff. April 2, 2015.

Sec. 826.054. SUITS TO ENJOIN OPERATION OF QUARANTINE OR IMPOUNDMENT FACILITY. (a) At the request of the commissioner, the attorney general may bring suit in the name of the state to enjoin the operation of a quarantine or impoundment facility that fails to meet the minimum standards established by this chapter and department rules.

(b) The suit shall be brought in a district court in the county in which the facility is located.

(c) When a court issues an order to a facility to cease operation, the local rabies control authority shall remove all animals housed in the facility to a shelter approved by the department. The county or municipality within whose jurisdiction the facility is located shall pay the cost of relocating the animals to an approved shelter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 14, eff. May 5, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1623, eff.

April 2, 2015.

Sec. 826.055. QUARANTINE OR IMPOUNDMENT FACILITY; CRIMINAL PENALTY. (a) A person commits an offense if the person operates a facility for quarantined or impounded animals that fails to meet standards for approval established by:

(1) department rules; or

(2) ordinances or rules adopted under this chapter by a county or municipality.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1624, eff. April 2, 2015.

CHAPTER 828. DOG AND CAT STERILIZATION

Sec. 828.001. DEFINITIONS. In this chapter:

(1) "New owner" means a person who is legally competent to enter into a binding contract and who is adopting a dog or cat from a releasing agency.

(2) "Releasing agency" means a public or private animal pound, shelter, or humane organization. The term does not include an individual who occasionally renders humane assistance or shelter in the individual's home to a dog or cat.

(3) "Sterilization" means the surgical removal of the reproductive organs of a dog or cat or the use of nonsurgical methods and technologies approved by the United States Food and Drug Administration or the United States Department of Agriculture to permanently render the animal unable to reproduce.

(4) "Veterinarian" means a person licensed to practice veterinary medicine by the State Board of Veterinary Medical Examiners.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.
Amended by:

Acts 2005, 79th Leg., Ch. 230 (S.B. 248), Sec. 1, eff. May 27, 2005.

Sec. 828.002. REQUIREMENTS FOR ADOPTION. Except as provided by Section 828.013, a releasing agency may not release a dog or cat for adoption unless the animal has been sterilized or the release is made to a new owner who signs an agreement to have the animal sterilized.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.003. STERILIZATION AGREEMENT. (a) The sterilization agreement used by a releasing agency must contain:

(1) the date of the agreement;

(2) the names, addresses, and signatures of the releasing agency and the new owner;

(3) a description of the animal to be adopted;

(4) the sterilization completion date; and

(5) a statement, printed in conspicuous, bold print, that sterilization of the animal is required under Chapter 828, Health and Safety Code, and that a violation of this chapter is a criminal offense punishable as a Class C misdemeanor.

(b) The sterilization completion date contained in the sterilization agreement must be:

(1) the 30th day after the date of adoption in the case of an adult animal;

(2) the 30th day after a specified date estimated to be the date an adopted infant female animal becomes six months old or an adopted infant male animal becomes eight months old; or

(3) if the releasing agency has a written policy recommending sterilization of certain infant animals at an earlier date, the 30th day after the date contained in the written policy.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.0035. STATE BOARD OF VETERINARY MEDICAL EXAMINERS. The State Board of Veterinary Medical Examiners shall:

(1) develop information sheets regarding surgical or nonsurgical sterilization to be distributed by a releasing agency to a new owner; and

(2) adopt rules requiring an animal that has been sterilized under this chapter to receive an identification marker in a manner authorized by the board.

Added by Acts 2005, 79th Leg., Ch. 230 (S.B. 248), Sec. 2, eff. May 27, 2005.

Sec. 828.004. STERILIZATION REQUIRED. (a) Except as provided by this section, a new owner who signs an agreement under Section 828.002 shall have the adopted animal sterilized on or before the sterilization completion date stated in the agreement.

(b) If the sterilization completion date falls on a Saturday, Sunday, or legal holiday, the deadline is extended to the first day that is not a Saturday, Sunday, or legal holiday.

(c) A releasing agency may extend the deadline for 30 days on presentation of a written report from a licensed veterinarian stating that the life or health of the adopted animal may be jeopardized by sterilization. There is no limit on the number of extensions that may be granted under this subsection.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992. Amended by:

Acts 2005, 79th Leg., Ch. 230 (S.B. 248), Sec. 3, eff. May 27, 2005.

Sec. 828.0045. NONSURGICAL STERILIZATION. A licensed veterinarian may use nonsurgical methods and technologies as labeled and approved by the United States Food and Drug Administration or the United States Department of Agriculture for use by veterinarians to humanely and permanently render a dog or cat unable to reproduce.

Added by Acts 2005, 79th Leg., Ch. 230 (S.B. 248), Sec. 4, eff. May 27, 2005.

Sec. 828.005. CONFIRMATION OF STERILIZATION. (a) Except as provided by Section 828.006 or 828.007, each new owner who signs a sterilization agreement under Section 828.002 shall deliver to the releasing agency from which the animal was adopted a letter signed by the veterinarian who performed the sterilization.

(b) The letter must be delivered in person or by mail not later than the seventh day after the date on which the animal was sterilized.

(c) The letter must state that the animal has been sterilized, briefly describe the animal, and provide the date of sterilization.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.
Amended by:
Acts 2005, 79th Leg., Ch. 230 (S.B. 248), Sec. 5, eff. May 27, 2005.

Sec. 828.006. LETTER CONCERNING ANIMAL'S DEATH. (a) If an adopted animal dies on or before the sterilization completion date agreed to under Section 828.002, the new owner shall deliver to the releasing agency a signed letter stating that the animal is dead.

(b) The letter must be delivered not later than the seventh day after the date of the animal's death and must describe the cause of death, if known, and provide the date of death.

(c) The letter required by this section is in lieu of the letter required by Section 828.005.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.007. LETTER CONCERNING LOST OR STOLEN ANIMAL. (a) If an adopted animal is lost or stolen before the sterilization completion date agreed to under Section 828.002, the new owner shall deliver to the releasing agency a signed letter stating that the animal is lost or stolen.

(b) The letter must be delivered not later than the seventh day after the date of the animal's disappearance and must describe the circumstances surrounding the disappearance and provide the approximate date of the disappearance.

(c) The letter required by this section is in lieu of the letter required by Section 828.005.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.008. NOTICE OF FAILURE TO RECEIVE LETTER. A releasing agency that does not receive a letter under Section 828.005, 828.006, or 828.007 before the expiration of the seventh day after the sterilization completion date agreed to under Section 828.002 shall

cause a complaint to be filed against the new owner. It is a presumption under this law that the failure of the new owner to deliver to the releasing agency a signed letter as required under Section 828.005, 828.006, or 828.007 is the result of the new owner's refusal to have the adopted animal sterilized. The new owner may rebut this presumption at the time of the hearing with the proof required under the above-mentioned sections.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.009. RECLAMATION. (a) A releasing agency that does not receive a letter under Section 828.005, 828.006, or 828.007 after the expiration of the seventh day after the sterilization completion date agreed to under Section 828.002 may promptly reclaim the animal from the new owner.

(b) A person may not prevent, obstruct, or interfere with a reclamation under this section.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.010. CRIMINAL PENALTY. (a) A new owner that violates this chapter commits an offense.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.011. ADOPTION STANDARDS. (a) Each releasing agency may set its own standards for potential adopters if those standards are applied in a fair and equal manner.

(b) If the releasing agency is a public facility, the standards must be reasonably related to the prevention of cruelty to animals and the responsible management of dogs and cats in the interest of preserving public health and welfare.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.012. SURGERY AND OTHER VETERINARY SERVICES. (a)

Surgery or nonsurgical sterilization performed in accordance with this chapter must be performed by a veterinarian or a full-time student of an accredited college of veterinary medicine as provided by Chapter 801, Occupations Code.

(b) A veterinarian employed by a releasing agency may not perform nonemergency veterinary services other than sterilization on an animal that the releasing agency knows or should know has an owner. However, this subsection does not prevent a veterinarian employed by a releasing agency from performing veterinary services on an animal whose owner is indigent.

(c) A person associated with a releasing agency may not interfere with the independent professional judgment of a veterinarian employed by or under contract with the releasing agency.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.811, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 230 (S.B. 248), Sec. 6, eff. May 27, 2005.

Sec. 828.013. EXEMPTIONS. This chapter does not apply to:

(1) a dog or cat that is claimed from a releasing agency by a person who already owns the animal;

(2) a releasing agency located in a municipality that has in effect an ordinance providing standards for dog and cat sterilization that exceed the requirements provided by this chapter;

(3) an institution of higher education that purchases or otherwise procures a dog or cat for the purpose of biomedical research, testing, or teaching; or

(4) a releasing agency located in:

(A) a county with a population of 20,000 or less; or

(B) a municipality with a population of 10,000 or less.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992. Amended by Acts 1993, 73rd Leg., ch. 794, Sec. 1, eff. June 18, 1993.

Sec. 828.014. ANIMAL FRIENDLY ACCOUNT; DEDICATION. (a) The animal friendly account is a separate account in the general revenue

fund. The account is composed of:

(1) money deposited to the credit of the account under former Section 502.291, Transportation Code, and under Section 504.605, Transportation Code; and

(2) gifts, grants, donations, and legislative appropriations.

(b) The Department of State Health Services administers the account.

(b-1) The Department of State Health Services may spend money credited to the account or money deposited to the associated trust fund account created under Section 504.6012, Transportation Code, only to:

(1) make grants to eligible organizations that sterilize animals owned by the general public at minimal or no cost; and

(2) defray the cost of administering the account.

(c) The Department of State Health Services may accept gifts, donations, and grants from any source for the benefit of the account. The executive commissioner of the Health and Human Services Commission by rule shall establish guidelines for spending money described by Subsection (b-1).

(d) In this section "eligible organization" means:

(1) a releasing agency;

(2) an organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code, that has as its primary purpose:

(A) animal welfare; or

(B) sterilizing animals owned by the general public at minimal or no cost; or

(3) a local nonprofit veterinary medical association that has an established program for sterilizing animals owned by the general public at minimal or no cost.

Added by Acts 1997, 75th Leg., ch. 657, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1292, Sec. 1, eff. June 16, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1625, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1626, eff. April 2, 2015.

CHAPTER 829. ANIMAL CONTROL OFFICER TRAINING

Sec. 829.001. DEFINITIONS. In this chapter:

(1) "Animal control officer" means a person who:

(A) is employed, appointed, or otherwise engaged primarily to enforce laws relating to animal control; and

(B) is not a peace officer.

(2) "Department" means the Department of State Health Services.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. September 1, 2007.

Sec. 829.0015. APPLICABILITY OF CHAPTER. The commissioners court of a county that has a population of 75,000 or less may adopt an order exempting the county from the application of this chapter. This chapter does not apply within the boundaries of a county for which an order is adopted under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. September 1, 2007.

Sec. 829.002. TRAINING REQUIRED. A person may not perform the duties of an animal control officer unless:

(1) the person:

(A) completes a basic animal control course under this chapter not later than the first anniversary of the date the person assumes animal control duties; or

(B) completed a personnel training course on or before June 30, 2008, under Section 823.004 as it existed on that date; and

(2) the person completes 30 hours of continuing education under this chapter during each three-year period following:

(A) the date the person completes the basic animal control course; or

(B) June 30, 2008, if the person completed a personnel training course under Subdivision (1)(B).

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1,

eff. July 1, 2008.

Sec. 829.003. TRAINING COURSES. (a) The department shall prescribe the standards and curriculum for basic and continuing education animal control courses. The curriculum for both the basic and continuing education courses must include the following topics:

(1) state laws governing animal control and protection and animal cruelty;

(2) animal health and disease recognition, control, and prevention;

(3) the humane care and treatment of animals;

(4) standards for care and control of animals in an animal shelter;

(5) standards and procedures for the transportation of animals;

(6) principles and procedures for capturing and handling stray domestic animals and wildlife, including principles and procedures to be followed with respect to an instrument used specifically for deterring the bite of an animal;

(7) first aid for injured animals;

(8) the documentation of animal cruelty evidence and courtroom procedures;

(9) animal shelter operations and administration;

(10) spaying and neutering, microchipping, and adoption;

(11) communications and public relations;

(12) state and federal laws for possession of controlled substances and other medications; and

(13) any other topics pertinent to animal control and animal shelter personnel.

(b) In prescribing the standards and curriculum of courses under this chapter, the department shall:

(1) determine what is considered satisfactory completion of a course;

(2) determine what is considered a passing grade on any postcourse tests and practical applications; and

(3) require that a person attend all sessions of a course.

(c) A basic animal control course must be at least 12 hours.

(d) In developing and approving the criteria and curriculum for animal control courses, the department shall consult with the Texas

Animal Control Association and other animal control and animal protection organizations as the department considers appropriate.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 299 (H.B. 405), Sec. 2, eff. June 19, 2009.

Sec. 829.004. AVAILABILITY OF COURSES. (a) The department or the department's designee shall offer at least two basic animal control courses every calendar year in each of the department's zoonosis control regions.

(b) The department or the department's designee shall offer at least 12 hours of continuing education animal control courses each calendar year in each of the department's zoonosis control regions.

(c) The department shall ensure the additional availability of animal control courses through sponsors approved by the department, which may include the Texas Animal Control Association.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. September 1, 2007.

Sec. 829.005. FEE. The department and any authorized animal control course sponsor, in accordance with department rules, may collect reasonable fees to cover the cost of arranging and conducting an animal control course.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1627, eff. April 2, 2015.

Sec. 829.006. ISSUANCE OF CERTIFICATE. (a) The department or the department's designee shall:

(1) maintain the training records for each person satisfactorily completing any course offered under this chapter for

the purpose of documenting and ensuring that the person is in compliance with the requirements of this chapter; and

(2) issue a certificate to each person satisfactorily completing a course offered under this chapter that contains:

(A) the person's name;

(B) the name of the course; and

(C) the date the course was completed.

(b) The department or the department's designee may charge a reasonable fee to cover the cost of issuing a certificate required by Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. September 1, 2007.

Sec. 829.007. FACILITY CERTIFICATE. The department shall issue a certificate to an animal shelter inspected under Section 823.003 or a quarantine or impoundment facility inspected under Section 826.052 that the department or the veterinarian conducting the inspection, as applicable, determines complies with this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. September 1, 2007.

Sec. 829.008. PAYMENT OF FEE. A political subdivision of this state may require that an individual pay a fee for a course or certificate under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. September 1, 2007.

Sec. 829.009. CIVIL REMEDY. A person may sue for injunctive relief to prevent or restrain a substantial violation of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. July 1, 2008.

TITLE 11. CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS
CHAPTER 841. CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 841.001. LEGISLATIVE FINDINGS. The legislature finds that a small but extremely dangerous group of sexually violent predators exists and that those predators have a behavioral abnormality that is not amenable to traditional mental illness treatment modalities and that makes the predators likely to engage in repeated predatory acts of sexual violence. The legislature finds that the existing involuntary commitment provisions of Subtitle C, Title 7, are inadequate to address the risk of repeated predatory behavior that sexually violent predators pose to society. The legislature further finds that treatment modalities for sexually violent predators are different from the traditional treatment modalities for persons appropriate for involuntary commitment under Subtitle C, Title 7. Thus, the legislature finds that a civil commitment procedure for the long-term supervision and treatment of sexually violent predators is necessary and in the interest of the state.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Sec. 841.002. DEFINITIONS. In this chapter:

(1) "Attorney representing the state" means a district attorney, criminal district attorney, or county attorney with felony criminal jurisdiction who represents the state in a proceeding under this chapter.

(2) "Behavioral abnormality" means a congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense, to the extent that the person becomes a menace to the health and safety of another person.

(3) "Case manager" means a person employed by or under contract with the office to perform duties related to the treatment and supervision of a person committed under this chapter.

(3-a) "Civil commitment proceeding" means a trial or hearing conducted under Subchapter D, F, or G.

(4) "Office" means the Texas Civil Commitment Office.

(5) "Predatory act" means an act directed toward

individuals, including family members, for the primary purpose of victimization.

(6) "Repeat sexually violent offender" has the meaning assigned by Section 841.003.

(7) "Secure correctional facility" means a county jail or a confinement facility operated by or under contract with any division of the Texas Department of Criminal Justice.

(7-a) "Sexually motivated conduct" means any conduct involving the intent to arouse or gratify the sexual desire of any person immediately before, during, or immediately after the commission of an offense.

(8) "Sexually violent offense" means:

(A) an offense under Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code;

(B) an offense under Section 20.04(a)(4), Penal Code, if the person committed the offense with the intent to violate or abuse the victim sexually;

(C) an offense under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the person entered the habitation with the intent to commit an offense listed in Paragraph (A) or (B) or committed or attempted to commit an offense listed in Paragraph (A) or (B);

(D) an offense under Section 19.02 or 19.03, Penal Code, that, during the guilt or innocence phase or the punishment phase for the offense, during the adjudication or disposition of delinquent conduct constituting the offense, or subsequently during a civil commitment proceeding under Subchapter D, is determined beyond a reasonable doubt to have been based on sexually motivated conduct;

(E) an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense listed in Paragraph (A), (B), (C), or (D);

(F) an offense under prior state law that contains elements substantially similar to the elements of an offense listed in Paragraph (A), (B), (C), (D), or (E); or

(G) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense listed in Paragraph (A), (B), (C), (D), or (E).

(9) "Sexually violent predator" has the meaning assigned by Section 841.003.

(10) "Tracking service" means an electronic monitoring service, global positioning satellite service, or other appropriate technological service that is designed to track a person's location.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 16, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 1, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.45, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 5, eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 3, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 1, eff. June 17, 2015.
Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 21, eff. September 1, 2023.

Sec. 841.003. SEXUALLY VIOLENT PREDATOR. (a) A person is a sexually violent predator for the purposes of this chapter if the person:

(1) is a repeat sexually violent offender; and

(2) suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence.

(b) A person is a repeat sexually violent offender for the purposes of this chapter if the person is convicted of more than one sexually violent offense and a sentence is imposed for at least one of the offenses, or if the person is convicted of an offense under Section 21.02, Penal Code, and a sentence is imposed for the offense, or if:

(1) the person:

(A) is convicted of a sexually violent offense, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the person was subsequently discharged from community supervision;

(B) enters a plea of guilty or nolo contendere for a

sexually violent offense in return for a grant of deferred adjudication; or

(C) is adjudicated by a juvenile court as having engaged in delinquent conduct constituting a sexually violent offense and is committed to the Texas Juvenile Justice Department under Section 54.04(d)(3) or (m), Family Code; and

(2) after the date on which under Subdivision (1) the person is convicted, receives a grant of deferred adjudication, or is adjudicated by a juvenile court as having engaged in delinquent conduct, the person commits a sexually violent offense for which the person is convicted, but only if the sentence for the offense is imposed.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1323 (S.B. 511), Sec. 9, eff. December 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 2, eff. June 17, 2015.
Acts 2025, 89th Leg., R.S., Ch. 1145 (S.B. 1610), Sec. 28, eff. September 1, 2025.

Sec. 841.005. TEXAS BOARD OF CRIMINAL JUSTICE. (a) In this section, "board" means the Texas Board of Criminal Justice.

(b) Except as provided by Subsection (d), the board shall provide representation for an indigent person subject to a civil commitment proceeding under this chapter.

(c) In providing representation for indigent persons described by Subsection (b):

(1) the board may employ attorneys, support staff, and any other personnel required to provide the representation;

(2) personnel employed under Subdivision (1) are directly responsible to the board in the performance of their duties; and

(3) the board shall pay all fees and costs associated with providing the representation.

(d) If for any reason the board is unable to provide representation for an indigent person described by Subsection (b) at a civil commitment proceeding under this chapter, the court shall

appoint other counsel to represent the indigent person.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 17, eff. Sept. 1, 2003.
Amended by:
Acts 2025, 89th Leg., R.S., Ch. 1022 (S.B. 2405), Sec. 103, eff. September 1, 2025.

Sec. 841.006. APPLICATION OF CHAPTER. This chapter does not:
(1) prohibit a person committed under this chapter from filing at any time a petition for release under this chapter; or
(2) create for the committed person a cause of action against another person for failure to give notice within a period required by Subchapter B, C, or D.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 17, eff. Sept. 1, 2003.

Sec. 841.007. DUTIES OF TEXAS CIVIL COMMITMENT OFFICE. The Texas Civil Commitment Office is responsible for:
(1) providing appropriate and necessary treatment and supervision for committed persons through the case management system; and
(2) developing and implementing a sex offender treatment program for persons committed under this chapter.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 17, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 4, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 3, eff. June 17, 2015.

SUBCHAPTER B. NOTICE OF POTENTIAL PREDATOR; INITIAL DETERMINATIONS

Sec. 841.021. NOTICE OF POTENTIAL PREDATOR. (a) Subject to Subsection (a-1) and except as provided by Subsection (d), before the person's anticipated release date, the Texas Department of Criminal Justice shall give to the multidisciplinary team established under Section 841.022 written notice of the anticipated release of a person who:

(1) is serving a sentence for:

(A) a sexually violent offense described by Section 841.002(8)(A), (B), or (C); or

(B) what is, or as described by this chapter what the department reasonably believes may be determined to be, a sexually violent offense described by Section 841.002(8)(D); and

(2) may be a repeat sexually violent offender.

(a-1) Regardless of whether any exigent circumstances are present, the Texas Department of Criminal Justice may give notice under this section with respect to a person who is scheduled to be released on parole or to mandatory supervision only if the person's anticipated release date is not later than 24 months after the date on which the notice will be given. The department may not give notice with respect to a person who is currently released on parole or to mandatory supervision, but the multidisciplinary team may perform the functions described by Section 841.022(c) within the applicable period required by that subsection if the written notice required by this section was received by the team before the date of the person's release.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 845 , Sec. 39(2), eff. June 17, 2015.

(c) The Texas Department of Criminal Justice shall give the notice described by Subsection (a) not later than the first day of the 24th month before the person's anticipated release date, but under exigent circumstances may give the notice at any time before that date, except as provided by Subsection (a-1). The notice must contain the following information:

(1) the person's name, identifying factors, anticipated residence after release, and criminal history;

(2) documentation of the person's institutional adjustment and actual treatment; and

(3) an assessment of the likelihood that the person will commit a sexually violent offense after release.

(d) The Texas Department of Criminal Justice may not provide

notice under Subsection (a) of the anticipated release of a person for whom the department has previously provided notice under this section and who has been previously recommended for an assessment under Section 841.022 unless, after the recommendation for assessment was made:

(1) the person is convicted of a new sexually violent offense; or

(2) the person's parole or mandatory supervision is revoked based on:

(A) the commission of a new sexually violent offense;

(B) failure to adhere to the requirements of sex offender treatment or supervision; or

(C) failure to register as a sex offender.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 5, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 4, eff. June 17, 2015.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 39(2), eff. June 17, 2015.

Acts 2025, 89th Leg., R.S., Ch. 1145 (S.B. 1610), Sec. 29, eff. September 1, 2025.

Sec. 841.022. MULTIDISCIPLINARY TEAM. (a) The executive director of the Texas Department of Criminal Justice shall establish a multidisciplinary team to review available records of a person referred to the team under Section 841.021. The team must include:

(1) a mental health professional from the Department of State Health Services;

(2) two persons from the Texas Department of Criminal Justice as follows:

(A) one person from the victim services division; and

(B) one person from the sex offender rehabilitation program in the rehabilitation programs division;

(3) a licensed peace officer who is employed by the Department of Public Safety and who has at least five years' experience working for that department or the officer's designee;

(4) two persons from the office; and

(5) a licensed sex offender treatment provider from the Council on Sex Offender Treatment.

(a-1) The Texas Department of Criminal Justice, in consultation with the office, shall provide training to the members of the multidisciplinary team regarding the civil commitment program under this chapter, including training regarding:

(1) eligibility criteria for commitment;

(2) the process for evaluating persons for commitment; and

(3) the sex offender treatment program for persons committed under this chapter.

(b) The multidisciplinary team may request the assistance of other persons in making an assessment under this section.

(c) Not later than the 60th day after the date the multidisciplinary team receives notice under Section 841.021(a), the team shall:

(1) assess whether the person is a repeat sexually violent offender and whether the person is likely to commit a sexually violent offense after release;

(2) give notice of that assessment to the Texas Department of Criminal Justice; and

(3) recommend the assessment of the person for a behavioral abnormality, as appropriate.

(d) Records of the multidisciplinary team are confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 18, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 6, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1628, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 5, eff. June 17, 2015.

Acts 2025, 89th Leg., R.S., Ch. 1145 (S.B. 1610), Sec. 30, eff.

September 1, 2025.

Sec. 841.023. ASSESSMENT FOR BEHAVIORAL ABNORMALITY. (a) Not later than the 60th day after the date of a recommendation under Section 841.022(c), the Texas Department of Criminal Justice shall assess whether the person suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence. To aid in the assessment, the department shall use an expert to examine the person. The department may contract for the expert services required by this subsection. The expert shall make a clinical assessment based on testing for psychopathy, a clinical interview, and other appropriate assessments and techniques to aid the department in its assessment.

(b) If as a result of the assessment the Texas Department of Criminal Justice believes that the person suffers from a behavioral abnormality, not later than the 60th day after the date of a recommendation under Section 841.022(c) the department shall give notice of that assessment and provide corresponding documentation to the attorney representing the state for the county in which the person was most recently convicted of a sexually violent offense.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 19, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 7, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 6, eff. June 17, 2015.

SUBCHAPTER C. PETITION ALLEGING PREDATOR STATUS

Sec. 841.041. PETITION ALLEGING PREDATOR STATUS. (a) If a person is referred to the attorney representing the state under Section 841.023, the attorney may file a petition alleging that the person is a sexually violent predator and stating facts sufficient to support the allegation.

(b) A petition described by Subsection (a) must be:

(1) filed in a district court in the county of the person's

most recent conviction for a sexually violent offense;

(2) filed not later than the 90th day after the date the person is referred to the attorney representing the state; and

(3) served on the person as soon as practicable after the date the petition is filed.

(c) To the extent feasible, in filing the petition in a district court described by Subsection (b)(1), the attorney representing the state shall give preference to filing the petition in the applicable court of conviction.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 20, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 7, eff. June 17, 2015.

Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 2, eff. September 1, 2021.

Sec. 841.042. ASSISTANCE FROM SPECIAL PROSECUTION UNIT. On request of the attorney representing the state, the special prosecution unit shall provide legal, financial, and technical assistance to the attorney for a proceeding conducted under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 8, eff. June 17, 2015.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 22, eff. September 1, 2023.

SUBCHAPTER D. TRIAL

Sec. 841.061. TRIAL. (a) The judge shall commence a trial to determine whether the person is a sexually violent predator:

(1) except as provided by Section 841.063, not later than the 270th day after the date a petition is served on the person under Section 841.041; and

(2) not later than the person's sentence discharge date unless the judge determines that a delay is necessary in the due

administration of justice.

(b) The person or the state is entitled to a jury trial on demand. A demand for a jury trial must be filed in writing not later than the 10th day before the date the trial is scheduled to begin.

(c) The person and the state are each entitled to an immediate clinical interview of the person by an expert. All components of the clinical interview must be completed not later than the 90th day before the date the trial begins.

(d) Additional rights of the person at the trial include the following:

(1) the right to appear at the trial;

(2) the right to waive the right to appear at the trial and appear through the person's attorney;

(3) except as provided by Subsection (f), the right to present evidence on the person's behalf;

(4) the right to cross-examine a witness who testifies against the person; and

(5) the right to view and copy all petitions and reports in the court file.

(e) The attorney representing the state may rely on the petition filed under Section 841.041 and supplement the petition with documentary evidence or live testimony.

(f) A person who is on trial to determine the person's status as a sexually violent predator is required to submit to all expert clinical interviews that are required or permitted of the state to prepare for the person's trial. A person who fails to submit to a clinical interview on the state's behalf as required by this subsection is subject to the following consequences:

(1) the person's failure to participate may be used as evidence against the person at trial;

(2) the person may be prohibited from offering into evidence the results of a clinical interview performed on the person's behalf; and

(3) the person may be subject to contempt proceedings if the person violates a court order by failing to submit to a clinical interview on the state's behalf.

(g) A judge assigned to preside over a trial under this subchapter is not subject to an objection under Section 74.053, Government Code, other than an objection made under Section 74.053(d), Government Code.

(h) Notwithstanding any other provision in this subchapter, the person may appear at the trial through the use of remote technology, including teleconference and videoconference technology.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 21, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 7, eff. June 15, 2007.
Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 9, eff. June 17, 2015.
Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 3, eff. September 1, 2021.

Sec. 841.062. DETERMINATION OF PREDATOR STATUS. (a) The judge or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. Either the state or the person is entitled to appeal the determination and to a retrial if an appellate court remands the case to the trial court for a new trial.
(b) A jury determination in a civil commitment proceeding must be by unanimous verdict. If one or two of the 12 jurors have been discharged and there are no alternate jurors to be seated, the remaining jurors may render a verdict. If fewer than 12 jurors render a verdict, the verdict must be signed by each juror rendering the verdict.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 4, eff. September 1, 2021.

Sec. 841.063. CONTINUANCE. (a) Except as provided by Subsection (b), the judge may continue a trial or hearing conducted under this chapter if the person is not substantially prejudiced by the continuance and:
(1) on the request of either party and a showing of good cause; or

(2) on the judge's own motion in the due administration of justice.

(b) The judge may not continue a trial conducted under this chapter to a date occurring later than the person's sentence discharge date unless the judge determines that a continuance is necessary in the due administration of justice.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 22, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 10, eff. June 17, 2015.
Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 5, eff. September 1, 2021.

Sec. 841.064. RETRIAL. (a) A trial following a mistrial must commence not later than the 90th day after the date a mistrial was declared in the previous trial, unless the later trial is continued as provided by Section 841.063.

(b) If an appellate court remands the case to the trial court for a new trial, the judge shall commence the retrial not later than the 90th day after the date the appellate court remanded the case. The retrial may be continued as provided by Section 841.063.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 6, eff. September 1, 2021.

Sec. 841.065. AGREED ORDER. An agreed order of civil commitment must require the person to submit to the treatment and supervision administered by the office.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 11, eff. June 17, 2015.

SUBCHAPTER E. CIVIL COMMITMENT

Sec. 841.081. CIVIL COMMITMENT OF PREDATOR. (a) If at a trial conducted under Subchapter D the judge or jury determines that the person is a sexually violent predator, the judge shall commit the person for treatment and supervision to be coordinated by the office. The commitment order is effective immediately on entry of the order, except that the treatment and supervision begins on the person's release from a secure correctional facility and continues until the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

(b) At any time after entry of a commitment order under Subsection (a), the office may provide to the person instruction regarding the requirements associated with the order, regardless of whether the person is incarcerated at the time of the instruction.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 23, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 12, eff. June 17, 2015.

Sec. 841.082. COMMITMENT REQUIREMENTS. (a) Before entering an order directing a person's civil commitment, the judge shall impose on the person requirements necessary to ensure the person's compliance with treatment and supervision and to protect the community. The requirements shall include:

(1) requiring the person to reside where instructed by the office;

(2) prohibiting the person's contact with a victim of the person;

(3) requiring the person's participation in and compliance with the sex offender treatment program provided by the office and compliance with all written requirements imposed by the office;

(4) requiring the person to submit to appropriate supervision and:

(A) submit to tracking under a particular type of tracking service, if the person:

(i) while residing at a civil commitment center, leaves the center for any reason;

(ii) is in one of the two most restrictive tiers of treatment, as determined by the office;

(iii) is on disciplinary status, as determined by the office; or

(iv) resides in the community; and

(B) if required to submit to tracking under Paragraph (A), refrain from tampering with, altering, modifying, obstructing, removing, or manipulating the tracking equipment; and

(5) prohibiting the person from leaving the state without prior authorization from the office.

(b) A tracking service to which a person is required to submit under Subsection (a)(4) must:

(1) track the person's location in real time;

(2) be able to provide a real-time report of the person's location to the office on request; and

(3) periodically provide a cumulative report of the person's location to the office.

(c) The judge shall provide a copy of the requirements imposed under Subsection (a) to the person and to the office. The office shall provide a copy of those requirements to the case manager and to the service providers.

(d) The committing court retains jurisdiction of the case with respect to a proceeding conducted under this subchapter, other than a criminal proceeding involving an offense under Section 841.085, or to a civil commitment proceeding conducted under Subchapters F and G.

(e) The requirements imposed under Subsection (a) may be modified by the committing court at any time after notice to each affected party to the proceedings and a hearing.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 24, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 7(1), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.12, eff.

September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 8, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 13, eff. June 17, 2015.

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 16, eff. September 1, 2017.

Sec. 841.0821. SEX OFFENDER TREATMENT BEFORE RELEASE FROM SECURE CORRECTIONAL FACILITY. (a) The Texas Department of Criminal Justice shall prioritize enrolling in a sex offender treatment program established by the department any committed person who has not yet been released by the department.

(b) The Texas Department of Criminal Justice and the office shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care for committed persons enrolled in a sex offender treatment program established by the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 14, eff. June 17, 2015.

Sec. 841.0822. REQUIRED PROCEDURES BEFORE RELEASE FROM SECURE CORRECTIONAL FACILITY. Before a committed person is released from a secure correctional facility, the Texas Department of Criminal Justice shall ensure that:

(1) the Department of Public Safety issues a personal identification card to the person; and

(2) the person completes an application for the following federal benefits, as appropriate, for which the person may be eligible:

(A) social security benefits, including disability benefits, administered by the United States Social Security Administration; and

(B) veterans benefits administered by the United States Department of Veterans Affairs.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 14, eff. June 17, 2015.

Sec. 841.083. TREATMENT; SUPERVISION. (a) The office shall determine the conditions of supervision and treatment of a committed person.

(b) The office shall provide supervision to the person. The provision of supervision must include a tracking service and, if determined necessary by the office, supervised housing.

(c) The office shall enter into appropriate memoranda of understanding with the Texas Department of Criminal Justice for the provision of a tracking service and with the Department of Public Safety and local law enforcement authorities for assistance in the preparation of criminal complaints, warrants, and related documents and in the apprehension and arrest of a person.

(d) The office shall enter into appropriate contracts for the provision of any necessary supervised housing and other related services and may enter into appropriate contracts for medical and mental health services and sex offender treatment. The term of a contract under this subsection may not exceed 10 years. The contract may provide for an unlimited number of renewals each for an additional term not to exceed 10 years. This subsection prevails to the extent of a conflict between this subsection and any other law.

(e) The case manager shall:

(1) coordinate the treatment and supervision required by this chapter, including performing a periodic assessment of the success of that treatment and supervision; and

(2) provide a report to the office, semiannually or more frequently as necessary, which must include any known change in the person's status that affects proper treatment and supervision.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 25, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.94, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 9, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 15, eff. June 17, 2015.

Acts 2025, 89th Leg., R.S., Ch. 1145 (S.B. 1610), Sec. 31, eff. September 1, 2025.

Sec. 841.0831. TIERED PROGRAM. (a) The office shall develop a tiered program for the supervision and treatment of a committed person.

(b) The tiered program must provide for the seamless transition of a committed person from a total confinement facility to less restrictive housing and supervision and eventually to release from civil commitment, based on the person's behavior and progress in treatment.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 16, eff. June 17, 2015.

Sec. 841.0832. HOUSING FACILITIES. (a) The office shall operate, or contract with a vendor to operate, one or more facilities provided for the purpose of housing committed persons.

(b) The office shall designate all or part of a facility under Subsection (a) to serve as an intake and orientation facility for committed persons on release from a secure correctional facility.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 16, eff. June 17, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 17, eff. September 1, 2017.

Sec. 841.0833. SECURITY AND MONITORING; CONFIDENTIALITY. (a) The office shall develop procedures for the security and monitoring of committed persons in each programming tier.

(b) Information regarding the security and monitoring procedures developed under Subsection (a) is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 16, eff.

June 17, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 18, eff. September 1, 2017.

Sec. 841.0834. MOVEMENT BETWEEN PROGRAMMING TIERS. (a) The office shall transfer between programming tiers a committed person required to reside in a total confinement facility if the transfer is in the best interests of the person and conditions can be imposed that adequately protect the community.

(b) Without the office's approval, a committed person may file a petition with the court for transfer to the next less restrictive tier. The court shall deny the transfer if the petition is filed before the 180th day after the date an order was entered under Subchapter D, F, or G or a previous order was entered under this section. The court shall grant the transfer if the court determines by clear and convincing evidence that the transfer is in the best interests of the person and that the office can impose conditions that adequately protect the community.

(c) A committed person who files a petition under Subsection (b) shall serve a copy of the petition on the office and the attorney representing the state.

(d) The office shall transfer a committed person who is not required to reside in a total confinement facility back to a more restrictive setting in a total confinement facility if the office considers the transfer necessary to further treatment and to protect the community. The decision to transfer the person must be based on the person's behavior or progress in treatment.

(e) Not later than the 90th day after the date a committed person is returned to a more restrictive setting in a total confinement facility under Subsection (d), the committing court shall hold a hearing via videoconference to review the office's determination. The court shall order the office to transfer the person to a less restrictive tier only if the court determines by clear and convincing evidence that the office's determination was not made in accordance with Subsection (d). The committed person may waive the right to a hearing under this subsection.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 16, eff.

June 17, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 19, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 7, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 12, eff. September 1, 2021.
Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 23, eff. September 1, 2023.

Sec. 841.0835. COMMITTED PERSONS WITH SPECIAL NEEDS. (a) The Health and Human Services Commission, after coordination with the office, shall provide psychiatric services, disability services, and housing for a committed person with an intellectual or developmental disability, a mental illness, or a physical disability that prevents the person from effectively participating in the sex offender treatment program administered by the office.

(b) For a committed person who the office has determined is unable to effectively participate in the sex offender treatment program because the person's mental illness prevents the person from understanding and internalizing the concepts presented by the program's treatment material, the Health and Human Services Commission shall provide inpatient mental health services until the person is able to participate effectively in the sex offender treatment program.

(c) A person who is adjudicated as a sexually violent predator under this chapter and who has a mental illness that prevents the person from effectively participating in a sex offender treatment program presents a substantial risk of serious harm to the person or others for purposes of Chapter 574.

(d) The committing court shall order the payment of reasonable compensation to persons performing a duty or providing a service under this section. The compensation paid shall be assessed as court costs. The Health and Human Services Commission shall pay all court costs associated with this subsection.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 16, eff. June 17, 2015.

Amended by:
Acts 2017, 85th Leg., R.S., Ch. 301 (S.B. 613), Sec. 1, eff. September 1, 2017.
Acts 2025, 89th Leg., R.S., Ch. 1145 (S.B. 1610), Sec. 32, eff. September 1, 2025.

Sec. 841.0836. RELEASE FROM HOUSING. (a) A committed person released from housing operated by or under contract with the office shall be released to:
(1) the county in which the person was most recently convicted of a sexually violent offense; or
(2) if the county described by Subdivision (1) does not provide adequate opportunities for the person's treatment and for the person's housing or other supervision, as determined by the office, a county designated by the office.
(b) The office may require a committed person released to a county under Subsection (a)(2) to change the person's residence to the county described by Subsection (a)(1) if the office determines that adequate opportunities for the person's treatment and for the person's housing or other supervision become available in that county.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 16, eff. June 17, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 20, eff. September 1, 2017.

Sec. 841.0837. EMERGENCY DETENTION ORDER. The office may issue an emergency detention order for a committed person's immediate apprehension and transportation to an office-designated location for the purpose of:
(1) returning the person to a more restrictive setting following:
(A) a transfer to less restrictive housing and supervision under Section 841.0834; or
(B) a release under Section 841.0836; or
(2) for a recently committed person who is not in the

custody of the Texas Department of Criminal Justice at the time the commitment order is entered, bringing the person under the supervision of the office.

Added by Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 21, eff. September 1, 2017.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 8, eff. September 1, 2021.

Sec. 841.0838. USE OF RESTRAINTS. (a) An employee of the office, or a person who contracts with the office or an employee of that person, may use mechanical restraints on a committed person residing in a civil commitment center or while transporting a committed person who resides at the center only if:

(1) the employee or person completes a training program approved by the office on the use of mechanical restraints that:

(A) includes instruction on the office's approved mechanical restraint techniques and devices and the office's verbal de-escalation policies, procedures, and practices; and

(B) requires the employee or person to demonstrate competency in the use of the mechanical restraint techniques and devices; and

(2) the mechanical restraint is:

(A) considered necessary to maintain the safety and security of the center or staff;

(B) considered necessary to maintain the safety of the public; and

(C) the least restrictive restraint necessary, used for the minimum duration necessary.

(b) An employee of the office, or a person who contracts with the office or an employee of that person, may use chemical restraints on a committed person residing in a civil commitment center or while transporting a committed person who resides at the center only if:

(1) the employee or person completes a training program approved by the office on the use of chemical restraints that:

(A) includes instruction on the office's approved chemical restraint techniques and devices and the office's verbal de-escalation policies, procedures, and practices; and

(B) requires the employee or person to demonstrate competency in the use of chemical restraint techniques and devices; and

(2) the chemical restraint is:

(A) used as a last resort;

(B) necessary to prevent or stop:

(i) physical injury to the committed person or another;

(ii) threatening behavior by the committed person;

(iii) a disturbance by a group of committed persons; or

(iv) an absconsion from the center; and

(C) the least restrictive restraint necessary, used for the minimum duration necessary, to prevent injury, property damage, or absconsion.

(c) The office shall develop procedures governing the use of mechanical or chemical restraints on committed persons.

Added by Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 21, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 24, eff. September 1, 2023.

Sec. 841.084. PAYMENT OF COSTS BY COMMITTED PERSON. (a) Notwithstanding Section 841.146(c), a civilly committed person who is not indigent:

(1) is responsible for the cost of:

(A) housing and treatment provided under this chapter;

(B) the tracking service required by Section 841.082; and

(C) repairs to or replacement of the tracking equipment required by Section 841.082, if the person intentionally caused the damage to or loss of the equipment, as determined by the office; and

(2) shall pay to the office:

(A) a monthly amount that the office determines will be necessary to defray the cost of providing the housing, treatment, and service with respect to the person; and

(B) as directed by the office, any amount for which the

person is responsible under Subdivision (1)(C).

(a-1) A civilly committed sex offender, whether indigent or not, is responsible for the cost of:

(1) repairs to or replacement of property belonging to this state, a contractor of this state or the agent of the contractor, the civil commitment facility, or another civilly committed sex offender, if the offender intentionally, knowingly, recklessly, or negligently caused damage to or the loss of the property; and

(2) any expenses for medical care provided to the civilly committed sex offender or any other person, if the offender intentionally, knowingly, recklessly, or negligently acted in a manner that caused the injury for which medical care was provided.

(a-2) A civilly committed sex offender shall pay to the office, at the office's direction, any amount for which the offender is responsible under Subsection (a-1), as determined by the office.

(b) Money collected under this section shall be deposited to the credit of the account from which the costs were originally paid.

(c) A committed person, on request, shall provide to the office any financial records or other information regarding the person's income, assets, and expenses to assist the office in determining whether the person is indigent for purposes of this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.13, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 10, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 17, eff. June 17, 2015.

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 22, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 9, eff. September 1, 2021.

Acts 2025, 89th Leg., R.S., Ch. 1145 (S.B. 1610), Sec. 33, eff. September 1, 2025.

Sec. 841.0845. NOTICE OF INTENT REGARDING NEW RESIDENCE OR FACILITY. (a) The office shall provide advance notice of any intent to house one or more committed persons at a new residence or facility

that has not previously served as housing for committed persons under this chapter.

(b) A vendor shall provide advance notice of any intent to submit a proposal to the office for the construction or renovation of a residence or facility that will serve as a new location for housing committed persons under this chapter.

(c) Notice must be provided in writing to each member of the legislature who represents a district containing territory in the affected county as follows:

(1) by a vendor, not later than the 30th day before the date that the vendor will submit a proposal described by Subsection (b) to the office; and

(2) by the office:

(A) as soon as practicable after awarding a contract for the construction or renovation of a residence or facility that will serve as a new location for housing committed persons under this chapter; or

(B) if a construction or renovation contract is unnecessary for the purpose, not later than the 30th day before the date that the residence or facility will first be used as housing for committed persons under this chapter, except as provided by Subsection (d).

(d) The office may provide notice required by Subsection (c)(2)(B) not later than 72 hours before transferring a committed person to the residence or facility if the transfer is necessary due to:

(1) a medical emergency;

(2) a serious behavioral or health and safety issue; or

(3) release from a secure correctional facility.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 18, eff. June 17, 2015.

Sec. 841.085. CRIMINAL PENALTY; PROSECUTION OF OFFENSE. (a) A person commits an offense if, after having been adjudicated and civilly committed as a sexually violent predator under this chapter, the person violates a civil commitment requirement imposed under Section 841.082(a)(1), (2), (4), or (5).

(b) An offense under this section is a felony of the third

degree.

(c) On request of the local prosecuting attorney, the special prosecution unit may assist in the trial of an offense under this section.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 8, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 19, eff. June 17, 2015.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 39(2), eff. June 17, 2015.

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 23, eff. September 1, 2017.

SUBCHAPTER F. COMMITMENT REVIEW

Sec. 841.101. BIENNIAL EXAMINATION. (a) A person committed under Section 841.081 shall receive a biennial examination. The office shall contract for an expert to perform the examination.

(b) In preparation for a judicial review conducted under Section 841.102, the office shall provide a report of the biennial examination to the judge and to the person. The report must include consideration of whether to modify a requirement imposed on the person under this chapter and whether to release the person from all requirements imposed on the person under this chapter.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 11, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 20, eff. June 17, 2015.

Sec. 841.102. BIENNIAL REVIEW. (a) Not later than the 60th day after the date of receipt of the report submitted under Section 841.101, the judge shall conduct a biennial review of the status of

the committed person and issue an order concluding the review or setting a hearing under Subsection (c).

(b) The person is entitled to be represented by counsel at the biennial review, but the person is not entitled to be present at that review.

(c) The judge shall set a hearing if the judge determines by a preponderance of the evidence at the biennial review that:

(1) a requirement imposed on the person under this chapter should be modified; or

(2) the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 21, eff. June 17, 2015.

Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 25, eff. September 1, 2023.

Sec. 841.103. HEARING. (a) At a hearing set by the judge under Section 841.102, the person and the state are entitled to an immediate examination of the person by an expert.

(b) If the hearing is set under Section 841.102(c)(1), hearsay evidence is admissible if it is considered otherwise reliable by the judge.

(c) If the hearing is set under Section 841.102(c)(2), the committed person is entitled to be present and to have the benefit of all constitutional protections provided to the person at the initial civil commitment proceeding. On the request of the person or the attorney representing the state, the court shall conduct the hearing before a jury. The burden of proof at that hearing is on the state to prove beyond a reasonable doubt that the person's behavioral abnormality has not changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

SUBCHAPTER G. PETITION FOR RELEASE

Sec. 841.121. AUTHORIZED PETITION FOR RELEASE. (a) If the office determines that the committed person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence, the office shall authorize the person to petition the court for release.

(b) The petitioner shall serve a petition under this section on the court and the attorney representing the state.

(c) The judge shall set a hearing on a petition under this section not later than the 30th day after the date the judge receives the petition. The petitioner and the state are entitled to an immediate examination of the petitioner by an expert.

(d) On request of the petitioner or the attorney representing the state, the court shall conduct the hearing before a jury.

(e) The burden of proof at the hearing is on the state to prove beyond a reasonable doubt that the petitioner's behavioral abnormality has not changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 22, eff. June 17, 2015.

Sec. 841.122. RIGHT TO FILE UNAUTHORIZED PETITION FOR RELEASE. On a person's commitment and annually after that commitment, the office shall provide the person with written notice of the person's right to file with the court and without the office's authorization a petition for release.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 23, eff. June 17, 2015.

Sec. 841.123. REVIEW OF UNAUTHORIZED PETITION FOR RELEASE. (a) If the committed person files a petition for release without the

office's authorization, the person shall serve the petition on the court, the attorney representing the state, and the office.

(b) The judge shall review and issue a ruling on a petition for release filed by the committed person without the office's authorization not later than the 60th day after the date of filing of the petition.

(c) Except as provided by Subsection (d), the judge shall deny without a hearing a petition for release filed without the office's authorization if:

(1) the judge determines by a preponderance of the evidence that the petitioner's behavioral abnormality has not changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence; or

(2) the petitioner has filed the petition for release before the 180th day after the date an order was entered under Subchapter D or F or a previous order was entered under this section.

(d) The judge is not required to deny a petition under Subsection (c)(2) if the judge determines by a preponderance of the evidence that the petitioner's behavioral abnormality has changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 24, eff. June 17, 2015.

Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 26, eff. September 1, 2023.

Sec. 841.124. HEARING ON UNAUTHORIZED PETITION FOR RELEASE. (a) If as authorized by Section 841.123 the judge does not deny a petition for release filed by the committed person without the office's authorization, the judge shall conduct a hearing on the petition not later than the 60th day after the date of filing of the petition.

(b) The petitioner and the state are entitled to an immediate examination of the person by an expert.

(c) On request of the petitioner or the attorney representing

the state, the court shall conduct the hearing before a jury.

(d) The burden of proof at the hearing is on the state to prove beyond a reasonable doubt that the petitioner's behavioral abnormality has not changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 25, eff. June 17, 2015.

SUBCHAPTER H. MISCELLANEOUS PROVISIONS

Sec. 841.141. RULEMAKING AUTHORITY. (a) The office by rule shall administer this chapter. Rules adopted by the office under this section must be consistent with the purposes of this chapter.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 40(2), eff. September 1, 2017.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 12, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 26, eff. June 17, 2015.

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 40(2), eff. September 1, 2017.

Sec. 841.142. RELEASE OR EXCHANGE OF INFORMATION. (a) To protect the public and to enable an assessment or determination relating to whether a person is a sexually violent predator, any entity that possesses relevant information relating to the person shall release the information to an entity charged with making an assessment or determination under this chapter.

(b) To protect the public and to enable the provision of supervision and treatment to a person who is a sexually violent predator, any entity that possesses relevant information relating to the person shall release the information to the office.

(c) On the written request of any attorney for another state or for a political subdivision in another state, the Texas Department of Criminal Justice, the office, a service provider contracting with one of those agencies, the multidisciplinary team, and the applicable attorney representing the state shall release to the attorney any available information relating to a person that is sought in connection with an attempt to civilly commit the person as a sexually violent predator in another state.

(d) To protect the public and to enable an assessment or determination relating to whether a person is a sexually violent predator or to enable the provision of supervision and treatment to a person who is a sexually violent predator, the Texas Department of Criminal Justice, the office, a service provider contracting with one of those agencies, the multidisciplinary team, and the applicable attorney representing the state may exchange any available information relating to the person.

(e) Information subject to release or exchange under this section includes information relating to the supervision, treatment, criminal history, or physical or mental health of the person, as appropriate, regardless of whether the information is otherwise confidential and regardless of when the information was created or collected. The person's consent is not required for release or exchange of information under this section.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 27, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 13, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 27, eff. June 17, 2015.

Sec. 841.143. REPORT, RECORD, OR STATEMENT SUBMITTED TO COURT. (a) A psychological report, drug and alcohol report, treatment record, diagnostic report, medical record, or victim impact statement submitted to the court under this chapter is part of the record of the court.

(b) Notwithstanding Subsection (a), the report, record, or

statement must be sealed and may be opened only:

(1) on order of the judge;

(2) as provided by this chapter; or

(3) in connection with a criminal proceeding as otherwise provided by law.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Sec. 841.144. COUNSEL. (a) Immediately after the filing of a petition under Section 841.041, a person subject to a civil commitment proceeding under this chapter is entitled to the assistance of counsel at all stages of the proceeding.

(b) If the person is indigent, the court shall appoint counsel as appropriate under Section 841.005 to assist the person.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 28, eff. Sept. 1, 2003.

Sec. 841.145. EXPERT. (a) At the person's own expense, a person who is examined under this chapter may retain an expert to perform an examination or participate in a civil commitment proceeding on the person's behalf, including a biennial examination or other civil commitment proceeding to assess the person's status as a sexually violent predator.

(b) On the request of an indigent person examined under this chapter, the judge shall determine whether expert services for the person are necessary. If the judge determines that the services are necessary, the judge shall appoint an expert to perform an examination or participate in a civil commitment proceeding on the person's behalf and shall approve compensation for the expert as appropriate under Subsection (c).

(c) The court shall approve reasonable compensation for expert services rendered on behalf of an indigent person on the filing of a certified compensation claim supported by a written statement specifying:

(1) time expended on behalf of the person;

(2) services rendered on behalf of the person;

(3) expenses incurred on behalf of the person; and

(4) compensation received in the same case or for the same services from any other source.

(d) The court shall ensure that an expert retained or appointed under this section has for purposes of examination reasonable access to a person examined under this chapter, as well as to all relevant medical and psychological records and reports.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 5, eff. September 1, 2005.

Sec. 841.146. CIVIL COMMITMENT PROCEEDING; PROCEDURE AND COSTS. (a) On request, a person subject to a civil commitment proceeding under this chapter and the attorney representing the state are entitled to a jury trial or a hearing before a jury for that proceeding, except for a proceeding set by the judge under Section 841.102(c)(1). The jury shall consist of 12 qualified jurors. The judge may direct that not more than four jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Each party is entitled to 10 peremptory challenges to the 12 qualified jurors and one peremptory challenge to the qualified alternate jurors.

(b) Except as otherwise provided by this subsection, a civil commitment proceeding is subject to the rules of procedure and appeal for civil cases. To the extent of any conflict between this chapter and the rules of procedure and appeal for civil cases, this chapter controls.

(c) In an amount not to exceed $2,500, the State of Texas shall pay all costs associated with a civil commitment proceeding conducted under Subchapter D. The State of Texas shall pay the reasonable costs of state or appointed counsel or experts for any other civil commitment proceeding conducted under this chapter and shall pay the reasonable costs of the person's treatment and supervision.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 29, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 28, eff. June 17, 2015.

Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 10, eff. September 1, 2021.

Sec. 841.1461. CERTAIN EXPERT TESTIMONY NOT REQUIRED FOR CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATOR. A person who suffers from a behavioral abnormality as determined under this chapter is not because of that abnormality a person of unsound mind for purposes of Section 15-a, Article I, Texas Constitution.

Added by Acts 2003, 78th Leg., ch. 347, Sec. 30, eff. Sept. 1, 2003.

Sec. 841.1462. PRIVILEGE FOR PERSONAL INFORMATION THAT IDENTIFIES VICTIM. Personal information, including a home address, home telephone number, and social security account number, that identifies the victim of a person subject to a civil commitment proceeding under this chapter is privileged from discovery by that person.

Added by Acts 2003, 78th Leg., ch. 347, Sec. 30, eff. Sept. 1, 2003.

Sec. 841.1463. FAILURE TO GIVE NOTICE WITHIN RELEVANT PERIOD NOT JURISDICTIONAL ERROR. The periods within which notice must be given under this chapter are binding on all appropriate persons as provided by this chapter, but a failure to give notice within the relevant period is not a jurisdictional error.

Added by Acts 2003, 78th Leg., ch. 347, Sec. 30, eff. Sept. 1, 2003.

Sec. 841.147. IMMUNITY. (a) The following persons are immune from liability for good faith conduct under this chapter:

(1) an employee or officer of the Texas Department of Criminal Justice or the office;

(2) a member of the multidisciplinary team established under Section 841.022;

(3) the applicable attorney representing the state and an employee of the attorney; and

(4) a person providing, or contracting, appointed, or volunteering to perform, a service under this chapter, at the request of the office.

(b) A court shall immediately dismiss any action asserting a claim against a person described by Subsection (a) that arose from the person's good faith conduct.

(c) This section does not affect a defense, immunity, or jurisdictional bar available to a person described by Subsection (a).

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 31, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 9, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 14, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 29, eff. June 17, 2015.

Acts 2025, 89th Leg., R.S., Ch. 1145 (S.B. 1610), Sec. 34, eff. September 1, 2025.

Sec. 841.148. ATTORNEY GENERAL REPRESENTATION. (a) The attorney general shall defend any person described by Section 841.147(a)(4) in an action if:

(1) the office requests that the attorney general defend the person; and

(2) the action arises from a service performed under this chapter at the request of the office.

(b) The office or the person is not responsible for and may not pay any costs associated with the assistance.

Added by Acts 2025, 89th Leg., R.S., Ch. 1145 (S.B. 1610), Sec. 35, eff. September 1, 2025.

Sec. 841.149. RECOVERY OF COURT COSTS AND ATTORNEY'S FEES. (a) In an action against a person described by Section 841.147(a)(4), the

court shall award to the person court costs and attorney's fees incurred in the action if the person is found immune under that section and the person is not represented by the attorney general.

(b) In an action against a person described by Section 841.147(a)(4) who is represented by the attorney general, the court shall award to the attorney general court costs and attorney's fees incurred in the action if the person is found immune under that section.

Added by Acts 2025, 89th Leg., R.S., Ch. 1145 (S.B. 1610), Sec. 35, eff. September 1, 2025.

Sec. 841.150. EFFECT OF SUBSEQUENT DETENTION, CONFINEMENT, OR COMMITMENT ON ORDER OF CIVIL COMMITMENT. (a) The duties imposed on the office and the judge by this chapter are suspended for the duration of a detention or confinement of a committed person in a correctional facility, secure correctional facility, or secure detention facility, or if applicable any other commitment of the person to a community center, mental health facility, or state supported living center, by governmental action.

(b) In this section:

(1) "Community center" means a center established under Subchapter A, Chapter 534.

(2) "Correctional facility" has the meaning assigned by Section 1.07, Penal Code.

(3) "Mental health facility" has the meaning assigned by Section 571.003.

(4) "Secure correctional facility" and "secure detention facility" have the meanings assigned by Section 51.02, Family Code.

(5) "State supported living center" has the meaning assigned by Section 531.002.

Added by Acts 2003, 78th Leg., ch. 347, Sec. 30, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 6, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 15, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1629, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 30, eff. June 17, 2015.

Sec. 841.151. NOTICE OF RELEASE OF SEXUALLY VIOLENT PREDATOR. (a) In this section:

(1) "Correctional facility" has the meaning assigned by Section 1.07, Penal Code.

(2) "Secure correctional facility" and "secure detention facility" have the meanings assigned by Section 51.02, Family Code.

(b) This section applies to a person who has been civilly committed under this chapter and who is detained or confined in a correctional facility, secure correctional facility, or secure detention facility as a result of violating:

(1) a civil commitment requirement imposed under Section 841.082(a)(1), (2), (4), or (5); or

(2) a law of this state.

(c) Except as provided by Subsection (c-1), as soon as practicable before, but not later than the third business day preceding, the date a correctional facility, secure correctional facility, or secure detention facility releases a person who, at the time of the person's detention or confinement, was civilly committed under this chapter as a sexually violent predator, the facility shall notify the office and the person's case manager in writing of the anticipated date and time of the person's release.

(c-1) Subsection (c) does not apply with respect to a person whom a court orders to be immediately released from a correctional facility, secure correctional facility, or secure detention facility.

(d) A case manager, on request, shall provide a correctional facility, a secure correctional facility, or a secure detention facility with the case manager's appropriate contact information for notification under Subsection (c).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 16, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 31, eff. June 17, 2015.

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 24, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 11, eff. September 1, 2021.

Sec. 841.152. CERTAIN HEARINGS BY CLOSED-CIRCUIT VIDEO TELECONFERENCING PERMITTED. (a) Notwithstanding Section 841.103(c), on motion by the attorney representing the state, the court shall require a committed person to appear via closed-circuit video teleconferencing at a hearing on the modification of civil commitment requirements under Section 841.082 or a hearing under Subchapter F or G.

(b) A recording of a hearing conducted as provided by Subsection (a) shall be made and preserved with the court's record of the hearing.

Added by Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 25, eff. September 1, 2017.

Sec. 841.153. STATE-ISSUED IDENTIFICATION; NECESSARY DOCUMENTATION. (a) On the release of a committed person from a correctional facility, secure correctional facility, or secure detention facility, as those terms are defined by Section 841.151, the office shall:

(1) determine whether the person has:

(A) a valid license issued under Chapter 521 or 522, Transportation Code; or

(B) a valid personal identification certificate issued under Chapter 521, Transportation Code; and

(2) if the person does not have a valid license or certificate described by Subdivision (1), submit to the Department of Public Safety on behalf of the person a request for the issuance of a personal identification certificate under Chapter 521, Transportation Code.

(b) The office shall submit a request under Subsection (a)(2) as soon as practicable.

(c) The office, the Department of Public Safety, and the vital statistics unit of the Department of State Health Services by rule shall adopt a memorandum of understanding that establishes their respective responsibilities with respect to the issuance of a

personal identification certificate to a committed person, including responsibilities related to verification of the person's identity. The memorandum of understanding must require the Department of State Health Services to electronically verify the birth record of a committed person whose name and any other personal information is provided by the office and to electronically report the recorded filing information to the Department of Public Safety to validate the identity of a committed person under this section.

(d) The office shall reimburse the Department of Public Safety or the Department of State Health Services, as applicable, for the actual costs incurred by those agencies in performing responsibilities established under this section. The office may charge a committed person for the actual costs incurred under this section or for the fees required by Section 521.421, Transportation Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 25, eff. September 1, 2017.

SUBCHAPTER I. ADMINISTRATION OF CERTAIN MEDICATION TO CERTAIN SEXUALLY VIOLENT PREDATORS

Sec. 841.201. DEFINITIONS. In this subchapter:

(1) "Capacity" means a committed person's ability to:

(A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and

(B) make a decision whether to undergo the proposed treatment.

(2) "Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a committed person to prevent:

(A) imminent probable death or substantial bodily harm to the committed person because the committed person:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the committed person is unable to satisfy the committed person's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another

because of threats, attempted acts, or acts the committed person overtly or continually makes or commits.

(3) "Psychoactive medication" has the meaning assigned by Section 574.101.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 27, eff. September 1, 2023.

Sec. 841.202. ADMINISTRATION OF MEDICATION TO COMMITTED PERSON. A person may not administer a psychoactive medication to a committed person who refuses to take the medication voluntarily unless:

(1) the committed person is having a medication-related emergency; or

(2) the committed person is under an order issued under Section 841.205 authorizing the administration of medication regardless of the committed person's refusal.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 27, eff. September 1, 2023.

Sec. 841.203. PHYSICIAN'S APPLICATION FOR ORDER TO AUTHORIZE PSYCHOACTIVE MEDICATION; DATE OF HEARING. (a) A physician who is treating a committed person may, on behalf of the state, file an application in a probate court or a court with probate jurisdiction for an order to authorize the administration of a psychoactive medication regardless of the committed person's refusal if:

(1) the physician believes that the committed person lacks the capacity to make a decision regarding the administration of the psychoactive medication;

(2) the physician determines that the medication is the proper course of treatment for the committed person;

(3) the committed person is receiving mental health services under Section 841.0835 or other law; and

(4) the committed person, verbally or by other indication, refuses to take the medication voluntarily.

(b) An application filed under this section must state:

(1) that the physician believes that the committed person lacks the capacity to make a decision regarding administration of the psychoactive medication and the reasons for that belief;

(2) each medication the physician wants the court to compel the committed person to take;

(3) whether the committed person is receiving mental health services under Section 841.0835 or other law;

(4) the physician's diagnosis of the committed person; and

(5) the proposed method for administering the medication and, if the method is not customary, an explanation justifying the departure from the customary methods.

(c) An application filed under this section is separate from an application for court-ordered mental health services.

(d) A hearing on the application must be held not later than the 30th day after the date the application was filed. If the committed person is transferred to a mental health facility in another county, the court may transfer the application to the county where the committed person has been transferred.

(e) Subject to the requirement in Subsection (d) that the hearing be held not later than the 30th day after the date the application was filed, the court may grant one continuance on a party's motion and for good cause shown. The court may grant more than one continuance only with the agreement of the parties.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 27, eff. September 1, 2023.

Sec. 841.204. RIGHTS OF COMMITTED PERSON. A committed person for whom an application under Section 841.203 is filed is entitled to:

(1) representation by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;

(2) meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the committed person's questions or concerns;

(3) receive, immediately after the time of the hearing is set, a copy of the application and written notice of the time, place, and date of the hearing;

(4) be told, at the time personal notice of the hearing is given, of the committed person's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;

(5) be present at the hearing;

(6) request from the court an independent expert; and

(7) be notified orally, at the conclusion of the hearing, of the court's determinations of the committed person's capacity and best interests.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 27, eff. September 1, 2023.

Sec. 841.205. HEARING AND ORDER AUTHORIZING PSYCHOACTIVE MEDICATION. (a) The court may issue an order authorizing the administration of one or more classes of psychoactive medication to a committed person who is receiving mental health services under Section 841.0835 or other law.

(b) The court may issue an order under this section only if the court finds by clear and convincing evidence after a hearing that the committed person:

(1) lacks the capacity to make a decision regarding the administration of the proposed medication and treatment with the proposed medication is in the best interest of the committed person; or

(2) as determined under Section 841.206, presents a danger to the committed person or others in the civil commitment center in which the committed person is being treated.

(c) In making the finding that treatment with the proposed medication is in the best interest of the committed person, the court shall consider:

(1) the committed person's expressed preferences regarding treatment with psychoactive medication;

(2) the committed person's religious beliefs;

(3) the risks and benefits, from the perspective of the committed person, of taking psychoactive medication;

(4) the consequences to the committed person if the psychoactive medication is not administered;

(5) the prognosis for the committed person if the committed person is treated with psychoactive medication;

(6) alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and

(7) less intrusive treatments likely to secure the committed person's agreement to take the psychoactive medication.

(d) A hearing under this subchapter shall be conducted on the record by the probate judge or judge with probate jurisdiction, except as provided by Subsection (e).

(e) A judge may refer a hearing to a magistrate or court-appointed associate judge who has training regarding psychoactive medications. The magistrate or associate judge may provide the notice, set hearing dates, and appoint attorneys as required by this subchapter. A record is not required if the hearing is held by a magistrate or court-appointed associate judge.

(f) A party is entitled to a hearing de novo by the judge if an appeal of the magistrate's or associate judge's report is filed with the court not later than the third day after the date the report is issued. The hearing de novo must be held not later than the 30th day after the date the application under Section 841.203 was filed.

(g) If a hearing or an appeal of a magistrate's or associate judge's report is to be held in a county court in which the judge is not a licensed attorney, the committed person or the committed person's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county judge shall transfer the case after receiving the request, and the receiving court shall hear the case as if it had been originally filed in that court.

(h) As soon as practicable after the conclusion of the hearing, the committed person is entitled to have provided to the committed person and the committed person's attorney written notification of the court's determinations under this section. The notification must include a statement of the evidence on which the court relied and the reasons for the court's determinations.

(i) An order issued under this section shall authorize the administration to a committed person, regardless of the committed person's refusal, of one or more classes of psychoactive medications specified in the application and consistent with the committed person's diagnosis. The order shall permit an increase or decrease in a medication's dosage, continuation of medication authorized but discontinued during the period the order is valid, or the substitution of a medication within the same class.

(j) The classes of psychoactive medications in the order must conform to classes determined by the Health and Human Services

Commission.

(k) An order issued under this section may be reauthorized or modified on the petition of a party. The order remains in effect pending action on a petition for reauthorization or modification. For the purpose of this subsection, "modification" means a change of a class of medication authorized in the order.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 27, eff. September 1, 2023.

Sec. 841.206. FINDING THAT COMMITTED PERSON PRESENTS A DANGER. In making a finding under Section 841.205(b)(2) that the committed person presents a danger to the committed person or others in the civil commitment center in which the committed person is being treated, the court shall consider:

(1) an assessment of the committed person's present mental condition;

(2) whether the committed person has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical or emotional harm to the committed person's self or to another while in the center; and

(3) whether the committed person, in the 180-day period preceding the date the committed person was placed in the center, has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical or emotional harm to another.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 27, eff. September 1, 2023.

Sec. 841.207. COSTS. (a) The court shall order the payment of reasonable compensation to attorneys, physicians, language interpreters, sign interpreters, and associate judges appointed under this subchapter. The compensation paid shall be assessed as court costs.

(b) The agency responsible for services under Section 841.0835(a) shall pay as provided by Subsection (a) the costs of a hearing held under Section 841.205 regarding an order for the administration of psychoactive medication to a committed person.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 27, eff. September 1, 2023.

Sec. 841.208. APPEAL. (a) An appeal from an order issued under Section 841.205, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is issued.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is issued.

(c) When an appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) An order issued under Section 841.205 is effective pending an appeal of the order.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 27, eff. September 1, 2023.

Sec. 841.209. EXPIRATION OF ORDER. An order issued under Section 841.205 expires on the first anniversary of the date the order was issued.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 27, eff. September 1, 2023.

TITLE 12. HEALTH AND MENTAL HEALTH

CHAPTER 1001. DEPARTMENT OF STATE HEALTH SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1001.001. DEFINITIONS. In this title:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the commissioner of state health services.

(3) "Council" means the State Health Services Council.

(4) "Department" means the Department of State Health

Services.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1630, eff. April 2, 2015.

Sec. 1001.002. AGENCY AND AGENCY FUNCTIONS. (a) In this section, "function" includes a power, duty, program, or activity and an administrative support services function associated with the power, duty, program, or activity, unless consolidated under former Section 531.02012, Government Code.

(b) The department is an agency of the state.

(c) In accordance with former Subchapter A-1, Chapter 531, Government Code, and notwithstanding any other law, the department performs only functions related to public health, including health care data collection and maintenance of the Texas Health Care Information Collection program.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.16, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.65, eff. April 1, 2025.

Sec. 1001.003. SUNSET PROVISION. The Department of State Health Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2027.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.03, eff. June 15, 2007.

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 2.09, eff.

July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.11, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 4.03, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 4.08, eff. June 10, 2019.

Sec. 1001.004. REFERENCES IN LAW MEANING DEPARTMENT. In this code or any other law, a reference to the department in relation to a function described by Section 1001.002(c) means the department. A reference in law to the department in relation to any other function has the meaning assigned by Section 521.0002, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.17, eff. September 1, 2017.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.66, eff. April 1, 2025.

Sec. 1001.005. REFERENCES IN LAW MEANING COMMISSIONER OR DESIGNEE. In this code or in any other law, a reference to the commissioner in relation to a function described by Section 1001.002(c) means the commissioner. A reference in law to the commissioner in relation to any other function has the meaning assigned by Section 521.0003, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.17, eff. September 1, 2017.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.67, eff. April 1, 2025.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 1001.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commissioner, with the advice of the council, shall prepare information of public interest describing the functions of the department and the procedures by which complaints are filed with and

resolved by the department. The commission shall make the information available to the public and appropriate state governmental entities.

(b) The executive commissioner by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for directing complaints to the department.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.029. PUBLIC ACCESS AND TESTIMONY. (a) The commissioner shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commissioner and to speak on any issue under the jurisdiction of the department.

(b) The commissioner shall grant an opportunity for a public hearing before the council makes recommendations to the commissioner regarding a substantive rule if a public hearing is requested by:

(1) at least 25 persons;

(2) a governmental entity; or

(3) an association with at least 25 members.

(c) The executive commissioner shall consider fully all written and oral submissions about a proposed rule.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.030. POLICYMAKING AND MANAGEMENT RESPONSIBILITIES. The commissioner, with the advice of the council and subject to the approval of the executive commissioner, shall develop and the department shall implement policies that clearly delineate the policymaking responsibilities of the executive commissioner from the management responsibilities of the commission, the commissioner, and the staff of the department.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.0305. LOCAL HEALTH ENTITY POLICY. In developing policy related to funding local health entities as defined by Section

117.001, the department shall consult with the Public Health Funding and Policy Committee established under Chapter 117.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 2, eff. September 1, 2011.

Sec. 1001.032. OFFICES. The department shall maintain its central office in Austin. The department may maintain offices in other areas of the state as necessary.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.033. APPLICATION REQUIREMENT FOR COLONIAS PROJECTS. (a) In this section, "colonia" means a geographic area that:

(1) is an economically distressed area as defined by Section 17.921, Water Code;

(2) is located in a county any part of which is within 62 miles of an international border; and

(3) consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(3), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(3), eff. September 1, 2019.

(d) Regarding any projects funded by the commission that provide assistance to colonias, the commission shall require an applicant for the funds to submit to the commission a colonia classification number, if one exists, for each colonia that may be served by the project proposed in the application. If a colonia does not have a classification number, the commission may contact the secretary of state or the secretary of state's representative to obtain the classification number. On request of the commission, the secretary of state or the secretary of state's representative shall assign a classification number to the colonia.

Added by Acts 2005, 79th Leg., Ch. 828 (S.B. 827), Sec. 5, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 341 (S.B. 99), Sec. 16, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 2.09, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 2.10, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(3), eff. September 1, 2019.

Sec. 1001.034. INVESTIGATION OF DEPARTMENT. The executive commissioner shall investigate the conduct of the work of the department. For that purpose, the executive commissioner shall have access at any time to all department books and records and may require an officer or employee of the department to furnish written or oral information.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Transferred, redesignated and amended from Health and Safety Code, Section 11.014 by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0007, eff. April 2, 2015.

Sec. 1001.035. ADVISORY COMMITTEES. (a) The executive commissioner may appoint advisory committees to assist the executive commissioner and department in performing duties related to department functions.

(b) If the executive commissioner appoints an advisory committee under this section, the appointment must be made in a manner that provides for:

(1) a balanced representation of persons with knowledge and interest in the committee's field of work;

(2) the inclusion on the committee of at least two members who represent the interests of the public; and

(3) a balanced representation of the geographic regions of the state.

(d) A member of an advisory committee appointed under this section may receive reimbursement for travel expenses as provided by Section 2110.004, Government Code.

(e) The executive commissioner shall specify each committee's

purpose, powers, and duties, and shall require each committee to report to the executive commissioner or department in the manner specified by the executive commissioner concerning the committee's activities and the results of its work.

(f) The executive commissioner shall establish procedures for receiving reports relating to the activities and accomplishments of an advisory committee established by statute to advise the department or executive commissioner on matters related to department functions. The executive commissioner may appoint additional members to those advisory committees and may establish additional duties of those committees as the executive commissioner determines to be necessary.

(g) The executive commissioner shall adopt rules to implement this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 2, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.17, eff. Sept. 1, 1999. Transferred, redesignated and amended from Health and Safety Code, Section 11.016 by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0008, eff. April 2, 2015.

SUBCHAPTER C. PERSONNEL

Sec. 1001.051. COMMISSIONER. (a) The executive commissioner shall appoint a commissioner of the department with the approval of the governor. The commissioner is to be selected according to education, training, experience, and demonstrated ability.

(a-1) The executive commissioner shall employ the commissioner in accordance with Subchapter B, Chapter 524, Government Code, and Section 524.0101(b), Government Code.

(a-2) Except as provided in Subsection (a-3), the commissioner must:

(1) have at least five years of experience in the administration of public health systems; and

(2) be a person licensed to practice medicine in this state.

(a-3) The executive commissioner may, based on the qualifications and experience in administering public health systems, employ a person other than a physician as the commissioner.

(a-4) If the executive commissioner employs a person as

commissioner who is not a physician, then the executive commissioner shall designate a person licensed to practice medicine in this state as chief medical executive.

(b) The commissioner serves at the pleasure of the executive commissioner.

(b-1) The executive commissioner may supplement the salary of the commissioner with the approval of the governor. The salary may not exceed 1.5 times the salary of the governor, from funds appropriated to the department. The use of funds from other sources are not limited by this subsection.

(c) Subject to the control of the executive commissioner, the commissioner shall:

(1) act as the department's chief administrative officer;

(2) in accordance with the procedures prescribed by Section 524.0152, Government Code, assist the executive commissioner in the development and implementation of policies and guidelines needed for the administration of the department's functions;

(3) in accordance with the procedures adopted by the executive commissioner under Section 524.0152, Government Code, assist the executive commissioner in the development of rules relating to the matters within the department's jurisdiction, including the delivery of services to persons and the rights and duties of persons who are served or regulated by the department; and

(4) serve as a liaison between the department and commission.

(d) The commissioner shall administer this chapter under operational policies established by the executive commissioner and in accordance with the memorandum of understanding under Section 524.0101(a), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0006, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1631, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.68, eff. April 1, 2025.

Sec. 1001.0515. OFFICE OF CHIEF STATE EPIDEMIOLOGIST. (a) The commissioner shall:

(1) establish an Office of Chief State Epidemiologist within the department to provide expertise in public health activities and policy in this state by:

(A) evaluating epidemiologic, medical, and health care information; and

(B) identifying pertinent research and evidence-based best practices; and

(2) appoint a physician licensed to practice medicine in this state as the chief state epidemiologist to administer the Office of Chief State Epidemiologist.

(b) The chief state epidemiologist must:

(1) be board certified in a medical specialty; and

(2) have significant experience in public health and an advanced degree in public health, epidemiology, or a related field.

(c) The chief state epidemiologist serves as:

(1) the department expert on epidemiological matters and on communicable and noncommunicable diseases; and

(2) the department's senior science representative and primary contact for the Centers for Disease Control and Prevention and other federal agencies related to epidemiologic science and disease surveillance.

(d) The chief state epidemiologist may provide professional and scientific consultation regarding epidemiology and disease control, harmful exposure, and injury prevention to state agencies, health facilities, health service regions, local health authorities, local health departments, and other entities.

(e) Notwithstanding any other law, the chief state epidemiologist may access information from the department to implement duties of the epidemiologist's office. Reports, records, and information provided to the Office of Chief State Epidemiologist that relate to an epidemiologic or toxicologic investigation of human illness or conditions and of environmental exposure that are harmful or believed to be harmful to the public health are confidential and not subject to disclosure under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise, except for statistical purposes if released in a manner that prevents identification of any person.

Added by Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 15, eff. June 16, 2021.

Sec. 1001.052. PERSONNEL. (a) The department may employ, compensate, and prescribe the duties of personnel necessary and suitable to administer this chapter.

(b) The executive commissioner shall prepare and by rule adopt personnel standards.

(c) A personnel position may be filled only by an individual selected and appointed on a nonpartisan merit basis.

(d) The commissioner, with the advice of the council, shall develop and the department shall implement policies that clearly define the responsibilities of the staff of the department.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.053. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to department employees, as often as necessary, information regarding the requirements for employment under this chapter or rules adopted by the executive commissioner, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state employees.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.054. MERIT PAY. Subject to rules adopted by the executive commissioner, the commissioner or the commissioner's designee shall develop a system of annual performance evaluations. All merit pay for department employees must be given under the system established under this section or under rules adopted by the executive commissioner.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.055. CAREER LADDER. The commissioner or the commissioner's designee shall develop an intra-agency career ladder

program. The program must require intra-agency postings of all nonentry-level positions concurrently with any public posting.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) Subject to rules adopted by the executive commissioner, the commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) Unless the following are included in a policy statement adopted by the executive commissioner that is applicable to the department, the policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the department to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the department's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must be:

(1) updated annually;

(2) reviewed by the Texas Workforce Commission civil rights division for compliance with Subsection (b)(1); and

(3) filed with the governor's office.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1632, eff. April 2, 2015.

SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

Sec. 1001.071. GENERAL POWERS AND DUTIES OF DEPARTMENT RELATED TO HEALTH CARE. (a) The department is the state agency with primary responsibility to administer or provide health services, including:

(1) disease prevention;
(2) health promotion;
(3) indigent health care;
(4) certain acute care services;
(5) licensing of certain health professions; and
(6) other health-related services as provided by law.

(b) The department is responsible for administering human services programs regarding the public health, including:

(1) implementing the state's public health care delivery programs under the authority of the department;

(2) administering state health facilities, hospitals, and health care systems;

(3) developing and providing health care services, as directed by law;

(4) providing for the prevention and control of communicable diseases;

(5) providing public education on health-related matters, as directed by law;

(6) compiling and reporting health-related information, as directed by law;

(7) acting as the lead agency for implementation of state policies regarding the human immunodeficiency virus and acquired immunodeficiency syndrome and administering programs related to the human immunodeficiency virus and acquired immunodeficiency syndrome;

(8) investigating the causes of injuries and methods of prevention;

(9) administering a grant program to provide appropriated money to counties, municipalities, public health districts, and other political subdivisions for their use to provide or pay for essential public health services;

(10) administering the registration of vital statistics;

(11) licensing, inspecting, and enforcing regulations regarding health facilities, other than long-term care facilities regulated by the Department of Aging and Disability Services;

(12) implementing established standards and procedures for the management and control of sanitation and for health protection measures;

(13) enforcing regulations regarding radioactive materials;

(14) enforcing regulations regarding food, drugs, cosmetics, and health devices;

(15) enforcing regulations regarding food service establishments, retail food stores, mobile food units, and roadside food vendors;

(16) enforcing regulations controlling hazardous substances in households and workplaces; and

(17) implementing a mental health program for veterans.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 352 (H.B. 2392), Sec. 1, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0005(a), eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0005(b), eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.020, eff. September 1, 2015.

Sec. 1001.0711. SCHOOL HEALTH ADVISORY COMMITTEE. (a) The executive commissioner by rule shall establish a School Health Advisory Committee at the department to provide assistance to the council in establishing a leadership role for the department in support for and delivery of coordinated school health programs and school health services.

(b) The committee shall include at least:

(1) one representative from the Department of Agriculture, appointed by the commissioner of agriculture; and

(2) one representative from the Texas Education Agency, appointed by the commissioner of education.

(c) Section 2110.008, Government Code, does not apply to a committee created under this section.

Added by Acts 2005, 79th Leg., Ch. 784 (S.B. 42), Sec. 9, eff. June 17, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1633, eff. April 2, 2015.

Sec. 1001.072. GENERAL POWERS AND DUTIES OF DEPARTMENT RELATED

TO MENTAL HEALTH. The department is responsible for administering human services programs regarding mental health, including:

(1) administering and coordinating mental health services at the local and state level;

(2) operating the state's mental health facilities; and

(3) inspecting, licensing, and enforcing regulations regarding mental health facilities, other than long-term care facilities regulated by the Department of Aging and Disability Services.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.073. GENERAL POWERS AND DUTIES OF DEPARTMENT RELATED TO SUBSTANCE ABUSE. The department is responsible for administering human services programs regarding substance abuse, including:

(1) administering, coordinating, and contracting for the delivery of substance abuse prevention and treatment programs at the state and local level;

(2) inspecting, licensing, and enforcing regulations regarding substance abuse treatment facilities; and

(3) providing public education on substance abuse issues, as directed by law.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.074. INFORMATION REGARDING COMPLAINTS. (a) The department shall maintain a file on each written complaint filed with the department. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the department;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the department closed the file without taking action other than to investigate the complaint.

(b) The department shall provide to the person filing the

complaint and to each person who is a subject of the complaint a copy of the executive commissioner's and the department's policies and procedures relating to complaint investigation and resolution.

(c) The department, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.075. RULES. The executive commissioner may adopt rules reasonably necessary for the department to administer this chapter, consistent with the memorandum of understanding under Section 524.0101(a), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.69, eff. April 1, 2025.

Sec. 1001.077. ADULT DIABETES EDUCATION PROGRAM. (a) In counties with populations of more than 100,000, the department may assist hospital districts and county hospital systems in providing an adult diabetes education program. The program must be based on a curriculum developed by the Texas Diabetes Council.

(b) A hospital district or county hospital system that participates in the program shall:

(1) make the adult diabetes education program available in English and Spanish using the curriculum developed by the Texas Diabetes Council; and

(2) make the education program available in the county, including at each rural health clinic the district or system may have.

(c) The Texas Diabetes Council shall develop for the adult diabetes education program a curriculum emphasizing life choices that enable a diabetic patient to control the disease and improve the patient's standard of living.

Added by Acts 2011, 82nd Leg., R.S., Ch. 217 (H.B. 123), Sec. 1, eff. September 1, 2011.

Sec. 1001.078. FUNDING FORMULA; PUBLIC HEALTH EVALUATION. (a) In this section:

(1) "Health service region" means a public health region designated under Section 121.007.

(2) "Local health department" means a local health department established under Subchapter D, Chapter 121.

(3) "Local health unit" has the meaning assigned by Section 121.004.

(4) "Public health district" means a health district established under Subchapter E, Chapter 121.

(b) The department, in collaboration with the Public Health Funding and Policy Committee established under Section 117.051, shall:

(1) develop funding formulas for federal and state funds appropriated to the department to be allocated to local health departments, local health units, public health districts, and health service regions' regional headquarters, based on population, population density, disease burden, social determinants of health, local efforts to prevent disease, and other relevant factors as determined by the department and committee;

(2) evaluate the feasibility and benefits of placing a cap on the percentage of public health funds that can be used on administrative costs at local health departments, local health units, public health districts, and health service regions' regional headquarters; and

(3) evaluate public health functions provided by the department, local health departments, local health units, public health districts, and health service regions' regional headquarters and determine if another entity, including a private entity, can provide those functions more effectively.

Added by Acts 2013, 83rd Leg., R.S., Ch. 732 (S.B. 127), Sec. 1, eff. September 1, 2013.

Sec. 1001.079. PUBLIC HEALTH THREAT POLICY. (a) In this

section, "local health department" means a local health department established under Subchapter D, Chapter 121.

(b) The department shall create a policy to allow a local health department flexibility, to the extent allowed under federal law, in the use of personnel and other resources during disaster response activities, outbreaks, and other appropriate public health threats.

Added by Acts 2013, 83rd Leg., R.S., Ch. 732 (S.B. 127), Sec. 1, eff. September 1, 2013.

Sec. 1001.080. HEALTH INSURANCE COVERAGE INFORMATION. (a) In this section, "individual's legally authorized representative" means:

(1) a parent, managing conservator, or guardian of an individual, if the individual is a minor;

(2) a guardian of an individual, if the individual has been adjudicated incompetent to manage the individual's personal affairs; or

(3) an agent of the individual authorized under a medical power of attorney for health care.

(b) This section applies to health or mental health benefits, services, or assistance provided by the department that the department anticipates will be impacted by a health insurance exchange as defined by Section 1001.081(a), including:

(1) community primary health care services provided under Chapter 31;

(2) women's and children's health services provided under Chapter 32;

(3) services for children with special health care needs provided under Chapter 35;

(4) epilepsy program assistance provided under Chapter 40;

(5) hemophilia program assistance provided under Chapter 41;

(6) kidney health care services provided under Chapter 42;

(7) human immunodeficiency virus infection and sexually transmitted disease prevention programs and services provided under Chapter 85;

(8) immunization programs provided under Chapter 161;

(9) programs and services provided by the Rio Grande State

Center under Chapter 252;

(10) mental health services for adults provided under Chapter 534;

(11) mental health services for children provided under Chapter 534;

(12) programs and services provided by community mental health hospitals under Chapter 552;

(13) programs and services provided by state mental health hospitals under Chapter 552; and

(14) any other health or mental health program or service designated by the department.

(c) Subject to Subsection (d), the department may not provide health or mental health benefits, services, or assistance described in Subsection (b) unless the individual applying to receive the benefits, services, or assistance submits to the department on the form prescribed by the department:

(1) a statement by the individual or the individual's legally authorized representative attesting that the individual does not have access to private health care insurance that provides coverage for the benefit, service, or assistance; or

(2) if the individual has access to private health care insurance that provides coverage for the benefit, service, or assistance, the information and authorization necessary for the department to submit a claim for reimbursement from the insurer for the benefit, service, or assistance.

(d) The department may waive the prohibition under Subsection (c) for an individual or for health or mental health benefits, services, or assistance described in Subsection (b) if the department determines that a benefit, service, or assistance is necessary during a crisis or emergency.

(e) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 765 (S.B. 1057), Sec. 1, eff. June 14, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1634, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 2.27, eff. September 1, 2015.

Sec. 1001.081. HEALTH INSURANCE EXCHANGE INFORMATION. (a) In this section:

(1) "Health insurance exchange" means an American Health Benefit Exchange administered by the federal government under 42 U.S.C. Section 18041 or created under 42 U.S.C. Section 18031.

(2) "Individual's legally authorized representative" has the meaning assigned by Section 1001.080(a).

(b) The department may develop informational materials regarding health care insurance coverage and subsidies available under a health insurance exchange.

(c) The department shall provide the informational materials regarding health care insurance coverage and subsidies available under a health insurance exchange to an individual or the individual's legally authorized representative who:

(1) applies to receive health or mental health benefits, services, or assistance described in Section 1001.080(b); and

(2) has an income above 100 percent of the federal poverty level.

(d) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 765 (S.B. 1057), Sec. 1, eff. June 14, 2013.

Sec. 1001.084. CONTRACTING AND AUDITING AUTHORITY; DELEGATION. (a) The executive commissioner, as authorized by Section 524.0002, Government Code, may delegate to the department the executive commissioner's authority under that section for contracting and auditing relating to the department's powers, duties, functions, and activities.

(b) If the executive commissioner does not make a delegation under Subsection (a), a reference in law to the department with respect to the department's contracting or auditing authority means the executive commissioner. If the executive commissioner makes a delegation under Subsection (a), a reference in law to the department's contracting or auditing authority means that authority the executive commissioner has delegated to the department.

(c) If the executive commissioner revokes all or part of a delegation made under Subsection (a), a reference in law to the department with respect to a function for which the delegation was revoked means the executive commissioner or another entity to which the executive commissioner delegates that authority.

(d) It is the legislature's intent that the executive commissioner retain the authority over and responsibility for contracting and auditing at each health and human services agency as provided by Section 524.0002, Government Code. A statute enacted on or after January 1, 2015, that references the contracting or auditing authority of the department does not give the department direct contracting or auditing authority unless the statute expressly provides that the contracting or auditing authority:

(1) is given directly to the department; and

(2) is an exception to the exclusive contracting and auditing authority given to the executive commissioner under Section 524.0002, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1635, eff. April 2, 2015.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.70, eff. April 1, 2025.

Sec. 1001.0845. MENTAL HEALTH AND SUBSTANCE ABUSE PUBLIC REPORTING SYSTEM. (a) The department, in collaboration with the commission, shall establish and maintain a public reporting system of performance and outcome measures relating to mental health and substance use services established by the commission. The system must allow external users to view and compare the performance and outcomes of:

(1) local mental health authorities;

(2) local behavioral health authorities; and

(3) local intellectual and developmental disability authorities.

(b) The public reporting system must allow external users to view and compare the performance and outcomes of the Medicaid managed care programs that provide mental health services.

(c) The department shall post the performance and outcome

measures on the department's Internet website so that the information is accessible to the public. The department shall post the measures monthly, or as frequently as possible.

(e) Repealed by Acts 2023, 88th Leg., R.S., Ch. 1035 (S.B. 26), Sec. 10, eff. September 1, 2023.

(f) The department shall ensure that information reported through the public reporting system does not permit the identification of an individual.

(g) In this section:

(1) "Local behavioral health authority" means an authority designated by the commission under Section 533.0356.

(2) "Local intellectual and developmental disability authority" and "local mental health authority" have the meanings assigned by Section 531.002.

(3) "State hospital" has the meaning assigned by Section 552.0011.

(4) "State supported living center" has the meaning assigned by Section 531.002.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1143 (S.B. 58), Sec. 3, eff. September 1, 2013.
Added by Acts 2013, 83rd Leg., R.S., Ch. 1147 (S.B. 126), Sec. 1, eff. September 1, 2013.
Redesignated from Health and Safety Code, Section 1001.078 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(34), eff. September 1, 2015.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1035 (S.B. 26), Sec. 8, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1035 (S.B. 26), Sec. 10, eff. September 1, 2023.
Redesignated from Health and Safety Code, Section 1001.084 by Acts 2025, 89th Leg., R.S., Ch. 204 (H.B. 1620), Sec. 22.001(24), eff. September 1, 2025.

Sec. 1001.085. MANAGEMENT AND DIRECTION BY EXECUTIVE COMMISSIONER. The department's powers and duties prescribed by this chapter and other law, including enforcement activities and functions, are subject to the executive commissioner's oversight

under the revised provisions derived from Chapter 531, Government Code, as that chapter existed on March 31, 2025, to manage and direct the operations of the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1635, eff. April 2, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.71, eff. April 1, 2025.

Sec. 1001.086. TREATMENT ALTERNATIVES TRAINING CURRICULUM FOR JUDGES AND ATTORNEYS. (a) The department, with input from the court of criminal appeals and the forensic director appointed under Section 532.013, shall develop and maintain a training curriculum for judges and attorneys that provides information on inpatient and outpatient treatment alternatives to inpatient commitment to a state hospital for a patient whom a court is ordering to receive mental health services:

(1) to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure; or

(2) following an acquittal by reason of insanity under Chapter 46C, Code of Criminal Procedure.

(b) The training curriculum developed and maintained under Subsection (a) must include a guide to treatment alternatives, other than inpatient treatment at a state hospital, from which a patient described by Subsection (a) may receive mental health services.

Added by Acts 2015, 84th Leg., R.S., Ch. 207 (S.B. 1507), Sec. 3, eff. May 28, 2015.

Sec. 1001.087. CONTRACTING FOR AND ADMINISTRATION OF CERTAIN FUNCTIONS RELATING TO SUBSTANCE ABUSE. (a) The department may contract only with local mental health authorities and local behavioral health authorities to administer outreach, screening, assessment, and referral functions relating to the provision of substance abuse services. A local mental health authority or local behavioral health authority may subcontract with a substance abuse or behavioral health service provider to provide those services.

(b) A local mental health authority or local behavioral health

authority who contracts with the department to administer outreach, screening, assessment, and referral functions relating to the provision of substance abuse services shall develop an integrated service delivery model that, to the extent feasible, uses providers who have historically administered outreach, screening, assessment, and referral functions.

Added by Acts 2015, 84th Leg., R.S., Ch. 207 (S.B. 1507), Sec. 3, eff. May 28, 2015.

Sec. 1001.088. MENTAL HEALTH AND SUBSTANCE ABUSE HOTLINES. The department shall ensure that each local mental health authority and local behavioral health authority operates a toll-free telephone hotline that enables a person to call a single hotline number to obtain information from the authority about mental health services, substance abuse services, or both.

Added by Acts 2015, 84th Leg., R.S., Ch. 207 (S.B. 1507), Sec. 3, eff. May 28, 2015.

Sec. 1001.089. PUBLIC HEALTH DATA. (a) In this section:

(1) "Essential public health services" has the meaning assigned by Section 121.002.

(2) "Local public health entity" means a local health authority, local health unit, local health department, or public health district.

(b) Notwithstanding Sections 81.103, 82.009, 88.002(b), 92.006, and 192.002(b), the department may enter into an agreement with a local public health entity that provides essential public health services to provide the entity access to:

(1) identified public health data relating to the entity's jurisdiction and any public health data relating to a jurisdiction contiguous to the entity; and

(2) deidentified public health data maintained by the department relating to the jurisdiction of any other local public health entity.

(c) The public health data obtained through the agreement may be used only in the provision of essential public health services.

(d) Access to public health data includes necessary identified

public health data required for an infectious disease investigation conducted under Chapter 81.

(e) For any public health data request that is not subject to Subsection (b), (c), or (d) and except as provided by Subsection (f), the department shall establish a review process for the consideration of public health data requests relating to essential public health services or public health research. The process must evaluate:

(1) the public health benefit and purpose of the request;

(2) the privacy of the individuals whose data is requested;

(3) the management of the data by the requestor, including management of public health data released to the requestor in previous requests; and

(4) other relevant law.

(f) A local public health entity seeking public health data for human subject research purposes must submit a request to the department's institutional review board for review and consideration.

(g) A local public health entity receiving public health data from the department under this section shall:

(1) maintain the integrity and security of the data; and

(2) comply with state and federal privacy laws.

Added by Acts 2019, 86th Leg., R.S., Ch. 1184 (H.B. 3704), Sec. 1, eff. September 1, 2019.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 16, eff. June 16, 2021.

Text of subchapter effective on September 1, 2009, but only if a specific appropriation is provided as described by Acts 2009, 81st Leg., R.S., Ch. 1238, Sec. 7(f), which states: This section does not make an appropriation. This section takes effect only if a specific appropriation for the implementation of the section is provided in a general appropriations act of the 81st Legislature.

SUBCHAPTER F. TEXAS MEDICAL CHILD ABUSE RESOURCES AND EDUCATION SYSTEM (MEDCARES)

Sec. 1001.151. TEXAS MEDICAL CHILD ABUSE RESOURCES AND EDUCATION SYSTEM GRANT PROGRAM. (a) The department shall establish the Texas Medical Child Abuse Resources and Education System (MEDCARES) grant program to award grants for the purpose of

developing and supporting regional programs to improve the assessment, diagnosis, and treatment of child abuse and neglect as described by the report submitted to the 80th Legislature by the committee on pediatric centers of excellence relating to abuse and neglect in accordance with Section 266.0031, Family Code, as added by Chapter 1406 (S.B. 758), Acts of the 80th Legislature, Regular Session, 2007.

(b) The department may award grants to hospitals or academic health centers with expertise in pediatric health care and a demonstrated commitment to developing basic and advanced programs and centers of excellence for the assessment, diagnosis, and treatment of child abuse and neglect.

(c) The department shall encourage collaboration among grant recipients in the development of program services and activities.

Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 7(a), eff. September 1, 2009.

Sec. 1001.152. USE OF GRANT. A grant awarded under this subchapter may be used to support:

(1) comprehensive medical evaluations, psychosocial assessments, treatment services, and written and photographic documentation of abuse;

(2) education and training for health professionals, including physicians, medical students, resident physicians, child abuse fellows, and nurses, relating to the assessment, diagnosis, and treatment of child abuse and neglect;

(3) education and training for community agencies involved with child abuse and neglect, law enforcement officials, child protective services staff, and children's advocacy centers involved with child abuse and neglect;

(4) medical case reviews and consultations and testimony regarding those reviews and consultations;

(5) research, data collection, and quality assurance activities, including the development of evidence-based guidelines and protocols for the prevention, evaluation, and treatment of child abuse and neglect;

(6) the use of telemedicine and other means to extend services from regional programs into underserved areas; and

(7) other necessary activities, services, supplies, facilities, and equipment as determined by the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 7(a), eff. September 1, 2009.

Sec. 1001.154. GIFTS AND GRANTS. The department may solicit and accept gifts, grants, and donations from any public or private source for the purposes of this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 7(a), eff. September 1, 2009.

Sec. 1001.155. REQUIRED REPORT. Not later than December 1 of each even-numbered year, the department shall submit a report to the governor and the legislature regarding the grant activities of the program and grant recipients, including the results and outcomes of grants provided under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 7(a), eff. September 1, 2009.
Reenacted and amended by Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.12(b), eff. September 1, 2015.

Sec. 1001.156. RULES. The executive commissioner may adopt rules as necessary to implement this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 7(a), eff. September 1, 2009.

Sec. 1001.157. APPROPRIATION REQUIRED. The department is not required to award a grant under this subchapter unless the department is specifically appropriated money for purposes of this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 7(a), eff. September 1, 2009.

SUBCHAPTER H. MENTAL HEALTH FIRST AID TRAINING

Sec. 1001.201. DEFINITIONS. In this subchapter:

(1) "Child-care facility" has the meaning assigned by Section 42.002, Human Resources Code.

(2) "Educator" means a person who is required to hold a certificate issued under Subchapter B, Chapter 21, Education Code.

(3) "First responder" has the meaning assigned by Section 421.095, Government Code.

(4) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(5) "Local behavioral health authority" means an authority designated by the commission under Section 533.0356.

(6) "Local mental health authority" has the meaning assigned by Section 531.002.

(7) "Open-enrollment charter school" and "private school" have the meanings assigned by Section 5.001, Education Code.

(8) "Regional education service center" means a regional education service center established under Chapter 8, Education Code.

(9) "School district employee" means a person employed by a school district who regularly interacts with students through the course of the person's duties, including an educator, a secretary, a school bus driver, or a cafeteria worker.

(10) "School resource officer" has the meaning assigned by Section 1701.601, Occupations Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 4, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 836 (S.B. 133), Sec. 1, eff. June 17, 2015.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 2.28, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 45 (S.B. 1533), Sec. 1, eff. May 19, 2017.

Acts 2023, 88th Leg., R.S., Ch. 324 (H.B. 2059), Sec. 1, eff. September 1, 2023.

Sec. 1001.202. GRANTS FOR TRAINING OF MENTAL HEALTH FIRST AID TRAINERS. (a) To the extent money is appropriated to the commission

for that purpose, the commission shall make grants to local mental health authorities or local behavioral health authorities to contract with persons approved by the commission to train employees or contractors of the authorities as mental health first aid trainers.

(b) The commission shall make each grant to a local mental health authority or local behavioral health authority under this section in the amount the commission determines necessary to cover the costs of training employees or contractors of the authority whose training as mental health first aid trainers will be paid by the grant.

(d) The executive commissioner shall adopt rules to establish the requirements for a person to be approved by the commission to train employees or contractors of a local mental health authority or local behavioral health authority as mental health first aid trainers. The rules must ensure that a person who is approved by the commission is qualified to provide training in:

(1) the potential risk factors and warning signs for various mental illnesses, including depression, anxiety, trauma, psychosis, eating disorders, substance use disorders, and self-injury;

(2) the prevalence of various mental illnesses in the United States and the need to reduce the stigma associated with mental illness;

(3) an action plan for use by the employees or contractors that involves the use of skills, resources, and knowledge to assess a situation and develop and implement an appropriate intervention to help an individual experiencing a mental health crisis obtain appropriate professional care; and

(4) the evidence-based professional, peer, social, and self-help resources available to help individuals with mental illness.

(e) Two or more local mental health authorities or local behavioral health authorities may collaborate and share resources to provide training for employees or contractors of the authorities under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 4, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 836 (S.B. 133), Sec. 3, eff. June

17, 2015.

Acts 2015, 84th Leg., R.S., Ch. 836 (S.B. 133), Sec. 8(1), eff. June 17, 2015.

Acts 2023, 88th Leg., R.S., Ch. 324 (H.B. 2059), Sec. 2, eff. September 1, 2023.

Sec. 1001.203. GRANTS FOR TRAINING CERTAIN INDIVIDUALS IN MENTAL HEALTH FIRST AID. (a) To the extent money is appropriated for the purpose, the commission shall make grants to local mental health authorities or local behavioral health authorities to provide at no cost an approved mental health first aid training program administered by mental health first aid trainers to the following individuals at the discretion of the authorities:

(1) school district employees and school resource officers;

(2) employees of:

(A) an institution of higher education;

(B) an open-enrollment charter school; or

(C) a private school;

(3) employees and contractors of a child-care facility;

(4) youth;

(5) individuals with direct and recurring contact with students;

(6) first responders;

(7) military service members, veterans, or immediate family members of military service members or veterans;

(8) judges and attorneys, as applicable based on the practice of law of the judge or attorney; or

(9) contractors of an institution of higher education, an open-enrollment charter school, a private school, or a school district.

(c) The commission shall grant to a local mental health authority or local behavioral health authority the amount the commission determines necessary to cover the costs of training each individual described by Subsection (a) who successfully completes a mental health first aid training program provided by the authority under this section.

(d) A mental health first aid training program provided by a local mental health authority or local behavioral health authority under this section must:

(1) be conducted by a person trained as a mental health first aid trainer;

(2) provide participants with the skills necessary to help an individual experiencing a mental health crisis until the individual is able to obtain appropriate professional care; and

(3) include:

(A) instruction in a five-step strategy for helping an individual experiencing a mental health crisis, including assessing risk, listening respectfully to and supporting the individual, and identifying professional help and other supports for the individual;

(B) an introduction to the risk factors and warning signs for mental illness and substance use problems;

(C) experiential activities to increase participants' understanding of the impact of mental illness on individuals and families; and

(D) a presentation of evidence-supported treatment and self-help strategies.

(e) A local mental health authority or local behavioral health authority may contract with a regional education service center to provide under this section a mental health first aid training program to school district employees and contractors, school resource officers, open-enrollment charter school employees and contractors, private school employees and contractors, and employees and contractors of an institution of higher education.

(f) Two or more local mental health authorities or local behavioral health authorities may collaborate and share resources to develop and operate a mental health first aid training program under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 4, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 836 (S.B. 133), Sec. 4, eff. June 17, 2015.

Acts 2015, 84th Leg., R.S., Ch. 836 (S.B. 133), Sec. 8(2), eff. June 17, 2015.

Acts 2017, 85th Leg., R.S., Ch. 45 (S.B. 1533), Sec. 3, eff. May 19, 2017.

Acts 2023, 88th Leg., R.S., Ch. 324 (H.B. 2059), Sec. 3, eff. September 1, 2023.

Sec. 1001.204. PLANS FOR MENTAL HEALTH FIRST AID TRAINING PROGRAMS. (a) Not later than July 1 of each even-numbered year for which a local mental health authority or local behavioral health authority will seek a grant from the commission under Section 1001.203, the authority shall submit to the commission a plan demonstrating the manner in which grants made to the authority under that section will be used:

(1) to train individuals in mental health first aid throughout the authority's local service area to maximize the number of children who have direct contact with an individual who has successfully completed a mental health first aid training program provided by the authority;

(2) to meet the greatest needs of the authority's local service area, as identified by the authority; and

(3) to complement existing resources and not duplicate established mental health first aid training efforts.

(b) The commission may not make a grant to a local mental health authority or local behavioral health authority under Section 1001.203 unless the commission has evaluated a plan submitted by the authority under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 4, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 836 (S.B. 133), Sec. 6, eff. June 17, 2015.

Acts 2023, 88th Leg., R.S., Ch. 324 (H.B. 2059), Sec. 4, eff. September 1, 2023.

Sec. 1001.205. REPORTS. (a) Not later than September 30 of each year, a local mental health authority or local behavioral health authority shall provide to the commission the number of:

(1) employees and contractors of the authority who were trained as mental health first aid trainers under Section 1001.202 during the preceding fiscal year, the number of trainers who left the program for any reason during the preceding fiscal year, and the number of active trainers;

(2) school district employees and contractors, school resource officers, open-enrollment charter school employees and contractors, private school employees and contractors, and employees and contractors of an institution of higher education who completed a mental health first aid training program offered by the authority under Section 1001.203 during the preceding fiscal year categorized by:

(A) local mental health authority or local behavioral health authority region;

(B) school district, open-enrollment charter school, private school, and institution of higher education, as applicable; and

(C) category of personnel;

(3) child-care facility employees and contractors, youth, individuals with direct and recurring contact with students, first responders, judges, and attorneys who completed a mental health first aid training program offered by the authority during the preceding fiscal year categorized by local mental health authority or local behavioral health authority region; and

(4) military service members, veterans, and immediate family members of military service members and veterans who completed the veterans module or standard version of a mental health first aid training program offered by the authority during the preceding fiscal year categorized by local mental health authority or local behavioral health authority region and the training program completed.

(b) Not later than December 1 of each year, the commission shall compile the information submitted by local mental health authorities or local behavioral health authorities as required by Subsection (a) and submit a report to the legislature containing:

(1) the number of authority employees and contractors trained as mental health first aid trainers during the preceding fiscal year, the number of trainers who left the program for any reason during the preceding fiscal year, and the number of active trainers;

(2) the number of school district employees and contractors, school resource officers, open-enrollment charter school employees and contractors, private school employees and contractors, and employees and contractors of an institution of higher education who completed a mental health first aid training program provided by an authority during the preceding fiscal year categorized by:

(A) local mental health authority region or local behavioral health authority region;

(B) school district, open-enrollment charter school, private school, and institution of higher education, as applicable; and

(C) category of personnel;

(3) the number of child-care facility employees and contractors, youth, individuals with direct and recurring contact with students, first responders, judges, and attorneys who completed a mental health first aid training program provided by an authority during the preceding fiscal year categorized by local mental health authority or local behavioral health authority region;

(4) the number of military service members, veterans, and immediate family members of military service members and veterans who completed the veterans module or standard version of a mental health first aid training program provided by an authority during the preceding fiscal year categorized by local mental health authority or local behavioral health authority region and the training program completed; and

(5) a detailed accounting of expenditures of money appropriated for the purpose of implementing this subchapter.

(c) The commission shall develop and provide to local mental health authorities and local behavioral health authorities a form to be used for the reporting of information required under Subsection (a), including the reporting of each category of personnel described by that subsection.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 4, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 836 (S.B. 133), Sec. 7, eff. June 17, 2015.

Acts 2017, 85th Leg., R.S., Ch. 45 (S.B. 1533), Sec. 5, eff. May 19, 2017.

Acts 2019, 86th Leg., R.S., Ch. 352 (H.B. 18), Sec. 2.01, eff. December 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 755 (H.B. 1070), Sec. 1, eff. December 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1327 (H.B. 4429), Sec. 2, eff. September 1, 2019.

Reenacted and amended by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.009, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 324 (H.B. 2059), Sec. 5, eff. September 1, 2023.

Sec. 1001.206. LIABILITY. A person who has completed a mental health first aid training program offered by a local mental health authority or local behavioral health authority under this subchapter and who in good faith attempts to assist an individual experiencing a mental health crisis is not liable in civil damages for an act performed in attempting to assist the individual unless the act is wilfully or wantonly negligent.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 4, eff. September 1, 2013.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 324 (H.B. 2059), Sec. 6, eff. September 1, 2023.

Sec. 1001.207. PROGRAM PROMOTION. (a) The commission shall make available on its official Internet website information about the mental health first aid training program for the purpose of promoting public awareness of the program. An electronic link to an outside source of information is not sufficient.

(b) The Texas Education Agency shall make available on its official Internet website information about the mental health first aid training program for the purpose of promoting public awareness of the program. An electronic link to an outside source of information is not sufficient.

Added by Acts 2019, 86th Leg., R.S., Ch. 352 (H.B. 18), Sec. 2.02, eff. December 1, 2019.

SUBCHAPTER J. MATERNAL MORTALITY REPORTING AND INVESTIGATION INFORMATION

Sec. 1001.241. MATERNAL MORTALITY REPORTING AND INVESTIGATION INFORMATION. (a) The department shall post on the department's

Internet website information regarding the systematic protocol for pregnancy-related death investigations and the best practices for reporting pregnancy-related deaths to the medical examiner or justice of the peace of each county, as applicable.

Text of subsection effective until April 1, 2027

(b) The information provided under Subsection (a) must include guidelines for:

(1) determining when a comprehensive toxicology screening should be performed on a person whose death was related to pregnancy;

(2) determining when a death should be reported to or investigated by a medical examiner or justice of the peace under Chapter 49, Code of Criminal Procedure; and

(3) correctly completing the death certificate of a person whose death was related to pregnancy.

Text of subsection effective on April 1, 2027

(b) The information provided under Subsection (a) must include guidelines for:

(1) determining when a comprehensive toxicology screening should be performed on a person whose death was related to pregnancy;

(2) determining when a death should be reported to or investigated by a medical examiner or justice of the peace under Chapter 49A, Code of Criminal Procedure; and

(3) correctly completing the death certificate of a person whose death was related to pregnancy.

(c) The executive commissioner shall adopt rules as necessary to implement this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 927 (S.B. 1599), Sec. 1, eff. September 1, 2017.
Amended by:

Acts 2025, 89th Leg., R.S., Ch. 202 (H.B. 1610), Sec. 2.16, eff. April 1, 2027.

SUBCHAPTER L. DATA COLLECTION AND ANALYSIS REGARDING OPIOID OVERDOSE DEATHS AND CO-OCCURRING SUBSTANCE USE DISORDERS

Sec. 1001.281. DATA COLLECTION AND ANALYSIS REGARDING OPIOID OVERDOSE DEATHS AND CO-OCCURRING SUBSTANCE USE DISORDERS. (a) The executive commissioner shall ensure that data is collected by the department regarding opioid overdose deaths and the co-occurrence of

substance use disorders and mental illness. The department may use data collected by the vital statistics unit and any other source available to the department.

(b) In analyzing data collected under this section, the department shall evaluate the capacity in this state for the treatment of co-occurring substance use disorders and mental illness.

Added by Acts 2019, 86th Leg., R.S., Ch. 1167 (H.B. 3285), Sec. 8, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(57), eff. September 1, 2021.

CHAPTER 1003. ADULT STEM CELLS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1003.001. ESTABLISHMENT OF ADULT STEM CELL BANK. (a) If the executive commissioner of the Health and Human Services Commission determines that it will be cost-effective and increase the efficiency or quality of health care, health and human services, and health benefits programs in this state, the executive commissioner by rule shall establish eligibility criteria for the creation and operation of an autologous adult stem cell bank.

(b) In adopting the rules under Subsection (a), the executive commissioner shall consider:

(1) the ability of the applicant to establish, operate, and maintain an autologous adult stem cell bank and to provide related services; and

(2) the demonstrated experience of the applicant in operating similar facilities in this state.

(c) This section does not affect the application of or apply to Chapter 162.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 14.01, eff. September 28, 2011.

Sec. 1003.002. GENERAL REQUIREMENTS FOR ADULT STEM CELL USE IN HEALTH CARE. A person using adult stem cells in the provision of health care:

(1) must use adult stem cells that are properly manufactured and stored; and

(2) may only use adult stem cells in a clinical trial approved by the United States Food and Drug Administration.

Added by Acts 2015, 84th Leg., R.S., Ch. 992 (H.B. 177), Sec. 5, eff. September 1, 2015.

Sec. 1003.003. ADDITIONAL REQUIREMENTS FOR ADULT STEM CELL USE IN HOSPITALS. A hospital may use adult stem cells in a procedure if:

(1) a physician providing services at the hospital determines that the use of adult stem cells in the procedure is appropriate;

(2) the patient consents in writing to the use;

(3) the requirements for stem cell use under Section 1003.002 are met;

(4) the manufacturing processes for the adult stem cells satisfy current good manufacturing practices adopted by the United States Food and Drug Administration; and

(5) appropriate state and federal guidelines on the use of adult stem cells are followed.

Added by Acts 2015, 84th Leg., R.S., Ch. 992 (H.B. 177), Sec. 5, eff. September 1, 2015.

SUBCHAPTER B. PROVISION OF INVESTIGATIONAL STEM CELL TREATMENTS TO PATIENTS WITH CERTAIN SEVERE CHRONIC DISEASES OR TERMINAL ILLNESSES

Sec. 1003.051. DEFINITIONS. In this subchapter:

(1) "Investigational stem cell treatment" means an adult stem cell treatment that:

(A) is under investigation in a clinical trial and being administered to human participants in that trial; and

(B) has not yet been approved for general use by the United States Food and Drug Administration.

(2) "Severe chronic disease" means a condition, injury, or illness that:

(A) may be treated;

(B) is never cured or eliminated; and

(C) entails significant functional impairment or severe pain.

(3) "Terminal illness" means an advanced stage of a disease

with an unfavorable prognosis that, without life-sustaining procedures, will soon result in death or a state of permanent unconsciousness from which recovery is unlikely.

Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 3, eff. September 1, 2017.

Sec. 1003.052. RULES. The executive commissioner shall adopt rules designating the medical conditions that constitute a severe chronic disease or terminal illness for purposes of this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 3, eff. September 1, 2017.

Sec. 1003.0525. ADMINISTRATION OF SUBCHAPTER. The department shall administer this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1158 (H.B. 3148), Sec. 1, eff. September 1, 2019.

Sec. 1003.0526. INVESTIGATIONAL STEM CELL REGISTRY. The department shall establish and maintain an investigational stem cell registry that lists each physician who administers an investigational stem cell treatment under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1158 (H.B. 3148), Sec. 1, eff. September 1, 2019.

Sec. 1003.053. PATIENT ELIGIBILITY. A patient is eligible to access and use an investigational stem cell treatment under this subchapter if:

(1) the patient has a severe chronic disease or terminal illness listed in the rules adopted under Section 1003.052 and attested to by the patient's treating physician; and

(2) the patient's physician:

(A) in consultation with the patient, has considered all other treatment options currently approved by the United States

Food and Drug Administration and determined that those treatment options are unavailable or unlikely to alleviate the significant impairment or severe pain associated with the severe chronic disease or terminal illness; and

(B) has recommended or prescribed in writing that the patient use a specific class of investigational stem cell treatment.

Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 3, eff. September 1, 2017.

Sec. 1003.054. INFORMED CONSENT. (a) Before receiving an investigational stem cell treatment, an eligible patient must sign a written informed consent.

(b) If the patient is a minor or lacks the mental capacity to provide informed consent, a parent, guardian, or conservator may provide informed consent on the patient's behalf.

(c) The executive commissioner by rule shall adopt a form for the informed consent under this section. The form must provide notice that the department administers this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 3, eff. September 1, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1158 (H.B. 3148), Sec. 2, eff. September 1, 2019.

Sec. 1003.055. TREATMENT REQUIREMENTS; TEXAS MEDICAL BOARD RULES. (a) Treatment provided under this subchapter must be:

(1) administered directly by a physician certified under Subsection (c);

(2) overseen by an institutional review board described by Subsection (d); and

(3) provided at:

(A) a hospital licensed under Chapter 241;

(B) an ambulatory surgical center licensed under Chapter 243; or

(C) a medical school, as defined by Section 61.501, Education Code.

(b) A physician administering an investigational stem cell

treatment under this subchapter shall comply with all applicable Texas Medical Board rules.

(c) An institutional review board described by Subsection (d) may certify a physician to provide an investigational stem cell treatment under this subchapter.

(d) An institutional review board that oversees investigational stem cell treatments administered under this subchapter must meet one of the following conditions:

(1) be affiliated with a medical school, as defined by Section 61.501, Education Code;

(2) be affiliated with a hospital licensed under Chapter 241 that has at least 150 beds;

(3) be accredited by the Association for the Accreditation of Human Research Protection Programs;

(4) be registered by the United States Department of Health and Human Services, Office for Human Research Protections, in accordance with 21 C.F.R. Part 56; or

(5) be accredited by a national accreditation organization acceptable to the Texas Medical Board.

(e) The Texas Medical Board may adopt rules regarding institutional review boards as necessary to implement this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 3, eff. September 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1158 (H.B. 3148), Sec. 3, eff. September 1, 2019.

Sec. 1003.056. EFFECT ON OTHER LAW. (a) This subchapter does not affect the coverage of enrollees in clinical trials under Chapter 1379, Insurance Code.

(b) This subchapter does not affect or authorize a person to violate any law regulating the possession, use, or transfer of fetal tissue, fetal stem cells, adult stem cells, or human organs, including Sections 48.02 and 48.04, Penal Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 3, eff. September 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.002(13),

eff. September 1, 2019.

Sec. 1003.057. ACTION AGAINST PHYSICIAN'S LICENSE PROHIBITED. Notwithstanding any other law, the Texas Medical Board may not revoke, fail to renew, suspend, or take any action against a physician's license under Subchapter B, Chapter 164, Occupations Code, based solely on the physician's recommendations to an eligible patient regarding access to or use of an investigational stem cell treatment, provided that the care provided or recommendations made to the patient meet the standard of care and the requirements of this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 3, eff. September 1, 2017.

Sec. 1003.058. GOVERNMENTAL INTERFERENCE PROHIBITED. (a) In this section, "governmental entity" means this state or an agency or political subdivision of this state.

(b) A governmental entity or an officer, employee, or agent of a governmental entity may not interfere with an eligible patient's access to or use of an investigational stem cell treatment authorized under this subchapter unless the treatment uses an adult stem cell product that is considered an adulterated or misbranded drug under Chapter 431. For purposes of this subsection, a governmental entity may not consider the adult stem cell product to be an adulterated or misbranded drug solely on the basis that the United States Food and Drug Administration has not approved the adult stem cell product.

Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 3, eff. September 1, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1158 (H.B. 3148), Sec. 4, eff. September 1, 2019.

Sec. 1003.059. INSTITUTIONAL REVIEW BOARD DOCUMENTATION; REPORT. (a) An institutional review board overseeing an investigational stem cell treatment under this subchapter shall keep a record on each person to whom a physician administers the treatment

and document in the record the provision of each treatment and the effects of the treatment on the person throughout the period the treatment is administered to the person.

(b) Each institutional review board overseeing an investigational stem cell treatment under this subchapter shall submit an annual report to the Texas Medical Board on the review board's findings based on records kept under Subsection (a). The report may not include any patient identifying information and must be made available to the public in both written and electronic form.

Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 3, eff. September 1, 2017.

Sec. 1003.060. CONSTRUCTION OF SUBCHAPTER. This subchapter may not be construed to:

(1) prohibit a physician from using adult stem cells for their intended homologous use if the stem cells are:

(A) produced by a manufacturer registered by the United States Food and Drug Administration; and

(B) commercially available; or

(2) require an institutional review board to oversee treatment using adult stem cells registered by the United States Food and Drug Administration for their intended homologous use.

Added by Acts 2019, 86th Leg., R.S., Ch. 1158 (H.B. 3148), Sec. 5, eff. September 1, 2019.

TITLE 13. ENVIRONMENTAL, HEALTH, AND SAFETY AUDIT PRIVILEGE ACT

CHAPTER 1101. ENVIRONMENTAL, HEALTH, AND SAFETY AUDIT PRIVILEGE ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1101.001. SHORT TITLE. This chapter may be cited as the Texas Environmental, Health, and Safety Audit Privilege Act.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.002. PURPOSE; CIRCUMVENTION BY RULE PROHIBITED. (a) The purpose of this chapter is to encourage voluntary compliance with

environmental and occupational health and safety laws.

(b) A regulatory agency may not adopt a rule or impose a condition that circumvents the purpose of this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.003. DEFINITIONS. (a) In this chapter:

(1) "Acquisition closing date" means the date on which ownership of, or a direct or indirect majority interest in the ownership of, a regulated facility or operation is acquired in an asset purchase, equity purchase, merger, or similar transaction.

(2) "Audit report" means an audit report described by Section 1101.051.

(3) "Environmental or health and safety audit" or "audit" means a systematic voluntary evaluation, review, or assessment of compliance with environmental or health and safety laws or with any permit issued under an environmental or health and safety law conducted by an owner or operator, an employee of an owner or operator, a person, including an employee or independent contractor of the person, that is considering the acquisition of a regulated facility or operation, or an independent contractor of:

(A) a regulated facility or operation; or

(B) an activity at a regulated facility or operation.

(4) "Environmental or health and safety law" means:

(A) a federal or state environmental or occupational health and safety law; or

(B) a rule, regulation, or regional or local law adopted in conjunction with a law described by Paragraph (A).

(5) "Owner or operator" means a person who owns or operates a regulated facility or operation.

(6) "Penalty" means an administrative, civil, or criminal sanction imposed by the state to punish a person for a violation of a statute or rule. The term does not include a technical or remedial provision ordered by a regulatory authority.

(7) "Regulated facility or operation" means a facility or operation that is regulated under an environmental or health and safety law.

(b) A person acts intentionally for purposes of this chapter if

the person acts intentionally within the meaning of Section 6.03, Penal Code.

(c) For purposes of this chapter, a person acts knowingly, or with knowledge, with respect to the nature of the person's conduct when the person is aware of the person's physical acts. A person acts knowingly, or with knowledge, with respect to the result of the person's conduct when the person is aware that the conduct will cause the result.

(d) A person acts recklessly or is reckless for purposes of this chapter if the person acts recklessly or is reckless within the meaning of Section 6.03, Penal Code.

(e) To fully implement the privilege established by this chapter, the term "environmental or health and safety law" shall be construed broadly.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.004. APPLICABILITY. The privilege established by this chapter applies to environmental or health and safety audits that are conducted on or after May 23, 1995.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.005. RELATIONSHIP TO OTHER RECOGNIZED PRIVILEGES. This chapter does not limit, waive, or abrogate the scope or nature of any statutory or common law privilege, including the work product doctrine and the attorney-client privilege.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

SUBCHAPTER B. GENERAL AUDIT PROVISIONS

Sec. 1101.051. AUDIT REPORT. (a) An audit report is a report that includes each document and communication, other than those described by Section 1101.102, produced from an environmental or health and safety audit.

(b) General components that may be contained in a completed audit report include:

(1) a report prepared by an auditor, monitor, or similar person, which may include:

(A) a description of the scope of the audit;

(B) the information gained in the audit and findings, conclusions, and recommendations; and

(C) exhibits and appendices;

(2) memoranda and documents analyzing all or a portion of the materials described by Subdivision (1) or discussing implementation issues; and

(3) an implementation plan or tracking system to correct past noncompliance, improve current compliance, or prevent future noncompliance.

(c) The types of exhibits and appendices that may be contained in an audit report include supporting information that is collected or developed for the primary purpose of and in the course of an environmental or health and safety audit, including:

(1) interviews with current or former employees;

(2) field notes and records of observations;

(3) findings, opinions, suggestions, conclusions, guidance, notes, drafts, and memoranda;

(4) legal analyses;

(5) drawings;

(6) photographs;

(7) laboratory analyses and other analytical data;

(8) computer-generated or electronically recorded information;

(9) maps, charts, graphs, and surveys; and

(10) other communications associated with an environmental or health and safety audit.

(d) To facilitate identification, each document in an audit report should be labeled "COMPLIANCE REPORT: PRIVILEGED DOCUMENT" or labeled with words of similar import. Failure to label a document under this section does not constitute a waiver of the privilege established by this chapter or create a presumption that the privilege does or does not apply.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.052. PERIOD FOR COMPLETION OF AUDIT. (a) Unless an extension is approved by the governmental entity with regulatory authority over the regulated facility or operation based on reasonable grounds, an environmental or health and safety audit must be completed within a reasonable time not to exceed six months after:

(1) the date the audit is initiated; or

(2) the acquisition closing date, if the person continues the audit under Section 1101.053.

(b) Subsection (a)(1) does not apply to an environmental or health and safety audit conducted before the acquisition closing date by a person that is considering the acquisition of the regulated facility or operation.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.053. CONTINUATION OF AUDIT BEGUN BEFORE ACQUISITION CLOSING DATE. A person that begins an environmental or health and safety audit before becoming the owner of a regulated facility or operation may continue the audit after the acquisition closing date if the person gives notice under Section 1101.155.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

SUBCHAPTER C. PRIVILEGE

Sec. 1101.101. SCOPE OF PRIVILEGE. (a) An audit report is privileged as provided by this section.

(b) Except as provided by Sections 1101.102, 1101.103, and 1101.104, any part of an audit report is privileged and is not admissible as evidence or subject to discovery in:

(1) a civil action, whether legal or equitable; or

(2) an administrative proceeding.

(c) A person, when called or subpoenaed as a witness, may not be compelled to testify or produce a document related to an environmental or health and safety audit if:

(1) the testimony or document discloses any item listed in

Section 1101.051 that was made as part of the preparation of an audit report and that is addressed in a privileged part of an audit report; and

(2) the person is:

(A) a person who conducted any portion of the audit but did not personally observe the physical events;

(B) a person to whom the audit results are disclosed under Section 1101.103(b); or

(C) a custodian of the audit results.

(d) A person who conducts or participates in the preparation of an environmental or health and safety audit and who has actually observed physical events of violation may testify about those events but may not be compelled to testify about or produce documents related to the preparation of or any privileged part of an environmental or health and safety audit or any item listed in Section 1101.051.

(e) An employee of a state agency may not request, review, or otherwise use an audit report during an agency inspection of a regulated facility or operation or an activity of a regulated facility or operation.

(f) A party asserting the privilege created by this section has the burden of establishing the applicability of the privilege.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.102. NONPRIVILEGED MATERIALS. (a) The privilege established by Section 1101.101 does not apply to:

(1) a document, communication, datum, or report or other information required by a regulatory agency to be collected, developed, maintained, or reported under a federal or state environmental or health and safety law;

(2) information obtained by observation, sampling, or monitoring by a regulatory agency; or

(3) information obtained from a source not involved in the preparation of the audit report.

(b) This section does not limit the right of a person to agree to conduct and disclose an audit report.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec.

20.002(a), eff. September 1, 2017.

Sec. 1101.103. EXCEPTION: WAIVER. (a) The privilege established by Section 1101.101 does not apply to the extent the privilege is expressly waived by the owner or operator who prepared the audit report or caused the report to be prepared.

(b) Disclosure of an audit report or any information generated by an environmental or health and safety audit does not waive the privilege established by Section 1101.101 if the disclosure:

(1) is made to address or correct a matter raised by the audit and is made only to:

(A) a person employed by the owner or operator, including a temporary or contract employee;

(B) a legal representative of the owner or operator;

(C) an officer or director of the regulated facility or operation or a partner of the owner or operator;

(D) an independent contractor of the owner or operator;

(E) a person considering the acquisition of the regulated facility or operation that is the subject of the audit; or

(F) an employee, temporary employee, contract employee, legal representative, officer, director, partner, or independent contractor of a person described by Paragraph (E);

(2) is made under the terms of a confidentiality agreement between the person for whom the audit report was prepared or the owner or operator of the audited facility or operation and:

(A) a partner or potential partner of the owner or operator of the facility or operation;

(B) a transferee or potential transferee of the facility or operation;

(C) a lender or potential lender for the facility or operation;

(D) a governmental official of a state; or

(E) a person engaged in the business of insuring, underwriting, or indemnifying the facility or operation; or

(3) is made under a claim of confidentiality to a governmental official or agency by the person for whom the audit report was prepared or by the owner or operator.

(c) A party to a confidentiality agreement described by Subsection (b)(2) who violates that agreement is liable for damages

caused by the disclosure and for any other penalties stipulated in the confidentiality agreement.

(d) Information that is disclosed under Subsection (b)(3) is confidential and is not subject to disclosure under Chapter 552, Government Code. A public entity, public employee, or public official who discloses information in violation of this subsection is subject to any penalty provided by Chapter 552, Government Code. It is an affirmative defense to the clerical dissemination of a privileged audit report that the report was not clearly labeled "COMPLIANCE REPORT: PRIVILEGED DOCUMENT" or labeled with words of similar import. The lack of labeling may not be raised as a defense if the entity, employee, or official knew or had reason to know that the document was a privileged audit report.

(e) This section may not be construed to circumvent the protections provided by federal or state law for individuals who disclose information to law enforcement authorities.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.104. EXCEPTION: DISCLOSURE REQUIRED BY COURT OR ADMINISTRATIVE HEARINGS OFFICIAL. (a) A court or administrative hearings official with competent jurisdiction may require disclosure of a portion of an audit report in a civil or administrative proceeding if the court or administrative hearings official determines, after an in camera review consistent with the appropriate rules of procedure, that:

(1) the privilege is asserted for a fraudulent purpose;

(2) the portion of the audit report is not subject to the privilege by application of Section 1101.102; or

(3) the portion of the audit report shows evidence of noncompliance with an environmental or health and safety law and appropriate efforts to achieve compliance with the law were not promptly initiated and pursued with reasonable diligence after discovery of noncompliance.

(b) A party seeking disclosure under this section has the burden of proving that Subsection (a)(1), (2), or (3) applies.

(c) Notwithstanding Chapter 2001, Government Code, a decision of an administrative hearings official under Subsection (a)(1), (2),

or (3) of this section is directly appealable to a court of competent jurisdiction without disclosure of the audit report to any person unless so ordered by the court.

(d) A person claiming the privilege is subject to sanctions as provided by Rule 215 of the Texas Rules of Civil Procedure or to a fine not to exceed $10,000 if the court finds, consistent with fundamental due process, that the person intentionally or knowingly claimed the privilege for information that, by application of Section 1101.102, is not subject to the privilege.

(e) A determination of a court under this section is subject to interlocutory appeal to an appropriate appellate court.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.105. REVIEW OF PRIVILEGED DOCUMENTS BY GOVERNMENTAL AUTHORITY. (a) If an audit report is obtained, reviewed, or used in a criminal proceeding, the administrative or civil evidentiary privilege established by Section 1101.101 is not waived or eliminated for any other purpose.

(b) Notwithstanding the privilege established by Section 1101.101, a regulatory agency may review information that is required to be available under a specific state or federal law, but that review does not waive or eliminate the administrative or civil evidentiary privilege if applicable.

(c) If information is required to be available to the public by operation of a specific state or federal law, the governmental authority shall notify the person claiming the privilege of the potential for public disclosure before obtaining the information under Subsection (a) or (b).

(d) If privileged information is disclosed under Subsection (b) or (c), on the motion of a party, a court or the appropriate administrative official shall suppress evidence offered in any civil or administrative proceeding that arises or is derived from review, disclosure, or use of information obtained under this section unless the review, disclosure, or use is authorized under Section 1101.102. A party having received information under Subsection (b) or (c) has the burden of proving that the evidence offered did not arise and was not derived from the review of privileged information.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

SUBCHAPTER D. VOLUNTARY DISCLOSURE; IMMUNITY

Sec. 1101.151. IMMUNITY FOR VIOLATION VOLUNTARILY DISCLOSED. Except as otherwise provided by this subchapter, a person who makes a voluntary disclosure of a violation of an environmental or health and safety law is immune from an administrative or civil penalty for the violation disclosed.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.152. NATURE OF VOLUNTARY DISCLOSURE. (a) A disclosure is voluntary for purposes of this subchapter only if:

(1) the disclosure was made:

(A) promptly after knowledge of the information disclosed is obtained by the person making the disclosure; or

(B) not later than the 45th day after the acquisition closing date, if the violation was discovered during an audit conducted before the acquisition closing date by a person considering the acquisition of the regulated facility or operation;

(2) the disclosure was made in writing by certified mail to an agency that has regulatory authority with regard to the violation disclosed;

(3) an investigation of the violation was not initiated or the violation was not independently detected by an agency with enforcement jurisdiction before the disclosure was made using certified mail;

(4) the disclosure arises out of a voluntary environmental or health and safety audit;

(5) the person making the disclosure initiates an appropriate effort to achieve compliance, pursues that effort with due diligence, and corrects the noncompliance within a reasonable time;

(6) the person making the disclosure cooperates with the appropriate agency in connection with an investigation of the issues identified in the disclosure; and

(7) the violation did not result in:

(A) injury or imminent and substantial risk of serious injury to one or more persons at the site; or

(B) off-site substantial actual harm or imminent and substantial risk of harm to persons, property, or the environment.

(b) For a disclosure described by Subsection (a)(1)(B), the person making the disclosure must certify in the disclosure that before the acquisition closing date:

(1) the person was not responsible for the environmental, health, or safety compliance at the regulated facility or operation that is subject to the disclosure;

(2) the person did not have the largest ownership share of the seller;

(3) the seller did not have the largest ownership share of the person; and

(4) the person and the seller did not have a common corporate parent or a common majority interest owner.

(c) A disclosure is not voluntary for purposes of this subchapter if the disclosure is a report to a regulatory agency required solely by a specific condition of an enforcement order or decree.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.153. BURDEN OF PROOF WITH RESPECT TO VOLUNTARY DISCLOSURE. (a) In a civil or administrative enforcement action brought against a person for a violation for which the person claims to have made a voluntary disclosure, the person claiming the immunity created by this subchapter has the burden of establishing a prima facie case that the disclosure was voluntary.

(b) After the person claiming the immunity establishes a prima facie case of voluntary disclosure, other than a case in which immunity does not apply under Section 1101.157, the enforcement authority has the burden of rebutting the presumption by a preponderance of the evidence.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.154. NOTICE REQUIREMENT. (a) This section does not apply to an environmental or health and safety audit conducted before the acquisition closing date by a person considering the acquisition of the regulated facility or operation that is the subject of the audit.

(b) To receive immunity under this subchapter, a facility conducting an environmental or health and safety audit under this chapter must provide notice to an appropriate regulatory agency of the fact that it is planning to begin the audit.

(c) The notice must specify:

(1) the facility or portion of the facility to be audited;

(2) the anticipated time the audit will begin; and

(3) the general scope of the audit.

(d) The notice may provide notification of more than one scheduled environmental or health and safety audit at a time.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.155. NOTICE REQUIREMENT FOR CERTAIN AUDITS BEGUN BEFORE ACQUISITION CLOSING DATE. (a) A person that begins an environmental or health and safety audit before becoming the owner of the regulated facility or operation that is the subject of the audit may continue the audit after the acquisition closing date if, not later than the 45th day after the acquisition closing date, the person provides notice to an appropriate regulatory agency of the fact that the person intends to continue an ongoing audit.

(b) The notice must specify:

(1) the facility or portion of the facility being audited;

(2) the date the audit began; and

(3) the general scope of the audit.

(c) The person must certify in the notice that before the acquisition closing date:

(1) the person was not responsible for the scope of the environmental, health, or safety compliance being audited at the regulated facility or operation;

(2) the person did not have the largest ownership share of the seller;

(3) the seller did not have the largest ownership share of

the person; and

(4) the person and the seller did not have a common corporate parent or a common majority interest owner.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.156. IDENTIFICATION OF VIOLATION IN COMPLIANCE HISTORY REPORT. A violation that has been voluntarily disclosed and to which immunity applies under this subchapter must be identified in a compliance history report as being voluntarily disclosed.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.157. EXCEPTION TO IMMUNITY: CERTAIN VIOLATIONS AND OFFENSES; IMPOSITION OF PENALTY; MITIGATING FACTORS. (a) The immunity established by this subchapter does not apply and an administrative or civil penalty may be imposed under applicable law if:

(1) the person who made the disclosure intentionally or knowingly committed or was responsible within the meaning of Section 7.02, Penal Code, for the commission of the disclosed violation;

(2) the person who made the disclosure recklessly committed or was responsible within the meaning of Section 7.02, Penal Code, for the commission of the disclosed violation and the violation resulted in substantial injury to one or more persons at the site or off-site harm to persons, property, or the environment;

(3) the offense was committed intentionally or knowingly by a member of the person's management or an agent of the person and the person's policies or lack of prevention systems contributed materially to the occurrence of the violation;

(4) the offense was committed recklessly by a member of the person's management or an agent of the person, the person's policies or lack of prevention systems contributed materially to the occurrence of the violation, and the violation resulted in substantial injury to one or more persons at the site or off-site harm to persons, property, or the environment; or

(5) the violation has resulted in a substantial economic

benefit that gives the violator a clear advantage over its business competitors.

(b) A penalty that is imposed under Subsection (a) should, to the extent appropriate, be mitigated by factors such as:

(1) the voluntariness of the disclosure;

(2) efforts by the disclosing party to conduct environmental or health and safety audits;

(3) remediation;

(4) cooperation with government officials investigating the disclosed violation;

(5) the period of ownership of the regulated facility or operation; or

(6) other relevant considerations.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.158. EXCEPTION TO IMMUNITY: VIOLATIONS THAT CONSTITUTE PATTERN OF DISREGARD OF ENVIRONMENTAL OR HEALTH AND SAFETY LAWS. (a) The immunity established by this subchapter does not apply if a court or administrative law judge finds that the person claiming the immunity has, after May 23, 1995, repeatedly or continuously committed significant violations and not attempted to bring the facility or operation into compliance, so as to constitute a pattern of disregard of environmental or health and safety laws.

(b) For violations committed by a person to be considered a "pattern" under Subsection (a), the person must have committed a series of violations that were due to separate and distinct events occurring within a three-year period at the same facility or operation.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.